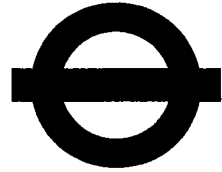


Professional Appointment for Design Services

Contract Reference Number: TfL90711

Purchase Order Number: 3100579075



DATED 3 day of *May* 2013

Transport for London as Client
Heatherwick Studio Ltd as Consultant

PROFESSIONAL APPOINTMENT

for Design Services Relating to a New Footbridge in Central London
Connecting Temple with the South Bank

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PARTIES

- (1) Transport for London (the "**Client**")
- (2) **Heatherwick Studio Ltd** (company registration No 4170748) whose registered office is at 356 – 364 Gray's Inn Road, London WC1X (the "**Consultant**")

BACKGROUND

- (A) The Client intends to carry out the Project.
- (B) The Client wishes to appoint the Consultant to provide design services in connection with the Project.
- (C) The Client has relied and will continue to rely upon the Consultant's skill, care and diligence in respect of all matters covered by this Agreement.

OPERATIVE PROVISIONS

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement:

"**Brief**" means the document set out at Schedule 3 (*The Brief*) outlining the Client's requirements for the Project, as updated by the Client from time to time.

"**CDM Regulations**" means the Construction (Design and Management) Regulations 2007 (SI 320).

"**Client**" means Transport for London, as referred to above and includes, except for the purposes of Clause 5 (*Remuneration*), any person to whom the benefit of this Agreement and any rights under it have been validly assigned under Clause 10.3.

"**Confidential Information**" means all information (whether written or verbal) that by its nature may reasonably be regarded as confidential to the Client (and where the Client is TfL, including the TfL Group) whether commercial, financial, technical or otherwise, and including information which relates to the business affairs, customers, suppliers, products, software, telecommunications, networks, trade secrets, know-how or personnel of the Client (and where the Client is TfL, any member of the TfL Group).

"**Contractor**" means the contractor to be appointed by the Client to carry out and complete the design and construction of the Project, including (where the context so admits) the Contractor's employees, agents and Sub-Contractors.

“Contract Manager” means the person so named in Schedule 1 or another person appointed by the Client to act in its place.

“Construction Act” means Part II of the Housing Grants, Construction and Regeneration Act 1996 as amended by Part 8 of the Local Democracy, Economic Development and Construction Act 2009.

“Fee” means the lump sum stated in Schedule 1 which shall not exceed £60,000 or any adjusted sum agreed under Clause 6.2 payable to the Consultant for the Services.

“Fund” means any person (acting for himself and, where he leads for a syndicate of persons, as agent and trustee for them) who agrees to provide finance to the Client in connection with the carrying out of the Project or any part of it.

“Holding Company” means any company which from time to time directly or indirectly controls the Consultant where “control” is as defined by section 840 of the Income and Corporation Taxes Act 1988;

“Insolvency Event” means any of the following:

- (a) the Consultant and/or the Holding Company making any voluntary arrangement with its creditors or becoming subject to an administration order;
- (b) a receiver, administrative receiver, manager, or administrator being appointed over all or part of the business of the Consultant and/or the Holding Company;
- (c) being a company, the Consultant and/or the Holding Company having passed a resolution for its winding-up or being subject to a petition for its winding-up (except for the purposes of a voluntary amalgamation, reconstruction or other re-organisation without insolvency);
- (d) the Consultant and/or the Holding Company ceasing or threatening to cease to carry on its business for any reason and/or being unable to pay its debts within the meaning of the Insolvency Act 1986;
- (e) being an individual or firm, the Consultant becoming bankrupt or dying;
- (f) any similar event to those in (a) to (e) above occurring in relation to the Consultant and/or the Holding Company under the law of any applicable jurisdiction for those purposes.

“Intellectual Property Rights” mean any patent, know-how, trade mark or name, service mark, design right, copyright, rights in passing

off, database right, rights in commercial or technical information, any other rights in any invention, discovery or process and any other intellectual property rights, in each case whether registered or unregistered and including applications for the grant of any such rights and all rights or forms of protection having equivalent or similar effect in each case in the United Kingdom and anywhere else in the world;

“Key Person” means the person(s) so named in Schedule 1 or any replacement appointed under Clause 4.2 or Clause 4.3.

“Project” means the proposed design and construction of a new footbridge in central London connecting Temple with the South Bank, more particularly described in the Brief.

“Products” means all documents drawings, computer software, details, plans, specifications, schedules, reports, calculations, and other work (and any designs, ideas and concepts contained in them) prepared, conceived or developed by or on behalf of the Consultant in the provision of the Services.

“Project Team” means collectively those consultants (other than the Consultant) appointed by the Client in connection with the Project.

“Scheme” means the Scheme for Construction Contracts (England and Wales) Regulations 1998 (SI 649).

“Services” means the services to be performed by the Consultant in connection with the Project as set out in Schedule 2 (*The Services*), including (except for the purpose of Clause 5.1) any additional services instructed by the Client under Clause 6.3.

“Site” means the site described in Schedule 1, including any addition to or omission from it.

“Statutory Requirements” means all requirements of all Acts of Parliament, statutory instruments, court orders, regulations, directives, European Community decisions (insofar as legally binding), byelaws, treaties and other regulatory requirements relevant to the Consultant’s business and/or the Client’s business, from time to time in force which are or may become applicable to the Services and/or the Project.

“Sub-Contractor” means a sub-contractor or supplier (of any tier) employed or engaged on or in connection with the Project or any part of it.

“TfL” means Transport for London, a statutory corporation established under the Greater London Authority Act 1999.

“TfL Group” means TfL and all its subsidiaries (as defined in section 1159 of the Companies Act 2006) from time to time together and reference to any “member of the TfL Group” shall refer to TfL or any such subsidiary.

1.2 Interpretation

- 1.2.1 References to liability include, where the context allows, claims, demands, proceedings, damages, losses, costs and expenses.
- 1.2.2 A reference to the singular includes the plural and vice versa, and a reference to any gender includes all genders.
- 1.2.3 The Clause and paragraph headings in this Agreement are for ease of reference only and are not to be taken into account in the construction or interpretation of any provision to which they refer.
- 1.2.4 The words “including”, “includes” and “included” will be construed without limitation unless inconsistent with the context.
- 1.2.5 Unless the contrary intention appears, references:
- (a) to defined terms are references to the relevant defined term in Clause 1.1;
 - (b) to numbered Clauses and Schedules are references to the relevant Clause in, or Schedule to, this Agreement; and
 - (c) to a numbered paragraph in any Schedule are references to the relevant paragraph in that Schedule.
- 1.2.6 The expression “person” means any individual, firm, body corporate, unincorporated association, partnership, government, state or agency of a state or joint venture.
- 1.2.7 References in this Agreement to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended or re-enacted by any subsequent statute, enactment, order, regulation or instrument and shall include all statutory instruments or orders made pursuant to it whether replaced before or after the date of execution of the Agreement.
- 1.2.8 If the Consultant is two or more persons, the expression the **“Consultant”** includes the plural number and obligations in this Agreement expressed or implied to be made with or by the Consultant are to be treated as made with or by such persons jointly and severally.

2 CONSULTANT'S GENERAL OBLIGATIONS

- 2.1 The Client appoints the Consultant and the Consultant agrees to perform the Services fully and faithfully in accordance with and subject to the terms of this Agreement.
- 2.2 The Consultant shall comply with all instructions and directions given to him by the Client on any matter connected with the Project.
- 2.3 The Consultant warrants to the Client that he has exercised and will continue to exercise, in the performance of the Services, all the professional skill, care and diligence which may reasonably be expected of a qualified and competent designer experienced in the provision of such services in respect of projects of a similar size, scope, nature and complexity to the Project.
- 2.4 The Consultant warrants to the Client that he has not specified or authorised for use and that he will not specify or authorise for use in the Project any products or materials which are generally known within the construction industry to be deleterious at the time of use in the particular circumstances in which they are used, or those identified as potentially hazardous in or not in conformity with:
- (a) the BPF/BCO report 'Good practice in the selection of construction materials (current edition), other than in accordance with the recommendations as to good practice contained in section 2 of that report;
 - (b) relevant British or European Standards or Codes of Practice; or
 - (c) any publications of the Building Research Establishment related to the specification of products or materials.
- 2.5 The Consultant shall comply fully with the requirements of the Brief, provided that nothing in this Clause 2 (*Consultant's general obligations*) shall preclude the exercise of independent skill and judgment by the Consultant in the performance of the Services. The Consultant shall notify the Client forthwith if he considers that any changes to the Brief are necessary or desirable in the interests of the Project.
- 2.6 The Consultant warrants to the Client that:
- (a) the design carried out by the Consultant for the Project complies and will comply and will enable the Client to comply with the Statutory Requirements;
 - (b) the Consultant will otherwise comply with the Statutory Requirements in performing the Services; and

- (c) no act, omission or default of the Consultant in relation to the Services shall constitute, cause or contribute to a breach by the Client of his obligations under the Statutory Requirements.
- 2.7 The Consultant shall comply with all the obligations imposed on him as a “designer” under the CDM Regulations insofar as they apply to the Project and shall co-operate with and provide information to the Project Team, the Contractor and the Sub-Contractors as necessary to enable them to comply with their respective obligations under the CDM Regulations in relation to the Project.
- 2.8 The Consultant shall keep the Client and the Contract Manager fully and properly informed on all aspects of the progress and performance of the Services and shall provide the Client and the Contract Manager with all such other information in connection with the Project as the Client and/or the Contract Manager may reasonably require.
- 2.9 The Consultant acknowledges that the Client intends to appoint a principal design consultant in connection with the Project and the Consultant shall fully co-operate with the principal design consultant and liaise directly as necessary with the other members of the Project Team, the Contractor and the Sub-contractors to the intent that:
 - (a) the design of the Project is fully integrated;
 - (b) the Project is able to proceed with all reasonable speed and economy and in accordance with any time limits agreed between the Client and the Consultant; and
 - (c) the cost of executing each element of the Project will not exceed the financial limit notified by the Client.
- 2.10 The liability of the Consultant under this Agreement shall not be released, diminished or in any other way affected by:
 - (a) the appointment by the Client of any person to survey the Site or to monitor the carrying out of the Project or to inspect any documents relating to them on behalf of the Client or the failure to appoint such a person;
 - (b) any approval or consent given or withheld or purported to be given or withheld by or on behalf of the Client; or
 - (c) any other independent inquiry into any relevant matter which the Client may make or fail to make.

3 THIRD PARTY OBLIGATIONS

- 3.1 The Consultant shall perform the Services in accordance with any specific requirements which the Client has made known to the Consultant in respect of the Project (including, without limitation, any

contractual obligations owed by the Client to any third party) and so as not to cause or contribute to a breach by the Client of any such requirements. The Consultant shall promptly report to the Client in writing if he considers that such requirements are unachievable or that changes to them are necessary or desirable in the best interests of the Project.

3.2 The Consultant shall, as required by the Client, liaise and co-operate with any person who has or may acquire an interest in the whole or any part of the Site and/or the Project (and their respective representatives) and provide them with all such information in connection with the Project as they may reasonably require.

3.3 The Consultant shall, within 14 days of the Client's request to do so, execute collateral warranties in favour of any:

3.3.1 Fund;

3.3.2 river authority;

3.3.3 principal design consultant forming part of the Project Team; and/or

3.3.4 the Contractor;

in the form set out in Schedule 5 (Pro forma collateral warranty) and shall deliver them to the Client. If the Consultant fails to deliver any collateral warranty validly requested under this Clause 3.3 within 14 days of the Client's request, the Client shall not be obliged to make any further payment to the Consultant under this Agreement until such collateral warranty is delivered to the Client.

3.4 Save that any member of the TfL Group and the Greater London Authority ("**GLA**") has the right to enforce the terms of the Agreement in accordance with the Contracts (Rights of Third Parties) Act 1999 ("**Third Party Act**"), the parties do not intend that any of the terms of the Agreement will be enforceable by virtue of the Third Party Act by any person not a party to it.

3.5 The parties may rescind or vary this Agreement without the consent of any third party to whom an express right to enforce any of its terms has been granted.

4 **CONSULTANT'S TEAM**

4.1 The services of the Key Person shall be available at such times and for as long as may be necessary, and he shall devote such time and attention as may be necessary, to ensure the proper performance by the Consultant of the Services.

4.2 The Consultant shall not replace the Key Person without the prior approval of the Client (such approval not to be unreasonably withheld or delayed) and shall only replace either of them with a person

approved by the Client (such approval not to be unreasonably withheld or delayed). Other than in cases of emergency, the Consultant shall ensure that there is an appropriate handover period between the person being replaced and his replacement.

- 4.3 The Client may, after consultation with the Consultant, request the removal of any person engaged in the performance of the Services if, in the Client's reasonable opinion, his performance or conduct is or has been unsatisfactory and the Consultant shall promptly replace him with a person approved by the Client (such approval not to be unreasonably withheld or delayed).

5 REMUNERATION

- 5.1 The Client shall pay the Consultant the Fee as full remuneration for the Services.
- 5.2 The Fee shall be paid by instalments as provided in Schedule 1 and in accordance with the provisions of Clause 5.3 to Clause 5.6.
- 5.3 The Consultant shall, on each of the dates or at the end of the periods set out in Schedule 1 or (if no dates or periods are specified) not more frequently than monthly, submit to the Client an invoice specifying the sum which the Consultant considers to be due to him under the Agreement as at the due date (including, if applicable, any adjustments arising under Clause 6.2 and/or Clause 6.3) and the basis on which such sum has been calculated, together with any value added tax which may be chargeable, less any sums previously paid by the Client. Invoices shall comply with Regulations 13 and 14 of the Value Added Tax Regulations 1995 (SI 2518), contain all of the information specified in Schedule 1 and shall be supported by all such documents, vouchers and receipts as may be necessary for computing and verifying them. The Consultant's invoice shall be the payment notice required by Section 110A(1) of the Construction Act.
- 5.4 The due date for payment of each invoice shall be the date on which the Client receives the invoice.
- 5.5 If the Client intends to pay less than the amount specified as due in any invoice submitted by the Consultant in accordance with Clause 5.3, he shall give the Consultant a notice of his intention to do so, specifying the sum that he considers to be due to the Consultant as at the date such notice is given and the basis on which such sum has been calculated. Such notice (which shall be the "pay less" notice referred to in Section 111(3) of the Construction Act) may not be given before the due date and must be given not later than three days before the final date for payment of the relevant instalment.
- 5.6 The Client shall pay to the Consultant the amount specified as due in any invoice submitted by the Consultant in accordance with Clause 5.3 (or, if less, the amount specified in the Client's notice under

Clause 5.5) on or before the final date for payment, which shall be 30 days after the due date.

- 5.7 If the Client fails to pay any amount (or any part of it) properly due to the Consultant under this Agreement by the final date for payment under Clause 5.6 and such failure continues for 5 working days after the Consultant has given to the Client written notice of his intention to suspend performance of his obligations under this Agreement and the ground or grounds on which he intends to suspend performance, the Consultant shall be entitled (without limiting any other right or remedy of the Consultant) to suspend performance of any or all those obligations until the outstanding amount is paid in full. Any period during which performance is validly suspended under this Clause 5.7 shall be disregarded in computing the time taken by the Consultant to complete any of the Services affected by the suspension. The Consultant shall be entitled to a reasonable amount in respect of costs and expenses properly and reasonably incurred by him as a result of the valid exercise of his right under this Clause 5.7 and such amount shall be added to the next instalment due to the Consultant under this Agreement.
- 5.8 Any amount due under this Agreement which is not paid by the final date for payment under Clause 5.6 shall carry interest at the rate of 2% above the base rate of HSBC Bank plc from time to time for the period between the final date for payment and the date on which payment is made. The parties agree that this provision constitutes a substantial remedy for late payment of any sum payable under the Contract in accordance with s8(2) of the Late Payment of Commercial Debts (Interest) Act 1998.

6 ADDITIONS TO THE FEE AND ADDITIONAL SERVICES

- 6.1 Subject to Clause 6.3 and Clause 13.2, the Fee shall be deemed to be inclusive payment for the Services and all other matters relating to this Agreement and for all costs, disbursements, expenses and overheads incurred by the Consultant in connection with the Project, except for those items listed in paragraph 8 of Schedule 1 which (if properly and necessarily incurred by the Consultant in connection with the Project with the prior approval of the Client) shall be reimbursed to the Consultant at cost.
- 6.2 If the nature and scope of the Project or of the Services is materially altered in accordance with the Client's requirements, the Client and the Consultant shall agree a fair and reasonable adjustment to the Fee (and a consequential adjustment to the instalments set out in Schedule 1) to reflect any substantial increase or decrease in the work required of the Consultant resulting from the alteration.
- 6.3 In addition to the Services, the Consultant shall perform any other services in relation to the Project which the Client may reasonably instruct. Subject to Clause 6.4 and Clause 6.5, the Client shall pay

an additional fee to the Consultant in respect of any services so instructed, the amount and timing of payment of which shall be agreed between the parties or (if the Client in his sole discretion decides) calculated by reference to the hourly rates in Schedule 4 (*Hourly rate*).

- 6.4 It is a condition precedent to the Consultant's right to payment under Clause 6.3 that, prior to commencing any additional services, he shall notify the Client that he intends to seek additional payment and shall provide to the Client an estimate of such additional payment and that the Client has agreed to this.
- 6.5 Notwithstanding Clause 6.2 and Clause 6.3, the Consultant shall not be entitled to any increase in the Fee nor to any additional payment to the extent that the need for such additional work and/or services results from any negligence, omission or default on the part of the Consultant in the performance of his obligations under this Agreement.

7 **INSURANCE**

- 7.1 Without limiting his other obligations under this Agreement or otherwise at law, the Consultant shall maintain professional indemnity insurance to cover his professional liability under this Agreement, with a limit of indemnity of not less than £5,000,000 in respect of each and every claim, provided that such insurance continues to be available in the European Union market on reasonable terms and at commercially reasonable premium rates to consultants performing services substantially similar to the Services.
- 7.2 The insurance referred to in Clause 7.1 shall:
- (a) be subject only to such conditions and excesses as may be usual in the European Union market at the time; and
 - (b) be maintained with reputable insurers with a place of business in the United Kingdom, from the date of this Agreement and for a period expiring not less than six years after the completion of the Services and notwithstanding the expiry or termination of the Consultant's engagement under this Agreement.
- 7.3 As and when he is reasonably required to do so by the Client, the Consultant shall produce documentary evidence that the insurance required by this Clause 7 (*Insurance*) is being properly maintained.
- 7.4 The Consultant shall promptly notify the Client if at any time he is unable to obtain insurance as required by this Clause 7 (*Insurance*) on reasonable terms and at commercially reasonable premium rates or at all and in that event shall continue to maintain insurance on such

terms and with such a limit of indemnity as may then be available to the Consultant.

8 INTELLECTUAL PROPERTY RIGHTS

- 8.1 The Consultant hereby assigns with full title guarantee to the Client all Intellectual Property Rights in all Products provided that such assignment shall not include items not prepared or developed for the purposes of this Agreement.
- 8.2 Without prejudice to Clause 8.1, the Consultant grants to the Client an irrevocable royalty-free licence to use and to reproduce any or all of the Products for any purpose connected with the Project and/or the Site, including (without limitation) the execution and completion of the Project and the subsequent maintenance, letting, occupation, management, sale, advertisement, extension, alteration, reinstatement and repair of the Site or any buildings or structures on the Site.
- 8.3 The licence referred to in Clause 8.1 carries the right to grant sub-licences and shall be transferable to third parties and shall subsist notwithstanding the expiry or termination (for any reason) of the Consultant's engagement under this Agreement.
- 8.4 The Consultant acknowledges and warrants that he is the author (as defined in the Copyright, Designs and Patents Act, 1988) of the Products and waives any moral rights which he might otherwise be deemed to possess under chapter IV of that Act in respect of the Products and of the Project.
- 8.5 Notwithstanding any other provision of this Clause 8, the Consultant shall not without the prior consent of the Client be entitled to use the Products so as to design any building or structure similar in overall design, appearance or features to the Project, nor shall he be entitled to use the Products for any purpose connected with the Site other than for the purposes of this Agreement and the completion of the Project (notwithstanding the expiry or termination of his engagement under this Agreement or the abandonment of the Project by the Client).
- 8.6 The Consultant shall, if requested by the Client, execute any documents and do anything required to assure to the Client the rights referred to in Clause 8.1 to Clause 8.5.
- 8.7 The Client acknowledges that the Consultant shall not be liable for the consequences of any use of the Products for any purpose which is inconsistent with that for which it was prepared by the Consultant.
- 8.8 The Consultant shall indemnify the Client against any liability which the Client may incur by reason of the Consultant infringing or being held to have infringed any Intellectual Property Rights of any person.

- 8.9 The Consultant shall, at the request of the Client, provide to the Client such copies of the Products and any materials relied upon or referred to in the creation of the Products (in hard copy or electronic form) as he may reasonably require in connection with the Project, provided that where the Client requires the Consultant to provide in excess of 12 hard copies of any of the Products the Client shall pay the Consultant's reasonable photocopying charges incurred in providing such excess copies.
- 8.10 The Client shall procure that all the Client's personnel (including the Key Persons) performing the Services (or part of them) contract with the Client that any Intellectual Property Rights arising out of or relating to work done by those persons pursuant to the Agreement shall be assigned with full title guarantee to the Client and that those persons shall have no title, rights or interests whether legal or beneficial in any of such Intellectual Property Rights and, in relation to any copyright work created, that all moral rights shall be waived by the creator.
- 8.11 The Client shall have no right (save where expressly permitted under the Agreement or with the Client's prior written consent) to use any trade marks, trade names, logos or other Intellectual Property Rights of the Client.
- 8.12 As between the Client and the Consultant, Intellectual Property Rights in all documentation and other items supplied by the Client to the Consultant in connection with the Agreement shall remain the property of the Client.
- 8.13 The Client shall ensure that all royalties, licence fees or similar expenses in respect of all Intellectual Property Rights used in connection with the Agreement have been paid and are included within the Fee.

9 CONFIDENTIALITY

- 9.1 Save as provided below in this Clause 9, the Consultant shall not communicate with representatives of the general or technical press, radio, television or other communications media in relation to the existence of this Agreement or that it is providing the Services to the Client or in relation to any matter under or arising from the Agreement unless specifically granted permission to do so in writing by the Client. The Client shall have the right to approve any announcement before it is made.
- 9.2 The Consultant shall not, without the prior written consent of the Client, hold itself out, verbally or in writing, as being associated with the Project.
- 9.3 The Consultant shall be credited as being associated with or supporting the design of the Project, as the Client's Designer in all

media activity undertaken by the Client including information in press releases, websites and marketing literature used to communicate and publicise the project.

- 9.4 The Consultant shall be included in all promotional and press events organised by or on behalf of the Company for the opening and promotion of the Project. The Consultant shall receive such number of invitations as it may reasonably request to any press, promotion or opening activity by or on behalf of the Client in connection with the Project. In addition, the Consultant shall be entitled to use, copy and communicate to the public (including use on its website) promotional and press images, graphics, photography and promotional literature relating to the Project and its related designs, and otherwise to publicise on its own account its involvement in relation to the concept design of the Project by agreement with the Client such agreement not to be unreasonably withheld or delayed.
- 9.5 The Consultant shall provide artistic guidance for photography of the Project for events and publications.
- 9.6 The Consultant will be given full and free of charge access to and use (for its own business purposes) of all press photography taken by or behalf of the Client.
- 9.7 In the event of negative publicity in relation to the concept design of the Project, the Consultant shall be consulted and kept informed in relation to any press release, announcement or other publication or statement in relation thereto.
- 9.8 In the event that footbridge that is the subject of the Project does not progress and/or another entity is appointed to undertake its full design, the provisions of Clause 9.3 to 9.7 shall no longer apply and, where the consultant so requests, the Client shall not associate the Consultant with the footbridge.
- 9.9 The Consultant will keep confidential:
 - 9.9.1 the terms of this Agreement; and
 - 9.9.2 any and all Confidential Information that it may acquire in relation to the Client.
- 9.10 The Consultant will not use the Client's Confidential Information for any purpose other than to perform its obligations under this Agreement. The Consultant will ensure that its officers and employees comply with the provisions of Clause 9.8.
- 9.11 During the term of this Agreement and after its expiry or termination for any reason, the Consultant undertakes to keep the Confidential Information confidential, except that Clause 9.8 will not apply to any Confidential Information:

- (a) which the Consultant can demonstrate is in the public domain (other than as a result of a breach of this Clause 9);
- (b) which the Consultant is required to disclose by order of a court of competent jurisdiction but then only to the extent of such required disclosure; or
- (c) to the extent that such disclosure is to the Secretary for Transport (or the government department responsible for public transport in London for the time being) the Office of Rail Regulation, or any person or body who has statutory responsibilities in relation to transport in London and their employees, agents and sub-contractors.

10 ASSIGNMENT AND SUB-LETTING

- 10.1 The Consultant shall not assign his interest in this Agreement or any part of it, nor any right arising under it, to any person without the prior consent of the Client.
- 10.2 The Consultant shall not, without the prior consent of the Client, sub-contract the performance of any of the Services. The Consultant shall be fully responsible for any work sub-contracted as if he had performed such work himself.
- 10.3 The Client may at any time or assign the benefit of this Agreement and any rights under it to any person (subject to a maximum of two such assignments). Assignments to a subsidiary or holding company of the Client or any other subsidiary of the Client's holding company shall not require the prior consent of the Consultant and shall not count towards such two occasions. The Client or any other subsidiary of the Client's holding company shall notify the Consultant within a reasonable time of any such assignment.

11 TIME FOR PERFORMANCE

- 11.1 The Consultant shall perform the Services regularly and diligently and (subject to Clause 11.2) within a reasonable time, bearing in mind the requirements of the Project, and in accordance with any time limits agreed between the Client and the Consultant.
- 11.2 If at any time the Consultant is prevented or delayed in the performance of the Services for any reason, he shall promptly so notify the Client giving the specific reason for the delay or prevention, together with his best estimate of its effect on any agreed time limits, and shall use all reasonable endeavours to resume and expedite the Services as soon as practicable. The Consultant shall not be treated as being in breach of this Agreement to the extent that he is delayed in the performance of the Services for reasons beyond his reasonable control.

12 TERMINATION OF CONSULTANT'S ENGAGEMENT BY CLIENT

12.1 The Client may at any time, by not less than five days' prior notice to the Consultant, terminate the Consultant's engagement under this Agreement or the performance of any part of the Services.

13 CONSEQUENCES OF TERMINATION OF CONSULTANT'S ENGAGEMENT

13.1 On termination of the Consultant's engagement under Clause 12 (*Termination of Consultant's engagement by Client*), the Consultant shall take immediate steps to bring the Services to an end in an orderly manner (but with all reasonable speed and economy) and shall within 14 days deliver to the Client all the Products (whether in the course of preparation or completed) provided that the Consultant shall be entitled to retain copies of them.

13.2 If the Consultant's engagement is terminated, the Client shall (subject to any withholdings, deductions or set-offs which the Client is entitled to make and to Clause 13.3, Clause 13.4 and Clause 13.5) pay to the Consultant that part of the Fee and any other amounts arising under this Agreement which have already accrued due prior to the date of termination, plus a fair and reasonable proportion of the next instalment of the Fee having regard to the extent of the Services performed up to the date of termination, less the amount of any payments previously made by the Client to the Consultant under this Agreement. In addition the Client shall in the event of a termination (save where the Consultant is subject to an Insolvency Event) reimburse to the Consultant the direct costs wholly and necessarily incurred by the Consultant resulting from the termination, provided that such termination and such costs have not arisen through any negligence, omission or default on the part of the Consultant.

13.3 On termination or suspension of the Consultant's engagement for whatever reason, the Client shall not (except as exclusively set out in Clause 13.2) be liable to the Consultant for any loss of profit, loss of contracts or other costs, losses and/or expenses incurred by the Consultant in connection with such termination or suspension.

13.4 Termination of the Consultant's engagement for whatever reason shall not (subject to Clause 13.3) limit the rights and remedies of either party in relation to any negligence, omission or default of the other party occurring prior to the termination.

13.5 The provisions of this Agreement shall continue to bind the parties for as long as may be necessary to give effect to their respective rights and obligations under it.

13.6 If the Client obtains a satisfactory planning permission for the Project, the Consultant acknowledges that the Client is not obliged to appoint the Consultant to provide further services in connection with the

detailed design, procurement and construction of the Project or any part of it and that the Client shall be entitled (in its absolute discretion) to appoint another consultant or consultants in the Consultant's place should it wish to.

14 MISCELLANEOUS

- 14.1 All additions, amendments and variations to this Agreement shall be binding only if in writing and signed by the duly authorised representatives of both the Client and the Consultant.
- 14.2 This Agreement supersedes any previous agreement or arrangement between the parties in relation to the Services (whether oral or written) and represents the entire understanding between the parties in relation to the Services.
- 14.3 Notwithstanding the date of this Agreement, it shall have effect as if it had been executed on the actual commencement of the Services by the Consultant.

15 NOTICES

A notice or other communication required under this Agreement shall be given in writing and shall be deemed properly given if it complies with section 196 of the Law of Property Act 1925 (as amended by the Recorded Delivery Service Act 1962 and the Postal Services Act 2000). The addresses and numbers for service of the Client and of the Consultant shall be those stated in Schedule 1 or such other address or number for service as the party to be served has previously notified to the other.

16 DISPUTES

- 16.1 Either party may refer any dispute arising under, out of, or in connection with this Agreement to adjudication in accordance with the rules and provisions of the Scheme and this Clause 16.
- 16.2 Any dispute referred to adjudication shall be referred to an adjudicator appointed by the president or vice president for the time being of the Royal Institution of Chartered Surveyors.
- 16.3 The following provisions of the Scheme shall be amended as set out below:

“8. (1) The adjudicator may adjudicate at the same time on more than one dispute under the same contract.

18. The adjudicator and any party to the dispute shall not disclose to any other person any information or document provided to him in connection with the adjudication, except to the extent that it is necessary for the purpose of, or in connection with, the adjudication.

22. The adjudicator shall provide reasons for his decision.”.

17 **GOVERNING LAW**

17.1 This Agreement shall in all respects be governed by English law.

17.2 The English courts shall have exclusive jurisdiction to determine any dispute arising in connection with this Agreement save that any decision, judgement or award of such courts may be enforced in the courts of any jurisdiction.

THIS AGREEMENT has been signed for and on behalf of the parties the day and year written above.

**Schedule 1
Key Information**

- 1 The Site is N/A
- 2 The Key Person(s) is Richard de Cani, TfL.
- 3 The Contract Manager is Alison Parr, TfL.
- 4 The period of the Contract is from 13 March 2013 to 26 July 2013. Any extension to the end date is subject to further written agreement between the parties.
- 5 The Fee is the lump sum of £60,000 exclusive of value added tax.
- 6 Instalments of the Fee payable in accordance with Clause 5.2 shall be as follows:

Heatherwick Ltd to invoice on a 4 weekly basis in line with TfL's periodic calendar – all invoices must be approved by the TfL Key person Richard de Cani prior to submission
- 7 The Client's address and number for service:

Address: TfL, Windsor House
10th Floor, 42-50 Victoria Street
London
SW1H 0TL

Fax no: N/A
- 8 The Consultant's address and number for service are:

Address: Heatherwick Studio Ltd
356 – 364 Gray's Inn Road
London
WC1X 8BH

Fax no: +44 (0)20 7833 8400
- 9 The Exclusions from the Fee are: N/A
- 10 If applicable, the list of partners is: N/A
- 11 Invoices to be submitted to the Client shall include the following information: Contract Reference Number, (if applicable) SAP order number, Client's name and address, a separate calculation of VAT and a brief description of the Services provided.

Schedule 2 The Services

General

- The Consultant shall provide the Client with design services to enable different options for a new footbridge across the Thames to be considered and assessed allowing a single preferred option to be identified.

Specific

The Consultant shall:

- Together with the Client discuss and establish the Client's objectives, priorities and requirements including programme and budget. Assess these and give general advice on how to proceed.
- Assist with advice over prioritising the requirements and objectives. Assist in the preparation of a preliminary Brief.
- Work with the client to develop clear objectives and assessment criteria for the new footbridge
- Advise the client on constraints and opportunities that would inform the preparation of options for the new bridge
- Work with the Client to develop a number of different design options for the new bridge and support the assessment of these options against the overall objectives.
- Advise on the planning implications and prepare any other report that may be expected of a designer required for the consideration of proposals.
- Develop a preferred option or options to a stage where further technical, design and planning work could be progressed. This includes supporting the preparation of further briefs and tender documents.

Schedule 3 The Brief

1. The Client wishes to secure design advice to help progress ideas for a new footbridge crossing of the River Thames in Central London.
2. The Mayors Transport Strategy (MTS) and London Plan is supportive of the need for improvements in pedestrian connectivity in central London that support an overall enhancement in the quality of pedestrian routes across the central area. The MTS is particularly supportive of a shift in shorter trips from public transport to walking to reduce congestion on the public transport networks.
3. The population of London is forecast to grow to potentially 10 million people by 2033 with a continued increase in the number of people working and travelling to central London. Over the past 10 years there has been a sustained increase in the number of people using national rail services to travel into London which in turn has led to a significant increase in the demand for onward travel from the main line rail terminal. Waterloo is the busiest station in London with significant demand for onward travel using the tube and bus. The Client has been actively encouraging people to consider walking to their onward destination (many of which are within 20 minutes walk) and one of the challenges is access across the river towards the midtown area.
4. In addition, there is a focus of activity along the South Bank area with major developments planned and a high concentration of cultural and leisure activities. Access to the South Bank is limited to a number of crossing points and there is a clear desire to improve access points from the north to spread the activity that is clustered on the South Bank to the north side of the river but also to improve access to key tube stations such as Temple, as a gateway to the South Bank.
5. The Client and the GLA have identified the potential for a new footbridge in central London connecting the South Bank with the Temple area and has appointed the Consultant to help develop this concept to understand the potential and the scale of costs and benefits. A new footbridge in this location could offer benefits in terms of connectivity for pedestrians but would also be a positive contribution to this important cultural and leisure destination.
6. Such a bridge in this location would have to be of a high quality design to meet policies in the local planning documents and the London Plan.

7. This initial study will help examine the potential for a footbridge in this area, considering a number of different locations and taking into account a range of constraints in the area. The Consultant shall work with the Client to identify and test broad options and to help identify a potential preferred option that could be considered further.

8. In June 2006 the GLA adopted a 'Responsible Procurement Policy' to support the delivery of the Mayor's vision for London. The policy defines seven themes of responsible procurement. These are:
 - Encouraging a diverse base of suppliers.

 - Promoting fair employment practices (including the London Living Wage).

 - Promoting workforce welfare.

 - Meeting strategic labour needs and enabling training opportunities.

 - Community benefits.

 - Ethical sourcing practices.

 - Promoting greater environmental sustainability.

The requirements of, and matters raised in, the Responsible Procurement Policy will need to be taken into account and addressed in any design work going forward.

Schedule 4
Daily rate

Daily rates applicable to this Contract are detailed in the table below.

Staff Level	Day Rate
Studio Principal	
Project Leader	
Architect and Designer	
Visualiser	
Junior Architect and Designer	
Technician	
Studio Support	

Schedule 5
Pro forma collateral warranty

DATED [●]

Heatherwick Studio Ltd as Consultant

[●]
as Beneficiary

Transport for London as Client

COLLATERAL WARRANTY

for design services relating to a new footbridge in central London connecting
Temple with the South Bank

DATED [●]

PARTIES

- (1) Heatherwock Studio Ltd(company registration No 4170748 [●]) whose registered office is at 356 -364 Gray's Inn Road, London WC1X 8BH(the "Consultant")
- (2) [●] (company no [●]) whose registered office is at [●] (the "Beneficiary")
- (3) Transport for London (the "Client")¹

BACKGROUND

- (A) By the Appointment, the Client has employed the Consultant to perform the Services.
- (B) [*insert description of Beneficiary's interest*]
- (C) As a condition of and in consideration of the Beneficiary's agreement the Consultant has agreed to enter into this agreement for the benefit of the Beneficiary.

OPERATIVE PROVISIONS

1 DEFINITIONS AND INTERPRETATION

1.1 Unless the contrary intention appears, the following definitions apply:

"**Appointment**" means the contract dated [●] between the Client (1) and the Consultant (2) (and any further agreement varying or supplementing it) under which the Consultant has agreed to perform the Services.

"**Beneficiary**" means any person to whom the benefit of this agreement and/or any rights under it have been validly assigned in accordance with Clause 7 (*Assignment*).

"**Consultant**" means any person who may become a partner of the Consultant after the date of this agreement.²

"**Client**" [*means [insert name of Client]*] and³ includes any person to whom the benefit of the Appointment has been validly assigned.

"**Project**" means the development of the Property as more particularly described in the Appointment.

"**Products**" means all documents drawings, computer software, details, plans, specifications, schedules, reports, calculations, and other work (and any designs, ideas and concepts contained in them) prepared, conceived or developed by or on behalf of the Consultant in the provision of the Services.

¹ Delete if Beneficiary does not have step-in rights.

² Delete if Consultant is a limited company.

“Property” means [●].

“Services” means the services performed or to be performed by the Consultant in respect of the Project as more particularly described in the Appointment.

- 1.2 A reference to the singular includes the plural and vice versa, and a reference to any gender includes all genders.
- 1.3 The clause headings in this agreement are for ease of reference only and are not to be taken into account in the construction or interpretation of any provision to which they refer.
- 1.4 Unless the contrary intention appears, references in this agreement to numbered clauses are references to the relevant clause in this agreement.
- 1.5 The expression “person” means any individual, firm, body corporate, unincorporated association, partnership, government, state or agency of a state or joint venture.
- 1.6 References in this agreement to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended or re-enacted by any subsequent statute, enactment, order, regulation or instrument and shall include all statutory instruments or orders made pursuant to it whether replaced before or after the date of execution of the agreement.
- 1.7 The words “including”, “includes” and “included” will be construed without limitation unless inconsistent with the context.
- 1.8 If the Consultant is two or more persons, the expression the “Consultant” includes the plural number and obligations in this agreement expressed or implied to be made with or by the Consultant are to be treated as made with or by such persons jointly and severally.

2 CONSULTANT’S WARRANTIES

- 2.1 The Consultant warrants to the Beneficiary that it has observed and performed and will continue to observe and perform all its obligations under or arising out of the Appointment in accordance with the terms of the Appointment, provided always that:
 - (a) the Consultant shall owe no greater obligations to the Beneficiary under this agreement than it owes to the Client under the Appointment; and
 - (b) the Consultant shall be entitled in any proceedings under this agreement to rely on any limitation in the Appointment and to raise the equivalent rights in defence of liability (but excluding set-offs or counterclaims) as if the Beneficiary had been named as a joint client with the Client under the Appointment.

- 2.2 The Consultant warrants to the Beneficiary that, in the performance of the Services, it has exercised and will continue to exercise all the skill, care and diligence which may reasonably be expected of a qualified and competent consultant of the relevant discipline, experienced in the provision of such

services in respect of works of a similar size, scope, nature and complexity to the Project.

2.3 Without limiting Clause 2.2, the Consultant warrants to the Beneficiary that it has not specified or authorised for use and will not specify or authorise for use in the Project any products or materials which are generally known within the construction industry to be deleterious at the time of use in the particular circumstances in which they are used, or those identified as potentially hazardous in or not in conformity with:

- (a) the BPF/BCO report Good practice in the selection of construction materials (current edition), other than in accordance with the recommendations as to good practice contained in section 2 of that report;
- (b) relevant British or European Standards or Codes of Practice; or
- (c) any publications of the Building Research Establishment related to the specification of products or materials.

and the Consultant shall notify the Beneficiary promptly if it becomes aware of any proposed or actual use in the construction of the Project of any materials otherwise than in accordance with this clause.

2.4 The Consultant extends to the Beneficiary the benefit of all warranties on the part of the Consultant contained in the Appointment.

2.5 The Consultant acknowledges that the Beneficiary shall be deemed to have relied and shall continue to rely upon the warranties given by the Consultant under this Clause 2 (*Consultant's warranties*).

3 **[OBLIGATIONS PRIOR TO DETERMINATION OF THE CONSULTANT'S ENGAGEMENT⁴**

3.1 The Consultant shall not exercise nor seek to exercise any right to determine its engagement under the Appointment for any reason, including any breach on the part of the Client, without giving to the Beneficiary not less than 21 days' notice of its intention to do so and specifying the grounds for the proposed determination.

3.2 Any period stipulated in the Appointment for the exercise by the Consultant of a right of determination shall be extended, as necessary, to take account of the period of notice required under Clause 3.1.

3.3 Compliance by the Consultant with Clause 3.1 shall not be treated as a waiver of any breach on the part of the Client giving rise to the right of determination, nor otherwise prevent the Consultant from exercising its rights after the expiration of the notice, unless the right of determination shall have ceased under the provisions of Clause 4 (*"Step-in" right*).

4 **"STEP-IN" RIGHT**

4.1 The right of the Consultant to determine its engagement under the Appointment shall cease if, within the period of 21 days referred to in

Clause 3.1, the Beneficiary [(which expression shall for the purposes of this Clause 4 ("*Step-in*" right) include any receiver, administrative receiver or other appointee (in each case a "Nominee") appointed by the Beneficiary)]⁵ shall give notice to the Consultant:

- (a) requiring it to continue its obligations under the Appointment;
- (b) acknowledging that the Beneficiary is assuming all the obligations of the Client under the Appointment; and
- (c) undertaking to the Consultant to discharge all payments which may subsequently become due to the Consultant under the terms of the Appointment and to pay to the Consultant within 7 days any sums which have become due and payable to it under the Appointment but which remain unpaid.

4.2 Upon compliance by the Beneficiary with the requirements of Clause 4.1, the Appointment shall continue as if the right of determination on the part of the Consultant had not arisen and as if the Appointment had been entered into between the Consultant and the Beneficiary to the exclusion of the Client.

4.3 Notwithstanding that as between the Client and the Consultant the Consultant's right of determination of its engagement under the Appointment may not have arisen, the provisions of Clause 4.2 shall apply if the Beneficiary gives notice to the Consultant and the Client to that effect and the Beneficiary complies with the requirements on its part under Clause 4.1.

4.4 The Consultant shall be bound to assume that, as between the Client and the Beneficiary, circumstances have occurred which permit the Beneficiary to give notice under Clause 4.3.

4.5 The Consultant, acting in accordance with the provisions of this Clause 4 ("*Step-in*" right), shall not incur any liability to the Client.

4.6 [If the Beneficiary appoints a Nominee to exercise its rights under this Clause 4 ("*Step-in*" right), the Nominee shall act on behalf of the Client and shall have no personal liability to the Consultant, but the Beneficiary shall be liable to the Consultant as guarantor for the payment of all sums from time to time due to the Consultant from the Nominee.]⁶

5 USE OF PROPRIETARY MATERIAL

5.1 The copyright in the Products shall remain vested in the Consultant or the Client (as applicable pursuant to the Appointment), but the Consultant grants (and the Client consents to such grant) to the Beneficiary an irrevocable royalty-free non-exclusive licence to use and to reproduce any or all of the Products for any purpose connected with the Project and/or the Property, including (without limitation) the execution and completion of the Project and the subsequent maintenance, letting, occupation, management, sale, advertisement, extension, alteration, reinstatement and repair of the Property.

⁵ Include only where Beneficiary is a bank providing finance.

- 5.2 The licence referred to in Clause 5.1 carries the right to grant sub-licences and shall be transferable to third parties and shall subsist notwithstanding the expiry or determination (for any reason) of the Consultant's engagement under the Appointment.
- 5.3 The Consultant acknowledges that it is the author (as referred to in the Copyright, Designs and Patents Act 1988) of the Products and waives any moral rights which it might otherwise be deemed to possess under Chapter IV of that Act in respect of the Products and of the Project.
- 5.4 The Consultant shall provide a complete set of copies of the Products to the Beneficiary without charge on completion of the Project and shall provide further copies of any or all of the Products to the Beneficiary on request and upon payment by the Beneficiary of the Consultant's reasonable copying charges.
- 5.5 The Consultant shall not be liable for the consequences of any use of the Products for any purpose other than that for which it was prepared by the Consultant.

6 **INSURANCE**

- 6.1 Without limiting its other obligations under this agreement or otherwise at law, the Consultant shall maintain professional indemnity insurance to cover each and every professional liability which it may incur under this agreement, with a limit of indemnity of not less than £[5,000,000] in respect of each and every claim, provided that such insurance continues to be available in the European Union market on reasonable terms and at commercially reasonable premium rates to consultants performing services substantially similar to the Services.
- 6.2 The insurance referred to in Clause 6.1 shall:
- (a) be subject only to such conditions and excesses as may be usual in the European Union market at the time; and
 - (b) be maintained with reputable insurers with a place of business in the United Kingdom, from the date of this agreement and for a period expiring not less than 6 years after completion of the Project and notwithstanding the expiry or determination (for any reason) of the Consultant's engagement under the Appointment.
- 6.3 As and when reasonably required to do so by the Beneficiary, the Consultant shall produce documentary evidence that the insurance required by this Clause 6 (*Insurance*) is being properly maintained.
- 6.4 The Consultant shall promptly notify the Beneficiary if at any time it is unable to obtain insurance as required by this Clause 6 (*Insurance*) on reasonable terms and at commercially reasonable premium rates or at all or if there is any material reduction in the scope or level of cover offered by such insurance.

7 **ASSIGNMENT**

The Beneficiary may at any time assign the benefit of this agreement and/or

such assignments) on notice to the Consultant, without the consent of the Consultant being required.

8 THIRD PARTIES

8.1 Any holding or subsidiary company of the Beneficiary or any company associated with it may in its own right enforce any term of this agreement.

8.2 Except as provided in Clause 8.1, it is not intended that any third party (other than the Beneficiary) should have the right to enforce a provision of this agreement pursuant to the Contracts (Rights of Third Parties) Act 1999.

8.3 The parties may rescind or vary this agreement without the consent of a third party to whom an express right to enforce any of its terms has been provided.

9 OTHER REMEDIES

9.1 Nothing in this agreement shall in any way limit or affect any other rights or remedies (whether under any contract, at law, in equity or otherwise) which the Beneficiary would have against the Consultant in the absence of this agreement.

9.2 The liability of the Consultant under this agreement shall not be released, diminished or in any other way affected by:

(a) the appointment by the Beneficiary of any person to survey the Property or to monitor the carrying out of the Project or to inspect any documents relating to them on behalf of the Beneficiary or the failure to appoint such a person;

(b) any approval or consent given or withheld or purported to be given or withheld by or on behalf of the Beneficiary; or

(c) any other independent inquiry into any relevant matter which the Beneficiary may make or fail to make.

10 LIMITATION

No action or proceedings for any breach of this agreement shall be commenced against the Consultant after the expiry of 6 years following completion of the Project.

11 NOTICES

Any notice or other communication required under this agreement shall be given in writing and shall be deemed to have been properly given if compliance is made with section 196 of the Law of Property Act 1925 (as amended by the Recorded Delivery Service Act 1962).

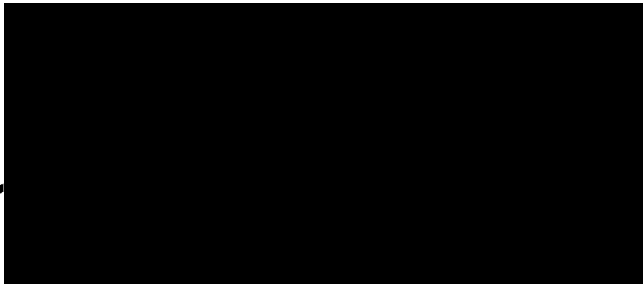
12 GOVERNING LAW

12.1 This agreement shall in all respects be governed by English law.

12.2 The English courts shall have exclusive jurisdiction to determine any dispute arising in connection with this agreement save that any decision, judgement or award of such courts may be enforced in the courts of any jurisdiction.

THIS AGREEMENT has been signed for and on behalf of the parties the day and year written above.

Signed by)
for and on behalf of)
[INSERT CONSULTANT'S NAME])
Signature
Print name and position
Date:
In the presence of:



1
SIGNED IN ERROR

Witness name:
Witness signature:
Witness address:
Witness occupation:

[Add attestation for Beneficiary and Client where Beneficiary has step-in rights.]

