



Dated 29<sup>th</sup> September 2010

- (1) OLYMPIC PARK LEGACY COMPANY LIMITED
- (2) ARCELORMITTAL ORBIT LIMITED
- (3) ARCELORMITTAL S.A.

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Agreement

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relating to the Orbit at the Olympic Park, Stratford, London

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**THIS AGREEMENT** is made on

29th September 2010.

**BETWEEN**

- (1) **OLYMPIC PARK LEGACY COMPANY LIMITED** (Company Number 06900359) whose registered office is at 29-35 West Ham Lane, Stratford, London E15 4PH ("**OPLC**");
- (2) **ARCELORMITTAL ORBIT LIMITED** (Company Number 7208366) of 7th Floor, Berkeley Square House, Berkeley Square, London W1J 6DA ("**ArcelorMittal**"); and
- (3) **ARCELORMITTAL S.A.** (Company Number B 82454) of 19, Avenue de la Liberté, Luxembourg, Grand-Duchy of Luxembourg, R.C.S. Luxembourg B 82.454 (the "**Guarantor**").

**BACKGROUND**

- (A) The Parties have agreed arrangements whereby a new permanent visitor attraction in the Olympic Park will be commissioned, designed and constructed by ArcelorMittal.
- (B) OPLC owns or will procure the transfer to it of the Property and the Orbit will be owned, occupied and operated by OPLC after the 2012 Games.
- (C) ArcelorMittal has agreed to make available various funding for the construction of the Orbit.
- (D) OPLC has agreed to grant to ArcelorMittal the right to name the Orbit.
- (E) OPLC has agreed to split net revenue from the Orbit with ArcelorMittal.
- (F) The Planning Permission has been granted.

**OPERATIVE PROVISIONS**

1. **INTERPRETATION**

- 1.1 In this Agreement, the following words and expressions have the following meanings:

**"2012 Games"** the 2012 Olympic and Paralympic Games

**"Accounting Period"** each period of one year from and including the Accounting Reference Date (or if the Accounting Reference Date changes the period of no more than 12 months from and including the Accounting Reference Date ending the day

before the next Accounting Reference Date)

**"Accounting Reference Date"** the Operational Date or such other date specified from time to time by OPLC as the new accounting reference date provided that OPLC shall not be entitled to change the accounting reference date more than once in any 12 month period

**"Adjacent Outlet"** any outlet within the Olympic Park which generates Revenue that is directly attributable to the Orbit including the sale of any merchandise on which the Mark or Name appears and/or which uses the image of the whole or any part of the Orbit

**"Agreed Sum"** £22,296,774.53 (twenty two million two hundred and ninety six thousand seven hundred and seventy four pounds fifty three pence)

**"Ancillary Rights"** as defined at **clause 11.4**

**"ArcelorMittal Funding"** together the Debt Funding and the Equity Funding which must total in aggregate £19,196,774.53 (nineteen million one hundred and ninety six thousand seven hundred and seventy four pounds fifty three pence) subject to **clause 2.6**

**"ArcelorMittal Materials"** all of the following:

- (a) advertising (print, TV, online, radio) in the UK and internationally bearing the image and/or name of the Orbit;
- (b) web sites featuring the Orbit;
- (c) literature featuring the Orbit;
- (d) premiums (mugs, clothing, pens etc) featuring the Orbit but not sale; and
- (e) video programming featuring the Orbit for transmission on ArcelorMittal's and Group Companies of ArcelorMittal's web channels

<b>"ArcelorMittal's Representative"</b>	such independent, professionally qualified project manager as is notified by ArcelorMittal to OPLC in writing from time to time
<b>"ArcelorMittal Share"</b>	the 50% share of all Tranche 3 monies paid to ArcelorMittal from time to time
<b>"Back to Back Agreement"</b>	the back to back agreement relating to the Planning Permission dated on or around the date of this agreement between OPLC (1), ODA (2), ArcelorMittal (3) and the Guarantor (4)
<b>"Bank"</b>	HSBC Bank Plc or such other bank providing Debt Funding as is notified to OPLC by ArcelorMittal from time to time
<b>"Base Specification"</b>	means the specification at <b>Appendix 6</b>
<b>"Brand Guidelines"</b>	the guidelines for the use of the Name (and all associated branding) as agreed pursuant to <b>clause 17.8</b>
<b>"Budget"</b>	the annual budget of projected income and expenditure for the operation and management of the Orbit
<b>"Building Contract"</b>	has the meaning given to such expression in the Construction Licence
<b>"Building Contractor"</b>	has the meaning given to such expression in the Construction Licence
<b>"Business Plan"</b>	OPLC's business plan for the ongoing operation and management of the Orbit from time to time
<b>"Certificate of Making Good Defects"</b>	the certificate to be issued in accordance with the Building Contract certifying that all defects in the Development Works which are the responsibility of the Building Contractor have been made good in accordance with the terms of the Building Contract
<b>"Certificate of Practical Completion"</b>	the certificate or statement to be issued in accordance with the Building Contract certifying that Practical Completion has taken place

**"Challenge Period"**

the period of three months and two weeks from but excluding the date of the Planning Permission

**"Change of Control"**

where ArcelorMittal S.A. ceases to control ArcelorMittal directly or indirectly and/or any person or group of persons acting in concert gains direct or indirect control of ArcelorMittal. For the purposes of this definition:

(a) **"control"** of ArcelorMittal means:

(i) the power (whether by way of ownership of shares, proxy, contract, agency or otherwise) to:

(A) cast, or control the casting of, more than 50 per cent of the maximum number of votes that might be cast at a general meeting of ArcelorMittal; or

(B) appoint or remove all, or the majority, or the directors or other equivalent officers of ArcelorMittal; and/or

(ii) the holding beneficially of more than 50 per cent of the issued share capital of ArcelorMittal (excluding any part of that issued share capital that carried no right to participate beyond a specified amount in a distribution of either profits or capital).

(b) **"acting in concert"** means, a group of persons who, pursuant to an agreement or understanding (whether formal or informal), actively co-operate, through the acquisition directly or indirectly of shares in ArcelorMittal by any of them, either directly or indirectly, to obtain or consolidate control of ArcelorMittal

<b>"Commercial Objectives"</b>	the objectives which OPLC wishes to achieve in the ongoing maintenance and operation of the Orbit set out in <b>Schedule 5</b>
<b>"Construction Licence"</b>	the licence to be granted by ODA to ArcelorMittal in respect of the Property for the construction of the Orbit in the form set out in <b>Annexure 3</b>
<b>"Contamination"</b>	the presence of any Hazardous Substance in the soil or groundwater at the Property as at the date hereof
<b>"Debt Funding"</b>	debt funding from the Bank for the Development and such expression includes any new or replacement facility from the Bank or any other Bank notified to OPLC by ArcelorMittal subject to <b>clauses 2.4 and 2.5</b>
<b>"Design"</b>	the rights in the overall shape, appearance and/or design of the Orbit
<b>"Design Documents"</b>	all documents (including all designs, drawings, models, plans, specifications, design details, photographs, brochures, reports, notes of meetings, CAD materials, calculations, schedules, programmes, bills of quantities, budgets and all other materials subsisting from time to time) relating to the design of the Orbit and created by Anish Kapoor, Cecil Balmond or White Dark Limited
<b>"Design Licence"</b>	the agreement (or series of agreements) under which OPLC is granted the right to utilise the Intellectual Property Rights in the Design Documents for the purposes of (inter alia) enabling it to operate the Orbit
<b>"Development"</b>	any one or more of the following activities for the Orbit: <ul style="list-style-type: none"> <li>(a) obtaining Planning Permissions and other Statutory Consents;</li> <li>(b) the appointment of the Professional Team, Building Contractor and any</li> </ul>



Principal Sub-Contractors;

- (c) the preparation and approval of the Standard Specification; and
- (d) the construction of the Orbit in accordance with the Construction Licence

and the word "**Develop**" is to be interpreted accordingly.

**"Development Costs"**

any costs or expenditure incurred in carrying out the Development Works including:

- (a) obtaining Planning Permission and Statutory Consents for the Development and complying with the provisions of **clause 3.5**;
- (b) payments due to the Building Contractor under the Building Contract;
- (c) fees due to any professionals (including any member of the Professional Team) or consultants incurred in relation to the Development and/or Development Works; and
- (d) the cost of pursuing, defending, settling or meeting any claim arising out of the Development and/or Development Works of whatsoever nature save to the extent that they arise out of an act or default of ArcelorMittal under the terms of this Agreement. ArcelorMittal will not, for the purposes of this definition only, be treated as being in default of its obligations under this Agreement, if ArcelorMittal is bringing a claim against a third party whose act or omission has put ArcelorMittal in breach of this Agreement

<b>"Development Works"</b>	<p>all demolition or construction works required for the Development in accordance with the Planning Permission including:</p> <ul style="list-style-type: none"> <li>(a) the construction of the Orbit on the Property and all associated site clearance and site preparation works;</li> <li>(b) all works carried out pursuant to any Planning Agreement or pursuant to any Planning Permission; and</li> <li>(c) all ancillary works and facilities required for the Development</li> </ul>
<b>"Environment"</b>	<p>all or any of the following media namely the air, including the air within buildings and within other natural or man-made structures, water (including inland waters, surface water and groundwater) and land and any living organisms or ecosystems supported by those media</p>
<b>"Equity Funding"</b>	<p>ArcelorMittal's equity contribution of £10,000,000 (ten million pounds) to the Development plus any further contribution required in relation to <b>clauses 2.2.2 and 2.2.3</b></p>
<b>"Event of Default"</b>	<p>any of the events of default set out in <b>clause 24.1</b></p>
<b>"Gross Profit"</b>	<p>total Revenues (net of VAT) less payments made to external suppliers for:</p> <ul style="list-style-type: none"> <li>(a) merchandise to sell in the shop at the Orbit or any Adjacent Outlet;</li> <li>(b) supplies for functions that cannot be passed on to the customer (eg equipment hire); and</li> <li>(c) the costs of supply of any other secondary spend items such as photography</li> </ul>
<b>"Group Company"</b>	<p>a company that is, in relation to a specified</p>

company, its holding company or its subsidiary or a subsidiary of its holding company where "holding company" and "subsidiary" have the meanings given to them in section 1159 Companies Act 2006

**"Handover Date"**

the date on which the structure of the Orbit is formally handed back to OPLC by LOCOG under the terms of the LOCOG Licence and which shall not be later than the Operational Date

**"Hazardous Substance"**

any substance whether alone or in combination with any other substance which is capable of causing material harm to man or any other living organism or the Environment

**"Health and Safety Executive"**

the Health and Safety Executive or any successor department or organisation having responsibility for the administration of the CDM Regulations

**"Initial Period"**

the period from and including drawdown of the Debt Funding to but excluding the Operational Date

**"Insolvency Event"**

any one or more of the following in relation to a Party:

- (a) it enters into a voluntary arrangement under Part I of the Insolvency Act 1986 or it enters into a scheme of arrangement with its creditors in satisfaction or composition of its debt;
- (b) an administrator is appointed under Part II of the Insolvency Act 1986;
- (c) a receiver or manager, including an administrative receiver, is appointed whether under Part III of the Insolvency Act 1986, under the Law of Property Act 1925 or otherwise;
- (d) a resolution to wind-up is passed or a provisional liquidator is appointed or a winding-up order is made under Part

IV of the Insolvency Act 1986 unless for the purpose of a solvent amalgamation or reconstruction of the company approved in writing by the other Party;

- (e) a scheme of arrangement is made under Part 26 Companies Act 2006;
- (f) it is struck off the register of companies or otherwise ceases to exist; or
- (g) (in relation to a Party that is not a company) any other process that is analogous to any of the matters in paragraphs (a) to (f) above

**“Intellectual Property Rights”**

copyright, design rights, rights in databases, trade marks, service marks, trade and business names, patents, rights in inventions and other intellectual property rights, in each case whether registered or unregistered and including applications for the grant of the foregoing and all rights or forms of protection having equivalent or similar effect to any of the foregoing which may subsist anywhere in the world

**“Interest on Debt Funding”**

the interest properly and contractually due on the Debt Funding which includes:

- (a) rolled up interest during the Initial Period plus (if charged by the Bank) interest on such interest; and
- (b) interest during the Operational Period; and
- (c) rolled up interest in circumstances where insufficient Revenue is generated to be applied to Tranche 2 during the Operational Period plus (if charged by the Bank) interest on such interest; and

- (d) in the event that ArcelorMittal (or a Group Company) acting in its discretion pays such interest or the fees described in paragraph (f) below, whether during the Initial Period or the Operational Period, interest at the rate of 3% per annum above LIBOR on such sum subject to **clause 2.9**; and
- (e) in the event that ArcelorMittal (or a Group Company) acting in its discretion repays out of its or such Group Company's own resources some or all of the capital on Debt Funding, whether during the Initial Period or the Operational Period, interest at the rate of 3% per annum above LIBOR on such sum subject to **clause 2.9**; and
- (f) one off arrangement and other usual banking fees applied to the Debt Funding facility or facilities from time to time

provided always that in the case of paragraphs (a), (b), (c) and (f) of this definition such interest and fees accrue under the terms of the Debt Funding facility or facilities and do not arise as the result of a breach of any terms of such facility

**"Interest Statement"**

the statement to be produced by ArcelorMittal in accordance with **clause 21.6**

**"IPR Agreement"**

the agreement(s) to be entered into by OPLC, ArcelorMittal, the Greater London Authority and Anish Kapoor to document the terms agreed between them in relation to revenue sharing arrangements for the exploitation of intellectual property rights relating to the Orbit as set out in the heads of terms at **Appendix 5** to this Agreement

**"LDA"**

the London Development Agency

**"LDA Funding"**

£3,100,000 (three million one hundred

thousand pounds) to be provided by the LDA to ArcelorMittal for the Orbit on terms to be agreed between LDA and ArcelorMittal

**"Legislation"**

the Freedom of Information Act 2000 and all subordinate legislation made under it, together with the Environmental Information Regulations 2004 (and any provisions that replace these) and any guidance issued by the Information Commissioner, the Department for Constitutional Affairs, or the Department for Environment Food and Rural Affairs (including in each case its successors or assigns) in relation to that legislation

**"LIBOR"**

the three months sterling London Inter Bank Overnight Rate

**"LOCOG"**

the London Organising Committee of the Olympic Games

**"LOCOG Agreement"**

the 2012 supporter agreement dated 31 March 2010 between LOCOG (1) and ArcelorMittal (2)

**"LOCOG Access Rights"**

a deed in which the rights described in paragraph 2 of Schedule 6 of the LOCOG Agreement are unconditionally and irrevocably granted to LOCOG at no cost, but reserving to ArcelorMittal the rights described in paragraph 7 of Schedule 6 of the LOCOG Agreement

**"LOCOG Licence"**

the licence of the Orbit to be granted by OPLC to LOCOG in respect of the period from the Date of Practical Completion to the Handover Date

**"Management Fees"**

a fee equating to 1.5% of Gross Profit to recompense OPLC for their role in client management, maintaining and enforcing the Operator Agreement, supporting destination marketing and associated financial administration processes in connection with the Orbit

**"Marketing Strategy"**

the marketing strategy set out in more detail in **clause 17.1**

<b>"Marks"</b>	the mark "Orbit" and variations thereof (including any relevant stylised marks and associated logos) to be designed by ArcelorMittal and approved by OPLC in accordance with <b>clause 17.8</b>
<b>"Material Breach"</b>	a breach of any of the terms of this Agreement that is material having regard to all relevant circumstances including: <ul style="list-style-type: none"> <li>(a) the nature of the relationship between the Parties;</li> <li>(b) the need for each Party to maintain the confidence of the other;</li> <li>(c) the nature of the breach, and in particular whether it is intentional, negligent or otherwise; and</li> <li>(d) the consequences of the breach;</li> </ul> <p>but provided always that so long as ArcelorMittal provides the Drawdown Balance (as defined in the Construction Licence) to the ODA then neither the breach or breaches of the Construction Licence that entitled the ODA to step in nor the act of stepping in constitute a "Material Breach" for the purpose of this Agreement</p>
<b>"Merchandising Arrangement"</b>	any merchandising arrangement with the purpose of generating revenue through the commercial exploitation of the Intellectual Property Rights in the Marks, the Name and/or the Design Documents
<b>"Name"</b>	"the ArcelorMittal Orbit"
<b>"ODA"</b>	the Olympic Delivery Authority
<b>"Olympic Park"</b>	the Olympic Park in Stratford, East London the current extent of which is shown on <b>Plan 1</b>
<b>"Operating Costs "</b>	all operating costs of the Orbit incurred by or on behalf of OPLC in respect of the period after the Handover Date including:

- (a) Pre-Operational Costs;
- (b) to the extent that they relate to the Orbit, the costs of the appointed Operator (from time to time);
- (c) fit out costs of the Orbit;
- (d) any profit and/or fees the Operator is entitled to in relation to the operation of the Orbit;
- (e) the cost of maintenance and servicing and providing security for the Orbit to the extent to which it is not the responsibility of the Operator under the Operator Agreement;
- (f) the Service Charge;
- (g) such reasonable amount as a prudent landowner would retain for the long term maintenance/renewal of the structure of the Orbit; and
- (h) any and all sums payable to Anish Kapoor (and/or his associates) pursuant to the IPR Agreement

provided always that:

- (a) if the Operator is OPLC or a Group Company of it then all the costs and expenses of the Operator must be reasonable and proper;
- (b) no sum shall be included within paragraphs (b), (c) and (d) of this definition of "Operating Costs" which the Operator is not entitled to under the terms of the Operating Agreement;
- (c) no amount of cost or expense may be included more than once within Operating Costs;
- (d) recoverable VAT will be excluded from



Operating Costs; and

- (e) a reasonable and proper proportion of the costs of any Adjacent Outlet may be included in Operational Costs - to the extent that they relate to the proper operation of the Orbit

<b>"Operational Date"</b>	the date on which the Orbit is fully equipped and operational and open to the general public as a visitor attraction (after the Handover Date)
<b>"Operational Period"</b>	the period from and including the Operational Date to and including the earlier of the Repayment Date and the date of termination of this Agreement in accordance with its terms by OPLC
<b>"Operator"</b>	any operator by whom the whole or any part of the Orbit is to be managed and operated under an Operator Agreement
<b>"Operator Agreement"</b>	the agreement to be entered into with the Operator for the management and operation of the Orbit
<b>"OPLC's Representative"</b>	an employee or agent of OPLC as such person or persons is notified by OPLC to ArcelorMittal in writing from time to time
<b>"Orbit"</b>	the permanent visitor attraction shown on Plan 2 structure to be constructed on the Property in accordance with the Planning Permission
<b>"Parties"</b>	OPLC and ArcelorMittal, and <b>"Party"</b> shall mean either of them
<b>"Peak Times"</b>	weekends, bank holidays and each of 14 February, 31 October, 5 November, 24 December and 31 December or such other times as are specified from time to time by OPLC which it believes acting reasonably are likely to attract above average numbers of visitors to the Orbit

<b>"Plan"</b>	the plans annexed to this Agreement
<b>"Planning Act"</b>	the Town and Country Planning Act 1990
<b>"Planning Agreement"</b>	an agreement or undertaking in respect of and affecting the Property or the Development Works, whether or not also affecting other property, pursuant to section 106 of the Planning Act or sections 38 or 278 Highways Act 1980
<b>"Planning Authority"</b>	the ODA Planning Delivery Team or any successor body with responsibility for planning consents at the Olympic Park
<b>"Planning Conditions"</b>	the conditions attached to the Planning Permission
<b>"Planning Permission"</b>	planning permission for the Development reference 10/90250/FULODA
<b>"Practical Completion"</b>	is defined in the Construction Licence
<b>"Pre-Operational Costs"</b>	all costs incurred by or on behalf of OPLC after the Handover Date in the management and operation of the Orbit prior to the Operational Date including utilities, rates, insurance, Management Fees, staffing costs and marketing
<b>"Professional Team"</b>	has the meaning ascribed to such expressions in the Construction Licence
<b>"Project Brief"</b>	the Agreed Specification in the Construction Licence
<b>"Property"</b>	the freehold site on which the Orbit is to be constructed registered at the Land Registry under the Title Number and shown more particularly edged red on Plan 1 attached to this agreement
<b>"Relevant Contract"</b>	any contractual arrangement entered into by OPLC (other than this Agreement or the LOCOG Licence) which relates to the Orbit and under which the counterparty is reasonably likely to have cause to make reference publicly

to the Orbit (including the Operator Agreement)

**"Remedial works"**

the remediation of any Contamination required during the construction of the Orbit to comply with the Planning Conditions in order to prevent or mitigate any harm to the Environment or damage to human health

**"Repayment Date"**

the date on which ArcelorMittal receives payment of the final amount of a total sum equalling the whole of the Debt Funding (both capital and Interest on Debt Funding) by way of Tranche 2 and Tranche 3 payments

**"Revenue"**

all revenues directly attributable to the Orbit including all revenues for which the Operator is responsible under the terms of the Operator Agreement, as further defined in **clause 21.3**

**"Revenue and Costs Statement"**

the statement to be produced by OPLC in accordance with **clause 21.5**

**"Service Charge"**

the estate management charge payable in relation to the Orbit in respect of services provided to the Orbit and one or more venues in the Olympic Park

**"Session"**

any one of the following:

- (a) the period of 7am - 9am (a breakfast session) but excluding all bank holidays and weekends;
- (b) the period of 10am - 5pm but excluding all Peak Times and English state school holidays (a day session); and
- (c) the period of 7pm - 10pm but excluding Peak Times (an evening session)

or such other sessions and/or exclusions as are specified from time to time by OPLC which it believes acting reasonably are likely to attract above average numbers of visitors to the Orbit

<b>"Sponsor Mark"</b>	"ArcelorMittal" as more particularly set out at <b>Schedule 4</b>
<b>"Sponsorship Rights"</b>	the right for the Sponsor Mark to be used in conjunction with the Marks as the primary naming sponsor in relation to the Orbit and as further set out in <b>Schedule 3</b>
<b>"Statement"</b>	one or both of the Interest Statement and/or the Revenue and Costs Statement, as appropriate
<b>"Statutory Consents"</b>	any statutory approvals, consents, licences or permissions required from any local or other competent authority to enable ArcelorMittal lawfully to carry out and complete the Development Works or to reinstate them following their damage or destruction and includes the approval of reserved matters under the Planning Permission
<b>"Statutory Requirements"</b>	all or any of the following: <ul style="list-style-type: none"> <li>(a) any Acts of Parliament and any statutory instruments, rules, orders, regulations, notices, directions, bye-laws and permissions for the time being made under or deriving validity from any Act of Parliament;</li> <li>(b) any European directive or regulations and rules having the force of law in the United Kingdom; and</li> <li>(c) any regulations, orders, bye-laws or codes of practice of any local or statutory authority having jurisdiction over the Development Works</li> </ul>
<b>"Target Date"</b>	5 March 2012
<b>"Third Party Rights"</b>	the rights set out in <b>Schedule 4</b> of the Construction Licence
<b>"Title Number"</b>	EGL356763
<b>"Tranche 1"</b>	all Operating Costs

<b>"Tranche 2"</b>	Interest on Debt Funding but excluding any: <ul style="list-style-type: none"> <li>(a) penalty or additional interest payable to the Bank due to any default for which ArcelorMittal is responsible; and</li> <li>(b) capital repayments of the Debt Funding</li> </ul>
<b>"Tranche 3"</b>	the balance of any Revenue after accounting for Tranche 1 and Tranche 2
<b>"Unacceptable Sponsors"</b>	any person or organisation involved in any of the following sectors: steel production, metals or mining, save if their involvement is minor or insignificant;
<b>"VAT"</b>	Value Added Tax
<b>"Working Day"</b>	any day other than a Saturday, Sunday or English bank or public holiday.

1.2 In this Agreement:

- 1.2.1 the clause headings do not affect its interpretation;
- 1.2.2 unless otherwise indicated, references to clauses and Schedules are to clauses of and Schedules to this Agreement and references in a Schedule to a Part or paragraph are to a Part or paragraph of that Schedule;
- 1.2.3 references to any statute or statutory provision include references to:
  - 1.2.3.1 all Acts of Parliament and all other legislation having legal effect in the United Kingdom; and
  - 1.2.3.2 any subsequent statutes directly or indirectly amending, consolidating, extending, replacing or re-enacting that statute and also include any orders, regulations, instruments or other subordinate legislation made under that statute;
- 1.2.4 references to the Property include any part of it;
- 1.2.5 where a right is stated to be granted on an "exclusive" basis it shall mean that the right is granted to the exclusion of any other person (including, for the avoidance of doubt, the person granting the right);
- 1.2.6 "including" means "including, without limitation"; and

1.2.7 references to OPLC shall include any statutory successors in function who has assumed OPLC's rights and obligations under this agreement and any other person to whom OPLC's rights and obligations have passed under this Agreement.

1.3 The Parties and the Guarantor do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.

1.4 Words and expressions defined in the Construction Licence shall have the same meanings in this Agreement. In the case of any discrepancy, this Agreement will take precedence.

## 2. **FINANCIAL ARRANGEMENTS**

2.1 ArcelorMittal is to procure funding for the Development Costs (which includes the LDA Funding). OPLC will not under any circumstances be obliged to provide, guarantee or in any way be responsible for any funding for the Development Costs.

2.2 ArcelorMittal will be responsible for:

2.2.1 payment of fees of Davis Langdon and [REDACTED] totalling in aggregate £278,300;

2.2.2 payment of fees to Pinsent Masons as ODA PDT lawyers totalling £18,474.53; and

2.2.3 any costs overruns beyond the Agreed Sum in connection with the carrying out of the Development Works.

2.3 ArcelorMittal will contribute the ArcelorMittal Funding, and will procure the LDA Funding.

2.4 ArcelorMittal will as soon as practicable and in any event within five Working Days of agreeing terms with the Bank provide to OPLC full details of the terms and conditions of the Debt Funding.

2.5 The Debt Funding must be on open market terms for an unsecured loan which are commercially available to ArcelorMittal at the time the facility with the Bank is put in place. The Guarantor will, if required, provide a guarantee for the Debt Funding.

2.6 The amount of the Debt Funding may not exceed £9,196,774.53 (nine million one hundred and ninety six thousand seven hundred and seventy four pounds fifty three pence) without OPLC's prior written approval (at its absolute discretion).

- 2.7 In the event that the Development Costs are less than the Agreed Sum, the difference between the actual Development Costs and the Agreed Sum will be deducted from the amount of the Debt Funding borrowed or to be borrowed by ArcelorMittal.
- 2.8 ArcelorMittal will contribute and apply its Equity Funding (in full) to pay the Development Costs before drawing down and applying any part of the Debt Funding.
- 2.9 ArcelorMittal will take reasonable steps to minimise the amount of Interest on Bank Debt. For the avoidance of doubt, this clause does not apply to the terms on which the Debt Funding is agreed subject to **clause 2.4**.
- 2.10 If ArcelorMittal decides that it (or a Group Company) will pay Interest on Debt Funding under part (c) of that definition, the notional interest that it is entitled to recover cannot exceed the interest on interest that would be payable to the Bank under the Debt Funding facility as envisaged in parts (a) and (b) of the definition of Interest on Debt Funding.
- 2.11 The Parties agree that ArcelorMittal will be solely responsible for repayment and servicing of the Debt Funding. ArcelorMittal will not use any part of the Orbit (including the Property, structure, materials, fixtures or fittings) as collateral or security in connection with the Debt Funding - or any other funding.
- 2.12 Save to the extent that this Agreement already imposes an obligation on either party to pay the other interest or compensation on late payment or other default, if any amount payable by one party to the other under this Agreement remains unpaid after it becomes due, the defaulting party shall in addition pay to the other interest on such sum from the date the payment was due until the date of payment (both before and after any judgment) at 3% per annum above LIBOR.

### 3. **PLANNING**

- 3.1 ArcelorMittal will keep OPLC fully informed of its discussions (and the discussions of any of its consultants/agents) with the Planning Authority including in relation to the satisfaction of the conditions attached to the Planning Permission.
- 3.2 The Parties will not be entitled to challenge the Planning Permission.
- 3.3 In the event that any third party brings any proceedings to either (a) challenge the Planning Permission or its grant, within the Challenge Period; or (b) challenge whether OPLC, ODA or LDA properly complied with all public procurement rules (which include the Public Contracts Regulations 2006) in relation to the awarding of this contract or the Construction Licence or the LDA Funding or whether ArcelorMittal properly complied with such public procurement rules in relation to the placing of the Building Contract then (subject to the

proviso to **clause 3.3**) either Party may terminate this Agreement on one month's written notice to the other and on such termination neither Party shall have any rights against the other in relation thereto but provided always that OPLC is only entitled to determine this Agreement if the ODA and ArcelorMittal have determined the Construction Licence and if such determination has not taken place any notice served by OPLC to determine will not be effective.

- 3.4 ArcelorMittal may at its discretion commence the Development Works during the Challenge Period.
- 3.5 ArcelorMittal will be responsible (at its cost) for the satisfaction of all of the Planning Conditions which have to be complied with prior to the issue of the Certificate of Practical Completion and for which it has expressly accepted responsibility under the Back to Back Agreement.
- 3.6 OPLC will be responsible (at its cost) for the satisfaction of all the Planning Conditions which have to be complied with after the issue of the Certificate of Practical Completion and for which it has expressly accepted responsibility under the Back to Back Agreement.
- 3.7 ArcelorMittal will use reasonable endeavours (at OPLC's cost) to assist OPLC with the satisfaction of any Planning Conditions which have to be complied with after the issue of the Certificate of Making Good Defects.
- 3.8 ArcelorMittal is (save to the extent that OPLC is aware of the same through attendance at steering committee meetings) to:
  - 3.8.1 provide to OPLC a copy of all material correspondence with the Planning Authority in relation to the Planning Conditions and any Planning Agreement;
  - 3.8.2 keep OPLC informed at reasonable intervals, but not more than once in each calendar month, of the progress of, satisfying each Planning Condition and/or satisfying the terms of any obligations under any Planning Agreement and details of all discussions and negotiations with the Planning Authority;
  - 3.8.3 give OPLC reasonable prior notice of any meetings with the Planning Authority and allow OPLC and its planning consultants to attend those meetings; and
  - 3.8.4 provide OPLC with copies of all notes, correspondence, documents and minutes of meetings concerning the Planning Conditions and/or any Planning Agreement.



- 3.9 OPLC is to co-operate with ArcelorMittal and use all reasonable endeavours to assist ArcelorMittal to satisfy the Planning Conditions for which ArcelorMittal is responsible pursuant to **clause 3.5**.
- 3.10 The Parties will not apply for planning permission under any legislation relating to town and country planning or implement any planning permission (other than the Planning Permission) or apply to vary the Planning Conditions without the prior written consent of the other (such consent not to be unreasonably withheld or delayed) provided that ArcelorMittal may not withhold its consent to a planning application in relation to the fitting out of the Orbit including securing the curtilage around the radius of the Orbit which:
- 3.10.1 is consistent with the drawings and information it has previously approved pursuant to **clause 5.5**; and/or
- 3.10.2 does not:
- 3.10.2.1 increase the cost of constructing the Orbit and/or the scope of works;
- 3.10.2.2 delay the timescale for Practical Completion; and/or
- 3.10.2.3 prejudice ArcelorMittal's rights and protection under the Construction Licence, Building Contract or the appointments of the Professional Team.
- 3.11 The Parties agree that they will not enter into any Planning Agreement without the prior written consent of the other (such consent not to be unreasonably withheld or delayed). For the avoidance of doubt, the Parties have approved the Planning Agreement to be entered into on or about the date of this Agreement by (1) Olympic Delivery Authority and (2) London Development Agency in relation to the Orbit.

#### 4. **DEVELOPMENT**

- 4.1 ArcelorMittal is to carry out or procure that the Development Works are carried out in accordance with the Construction Licence.
- 4.2 ArcelorMittal covenants with OPLC that (subject to the Construction Licence subsisting) it will not use or permit the Property to be used before the Date of Practical Completion for any purpose other than the carrying out of the Development Works.
- 4.3 For the avoidance of doubt, OPLC will own the Development Works by virtue of the fact that it owns the Property but OPLC acknowledge that (a) ArcelorMittal have the right (without requiring the approval of OPLC) to enter the Property and carry out the Development Works and to authorise others to do the same by virtue of the Construction Licence; (b) if ArcelorMittal have constructed some or

all of the Orbit before OPLC acquires the freehold of the Property then ownership of the Orbit may be vested in the original owner or owners of the Property. OPLC covenants to ArcelorMittal that when it acquires the freehold of the Property it will acquire the whole of such person or person's interest in the Orbit.

4.4 ArcelorMittal will provide to OPLC on reasonable request such information including drawings, plans and technical specifications as is reasonably requested by OPLC in connection with the selection and appointment of an Operator.

4.5 ArcelorMittal will comply with the Clauses 1, 3, 4 and 7 and Schedules 2, 3, 4 and 5 of the Construction Licence as if those provisions were expressly set out in this Agreement, save that (but subject to the proviso) references to the ODA are replaced by references to OPLC but provided always that where ODA's approval is required under such parts of the Construction Licence, the approval of the ODA only is required and OPLC's approval is not required. To the extent that such provisions in the Construction Licence conflict with the provisions of this Agreement then the provisions of the Construction Licence shall take precedence.

## 5. FIT OUT

5.1 OPLC will be responsible for fitting out the Orbit at no cost to ArcelorMittal by the Operational Date. In connection with its obligations to procure an Operator under **clause 20** OPLC will:

5.1.1 Incorporate the Base Specification; and

5.1.2 seek the necessary investment from an Operator to deliver the Base Specification

as part of the specifications within the documentation intended to form the tender to appoint an Operator.

5.2 Subject to OPLC having the benefit of an unconditional contractual obligation on the part of the Operator to fund the Base Specification, OPLC will accept an obligation in the ~~LOCOG Agreement~~<sup>LOCOG Agreement</sup> to fit out the Orbit to the Base Specification, or to such lesser specification as is agreed with LOCOG.

5.3 OPLC will keep ArcelorMittal informed at reasonable intervals as to its progress in:

5.3.1 working up the specification and cost of fitting out the Orbit; and

5.3.2 locating and securing an Operator.

5.4 The Parties will co-operate in relation to the fit out works and ArcelorMittal will (at no cost to it) use reasonable endeavours to accommodate the fit out works and (to the extent it is entitled to under the terms of the Building Contract and

Construction Licence) provide access to OPLC and its contractors prior to Practical Completion of the Orbit subject to **clause 5.6**.

- 5.5 If OPLC wishes to incorporate additional works into the Project Brief (at its own cost), it will provide full details of such works to ArcelorMittal. ArcelorMittal will, as soon as reasonably practicable, review the works details to determine that the works do not fall within the provisions of **clause 5.6**, and/or there is no other reason why it would be reasonable for ArcelorMittal not to make such changes and if there is not, it will obtain an estimate of the cost of undertaking such works from the Building Contractor as soon as reasonably practicable. If OPLC is content with the cost estimate, it will within 10 Working Days of receiving the estimates give written notice to ArcelorMittal approving the same and in the event of failure so to do it shall be deemed not to wish to proceed with the change but shall bear the costs of ArcelorMittal in considering the application. ArcelorMittal shall provide OPLC with details of whatever information it reasonably requires from OPLC to effectively programme and carry out the changes and the date(s) by which such information must be made available; and OPLC shall provide ArcelorMittal with all such information on or prior to such date(s); and any costs incurred or suffered by ArcelorMittal as a result of a delay in the provision of such information shall be paid by OPLC to ArcelorMittal. The cost of carrying out the changes to the Project Brief (which may be higher or lower than the estimates) shall be paid by OPLC to ArcelorMittal or as it may direct within 10 Working Days of demand. In the event that an extension of time is granted to the Building Contractor under the Building Contract in order for the Building Contractor to carry out OPLC's changes, then the Longstop Date shall be extended by a period equal to such period of extension of time.
- 5.6 ArcelorMittal will not be obliged to do anything which would or is likely to:
- 5.6.1 increase the cost of constructing the Orbit;
  - 5.6.2 delay the timescale for Practical Completion;
  - 5.6.3 prejudice ArcelorMittal's rights and protection under the Construction Licence, Building Contract or the appointments of the Professional Team; and
  - 5.6.4 require the obtaining of any Statutory Consents.
- 5.7 On and from the issue of the Certificate of Practical Completion OPLC will insure or procure the insurance of the Orbit in its full reinstatement value against a reasonably comprehensive list of insured risks that are appropriate to a structure such as the Orbit and as are reasonably available in the market (the "Insured Risks") and if the Orbit is destroyed or damaged by an Insured Risk promptly procure that the same is reinstated as near as reasonably possible to the same design and specification as prior to such damage or destruction.

5.8 For so long as there is either sufficient Revenue to do so or sufficient sums have been retained out of the Revenue from previous years to fund the same, OPLC will keep the Orbit in a good state of repair and decorative condition.

## 6. **THIRD PARTY RIGHTS**

6.1 ArcelorMittal will use reasonable endeavours to provide OPLC prior to commencing (by way of a material operation under section 56(4) of the Planning Act) the Development Works with the Third Party Rights for each of:

6.1.1 the Building Contractor;

6.1.2 the Professional Team; and

6.1.3 the Key Sub-Contractors (as defined in the Construction Licence);

in accordance with the terms of the Construction Licence.

6.2 If ArcelorMittal has not provided OPLC with all of the Third Party Rights referred to at **clause 6.1.1** and **6.1.2** above by the Date of Practical Completion then both (a) ArcelorMittal's release under **clause 9.2**; and (b) OPLC's obligations to make any payment to ArcelorMittal pursuant to **clause 21.10**, will be suspended until such time as all of the Third Party Rights have been provided.

6.3 ArcelorMittal will provide to OPLC certified copies of each of:

6.3.1 the Building Contract;

6.3.2 the appointment of each member of the Professional Team; and

6.3.3 the appointment of each of the Key Sub-Contractors

within 20 working days of the date of completion of the relevant document.

6.4 ArcelorMittal shall not without the prior written approval of OPLC agree any changes to any of the documents referred to at **clause 6.3.1** to **6.3.3** to the extent that such changes would materially diminish OPLC's position under the Third Party Rights.

## 7. **ENVIRONMENTAL**

7.1 ArcelorMittal will provide to OPLC as soon as reasonably practicable but in any event within ten Working Days full copies of any notices it receives or other material written correspondence with the Environment Agency or other statutory or regulatory body dealing with Contamination.

7.2 ArcelorMittal will provide OPLC with a reasonable opportunity to comment on any proposed response by ArcelorMittal to such notices or correspondence, and will give due consideration to OPLC's comments.

7.3 ArcelorMittal will procure that the Remedial Works are carried out as part of the Development Works.

## 8. **INSURANCE**

It is agreed that the risk of damage to or loss or destruction of the Property, including all buildings, fixtures, fittings, plant and equipment, is to:

8.1 pass to ArcelorMittal on the date of this Agreement; and

8.2 pass back to OPLC on and from the Date of Practical Completion.

## 9. **LIMITATION OF ARCELORMITTAL'S LIABILITY**

9.1 ArcelorMittal is not to be relieved of liability for any breach of its obligations in this Agreement by:

9.1.1 the consent or approval of OPLC to any matter under this Agreement (save to the extent that the giving of consent or approval is itself a negligent act), whether or not this Agreement expressly requires the consent or approval of OPLC;

9.1.2 the issue of the Certificate of Practical Completion or the absence of any objection by OPLC to its being issued or the terms which it contains;

9.1.3 the making good of defects by the Building Contractor under the terms of the Building Contract subject to **clause 9.2**;

9.1.4 the right of ArcelorMittal to make a claim against the Building Contractor or members of the Professional Team;

9.1.5 any delay or neglect by OPLC in enforcing the terms of this Agreement or any time allowed by OPLC for their performance;

9.1.6 any variation of the terms of this Agreement; or

9.1.7 any legal limitation, immunity, disability, incapacity of other circumstances relating to ArcelorMittal, whether or not known to OPLC.

9.2 ArcelorMittal will be released from its obligations in **clauses 2.1 - 2.8, 4, 5, 6, 7.3, 8 and 10, and Schedule 2** on the issue of the Certificate of Making Good Defects subject to any valid claims that have been notified to and not settled by ArcelorMittal prior to the date of the Certificate of Making Good Defects and subject to **clause 6.2**.

## 10. **ARCELORMITTAL'S INDEMNITY**

10.1 ArcelorMittal is to indemnify OPLC in respect of any loss or liability suffered or incurred by OPLC arising as the result of the following matters arising directly or indirectly in relation to the Development Works:

10.1.1 the death of, injury to or accident to any person;

10.1.2 the material damage to or loss of any property;

10.1.3 any breach of the Statutory Consents or Statutory Requirements;

10.1.4 the infringement of the rights (excluding any Intellectual Property Rights) of any third party caused by the carrying out of the Development Works to the extent only that ArcelorMittal are aware of such rights but it is agreed and acknowledged by the parties that ArcelorMittal has carried out no due diligence of any kind as to such matter and has relied on the assurances given by ODA in the Construction Licence in relation thereto; and

10.1.5 any nuisance or disturbance suffered by any third party caused by the carrying out of the Development Works

save to the extent that any such matter is caused directly or indirectly by OPLC or someone authorised by OPLC.

## 11. **GRANT OF SPONSORSHIP RIGHTS**

11.1 OPLC grants to ArcelorMittal the Sponsorship Rights for use by ArcelorMittal from the date of this Agreement until its termination strictly on the terms of this Agreement and in accordance with the Brand Guidelines. As more particularly specified in **Schedule 3**, certain elements of the Sponsorship Rights (including the right to use a name in conjunction with the word "Orbit" and the right to make reference to the fact that ArcelorMittal is a primary sponsor of the Orbit) shall commence prior to the Handover Date whereas certain other elements of the Sponsorship Rights shall commence on the Handover Date save as permitted by LOCOG in writing during the period the Orbit is handed over to LOCOG under the LOCOG Licence.

11.2 Subject to **clause 11.4**, OPLC hereby confirms that the Sponsorship Rights are granted to ArcelorMittal on an exclusive basis. For the avoidance of doubt, nothing within this Agreement shall restrict OPLC from entering into any Merchandising Arrangements with any third party whatsoever and ArcelorMittal agrees that it shall not be entitled to any income from such arrangements other than as set out in the IPR Agreement.

11.3 All rights not expressly granted to ArcelorMittal under this Agreement are hereby reserved to OPLC. OPLC confirms that it is the owner of all such rights as are

required so as to enable it to grant the Sponsorship Rights and accordingly ArcelorMittal acknowledges and agrees that it shall assume no ownership over such rights pursuant to this Agreement.

11.4 Other than in respect of Merchandising Arrangements, OPLC shall be not entitled to license any third party to use the Marks save that OPLC shall be entitled to enter into any sponsorship arrangement with any third party on such terms as OPLC deems appropriate in order to maximise the revenue derived from the Orbit ("the Ancillary Rights") provided that:

11.4.1 OPLC shall not be entitled to enter into any such arrangement without having obtained ArcelorMittal's prior approval (not to be unreasonably withheld or delayed, and the Parties hereby agree that without limitation to ArcelorMittal's right to object to other parties it shall be reasonable for ArcelorMittal to withhold its approval where the proposed sponsor is an Unacceptable Sponsor) as to the identity of the relevant sponsor;

11.4.2 the terms of any such arrangement shall not entitle the sponsor to display any signage or similar on or near the exterior of the Orbit, without ArcelorMittal's prior approval (not to be unreasonably withheld or delayed), and such signage or similar shall no in any event be more prominent or larger in size than the Sponsorship Rights;

11.4.3 the terms of any such arrangement shall not permit or require either the Sponsor or OPLC to refer to the Orbit by any name other than the Name; and

11.4.4 the grant of such Ancillary Rights does not or is not reasonably likely (in the reasonable opinion of a reasonable person) to damage or denigrate ArcelorMittal's reputation or detrimentally affect the value of the Sponsorship Rights to ArcelorMittal.

11.5 ArcelorMittal shall not be entitled to use any name in conjunction with the Marks other than the Sponsor Mark.

11.6 In the event that ArcelorMittal wishes to use a different name in conjunction with the Mark then it must obtain the prior written approval of OPLC (which shall be given or not in its absolute discretion) subject to **clause 11.7**.

11.7 OPLC will not unreasonably withhold or delay its approval under **clause 11.6** if the proposed renaming arises directly out of a corporate reorganisation, restructuring, acquisition or corporate rebranding exercise involving ArcelorMittal.

11.8 In the event that approval is given by OPLC under **clause 11.6** or **11.7**, then:

- 11.8.1 ArcelorMittal shall be responsible for all reasonable and proper costs incurred in the rebranding of the Orbit and the rebranding of all connected or supporting services, promotional materials and advertising and as otherwise notified by OPLC (acting reasonably and properly);
- 11.8.2 due consideration shall be given to the timing of the transition to the new name (including as may be relevant to any Merchandising Arrangements in place at the time) and the final decision as to the date of such transition shall be that of OPLC;
- 11.8.3 the new ArcelorMittal name to be used in conjunction with the Marks shall thereafter automatically be deemed the "Sponsor Mark"; and
- 11.8.4 the new combined name shall thereafter automatically be deemed the "Name".
- 11.9 Throughout the term of this Agreement (but excluding the period the Orbit is handed over to LOCOG under the LOCOG Licence, save as permitted in writing by LOCOG) the Parties shall:
- 11.9.1 always identify the Orbit by reference to the Name (and not, without limitation, by reference to the name "Orbit") in all announcements, advertising, official documents, press releases, written and oral communications with third parties (including the print and broadcast media) and all printed materials and written correspondence (including emails);
- 11.9.2 (without prejudice to **clause 11.9**) use reasonable endeavours to ensure that journalists and other third parties always identify the Orbit by reference to the Name, it being acknowledged that any failure by such persons to make such reference shall not of itself constitute a breach of this **clause 11.8.2** and further that (subject to **clause 11.9**) neither Party has the ability to control the actions of third parties; and
- 11.9.3 always use the Name in a manner consistent with this Agreement (including, without limitation, the Brand Guidelines).
- 11.10 In entering into a Relevant Contract at any time during the term of this Agreement OPLC shall ensure that the counterparty is bound by a prohibition on publicly identifying the Orbit by reference to any name other than the Name (and OPLC shall take all such steps as are prudent to seek appropriate remedies in the event of a breach of such prohibition).
- 11.11 OPLC shall ensure that the terms of the LOCOG Licence require LOCOG always to identify the Orbit by reference to the name "Orbit" as a word on its own.



12. **OBLIGATIONS OF OPLC**

12.1 OPLC undertakes to ArcelorMittal as follows:

12.1.1 to deliver or procure the delivery of the Sponsorship Rights to ArcelorMittal;

12.1.2 to provide reasonable assistance to ArcelorMittal in relation to the development of the Brand Guidelines;

12.1.3 to use the Sponsor Mark in the manner and form illustrated in **Schedule 4** and at all times to use the Name in accordance with the Brand Guidelines;

12.1.4 to use reasonable endeavours to ensure that the Orbit is fully equipped and operational and open to the general public as a visitor attraction throughout the Operational Period save that any closure:

12.1.4.1 for up to one month in any 12 month period;

12.1.4.2 for scheduled maintenance; and/or

12.1.4.3 if required by any relevant authority or Statutory Requirement

will not be a breach of **clause 12.1.4**;

12.1.5 to ensure that so far as possible, in operating the Orbit and making it available to the general public, it at all times adheres to the Commercial Objectives; and

12.1.6 It will negotiate in good faith with LOCOG to grant LOCOG the LOCOG Access Rights as soon as reasonably practicable and will use reasonable endeavours to conclude the LOCOG Agreement within 6 months of the date of this Agreement but provided that:

12.1.6.1 if LOCOG agree to reduce ArcelorMittal's obligations to LOCOG under the LOCOG Agreement in relation thereto then OPLC's obligation under **clause 12.1.6** shall be reduced accordingly; and

12.1.6.2 OPLC will not be required to grant LOCOG Access Rights which exceed the obligations of ArcelorMittal to OPLC under this Agreement in relation to the construction of the Orbit including regarding the timescale for practical completion.

12.2 OPLC warrants that it has full authority to enter into this Agreement.

- 12.3 OPLC undertakes that it shall work closely with the proprietor(s) of Intellectual Property Rights in the Design Documents in taking all such steps as are prudent and necessary to curtail any unauthorised use of such rights of which it becomes aware from time to time following the Date of Practical Completion (and the Parties agree that all costs incurred by OPLC in doing so shall be considered Operating Costs).
- 12.4 OPLC agrees that it shall not assign any of its rights and obligations under the Design Licence save where the assignee is a permitted assignee under **clause 34.2**.
- 12.5 OPLC will provide the following services:
- 12.5.1 Operator procurement, contracting and contract enforcement;
  - 12.5.2 Client project management and monitoring – Including likely monthly, quarterly and annual performance monitoring against the operator contract;
  - 12.5.3 Financial controls, payments, monitoring and reporting (including AM debt repayments);
  - 12.5.4 Destination marketing;
  - 12.5.5 Park co-ordination between operators/venues and service packages;
  - 12.5.6 Park events programming; and
  - 12.5.7 Administration associated with the above tasks.
- 12.6 Subject to, and conditional upon, OPLC complying with the provisions of **clause 12.5**, OPLC may deduct the Management Fee from Tranche 1.

### 13. **OBLIGATIONS OF ARCELORMITTAL**

- 13.1 ArcelorMittal hereby undertakes that it shall:
- 13.1.1 exercise the Sponsorship Rights strictly in accordance with the terms of this Agreement;
  - 13.1.2 use the Marks in accordance with the Brand Guidelines and the terms of this Agreement;
  - 13.1.3 provide reasonable assistance to OPLC in relation to the development of the Brand Guidelines and at all times comply with any and all provisions of the Brand Guidelines;
  - 13.1.4 be responsible for all further reasonable and proper costs incurred in the branding of the Orbit as may arise out of the exercise of the

Sponsorship Rights (but excluding any costs arising in relation to the Intellectual Property Rights in the Name or the Marks save as provided for in **clauses 14 and 15**) and/or in the implementation of the Brand Guidelines;

- 13.1.5 not, without the prior written approval of OPLC (at its absolute discretion), engage in any joint promotional activity or otherwise exploit any of the Sponsorship Rights with or in connection with any third party;
  - 13.1.6 not do or permit anything to be done which might adversely affect the rights of OPLC in or to the Sponsorship Rights; and
  - 13.1.7 ensure that any and all ArcelorMittal Materials featuring the Name are produced in accordance with the Brand Guidelines and to the ArcelorMittal corporate quality standards and are fit for their purpose.
- 13.2 ArcelorMittal hereby grants to OPLC a non-exclusive, royalty-free licence during the term of this Agreement to use the Sponsor Mark in connection with the delivery of the Sponsorship Rights and subject to ArcelorMittal's approval (not to be unreasonably withheld or delayed) of the circumstances in which the Sponsor Mark is used.
- 13.3 ArcelorMittal hereby grants to OPLC a non-exclusive, royalty-free licence during the term of this Agreement to use the Sponsor Mark and any audio, visual and audio-visual or electronic recordings of the same, by all or any means and in all or any form of media whether now known or hereafter to be invented (including in connection with any official website and any other official product or publication) throughout the world in perpetuity for the purposes of advertising, merchandising and publicity for the Orbit. The rights granted in this clause are subject to ArcelorMittal's approval (not to be unreasonably withheld or delayed) of the circumstances in which the Sponsor Mark is used provided that once approval is given in respect of such use then no further approval shall be required and save always that ArcelorMittal shall have no right of approval in respect of the any Merchandising Arrangement (including the scope and subject matter) provided that the Sponsor Mark is used in the manner and form illustrated in **Schedule 5**.
- 13.4 OPLC shall not be entitled to use the Sponsor Mark other than as part of the Name (save where simply making reference to ArcelorMittal) and OPLC hereby agrees that it shall not use any name in conjunction with the Marks other than the Sponsor Mark.
- 13.5 The rights granted pursuant to **clauses 13.2 and 13.3** shall automatically terminate on termination of this Agreement for any reason.

- 13.6 OPLC shall ensure that all materials which it creates (or which are created on its behalf) and which bear the Name are produced in accordance with the Brand Guidelines and to the ArcelorMittal corporate quality standards and are fit for their purpose.
- 13.7 OPLC shall not:
- 13.7.1 dispute or challenge the validity of the Sponsor Mark, or the rights of ArcelorMittal to the Sponsor Mark, during the term of this Agreement;
  - 13.7.2 subject to **clause 15.5**, apply for, or obtain, registration of any trade or service mark (or other proprietary right) which consists of or comprises either of the words "Arcelor" or "Mittal" or any confusingly similar word or words;
  - 13.7.3 do, or omit to do, anything which is likely to diminish or prejudice the rights of ArcelorMittal in the Sponsor Mark or Impair any registration of the Sponsor Mark; or
  - 13.7.4 use the Sponsor Mark in a manner which would bring them or ArcelorMittal into disrepute, materially damage their goodwill or reputation, cause them to become generic or misleading or to lose their distinctiveness.
- 13.8 OPLC shall:
- 13.8.1 inform ArcelorMittal forthwith of any use by any third party or any act or thing of which it becomes aware which might vitiate or prejudice the rights of ArcelorMittal in and to the Sponsor Mark;
  - 13.8.2 promptly notify ArcelorMittal of any attack on the validity of any registration of the Sponsor Mark; and
  - 13.8.3 to the extent appropriate and relevant co-operate fully with ArcelorMittal in taking all steps reasonably required by ArcelorMittal in connection with any infringement of the Sponsor Mark including legal proceedings.
- 13.9 Any goodwill derived from the use of the Sponsor Mark shall accrue to ArcelorMittal. ArcelorMittal may, at any time, call for a confirmatory assignment of that goodwill and OPLC shall promptly execute the requisite documentation.
- 13.10 ArcelorMittal shall only use the Marks on and in connection with ArcelorMittal Materials as approved by OPLC on a case by case basis and that are produced in accordance with the Brand Guidelines and to the ArcelorMittal corporate quality standards.

14. **THE MARKS**

- 14.1 The Parties acknowledge and agree that OPLC shall be the owner of all Intellectual Property Rights subsequently arising in relation to the Marks (including, for the avoidance of doubt, any and all logos or stylised marks incorporating the Marks) and that the final decision as to the appropriate steps necessary for the protection and exploitation of the Marks shall be that of OPLC in its absolute discretion.
- 14.2 OPLC shall take all such steps as it deems reasonably necessary to obtain and maintain (including by way of renewal) registered trade mark protection (as a UK and/or Community trade mark) in relation to the "Orbit" name, such protection to cover all appropriate goods and services (including buildings, structures and common merchandising items). OPLC shall apply to register the image of the Orbit as a UK and Community trade mark.
- 14.3 ArcelorMittal shall provide, at the request of OPLC, all necessary assistance as OPLC may reasonably require in seeking to comply with **clause 14.2**.
- 14.4 OPLC and ArcelorMittal each undertake that they shall, at the other's request and at ArcelorMittal's expense, execute or procure the execution of any document which may be necessary to allow recordal of the rights granted to ArcelorMittal in relation to the Marks pursuant to this Agreement.
- 14.5 Any goodwill derived from the use of the Marks shall accrue to OPLC. OPLC may, at any time, call for a confirmatory assignment of that goodwill and ArcelorMittal shall promptly execute the requisite documentation.
- 14.6 OPLC shall take such steps as it deems necessary consistent with the prudent proprietorship of a high-profile and valuable brand to prevent the Marks becoming generic, losing their distinctiveness or becoming liable to mislead the public (including by way of appropriate policing of the Operator's use of the Marks).
- 14.7 ArcelorMittal shall not:
- 14.7.1 dispute or challenge the validity of the Marks, or the rights of OPLC to the Marks, during the term of this Agreement;
  - 14.7.2 subject to **clause 15.5** apply for, or obtain, registration of any trade or service mark (or other proprietary right) which consists of or comprises the word "Orbit" or any confusingly similar word or words;
  - 14.7.3 do, or omit to do, anything which is likely to diminish or prejudice the rights of OPLC in the Marks or impair any registration of the Marks; or

- 14.7.4 use the Marks in a manner which would bring them or OPLC into disrepute, materially damage their goodwill or reputation, cause them to become generic or misleading or to lose their distinctiveness.
- 14.8 ArcelorMittal shall:
- 14.8.1 inform OPLC forthwith of any use by any third party or any act or thing of which it becomes aware which might vitiate or prejudice the rights of OPLC in and to the Marks;
- 14.8.2 promptly notify OPLC of any attack on the validity of any registration of the Marks; and
- 14.8.3 to the extent appropriate and relevant co-operate fully with OPLC in taking all steps reasonably required by OPLC in connection with any infringement of the Marks including legal proceedings.
- 14.9 All costs and expenses incurred by OPLC in complying with its obligations under **clause 14.2** shall be Operational Costs and treated accordingly under **clause 21**.
- 14.10 OPLC shall have the exclusive right to take whatever action it believes necessary and proper in connection with any unauthorised use, infringement, suspected or threatened infringement, passing off, or other unlawful interference with its rights in the Marks.
- 14.11 ArcelorMittal agrees to provide to OPLC all reasonable assistance which OPLC may require in connection with any action it may decide to take in relation to any unauthorised use, infringement, suspected or threatened infringement, passing off or other unlawful interference with the rights in the Marks (including, without limitation, bringing or joining in proceedings or lending its name to any proceedings brought by OPLC).
- 14.12 All costs and expenses incurred by OPLC in connection with dealing with an alleged infringer of the Marks pursuant to **clause 14.10** or dealing with any incorrect and unjustified allegation that OPLC or any of its licensees has infringed third party Intellectual Property Rights by its use or dealings in any way of or with the Marks shall be Operational Costs and treated accordingly under **clause 21**. All sums recovered by OPLC (whether by way of a damages award, costs award, settlement payment or otherwise) in connection with dealing with an alleged infringer of the Marks pursuant to **clause 14.10** shall be Revenue and treated accordingly under **clause 21**.
- 14.13 OPLC shall not license or assign or otherwise transfer or permit the use of the Marks save where:

14.13.1 it grants a limited licence to a sponsor as part of an agreement entered into in accordance with **clause 11.4**;

14.13.2 it grants a licence to a third party as part of a Merchandising Arrangement; or

14.13.3 the assignee of the Intellectual Property Rights in the Marks is a permitted assignee under **clause 34.2**.

## 15. **THE NAME**

15.1 The Parties hereby acknowledge and agree that any and all goodwill arising pursuant to use by or on behalf of either Party of the Name shall belong to the Parties jointly as tenants in common such that (i) goodwill relating to usage of the part of the Name which consists of the Sponsors Mark shall accrue to ArcelorMittal and (ii) goodwill relating to usage of the part of the Name which consists of the Marks shall accrue to OPLC. Either Party may, at any time, call for a confirmatory assignment of their respective element of such goodwill and the other Party shall promptly execute the requisite documentation.

15.2 Each Party shall promptly notify the other of any passing off or of any other act or thing which might vitiate or prejudice the rights of either Party in and to the Name and the goodwill relating thereto that comes to its notice.

15.3 Neither Party shall take any action (including the commencement of proceedings) in connection with any unauthorised use or passing off relating to the Name without first having discussed the matter with the other Party and having sought to reach agreement as to the most appropriate course of action to be taken. In the event that one Party subsequently takes any such action (the "Acting Party") then the other Party shall provide all reasonable assistance which the Acting Party may require in connection therewith (including, without limitation, bringing or joining in proceedings or lending its name to any proceedings brought by the Acting Party).

15.4 The costs in respect of any action brought pursuant to **clause 15.3** (whether brought by one Party alone or by the Parties jointly) shall be an Operational Cost and treated accordingly under **clause 21** and shall be reimbursed in full to the Party that incurred the costs. All sums recovered by one Party alone or by the Parties jointly (whether by way of a damages award, costs award, settlement payment or otherwise) in connection with any action brought pursuant to **clause 15.3** shall be Revenue and treated accordingly under **clause 21**.

15.5 Neither Party shall be entitled to obtain or apply to obtain registered trade mark, protection in relation to the Name without having first discussed the proposed plans with the other Party and agreed in writing (inter alia) the manner in which such application/registration shall be sought, maintained and enforced. In the event of any failure by the Parties to jointly agree the foregoing then the final

decision as to the appropriate steps necessary for the protection of the Name (whether by way of an application for registered trade mark, protection or otherwise) shall be that of OPLC. This provision is subject to **clause 15.9**.

- 15.6 OPLC acknowledges and agrees that it shall only be entitled to use the Name in connection with the delivery of the Sponsorship Rights and the commercial exploitation of the Orbit (which shall include any Merchandising Arrangements) and ArcelorMittal acknowledges and agrees that it shall only be entitled to use the Name in connection with the enjoyment of the Sponsorship Rights.
- 15.7 The Parties hereby undertake that, on termination of this Agreement, they shall each cease making any further use of the Name for any reason and OPLC shall as soon as reasonably practicable remove any references to the Name from any signage on or around the Orbit and from any marketing materials, documentation and websites and shall cease making any merchandise bearing the Name available for sale.
- 15.8 Neither Party shall be entitled to assign its rights in the Name to any third party without having first sought and obtained the written consent of the other Party (such consent to be given or withheld entirely at the other Party's discretion) save that nothing in this **clause 15.8** shall operate so as to restrict OPLC's ability to assign its rights in the marks or so as to restrict ArcelorMittal's ability to assign its rights in the Sponsor Mark.
- 15.9 OPLC acknowledges that application number 009048241 (the "**Application**") is subsisting and is currently being processed in the Office for the Harmonisation of the Internal Market and that nothing in this Agreement shall prohibit the Guarantor from prosecuting the Application nor from owning the registration which may result from the Application.
- 15.10 In relation to any trademark registration granted pursuant to the Application ("**New Mark**"), the Guarantor shall as soon as reasonably practicable after such registration assign any and all rights in the New Mark to ArcelorMittal.
- 15.11 ArcelorMittal shall:
- 15.11.1 only use the New Mark strictly in accordance with the Brand Guidelines and the terms of this Agreement and ArcelorMittal recognises that ownership of the New Mark does not confer any additional rights upon ArcelorMittal other than as set out elsewhere in this Agreement and that the maintenance and enforcement of the New Mark shall be in accordance with **clause 15.5** above;
  - 15.11.2 grant to OPLC a royalty free, non-exclusive licence to use the New Mark in accordance with OPLC's rights and obligations under this Agreement;



15.11.3 other than in accordance with **clause 15.11.2** above, not grant any rights in the New Mark to any third party; and

15.11.4 in the event that this Agreement is terminated immediately cease to use the New Mark and will apply to cancel the New Mark.

## 16. **TICKETS AND HOSPITALITY**

16.1 ArcelorMittal has the right in every calendar year and subject to **clause 16.7**:

16.1.1 to receive on request, free of charge, up to 250 (two hundred and fifty) standard entrance tickets to the Orbit (whether by way of vouchers tickets or redeemable codes) for use by ArcelorMittal personnel or their guests (but not during Peak Hours), subject to compliance by ArcelorMittal personnel and their guests with the standard conditions of entry applicable to such tickets. In the event that such tickets are not requested in any given year such allocation shall not be added to the allocation for the following year; and

16.1.2 to the exclusive use, free of charge, of the viewing platform (for breakfast and evening Sessions only) and the corporate hospitality platform (for any Session) of the Orbit to host private events of up to a maximum of five Sessions subject to **clauses 16.2 to 16.6**.

16.2 Subject to **clauses 16.3 to 16.6** OPLC shall guarantee that ArcelorMittal shall be entitled to host private events in accordance with **clause 16.1.2** on dates and at times of ArcelorMittal's choosing in each calendar year, provided that the particular dates and times are notified by ArcelorMittal to OPLC no later than 1 November in the calendar year prior to the calendar year to which the Sessions relate (or, in respect of the calendar year in which the Operational Date falls, no later than 60 days prior to the Operational Date). In the event that, having notified a particular date and time in this manner, ArcelorMittal subsequently decides that it does not wish to make use of such guaranteed private event, it shall promptly notify OPLC and, if notice is given less than 30 days prior to the particular date, ArcelorMittal shall be required to pay OPLC a reasonable sum so as to compensate OPLC in respect of the absence of a group booking for the particular Session. For the avoidance of doubt ArcelorMittal shall be entitled to a maximum of five private event sessions per calendar year regardless of whether or not the dates and times of all or some of such Sessions have been guaranteed in accordance with the mechanism set out above.

16.3 OPLC may require payment for each Session used by ArcelorMittal in a calendar year which is over and above the five sessions granted under clause 16.1.2, provided that OPLC will charge preferential rates to ArcelorMittal. ArcelorMittal acknowledges that it will be responsible for the costs of each Session (including those granted under **clause 16.1.2**) including:

- 16.3.1 event set up at standard operation rate;
  - 16.3.2 all costs relating to directly to catering/hospitality including food and beverage;
  - 16.3.3 marketing and ticketing;
  - 16.3.4 any additional technical support and staffing costs (beyond standard operation);
  - 16.3.5 any costs related to extended operating hours beyond those listed in the definition of Session.
- 16.4 ArcelorMittal shall not be entitled to more than:
- 16.4.1 1 Session during the 2 months of July and August; or
  - 16.4.2 1 evening Session in December; or
  - 16.4.3 1 Session in any one day.
- 16.5 In the event that the number of private events used by ArcelorMittal in any given calendar year is less than five, the remainder of such allocation shall not be added to the allocation for the following year.
- 16.6 ArcelorMittal will not offer for sale or resell the tickets referred to in **clause 16.1.1** and will not charge third parties for the use of the Orbit including accessing the viewing platform or the corporate hospitality platform during any Session.
- 16.7 The rights granted in **clause 16.1** shall be exercisable from the Operational Date until the end of the calendar year in which falls the later of:
- 16.7.1 the Repayment Date; and
  - 16.7.2 the twenty-fifth anniversary of this Agreement.
- 17. MARKETING AND PUBLIC RELATIONS**
- 17.1 OPLC will devise a marketing strategy for the promotion of the Orbit as soon as reasonably practicable after the date of the Operator Agreement. The Marketing Strategy will include such aspects of the marketing and promotion of the Orbit as determined by OPLC and shall be updated at least annually by OPLC.
- 17.2 OPLC will provide a copy of the Marketing Strategy (and any updated Marketing Strategy) to ArcelorMittal and take into account any reasonable comments made by ArcelorMittal on the Marketing Strategy.

- 17.3 Subject to **clause 17.6** the Parties will implement any actions agreed in the Marketing Strategy and will keep each other informed of all steps taken in that regard.
- 17.4 Subject to **clause 17.6**, ArcelorMittal will use reasonable endeavours to assist OPLC in promoting the Orbit including where possible through its Group Companies and general business contacts.
- 17.5 Other than as set out in the Marketing Strategy, no announcement, press release or any other publicity shall be made by either Party in relation to this Agreement without the prior written consent of the other (such consent not to be unreasonably withheld or delayed).
- 17.6 The Marketing Strategy shall not require any external costs to be incurred by ArcelorMittal unless otherwise agreed between the Parties.
- 17.7 The Parties acknowledge and agree that any marketing and promotion material must adhere to the London 2012 brand licence guidelines and any requirements of either Party's arrangements with LOCOG and/or the British Olympic Association.
- 17.8 As soon as reasonably practicable following execution of this Agreement ArcelorMittal shall appoint (at its own cost) a branding consultant the identity of which shall be approved by OPLC, such approval not to be unreasonably withheld or delayed) for the purposes of creating a brand identity (including if appropriate, a logo) in relation to the Name following which the Parties shall work together in developing a set of agreed, written Brand Guidelines which shall specify the manner in which the Sponsorship Rights and the Name shall be used during the term of this Agreement. In the event that the Parties cannot agree the scope or content of the Brand Guidelines (or any element therein) then any final decisions or approvals shall be that of OPLC, although the consent of ArcelorMittal (which will not be unreasonably withheld or delayed) must be obtained before the logo, if created, changed, modified or varied in any way.
- 17.9 All Intellectual Property Rights arising as part of the creation of the brand identity under **clause 17.8** (including any logo(s) and the content of the Brand Guidelines excluding the Sponsor Mark) shall be owned by OPLC. Where necessary ArcelorMittal shall arrange for the transfer of the foregoing rights from the branding consultant and/or ArcelorMittal to OPLC.
- 17.10 Both Parties will provide to each other on reasonable request copies of all publicity materials including visual media produced by or on behalf of each Party in relation to the Orbit for use by the other Party in connection with the marketing and promotion of the Orbit.

18. **WEBSITE**

- 18.1 As soon as reasonably practicable following completion of the Brand Guidelines a website relating to the Orbit shall be created by or on behalf of ArcelorMittal which shall be accessible at [www.arcelormittalorbit.com](http://www.arcelormittalorbit.com). On or as soon as reasonably practicable after the Handover Date ArcelorMittal shall cease hosting the aforementioned website and shall licence to OPLC the content of and web files relating to the aforementioned domain name and OPLC undertakes that it shall thereafter for the remainder of the term of this Agreement host and make available to the public a website utilising such domain name which provides visitor information and ticket and merchandise sale functionality relating to the Orbit. The costs incurred by OPLC in creating, hosting and maintaining the website shall be considered an Operating Cost and treated accordingly under **clause 21**.
- 18.2 Each Party agrees that any website it makes available to the public pursuant to **clause 18.1** shall adhere to the Brand Guidelines.

19. **REPUTATION ISSUES**

- 19.1 Neither Party will act or use the Sponsorship Rights in a manner which will or is likely to damage or bring into disrepute the good name, image and reputation of the other Party or the Orbit or which might adversely affect the commercial rights to be generated from the Orbit or otherwise be prejudicial to either Party.
- 19.2 Either Party can terminate the Agreement if the other Party (which in the case of ArcelorMittal – in this **clause 19.2** only - includes any Group Company of ArcelorMittal) does any act which in the reasonable opinion of a reasonable person:
- 19.2.1 causes significant damage to the reputation, name or standing of the other Party; and/or
- 19.2.2 materially prejudices the ability of either Party to exploit the commercial rights relating to the Orbit;
- and the offending Party does not take all reasonable and proper steps to remedy (to the extent it is possible to do so) the effects of the act and to limit the damage and/or prejudice caused under **clauses 19.2.1** and/or **19.2.2** as soon as reasonably practicable thereafter.
- 19.3 If one Party wishes to exercise its right to terminate pursuant to **clause 19.2** it must first serve written notice ("**Termination Notice**") on the other in which it specifies details of the offending act.
- 19.4 Upon receipt of a Termination Notice, the offending Party will provide to the other Party details (in relation to the offending act) of all material surrounding

circumstances and the steps being taken by or on behalf of the offending Party pursuant to **clause 19.2**.

19.5 If by the date one month from the service of the Termination Notice the offending Party has not taken all reasonable and proper steps to remedy (to the extent it is possible to do so) the effects of the said offending act and to limit the damage and/or prejudice caused by such act, then the Party who served the Termination Notice, may serve a further notice on the offending Party to bring this Agreement to an end. On service of such notice this Agreement will come to an end if, and only if, the provisions of **clauses 19.2 and 19.3** have been properly followed.

19.6 In case of disagreement over the provisions contained in **clause 19.2**, either Party can refer the matter to an expert for determination as further set out at **clause 22**.

## 20. **OPERATOR ARRANGEMENTS**

20.1 OPLC shall use reasonable endeavours to ensure that the Orbit is fully equipped and operational and open to the general public as a visitor attraction as soon as reasonably practicable following the Handover Date (and by no later than 1 May 2013).

20.2 As soon as reasonably practicable following commencement of this Agreement OPLC will use reasonable endeavours to procure an Operator to manage and operate the Orbit from the Operational Date and will:

20.2.1 use reasonable endeavours to achieve the Commercial Objectives in choosing and appointing the Operator;

20.2.2 choose an appropriately experienced and reputable Operator who is of sufficient financial substance so as to be able to perform the obligations on the part of the Operator under the Operator Agreement; and

20.2.3 only enter into an Operator Agreement which reflects commercial market terms prevailing at the time the Operator Agreement is entered into.

20.3 Once the Operator Agreement has been completed, OPLC will take all commercially sensible steps to enforce the obligations on the part of the Operator under the terms of the Operator Agreement.

20.4 OPLC shall procure that by no later than the Operational Date the Orbit has been fitted out in compliance with all Statutory Requirements.

- 20.5 In the event that the Operator Agreement is terminated, OPLC will comply with **clauses 20.1** and **20.2** in relation to the appointment of a replacement operator for the Orbit.
- 20.6 In the event that an Operator Agreement is not for any reason in place at any time during the Operational Period, OPLC shall itself be responsible for the operation of the Orbit during such period and OPLC shall not be absolved from complying with its obligations under **clause 12.1.4**.
- 20.7 During the Operational Period, if ArcelorMittal reasonably believes that there is a material adverse issue with the operation of Orbit, it may notify OPLC of the issue in writing.
- 20.8
- 20.8.1 OPLC will take account of any reasonable representations made by ArcelorMittal pursuant to **clause 20.6** and will provide a written response to ArcelorMittal within 25 Working Days setting out the steps OPLC will take to remedy the issue raised.
- 20.8.2 OPLC will undertake such steps in the reasonable timescale advised to ArcelorMittal.
- 20.9 During the Operational Period OPLC will provide to ArcelorMittal once in each calendar year a copy of the Business Plan and the Budget. From the second year onwards of the Operational Period, OPLC will also provide a copy of the actual income and expenditure against the Budget for the relevant period.
- 20.10 OPLC will meet with ArcelorMittal on reasonable request to discuss the information provide in **clause 20.8**.

## 21. **DISTRIBUTION OF REVENUE**

- 21.1 During the Operational Period the Parties agree that all Revenue will be applied in the following priorities:
- 21.1.1 Tranche 1;
- 21.1.2 Tranche 2;
- 21.1.3 Tranche 3.
- 21.2 Only if Revenue is sufficient for the total of one tranche will it be applied to the subsequent tranche.
- 21.3 Revenue Includes all revenues of whatsoever nature from the operation of the Orbit (including from any Ancillary Rights and any revenue from any Adjacent Outlet which is directly attributable to the Orbit and revenue obtained from the

sale of merchandise on which the Mark and/or Name appears and/or which uses the image of the whole or part of the Orbit shall be treated as being directly attributable to the Orbit) and from any [royalties in relation to the Orbit] which are actually received by OPLC or the Operator. Subject to the terms of the IPR Agreement, OPLC will use its reasonable endeavours to recover, and will use its reasonable endeavours to procure that the Operator does likewise, all of the said revenues.

- 21.4 In relation to the Operating Costs, OPLC will ensure that:
- 21.4.1 there is no ground rent payable in respect of the Orbit;
  - 21.4.2 the Service Charge will be calculated on the same basis as the service charge for the other venues and/or occupiers within the Olympic Park;
  - 21.4.3 there will be no weighting of the Service Charge against the service charge payable by the other venues and/or occupiers within the Olympic Park; and
  - 21.4.4 any sinking fund contribution imposed on the Orbit will be set at a reasonable level having regard to the principles of good estate management.
- 21.5 OPLC is to provide to ArcelorMittal within 3 months after the end of each Accounting Period a statement setting out the Revenue and Operating Costs for the relevant Accounting Period.
- 21.6 ArcelorMittal is to provide to OPLC within 3 months after the end of each Accounting Period a statement setting out the Interest on Debt Funding paid by ArcelorMittal in the relevant Accounting Period.
- 21.7 Subject to **clause 21.8**, either Party has a period of 10 Working Days from receipt of the relevant Statement to raise a material objection to that Statement. If no objection is notified to the other Party within this timescale, then the Statement is deemed to be agreed.
- 21.8 The Statements shall be conclusive evidence as to their content save in the case of manifest error.
- 21.9 Any dispute over the Statements may be referred for determination by an expert in accordance with **clause 22**.
- 21.10 To the extent that there is sufficient Revenue to do so, OPLC will pay to ArcelorMittal an amount equal to Tranche 2 and 50% of Tranche 3 within 10 Working Days of either the date on which both Statements have been provided to the other Party without objection, or (if later) the date on which any objection is determined.

21.11 Until such time as the Debt Funding has been repaid in full out of Tranche 3, ArcelorMittal will apply the whole of the ArcelorMittal Share to paying off the Debt Funding (including repaying ArcelorMittal any capital repaid by it or a Group Company out of it or the Group Company's resources) together with any break costs or other redemption fees properly payable in accordance with the terms of the Debt Funding.

## 22. DETERMINATION OF DISPUTES

22.1 If any dispute arises between ArcelorMittal and OPLC relating to or arising out of the terms of this Agreement, OPLC or ArcelorMittal may give to the other written notice requiring the dispute to be determined under this **clause 22**. The notice is to:

22.1.1 propose an appropriate Specialist;

22.1.2 state whether the Specialist is to act as an independent expert or an arbitrator, having regard to the terms of this **clause 22**; and

22.1.3 specify the nature and substance of the dispute and the relief sought in relation to the dispute.

22.2 For the purposes of this **clause 22** a "Specialist" is a person:

22.2.1 qualified to act as an expert or an arbitrator in relation to the dispute;

22.2.2 having not less than ten years' professional experience; and

22.2.3 having appropriate practical experience.

22.3 The recipient of a notice under **clause 22.1** will be deemed to accept the identity of the Specialist and the capacity in which he is to act unless it gives notice in writing to the Party serving the notice rejecting one or more of the proposals within five Working Days of receipt of the notice and, on the service of a notice rejecting one or more of the proposals, **clause 22.4** will apply.

22.4 Unless ArcelorMittal and OPLC agree or are deemed to agree the terms for resolving the dispute set out in the notice served under **clause 22.1**:

22.4.1 any dispute over the type of Specialist appropriate to resolve the dispute or the capacity in which a Specialist is to act may be referred at the request of ArcelorMittal or OPLC to:

22.4.1.1 (where the dispute relates to the design, build, development, planning, funding, fit out or any other matter relating to the construction of the Orbit) the President or next most senior available officer of the Royal Institution of Chartered Surveyors; or



22.4.1.2 (where the dispute relates to any other matter) the senior member of the most appropriate professional body to the subject matter of the dispute as is agreed by the Parties;

who will have the power, with the right to take such further advice as he may require, to determine and nominate the appropriate Specialist or to arrange his nomination and to determine the capacity in which the Specialist is to act; and

22.4.2 any dispute over the identity of the Specialist is to be referred at the request of ArcelorMittal or OPLC to the president or other most senior available officer of the organisation generally recognised as being responsible for the relevant type of Specialist. If no such organisation exists, or the Parties cannot agree the identity of the organisation, then the Specialist is to be nominated by the President or next most senior available officer of the Royal Institution of Chartered Surveyors.

22.5 The reference to a Specialist is to be made to him as an expert unless:

22.5.1 the dispute is of such a nature that it is not capable of being determined by an expert;

22.5.2 both ArcelorMittal and OPLC agree, or are deemed to agree, that the Specialist should act as an arbitrator;

22.5.3 this Agreement specifies that the dispute is to be determined by an arbitrator; or

22.5.4 **clause 22.6** applies.

22.6 If any dispute raises or relates to the same or similar issues as those which have been or are being submitted to independent determination under the Building Contract or the Construction Licence, OPLC and ArcelorMittal will endeavour to appoint the same person acting in the same capacity as may be appointed to resolve the dispute under the Building Contract or the Construction Licence and to have the dispute proceedings under this Agreement and the Building Contract or the Construction Licence consolidated.

22.7 Where a Specialist is to act as an independent expert:

22.7.1 ArcelorMittal and OPLC may make written representations within ten Working Days of his appointment and will copy the written representations to the other Party;

22.7.2 ArcelorMittal and OPLC are to have a further ten Working Days to make written comments on each other's representations and will copy the written comments to the other Party;

- 22.7.3 the Specialist is to be at liberty to call for such written evidence from the Parties and to seek such legal or other expert assistance as he or she may reasonably require;
- 22.7.4 the Specialist is not to take oral representations from ArcelorMittal or OPLC without giving both Parties the opportunity to be present and to give evidence and to cross-examine each other;
- 22.7.5 the Specialist is to have regard to all representations and evidence before him when making his decision, which is to be in writing, and is to give reasons for his decision;
- 22.7.6 the Specialist is to use all reasonable endeavours to publish his decision within 30 Working Days of his appointment; and
- 22.7.7 save in the case of manifest error the Specialist's decision shall be binding on the Parties.
- 22.8 Where a Specialist is to act as an arbitrator:
- 22.8.1 all submissions made or evidence supplied to him are to be in writing unless the Parties agree within ten Working Days of his appointment that this requirement does not apply;
- 22.8.2 the date of his award will be deemed to be the date on which he serves a copy of the award on ArcelorMittal and OPLC;
- 22.8.3 he will not be entitled to order the rectification, setting aside or cancellation of this Agreement or any other deed or document;
- 22.8.4 he will not be entitled to direct that the recoverable costs of the arbitration, or any part of it, be limited to a specified amount; and
- 22.8.5 he will not be entitled to require that security be provided in respect of the costs of the arbitration.
- 22.9 Responsibility for the costs of referring a dispute to a Specialist under this **clause 22**, including costs connected with the appointment of the Specialist and the Specialist's own costs, but not the legal and other professional costs of any Party in relation to a dispute, will be decided by the Specialist.
- 22.10 Where (but only where) Part II of the Housing Grants, Construction and Regeneration Act 1996 applies, either Party may refer any dispute or difference arising under this Agreement to adjudication. The adjudication procedures and the agreement for the appointment of an adjudicator shall be as set out in the Model Adjudication Procedures published by the Construction Industry Council current at the date of reference. The nominating body shall be the Technology and Construction Solicitors' Association or any successor organisation.

23. **VALUE ADDED TAX**

- 23.1 Any payment for a supply made by either OPLC or ArcelorMittal under this Agreement is exclusive of any VAT chargeable on that payment.
- 23.2 An obligation under this Agreement to pay money includes an obligation to pay any VAT chargeable on that payment. When a taxable supply is made for the purposes of VAT under this Agreement, a valid VAT invoice is to be issued in respect of that supply.
- 23.3 Where the obligation under this Agreement is to indemnify and reimburse another party for any sum, including VAT, that payment or reimbursement is also to include the VAT on it unless that other party is able to recover that VAT as an input tax.

24. **CONSEQUENCES OF BREACH**

- 24.1 An Event of Default will be committed if:
- 24.1.1 either Party commits a Material Breach that cannot effectively be remedied or that the Party fails effectively to remedy within a reasonable time of receipt of a notice in writing from the other Party specifying the breach and requiring remedy; or
  - 24.1.2 an Insolvency Event occurs in relation to OPLC (at any time); or
  - 24.1.3 an Insolvency Event occurs in relation to ArcelorMittal and/or the Guarantor at any time prior to the issue of the Certificate of Making Good Defects.
- 24.2 If a Party commits an Event of Default, the other Party may, at any time within 30 Working Days of becoming aware of the Event of Default, serve notice in writing on the defaulting Party. If notice is served under this **clause 24.2** this Agreement will automatically come to an end but without prejudice to the rights of either Party against the other in respect of any breach of this Agreement existing at that date.
- 24.3 The provisions of **clauses 24.1** and **24.2** are additional to any express rights of termination contained elsewhere in this Agreement.
- 24.4 Termination of this Agreement will be without prejudice to any accrued rights and liabilities of any of the Parties.
- 24.5 If OPLC commits an Event of Default ArcelorMittal may (without prejudice to any other right in this Agreement) instruct OPLC (at its cost) to remove all references of whatsoever nature to ArcelorMittal from Orbit, or any literature, websites, or any other media directly or indirectly controlled by OPLC for so long as ArcelorMittal requires.

**25. NO PARTNERSHIP OR AGENCY**

25.1 Nothing in this Agreement is intended to constitute or may be interpreted as constituting a partnership between the Parties and/or the Guarantor or constitute one Party the agent of the other Party and/or the Guarantor.

25.2 The Parties are not to do or allow anything to be done by which one Party is or may be represented as the partner or agent of the other Party and/or the Guarantor.

**26. EXERCISE OF POWERS**

Words denoting an obligation on a Party or the Guarantor to do any act, matter or thing include, except as otherwise specified, an obligation to use all reasonable endeavours to procure that it be done and words placing a party under a restriction include an obligation not to permit or allow so far as the same is possible infringement of that restriction.

**27. WAIVER**

27.1 The waiver by any Party of any default by any other party in the performance of any obligation of such other Party or the Guarantor under this Agreement will not affect such Party's rights in respect of any other default nor any subsequent default of the same or of a different kind.

27.2 Any delay or omission of any Party to exercise any right arising from any default will not affect or prejudice that Party's rights as to the same or any future default.

**28. VARIATION**

Any variation of any term of this Agreement is to be in writing duly signed by the Parties.

**29. CONFIDENTIALITY**

29.1 Neither of the Parties nor the Guarantor are, without the prior written consent of the other (such consent not to be unreasonably withheld or delayed), knowingly to disclose or publish or permit or cause to be disclosed or published any details of this Agreement (as distinct from publicising the Orbit or the Mark or Name in accordance with this Agreement) save only:

29.1.1 to the extent necessary in order to comply with the requirements of the Stock Exchange;

29.1.2 to HM Revenue and Customs or the rating authority;

- 29.1.3 to the extent necessary to stamp documents and effect noting or registration at the Land Registry;
  - 29.1.4 to the extent necessary to comply with statutory obligations;
  - 29.1.5 to the extent necessary for audit purposes;
  - 29.1.6 to the extent necessary to obtain professional advice in relation to the determination of any dispute;
  - 29.1.7 to the extent ordered to do so by the court or any other competent authority;
  - 29.1.8 (in the case of ArcelorMittal) in connection with the Debt Funding;
  - 29.1.9 to the extent that it is already in the public domain (other than as the result of a breach by that Party of this **clause 29**); or
  - 29.1.10 to the extent envisaged by **clause 30**.
- 29.2 Each of the Parties and the Guarantor is to procure that their professional advisers and agents are fully instructed and required to comply with these restrictions on disclosure.

### 30. **FREEDOM OF INFORMATION**

- 30.1 ArcelorMittal acknowledges that OPLC voluntarily complies with, and may well in future be formally subject to the Legislation and agrees to assist and co-operate and procure that its contractors and subcontractors assist and co-operate with OPLC to enable OPLC to comply with terms of the Legislation including providing such information as OPLC may reasonably request concerning this Agreement and/or the Development within five Working Days of a request from OPLC.
- 30.2 ArcelorMittal further acknowledges that OPLC may be obliged under the Legislation to disclose information without consulting or obtaining consent from ArcelorMittal. In such circumstances, OPLC will use reasonable endeavours to advise ArcelorMittal in writing of the request and the information being disclosed, prior to disclosing such information to a third party. Without prejudice to the generality of the foregoing ArcelorMittal will transfer to OPLC any request for information under the Legislation that it receives as soon as reasonably practicable. ArcelorMittal will not itself respond to any person making such a request save to acknowledge receipt, unless expressly authorised to do so by OPLC.

### 31. **NOTICES**

- 31.1 Any notice, demand or any other communication served on OPLC is to be delivered by hand or sent by first class post, pre-paid or recorded delivery to the

address of OPLC set out above or to such other UK address as OPLC may notify in writing to ArcelorMittal at any time as its address for service.

- 31.2 Any notice, demand or any other communication served on ArcelorMittal is to be delivered by hand or sent by first class post, pre-paid or recorded delivery to the address of ArcelorMittal set out above or to such other UK address as ArcelorMittal may notify in writing to OPLC at any time as its address for service.
- 31.3 Any notice, demand or any other Communication served on the Guarantor is to be delivered by hand or sent by first class post, pre-paid or recorded delivery to the address of ArcelorMittal set out above or to such other UK address as the Guarantor may notify in writing to OPLC at any time as its address for service.
- 31.4 Unless the time of actual receipt is proved, a notice, demand or communication sent by the following means is to be treated as having been served:
- 31.4.1 if delivered by hand, at the time of delivery; or
- 31.4.2 if sent by post, on the second Working Day after posting.
- 31.5 If a notice, demand or any other communication is served after 4.00 pm on a Working Day, or on a day that is not a Working Day, it is to be treated as having been served on the next Working Day.
- 31.6 For the avoidance of doubt, where proceedings have been issued in the Courts of England and Wales, the provisions of the Civil Procedure Rules must be complied with in respect of the service of documents in connections with those proceedings.

## 32. **SEVERABILITY**

The illegality, invalidity or unenforceability of any clause or part of this Agreement will not affect the legality, validity or enforceability of the remainder. If any clause or part is found by any competent court or authority to be illegal, invalid or unenforceable, the parties agree that they will substitute provisions in a form as similar to the offending provisions as is possible without rendering them illegal, invalid or unenforceable.

## 33. **ENTIRE AGREEMENT**

- 33.1 This Agreement constitutes the entire contractual relationship between the Parties in relation to subject matter of this Agreement.
- 33.2 There are no representations, promises, terms, conditions or obligations between the parties other than those contained or expressly referred to in this Agreement.

33.3 This **clause 33** does not restrict liability of a Party for representations made by it fraudulently.

34. **DEALINGS**

34.1 No Party may assign, transfer or hold on trust for any other person, including any other Party, or purport to assign or transfer any of their rights or obligations under this Agreement or enter into any agreement to do so, other than as expressly set out in the following sub-clauses.

34.2 Subject to **clause 34.3** OPLC may assign its rights together with its obligations under this Agreement to any statutory successor or to a subsidiary trading company provided that if the assignee does not own (or will not own on the proposed date of the assignment) the Property and the structure of the Orbit, the prior written approval of ArcelorMittal (not to be unreasonably withheld or delayed) will be required to the assignment.

34.3 If OPLC assigns its rights and obligations under this Agreement or disposes of the Property or an interest in it to any person then unless its obligations under this Agreement pass automatically by virtue of statute it shall procure that the assignee enters into a deed of covenant with ArcelorMittal (or its permitted assignee) in a form agreed between the Parties (acting reasonably) to comply with the obligations of OPLC under this Agreement. OPLC agrees to apply as soon as reasonably practicable after the date of this Agreement to the Land Registry for the entry of the following restriction against OPLC's title to the Property:

"No disposition of the registered estate by the proprietor of the registered estate or by the proprietor of a registered charge, is to be registered without a certificate signed by the applicant for registration or his conveyancer that the provisions of **clause 34.3** of the agreement dated [●] between (1) Olympic Park Legacy Company Limited (2) ArcelorMittal Orbit Limited and (3) ArcelorMittal S.A. have been complied with or that they do not apply."

34.4 ArcelorMittal may assign its rights and obligations under this Agreement to:

34.4.1 a Group Company with the prior written approval of OPLC such approval not to be unreasonably withheld or delayed;

34.4.2 an entity which is not a Group Company with the prior written approval of OPLC which OPLC shall be entitled to give or withhold at its absolute discretion.

34.5 If ArcelorMittal assigns its rights under this Agreement to any person then it shall procure that the assignee enters into a deed of covenant with OPLC (or its permitted assignee) in a form agreed between the Parties (acting reasonably) to comply with the obligations of ArcelorMittal under this Agreement.

34.6 ArcelorMittal will not undergo any Change of Control without the prior written approval of OPLC (at OPLC's absolute discretion).

35. **GUARANTOR**

The Guarantor is to comply with its obligations in **Schedule 1**.

36. **LAW AND JURISDICTION**

36.1 This Agreement is governed by and is to be construed in accordance with the laws of England.

36.2 The Parties and the Guarantor agree that a judgment or order of any court referred to in this **clause 36** is conclusive and binding upon them and may be enforced against them in the courts of any other jurisdiction.

37. **LEGAL OPINION**

On or before the date of this Agreement, ArcelorMittal is to provide OPLC with an opinion letter from a reputable firm of lawyers in the jurisdiction in which the Guarantor is incorporated in substantially the form set out in **Appendix 4**.

38. **EXECUTION**

Each of the Parties and the Guarantor have executed this Agreement as a deed on the date set out on the first page.



## **SCHEDULE 1**

### **Guarantor's obligations**

#### **1. Obligations guaranteed**

- 1.1 The Guarantor as primary obligor, and not only as guarantor, guarantees to OPLC that ArcelorMittal will comply with the terms of this Agreement.
- 1.2 As an Independent obligation, the Guarantor agrees with OPLC to comply with the terms of this Agreement if ArcelorMittal does not do so and to indemnify OPLC against any breach of those terms.
- 1.3 The Guarantor agrees that OPLC may make a claim under this guarantee and indemnity without first making a claim against ArcelorMittal.
- 1.4 The Guarantor is to pay all sums due to OPLC under this guarantee and indemnity without any legal or equitable set-off, counterclaim or deduction.

#### **2. Continuation of the guarantee**

- 2.1 The obligations of the Guarantor are not to be released by:
  - 2.1.1 any delay or neglect by OPLC in enforcing the terms of this Agreement or any time allowed by OPLC for their performance;
  - 2.1.2 any variation of the terms of this Agreement;
  - 2.1.3 any Event of Default;
  - 2.1.4 the disclaimer of this Agreement by the Crown or by a liquidator or trustee in bankruptcy of ArcelorMittal;
  - 2.1.5 if ArcelorMittal is a company, ArcelorMittal is struck off the register of companies or otherwise ceases to exist
  - 2.1.6 ArcelorMittal or OPLC giving consent to any matter under this Agreement;
  - 2.1.7 any legal limitation, immunity, disability, incapacity or other circumstances relating to ArcelorMittal, whether or not known to OPLC; or
  - 2.1.8 anything else which would have released the Guarantor whether by the variation of the obligations guaranteed or by the conduct of the parties.

### 3. **Development documentation**

3.1 The provisions of this **paragraph 3** will apply:

- 3.1.1 if OPLC exercises its right to bring this Agreement to an end following an Event of Default;
- 3.1.2 following the disclaimer of this Agreement by the Crown or by a liquidator or trustee in bankruptcy of ArcelorMittal; or
- 3.1.3 if ArcelorMittal is a company, ArcelorMittal is struck off the register of companies or otherwise ceases to exist

3.2 If any of the provisions in **paragraph 3.1** apply and OPLC requests the Guarantor to do so in writing, the Guarantor is to:

- 3.2.1 enter into a new agreement with OPLC on the terms of this Agreement with the substitution of the Guarantor for ArcelorMittal and with due allowance to be made in the new agreement for any sums paid by OPLC or ArcelorMittal under this Agreement when calculating any sums due under the new agreement; and
- 3.2.2 to the extent that it is able to do so, take all steps necessary to become the employer of the Building Contractor and the members of the Professional Team.

### 4. **No assignment**

- 4.1 The Guarantor is not to take an assignment of this Agreement from ArcelorMittal.
- 4.2 The Guarantor is not to become the employer of the Building Contractor or the members of the Professional Team except on the terms set out in **paragraph 3**.

### 5. **Additional provisions**

- 5.1 The Guarantor is not to claim any rights of subrogation in respect of the obligations guaranteed by the Guarantor and is not entitled to participate in any security held by OPLC in respect of those obligations unless and until those obligations have been performed or discharged in full.
- 5.2 The Guarantor is not to claim in competition with OPLC in the insolvency of ArcelorMittal and is not to take any security, indemnity or guarantee from that person in respect of those obligations.
- 5.3 If any payment made to OPLC is set aside or avoided under the laws relating to insolvency, OPLC may claim under this guarantee and indemnity in respect of

that payment and any settlement, release or discharge of the obligations guaranteed by the Guarantor is to take effect subject to this condition.

## SCHEDULE 2

### Development Obligations

#### 1. Carrying out the Development Works

ArcelorMittal is to proceed diligently with and carry out and complete the Development Works in accordance with the Construction Licence.

#### 2. Extensions of time

If any extension of time is granted under the Building Contract or the Construction Licence or the provisions of Clause 5 of this Agreement that does not result from the act, omission or default of ArcelorMittal, the period or periods of time for carrying out and completing the Development Works is to be extended by the extension of time granted to the Building Contractor under the Building Contract or to ArcelorMittal under the Construction Licence and the Target Date shall be extended accordingly.

#### 3. Variations

3.1 The Parties have agreed the Project Brief prior to entering into this Agreement.

3.2 OPLC is not permitted to require ArcelorMittal to make any variations to the Project Brief other than as set out in **clause 5**.

3.3 ArcelorMittal may make changes to the Project Brief without consent of OPLC where:

3.3.1 the changes are minor changes of a non structural nature; or

3.3.2 any of the materials, plant or equipment required for the Development Works cannot be obtained within a reasonable time or at a reasonable cost, ArcelorMittal will be entitled to use alternative materials, plant or equipment in their place so long as the alternative materials, plant or equipment are of no lesser quality than the materials, plant or equipment which they replace;

3.3.3 the changes are required to comply with Statutory Requirements;

3.3.4 the changes are permitted under the Construction Licence.

3.4 All other changes to the Project Brief and any further design development which is not consistent with the Project Brief will require the prior written consent of OPLC (not to be unreasonably withheld or delayed).

3.5 ArcelorMittal is to notify OPLC in writing of any changes in the Programme (as defined in the Construction Licence) which ArcelorMittal reasonably believes are

required. No variations to the Programme that involve time-critical changes or that have material cost implications will be permitted without the prior written consent of OPLC, such consent not to be unreasonably withheld or delayed.

#### **4. Inspection by OPLC**

4.1 During the carrying out of the Development Works, OPLC and OPLC's Representative may on prior appointment enter the Property to view the state and progress of the Development Works on the terms set out in the Construction Licence.

4.2 OPLC and OPLC's Representative will:

4.2.1 give reasonable prior notice to ArcelorMittal before exercising these rights unless prior arrangements have been made with ArcelorMittal for regular visits;

4.2.2 exercise the rights at reasonable times and at reasonable intervals;

4.2.3 be accompanied by ArcelorMittal's Representative if ArcelorMittal so requires;

4.2.4 comply with the reasonable requirements of the Building Contractor;

4.2.5 comply with any health and safety requirements in the Construction Phase Plan;

4.2.6 refer all matters arising to ArcelorMittal and not to the Building Contractor or its agents, workmen or sub-contractors; and

4.2.7 not do anything to impede or prejudice the Development Works.

#### **5. Site Meetings**

ArcelorMittal is to hold site meetings not less than once every month and procure that the Building Contractor, ArcelorMittal's Representative, members of the Professional Team and any relevant Principal Sub-Contractors attend such meetings to review or plan progress or deal with any other matter relating to the carrying out of the Development Works.

#### **6. Handover and Commissioning**

6.1 As soon as reasonably practicable but in any event within 6 months of the date hereof ArcelorMittal shall jointly with the Building Contractor appoint an appropriately qualified independent commissioning engineer to carry out testing and conditioning of the plant and machinery at the Development Works. The identity and appointment of the commissioning engineer shall be on terms approved by OPLC (acting reasonably) and shall provide that the commissioning

engineer grants Third Party Rights to OPLC in identical terms to those required from the Professional Team pursuant to the Construction Licence on the date of his appointment.

6.2 Within one month of the Date of Practical Completion, ArcelorMittal will provide or procure that the Building Contractor provides to OPLC all of the following for the Orbit:

6.2.1 three full sets of hard copy as-built plans along with electronic copies;

6.2.2 the health and safety file;

6.2.3 the operations and maintenance manual;

6.2.4 all relevant information on utility and services providers;

6.2.5 the maintenance strategy;

6.2.6 full information on any adjoining property issues;

6.2.7 a general hazard assessment;

6.2.8 an energy performance certificate for the Orbit;

6.2.9 installed building systems documentation;

6.2.10 a Building Log Book;

6.2.11 all written evidence in relation to submission and approval of conditions under the Planning Permission and/or the Orbit Section 106 Agreement and building regulations requirements for which ArcelorMittal or the Building Contractor is responsible.

## **SCHEDULE 3**

### **The Sponsorship Rights**

A permanent right for ArcelorMittal to attach a plaque with a surface area not larger than one square metre at the base of the Orbit in a prominent position so that it is clearly visible to all visitors of the Orbit. The plaque will feature the ArcelorMittal logo and will provide wording along the following lines:

"The ArcelorMittal Orbit

Designed by Anish Kapoor with Cecil Balmond, and supported by London Mayor Boris Johnson, the ArcelorMittal Orbit, on the site of the 2012 Olympic and Paralympic Games, was made possible through a donation given by the world's No.1 steel company, ArcelorMittal."

ArcelorMittal has a further permanent right to attach a plaque not larger than one square metre on the upper storey viewing platform recording some of the technical features of the Orbit and bearing the ArcelorMittal logo.

ArcelorMittal will provide a custom-made "sheath" which will cover the plaques during the 17 days of the Games.

## **SCHEDULE 4**

### **The Sponsor Mark**

Please see attached.



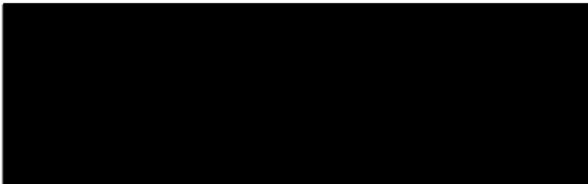
## **SCHEDULE 5**

### **Commercial Objectives**

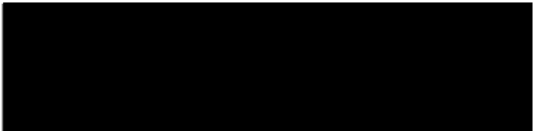
OPLC is seeking to achieve the following commercial objectives in relation to the Orbit:

1. Profit driven business approach.
2. Commercially priced to optimise financial return.
3. High quality foodservice offers (public catering and functions).
4. Populist market-led approach to on-going product development.
5. Creation of brand value through retail and other brand stretch opportunities.
6. Experienced, established and professional management contractor with defined income targets.
7. Integrated marketing approach as part of the Olympic Park/Stratford Hub destination to position the Orbit as a must see for all visitors to East London.
8. High quality customer service and satisfaction levels.
9. Regular reinvestment to keep product fresh and maintain quality of product.
10. Engender local pride and support by working closely with neighbours and local community stakeholders.
11. Reasonable endeavours to realise the Business Plan.

**SIGNED** as a deed by )  
**OLYMPIC PARK LEGACY COMPANY** )  
**LIMITED** )  
acting by one director )  
in the presence of: )



Witness signature:



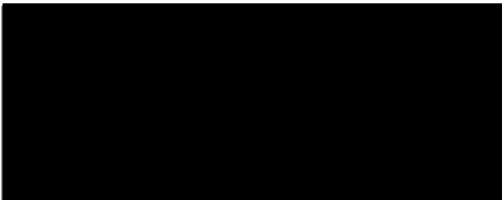
Name:



Address: *EVERSHEDS LLP, ONE WOOD STREET  
LONDON EC2V 7WS*

Occupation: *SOLICITOR*

**SIGNED** as a deed by )  
**ARCELORMITTAL ORBIT LIMITED** )  
acting by one director )  
in the presence of: )



Witness signature:



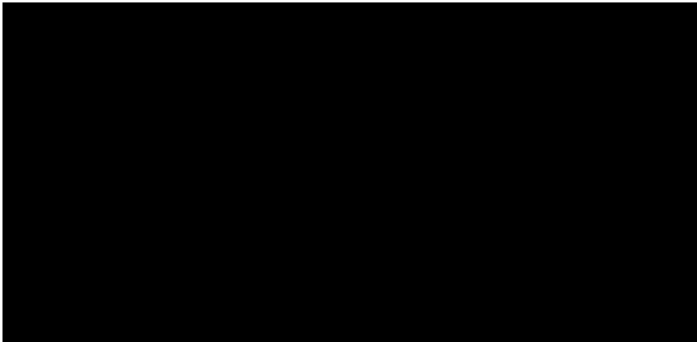
Name:



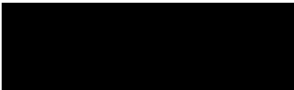
Address: *BERKELEY SQUARE HOUSE  
LONDON W1J 6PA*

Occupation: *SOLICITOR*

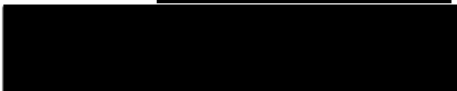
**SIGNED** as a deed by )  
**ARCELORMITTAL S.A.** )  
acting by <sup>*two*</sup> ~~one~~ director <sup>*authorised*</sup> )  
in the presence of: <sup>*signatories*</sup> )



Witness signature:

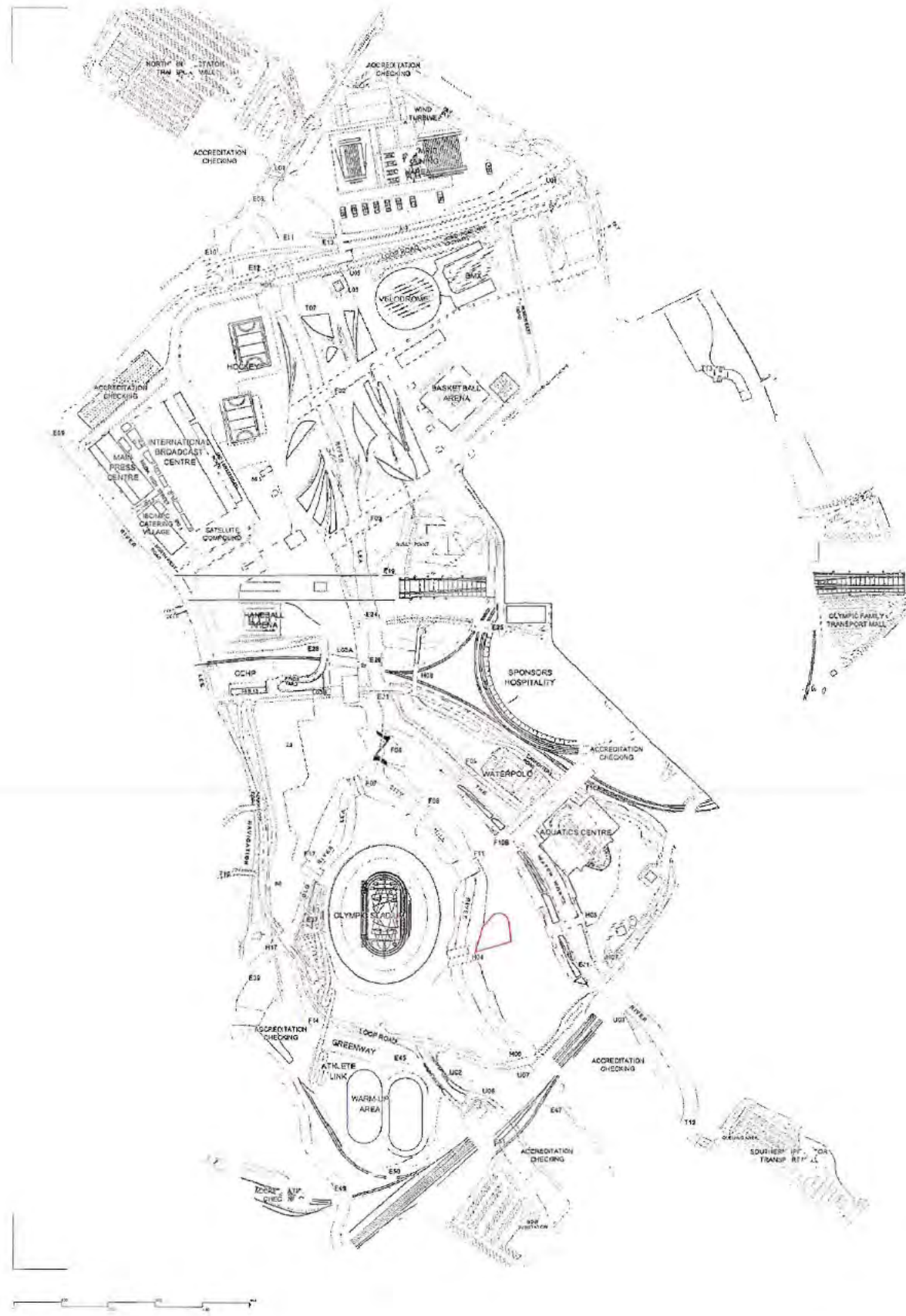


Name:



Address: *BERKELEY SQUARE HOUSE  
LONDON W1J 6PA*

Occupation: *SOLICITOR*



NOTE  
 Gray scale layout shown for illustrative purposes only

Issue	Date	By	Check	App'd
01	11.08.2010	MO	UD	GD

Client  
 ArcelorMittal Orbit Limited  
 7th Floor, Berkeley Square House  
 Berkeley Square  
 London  
 W1J 8DA

Job Title  
 ArcelorMittal Orbit

Scale as A1 1:6000  
 Discipline Planning Application

**ARUP**

15 Fitzroy Street  
 London W1T 4EZ  
 Tel: +44 (0) 20 7546 1000 Fax: +44 (0) 20 7546 2000  
 www.arup.com

Drawing Title		
Context Plan		
Drawing Status		
Planning - For Approval		
201.706	Drawing No.	Issue
212157	A001_001	01



ISSUE	DATE	BY	CHKD	APPD
01	11.06.2010	MD	CB	DB

Client  
 ArcelorMittal Orbit Limited  
 7th Floor, Berkeley Square House  
 Berkeley Square  
 London  
 W1J 8DA

Job Title  
 ArcelorMittal Orbit

**ARUP**

15 Floor, 51 West  
 London W1T 4GD  
 Tel: +44 (0)20 7188 1531 Fax: +44 (0)20 7188 2004  
 www.arup.com

Drawing Title  
 Olympic Orbit views  
 Day

Drawing Status  
 Planning - For illustrative purpose

Job No.	Drawing No.	Issue
212157	009_001	01

**OLYMPIC DELIVERY AUTHORITY**

**ARCELORMITTAL ORBIT LIMITED**

**CONSTRUCTION LICENCE**

relating to the construction of the ArcelorMittal Orbit on the Olympic Park

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**DATED            SEPTEMBER 2010**

**PARTIES**

- (1)     **OLYMPIC DELIVERY AUTHORITY** whose registered office is at 23<sup>rd</sup> Floor, One Churchill Place, Canary Wharf, London E14 5LN (the "**ODA**", which expression shall include its statutory successors, assigns and transferees)
- (2)     **ARCELORMITTAL ORBIT LIMITED** (company no 07208366) whose registered office is at 7<sup>th</sup> Floor Berkeley Square House, Berkeley Square, London W1J 6DA (the "**Licensee**")

**BACKGROUND**

- (A)     The GLA is seeking to promote cultural benefits in connection with the Games.
- (B)     The Licensee has made an offer to the GLA to part fund and procure the carrying out of the Project in order to mark the holding of the Games and to provide a lasting cultural benefit in connection therewith.
- (C)     The GLA has accepted the Licensee's offer and has requested the ODA to make the Licensed Area available for the carrying out of the Project.
- (D)     The ODA has acceded to the GLA's request and has agreed to grant the Licensee a construction licence for the Project on the terms set out in this Licence.

**OPERATIVE PROVISIONS**

**1            DEFINITIONS AND INTERPRETATION**

1.1        In this Licence:

**"Access Conditions Precedent"** means the conditions, matters and things that the Licensee must discharge, comply with or do or procure be discharged, complied with or done to satisfy:

- (a)     Clause 3.1(a), relating to the making of an election as client under the CDM Regulations;
- (b)     Clause 3.1(b), relating to the appointment of a CDM co-ordinator and principal contractor under the CDM Regulations;
- (c)     delivery of all construction and operational insurance certificates including Public Liability Insurance of £25,000,000;
- (d)     delivery of certified copies of the executed Building Contract, Professional Team appointments, certified copies of underlying contracts all to include Third Party Rights Schedules;
- (e)     delivery of a LOCOG No Marketing Deed and Confidentiality Agreement from Key Sub-Contractors as and when appointed under High Value Contracts;
- (f)     delivery by the Licensee of a Parent Company Guarantee.
- (g)     delivery of certified copy of the signed Memorandum of Understanding between the Licensee and the GLA and OPLC and the GLA Funding Agreement.

- (h) delivery of a certified copy of the Planning Obligation by Agreement.
- (i) delivery of a certified copy of the Back to Back Agreement Relating to the Orbit s.106 Agreement signed by the Licensee.

**"Actual Project Cost"** means the cumulative total (excluding VAT) of the last payment certificate issued under the Building Contract.

**"Agreed Specification"** means the specification of the Project detailed in Schedule 1

**"Building Contract"** means the building contract for the carrying out of the Building Works which will include Third Party Rights Schedules to be entered into by the Licensee and the Building Contractor under the terms of Schedule 2 (*Project Development Obligations*).

**"Building Contractor"** means Sir Robert McAlpine Limited or such other building contractor as may be appointed with the prior written approval of ODA under the terms of Schedule 2 (*Project Development Obligations*).

**"Building Works"** means the works of and in connection with the carrying out of the Project to be procured by the Licensee and includes, where the context permits, the completed Building Works.

**"Catastrophic Event"** means a catastrophic collapse of the structure or some other serious event during the Building Works rendering completion of the Project prior to the Games unachievable.

**"Crane"** means the crane tower required for the Building Works.

**"Crane Jib"** means the fixed jib of the Crane and its counterbalance.

**"CDM Co-ordinator"** means the person appointed by the Licensee to perform the functions of CDM co-ordinator under the CDM Regulations for the Project.

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

**"CLM"** means the ODA's delivery partner, CLM Delivery Partner Limited (company no 5796284) whose registered office is at Atelier House, 64 Pratt Street, London NW1 0LF.

**"Data Processor"** has the meaning given to it in the Data Protection Act 1998.

**"Data Protection Legislation"** means the Data Protection Act 1998, the EU Data Protection Directive 95/46/EC, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), the Electronic Communications Data Protection Directive 2002/58/EC, the Privacy and Electronic Communications (EC Directive) Regulations 2003 and all applicable laws and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner.

**"Development Period"** means the period during which the Building Works are to be carried out commencing on the entry date of 29th September to the Licensed Area by the Building Contractor and ending four weeks after Practical Completion.

**"Drawdown Balance"** means the difference between the Estimated Final Cost and the Actual Project Cost (excluding VAT).



**"Employer Data"** means all data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any media (including electronic, magnetic, optical and tangible media) and which are supplied to the Licensee by or on behalf of the ODA and any intellectual property rights relating to the same which are vested in the ODA.

**"Estimated Final Cost"** means the estimated final cost of the Building Works.

**"Force Majeure Event"** means acts of God, flood, labour lockouts, strikes, or other industrial disputes, non availability of labour, materials or equipment, earthquake, windstorm or other exceptionally adverse weather conditions or other natural disaster, epidemic or pandemic, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, terrorist attack, civil war, civil commotion or riots, nuclear, chemical or biological contamination or sonic boom, fire or explosion and any other causes or circumstances beyond the reasonable control of the Parties (other than in each case one caused by a breach of contract by, or assistance of, the party seeking to rely on this clause or companies in the same group as such party)

**"Games"** means the Games of the thirtieth Olympiad and the Paralympic Games that are to take place in 2012 in London.

**"GLA"** means the Greater London Authority of City Hall, The Queen's Walk, London SE1 2AA.

**"GLA Funding Agreement"** means an agreement between GLA and the Licensee in relation to the provision of £3.1m of grant funding in relation to the Project.

**"Group Company"** means in relation to a company, any company which is a subsidiary, or a holding company, or another subsidiary of a holding company of that company ("subsidiary" and "holding company" having the meanings ascribed to them by section 1159 of the Companies Act 2006).

**"High Value Contract"** means a contract whose total value (including any amounts payable or another form of consideration) exceeds £100,000.

**"Insolvency Event"** means inability of the Licensee to pay its debts, entry into liquidation either compulsory or voluntary (except for the purpose of amalgamation or reconstruction), the passing of a resolution for a creditors winding-up, the making of a proposal to the Licensee and its creditors for a composition in satisfaction of its debts or a scheme of arrangement of its affairs, the application to the court for an administration order, the giving of a notice of appointment or intention to appoint an administrator or liquidator and the appointment of a receiver or administrative receiver and in relation to the various events of insolvency they are wherever appropriate to be interpreted in accordance and conjunction with the relevant provisions of the Insolvency Act 1986 and any similar or analogous procedure in any jurisdiction.

**"Joint Names Policy"** means an insurance policy where the cover effected applies separately to each insured party as though separate insurance policies had been issued for each such party.

**"Key Sub-Contractor"** means each sub-contractor appointed by the Building Contractor to provide goods and/or carry works in relation to the following sub-contract packages:

- (a) piling;
- (b) structural steel;

- (c) steel connections;
- (d) lifts;
- (e) mechanical and electrical systems; and
- (f) paint and surface finishes.
- (g) glazing and cladding

**"LDA"** means the London Development Agency of Palestra, 197 Blackfriars Road, London SE1 8AA and its statutory successors, assigns and transferees.

**"Licensed Area"** means those parts of the Olympic Park Site shown outlined on the plan set out in Schedule 9 including the construction site and the lay down area.

**LOCOG**" means the London Organising Committee of the Olympic Games and Paralympic Games Limited (company number 5267819) of One Churchill Place, London E14 5LN and its successors and assigns.

**"ODA Contractor's"** means any contractor or consultant employed by or on behalf the ODA in relation to the Olympic Park Site.

**"ODA Construction Standards"** means the standards, policies and procedures specified or referred to in Schedule 3 (*ODA Construction Standards*).

**"ODA Prevention"** means an act or omission by the ODA that prevents or delays the Licensee completing the Building Works by the date stated on the latest accepted Programme.

**"Olympic Park Site"** means that area shown outlined on the plan set out in Schedule 8 of this Licence.

**"OPLC"** means the Olympic Park Legacy Company Limited (company no 6900359) whose registered office is at One Churchill Place, Canary Wharf, London E14 5LN and its statutory successors, assigns and transferees.

**"Other Works"** means any other works being carried out by or on behalf of the ODA in furtherance of its objectives in relation to the Games.

**"Party"** means a party to this Licence and **"Parties"** means both the ODA and the Licensee.

**"Personal Data"** has the meaning given to it in the Data Protection Act 1998.

**"Plans"** means the plans, drawings, specifications, bills of quantity, engineering calculations and other data relating to the Building Works including, as they are from time to time made, any variations from, alterations and additions, to and revisions of, the Plans.

**"Planning Obligation by Agreement"** means the agreement made pursuant to section 106 of the Town and Country Planning Act 1990 and sections 4 and 5 of the London Olympic Games and Paralympic Games Act 2006 and all other powers enabling relating to the ArcelorMittal Orbit, Planning Delivery Zone 2, Olympic Park, Stratford, London E15

**"Practical Completion"** means the practical completion of the Building Works in accordance with the Building Contract and this Licence.

**"Professional Team"** means project manager and professional designers whose services are from time to time appointed by the Licensee or the Building Contractor in connection with the Project in conformity with the provisions of Schedule 2 (*Project Development Obligations*) or any one or more of them and references to a "member of the Professional Team" shall be construed accordingly.

**"Programme"** means the Licensee's programme for the carrying out and completion of the Project set out in Schedule 10 as submitted to the ODA for acceptance (not to be unreasonably withheld), updated from time to time the consent and approval of the ODA and extended in accordance with paragraph 5 of Schedule 2.

**"Programme Milestones"** means

Milestone 1 - Commencement of Primary Steel Frame Erection by 14th February 2011

Milestone 2 - Completion of Primary Steel Frame to 50m (excluding external staircase and final paint coat) by 18th May 2011

Milestone 3 - Primary Steel Structure reaching 114m (excluding external staircase and final paint coat) by 22nd August 2011

Milestone 4 - Completion of Curtain Walling installation by 23rd December 2011

**"Prohibited Act"** means:

- (a) offering or agreeing to give to any servant of the ODA any gift or consideration of any kind as an inducement or reward:
  - (i) for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this Licence or any other contract with the ODA; or
  - (ii) for showing or not showing favour or disfavour to any person in relation to this Licence or any other contract with the ODA;
- (b) accepting or agreeing to accept any gift or consideration of any kind as an inducement or reward:
  - (i) for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of any contract in relation to the Project; or
  - (ii) for showing or not showing favour or disfavour to any person in relation to such a contract;
- (c) entering into this Licence or any other contract with the ODA in connection with which commission has been paid or has been agreed to be paid by the Licensee or on its behalf, or to its knowledge, unless before the relevant contract is entered into particulars of any such commission or agreement for the payment thereof have been disclosed in writing to the ODA;
- (d) entering into a contract in relation to the Project in connection with which commission has been paid or has been agreed to be paid to the Licensee or to any other person, or to its knowledge, unless before the relevant

contract is entered into particulars of any such commission or agreement for the payment thereof have been disclosed in writing to the ODA;

- (e) committing an offence in relation to this Licence or any other contract with the ODA or any contractor of whatever tier in relation to the Project:
  - (i) under the Prevention of Corruption Acts 1889-1916; or
  - (ii) under laws creating offences in respect of fraudulent acts (including common law offences in respect of fraudulent acts); or
- (f) defrauding or attempting to defraud or conspiring to defraud the ODA.

**"Project"** means the project of constructing a visitor attraction, to be known as Project Orbit prior to the Olympic Games and the ArcelorMittal Orbit after the Olympic Games, on the Licensed Area in accordance with the Plans and comprising the Building Works and a reference to the Project is to the whole or any part of it as the circumstances may require.

**"Project Development Obligations"** means the development obligations for the Project set out in Schedule 2 (*Project Development Obligations*).

**"Proprietary Material"** means all drawings, details, plans, specifications, schedules, reports, calculations, software and other work (and any designs, ideas and concepts contained in them) prepared, conceived or developed by or on behalf of the Licensee in the course of or as a result of delivering the Project.

**"Requisite Consents"** means those permissions, consents, approvals, licences, certificates and permits in legally effectual form as may be necessary lawfully to commence, carry out, maintain and complete the Project and to use and enjoy the Project as intended by the Parties including:

- (a) planning permission and approval of reserved matters;
- (b) building regulations, consents and bylaw approvals; and
- (c) the requirements of all competent authorities regulating the Project and/or the use of the Licensed Area.

**"Stakeholder"** means each of GLA, LDA, LOCOG, OPLC and any other party the ODA may name in writing from time to time.

**"Statutory Requirements"** means any enforceable Community right (within the meaning of section 2(1) of the European Communities Act 1972), any requirements of any Act of Parliament (including the Building Act 1984), any instrument, rule or order made under any Act of Parliament (including the Building Regulations 1991), any regulation or by-law of any local authority or of any statutory undertaker or other body which has any jurisdiction with regard to the Project or with whose systems the same are or will be connected, any code of practice or guideline for the time being in force under the Health and Safety at Work Act 1974 or the Control of Pollution Act 1974 or the Environment Act 1995 and any environmental guideline published by any governmental or parliamentary authority or research body.

**"Step in Notice"** means a notice issued under clause 18.1

**"Supporter Agreement"** means the 2012 Supporter Agreement between the Licensee and LOCOG dated 31<sup>st</sup> March 2010 appointing the Licensee as a Tier 2 Sponsor.

**"Termination Notice"** means a notice issued under clause 19.1

**"Third Party Rights Schedule"** means those rights in the relevant form set out in Schedule 4 to be vested in the ODA and OPLC pursuant to the Contracts (Rights of Third Parties) Act 1999.

**"Working Day"** means any day from Monday to Friday (inclusive) which is not a statutory bank holiday and which is not a day between 24 December and 1 January (inclusive).

- 1.2 An obligation on a Party to this Licence to do an act includes an obligation to procure that it is done.
- 1.3 If a Party is placed under a restriction in this Licence, the restriction includes an obligation on the Party not to permit the infringement of the restriction by any person.
- 1.4 References to liability include, where the context allows, claims, demands, proceedings, damages, losses, costs and expenses.
- 1.5 Words importing the singular meaning shall include, where the context so admits, the plural meaning and vice versa.
- 1.6 Words denoting the masculine gender shall include the feminine and neuter genders and words denoting natural persons shall include corporations and firms and all such words shall be constructed interchangeably in that manner.
- 1.7 "Include", "includes" and "including" denote inclusion without limitation.
- 1.8 The Clause and paragraph headings in this Licence 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.
- 1.9 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 Licence; and
  - (c) to a numbered paragraph in any Schedule are references to the relevant paragraph in that Schedule.
- 1.10 References in this Licence to any statutes or statutory instruments include any statute or statutory instrument amending, consolidating or replacing them respectively from time to time in force, and references to a statute include statutory instruments, regulations and codes of practice made pursuant to it.

## 2 LICENCE

- 2.1 Subject to the provisions of Clause 18 and Clause 19 of this Licence, and the Licensee having discharged and continuing to comply with the Access Conditions Precedent, the ODA grants to the Licensee and its contractors, members of the Professional Team and other persons authorised by the Licensee the following rights:
- (a) to enter on and remain on the Licensed Area for the purpose of carrying out and completing the Building Works during the Development Period; and

- (b) to enter on to the Licensed Area with all necessary plant, machinery, equipment and materials to carry out the Building Works and to store any materials on the Licensed Area required in connection with the Building Works;
- (c) to use the Crane and the Crane Jib in such a way that they will swing over and pass through the airspace over the Olympic Park Site, the Licensee covenanting to comply with all Statutory Requirements and the approvals and procedures of the ODA and keep the Crane and the Crane Jib in good repair and working order; and
- (d) to enter and remain on the Licensed Area after the Development Period for the purpose of carrying out and completing its obligations under paragraph 9 of Schedule 2 to this Licence.

2.2 This Licence is non exclusive and is not intended by either party to confer on the Licensee any right or interest in the nature of a tenancy and gives no proprietary interest to the Licensee and shall be separate and distinct from any lease under which the Licensee may own any adjoining property.

2.3 ODA warrants that it has good and marketable title to the Licensed Area and that it is not subject to any restrictions or encumbrances on the title to the Licensed Area whether legal or equitable preventing or restricting the construction and thereafter retention and beneficial use and enjoyment of the Project whether in whole or in part.

### 3 CDM REGULATIONS

3.1 The Licensee will be the client for the Project for the purposes of the CDM Regulations and will use best endeavours to ensure that the design and execution of the Project complies with the CDM Regulations. The Licensee will:

- (a) elect in writing to be treated as the only client for the Project in accordance with regulation 8 of the CDM Regulations and provide a copy of the election to the ODA;
- (b) appoint a CDM co-ordinator and a principal contractor in respect of the Project and take all steps as are in the circumstances necessary to ensure that each is provided with the relevant information to enable him to perform his duties under the CDM Regulations;
- (c) allow sufficient time and resources to enable the CDM co-ordinator and principal contractor to comply with their obligations relating to health and safety matters arising from the CDM Regulations and co-operate with them to that end;
- (d) notify the CDM co-ordinator and principal contractor of any change in circumstances relating to the Project of which the Licensee is or ought reasonably to be aware which may affect the health and safety of persons involved, or likely to become involved, in the Project;
- (e) use best endeavours to procure compliance with the construction phase plan;
- (f) use best endeavours to procure that there is included in the design of the Project all information relating to the design and materials which might reasonably affect the health and safety of persons working on the Project and its maintenance and repair; and

- (g) use best endeavours to procure and deliver to the ODA not later than four weeks after the date of Practical Completion three hard copies and three soft copies (on CD Rom in such format as the ODA may require) of the health and safety file prepared, maintained and completed as required by the CDM Regulations.

3.2 The Licensee will keep the ODA indemnified against liability for breach of obligation of the Licensee under this Clause 3.

#### 4 **CONSTRUCTION OBLIGATIONS**

4.1 The Licensee is fully responsible for the cost, delivery and performance of the Building Works, the Building Contractor, the Professional Team, and full compliance with all of the Licensee's obligations under Schedule 2 and all other construction obligations within this Licence.

#### 5 **INTERFACES AND CO-ORDINATION OF PROJECT WITH OTHER WORKS**

5.1 The Licensee shall comply with any instruction given by ODA or CLM in relation to the co-ordination of the Building Works with ODA Contractor's and co-operate with ODA Contractor's in obtaining and providing information they reasonably require in connection with Other Works. The Licensee shall co-operate and share the Licensed Area with ODA's Contractor's as reasonably required and permit the carrying out of Other Works by ODA Contractor's concurrently with the execution of the Building Works. Such co-operation shall be fully in accordance with Clause 7.

5.2 The Licensee shall comply with any instruction given by ODA or CLM in relation to the access routes, size, position and layout of the Licensed Area and acknowledges and agrees that the ODA may from time to time change or alter access routes to and from the Licensed Area and change the size, position and layout of the Licensed Area. Such acknowledgement and agreement shall be fully in accordance with Clause 7.

#### 6 **TRANSFER OF TITLE**

The Licensee confirms that the title to the Project will at all times be good and marketable, and free from mortgages, charges and encumbrances.

#### 7 **RISK**

7.1 The Licensee shall be fully responsible for all costs in relation to the delivery of the Building Works, including interface and co-ordination, co-operation with ODA Contractor's, alteration of access routes, cost overruns, programme slippage, programme recovery and mitigation costs and measures however caused but provided that the ODA may grant the Licensee an extension to the Programme and the completion date in accordance with paragraph 5 of Schedule 2.

#### 8 **INDEMNITY**

8.1 The Licensee shall be liable for and shall indemnify the ODA against any expense, liability, loss, claim or proceedings whatsoever arising under any statute or at common law in respect of personal injury to or the death of any person whomsoever arising out of or in the course of or by reason of the carrying out of the Project, except to the extent that the same is due to any act or neglect of the ODA or of any person for whom the ODA is responsible (excluding always the Licensee and any person of any tier engaged directly or indirectly by the Licensee in connection with the Project and their respective servants and agents and any statutory undertaker (and any person employed, engaged or authorised by a statutory undertaker) executing work solely in pursuance of its statutory obligations in relation to the Project).

8.2 The Licensee shall be liable for and shall indemnify the ODA against any expense, liability, loss, claim or proceedings in respect of any injury or damage whatsoever to any property real or personal in so far as such injury or damage arises out of or in the course of or by reason of the carrying out of the Project and to the extent that the same is due to any negligence, breach of statutory duty, act, omission or default of the Licensee, the Building Contractor, any sub-contractor and their respective servants and agents of whatever tier in the carrying out and completion of the Project.

8.3 The Licensee shall be liable for and shall indemnify the ODA against any expense, liability, loss, claim or proceedings whatsoever arising out of any breach of any Statutory Requirement arising out of or in the course of or by reason of the carrying out of the Project.

## 9 **CLEAN VENUES**

This License agreement confers no additional rights on the Licensee in relation to clean venues than those contained within the Supporter Agreement.

## 10 **NAMING RIGHTS AND COMMERCIAL EXPLOITATION**

This Licence agreement confers no additional rights on the Licensee in relation to naming rights and commercial exploitation than those contained within the Supporter Agreement.

## 11 **NO MARKETING RIGHTS**

This Licence agreement confers no additional marketing rights on the Licensee than those contained within the Supporter Agreement.

## 12 **RECOURSE TO PUBLIC FUNDS**

Save for the GLA Funding Agreement, the Licensee shall perform its obligations under this Licence entirely at its own cost and without recourse at any time to Government, European Union or other public funds or guarantees without prior consent of the ODA.

## 13 **CONFIDENTIALITY**

13.1 Each Party shall:

- (a) treat in confidence information it receives from the other Party;
- (b) not disclose such information to any third party without the other Party's prior written consent (except for disclosure to insurers and legal and financial advisers, where prior written consent is not required);
- (c) not use information it receives from the other Party except for the purposes of this Licence; and
- (d) not copy information it receives from the other Party except to the extent necessary for it to use such information for the purposes of this Licence.

13.2 The Licensee shall ensure that information disclosed to it by or on behalf of the ODA in connection with this Licence:

- (a) is disclosed to its employees and contractors only to the extent necessary for them to undertake their duties in connection with the carrying out of the Project; and



- (b) is treated in confidence by its employees and contractors and not disclosed without the Employer's prior written consent or used by them otherwise than for the purpose of the carrying out of the Project.

13.3 The Licensee shall ensure that its employees, contractors and any recipient of information under 13.1 are aware of the arrangements in this Clause 13 before they receive information and shall procure that they comply with and enforce such arrangements.

13.4 The restrictions in this Clause 13 do not apply to any information to the extent that either Party:

- (a) exercises rights of use or disclosure granted otherwise than under this Licence;
- (b) has the right by virtue of other provisions of this Licence to use or disclose information; or
- (c) can show:
  - (i) the information was published or made publicly available otherwise than through the Party's breach of this Clause 13;
  - (ii) the information was already known to it (without any restriction on use or disclosure) prior to receiving it in connection with this Licence;
  - (iii) the information was received without restriction on further disclosure from a third party who lawfully acquired it and who was himself under no obligation restricting its disclosure; or
  - (iv) from its records that the same information was derived independently from the information received in connection with this Licence,

provided in each case that the disclosing Party does not reveal the relationship to any other information.

13.5 Neither Party is in breach of this Clause 13 if it discloses information solely and to the extent necessary to comply with legislation. The Party making such disclosure shall make the other Party aware of the disclosure and (save in the case of disclosures required to be made by the ODA pursuant to the requirements of the Freedom of Information Act 2000, the Environmental Information Regulations 2004 or any audit) shall ensure the recipient of the information is made aware of and respects its confidentiality.

13.6 The ODA shall not be in breach of this Clause 13 if it discloses information:

- (a) to any department, office or agency of the Crown;
- (b) to any Stakeholder;
- (c) to any consultant, contractor or other person engaged by the ODA for the purpose of this Licence or to any person conducting an Office of Government Commerce gateway review or London Development Agency or Lee Valley Regional Park Authority review in connection with the legacy use of the Olympic Park Site; or
- (d) for any examination pursuant to the National Audit Act 1983.

14 **FREEDOM OF INFORMATION AND DATA PROTECTION**

14.1 The Licensee:

- (a) acknowledges that the ODA is subject to the requirements of the Freedom of Information Act 2000 and the Environmental Information Regulations 2004;
- (b) shall assist and co-operate with the ODA to enable the ODA to comply with its disclosure obligations under that legislation; and
- (c) acknowledges that the ODA may, acting in accordance with the codes of practice issued and revised from time to time under both section 45 of the Freedom of Information Act 2000 and regulation 16 of the Environmental Information Regulations, be obliged by that legislation to disclose information without consulting with the Licensee or any person engaged by the Licensee in connection with the Project.

14.2 Without limiting the Licensee's confidentiality obligations in Clause 13, if the Licensee receives a request from a third party for:

- (a) any information which the created by or on behalf of the Licensee in the course of the carrying out of the Project; or
- (b) any Employer Data

the Licensee does not disclose that information to the third party, but directs the third party to request the relevant information from the ODA.

14.3 If the Licensee is a Data Processor in respect of Personal Data for the purposes of the Data Protection Legislation:

- (a) the Licensee will only use Personal Data relating to the Project in accordance with the ODA's instructions;
- (b) the Licensee warrants that it has in place and undertakes to maintain at all times appropriate technical and organisational measures to prevent unauthorised or unlawful processing of Personal Data or accidental loss or destruction of or damage to Personal Data; and
- (c) the Licensee shall not process any Personal Data other than as reasonably required in accordance with the terms of this Licence and shall not transfer any Personal Data to any country outside the European Economic Area without the prior written consent of the ODA.

15 **PUBLICITY**

15.1 The Licensee will not make or authorise or allow there to be made or authorised by any person any media statement or other public announcement, briefing or communication regarding the Project (a "public statement") without the consent of the ODA.

15.2 Notwithstanding the other provisions of this Clause 15, a Party may make a public statement if and to the extent:

15.2.1 required by law;

- 15.2.2 required by any securities exchange or regulatory or governmental body to which that Party or any Group Company of it is subject or submits, wherever situated, whether or not the requirement has the force of law; or
- 15.2.3 in the case of the ODA, where such statement is made as part of any briefing being made from time to time in the context of the preparations for and operation of the Games or in relation to the legacy transformation and use of the Olympic Park Site and does not involve any breach of the confidentiality provisions contained in Clause 13.
- 15.3 The restrictions contained in this Clause 15 shall continue to apply after the expiry or termination of this Licence without limit in time.
- 15.4 Where there is a conflict between the terms of this Clause 15 and the terms of the Supporter Agreement, then the terms of the Supporter Agreement shall take precedence.

## 16 **ASSIGNMENT AND NOVATION**

- 16.1 The Licensee shall not assign its interest in this Licence or any part of it, nor any right arising under it, to any person without the prior consent of the ODA.
- 16.2 The ODA may at any time assign the benefit of this Licence and any rights under it on giving notice to the Licensee without the consent of the Licensee being required.
- 16.3 The Licensee shall, within 14 days of the ODA's request, execute and deliver to the ODA a deed of novation in the form set out in Schedule 7 novating the Licence from the ODA to any Stakeholder or department, office or agency of the Crown.

## 17 **PERFORMANCE SECURITY**

The Licensee shall provide a guarantee from ArcelorMittal S.A. in the form set out in Schedule 6. The Licensee acknowledges and agrees that this guarantee is in addition to the ODA's rights and remedies under clause 18.5 and 19.6.

## 18 **STEP-IN**

- 18.1 The ODA shall be entitled to issue a Step in Notice if:
- (a) the ODA notifies the Licensee that the ODA, having regard to the Programme and Programme Milestones, is of the opinion that the Building Works will not be completed by 05th March 2012 as adjusted in accordance with paragraph 5 of Schedule 2;
  - (b) the Licensee has committed breaches of obligation under this Licence which are individually or cumulatively of such seriousness as to permit the ODA to treat this Licence as repudiated by breach;
  - (c) the Licensee has committed a Prohibited Act;
  - (d) an Insolvency Event occurs in relation to the Licensee;
  - (e) execution or distress is levied or enforced against the Licensee which is not removed or discharged within seven days; and/or
  - (i) a serious or continuous Health and Safety or Environmental breach occurs.

Any such notice will be in writing and contain such detail of the alleged breach or breaches of this Clause 18.1 as is reasonable in the circumstances.

18.2 If the Licensee is still in default twenty Working Days after the issue of the Step in Notice under Clause 18.1 the ODA may:

- (a) assume the responsibility of the Licensee to his exclusion for the continuation and completion of the Building Works on giving to the Licensee written notice to that effect; and
- (b) invoke the relevant provisions of the Third Party Rights Schedule set out in Schedule 4 this for assuming such responsibility.

18.3 If the issue contained in the Step in Notice has been remedied prior to expiry of the twenty Working Day period the Licensee shall inform the ODA in writing. On satisfaction that the issue has been remedied the ODA shall withdraw the Step in Notice which shall then have no effect.

18.4 The exercise by the ODA of its rights under paragraphs 18.2 or 18.3 does not affect or limit any other right or remedy of the ODA against the Licensee for breach of obligation under this Licence or otherwise.

18.5 If a Catastrophic Event occurs then Clauses 18.1, 18.2 and 18.3 shall not apply and the ODA shall step in with immediate effect and:

- (a) assume the responsibility of the Licensee to his exclusion for the continuation and completion of the Building Works on giving to the Licensee written notice to that effect; and
- (b) invoke the relevant provisions of the Third Party Rights Schedule set out in Schedule 4 this for assuming such responsibility

18.6 The Licensee acknowledges and agrees that in the event of the ODA exercising the step-in rights contained in this Licence, the ODA will be entitled to payment from the Licensee of the Drawdown Balance plus VAT, which shall be due to the ODA as a debt and paid without deduction or set off. The Licensee will within ten Working Days following step-in, transfer the Drawdown Balance plus VAT in full to the ODA's named bank account.

## 19 **TERMINATION OF LICENCE**

19.1 The ODA shall be entitled to issue a valid Termination Notice if:

- (a) the Building Works are not progressed in conformity with the Programme, including the Programme Milestones as adjusted in accordance with paragraph 5 of Schedule 2;
- (b) the ODA notifies the Licensee that the ODA is of the opinion that the Building Works will not be completed by 05th March 2012 as adjusted in accordance with paragraph 5 of Schedule 2;
- (c) the Licensee has committed breaches of obligation under this Licence which are individually or cumulatively of such seriousness as to permit the ODA to treat this Licence as repudiated by breach;
- (d) the Licensee has committed a Prohibited Act;
- (e) an Insolvency Event occurs in relation to the Licensee;

- (f) execution or distress is levied or enforced against the Licensee which is not removed or discharged within seven days; and/or
- (i) a serious or continuous Health and Safety or Environmental breach occurs;

Any such notice will be in writing and contain such details of the alleged breach or breaches of this Clause 19.1 as is reasonable in the circumstances.

- 19.2 If the issue contained in the Termination Notice has been remedied within the period of twenty Working Days of the date of the Termination Notice then the Licensee shall notify the ODA in writing. On satisfaction that the issue has been remedied the ODA shall withdraw the Termination Notice which shall then have no effect
- 19.3 Twenty Working Days after the issue of a valid Termination Notice the ODA may employ and pay other persons to carry out and complete the project and to make good any defects. The ODA and other persons may enter upon and take possession of the Licensed Area and the Building Works, and may use all the temporary buildings, plant, tools, equipment, and site materials as required.
- 19.4 On notice from the ODA not less than twenty Working Days after the issue of a valid Termination Notice (and not before) the Licensee shall ensure that the Building Contractor immediately removes from the Licensed Area any temporary buildings, plant, tools, equipment, goods and materials belonging to the Building Contractor or any sub contractor.
- 19.5 Twenty Working Days after the issue of a valid Termination Notice the Licensee shall provide the ODA with three copies of a full set of updated Plans and as built drawings.
- 19.6 If a Catastrophic Event occurs then Clauses 19.1, 19.2, 19.3, 19.4 and 19.5 shall not apply and the ODA shall be entitled to terminate with immediate effect. Such termination shall take precedence over Clause 18.5.
- 19.7 The Licensee acknowledges and agrees that in the event of the ODA exercising its right of Termination contained in this Licence, the ODA will be entitled to payment from the Licensee of the Drawdown Balance plus VAT, which shall be due to the ODA as a debt and paid without deduction or set off. The Licensee shall within ten Working Days following termination, transfer the Drawdown Balance plus VAT in full to the ODA's named bank account.

**20 CONSENTS AND APPROVALS**

Any consent or approval of the ODA or the Licensee required under this Licence is required to be obtained before the act or event to which it applies is carried out or done and is to be effective only when such consent or approval is given in writing.

**21 REMEDIES AND WAIVERS**

No failure to exercise nor any delay in exercising any right or remedy under this Licence shall operate as a waiver, nor shall any single or partial exercise of any right or remedy prevent any further or other exercise or the exercise of any other right or remedy. Any waiver of any breach of this Licence shall not be deemed to be a waiver of any subsequent breach.

**22 NOTICES**

- 22.1 Notices between the Parties relating to this Licence must be in English, in writing and must be delivered personally or sent by first class recorded delivery post to the address set out in Clause 22.2, marked for the attention of the person stated in that

Clause. Alternative details may be notified by a Party for the purposes of this Clause.

- 22.2 Notices shall be treated as received as follows: if delivered by hand, when delivered; and if sent by first class recorded delivery post, 48 hours after posting. Any notices received after 5pm on any day shall be deemed given on the next Working Day.

**ODA:**

Marked for the attention of: General Counsel  
Address: 23<sup>rd</sup> Floor  
One Churchill Place  
Canary Wharf  
London  
E14 5LN

**Licensee:**

Marked for the attention of: Sujogya Kumar  
Address: 7<sup>th</sup> Floor Berkeley Square House,  
Berkeley Square,  
London, W1J 6DA.

**23 NO PARTNERSHIP**

This Licence does not constitute a partnership or a joint venture between the Parties.

**24 FURTHER ASSURANCE**

The Parties shall at their own expense do or procure the doing of all such acts and execute or procure the execution of all such documents which a Party reasonably considers necessary for giving full effect to this Licence.

**25 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

- 25.1 Unless the right of enforcement is expressly provided, it is not intended that a third party should have the right to enforce a provision of this Licence pursuant to the Contracts (Rights of Third Parties) Act 1999.

- 25.2 The Parties may, by agreement, rescind or vary this Licence without the consent of a third party to whom the right of enforcement of any of its terms has been expressly provided.

**26 INVALIDITY AND SEVERANCE**

Each provision of this Licence shall be construed as independent of every other provision of this Licence, so that if any provision of this Licence is or becomes (whether or not pursuant to judgment or otherwise) illegal, invalid and/or unenforceable, that provision shall be divisible from this Licence and shall be

deemed to be deleted from this Licence and the validity of the remaining provisions shall not be affected.

27 **CONTINUING EFFECT**

The provisions of this Licence shall bind the Parties for as long as may be necessary to give effect to their respective rights and obligations under this Licence, but shall terminate twelve months after Practical Completion or on issue of the certificate of making good defects whichever is later, or at Termination in accordance with Clause 19.

28 **COUNTERPARTS**

This Licence may be executed in any number of counterparts each of which when executed and delivered shall be an original but all the counterparts taken together are to constitute one and the same deed.

29 **GOVERNING LAW AND DISPUTES**

The application and interpretation of this Licence shall in all respects be governed by English law and any dispute or difference arising under this deed shall, subject to the provisions of Schedule 5 (*Dispute Resolution Procedure*), be subject to the exclusive jurisdiction of the English courts.

30 **MISCELLANEOUS**

30.1 All additions, amendments and variations to this Licence shall be binding only if in writing and signed by the duly authorised representatives of both the ODA and the Licensee.

30.2 This Licence supersedes any previous agreement or arrangement between the Parties in relation to the matters to which it relates (whether oral or written) and represents the entire understanding between the Parties in relation thereto.

30.3 Notwithstanding the date of this Licence, it shall have effect as if it had been executed on the actual commencement of the Project by the Licensee.

**This Deed has been executed as a deed and delivered on the date stated at the beginning of this Deed.**

Schedule 1  
Agreed Specification

ArcelorMittal Orbit  
Project Brief  
24th September 2010





## **Introduction**

The purpose of the Outline Project Brief is to describe the scope of the ArcelorMittal Orbit Sculpture works to be provided by the Contractor for delivery of the sculpture in accordance with the ODA's requirements for Health and Safety and Environment and site wide requirements as agreed in the amended works information.

This document includes the following information as appendices:

- 3D Model of the steelwork in Tekla format (Appendix A),
- Typical sketch steelwork connection details as developed with contractor (Appendix B),
- Fire strategy report, (Appendix C)
- ODA Security Stage D report and Responsibilities Matrix (Appendix D)
- Ove Arup & Partners ArcelorMittal Orbit Design Brief (Appendix E)
- Definition CAT A Fit Out, as per schedule ArcelorMittal Orbit MEP Services Matrix (Draft 3) (Appendix F).
- Planning Condition Discharge Responsibilities Matrix (Appendix G)
- Orbit Responsibilities Matrix (Appendix H)

## **Location**

The Orbit is situated on the southern part of the Olympic Park between the Main Stadium and the Aquatic Centre on a site referred to as Zone 2. This central area of the Olympic Park is delineated by Waterworks River to the east, City Mill River to the west and by a pedestrian route North and a Service Road / Pedestrian route to the South.

## **Existing Site**

ODA enabling works contractors will hand the site to the contractor with all works complete in accordance with the approved remediation method statements.

The contractor is to allow ODA access to the site to complete on going monitoring of any ground water remediation systems or sampling from boreholes. Other than providing access, no other works are to be allowed for.

Validation records for the remediation works completed by the contractor are to be provided to allow a consolidated validation report to be completed by others.

## **Operation and Capacity**

The facility is to be offered as a CAT A construction, capable of accommodating:

- A maximum of 636 visitors per hour (based on maximum lift capacity, calculations in Appendix I)
- A maximum of 300 visitors (150 male and 150 female) on the two decks of the platform at any one time.
- A maximum of 180 visitors on either of the 2 decks at one time,

It is envisaged the facility will provide both a visitor attraction with food offer (which could include sale of alcoholic drinks) once fitted out by others. Licensing will be gained by others.

It is assumed that the Orbit will generally operate between the hours of 10am and 10pm, which might be extended for private functions. Food deliveries and waste will be managed during the night.

Security staff will be put in place at the ground entrance pavilion and on each of the two platform decks to ensure a safe flow of the public through the facility.

## **Structure**

Foundations will consist of a piled concrete raft below grade. The superstructure will be a tubular diagrid steel lattice structure, approximately 114m in total height, generally composed of site-bolted prefabricated components. Steel will be cold rolled seamed tubes to grade S355, primed and painted with a 20 year life paint. Steel is to be painted in a final top coat of RAL 3002.

Detail connection design is to be carried out by the Contractor, based on families of typical connections illustrated in appendix B.

The floor and roof structures of the viewing platform are composite concrete constructions consisting of steel beams and concrete slabs cast in-situ on corrugated steel decking. Surface water from the roofs and decks will be free draining and will fall to the concourse below where it will be collected by the landscaping drainage installed by others.

The Design Team will endeavour to minimise the forming of bird traps or nesting areas. However a bird proofing strategy will be put in place by the Operator of the facility which may rely on 'a man with a hawk' as implemented in other facilities of the Olympic Park.

The floor structures and diagrid lattice within 3m of the platform or entry pavilion will be fire protected with a 2 hour rated intumescent paint.

The Structure will be provided with a Tuned Mass Damper to limit wind induced accelerations in line with the parameters agreed through simulation testing in Southampton (1.6%g).

## **Entrance Pavilion and Canopy**

The entrance pavilion, which serves as a secured entrance to the Orbit's lifts, consists of an enclosed, naturally-ventilated building fitted out to a CAT A standard. The roof structure is to be waterproofed insitu concrete, supported on concrete walls and columns. The external envelope is to be formed by blockwork with glazed facades to the east and west elevations.

Provision has been made for a serviced disabled staff toilet and small security and storage rooms as well as space for installation of future security equipment.

No provision is to be made for the supply of any access control systems, ticketing or electronic points of sale equipment.

The canopy is a glass fibre reinforced plastic roof structure with connections to the diagrid by means of stainless steel cables. Surface water from the canopy will fall freely to the ground and will be collected in the crater where it will drain into the surface water drainage system.

## **Platform (consisting of two decks)**

The platform consists of an upper and a lower observation deck and an outdoor viewing walkway at the upper level.

## Upper Platform

The upper observation deck at circa 80m is to be a naturally ventilated space with a 3m high double-glazed facade with solar shading to minimise heat gains in the summer and meet security stakeholder blast resilience requirements. All Space will be fitted out to a CAT A Standard including provision of external disabled refuge.

An internal spiral staircase is to be provided to allow access between the two observation levels.

It is envisaged that, when fitted out by others, the accommodation would constitute of a visitor's observation deck/experience or art exhibition space. Any art installations shown on drawings, such as mirrors, are to be provided by others.

The upper observation deck includes a 2.5m wide external walkway with a perimeter handrail and 2.5m high vertical and overhead mesh protection. The flooring to the walkway is a metal type floor plate.

## Lower Platform

The lower observation deck at circa 76m is to be an enclosed space with a 3m high double-glazed facade with solar shading to minimise heat gains in the summer and meet security stakeholder blast resilience requirements. All Space will be fitted out to a CAT A Standard (except kitchen) including provision of a finishing kitchen (shell), disabled refuge, and serviced visitor toilets (including 2 single sex disabled toilets<sup>1</sup> to comply with ODA Inclusive Design Standards).

It is envisaged that, when fitted out by others, the accommodation would constitute of a food offer with visitor's observation space.

With respect to the cleaning of the external façade of the upper and lower platforms and the removal of small plant from the roof plant room appropriate allowances are to be made in the structural design to allow installation at a latter date by others (at a minimum these allowances will constitute sufficient sockets and removable davits, details to be supplied by the Client).

Building services to the platform decks will include:

- Foul drainage - provided to WC's at all levels. A suitable connection will be provided within the riser at both Deck levels.
- Fire Alarm - General coverage.
- Lighting - Functional lighting provision to both decks, Pavilion, base area, plant compound and roof in accordance with CIBSE Guidance. Emergency Lighting provided elsewhere where necessary.
- Capacity for future legacy lighting within the Distribution boards, as outlined in Ove Arup Specifications and drawings.
- Airplane warning light to be provided to the top of the structure.
- Small Power – Provision in line with CAT A definition and provision for legacy requirements as outlined in Ove Arup Specifications and drawings.
- Heating and Cooling system - Heating and Cooling to Lower Platform, Heating only to Upper Platform.
- Heating - provided by CCHP. Plate Heat Exchanger to be provided by ODA.
- Hot water - provided by CCHP. Plate Heat Exchanger to be provided by ODA.
- Provision of wet riser.
- Electrical supply to lifts.
- Provision of external plant compound, (including perimeter enclosure).
- Central plant to be sized to support Cat A use.
- Heating & Cooling to Lower platform to be provided from the central plant.

- External utilities compound to be at ground level in close proximity to development site.
- Upper deck opening louvres for natural ventilation to be actuator controlled via weather station for part L compliance.
- Disabled toilets / refuge fitted with appropriate call systems.
- Emergency lighting to entrance pavilion.
- Containment in all vertical risers connecting occupied spaces to allow future installation of CCTV, Security, Audio Systems, IT and comms.
- Water supply at roof level.

For further definition of services responsibilities see schedule ArcelorMittal Orbit MEP Services Matrix (Draft 3) (Appendix G).

The inclusion of sprinklers has been discussed at length with the local building control officers who have agreed that they are not required therefore no allowance should be made.

No allowance is to be made for spare parts or maintenance agreements, with the exception of the lift installation where the costs for the first year's maintenance are to be included and the option to buy 3 to 5 years additional cover.

### **Lifts**

Each lift consists of 1600kg, 21 person car designed to carry a maximum of 636 visitors up and down the attraction each hour with a speed of 2.5 m/s.

It is envisaged that passenger lifts are used as a goods lift. For this to be practical, food deliveries and vacuum-packed waste pick-up times need to be scheduled during the night or early morning. No other waste handling equipment is to be provided.

The lift cars are to be through cars to allow access directly to outside of the pavilion envelope during evacuation.

In the event that the attraction has to be evacuated in an emergency the lifts will be used. To ensure that this can be achieved safely the lift cars and associated machinery are to be designed in consideration of the requirements of BS-EN81-72 which are the regulations applicable to fire fighting lifts. It is recognised that the lift shaft is not enclosed and that a vertical ladder between the upper platforms and the pavilion area is not practical and therefore compliance of the building fabric with BS-EN81-72 is not required. To maximise the resilience of the lift system, lifts will be powered by two independent supplies provided within this area of the Park and will have a side hatch for lift-to-lift evacuation. Supply voltage will be 400V 3 phase, the capacity of two connections are primary 450kVA with a back up of 390kVA. Power supplies are from independent sources will be provided by the ODA therefore additional back up generators are not required.

The structure to the lifts and risers on either side will be an open rectangular vertical braced steel frame clad at the base up to 4m height above the roof of the pavilion structure.

### **Stair**

The stair will allow the public to exit the Orbit as well as being a means of escape. It will be a helicoidal structure mounted on the outside of the diagrid. It is enclosed on both sides and overhead with mesh protection and handrails on both sides, services to the stairs will be exposed and lighting will be of a 'bulk head' nature controlled via preset timers.

The last ten metres of the means of escape will be formed by an open ramp. At the junction of the enclosed stair and the ramp section a no re- entry system is to be installed (door, turnstile or similar).

### **External Feature Lighting**

The tubular diagrid steel lattice structure is illuminated with either a matrix of LED pixels or LED floodlights strategically positioned along the inside of the structure to create a distinct profile of the iconic sculptural structure from the observation tower and stairs. Feature lighting is to be provided in line with the agreed £100,000 budget.

### **Security**

Provision is to be made for:

- Anti climb protection to structure,
- Plinths around the base of the structure,
- PA coverage to both observation decks, lobby, stairs and entry pavilion,
- Phone Lines to lifts and LV panels
- Airplane warning lights, including means of maintenance,
- Blast Resilience

Security, Access control and EPOS systems are to be provided by others along with connection of said systems to any existing or future park wide control infrastructure. A basic CCTV system must be allowed for in the £110k (net trade) allowance for security systems. A process for the agreement with the Client of how this allowance is to be allocated must be devised.

### **Signage**

Statutory Signage only is to be allowed for.

### **Landscaping**

External Hard and Soft Landscaping is to be provided by others with the exception of:

- Forming of the profile of the crater in the residual fill
- A single drain point at the centre of the crater (connected back to the Olympic Park surface water collection system at an agreed location)
- Structural and Architectural plinths at the base of the dia-grid
- External Plant Compound

The porous asphalt surface to the crater and all other asphalt surfacing and associated channel drains is to be provided by others.

Granular material used for the temporary support of piling rigs and cranes is to be profiled to a level and condition to be agreed with the ODA and left in position by the contractor to allow incorporation, by others, in to the final hard and soft landscaping.

Visitor queuing systems and additional security protection such as security bollards will be provided by others.

Provision is to be made for a level loading area for pedestrians from the North elevation of the pavilion. This is to be situated with direct access to the back of the lifts under a sheltering canopy.

Containment for audio, data and LV power is to be integrated into the landscape by others. Where containment passes through the substructure appropriate duct works is to be provided by the contractor.

### **Utilities**

Utilities are to be provided to external plant compound by others. These services include;

- Drainage;
  - Surface Water (connection to be made into the Olympic Park system at a termination point agreed with the ODA)
  - Foul (instantaneous flow rate of 2.67l/s with an interface manhole location to be coordinated and fixed by design, but will be in the H04/H05 corridor area)
- Potable Water (see attached meter chamber coordinates, capacity 13m<sup>3</sup> per day)
- CCHP (150kW, plant room by SRM to Cofely adoptable standards)
- Fire Hydrant (at the termination chamber)

Utilities to be provided to agreed termination points by others;

- 2 independent sources of supply , primary 450kVA, back up 390kVA, (transformer plant rooms to EDF spec by SRM)
- Telecommunications (3 interface chambers for telecoms (2 ducts from each telecoms bank A, B, C) see attached drawing for coordinates)

**Schedule 2**  
**Project Development Obligations**

**1 PROFESSIONAL TEAM**

- 1.1 The Licensee shall appoint a project manager and other consultants with the ODA's approval (such approval not to be unreasonably withheld or delayed) and shall procure that the Building Contractor shall appoint and engage the other members of the Professional Team.
- 1.2 The appointment and engagement of a member of the Professional Team may be made only after due enquiry as to his repute, competence and suitability with respect to the Project and the Building Works.
- 1.3 The Licensee shall not appoint and engage or permit the Building Contractor to appoint or engage the services of a member of the Professional Team without the ODA's prior approval (such approval not to be unreasonably withheld or delayed) of the member's selection and financial standing and terms of appointment.
- 1.4 This paragraph also applies to the appointment of a member of the Professional Team by way of replacement of any member of, or addition to, the Professional Team.
- 1.5 The Licensee shall procure that each member of the Professional Team enters into an appointment containing a Third Party Rights Schedule in favour of each of the ODA and the OPLC in the respective form.
- 1.6 The Licensee shall require as a condition of appointment of each member of the Professional Team that the member maintains with a reputable insurer professional indemnity insurance of at least £10,000,000 for each and every claim that may be made throughout the period that the member retains liability for breach of the terms of its appointment. The Licensee shall require as a condition of appointment of each member of the Professional Team ensure that the member enters into a LOCOG No Marketing Deed and Confidentiality Agreement.
- 1.7 The Licensee will:
- (a) use best endeavours (and use best endeavours as appropriate procure that the Building Contractor shall take all steps) to procure the due performance and observance of the obligations and duties of each member of the Professional Team;
  - (b) not waive, release, vary nor estop itself (and as appropriate procure that the Building Contractor shall not waive, release, vary nor estop itself) from enforcing or seeking redress for any such obligation or duty without the consent of the ODA (such consent not to be unreasonably withheld or delayed); and
  - (c) without prejudice to the Licensee's right to terminate the Building Contract and appointments of the Professional Team for breach, not do nor omit to do (and use best endeavours to procure that the Building Contractor shall not do nor omit to do) any act or thing which (apart from any step-in provisions contained in the Third Party Rights Schedule referred to in paragraph 1.5) would entitle a member of the Professional Team to treat as terminated by breach its appointment in connection with the Project and the Building Works.
- 1.8 The Licensee shall procure that it is stipulated in the terms of the project manager's engagement that the project manager is to act impartially and independently of the

Licensee in issuing any statement of Practical Completion and notice of making good of defects under the Building Contract. The project manager will carry out the function of Employers representative under the Building Contract.

## 2 THE PLANS

- 2.1 The Licensee will use best endeavours to cause the Plans to be prepared within six weeks from the date of this Licence.
- 2.2 The Licensee will use best endeavours to cause the Plans to be prepared in such form and manner as are likely to obtain planning permission and to comply with and bring about the grant of other Requisite Consents before and throughout the course of the Project. The ODA acknowledges that the Licensee does not warrant that the planning permission or Requisite Consents will be granted.
- 2.3 The Licensee will submit the Plans to the ODA for information. The ODA may from time to time provide comments in relation to the Plans but such comments do not constitute an instruction or an approval. The Licensee remains fully and solely responsible for preparation of the Plans and (subject to obtaining the relevant planning permission) the delivery of the Building Works. The ODA's comments shall be primarily to ensure that the Project and the Plans;
- (a) do not have a detrimental impact on the ODA programme and/ or costs;
  - (b) do not have a detrimental impact on the condition of the land and/or the future ability to develop the land;
  - (c) are fully integrated with the design of the Olympic Park and are deliverable within the timescales proposed;
  - (d) do not have a detrimental impact on the existing planning permissions;
  - (e) do not put the ODA in breach of its licence to access the Olympic Park;
  - (f) do not impact on ODA projects (e.g. SBH, Utilities, Enabling, PPR);
  - (g) address priority theme issues (including accessibility);
  - (h) address deliverability, deconstruction and access needs and;
  - (i) do not impact on Park Operations and post Games bump out proposals.
- 2.4 The Licensee will submit the Plans to the ODA from time to time before and throughout the course of the Project as may be necessary to inform the ODA as to the design content and quality of the Project in all material respects as it progresses.
- 2.5 The Licensee will not make any variation (including any alteration or addition to or omission of anything from the Plans or the use of any materials in substitution for those specified in the Plans) without prior notification to the ODA except where the variation is substitution of materials of an equal or higher quality. However, without prejudice to the foregoing, the Licensee may make variations without the consent of ODA where the variations are minor changes of a non-structural nature or are required to comply with the Statutory Requirements.
- 2.6 The Licensee will keep the ODA furnished throughout the Project with a complete set of the Plans as amended and revised from time to time and will within four



weeks from Practical Completion deliver to the ODA three complete sets of the Plans of the Project as finally built.

### **3 REQUISITE CONSENTS**

- 3.1 The Licensee will apply for and use all reasonable endeavours to obtain all Requisite Consents from time to time as may be appropriate before and throughout the course of the Project.
- 3.2 The Licensee will promptly notify the ODA of the grant of a Requisite Consent and deliver a copy to the ODA.
- 3.3 The Licensee will (the Licensee bearing its own costs and ODA bearing its own costs), if reasonably required by the ODA, negotiate the terms of planning or other obligations with the local planning or other authority in respect of the Licensed Area (under section 106 of the Town and Country Planning Act 1990, section 38 of the Highways Act 1980 or other statutory provisions requiring undertakings from the Licensee) but may not settle the terms without the approval of the ODA (such approval not to be unreasonably withheld) and the ODA agrees and acknowledges that (once the terms of such obligations have been approved) the ODA will enter into such documentation as is required to give effect to such obligations. The Licensee will not be obliged to enter into any of the said agreements nor will the ODA agree to any obligation therein which will extend the Licensee's obligations herein.
- 3.4 If a Requisite Consent is refused, the Licensee will appeal against the refusal or take other appropriate action in order to proceed with the Project, subject to the prior approval of the ODA (such approval not to be unreasonably withheld). Provided that the Licensee shall not be bound to appeal against any refusal or take any other action where it has been advised by counsel that any such appeal or other action has less than 50% chance of success including without limitation where counsel is of the opinion that there would be insufficient time where the Licensee won any appeal to carry out the Building Works in time for the Target Opening Date.
- 3.5 The Licensee acknowledges that to carry out the Project on the Licensed Area pursuant to this Agreement or to access and egress the Licensed Areas for the purpose of the Project no agreements are required with the owners and occupiers of neighbouring property for the release of rights of way, light and air or otherwise nor is it necessary or desirable to extinguish interests in, over or with respect to the Licensed Area and no such rights and interests are infringed by the Project or would prevent or impede the carrying out or progress of the Project or its use and enjoyment thereafter.
- 3.6 The ODA undertakes to provide such assistance reasonably required by the Licensee in obtaining the Requisite Consents or making appeals or other appropriate action referred to in paragraph 3.4 of this Schedule.

### **4 THE BUILDING CONTRACTOR**

- 4.1 The Licensee is responsible for the appointment and employment of the Building Contractor.
- 4.2 The appointment and employment of the Building Contractor may be made only after due enquiry as to its repute, competence and suitability with respect to the Building Works.
- 4.3 The Licensee may not appoint and employ the Building Contractor without the ODA's prior approval (such approval not to be unreasonably withheld or delayed) of the Building Contractor's selection and financial standing and the terms of the

Building Contract. The Building Contract shall, without limiting the ODA's rights of approval, provide that:

- (a) the Building Contractor has assumed single point design responsibility for the Building Works;
- (b) the Building Works shall be suitable for their intended purpose stated in the Building Contract; and
- (c) the Building Contractor shall procure that each Key Sub-Contractor shall enter into a Third Party Rights Schedule in favour of each of the ODA and the OPLC.

4.4 This paragraph 4 also applies to the appointment of a building contractor by way of replacement of the Building Contractor.

4.5 The Licensee shall procure that the Building Contractor enters into a Third Party Rights Schedule in favour of each of the ODA and OPLC.

4.6 The Licensee shall require as a condition of appointment of the Building Contractor that the Building Contractor maintains with a reputable insurer professional indemnity insurance of at least £20,000,000 in the aggregate with two automatic reinstatements for a period of 12 years from the date of Practical Completion. The Building Contractor shall also maintain with a reputable insurer Public Liability Insurance of £25,000,000 for each and every claim.

4.7 The Licensee will:

- (a) diligently take all steps necessary effectually to procure the due performance and observance of the obligations and duties of the Building Contractor;
- (b) not waive, release, vary nor estop itself from enforcing or seeking redress for any such obligation or duty without the consent of the ODA (such consent not to be unreasonably withheld); and
- (c) not do, nor omit to do, any act or thing which (apart from any step-in provisions contained in the Third Party Rights Schedule referred to in paragraph 4.5) would entitle the Building Contractor to treat as terminated by breach the Building Contract.

4.8 The Licensee shall ensure that the Building Contractor and any Key Sub-Contractor appointed under a High Value Contract enters into a LOCOG No Marketing Deed and Confidentiality Agreement in the form set out in Schedule 11.

## **5 THE BUILDING WORKS**

5.1 The Licensee shall use its best endeavours to ensure that the Building Works are commenced, carried out and completed in accordance with the Programme as submitted to and agreed by the ODA. If the Building Works are delayed by an act of ODA Prevention or Force Majeure then the ODA shall grant an extension to the completion date on the latest accepted Programme that the ODA considers to be fair and reasonable in all the circumstances.

5.2 The Licensee shall use best endeavours to procure that the Building Works are carried out:

- (a) in a good and workmanlike manner and in accordance with good building practice;

- (b) with good and suitable materials;
- (c) in accordance with the Agreed Specification, ODA Construction Standards, Plans and Requisite Consents;
- (d) in compliance with planning and other obligations, whether under section 106 of the Town and Country Planning Act 1990, section 38 of the Highways Act 1980 or other statutory provisions applicable to the Project;
- (e) in compliance with the Statutory Requirements and any requirements and codes of practice of local authorities and other competent authorities affecting the Project and/or the Licensed Area;
- (f) without infringement of any rights, reservations, covenants, restrictions, stipulations or other encumbrances binding on or affecting the Licensed Area; and
- (g) with due diligence.

5.3 The Licensee shall use best endeavours to procure that the following materials are not specified for use and are not used in connection with the Building Works:

- (a) any of the materials identified as potentially hazardous in the British Property Federation/British Council for Offices 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; and
- (b) any other material which (or the use of which as specified by the relevant person) does not comply with relevant British Standard specifications (or their European Union equivalent) and codes of practice and good building practice or is otherwise generally known within the relevant person's profession or trade at the time of specification to be deleterious or harmful to health or to the durability of the Building Works in the particular circumstances in which it is proposed to be used.

5.4 The Licensee shall use best endeavours to procure that during the Development Period:

- (a) the site of the Licensed Area be at all times secured as fully against unauthorised entry;
- (b) no advertisements, posters, placards or signs be affixed to or displayed from or on the boundaries of the Licensed Area without the consent of the ODA;
- (c) no earth, clay, gravel, sand or other minerals be removed from the Licensed Area otherwise than may be necessary to enable the Building Works to be carried out;
- (d) the Licensed Area be kept tidy and properly cleared of surplus materials, rubble, rubbish or waste, and no goods or materials be deposited or stored on the Licensed Area which are not required within a reasonable time for the carrying out of the Building Works;
- (e) proper provision be made for the support and use of any land, walls, buildings, roads or footpaths upon, adjacent or near to the Licensed Area and which are affected by the Building Works;

- (f) hoardings be erected around the site in a secure manner, and all reasonable safety and other measures be taken to prevent damage and injury, and there be kept to a minimum nuisance, inconvenience or disturbance to owners and occupiers of neighbouring properties and members of the public;
- (g) good, efficient and well maintained plant and equipment be used for the carrying out of the Building Works;
- (h) proper arrangements be made with the supply authorities for the provision of water, gas, electricity, telephone and other services required for the carrying out of the Building Works;
- (i) unsatisfactory or unsuitable materials be replaced and defective workmanship remedied, whether or not at the instance of the ODA or CLM;
- (j) the Building Works be maintained in good repair and condition; and
- (k) four weeks after Practical Completion, the Licensed Area be left in full repair and in good and clean condition, cleared of all unused building materials, plant and equipment used in the Building Works and temporary structures.

5.5 The Licensee will keep the ODA and CLM informed of:

- (a) material measures taken, and stages reached, by the Licensee in performing his obligations;
- (b) the progress of the Building Works; and
- (c) material problems or delays affecting the Building Works,

and will promptly supply to the ODA all minutes and other written records of site and other relevant meetings and reports given by the Professional Team.

5.6 The Licensee shall organise and chair steering group monthly progress meetings and provide monthly progress reports to the ODA, identifying and highlighting cost and programme performance as measured against the baseline Programme as approved by the ODA at commencement of the Building Works and updated from time to time.

## **6 INSPECTION OF THE BUILDING WORKS BY THE ODA**

6.1 The OPLC, ODA and its advisers (including CLM) may at all reasonable times during the Development Period by arrangement with the Building Contractor enter the Licensed Area in order to inspect and view the state and progress of the Building Works and the materials used.

6.2 In doing so the OPLC, ODA and its advisers may not impede or obstruct the progress of the Building Works nor issue any instructions to the Building Contractor, any workmen employed on the site or the Professional Team, but will address any requirement, comment or complaint only to the Licensee.

6.3 The Licensee will give to the OPLC, ODA and CLM at least five Working Days' prior notice of site and other formal meetings of the Professional Team and the Building Contractor or any of them in connection with the Project and the OPLC, ODA, CLM and the ODA's other advisers are entitled to attend at and participate in such meetings.

- 6.4 The Licensee will pay due regard to requirements of the OPLC, ODA, CLM and the ODA's other advisers which are consistent with the terms of this Schedule.
- 6.5 Following Practical Completion the OPLC, ODA shall be given access to inspect the Project.
- 6.6 The OPLC, ODA and its advisers (including CLM) may at all reasonable times during the Development Period enter the Licensed Area in order to carry out health and safety audits or environmental monitoring and reviews.
- 6.7 The OPLC, ODA and its advisers (including CLM) may issue a notice to stop work if the Contractor is in breach of ODA or statutory requirements in relation to any health and safety or environmental issue on the Olympic Park. The stop notice shall remain in full force until such times as the issue contained in the notice has been remedied and any cost or time consideration associated with the stopping of work shall be borne by the Licensee.

## 7 **INSURANCE**

- 7.1 The Licensee will at all times during the Development Period keep insured the relevant structures in their full reinstatement cost for the time being, and unfixed goods and materials in connection with the Building Works in their full replacement cost for the time being, against the insured risks with an insurer of repute approved by the ODA (such approval not to be unreasonably withheld).
- 7.2 For the purposes of paragraph 7.1:
- (a) the insured risks are terrorism, fire, lightning, explosion, storm, tempest, flood, bursting or overflowing of water tanks, apparatus or pipes, earthquake, aircraft and other aerial devices or articles dropped from them, riot and civil commotion; and
  - (b) the relevant structures are the buildings and structures constructed, in course of construction or standing on the Licensed Area but excluding temporary buildings, plant, tools and equipment owned or hired by the Building Contractor.
- 7.3 The insurance is to be placed as a Joint Names Policy in the names of the Building Contractor, the Licensee any other person that the ODA reasonably requires.
- 7.4 The Licensee will supply the ODA with a copy of the insurance policy and endorsements made to it, and produce documentary evidence of its renewal, including receipts for payments of premiums when reasonably requested by the ODA.
- 7.5 If any default is made in insuring or continuing to insure the Licensed Area, the ODA may itself insure against any risk in respect of which the default may have occurred and the Licensee will indemnify the ODA against the cost so incurred by the ODA.
- 7.6 The Licensee will cause all Building Works damaged or destroyed to be reinstated with due diligence, and replace or repair any unfixed materials or goods destroyed or damaged, and remove and dispose of any debris and proceed as soon as may be practicable with carrying out and completion of the Building Works, and will cause the proceeds of the insurance to be applied towards the reinstatement.
- 7.7 If the proceeds of insurance are insufficient to cover the cost of reinstatement, replacement or repair, the Licensee will make good any deficiency out of his own monies.

## **8 CERTIFICATE OF PRACTICAL COMPLETION**

- 8.1 The Licensee is to procure that the project manager inspects the Building Works with a view to the issue of the certificate of Practical Completion in accordance with the terms of the Building Contract. The Licensee is to give OPLC not less than ten Working Days' prior written notice of the date and time, being a Working Day during the hours of daylight, when the project manager will carry out this inspection.
- 8.2 OPLC will be entitled to accompany the project manager on the inspection of the Building Works and to make representations on the proposal to issue the certificate of Practical Completion and the Licensee is to procure that the project manager takes proper account of any representations made by them.
- 8.3 The Licensee is to provide a copy of any draft snagging/defects list to OPLC and give OPLC at least five Working Days to comment on the list before it is served on the Building Contractor. The Licensee will take proper account of all reasonable comments of OPLC on the list when agreeing the defects/snagging list with the Building Contractor.
- 8.4 If there are any defects in the Building Works, other than defects in the nature of minor snagging items which would not be an impediment to the issue of the certificate of Practical Completion in accordance with the terms of the Building Contract, the Licensee is to procure that the project manager does not issue the certificate of Practical Completion until those defects have been made good.
- 8.5 Subject to paragraph 8.3, the Licensee is to serve a copy of the certificate of Practical Completion on OPLC as soon as reasonably practicable after the date of the inspection of the Building Works.
- 8.6 The Licensee shall use best endeavours to ensure that the Building Contractor remedies all defects notified at Practical Completion within four weeks of the date of Practical Completion.

## **9 DEFECTS LIABILITY**

- 9.1 The Licensee will enforce the defects liability provisions in the Building Contract.
- 9.2 The Licensee will inspect the Building Works and prepare a schedule of defects, itemising defects, shrinkages and other faults due to materials or workmanship not in accordance with the Building Contract or to frost occurring before Practical Completion and will:
- (a) deliver a copy to OPLC in time for OPLC to consider it and notify additions to the Licensee; and
  - (b) then deliver the schedule (with any additions notified to the Licensee by OPLC) to the Building Contractor within the appropriate time limits for doing so under the Building Contract.
- 9.3 OPLC is not obliged to prepare any such schedule of defects, but the Licensee will include in his schedule any defects notified to him by OPLC within the appropriate time limits, and OPLC will allow the Licensee the facilities necessary to enable the schedule of defects to be prepared.

## **10 HANDOVER AND COMMISSIONING**

- 10.1 The Licensee will use best endeavours to procure that the Building Contractor complies with the handover and commissioning requirements contained in the Agreement between OPLC and the Licensee.

11 **ACTION, CLAIMS AND PROCEEDINGS**

- 11.1 The Licensee will diligently prosecute claims and seek redress (so far as may be practicable and reasonable) for the consequences of failure on the part of the Professional Team or the Building Contractor to observe and perform their respective obligations in relation to the Project provided that such claims are made prior to the issue of the certificate of making good defects under the Building Contract.
- 11.2 The Licensee will hold the proceeds of such claims on trust:
- (a) to apply them towards the cost of remedying the consequences of the failure to observe and perform the relevant obligation, but to the extent that that may be impossible or impractical then
  - (b) to account with the proceeds to the ODA.
- 11.3 The Licensee will pay due regard to the requirements of the ODA both in relation to the prosecution of claims and the conduct of proceedings.
- 11.4 The prosecution of claims is to be carried out at the expense of the Licensee.

12 **LIMITATION OF THE LICENSEE'S LIABILITY**

- 12.1 The Licensee shall not be relieved of liability for breach of obligation in this Licence by:
- (a) the issue of the certificate of Practical Completion;
  - (b) the absence of objection by OPLC or the ODA to the issue or the terms of the certificate of Practical Completion;
  - (c) the performance of the Building Contractor of his obligations with respect to defects liability under the Building Contract; or
  - (d) the successful prosecution of a claim against the Building Contractor or any member of the Professional Team,
- unless and to the extent that any such event provides redress to the ODA for the breach of obligation.
- 12.2 The liability of the Licensee to the ODA in respect of breach of obligation under this Schedule is to cease twelve months after Practical Completion or on the issue of the certificate of making good defects under the Building Contract whichever is later, except for claims begun or accrued and identified rights of action in respect of which the ODA has given notice to the Licensee of intention to make a claim before the expiry of the period.

**Schedule 3  
ODA Construction Standards**

Appendix Reference	Section Reference	Document Title / Reference / Date	Version
<b>STANDARD</b>			
20	A275	CLM-D0503-GUI-OlympicGridUseBrief-vUnbranded	Version 1.0 3 April 07
21	B105 B301 B330 B1001	ODA Design & Construction Health, Safety and Environment Standard Summary, dated July 2007	Ref LOHS/07/25
22	B710	Performance Measurement Table	V1.2
23	B601	2012 Construction Commitments (undated)	4/7/06
24	B601	Code of Construction Practice	
	A295 B301 B1030 B1052	24A Code of Construction Practice, CLM-D0404-Rep-CoCP	Version 13 17Dec 07
	A295 B1002	24B Code of Construction Practice – Table of Contractor's responsibility	
25	B601	Code of Practice for the Conduct of Industrial Relations (undated)	No version ref & undated
26	B701 B705	Information Security Policy & Data Protection Policy	No version ref & undated
27	B2615 B2620	No Marketing Rights for Suppliers	No version ref & undated
28	B1505	Project Quality Requirements Plan, dated 6th August 2007.	Version 11.0 Dec 07
29	B1905	Risk Register Template	No version ref & undated



Appendix Reference	Section Reference	Document Title / Reference / Date	Version
30	A1015	Reserved Matters & Approvals Schedule, dated January 2008	No version ref & undated
31	B3080	Employer's Minimum Catering Standards - Draft Catering Requirement Brief(5c)	5c
32		Network Rail Basic Asset Protection Agreement relating to outside Party Works ("BAPA")	
	A1205 A1210	32A 15431443_2_UKMATTERS(BAPA for Roads and Bridges)	No version ref & undated
		32B 15045114_2_UKMATTERS(tfl letter 23_07_07)	No version ref & undated
		32C Protective Provisions Agreement - Stratford - ODA Ver 2 clean	No version ref & undated
34	B1018 S215	Protection of Park Wide Remediation -Permit to Proceed Protocol	Jan 08
35		Temporary Utilities:	
	B3050	35A Atkins Drawing Ref 2DD-ATK-UZ-ZZZ-OLP-XXX-E-0730 Rev 03	Rev 03/08
	B3050	35B Estimated HV/LV Drop Points Schedule, Rev A dated 2nd Feb 2007,	Rev A 2 Feb 07
	B3050	35C EDF Application for the Provision of Electricity Connections	Version 1.5 16/01/07
	B3075	35D ICT Location Plan	No version ref & undated
36	B3010	Ready Mix Concrete Brief	06/03/08
37	B3015	Fuel	16/04/08
38	B3020	Aggregates	16/04/08
39	B3000	Timber	16/04/08
40	B3045	Waste Management	16/04/08
41		Conflicts of Interests	July 09
42	A1207	TfL Asset Protection Requirements	Issued July 09
43	A1109	TfL Infrastructure Protection Special	Oct 2007

Appendix Reference	Section Reference	Document Title / Reference / Date	Version
		Conditions	

**Schedule 4**  
**Forms of Third Party Rights Schedule**  
**Part 1**

**Contractor Third Party Rights to ODA**

Words and expressions which are defined in the contract between the Contractor and the Employer dated [        ] (the "**Contract**") shall have the same meaning when used in this Third Party Rights schedule unless the context otherwise requires.

- 1.1 The Contractor warrants that he has complied and will continue to comply with the Contract and that he shall and has exercised in the performance of his obligations in relation to the design of the Project the skill and care to be expected of a professional designer appropriately qualified and competent in the discipline to which the design relates and experienced in carrying out works of a similar scope, nature and size to the Project.
- 1.2 The Contractor shall be entitled in any action or proceedings by the Beneficiary to rely on any term in the Contract and to raise the equivalent rights in defence of liability (save for set off and/or counterclaim) as he would have had as if the Beneficiary was named as a joint employer with the Employer under the Contract.
- 1.3 The obligations of the Contractor under or pursuant to clause 1.1 shall not be released or diminished by the appointment of any person by the Beneficiary to carry out any independent enquiry into any relevant matter.
2. The Beneficiary has no authority to issue any direction or instruction to the Contractor in relation to the Contract unless and until the Beneficiary has given notice under paragraph 4 or 5.4 of this Part 2 of this Schedule.
3. The Beneficiary has no liability to the Contractor in respect of amounts due under the Contract unless and until the Beneficiary has given notice under paragraph 4 or 5.4.
4. The Contractor agrees that, in the event of a breach of the Construction Licence the Contractor shall, if so required by written notice given by the Beneficiary and subject to paragraph 6, accept the instructions of the Beneficiary or its appointee to the exclusion of the Employer in respect of the Project upon the terms and conditions of the Contract. The Employer acknowledges that the Contractor shall be entitled to rely on a notice given to the Contractor by the Beneficiary under this paragraph 4 as conclusive evidence for the purposes of the Contract of the termination of the Construction Licence and further acknowledges that such acceptance of the instructions of the Beneficiary to the exclusion of the Employer shall not constitute any breach of the Contractor's obligations to the Employer under the Contract.
- 5.1 The Contractor shall not exercise any right of termination of his employment under the Contract without having first:
  - 5.1.1 copied to the Beneficiary any notices required by the Contract to be sent to the Employer prior to the Contractor being entitled to give notice under the Contract that his employment under the Contract is terminated; and
  - 5.1.2 given to the Beneficiary written notice that he has the right under the Contract forthwith to notify the Employer that his employment under the Contract is terminated.

- 5.2 The Contractor shall not treat the Contract as having been repudiated by the Employer without having first given to the Beneficiary written notice that he intends so to inform the Employer.
- 5.3 The Contractor shall not:
- 5.3.1 issue a notice to the Employer to which paragraph 5.1.2 refers; or
- 5.3.2 notify the Employer that he is treating this Contract as having been repudiated by the Employer as referred to in paragraph 5.2
- before the lapse of seven days from receipt by the Beneficiary of the written notice by the Contractor which the Contractor is required to give under paragraph 5.1.2 or 5.2.
- 5.4 The Beneficiary may, not later than the expiry of the seven days referred to in paragraph 5.3, require the Contractor by notice in writing and subject to paragraph 6 to accept the instructions of the Beneficiary or its appointee to the exclusion of the Employer in respect of the Project upon the terms and conditions of the Contract. The Employer acknowledges that the Contractor shall be entitled to rely on a notice given to the Contractor by the Beneficiary under this paragraph 5.4 and that acceptance by the Contractor of the instructions of the Beneficiary to the exclusion of the Employer shall not constitute any breach of the Contractor's obligations to the Employer under this Contract. Provided that, subject to paragraph 6, nothing in this paragraph 5.4 shall relieve the Contractor of any liability he may have to the Employer for any breach by the Contractor of the Contract.
6. It shall be a condition of any notice given by the Beneficiary under paragraph 4 or 5.4 that the Beneficiary or its appointee accepts liability for payment of the sums due and payable to the Contractor under the Contract and for performance of the Employer's obligations including payment of any sums outstanding at the date of such notice. Upon the issue of any notice by the Beneficiary under paragraph 4 or 5.4, this Contract shall continue in full force and effect as if no right of termination of the Contractor's employment under the Contract, nor any right of the Contractor to treat the Contract as having been repudiated by the Employer, had arisen and the Contractor shall be liable to the Beneficiary and its appointee under this Contract in lieu of his liability to the Employer. If any notice given by the Beneficiary under paragraph 4 or 5.4 requires the Contractor to accept the instructions of the Beneficiary's appointee, the Beneficiary shall be liable to the Contractor as guarantor for the payment of all sums from time to time due to the Contractor from the Beneficiary's appointee.
- 7.1 The copyright in the drawings, specifications, details, schedules of levels, setting out dimensions and the like which are required to be prepared by the Contractor for explaining or amplifying the Contract, which are necessary to enable the Contractor to execute the Project or which are required by the Contract (the "**Design Documents**") prepared by the Contractor in accordance with this Contract shall remain vested in the Contractor but the Contractor grants to the Beneficiary an irrevocable, royalty free, non-exclusive licence to copy and use the Design Documents and to reproduce the designs and content of them for any purpose relating to the Project including, without limitation, the design, execution, completion, maintenance, letting, sale, promotion, advertisement, reinstatement, refurbishment, and repair of the Project. Such licence shall enable the Beneficiary to copy and use the Design Documents for the purposes of an extension to the Project, but such use shall not include a licence to reproduce the designs contained in them for any extension to the Project. The Contractor agrees that the Beneficiary may grant sub-licences to other persons to use and to reproduce the Design Documents and the designs and content of them for any purposes relating to the Project.

- 7.2 To the extent that the Contractor does not have ownership of the copyright in any Design Document the Contractor shall use reasonable endeavours to procure from the copyright holder a licence with full title guarantee to the Beneficiary in respect of the Design Documents in the same terms as granted by paragraph 7.1.
- 7.3 The Contractor shall not be liable for any use of the Design Documents that is outside the scope of the licence granted by paragraph 7.1.
- 8.1 The Contractor shall take out a professional indemnity insurance policy with a limit of indemnity of at least twenty million pounds (£20,000,000) in the aggregate with two automatic reinstatements. Thereafter, provided it is available at commercially reasonable rates, such insurance shall be maintained until the expiry of 12 years from the date of Practical Completion of the Project.
- 8.2 Where the Contractor considers that any insurance required by paragraph 8.1 is no longer generally available at commercially reasonable rates he shall notify the Beneficiary and cooperate with the Beneficiary in seeking means by which the Contractor can be protected against professional liability claims arising out of the Project. The Contractor shall as and when reasonably required by the Beneficiary provide to the Beneficiary written confirmation from its insurance brokers of such current insurance.
9. The Contractor warrants to the Beneficiary that the design of the Project will use materials selected in accordance with "Good Practice in the selection of construction materials", prepared by Ove Arup & Partners and sponsored by the British Council for Offices and the British Property Federation, as current at the Base Date and will not use materials that are considered by construction professionals as:
- (i) being deleterious in themselves;
  - (ii) becoming deleterious when used in a particular situation or in combination with other materials;
  - (iii) becoming deleterious without a level of maintenance which is higher than that which would normally be expected in a building of a comparable type; or
  - (iv) being damaged by or causing damage to the structure in which they are incorporated or to which they are affixed.

For this purpose the word "deleterious" shall be deemed to include the use of materials or combinations of materials that would or might be hazardous to health or would or might have the effect of reducing the normal life expectancy:

- (i) of the materials themselves;
  - (ii) of any materials to which they are affixed; or
  - (ii) of the structure in which they are incorporated or to which they are affixed;
- to a period less than that which would normally be expected.
10. The rights contained in this Schedule may be assigned without the Contractor's consent by the Beneficiary, by way of absolute legal assignment, to another person (P1) providing finance or re-finance in connection with the carrying out of the Project or acquiring the Beneficiary's interest in the Project and by P1, by way of absolute legal assignment to another person (P2) providing finance or re-finance in connection with the carrying out of the Project or acquiring an interest in the Project. In such cases the

assignment shall only be effective upon written notice thereof being given to the Contractor. No further or other assignment of the Beneficiary's rights under this Contract will be permitted and in particular P2 shall not be entitled to assign these rights.

11. Any notices required to be given by this Schedule shall be delivered by hand or sent by Recorded Signed for or Special Delivery post to the registered office or if there is none the last known address of the party to be served and such notice shall take effect upon delivery.
12. No action or proceedings for any breach of the rights contained in this Schedule shall be commenced against the Contractor after the expiry of 12 years from the date of Practical Completion of the Project or the relevant Section (if applicable), whichever is the earlier.
13. Notwithstanding the rights contained in this Schedule, the Contractor shall have no liability to the Beneficiary for delay under the Contract unless and until the Beneficiary serves notice pursuant to paragraph 4 or 5.4. For the avoidance of doubt the Contractor shall not be required to pay liquidated damages in respect of the period of delay where the same has been paid to or deducted by the Employer.
14. This Schedule shall be governed by and construed in accordance with the law of England and the English courts shall have jurisdiction over any dispute or difference between the Contractor and the Beneficiary which arises out of or in connection with this Schedule."

## Part 2

### Contractor Third Party Rights for OPLC and GLA

Words and expressions which are defined in the contract between the Contractor and the Employer dated [ ] (the "**Contract**") shall have the same meaning when used in this Third Party Rights schedule unless the context otherwise requires.

- 1.1 The Contractor warrants that he has complied and will continue to comply with the Contract and that he shall and has exercised in the performance of his obligations in relation to the design of the Project the skill and care to be expected of a professional designer appropriately qualified and competent in the discipline to which the design relates and experienced in carrying out works of a similar scope, nature and size to the Project.
- 1.2 The Contractor shall be entitled in any action or proceedings by the Beneficiary to rely on any term in the Contract and to raise the equivalent rights in defence of liability (save for set off and/or counterclaim) as he would have had as if the Beneficiary was named as a joint employer with the Employer under the Contract.
- 1.3 The obligations of the Contractor under or pursuant to clause 1.1 shall not be released or diminished by the appointment of any person by the Beneficiary to carry out any independent enquiry into any relevant matter.
- 2.1 The copyright in the drawings, specifications, details, schedules of levels, setting out dimensions and the like which are required to be prepared by the Contractor for explaining or amplifying the Contract, which are necessary to enable the Contractor to execute the Project or which are required by the Contract (the "**Design Documents**") prepared by the Contractor in accordance with this Contract shall remain vested in the Contractor but the Contractor grants to the Beneficiary an irrevocable, royalty free, non-exclusive licence to copy and use the Design Documents and to reproduce the designs and content of them for any purpose relating to the Project including, without limitation, the design, execution, completion, maintenance, letting, sale, promotion, advertisement, reinstatement, refurbishment, and repair of the Project. Such licence shall enable the Beneficiary to copy and use the Design Documents for the purposes of an extension to the Project, but such use shall not include a licence to reproduce the designs contained in them for any extension to the Project. The Contractor agrees that the Beneficiary may grant sub-licences to other persons to use and to reproduce the Design Documents and the designs and content of them for any purposes relating to the Project.
- 2.2 To the extent that the Contractor does not have ownership of the copyright in any Design Document the Contractor shall use reasonable endeavours to procure from the copyright holder a licence with full title guarantee to the Beneficiary in respect of the Design Documents in the same terms as granted by paragraph 2.1.
- 2.3 The Contractor shall not be liable for any use of the Design Documents that is outside the scope of the licence granted by paragraph 2.1.
- 3.1 The Contractor shall take out a professional indemnity insurance policy with a limit of indemnity of at least twenty million pounds (£20,000,000) in the aggregate with two automatic reinstatements. Thereafter, provided it is available at commercially reasonable rates, such insurance shall be maintained until the expiry of 12 years from the date of Practical Completion of the Project.

- 3.2 Where the Contractor considers that any insurance required by paragraph 3.1 is no longer generally available at commercially reasonable rates he shall notify the Beneficiary and cooperate with the Beneficiary in seeking means by which the Contractor can be protected against professional liability claims arising out of the Project. The Contractor shall as and when reasonably required by the Beneficiary provide to the Beneficiary written confirmation from its insurance brokers of such current insurance.
4. The Contractor warrants to the Beneficiary that the design of the Project will use materials selected in accordance with "Good Practice in the selection of construction materials", prepared by Ove Arup & Partners and sponsored by the British Council for Offices and the British Property Federation, as current at the Base Date and will not use materials that are considered by construction professionals as:
- (i) being deleterious in themselves;
  - (ii) becoming deleterious when used in a particular situation or in combination with other materials;
  - (iii) becoming deleterious without a level of maintenance which is higher than that which would normally be expected in a building of a comparable type; or
  - (iv) being damaged by or causing damage to the structure in which they are incorporated or to which they are affixed.

For this purpose the word "deleterious" shall be deemed to include the use of materials or combinations of materials that would or might be hazardous to health or would or might have the effect of reducing the normal life expectancy:

- (i) of the materials themselves;
  - (ii) of any materials to which they are affixed; or
  - (ii) of the structure in which they are incorporated or to which they are affixed;
- to a period less than that which would normally be expected.
5. The rights contained in this Schedule may be assigned without the Contractor's consent by the Beneficiary, by way of absolute legal assignment, to another person (P1) providing finance or re-finance in connection with the carrying out of the Project or acquiring the Beneficiary's interest in the Project and by P1, by way of absolute legal assignment to another person (P2) providing finance or re-finance in connection with the carrying out of the Project or acquiring an interest in the Project. In such cases the assignment shall only be effective upon written notice thereof being given to the Contractor. No further or other assignment of the Beneficiary's rights under this Contract will be permitted and in particular P2 shall not be entitled to assign these rights.
6. Any notices required to be given by this Schedule shall be delivered by hand or sent by Recorded Signed for or Special Delivery post to the registered office or if there is none the last known address of the party to be served and such notice shall take effect upon delivery.
7. No action or proceedings for any breach of the rights contained in this Schedule shall be commenced against the Contractor after the expiry of 12 years from the date of



Practical Completion of the Project or the relevant Section (if applicable), whichever is the earlier.

8. This Schedule shall be governed by and construed in accordance with the law of England and the English courts shall have jurisdiction over any dispute or difference between the Contractor and the Beneficiary which arises out of or in connection with this Schedule."

## PART 3

### Consultant Third Party Rights to ODA

Words and expressions which are defined in the contract between the Contractor and the Employer dated [ ] as novated to the Contractor (the "**Appointment**") shall have the same meaning when used in this Third Party Rights schedule unless the context otherwise requires.

1. The Consultant warrants to the Beneficiary that he has complied and will continue to comply with the terms of the Appointment and, without prejudice to the foregoing, the Consultant warrants to the Beneficiary that he has exercised and will continue to exercise all the reasonable skill, care and diligence required by the Appointment in the performance of the Services under the Appointment.
  - 1.1 The Consultant shall be entitled in any action or proceedings by the Beneficiary to rely on any limitation in the Appointment and to raise the equivalent rights in defence of liability (save for set-off or counterclaim) as he would have had as if the Beneficiary was named as a joint employer with the Employer under the Appointment.
  - 1.2 The obligation of the Consultant under or pursuant to this paragraph 1 shall not be released or diminished by the appointment of any person by the Beneficiary to carry out any independent enquiry into any relevant matter.
2. The Beneficiary has no authority to issue any direction or instruction to the Consultant in relation to the Consultant's duties under the Appointment unless and until the Beneficiary has given notice under paragraphs 4 or 5.4.
3. The Beneficiary has no liability to the Consultant in respect of amounts due under the Appointment unless and until the Employer has given notice under paragraphs 4 or 5.4.
4. The Consultant agrees that in the event of termination or breach of the Construction Licence and termination of the Building Contract, the Consultant shall, if so required by notice in writing given by the Beneficiary and subject to paragraph 6, accept the instructions of the Beneficiary or its appointee to the exclusion of the Contractor in respect of the Project upon the terms and conditions of the Appointment. The Contractor acknowledges that the Consultant shall be entitled to rely on a notice given to the Consultant by the Beneficiary under this paragraph 4 as conclusive evidence for the purpose of this paragraph 4 of termination or breach of the Construction Licence and termination of the Building Contract and further acknowledges that such acceptance of the instructions of the Beneficiary to the exclusion of the Contractor shall not constitute any breach of the Consultant's obligations to the Contractor under the Appointment.
  - 5.1 The Consultant shall not exercise any right of termination of its employment under the Appointment without having first:
    - 5.1.1 copied to the Beneficiary any written notices required by the Appointment to be sent to the Contractor prior to the Consultant being entitled to give notice under the Appointment that its employment under the Appointment is determined, and
    - 5.1.2 given to the Beneficiary written notice that it has the right under the Appointment forthwith to notify the Contractor that its employment under the Appointment is determined.

5.2 The Consultant shall not treat the Appointment as having been repudiated by the Contractor without having first given to the Beneficiary written notice that it intends so to inform the Contractor.

5.3 The Consultant shall not:

5.3.1 issue any notification to the Contractor to which paragraph 5.1.2 refers, or

5.3.2 inform the Contractor that it is treating the Appointment as having been repudiated by the Contractor as referred to in paragraph 5.2:

before the lapse of 21 days from receipt by the Employer of the written notice by the Consultant which the Consultant is required to give under paragraph 5.1.2 or 5.2.

5.4 If the Appointment has been terminated, the Beneficiary may, not later than the expiry of the 21 days referred to in paragraph 5.3, require the Consultant by notice in writing and subject to paragraph 6 to accept the instructions of the Beneficiary or its appointee to the exclusion of the Contractor in respect of the Project upon the terms and conditions of the Appointment. The Contractor acknowledges that the Consultant shall be entitled to rely on a notice given to the Consultant by the Beneficiary under paragraph 5.4 and that acceptance by the Consultant of the instructions of the Beneficiary to the exclusion of the Contractor shall not constitute any breach of the Consultant's obligations to the Contractor under the Appointment. Provided that, subject to paragraph 6, nothing in paragraph 5.4 shall relieve the Consultant of any liability it may have to the Contractor for any breach by the Consultant of the Appointment or where the Consultant has wrongfully served notice under the Appointment that it is entitled to terminate its employment under the Appointment or has wrongfully treated the contract as having been repudiated by the Contractor.

6. It shall be a condition of any notice given by the Beneficiary under paragraph 4 or 5.4 that the Beneficiary or its appointee accepts liability for payment of the sums due and payable to the Consultant under the Appointment and for performance of the Contractor's obligations including payment of any sums outstanding at the date of such notice. Upon the issue of any notice by the Beneficiary under paragraph 4 or 5.4, the Appointment shall continue in full force and effect as if no right of termination of the Consultant's employment under the Appointment, nor any right of the Consultant to treat the Appointment as having been repudiated by the Contractor had arisen and the Consultant shall be liable to the Beneficiary and its appointee under the Appointment in lieu of its liability to the Contractor provided that the liability of the Consultant to the Beneficiary shall be without prejudice to any accrued rights of the Contractor at the time of issue of such notice. If any notice given by the Beneficiary under paragraph 4 or 5.4 requires the Consultant to accept the instructions of the Beneficiary's appointee, 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 Beneficiary's appointee.

7.1 The copyright in all drawings, reports, models, specifications, bills of quantities, calculations and other documents and information prepared by the Consultant in connection with the Project (referred to in paragraph 7 as "the **Documents**") shall remain the property of the Consultant but the Consultant hereby grants to the Beneficiary an irrevocable, royalty-free, non-exclusive licence to copy and to make full use of all or any Documents and to reproduce the contents of them for any purpose relating to the Project including, but without limitation, the design, execution, completion, maintenance, letting, sale, promotion, advertisement, reinstatement, refurbishment and repair of the Project. Such licence shall carry the right to grant sub-licences and shall be transferable to third parties but only in connection with the Project. Such licence shall enable the Beneficiary to copy and use the Documents for the purpose of an extension to the Project but such use shall not include a licence to reproduce the designs contained in them for any extension to the Project. The

Consultant agrees that the Beneficiary may grant sub-licences to other persons to use and to reproduce the Documents.

7.2 To the extent that the Consultant does not have ownership of the copyright in any Document the Consultant shall procure from the copyright holder a licence with full title guarantee to the Beneficiary in respect of that Document in the same terms as are set out in paragraph 7.1.

7.3 The Consultant shall not be liable for any use made of the Documents that is outside the scope of the licence granted by paragraph 7.

8.1 The Consultant shall take out and maintain throughout the execution of the Services and for a period of 12 years from the date of practical completion of the Project professional indemnity insurance of not less than ten million pounds (£10,000,000) for each and every claim with a reputable insurance company carrying on business in the United Kingdom, provided that such insurance remains available at commercially reasonable rates.

8.2 The Consultant shall notify the Beneficiary without delay should it be unable for any reason so to maintain such insurance in order that the parties may discuss means of best protecting their respective positions in the absence of such insurance. The Consultant shall as and when reasonably required by the Beneficiary provide to the Beneficiary written confirmation from its insurance brokers of such current insurance.

9 Using the standard of skill and care referred to in paragraph 1, the Consultant warrants to the Beneficiary that it shall not specify, use or permit to be used any products or materials which are generally known within the construction industry to be deleterious at the time of specification in the particular circumstances in which they are used or those identified as potentially hazardous in or not in conformity with the report entitled "Good Practice in the Selection of Construction Materials" prepared by Ove Arup and sponsored by the British Council for Offices and the British Property Federation, as current at the Base Date and will not use materials which are generally considered by construction industry professionals as:

- (i) being deleterious in themselves;
- (ii) becoming deleterious when used in a particular situation or in combination with other materials;
- (iii) becoming deleterious without a level of maintenance which is higher than that which would normally be expected in a building of comparable type;
- (iv) being damaged by or causing damage to the structure in which they are incorporated or to which they are affixed; or
- (v) posing a threat to health and safety of persons who come into contact with the materials either during or after construction

and the word "deleterious" for the purposes of this clause 3.4 shall be deemed to include the use of materials or combinations of materials that would or might be hazardous to health or would or might have the effect of reducing the normal life expectancy:

- (a) of the materials themselves;
- (b) of any materials to which they are affixed; or

(c) of the structure in which they are incorporated or to which they are affixed

to a period less than that which would normally be expected.

10. The rights contained in this schedule may be assigned without the consent of the Consultant by the Beneficiary by way of absolute legal assignment, to another person (P1) and by P1 by way of absolute legal assignment, to another person (P2). In such cases the assignment shall only be effective upon written notice thereof being given to the Consultant. No further or other assignment of the Beneficiary's rights under the Appointment will be permitted and in particular P2 shall not be entitled to assign these rights.
11. Any notices required to be given by this schedule shall be by actual delivery, registered post or recorded delivery to the registered office or if there is none the last known address of the party to be served and such notice shall take effect upon delivery.
12. No action or proceedings for any breach of the rights contained in this schedule shall be commenced against the Consultant after the expiry of 12 years from the date of Practical Completion of the Project or the relevant section (if applicable), whichever is the earlier.
13. Notwithstanding the rights contained in this Schedule, the Consultant shall have no liability to the Beneficiary for delay under the Appointment unless and until the Employer serves notice pursuant to paragraph 4 or paragraph 5.4.
14. This Schedule shall be governed and construed in accordance with the law of England and the English courts shall have jurisdiction over any dispute or difference between the Consultant and the Employer that arises out of or in connection with this schedule.

## Part 4

### Consultant Third Party Rights to OPLC and GLA

Words and expressions which are defined in the contract between the Consultant and the Employer dated [ ] as novated to the Contractor (the "**Appointment**") shall have the same meaning when used in this Third Party Rights schedule unless the context otherwise requires.

1. The Consultant warrants to the Beneficiary that he has complied and will continue to comply with the terms of the Appointment and, without prejudice to the foregoing, the Consultant warrants to the Beneficiary that he has exercised and will continue to exercise all the reasonable skill, care and diligence required by the Appointment in the performance of the Services under the Appointment
- 1.1 The Consultant shall be entitled in any action or proceedings by the Beneficiary to rely on any limitation in the Appointment and to raise the equivalent rights in defence of liability (save for set-off or counterclaim) as he would have had as if the Beneficiary was named as a joint employer with the Employer under the Appointment.
- 1.2 The obligation of the Consultant under or pursuant to this paragraph 1 shall not be released or diminished by the appointment of any person by the Beneficiary to carry out any independent enquiry into any relevant matter.
- 2.1 The copyright in all drawings, reports, models, specifications, bills of quantities, calculations and other documents and information prepared by the Consultant in connection with the Project (referred to in paragraph 7 as "**the Documents**") shall remain the property of the Consultant but the Consultant hereby grants to the Beneficiary an irrevocable, royalty-free, non-exclusive licence to copy and to make full use of all or any Documents and to reproduce the contents of them for any purpose relating to the Project including, but without limitation, the design, execution, completion, maintenance, letting, sale, promotion, advertisement, reinstatement, refurbishment and repair of the Project. Such licence shall carry the right to grant sub-licences and shall be transferable to third parties but only in connection with the Project. Such licence shall enable the Beneficiary to copy and use the Documents for the purpose of an extension to the Project but such use shall not include a licence to reproduce the designs contained in them for any extension to the Project. The Consultant agrees that the Beneficiary may grant sub-licences to other persons to use and to reproduce the Documents.
- 2.2 To the extent that the Consultant does not have ownership of the copyright in any Document the Consultant shall procure from the copyright holder a licence with full title guarantee to the Beneficiary in respect of that Document in the same terms as are set out in paragraph 2.1.
- 2.3 The Consultant shall not be liable for any use made of the Documents that is outside the scope of the licence granted by paragraph 2.
- 3.1 The Consultant shall take out and maintain throughout the execution of the Services and for a period of 12 years from the date of practical completion of the Project professional indemnity insurance of not less than ten million pounds (£10,000,000) for each and every claim with a reputable insurance company carrying on business in the United Kingdom, provided that such insurance remains available at commercially reasonable rates.
- 3.2 The Consultant shall notify the Beneficiary without delay should it be unable for any reason so to maintain such insurance in order that the parties may discuss means of

best protecting their respective positions in the absence of such insurance. The Consultant shall as and when reasonably required by the Beneficiary provide to the Beneficiary written confirmation from its insurance brokers of such current insurance.

4. Using the standard of skill and care referred to in paragraph 1, the Consultant warrants to the Beneficiary that it shall not specify, use or permit to be used any products or materials which are generally known within the construction industry to be deleterious at the time of specification in the particular circumstances in which they are used or those identified as potentially hazardous in or not in conformity with the report entitled "Good Practice in the Selection of Construction Materials" prepared by Ove Arup and sponsored by the British Council for Offices and the British Property Federation, as current at the Base Date and will not use materials which are generally considered by construction industry professionals as:

- (i) being deleterious in themselves;
- (vi) becoming deleterious when used in a particular situation or in combination with other materials;
- (vii) becoming deleterious without a level of maintenance which is higher than that which would normally be expected in a building of comparable type;
- (viii) being damaged by or causing damage to the structure in which they are incorporated or to which they are affixed; or
- (ix) posing a threat to health and safety of persons who come into contact with the materials either during or after construction

and the word "deleterious" for the purposes of this clause 3.4 shall be deemed to include the use of materials or combinations of materials that would or might be hazardous to health or would or might have the effect of reducing the normal life expectancy:

- (a) of the materials themselves;
- (b) of any materials to which they are affixed; or
- (c) of the structure in which they are incorporated or to which they are affixed

to a period less than that which would normally be expected.

5. The rights contained in this schedule may be assigned without the consent of the Consultant by the Beneficiary by way of absolute legal assignment, to another person (P1) and by P1 by way of absolute legal assignment, to another person (P2). In such cases the assignment shall only be effective upon written notice thereof being given to the Consultant. No further or other assignment of the Beneficiary's rights under the Appointment will be permitted and in particular P2 shall not be entitled to assign these rights.
6. Any notices required to be given by this schedule shall be by actual delivery, registered post or recorded delivery to the registered office or if there is none the last known address of the party to be served and such notice shall take effect upon delivery.
7. No action or proceedings for any breach of the rights contained in this schedule shall be commenced against the Consultant after the expiry of 12 years from the date of Practical Completion of the Project or the relevant section (if applicable), whichever is the earlier.

8. This Schedule shall be governed and construed in accordance with the law of England and the English courts shall have jurisdiction over any dispute or difference between the Consultant and the Employer that arises out of or in connection with this schedule."



## Part 5

### Sub-Contractor Third Party Rights to ODA

Words and expressions which are defined in the contract between the Contractor and the Sub-Contractor dated [ ] (the "**Sub-Contract**") shall have the same meaning when used in this Third Party Rights schedule unless the context otherwise requires.

- "1.1 The Sub-Contractor warrants that it has complied with and will continue to comply with the Sub-Contract.
- 1.2 The Sub-Contractor shall be entitled in any action or proceedings by the Beneficiary to rely on any term in the Sub-Contract and to raise the equivalent rights in defence of liability (save for set off and/or counterclaim) as he would have had as if the Beneficiary was named as joint employer with the Contractor under the Sub-Contract.
- 1.3 The obligations of the Sub-Contractor under or pursuant to paragraph 1 shall not be released or diminished by the appointment of any person by the Beneficiary to carry out any independent enquiry into any relevant matter.
- 2 The Beneficiary has no authority to issue any direction or instruction to the Sub-Contractor in relation to the Sub-Contract unless and until the Beneficiary has given notice under paragraph 4 or paragraph 5.4.
- 3 The Beneficiary has no liability to the Sub-Contractor in respect of amounts due under the Sub-Contract unless and until the Employer has given notice under paragraph 4 or paragraph 5.4.
- 4 The Sub-Contractor agrees that in the event of the termination or breach of the Construction Licence and termination of the Main Contract, the Sub-Contractor shall, if so required by notice in writing given by the Beneficiary and subject to paragraph 6, accept the instructions of the Beneficiary or its appointee to the exclusion of the Contractor in respect of the Project upon the terms and conditions of the Sub-Contract. The Contractor acknowledges that the Sub-Contractor shall be entitled to rely on a notice given to the Sub-Contractor by the Beneficiary under this paragraph 4 as conclusive evidence for the purpose of this paragraph 4 of the termination or breach of the Construction Licence and termination of the Main Contract and further acknowledges that such acceptance of the instructions of the Beneficiary to the exclusion of the Contractor shall not constitute any breach of the Sub-Contractor's obligations to the Contractor under the Sub-Contract.
- 5.1 The Sub-Contractor shall not exercise any right of termination of its employment under the Sub-Contract without having first:
- 5.1.1 copied to the Beneficiary any written notices required by the Sub-Contract to be sent to the Contractor prior to the Sub-Contractor being entitled to give notice under the Sub-Contract that its employment under the Sub-Contract is determined, and
- 5.1.2 given to the Beneficiary written notice that it has the right under the Sub-Contract forthwith to notify the Contractor that its employment under the Sub-Contract is determined.
- 5.2 The Sub-Contractor shall not treat the Sub-Contract as having been repudiated by the Contractor without having first given to the Beneficiary written notice that it intends so to inform the Contractor.
- 5.3 The Sub-Contractor shall not:

5.3.1 issue any notification to the Contractor to which paragraph 5.1.2 refers, or

5.3.2 inform the Contractor that it is treating the Sub-Contract as having been repudiated by the Contractor as referred to in paragraph 5.2

before the lapse of 21 days from receipt by the Employer of the written notice by the Sub-Contractor which the Sub-Contractor is required to give under paragraph 5.1.2 or paragraph 5.2.

5.4 The Beneficiary may, not later than the expiry of the 21 days referred to in paragraph 5.3, require the Sub-Contractor by notice in writing and subject to paragraph 6 to accept the instructions of the Beneficiary or its appointee to the exclusion of the Contractor in respect of the Project upon the terms and conditions of the Sub-Contract. The Contractor acknowledges that the Sub-Contractor shall be entitled to rely on a notice given to the Sub-Contractor by the Beneficiary under paragraph 5.4 and that acceptance by the Sub-Contractor of the instructions of the Beneficiary to the exclusion of the Contractor shall not constitute any breach of the Sub-Contractor's obligations to the Contractor under the Sub-Contract. Provided that, subject to paragraph 6, nothing in paragraph 5.4 shall relieve the Sub-Contractor of any liability it may have to the Contractor for any breach by the Sub-Contractor of the Sub-Contract or where the Sub-Contractor has wrongfully served notice under the Sub-Contract that it is entitled to terminate its employment under the Sub-Contract or has wrongfully treated the Sub-Contract as having been repudiated by the Contractor.

6 It shall be a condition of any notice given by the Beneficiary under paragraph 4 or paragraph 5.4 that the Beneficiary or its appointee accepts liability for payment of the sums due and payable to the Sub-Contractor under the Sub-Contract and for performance of the Contractor's obligations including payment of any sums outstanding at the date of such notice. Upon the issue of any notice by the Beneficiary under paragraph 4 or paragraph 5.4, the Sub-Contract shall continue in full force and effect as if no right of termination of the Sub-Contractor's employment under the Sub-Contract, nor any right of the Sub-Contractor to treat the Sub-Contract as having been repudiated by the Contractor had arisen and the Sub-Contractor shall be liable to the Beneficiary and its appointee under the Sub-Contract in lieu of its liability to the Contractor. If any notice given by the Beneficiary under paragraph 4 or paragraph 5.4 requires the Sub-Contractor to accept the instructions of the Beneficiary's appointee, the Beneficiary shall be liable to the Sub-Contractor as guarantor for the payment of all sums from time to time due to the Sub-Contractor from the Beneficiary's appointee.

7.1 The copyright in all drawings, reports, models, specifications, bill of quantities, calculations and other documents and information prepared by the Sub-Contractor in connection with the Project (referred to in this paragraph 7 as the "Documents") shall remain vested in the Sub-Contractor but the Sub-Contractor grants to the Beneficiary an irrevocable, royalty-free, non-exclusive licence to copy and use the Documents and to reproduce the designs and content of them for any purpose relating to the Project including, without limitation, the design, execution, completion, maintenance, letting, sale, promotion, advertisement, reinstatement, refurbishment and repair of the Project. Such licence shall enable the Beneficiary to copy and use the Documents for the purpose of an extension to the Project, but such use shall not include a licence to reproduce the designs contained in them for any extension to the Project. The Sub-Contractor agrees that the Beneficiary may grant sub-licences to other persons to use and to reproduce the Documents and the designs and contents of them for any purpose relating to the Project.

7.2 To the extent that the Sub-Contractor does not have ownership of the copyright in any Document the Sub-Contractor shall procure from the copyright holder a licence with full title guarantee to the Employer in respect of that Document in the same terms as are set out in paragraph 7.1.

7.3 The Sub-Contractor shall not be liable for any use made of the Documents that is outside the scope of the licence granted by paragraph 7.

8 Where the Sub-Contractor is required to maintain professional indemnity insurance under the Sub-Contract, the Sub-Contractor shall, upon request, provide to the Employer evidence that the insurance required is being maintained. Provided that it remains generally available at commercially reasonable rates, such insurance shall be maintained until the expiry of 12 years from the date of Practical Completion of the Project. Where the Sub-Contractor considers that such insurance is no longer generally available at commercially reasonable rates the Sub-Contractor shall notify the Employer and co-operate with the Employer in seeking means by which the Sub-Contractor can be protected against professional liability claims arising out of the Project. The Sub-Contractor shall as and when reasonably required by the Beneficiary provide to the Beneficiary written confirmation from its insurance brokers of such current insurance.

9. The Contractor warrants to the Beneficiary that the design of the Project will use materials selected in accordance with "Good Practice in the selection of construction materials", prepared by Ove Arup & Partners and sponsored by the British Council for Offices and the British Property Federation, as current at the Base Date and will not use materials that are considered by construction professionals as:

- (i) being deleterious in themselves;
- (ii) becoming deleterious when used in a particular situation or in combination with other materials;
- (iii) becoming deleterious without a level of maintenance which is higher than that which would normally be expected in a building of a comparable type; or
- (iv) being damaged by or causing damage to the structure in which they are incorporated or to which they are affixed.

For this purpose the word "deleterious" shall be deemed to include the use of materials or combinations of materials that would or might be hazardous to health or would or might have the effect of reducing the normal life expectancy:

- (i) of the materials themselves;
- (ii) of any materials to which they are affixed; or
- (ii) of the structure in which they are incorporated or to which they are affixed;

to a period less than that which would normally be expected.

10. The rights contained in this schedule may be assigned without the consent of the Sub-Contractor by the Employer by way of absolute legal assignment, to another person (P1) and by P1, by way of absolute legal assignment, to another person (P2). In such cases the assignment shall only be effective upon written notice thereof being given to the Sub-Contractor. No further or other assignment of the Employer's rights under the Sub-Contract will be permitted and in particular P2 shall not be entitled to assign these rights.

11. Any notices required to be given by this schedule shall be by actual delivery, registered post or recorded delivery to the registered office or if there is none the last known address of the party to be served and such notice shall take effect upon delivery.

12. No action or proceedings for any breach of the rights contained in this schedule shall be commenced against the Sub-Contractor after the expiry of 12 years from the date of Practical Completion of the Project or the relevant section (if applicable), whichever is the earlier.
13. Notwithstanding the rights contained in this Schedule, the Sub-Contractor shall have no liability to the Employer for delay under the Sub-Contract unless and until the Employer serves notice pursuant to paragraph 4 or paragraph 5.4.
14. This Schedule shall be governed and construed in accordance with the law of England and the English courts shall have jurisdiction over any dispute or difference between the Sub-Contractor and the Employer that arises out of or in connection with this schedule."

## Part 6

### Sub-Contractor Third Party Rightst to OPLC, GLA

Words and expressions which are defined in the contract between the Contractor and the Sub-Contractor dated [ ] (the "**Sub-Contract**") shall have the same meaning when used in this Third Party Rights schedule unless the context otherwise requires.

- 1.1 The Sub-Contractor warrants that it has complied with and will continue to comply with the Sub-Contract.
- 1.2 The Sub-Contractor shall be entitled in any action or proceedings by the Beneficiary to rely on any term in the Sub-Contract and to raise the equivalent rights in defence of liability (save for set off and/or counterclaim) as he would have had as if the Beneficiary was named as joint employer with the Contractor under the Sub-Contract.
- 1.3 The obligations of the Sub-Contractor under or pursuant to paragraph 1 shall not be released or diminished by the appointment of any person by the Beneficiary to carry out any independent enquiry into any relevant matter.
- 2.1 The copyright in all drawings, reports, models, specifications, bill of quantities, calculations and other documents and information prepared by the Sub-Contractor in connection with the Project (referred to in this paragraph 7 as the "Documents") shall remain vested in the Sub-Contractor but the Sub-Contractor grants to the Beneficiary an irrevocable, royalty-free, non-exclusive licence to copy and use the Documents and to reproduce the designs and content of them for any purpose relating to the Project including, without limitation, the design, execution, completion, maintenance, letting, sale, promotion, advertisement, reinstatement, refurbishment and repair of the Project. Such licence shall enable the Beneficiary to copy and use the Documents for the purpose of an extension to the Project, but such use shall not include a licence to reproduce the designs contained in them for any extension to the Project. The Sub-Contractor agrees that the Beneficiary may grant sub-licences to other persons to use and to reproduce the Documents and the designs and contents of them for any purpose relating to the Project.
- 2.2 To the extent that the Sub-Contractor does not have ownership of the copyright in any Document the Sub-Contractor shall procure from the copyright holder a licence with full title guarantee to the Employer in respect of that Document in the same terms as are set out in paragraph 2.1.
- 2.3 The Sub-Contractor shall not be liable for any use made of the Documents that is outside the scope of the licence granted by paragraph 2.
- 3 Where the Sub-Contractor is required to maintain professional indemnity insurance under the Sub-Contract, the Sub-Contractor shall, upon request, provide to the Employer evidence that the insurance required is being maintained. Provided that it remains generally available at commercially reasonable rates, such insurance shall be maintained until the expiry of 12 years from the date of Practical Completion of the Project. Where the Sub-Contractor considers that such insurance is no longer generally available at commercially reasonable rates the Sub-Contractor shall notify the Employer and co-operate with the Employer in seeking means by which the Sub-Contractor can be protected against professional liability claims arising out of the Project. The Sub-Contractor shall as and when reasonably required by the Beneficiary provide to the Beneficiary written confirmation from its insurance brokers of such current insurance.
4. The Contractor warrants to the Beneficiary that the design of the Project will use materials selected in accordance with "Good Practice in the selection of construction materials", prepared by Ove Arup & Partners and sponsored by the British Council for

Offices and the British Property Federation, as current at the Base Date and will not use materials that are considered by construction professionals as:

- (i) being deleterious in themselves;
- (ii) becoming deleterious when used in a particular situation or in combination with other materials;
- (iii) becoming deleterious without a level of maintenance which is higher than that which would normally be expected in a building of a comparable type; or
- (iv) being damaged by or causing damage to the structure in which they are incorporated or to which they are affixed.

For this purpose the word "deleterious" shall be deemed to include the use of materials or combinations of materials that would or might be hazardous to health or would or might have the effect of reducing the normal life expectancy:

- (i) of the materials themselves;
- (ii) of any materials to which they are affixed; or
- (ii) of the structure in which they are incorporated or to which they are affixed;

to a period less than that which would normally be expected.

5. The rights contained in this schedule may be assigned without the consent of the Sub-Contractor by the Employer by way of absolute legal assignment, to another person (P1) and by P1, by way of absolute legal assignment, to another person (P2). In such cases the assignment shall only be effective upon written notice thereof being given to the Sub-Contractor. No further or other assignment of the Employer's rights under the Sub-Contract will be permitted and in particular P2 shall not be entitled to assign these rights.
6. Any notices required to be given by this schedule shall be by actual delivery, registered post or recorded delivery to the registered office or if there is none the last known address of the party to be served and such notice shall take effect upon delivery.
7. No action or proceedings for any breach of the rights contained in this schedule shall be commenced against the Sub-Contractor after the expiry of 12 years from the date of Practical Completion of the Project or the relevant section (if applicable), whichever is the earlier.
8. This Schedule shall be governed and construed in accordance with the law of England and the English courts shall have jurisdiction over any dispute or difference between the Sub-Contractor and the Employer that arises out of or in connection with this schedule."

## **Schedule 5**

### **Dispute Resolution Procedure**

1. The dispute resolution procedure shall be adjudication as contained in and governed by Part 1 of The Scheme for Construction Contracts (England and Wales) Regulations 1998.
2. The adjudicator nominating body shall be the Institute of Civil Engineers who shall select the adjudicator from the list for London 2012 disputes.





- 4 acknowledges and agrees that ODA and OPLC shall not be required to pursue any remedy against AM before proceeding against the Guarantor under this Deed;
- 5 acknowledges and agrees that the liquidation or receivership or insolvency of AM shall not affect or reduce the liability of the Guarantor under this Deed;
- 6 agrees that so long as any liability incurred by AM to ODA and OPLC under or in connection with the Construction Licence remains unsatisfied, the Guarantor shall not in respect of any payment made or liability arising pursuant to this Deed, effect or seek to effect recovery from AM, whether by receipt of money or set-off or proof of debt or enforcement of security or otherwise;
- 7 agrees that all sums payable to ODA and OPLC hereunder shall be paid free of any restriction or condition and free and clear of any deduction or withholding by way of set-off or otherwise save to the extent required by law. The Guarantor further agrees that if it is required by law to deduct or withhold any amount from any sum payable by it hereunder it will pay such additional sum as is necessary to ensure that ODA and OPLC receives and retains a net sum equal to what it would have received and retained had no such deduction or withholding been required to be made;
- 8 agrees that if any condition clause or provision of this Deed is held to be illegal or unenforceable the validity or enforceability of the remainder of this Deed shall not be affected thereby;
- 9 agrees that this Deed shall not be revocable by the Guarantor and that the same shall be a continuing guarantee and shall remain in full force and effect until each and every part of the duties, obligations, covenants, warranties and undertakings on the part of AM under or pursuant to the Construction Licence shall have been discharged and performed in full and shall be additional to any other guarantee or security from time to time held by ODA and OPLC and shall remain in full force and effect notwithstanding the insolvency or liquidation of AM;
- 10 acknowledges and agrees that any notice or demand to be served under this Deed must be in writing and must be served by hand or by post or by registered post or recorded delivery and in the case of a corporation must be served at its registered office for the time being. In any other case notice may be served at any address for the time being of the person being served. Service shall take effect, if given by hand, on the date of delivery. If given by post, it shall take effect two days after posting, excluding Saturdays, Sundays and statutory holidays.

This Deed shall be governed by and construed in accordance with the laws of England and Wales and the courts of England and Wales shall have exclusive jurisdiction hereunder

IN WITNESS WHEREOF the Guarantor has executed this Agreement as a deed on the day and year first before written.

**SIGNED as a DEED** )

by **ARCELORMITTAL S.A.** )

acting by:

## Schedule 7

**THIS DEED OF NOVATION** is made on

### **BETWEEN**

- (1) **OLYMPIC DELIVERY AUTHORITY** of 23rd floor, 1 Churchill Place, London E14 5LN (the "**ODA**");
- (2) [ ] (company number [ ]) whose registered office is at [ ] ("**New Licensor**"); and
- (3) **ARCELORMITTAL ORBIT LIMITED** (company number 07208366 whose registered office is at 7th Floor, Berkeley Square House, Berkeley Square, London W1J 6DA (the "**Licensee**").

### **BACKGROUND**

- A The ODA is under a statutory obligation to deliver the Games of the Thirtieth Olympiad and the Paralympic Games that are each to take place in 2012 and to maximise the benefits after such Games from all things done in preparation for them.
- B The Licensee has made an offer to the GLA to part fund and procure the carrying out of the Project in order to mark the holding of the Games and to provide a lasting cultural benefit in connection therewith. The GLA has accepted the Licensee's offer and has requested the ODA to make the Licensed Area available for the carrying out of the Project. The ODA has acceded to the GLA's request and has agreed to grant the Licensee a Construction Licence for the Project.
- E The ODA and the Licensee have agreed, with the consent of the New Licensor, that subject to the terms of this deed, the New Licensor will take over the rights and liabilities of the ODA under the Construction Licence.
- F The parties have agreed to novate the Construction Licence from the ODA the New Licensor upon and subject to the terms of this deed.

**THIS DEED OF NOVATION WITNESSES** as follows:

By this deed and in consideration of the sum of £10 paid by the ODA (receipt of which the Licensee and the New Licensor hereby acknowledge), the Licensee and the New Licensor agree to enter into this deed.

### **1 DEFINITIONS AND INTERPRETATION**

In this deed unless the context requires otherwise:

- 1.1 reference to any gender includes all genders, reference to the singular includes the plural (and vice versa) and reference to persons includes bodies corporate, unincorporated associations and partnerships (whether or not any of them have a separate legal personality);
- 1.2 reference to a recital, clause or schedule is to a recital to or clause of or schedule to this deed;
- 1.3 reference to any legislative provision will be deemed to include any subsequent re-enactment, replacement or amending provision;

- 1.4 reference to any agreement or document is to that agreement or document as amended or varied from time to time in accordance with the terms of such agreement or document or, as the case may be, the agreement of the parties;
- 1.5 clause headings are included for convenience only and do not affect its interpretation;
- 1.6 where a party comprises two or more persons:
  - 1.6.1 any obligations on the part of that party contained or implied in this deed are deemed to be joint and several obligations on the part of those persons; and
  - 1.6.2 references to that party include references to each and any of those persons; and
- 1.7 periods of time will be calculated in accordance with section 116 of the Housing Grants, Construction and Regeneration Act 1996;
- 1.8 terms which have capital initials or terms which are in italics shall have the same meaning ascribed to them in the Construction Licence unless such terms have been defined in this deed.

**2 EFFECTIVE DATE**

Notwithstanding the date of execution or delivery of this deed, this deed became effective on [ ].

**3 RELEASE BY THE LICENSEE OF THE ODA**

The Licensee releases and discharges the ODA from the further performance of the ODA's duties and obligations under the Construction Licence.

**4 RELEASE BY THE ODA OF THE LICENSEE**

The ODA releases and discharges the Licensee from the further performance of the Licensee's duties and obligations under the Construction Licence save for any duty or obligation in the Construction Licence set out in this clause 4:

- 4.1 the Confidentiality obligations as set out at Clause 13;
- 4.2 the Freedom of Information and Data Protection obligations as set out at Clause 14;
- 4.3 the Publicity obligations as set out at Clause 15;
- 4.4 the agreements contained in the Third Party Rights Schedule at Schedule 4;

which duties and obligations shall be owed jointly to the ODA and the New Licensor.

**5 ACCEPTANCE OF LIABILITY BY THE LICENSEE TO THE NEW LICENSOR**

- 5.1 In respect of the duties and other obligations to be performed under the Construction Licence that have yet to be performed by the Licensee as at the date of this deed, the Licensee undertakes to perform all such duties and obligations to discharge all obligations on the part of the Licensee under the Construction Licence for the New Licensor as if the New Licensor was a party to the Construction Licence in place of the ODA and in accordance with and subject to the terms of the Construction Licence .
- 5.2 The Licensee warrants to the New Licensor that, in respect of the duties and obligations which it has already performed under the Construction Licence, it has

performed those duties and obligations in accordance with the standards of skill and care set out in the Construction Licence and the Licensee will be liable to the New Licensor for breaches of such duties and obligations as if the New Licensor was a party to the Construction Licence in place of the ODA notwithstanding that the ODA may not have suffered any loss. No waiver by the ODA, either express or implied, will affect the Licensee's liability to the New Licensor pursuant to this clause.

5.3 The Licensee acknowledges that the New Licensor has relied and will continue to rely upon performance, by the Licensee, of its duties and obligations under and in accordance with the Construction Licence.

5.4 The Licensee will have regard to the obligations on the part of the New Licensor under the Construction Licence and, provided the same are consistent with the Construction Licence, will exercise the standard of skill, care and diligence as provided in the Construction Licence to perform its duties and obligations in such manner and at such times as not to constitute, cause or contribute to any breach of the Construction Licence by the New Employer.

## **6 VESTING OF REMEDIES AGAINST LICENSEE**

Save as provided in clause 4 of this deed, all rights of action and remedies against the Licensee under and pursuant to the Construction Licence vested in the ODA will from the date of this deed vest in the New Licensor.

## **7 ACCEPTANCE OF LIABILITY BY THE NEW LICENSOR TO THE ODA**

In respect of those obligations to be performed under the Construction Licence that have yet to be performed by the ODA at the date of this deed, the New Licensor undertakes to perform all of the duties and to discharge all of the obligations on the part of the ODA under the Construction Licence as if the New Licensor was a party to the Construction Licence in place of the ODA and in accordance with and subject to the terms of the Construction Licence.

## **8 VESTING OF REMEDIES AGAINST THE ODA**

All rights of action and remedies under or pursuant to the Construction Licence vested in the Licensee will from the date of this deed lie against the New Licensor and not the ODA.

## **9 AFFIRMATION OF CONSTRUCTION LICENCE**

The terms and conditions of this deed represent the entire agreement between the parties relating to the novation of the Construction Licence and, except as specifically amended by the provisions of this deed, all of the terms and conditions of the Construction Licence remain in full force and effect.

## **10 THIRD PARTY RIGHTS SCHEDULES**

Nothing in this deed is intended to affect or derogate from the Third Party Rights Schedules already entered into by the Licensee.

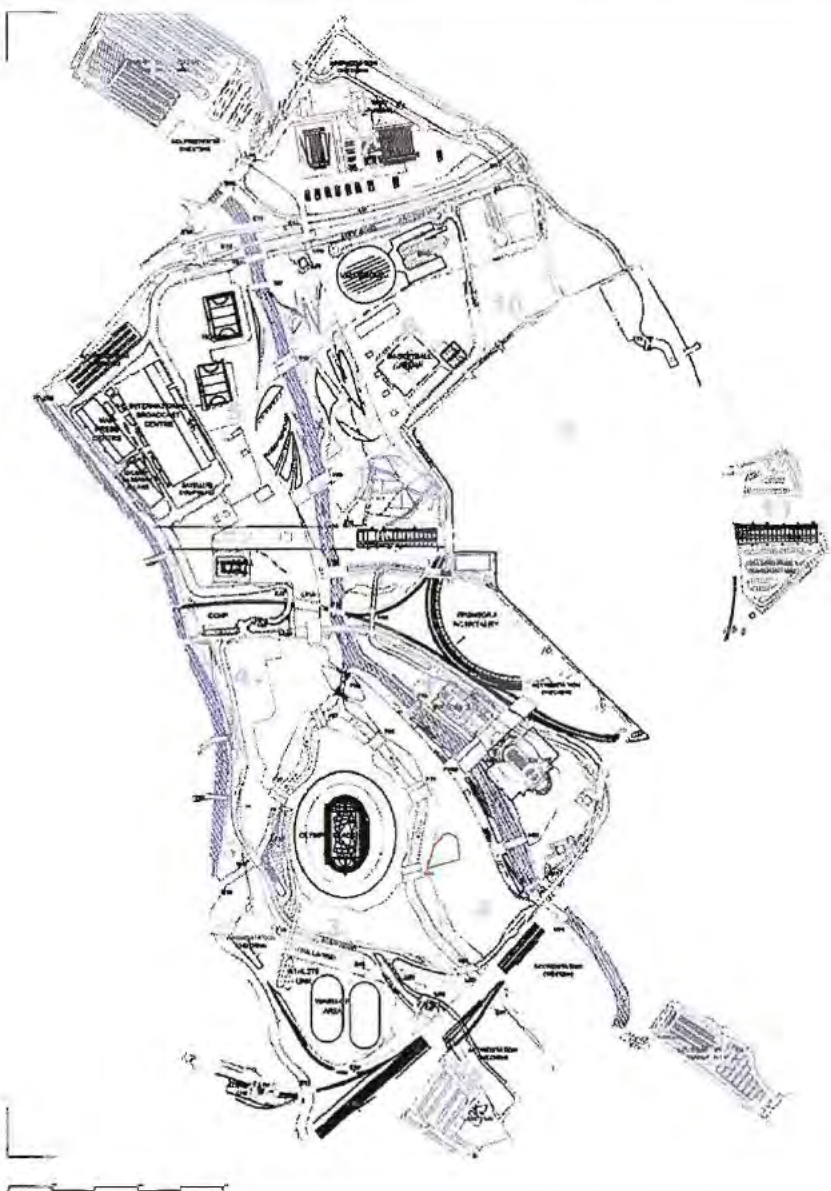
## **11 RIGHTS OF THIRD PARTIES**

A person who is not a party to this deed will have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this deed. This clause does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

12      **LAW AND JURISDICTION**

This deed is governed by and is to be construed according to English law and the English courts will have jurisdiction with regard to all matters arising under it.

**Schedule 8**  
**Olympic Park Site Plan**



NOTE:  
 Dimensions shown are for information purposes only.

SI	11.06.2011	MD	SR	DB
Name	Date	By	Check	Appr

Client:  
 Arden/Mittal Orbit Limited  
 7th Floor, Berkeley Square House  
 Berkeley Square  
 London  
 W1J 8GA

Architect:  
 Arden/Mittal Orbit  
 14000  
 Planning Application

**ARUP**  
 15 Broad Street  
 London EC1M 6DT  
 Tel: +44 (0)20 7462 0000  
 Fax: +44 (0)20 7462 0001

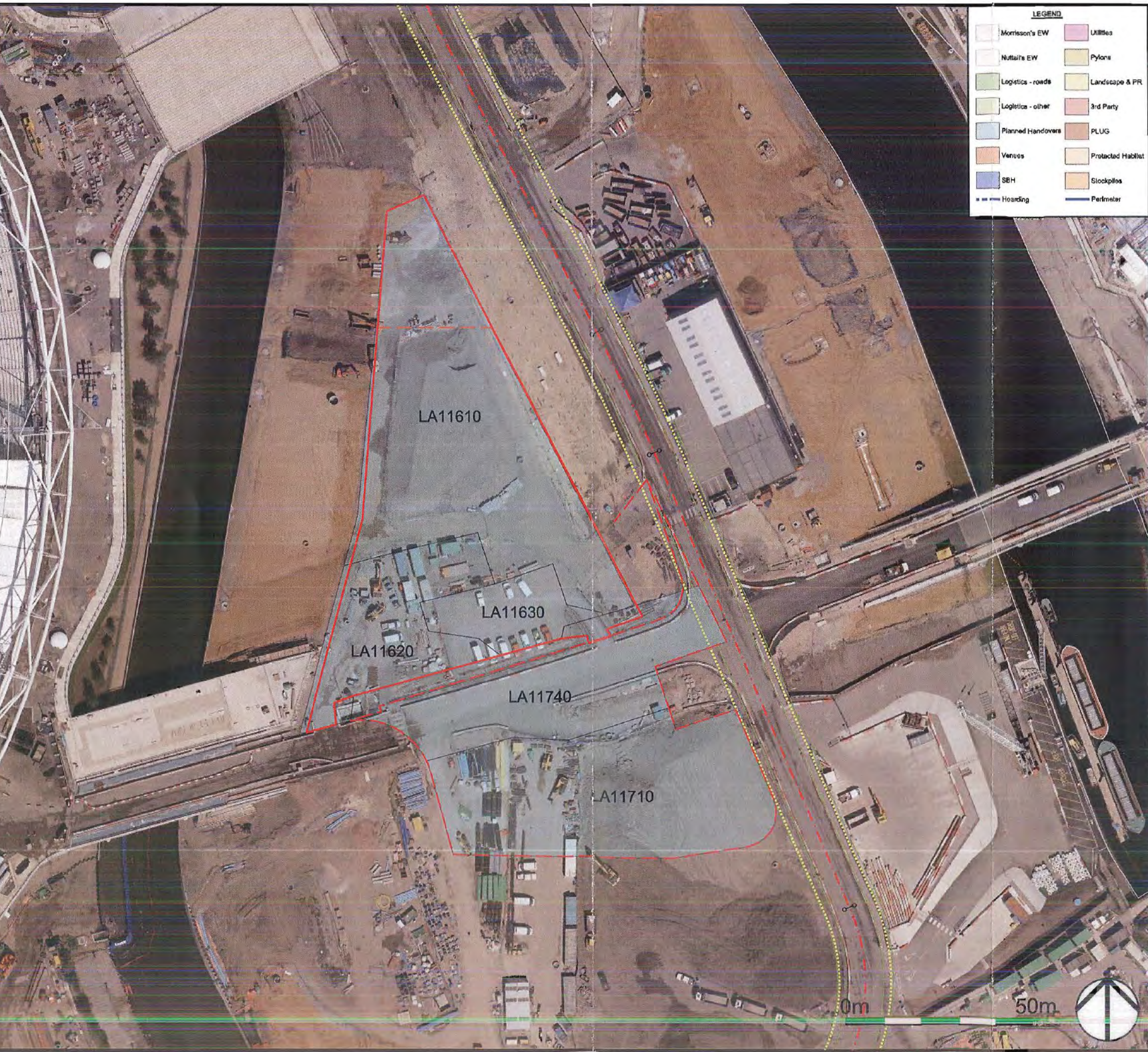
Drawing Title:  
 Context Plan  
 Drawing No.:  
 Planning - For Approval  
 Job No.:  
 2104  
 Drawing No.:  
 101  
 Page 101 of 210

**Schedule 9**  
**Licensed Area Plan**



**Confidential Information**  
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**KEYPLAN**



**LEGEND**

Morrison's EW	Utilities
Nuttall's EW	Pylons
Logistics - roads	Landscape & PR
Logistics - other	3rd Party
Planned Handovers	PLUG
Venues	Protected Habitat
SBH	Stockpiles
Hoarding	Perimeter

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Do not scale this drawing.  
 Notes:

No.	Description	Appr	N
Rev	Description	Drawn	Date
Safety, Health and Environment Information			
In addition to the hazards / risks normally associated with the types of work detailed on this drawing, note the following risks and information:			
Construction	CL	CB	
Dismantling / Demolition (Future)	DL	DF	
For information relating to Use, Clearing and Maintenance see the Health and Safety File. It is assumed that all works will be carried out by a competent contractor working, where appropriate, to an approved method statement.			
Created	Prepared by CLM On behalf of the ODA		
Project Title	OLYMPIC PARK DESIGN		
Drawing Title	PCR BOUNDARY AREA FOR ORBIT SITE		
Drawn	Checked	Approved	
TA			
Scale (A3)	Date	Status	
1/1000@A3	23/08/2010	DRAFT	
Purpose of Drawing	Rev.	Vers.	
FOR INFORMATION		00	
Drawing No.			
Document Identification:			
Contract No.	Project	Area	Disc. Category
XXXX1	XXX	Page 137 of 210	### I ##

FILENAME: \$FILENAME  
 PLOT DATE: \$PLOTDATE  
 PLOT TIME: \$PLOTTIME

**Schedule 10**  
**Programme**





## Schedule 11

### LOCOG No Marketing Deed and Confidentiality Agreement

THIS DEED is made on

BY:

*[insert name of Sub Supplier (for High Value Contracts)]* of *[insert address of Sub Supplier]* (the "Sub-Supplier") in favour of the London Organising Committee of the Olympic Games and Paralympic Games Limited ("LOCOG") and further to the Sub-Supplier's supply of goods or services in connection with the Games (as defined below) (the "Services") and further to the agreement dated ● 200● between *[insert name of Supplier which has contracted with ODA]* (the "Head Supplier") and the Olympic Delivery Authority for *[insert description of relevant of relevant Works or Services provided by the Head Supplier]* in respect of *[insert description of relevant project]* (the "Agreement")

THE SUB-SUPPLIER AGREES AS FOLLOWS:

#### Definitions

**"Ambush Marketing"**

means any activity, commercial or non-commercial, undertaken by any person or entity, whether public or private, that creates, implies or refers to a direct or indirect association of any kind (including an association in the minds of members of the public) with any Games Body or the Games (including by reference to the city of London and the year 2012), and the display or distribution of advertising materials or products with the intention of gaining exposure for any brand in or within the vicinity of Games Venues, which has not been properly authorised by LOCOG or any other Games Body;

**"Games"**

means the Games of the thirtieth Olympiad and the Paralympic Games that are to take place in 2012 in London;

**"Games Body"**

means each of the International Olympic Committee, the International Paralympic Committee, the British Olympic Association, the British Paralympic Association and (where the context admits) LOCOG, the Olympic Delivery Authority or any other organising committee of an Olympic and/or Paralympic Games and **Games Bodies** shall be construed accordingly;

**"Games Event"**

means an event (whether a sporting event or not, and whether held in London or not) held as part of the Games, Games test events, London 2012

cultural events or other events organised by or for LOCOG and **Games Events** shall be construed accordingly;

**"Games Venue"**

means a venue (including any public area) at, in or through which a Games Event is to be held or takes place and any official training venue of the Games, and for the avoidance of doubt includes, without limitation, the Olympic Park, Olympic Village, other areas requiring LOCOG accreditation to access, and includes any construction sites at which such venues are being constructed and **Games Venues** shall be construed accordingly;

**"High Value Contract"**

means a contract whose total value (including any amounts payable or another form of consideration) exceeds £100,000 and **High Value Contracts** shall be construed accordingly;

**"Intellectual Property Rights"**

means all rights in relation to any and all patents, trade marks, service marks, logos, rights in designs, get-up, trade names, domain names, goodwill associated with the foregoing, copyright (including rights in computer software) and moral rights, semi-conductor topography rights, rights in inventions, utility models, rights in know-how, trade secrets and other confidential information, rights in databases and other intellectual property rights in each case whether registered or unregistered and all rights or forms of protection having equivalent or similar effect anywhere in the world, and registered includes registrations and applications for registrations;

**"Protected Marks"**

means any trade marks, trade or business names, logos, design rights (whether registrable or otherwise), applications for any of the foregoing or any other Intellectual Property Rights of any Games Body, including marks and designs relating to the Games, any Olympic or Paralympic teams, the Olympic Symbol (i.e. the five interlocking rings of the International Olympic Committee), the Paralympic Symbol (i.e. the three agitos of the International Paralympic Committee), the words "Olympic", "Olympian", "Olympiad", "Paralympic", "Paralympian", "Paralympiad" (and their plurals) and/or any other word(s), motto or symbol or representation protected by the Olympic Symbol etc. (Protection) Act 1995, the London Olympic Games and

Paralympic Games Act 2006 (whether as now in force or as amended in the future) or by any other legislation enacted in relation to the Games.

1. **NO MARKETING RIGHTS**

1.1 The Sub-Supplier shall not:

- (i) by this by this deed or by its supply of goods or services to the Head Supplier in connection with activities relating to the Games, acquire any right, title or interest in the Protected Marks or any right to associate itself with any Games Body or the Games (whether prior to, during or after the Games take place);
- (ii) use any Protected Marks or any trade marks, trade names or logos so resembling the Protected Marks as to be likely to cause confusion with the Protected Marks;
- (iii) undertake any form of Ambush Marketing;
- (iv) cause to be done, or permit anyone reasonably within the Sub-Supplier's control to do, anything which might damage or endanger the validity or distinctiveness of, or the goodwill in, any of the Protected Marks;
- (v) do anything which would have an adverse effect on or embarrass any Games Body, or any official supporter or sponsor of the Games; or
- (vi) take or publish any photographs or make any other graphical or other reproduction (including film) at or of the Games Venues or any premises, property or equipment leased or in the possession of any Games Body other than in connection with the provision of the Services or for personal use.

1.2 The Sub-Supplier shall not, and shall draw to the attention of its employees that it shall not, without the prior written approval of LOCOG in each case:

- (a) represent, directly or indirectly, that any product or service provided has been endorsed or approved by or is in any way associated with the Games or any Games Body;
- (b) use in advertising, publicity or any other communication, whether written, electronic or any other means any Protected Mark, the name of any Games Body, or of any of its directors or employees; or
- (c) publish or issue any statement (factual or otherwise) about the Sub-Supplier's provision of products or services to a Games Body,

except in any case where there has been specific written approval of any applicable Games Body (and then only in relation to the specific matters approved of by the relevant body to the extent that such body is entitled to give such approval), and save that the Sub-Supplier shall be entitled to make such statements about the Supplier's provision of products or services in relation to the Games as may be required by law.

1.3 In relation to any of the Sub-Supplier's own suppliers, contractors or agents who provide goods or services in relation to the Agreement (each an "**Associated Party**")

the Sub-Supplier shall take the following steps to prevent each Associated Party from carrying out any of the activities described in clauses 1.1 and 1.2 (the "**Prohibited Activities**"):

- (a) draw the Prohibited Activities to the attention of each Associated Party, remind them with reasonable frequency of the Prohibited Activities, and as appropriate, provide them with any literature made available by LOCOG in relation to the Prohibited Activities;
- (b) use reasonable endeavours to monitor the marketing and other activities of each Associated Party and immediately notify LOCOG, providing full written particulars, as soon as it becomes aware that an Associated Party is carrying out, has carried out or plans to carry out any of the Prohibited Activities;
- (c) subject to clause 1.4, provide such assistance as is reasonably required by LOCOG to help it prevent or stop an Associated Party from carrying out a Prohibited Activity; and
- (d) when the Sub-Supplier, in connection with the Agreement, enters into a High Value Contract with any Associated Party, the Sub-Supplier shall:
  - (i) notify LOCOG of the parties to, and the nature of, such High Value Contract; and
  - (ii) procure that, upon the Supplier entering into the High Value Contract, the Associated Party signs a deed in favour of LOCOG in substantively the same form as this deed and delivers it to LOCOG forthwith.

1.4 Unless expressly instructed to do so under clause 1.3(c):

- (a) the Sub-Supplier shall not bring any claim, proceedings or other action against an Associated Party in relation to the Prohibited Activities;
- (b) LOCOG will have the conduct of all claims related to the Prohibited Activities; and
- (c) LOCOG will be entitled to retain any damages, expenses or other amounts awarded in respect of any such claim;

provided that the parties agree that in no circumstances will LOCOG be obliged to bring or defend any such claim and LOCOG in its sole discretion may decide what action (if any) to take regarding any such claim.

1.5 After the dissolution of LOCOG, an appropriate Games Body shall have the right to enforce the terms of clause 1.1 to 1.4 above in accordance with the Contracts (Rights of Third Parties) Act 1999 and the Sub-Supplier acknowledges the provisions therein are of such importance to LOCOG that damages may not be an adequate remedy for breach of clauses 1.2 to 1.4 by the Sub-Supplier and that injunctive relief may be a more appropriate remedy.

1.6 This clause shall continue to apply without limit of time.

## 2. **CLEAN VENUES**

2.1 The Sub-Supplier hereby acknowledges that all Games Venues must be clean of all advertising, marketing and other branded materials, other than such materials



approved by LOCOG, and that the Games Bodies must restrict the presence of unauthorised third party branding in all of their public activities.

2.2 The Sub-Supplier acknowledges and understands that the Agreement contains provisions in relation to the supply and use of goods, materials, structures, plant and equipment (the "**Materials**") which require that certain Materials must be delivered with no brands, logos, trademarks, trade names or other representation (whether such branding or representation relates to the Services, the Head-Supplier, the Sub-Supplier, an Associated Party or anyone or anything else) ("**Branding**"). To the extent that the Services involve the supply or use of Materials, the Sub-Supplier:

- (a) shall respect terms of the Agreement with regard to Branding;
- (b) shall follow any further instructions of LOCOG in relation to any Branding on those Materials; and
- (c) agrees that where those Materials are supplied with Branding (whether or not with the consent of LOCOG) LOCOG may obscure, cover or remove any Branding and LOCOG shall not be liable for any damage caused to the Materials as a consequence.

2.3 For the avoidance of doubt, Materials may be supplied/used with Branding on them if the Branding is the standard Branding of the manufacturer of the Material in question or, to the extent that it is necessary for the purpose of identifying the Sub-Supplier as owner or controller of any Materials, is the Sub-Supplier's own Branding and if the Materials:

- (a) will not be used at Games Venues or by any Games Bodies in any of their public activities;
- (b) will be present in Games Venues during a Games Event but will not be visible to spectators, participants and/or officials attending, or broadcasters filming, the Games Event as a result of them being concealed and/or being fixed for the duration of the Games Event in locations which will not usually be accessible to, or seen by, such people during the Games Event; or
- (c) will be present in Games Venues but not during a Games Event or any other period during which LOCOG accreditation is required to access the Games Venue,

provided that in all cases such Branding is in all the circumstances reasonable and proportionate and provided that nothing in this clause 2 will prevent any Branding or other information required to comply with the law (in particular, in relation to health and safety).

2.4 The Sub-Supplier shall not undertake any promotional or advertising activities in the course of delivering the Services.

2.5 If any employee, contractor or agent of the Sub-Supplier is present at or attends a Games Venue in a capacity other than as a spectator, the Sub-Supplier shall procure that such person shall follow the instructions of LOCOG in relation to his or her appearance and/or clothing and shall abide by the conditions of any Games accreditation granted to him.

**3. CHOICE OF LAW**

This deed (and any dispute, controversy, proceedings or claim of whatever nature arising out of or in any way relating to this deed or its formation) shall be governed by and construed in accordance with English law.

**IN WITNESS** whereof this deed has been executed by the Sub-Supplier and is intended to be and is hereby delivered on the date first above written.

**SIGNED** and delivered as a deed by  
*[insert name of Sub Supplier]*  
acting by two directors or by one  
director and the secretary:

**Director**

**Director or Secretary**

Signature:

Signature:

Name:

Name:

**CONFIDENTIALITY UNDERTAKING (COMPANY)**

Please read the following undertaking carefully. The Company is requested to confirm its agreement to this undertaking by executing this undertaking. Please note that the Company will not be allowed access to the London 2012 website or premises or provided with information unless the Company has confirmed its agreement to this undertaking.

To each of the London Organising Committee of the Olympic Games and Paralympic Games Limited ("LOCOG") and the Olympic Delivery Authority (the "ODA") together and severally (as appropriate) referred to as "London 2012".

COMPANY DETAILS	
Full name of organisation <i>(please print)</i> ("Company")	
Company or other identification number	
Registered address	
DETAILS OF PROJECT	
Project	
Contract Reference	
Services/Works/Goods	

In this agreement:

**"Confidential Information"** means any information relating in any way to the Games (including without limitation relating to the involvement in the Games of London 2012's sponsors, stakeholders, agents, employees, contractors, consultants, suppliers, the International Olympic Committee the British Olympic Association, the British Paralympic Association, or any other official Olympic or Paralympic body) ("**Partners**") in whatever form (including, without limitation, in written, oral, visual or electronic form or on tape or disk) supplied to the Company by or on behalf of London 2012 in connection with the Project or received or created by the Company as a result of its involvement with the Games that would be regarded as confidential by a reasonable business person (whether or not, such information is identified or treated by London 2012 as confidential); and

**"Games"** means the games of the thirtieth Olympiad and the Paralympic Games that are to take place in 2012 in London.

By executing this agreement and in consideration of London 2012 providing Confidential Information to the Company, the sufficiency of which the Company acknowledges, the Company hereby agrees and undertakes to each of LOCOG and the ODA that:

1. In the course of its work with London 2012, the Company will come into the possession of Confidential Information and the Company agrees to enter into this agreement in addition to and separate from any other obligation that it may have to London 2012, the ODA or LOCOG.
2. While the Company is performing duties for London 2012 and for as long as the Confidential Information remains confidential to London 2012 or to any third party to whom London 2012 owes a duty of confidentiality:

- (a) the Company will not directly or indirectly (whether through any person, firm, company or other entity) for any purpose other than for its work with London 2012: (i) except as expressly permitted, disclose any Confidential Information to any third party; or (ii) make any statement to, or communicate with, the media in respect of Confidential Information or in any way publish the same; or (iii) misuse any Confidential Information;
  - (b) the Company will keep all Confidential Information secure and in particular ensure that no Confidential Information that constitutes personal data (as defined in the Data Protection Act 1998) (the "Act") is transferred to any country outside the European Economic Area in breach of the Act; and
  - (c) the Company will limit access to Confidential Information to those of its employees, advisers, subcontractors and any counterparties who necessarily require the same for the purposes of the Project and inform each person to whom Confidential Information is disclosed of the restrictions contained in this agreement as to use and disclosure of such Confidential Information.
3. The Company shall not be restrained from using or disclosing any Confidential Information which it is authorised to use or disclose by LOCOG's General Counsel or the ODA's Chief Executive; or which it is required to disclose by law provided that the disclosure is made in good faith and in an appropriate way to an appropriate person having regard to the provisions of the relevant legislation.
  4. The Company will destroy or return to London 2012 on demand any document containing Confidential Information and any copy which has been made, and expunge all such Confidential Information from any computer system, disk or other device containing it owned by the Company or under the Company's control.
  5. In the event that London 2012 investigates any breach of this agreement, the Company accepts that London 2012 has the right to suspend the provision by the Company of its works, goods and/or services indefinitely.
  6. The Company shall comply with any instructions issued by London 2012, in London 2012's absolute discretion, in relation to the storage, viewing, copying and/or destruction of Confidential Information.
  7. The Company shall by this agreement have no right to use any trade marks, trade names, logos or other intellectual property rights of London 2012 (including the names "London 2012", "LOCOG" and "ODA") and shall not represent that any product, works or services provided has been endorsed or approved by London 2012 or any of the Partners, or that the Company, its products, works and/or services are in any way associated with those organisations or the Olympic Games and/or Paralympic Games, including by publishing or issuing any statement (factual or otherwise) about the Company's provision of products, works and/or services to London 2012 otherwise than in accordance with the branding guidelines set out from time to time on the london2012.com website or (if applicable) in accordance with any agreement on confidentiality and publicity that the Company may have with LOCOG or the ODA.
  8. In respect only of Confidential Information supplied by London 2012 to external consultants (not being seconded to London 2012), such Confidential Information does not purport to be comprehensive and no representation or warranty is made by any person as to the accuracy, reliability or completeness of any of such Confidential Information. Accordingly, the Company (being such a consultant) agrees that neither LOCOG nor the ODA shall have any liability to the Company resulting from the Company's reliance on Confidential Information, and that neither LOCOG nor the ODA shall owe any duty of care to the Company in respect of the Confidential Information.

9. Any breach of this agreement could cause injury to London 2012 for which monetary damages may not be an adequate remedy. In the event of a breach or threatened or possible breach by the Company, the Company accepts that London 2012 shall be entitled to injunctive relief in any court of competent jurisdiction. Nothing contained in this agreement shall be interpreted as prohibiting London 2012 from pursuing any other remedies available to London 2012 for such a breach.
10. Rights under this agreement expressed to be favour of London 2012 apply to LOCOG and the ODA collectively and to each of them individually.
11. The invalidity, unenforceability or illegality of any provision (or part of a provision) of this agreement under the laws of any jurisdiction shall not affect the validity, enforceability or legality of the other provisions. If any invalid, unenforceable or illegal provision would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with whatever modification as is necessary to give effect to the intention of the parties.
12. This agreement and any dispute or claim arising out of or in connection with it or its subject matter shall be governed by and construed in accordance with the law of England and Wales. The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this agreement or its subject matter.
13. To confirm the Company's agreement to the terms set out above, please ensure execution of this agreement by representatives of the Company authorised to enter into legally binding agreements on behalf of the Company and return this agreement to London 2012.

<b>Executed and delivered</b>	<b>by the Company acting by:</b>
Signature..... (Director)	
Print name.....	

<b>Executed and delivered</b>	<b>by the ODA acting by:</b>
Signature..... (Director)	
Print name.....	

**Schedule 12**  
**Works Information**

# **OLYMPIC DELIVERY AUTHORITY**

## **ArcelorMittal Orbit** (Under ODA Construction Licence)

### **PROJECT INFORMATION**

**September 2010**

Contract Ref TBA

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## INTRODUCTION

### 1.0 Organisation of this Document

This Project Information document is organised into the following Sections:

1) **Section 1: Site Information**

Provides the location of the Site along with information on the nature of the ground conditions and the surrounding area and adjacent land/property.

2) **Section 2: Works Information – Specific Requirements**

Is a description of the *works* that the *Contractor* is to provide including the extent of the *Contractor's* design responsibility, the intended programme and sequence that the *works* are to be carried out, any restraints on how the works will be carried out and any interfaces with Others that affects how the *Contractor* is to Provide the Works.

3) **Section 3: Works Information – General Issues**

Describe the policies and standards that have been developed and implemented by the *Employer* and the *Project Manager* and sets out the matters that the *Contractor* must comply with to Provide the Works.

4) **Section 4: Works Information – General Procedures and Processes**

Describe the processes and procedures that have been developed and implemented by the *Employer* and his *Project Manager* and sets out the matters that the *Contractor* must comply with to Provide the Works.

5) **Section 5: Works Information – Programme Wide Initiatives**

Describe the initiatives that have been/or are being developed by the *Employer* and his *Project Manager* that affects how the *Contractor* Provides the Works.

6) **Section 6: Ancillary Documents**

Includes further documents that are referred to in the Contract and which are relevant to the *Contractor* and/or the *Contractor's* supply chain.

7) **Section 7: Appendices**

List of all the documents that are referred to throughout the Project Information.

## GLOSSARY OF TERMS

Term	Definition	Paragraph Reference
5 Borough Partnership	A partnership of five London Boroughs impacted by the development of the Olympic Park i.e. Newham, Tower Hamlets, Hackney, Waltham Forest and Greenwich.	B540
<u>Apprentice</u>	Not used.	
Approval in Principle (AIP)	Not used.	
Breach of security	<u>the occurrence of unauthorised access to or use of the Employer's premises, the Site, the works, the Contractor's IT system or any data (including the Employer Data) used by the Employer or the Contractor in connection with this Contract</u>	
Brief	Not used.	
CAD	Computer Aided Design, computer software tool.	B1202
Contract Conditions	The Clauses of the Contract.	
Delivery Management System (DMS)	The Employer's system for the recording and tracking of all deliveries to the Olympic Park as described in paragraph B1035 of the Works Information.	A212, B215, B1031, B1032,
Design Input Statement	Not used	
design team/Design Team	Not used	
Enabling Works	The Site Investigation, Asbestos Removal, Demolition, Earthworks, Soil Remediation and some construction works necessary to prepare the Olympic Park as a platform for the construction of the venues and infrastructure for the London 2012 Olympic Games and Paralympic Games.	
External Technical Reviewers (ETRs)	Not used	
final account	Not used	
Games	The London 2012 Olympic Games and Paralympic Games.	B1505,
Games Period	The periods in August and September 2012 when the London 2012 Olympic Games and Paralympic Games are held.	A105, A290, A295,

<b>Term</b>	<b>Definition</b>	<b>Paragraph Reference</b>
GIS	Not used	
Good Industry Practice	<u>Not used</u>	
Inclusion	Refers to ensuring that groups of people that have traditionally been excluded or faced barriers to participation are considered and given opportunities to be involved	
infrastructure	All the areas around and between the venues on the Olympic Park comprising the construction of the roads and bridges required to move people and vehicles around the Olympic Park, the Utilities required to support the venues and the Olympic Park, the Landscaping and Public Realm construction and the front and back of house areas etc.	
Legacy Period	Not used	
Legacy Users	The users of the Olympic Park (or elements of it) to which ownership of the Olympic Park will pass when Legacy Conversion works have been completed.	A105,
LOCOG	London Organising Committee for the Olympic Games.	A105,
London 2012 Business Network	Not used	
London 2012 Programme	Not used	
Olympic Infrastructure Technical Approval Authority (OITAA)	Not used	
Olympic Overlay	Not used	
Olympic Park	Location of the London 2012 Olympic Games as described in paragraph S110 of the Site Information.	S105, S110, A105, A215, A220, A225, A240, A260, , A270, A275, A280, A295, A1015, A1020, A1035, B210, B215, B220, , , B1001, B1013, B1032, , , B1035, B1049, B2610, , , , A105, , B1905,
Olympic Programme	All the projects and contracts required to deliver the London 2012 Programme.	
Outline Approval in Principle (AIP)		

Term	Definition	Paragraph Reference
PDF	Adobe Acrobat Portable Document Format electronic data file.	
Post Games Period	The period after the London 2012 Olympic Games and Paralympic Games have been held.	A105,
Pricing Documents	Not used	
processed aggregate materials	Materials for use in the <i>works</i> or the temporary works such as road and footpath sub-base materials, aggregates and sand for use in the batching of concrete, stone materials used in drainage and other trenches, stone based materials used for hard standings (other than demolition based hardcore).	
Project	The works as defined in paragraph A105 of the Works Information.	S110, A105, A295, , , A1015, , B210, B601, B1022, , B1505, B2610
project team	The personnel of the <i>Employer</i> , the designer(s), the <i>Project Manager</i> and the <i>Contractor</i> involved in the delivery of the Project.	, B1057, B1905
Protectively Marked	<u>has the meaning as set out in the Cabinet Office Security Policy Framework.</u>	
RIMT	The Employer's Rail Interface Management Team as described in paragraph A105 part 8, Rail Possessions.	A105,
Security Policy	<u>the <i>Employer's</i> security policy which is set out in Appendix 26 to this Works Information</u>	
Security Policy Framework	<u>the HMG Cabinet Office Security Policy Framework that is available from the Cabinet Office Security Policy Division or available at <a href="http://www.cabinetoffice.gov.uk/spf.aspx">http://www.cabinetoffice.gov.uk/spf.aspx</a> and which has replaced the former Manual of Protective Security.</u>	
SHE Box	A "SHE Box" is a standard box on all drawings listing significant residual hazards either 'for construction' or 'for future dismantling/demolition'. Designers are required to complete these or to state that there are no unusual hazards for a competent contractor remaining in the design.	
Shop Drawings/shop drawings	Drawings prepared by the <i>Contractor</i> , his subcontractor's or suppliers of any tier, to enable the manufacture of elements, components or parts of the <i>works</i> in accordance with the detailed design drawings.	B1207,
Site Wide Sustainable Drainage System (SuDS)	Not used	

<b>Term</b>	<b>Definition</b>	<b>Paragraph Reference</b>
Test Events	Events to be held within the Olympic Park and elsewhere prior to the Games Period to test the operational effectiveness of the venues.	A105
Trainee	A person either being supported to complete accredited training or is an employee of the Contractor or his subcontractors of any tier and has registered as completing registered training whilst in employment.	
Venues/venues	Structures to be constructed on the Olympic Park in which the Olympic Games and Paralympic Games events will be held such as the Main Stadium, the Aquatics Centre, the Velodrome etc.	A295,
VVIP	Very Very Important Person.	

**PART ONE  
SPECIFIC INFORMATION**

**SITE INFORMATION - DETAILS OF THE SITE**

## **S100 SITE LOCATION**

- S105 The Site**            The Site is [within the Olympic Park] [or describe location and general address] and shown on drawing(s) set out in Appendix 1.<sup>1</sup>
- S110 The Olympic Park**    The Olympic Park is the area under development by the ODA that lies within East London and which is bounded by Hackney Marshes in the north and the A11 Bow Road in the South. Where the Project (or part thereof) as defined in paragraph A100 of the Works Information lies outside of the Olympic Park then the requirements of the affected section of the Works Information apply to the extent that the requirements remain possible of application outside of the Olympic Park.

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<sup>1</sup> Inset here details of Site Location(s), e.g. drawing reference(s), OS details, location plans etc and general features of the existing Site

## **S400 BURIED PLANT, PIPED/CABLE SERVICES**

### **S405 Buried Plant, Piped/Cable Services**

To the extent that such information is available to the *ODA* details of existing utility services (except for utility services described in paragraph S406 of the Site Information) in or near the Site are available to the *Contractor* and included in Appendix 3A. The *ODA* does not warrant the accuracy of such details and the *Contractor* is responsible for making his own inquiries and investigations to locate the extent and nature of all existing utility services.

The *Contractor* rectifies any damage which occurs to such utility services during the *works*.

The *Contractor* informs the *Project Manager* of all existing services discovered during the carrying out of the *works*.

[In respect of rail industry assets, the *Contractor* protects those assets on railway owned/operated land in conjunction with the appropriate standards set out by the respective rail asset management authority (NR, LUL etc.)]

### **S406 Described Utility Services**

Details of utility services constructed and/or installed in or near the Site in pursuant to a contract between the *ODA* and a third party contractor in respect of the London 2012 Programme are available to the *Contractor* and included in Appendix 3B. To the extent that the actual condition or location of any such utility services differ from the details included in Appendix 3B and such difference directly causes the *Contractor* to incur additional cost or to be delayed in the progress of the *works*, the *Contractor* is, subject to the provisions of clause 60, entitled to a compensation event. The *Contractor* rectifies any damage which occurs to such utility services during the *works*. The *Contractor* informs the *Project Manager* of all such services encountered during the carrying out of the *works*.

### **S415 Statutory Undertakers**

The *Contractor* complies with the requirements of any statutory undertaker(s) and any protective measures agreed with the relevant statutory undertaker(s) prior to the commencement of any activities.



**S500 ADJACENT BUILDINGS, STRUCTURES AND PLANT**

**S505 Adjacent Buildings, Structures and Plant**      Not used

Not used

**PART TWO  
SPECIFIC INFORMATION**

**WORKS INFORMATION - SPECIFIC REQUIREMENTS**

## A200 SPECIFIC REQUIREMENTS FOR COMPLETING THE WORKS AND THE USE OF THE SITE

- A205 Introduction** This section of the Project Information describes the requirements and constraints in the use of the Site.
- A210 Access** The *Contractor* is allowed access to the Site on the access date(s) provided the *Contractor's* site security proposals (see Section B200 (Security) of the Works Information) and delivery management strategy (see paragraph B1035 (Delivery Management) of the Works Information) are accepted by the ODA [and, where appropriate, formal applications are approved by the respective rail industry assurance body].<sup>3</sup>
- A212 Logistics** The *Contractor* complies with paragraphs B1031 to B1034 of the Works Information in respect of transport. The *Contractor* complies with paragraph B1035 (Delivery Management) of the Works Information and complies with the ODA's Delivery Management System ("DMS") referred to therein.
- A215 Contractors Parking** Subject to paragraph A220 of the Works Information the ODA prohibits parking within the Site and/or on the Olympic Park.
- A220 Vehicular Access to Site** Where vehicular access is to the Site and/or Olympic Park vehicles may only enter through the main entrances to the Olympic Park via prescribed access routes from the off-site logistics centre(s) and in accordance with the agreed bookings made and restrictions specified on the DMS.
- The *Contractor* gives the *Project Manager* 48 hours prior written notice of intended deliveries and access requirements along with weekly and 12 weekly look ahead delivery schedules for acceptance by the *Project Manager*.<sup>4</sup>
- A225 Pedestrian Entry/Access to Site** The *Contractor* complies with section B220 ( Security) of the Works Information in respect of pedestrian entry/access to the Olympic Park and the Site.
- A230 Site Visitors** The safety of visitors entering the Olympic Park and the Site at the invitation of or in connection with the *Contractor* is the responsibility of the *Contractor*.
- All visitors who enter the Olympic Park are escorted by a designated member of the *Contractor's* personnel at all times (such person having, as a minimum, been employed on-site for more than a month). Where the *works* are scheduled to last for a period which is less than a month, then a senior member of the *Contractor's* personnel accompanies all visitors.
- A235 Security** The *Contractor* complies with section B200 of the Works Information in respect of security.
- A237 Information Security** The *Contractor* acknowledges that the ODA places great emphasis on confidentiality, integrity and availability of information and consequently on the security of the Olympic Park, the Site and the security for the *Contractor's* IT system.
- The *Contractor's* IT systems at all times provide a level of security which:
- is in accordance with Good Industry Practice and law;
  - complies with the Security Policy;
  - meets any specific security threats to the *Contractor's* IT system; and
  - complies with ISO/IEC27002 and ISO/IEC27001 in accordance with paragraph B235

<sup>3</sup> Include here any further project specific stipulations that could affect the *Contractor's* right of access.

<sup>4</sup> The delivery management system may not be applicable to all contracts. The *Project Manager* is to liaise with the Logistics Team to define the project specific requirements in regard to the delivery management system.

below.

The Contractor ensures that the level of security employed in Providing the Works is appropriate to the level expected of the ODA, there is a zero tolerance of the following which must be reported to the ODA immediately:

loss of integrity of ODA;  
loss of confidentiality of ODA;  
unauthorised access to, use of, or interference with ODA Data by any person or organisation;  
unauthorised access to network elements, buildings, the Site and tools used by the Contractor in Providing the Works;  
use of the Contractor's IT system or Services by any third party in order to gain unauthorised access to any computer resource or ODA Data; and  
loss of availability of ODA Data due to any failure or compromise of the Contractor's security.

The Contractor develops, implements and maintains a Security Plan to apply during the Provision of the Works which will be accepted by the ODA, tested, periodically updated and audited in accordance with the provisions of Appendix 12 – Security Plan Provisions.

**A240 Transport of Personnel on Site**

The Contractor uses the Olympic Park bus service provided by the ODA (see paragraph B3055 of the Works Information) or other such arrangements as accepted by the ODA for transportation of workers between the Site and the Olympic Park main access and exit points.

The Contractor provides all necessary transportation for workers, visitors and personnel from either transport interchanges and/or Contractor designated pick up points outside the Olympic Park to the Olympic Park bus service pick up points at the main Olympic Park access and exit points. The Contractor submits proposals for such transportation arrangements to the ODA for acceptance prior to transport operations commencing.

Whilst ODA provide site wide services for contractors operating on the park the Contractor will be permitted to make use of those services. ODA will notify the Contractor in advance of changes or cessation of services. The Contractor to note that from 1<sup>st</sup> January 2012 LOCOG will be the park-wide operator.

**A245 Vehicle Screening/ Examination**

The Contractor complies with Section B200 of the Works Information in respect of vehicle screening and examination.

**A250 Hoarding/Fences**

The Contractor complies with Section B200 of the Works Information in respect of hoarding and fencing.

**A255 CCTV and Boundary Lighting**

The Contractor complies with Section B200 of the Works Information in respect of CCTV and boundary lighting.

**A260 Over Sailing adjacent Sites and Properties**

The Contractor obtains the necessary prior written approval of adjoining owners to the Olympic Park and/or the Site, occupiers of the Olympic Park and other contractors on the Olympic Park whenever over-sailing by cranes is required during the works and where such over-sailing affects their respective interests. The Contractor will not use over-sailing cranes if all appropriate prior written approvals have not been obtained.

In response to a written request for over sailing rights from other contractors on the Olympic Park, the Contractor confirms in writing, within the period for reply to the ODA'S Delivery Partner - CLM, the acceptance to grant such over-sailing rights and executes an over-sailing permit. The Contractor declines a written request for over

sailing rights where:

- the written request does not contain an appropriate level of detail sufficient to allow the *Contractor* to make a reasoned decision about the likely effects on the *Contractor* of the over-sailing rights; and/or
- the *Contractor* has reasonable health and safety concerns which the person seeking such over-sailing rights has not been able to address to the reasonable satisfaction of the *Contractor*.

**A268 Flood Procedures**

The *Contractor* follows the flood risk compliance procedures as outlined in the Code of Construction Practice (CoCP) included in Appendix 24a.

**A270 Working adjacent to the Rivers or Water**

Not used<sup>6</sup>

**A275 Olympic Grid**

The *Contractor* ensures that surveys and setting out of the *works* and temporary *works* for the Olympic Park are all co-ordinated and aligned to a single, three-dimensional (3D) reference grid known as the Olympic Grid. The *Contractor* undertakes all survey related works in accordance with the latest revision of the document entitled CLM-D0503-GUI-OlympicGridUseBrief-v1.0 as set out in Appendix 20.

**A280 Setting Out**

The *Employer* and *Project Manager* provide and maintain initial base stations in Olympic Grid for primary setting out at ground level within the Olympic Park. The *Contractor* checks existing base stations provided, relative to each other. The *Contractor* reports the results of these checks plus any errors in the survey station descriptions to the *Project Manager*.

The *Contractor* sets out the *works* and takes all necessary site measurements. The *Contractor* is responsible for the accuracy of the setting out of the *works* and the site measurement. The *Contractor* checks the setting out of work by Others which might substantially affect his own *works*.

Prior to the commencement of the *works* the *Contractor* submits the proposed method of dimensional setting out to the *Project Manager* for acceptance.

All works and deliverables data will be in Olympic Grid.

**A290 Health & Safety**

**CDM Co-ordinator**

The Client appoints the CDM Co-ordinator in accordance with CDM Regulations, 2007 who attends a quarterly CDM Co-ordinator's meeting arranged by the *Employer*] and submits on a monthly basis (on or before the 4<sup>th</sup> of the month) a Report and HS&E Scorecard to report their performance in specific areas, in accordance with the *Employer's* HSE on-line reporting and record system<sup>7</sup>.

The CDM Co-ordinator is [Arup. 13 Fitzroy Street. London W1T 4BQ]

<sup>6</sup> This may not apply to all projects. If not applicable then delete and insert 'Not Used' in lieu of the text above.

<sup>7</sup> Where the *Contractor* does not appoint the CDM Co-ordinator this bullet point should be deleted.

It is a requirement of the CDM Regulations that record documentation in the form of a Health and Safety File is handed to the *Employer* and *Project Manager* at Completion of both Games Period and Legacy Period conversion. Completion cannot be granted unless record documentation is handed to the CDM Co-ordinator. If the *Contractor* is the CDM Co-ordinator, the *Contractor* provides the Health and Safety documentation and any other required documentation to the *Project Manager*.

### **General Obligations**

The *Contractor*:

- Submits on a monthly basis (on or before the 4<sup>th</sup> of the month) a Report and HS&E Scorecard to report their design activity performance in specific areas, in accordance with the *Employer's* on-line reporting and record system<sup>8</sup>.
- Submits on a monthly basis (on or before the 4<sup>th</sup> of the month) a Report and HS&E Scorecard to report their site construction activity performance in specific areas, in accordance with the *Employer's* on-line reporting and record system.<sup>9</sup>
- Submits prompt and timely accidents, incidents, project health, safety and environmental monitoring and reports by using the *Employer's* HS & E on-line reporting and record system.<sup>10</sup>
- Provides Site induction courses which include Olympic Park and project specific information where such information is provided to the *Contractor* by the *Employer* or *Project Manager*.<sup>11</sup>
- Conducts an annual culture climate survey at an agreed time, using the survey format specified by the *Employer* for at least 60% of the *Contractors* and Subcontractor's respective workforce.<sup>12</sup>
- Submit proposals for action to improve the 3 weakest areas identified in the results of the relevant culture climate survey to the *Project Manager* within 6 weeks of the results of the relevant survey being available.<sup>13</sup>

The *Contractor* uses reasonable endeavours to ensure that his subcontractors of any tier co-operate with the *Contractor* in his obligations under this paragraph as applicable to the subcontractor's activities.

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<sup>8</sup> Delete if the project does not include design on the part of the Contractor.

<sup>9</sup> Delete if the Contractor will not be a Tier 1.

<sup>10</sup> The Project Team must liaise with the CLM Health, Safety & Environment Team to determine and subsequently review monitoring arrangements, accidents and incidents investigations and reporting strategies.

<sup>11</sup> Delete if the Contractor will not be a Tier 1.

<sup>12</sup> Delete if the Contractor will not be a Tier 1.

<sup>13</sup> Delete if the Contractor will not be a Tier 1.

## A400 PROGRAMME

**A405 Programme** In accordance with the requirements of the Contract the *Contractor* includes the following data in the programme;<sup>14</sup>

- See ODA Construction Licence for details of ODA Step in rights relating to programme and key milestones.

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<sup>14</sup> Insert any project specific information that needs to be included in the *Contractor's* programme. If there is no further specific information then insert 'Not Used' after the bullet point.

**PART THREE  
GENERAL INFORMATION**

**WORKS INFORMATION - GENERAL ISSUES**



## B100 HEALTH, SAFETY AND ENVIRONMENT<sup>15</sup>

### B105 Obligations

This section sets out the information for the *Contractor* and all his subcontractors of any tier (including consultants and designers) on the ODA's requirements for health, safety and environment.

The *Contractor* and all of his subcontractors of any tier as a minimum, comply with the requirements of the 'Design and Construction Health, Safety and Environment Standard Summary' set out in Appendix 21 and Provides the Works such as to ensure :

- The prevention of incidents, accidents and ill health and the promotion of well being for everyone working on or affected by the *works*;
- The provision of an occupational health service for their Olympic Park workers (may be satisfied by use of occupational health service provided by the ODA – refer to paragraph B3090 of this Works Information, Whilst ODA provide site wide services for contractors operating on the park SRM will be permitted to make use of those services. ODA will notify SRM in advance of changes or cessation of services. SRM to note that from 01Jan2012 LOCOG will be the parkwide operator.);
- The reduction of HS&E risk and impact through design, by identifying options and evaluating them taking HS&E fully into account;
- The reduction of waste by design and good practice - maximising re-use and recycling of material arising from the *works*;
- The protection and enhancement of biodiversity and ecology on site;
- The development and maintenance of a positive HS&E culture, throughout the supply chain and across the site, through effective leadership and engagement;
- The development and maintenance of a competent workforce;

### B120 Health & Safety File

From the start of the *works* on Site, the *Contractor* collates and assembles until the Completion Date, the documents and information required by the CDM Co-ordinator for the Health and Safety File. The *Contractor* ensures the documents and information held in the Health and Safety File is kept up to date. The Health and Safety File includes environmental information. Completion is not granted until the documents and information required by the CDM Co-ordinator for the Health and Safety File has been provided by the *Contractor*.

The Health and Safety File information shall be submitted to the CDM Co-ordinator not later than 4 weeks before Completion. The CDM Co-ordinator shall review and comment, and the *Contractor* shall, where necessary, revise the Health and Safety File to take account of the comments.

The *Contractor* ensures that 'As Built' or 'As Found' information is entered into the document management system as soon as practicable.

The *Contractor* collates and compiles Operation and Maintenance Manuals (O&Ms) as set out in B1203 of this Works Information.

### B125 Health, Safety and Environment Plan

Integrated HS&E Plans are welcome, but the *Contractor* may develop separate but mutually supportive HS & Environmental Management Plans.

The Pre-Construction Information in respect of the *works* is set out in Appendix 11.

<sup>15</sup> The *Project Manager* must liaise with the Health, Safety & Environment team to ensure that this section is up to date and the bullet points are consistent with the most recent version ODA HS&E Policy.

Before the planned commencement of the *works* on Site, the *Contractor* ensures the pre-construction information is incorporated into the construction phase plan.

The *Contractor* submits the construction phase plan to the CDM Co-ordinator for comment not later than 2 weeks before the planned commencement of *works* on Site.

The *Contractor* keeps the construction phase plan up to date and available on Site for inspection by the *Employer* and/or his representatives and/or by the CDM Co-ordinator and/or by the ODA.

**B130 Health & Safety Executive**

The *Contractor* provides the *Project Manager* with copies of all documents and correspondence submitted to the Health and Safety Executive with regard to the *works*.

**B135 Police Regulations**

The *Contractor* observes all government regulations including those regarding the loading and unloading of vehicles on the public highway.

**B140 Inspections**

The *Contractor* permits periodic inspections of the site offices, working areas and/or storage areas by the *Project Manager* and/or CDM Co-ordinator and/or the ODA to enable them to assess the suitability of the *Contractor's* fire precautions and health and safety arrangements and to carry out any such instructions necessary as a result of such inspections, at the *Contractor's* sole expense. Such inspections in no way relieve the *Contractor* of its responsibilities under this Contract or statute.

The *Contractor* ensures members of its personnel possess the relevant audit experience to work with auditors identified by the *Project Manager* to undertake *works* audits when required by audit schedule or in response to a significant incident or for the purpose of the HS&E Scorecard validation.

## B200 SECURITY

**B201 Obligations** This section sets out the ODA's requirements in relation to security.

The *Contractor* and all of his subcontractors of any tier:

- Complies with the ODA's Personnel Security Identification requirements as set out in paragraph B210 of the Works Information; and
- Complies with the ODA's Access requirements as set out in paragraph B215 of the Works Information;
- Complies with the ODAs policies and procedures requirements as set out in paragraph B225 of the Works Information;
- Complies with the ODA's Information Security Policy and Data Protection Policy; and
- Provides reporting data and assessments.

### **B210 Personnel Security Identification**

#### **Verification of Identity**

Access to the Olympic Park site will be strictly controlled via issue of an Olympic Park Site Pass (OPSP). Prior to issue of this pass to an individual, the *Contractor* provides assurance to the *ODA Interface Manager* that he has verified the individual's identity to the degree required by the 'Basic Check – Annex B' as detailed within *Her Majesty's Government's (HMG) Baseline Personnel Security Standards - Cabinet Office, July 2006*.

Where labour is required at short notice for short term specific tasks, the *ODA Interface Manager* may, exceptionally, use his discretion to apply suitable and sufficient alternative arrangements to assure himself of the identity, character and entitlement to work.

The *Contractor* (and his subcontractors of any tier) collects and maintains the following minimum information in respect of each person requiring access to the Olympic Park or responsible for the certification of materials destined for the Olympic Park:

- Full name and home address;
- Date of birth;
- National Insurance Number;
- Employment history (past 3 years);
- Completed Criminal Convictions Disclosure application form (a copy of which is available from Disclosure Scotland); and
- Evidence of entitlement to work in the UK in accordance with the HMG Baseline Personnel Security Standard (Cabinet Office, July 2006).

The *Contractor* reviews, assesses, verifies and records the information he and his subcontractors of any tier collect in accordance with Annex B of the HMG Baseline Personnel Security Standard and makes such information available to the *ODA Interface Manager* in an electronic format suitable for integration with the ODAs database, at least 5 working days prior to the relevant person attending the Project Managers Site Introduction and the *Contractors' Site Induction* (conducted by the *Contractor*).

In respect of visitors to the Site, the *Contractor* complies with the ODA's Security Operational Processes document a copy of which is available upon request from the *ODA Interface Manager*.

#### **Verification of Criminal Record Disclosure forms: after Start of Employment on Site**

The *Contractor* verifies 1 in 10 Criminal Record Disclosure forms. This process is undertaken in accordance with Part II of the HMG Baseline Personnel Security Standard should be initiated by the *Contractor* prior to mobilisation.

The personnel of the *Contractor* and his subcontractor's of any tier may, at the *ODA Interface Manager* discretion, be refused further entry to the Olympic Park should they subsequently fail Criminal Record Disclosure verification. The *Contractor* is responsible for implementing, managing and meeting the costs associated with carrying out the Criminal Record Disclosure verification checks.

#### **Additional Security Clearance requirements for Authorised Persons**

The *Contractor* identifies named individuals that carry out key security and inspection duties for the *Contractor* including those authorised to certify and seal loads, voids and cavities as 'free from prohibited items' across the construction lifecycle from manufacture through logistics to finished construction. These personnel may be subject to additional checks.

#### **Limited Access Areas**

Access to certain areas of the Olympic Park are subject to additional controls including requirements for contractors to hold higher levels of security clearance and/or appear on lists of named individuals. The *ODA Interface Manager* notifies the *Contractor* of these requirements as and when appropriate during the provision of the *works*, and advises on the additional requirements, checks and controls.

The *Contractor* provides (and will procure that his subcontractors of any tier provide) the *ODA Interface Manager* with all necessary personnel information to enable the *Contractor*, *C* and *ODA* to conduct a joint security risk assessment for all personnel requiring access to Limited Access Areas. Following this joint risk assessment, some of the personnel of the *Contractor* and his subcontractor's of any tier may need to pass higher levels of Government vetting before access can be permitted or continued.

To the extent that any Counter Terrorist Check (CTC) or Security Clearance (SC) is required (as determined by the joint risk assessment) the *ODA* administers and is responsible for carrying out such checks and for meeting all his properly and necessarily incurred fees and costs in carrying out such checks (excluding any associated costs of the *Contractor*, the relevant subcontractor and the relevant person).

#### **B215 Access - Olympic Park and Sites**

#### **Access Control and Searching - Personnel**

To gain access to the Olympic Park and the Site, all personnel must be in possession of an Olympic Park Site Pass ("OPSP"). All OPSP's are subject to the successful completion of the verification of identity process as described in paragraph B210 of the Works Information. All personnel of the *Contractor* and his subcontractor's of any tier attend an Project Managers Site Introduction before they are provided with a permanent OPSP. This process is managed and administered by the *ODA's Delivery Partner - CLM*. There will be no charge to the *Contractor* for each initial OPSP issued to the *Contractor's* personnel or those of his subcontractors.

If a person forgets, misplaces or loses an OPSP, such person goes through the visitor access process, which requires verification of identity through the production of a valid form of photographic identification, for example a passport, driving licence or other forms of agreed identification (as outlined in the induction documentation). This will result in the issue of a one day visitor pass to the relevant person.

If a person loses their OPSP and/or their one day visitors pass more than three times in a year, such person may, at the *ODA's* discretion, be refused access to the Olympic Park. Visitor passes will be provided at no charge.

When on the Olympic Park, OPSP or visitor passes must be clearly displayed at all times. Personnel refusing to display their OPSP (or visitor's pass), or allow it to be inspected, will be required to leave the Olympic Park immediately and, at the ODA's discretion, may be refused future access to the Olympic Park.

For reasons of safety and security the ODA's *Delivery Partner - CLM* will, at various times, require some or all of the personnel of the *Contractor* and his subcontractor's of any tier to submit to security searching and screening of themselves and their possessions for specified, prohibited items listed at each entry and exit point to the Olympic Park. Any refusal to participate in a search will result in that person being escorted from the Olympic Park. Following any such removal, the ODA may, at his sole discretion, refuse that person further access to the Olympic Park.

#### **Access Control – Vehicles**

The ODA, through the Delivery Management System ('DMS' - see paragraph B3060 of the Works Information), requires vehicles to pre-register delivery slots in order to ensure deliveries to the Olympic Park can take place safely, securely and efficiently. Vehicles, their loads and supporting documentation must be screened prior to entry into the Olympic Park either via arrangement with the ODA's security personnel or at one of the Logistics Centres (see paragraph B3025 of the Works Information) to ensure that access is granted in accordance with the ODA's Security Operational Processes document (details of which are available from the *ODA Interface Manager* on request).

Screening and searching of delivery vehicles and the personnel driving such vehicles entering and leaving the Olympic Park is conducted by the ODA's approved site security guards. A minimum of 10% of vehicles entering the Olympic Park are searched.

Delivery vehicles and the materials being delivered through Logistics Centres may also be screened and searched at those locations at the ODA's *Delivery Partner - CLM*'s discretion. The ODA may allow a supplier who has been previously approved by the ODA to screen a vehicle and materials on the ODA's behalf.

No private vehicles are permitted on the Olympic Park or the Site.

#### **B220 Site Security General**

The ODA is responsible for the security of the Olympic Park.

The *Contractor* is responsible for the security of his Site within the Olympic Park.

The *Contractor* and his subcontractors of any tier comply with the reasonable requests Of the ODA's *Delivery Partner - CLM* for access to the Site for the purposes of carrying out security checks including perimeter fence patrols and maintenance of the security infrastructure.

The *Contractor* does not position anything adjacent to the ODA's outer perimeter fence that could be an aid to breaching the integrity of that perimeter fence (e.g. provide a climbing aid).

#### **Contractor Responsibilities**

The *Contractor* prepares and completes a Security Risk Assessment ("SRA") for the Site and the works and submits the results to the ODA's *Delivery Partner - CLM* for acceptance at least one month prior to commencing work on the Site. The SRA complies with any specific standards notified by the ODA's *Delivery Partner - CLM* to the *Contractor*.

The *Contractor* provides the following security services in relation to the Site:

- Asset protection services within the Site (See Asset Protection below);

- Access Controls as agreed with the *ODA's Delivery Partner - CLM* ;
- Site perimeter hoarding, sufficient to ensure the *Contractor* complies with his obligations under the Construction (Design and Management) Regulations 2007 in relation to health and safety policy and the *Contractor's* own assessed Site security needs; and
- Adequate CCTV and lighting based on the *Contractor's* own assessed Site security needs.

The *Contractor* assesses and supplies his own Site 'Command, Control and Communication' accommodation requirements. Any such facilities must be capable of being connected to and integrated with the *ODA's* Olympic Park Command & Control system, details of which will be provided to the *Contractor* by the *ODA's Delivery Partner - CLM* on request.

#### **Asset Protection**

The *Contractor* procures his guarding requirements from suppliers who are accredited to the Security Industry Association for Security Guarding. The number of guards required for the Site is determined by the SRA undertaken by the *Contractor* and is subject to the acceptance of the *ODA's Delivery Partner - CLM*. The *Contractor* is responsible for meeting all costs associated with appointing adequate Site asset protection.

No animals are allowed on Site unless previously approved in writing by the *ODA's Delivery Partner - CLM*.

#### **Access Control**

The *ODA's* baseline requirements for access control to the Site are proximity cards, readers and turnstiles/gates. The specific Orbit Access Control system is to be agreed between *ODA Security, AM* and *SRM*. Only reasonable specific requirements will be accepted by *SRM*.

#### **Asset Marking**

The *ODA* strongly recommends that the *Contractor* adopts ACPO endorsed asset marking schemes as appropriate.

#### **Communications**

The *ODA* has a centrally controlled security radio system for the Olympic Park security operations, details of which are available upon request from the *ODA Interface Manager*. The *Contractor* operates his own construction communication system for the Site which is capable of being connected to and integrated with the *ODA's* centrally controlled security radio system for the Olympic Park .

### **B225 Policies and Procedures**

#### **Compliance**

The *ODA* implements a robust programme of security review, audits and security penetration testing to ensure compliance with the standards and policies identified in this Section B200 of the Works Information. The *Contractor* co-operates fully with this compliance monitoring.

#### **Void Certification**

The *Contractor* certifies all sealed voids and cavities brought onto or fabricated on the Site as being "clear from prohibited items" through a process of self-certification throughout the manufacture, logistics and construction processes. Voids in Plant for incorporation into the *works* by the *Contractor*, subcontractor or supplier of any tier, are to be certified as clear.

All members of the *Contractor's* void certification team will all need Counter Terrorist Check (CTC) or Security Clearance (SC) the *ODA* administers and is responsible for carrying out such checks and for meeting all his properly and necessarily incurred fees and costs in carrying out such checks (excluding any

associated costs of the *Contractor*, the relevant subcontractor and the relevant person).

The *Contractor* implements the ODA's void certification policy and utilises the *Project Manager's* procedure for managing the certification of voids.

The *Contractor's* self-certification is assured via an appropriate quality procedure and is subject to inspection by the ODA's *Delivery Partner - CLM*.

### **Risk and Incident Reporting**

All security incidents or breaches of security as defined in the Security Operational Processes document are reported by the *Contractor* immediately to the ODA *Interface Manager*..

The *Contractor* establishes a Risk and Incident reporting scheme for review by the ODA's *Interface Manager* that is consistent with the reporting requirements as defined in the Security Operational Processes document.

A copy of the Security Operational Processes document is available upon request from the ODA's *Interface Manager* .

### **Security Method Statements**

The *Contractor* submits security method statements to the ODA's *Delivery Partner - CLM* detailing how the *Contractor* implements security practices in respect of the Site to comply with his obligations as set out in this section B200 of the Works Information. Such method statements are subject to the ODA's *Delivery Partner - CLM's* acceptance prior to the implementation of any such practices.

### **Security of Information**

The *Contractor* complies the ODA's Information Security Policy and Data Protection Policy (a copy of which is set out as an Appendix 26 to this Works Information).

**PART FOUR  
GENERAL INFORMATION**

**WORKS INFORMATION - GENERAL PROCEDURES AND  
PROCESSES**



## B1000 MANAGEMENT OF THE WORKS

**B1001 Introduction** This Section covers matters in relation to the management of the *works* not already covered in Sections A200 and B100 of the Works Information

The *Contractor*:

- co-ordinates,
- supervises and administers the *works*, including all sub-contracts,
- arranges and monitors a programme with each Subcontractor and supplier, and
- obtains and supplies information as necessary for co-ordination of the *works*.

The *Contractor* coordinates the *works* with other Olympic Park contractors.

### **B1002 Contractor's Management of the Works**

The *Contractor* cooperates with and supports the ODA in the fulfilment of the ODA's aims and obligations as set out in the Olympic Park Code of Construction Practice (see Appendix 24A). In addition, the *Contractor* complies with all the obligations set out in the Olympic Park Code of Construction Practice identified as being the *Contractor's* responsibility on the table in Appendix 24B. The Olympic Park Code of Construction Practice covers the following areas:

- General Site Operations – Working Hours, Layout and Site Appearance
- Public Access and Transport Management
- Noise and Vibration
- Air Quality
- Contaminated Land
- Waste Management
- Protection of Surface and Groundwater Resources
- Ecology
- Archaeology and Heritage
- Pollution Incident Control

The *Contractor* is responsible for the co-ordination, supervision and administration of the *works* including managing and co-ordinating the interfaces between all Subcontractors as may be necessary. The *Contractor* arranges and monitors a programme with each Subcontractor, supplier, local authority and statutory authority as may be required and obtain and supply information as necessary for co-ordination of the *works*.

The *Contractor* ensures that all Subcontractors undertaking elements of the *works* or parts thereof (including, without limitation, the *Contractor's* design) are provided with copies of all relevant documentation including drawings and instructions issued by the ODA's *Delivery Partner – CLM* which relate to or affect the respective Subcontractors work.

The *Contractor* co-ordinates the *works* of any two or more Subcontractors in connection with the *Contractor's* design with particular regard to the sequence and setting out of such work and any conflicts which may arise as a consequence of the detailed interpretation of drawings by operatives on Site.

To the extent that the *Contractor* is responsible for the design of the *works*, the *Contractor* supervises each element of the *Contractor's* design, to ensure that the design is being provided in a proper and timeous manner consistent with the Accepted Programme and thereafter to ensure that the work comprised in each

element is being installed into the *works* in accordance with the design. The *Contractor* allows for the employment of such suitably qualified and experienced staff as may be required to provide such supervision.

**B1007 Vibration**

In the event of any *works* causing or likely to cause vibration to the existing structure, then those work activities will need to be pre-planned and carried out in agreement with the *ODA's Delivery Partner - CLM*. If any cessation of activities is required due to excessive vibration or noise inclusive, then the *Contractor* stops work immediately and re-plans his work in agreement with the *ODA's Delivery Partner - CLM*, such agreement shall not be unreasonably withheld.

If access is required to any areas of an existing building in use outside the Working Areas or Site, the *works* are carried out in a manner and at times agreed with the *ODA's Delivery Partner - CLM*. The *Contractor* gives 7 days notice to the *ODA's Delivery Partner - CLM* of the commencement of such *works*. All such *works* are temporarily screened off during their execution.

**B1009 Dust**

The *Contractor* is responsible for all necessary temporary measures, such as dustproof screening, sealing doors and windows and temporary ventilation system as appropriate in order to prevent dust from migrating from the Site and prevent dust arising from the *works* from getting into adjacent areas.

The location and siting of any fume emitting devices adjacent to fresh air inlets or ventilation plant is not permitted. The *Contractor* removes on a regular basis accumulated dust and debris within the Site caused by the carrying out of the *works*.

**B1010 Asbestos Based Material**

The *Contractor* reports immediately to the *ODA's Delivery Partner - CLM* any suspected asbestos based materials discovered during demolition/excavation *works*. The *Contractor* avoids where possible disturbing such materials and agrees with the *ODA's Delivery Partner - CLM* methods for taking a sample for analysis and the measures required for safe removal.

**B1011 Nuisance**

The *Contractor* prevents nuisance from smoke, dust, rubbish, vermin and other causes.

**B1012 Fire**

The *Contractor* prevents personal injury, death, and damage to the *works* or other property from fire and conducts fire drills as requested by the *ODA's Delivery Partner - CLM*. The *Contractor* complies with the 'Joint Code of Practice on the Protection from Fire of Construction Sites and Buildings Undergoing Renovation', known as the Joint Fire Code, published by the Construction Confederation and the Fire Protection Association that is current at any particular time. The *Contractor* also complies with any guidance issued by the insurers of the *works*, Site or adjoining properties.

The *Contractor* complies with any existing fire management system save that local arrangements may be entered into by the *Contractor* subject to agreement by the local fire brigade.

The *Contractor* puts in place and complies with a fire management system which shall be no less onerous than the requirements set out in the Joint Fire Code and integrating with the Olympic Park fire safety plan as applicable.

The *Contractor* is responsible for fire management and health and safety control on the Site during the construction of the *works*.

The *Contractor* ensures that in the carrying out of the *works*, fire engine access routes and fire exit routes to all structures are kept unrestricted, clean and clear at all times. The *Contractor* liaises with the Fire Officer to ascertain the extent of any such requirements.

The *Contractor* ensures that in carrying out the *works*, access to fire hydrants is maintained at all times.

The *Contractor* participates in detailed discussions with the fire brigade and Fire

Officers to ensure that interim arrangements for such access are maintained during the construction phase. The *Contractor* copies the minutes of any such meetings to the *ODA's Interface Manager*.

**B1013 Smoking**

Smoking is not permitted on the Site or within the Olympic Park except in designated areas that are managed to minimise any fire risk, and avoid discomfort or health risk to non smokers. The *Contractor* controls these areas and carries out regular inspections to guard against the risk of fire.

**B1014 Explosives**

The use of explosives is not permitted.

**B1015 Surface, Storm and Foul Water**

The *Contractor* prevents unlicensed discharge into and damage of storm, surface and foul water sewers and prevents the occurrence of pollution.

The *Contractor* considers outlets under the following categories (in order of increasing magnitude of cost).

- Ground;
- River;
- Sewer;
- Site provided drainage system;
- Tanker to landfill.

Based on the water management practices employed by the *Contractor* different charges will be associated with each of the above categories (tanker to landfill being the most expensive). The *Contractor* is made aware that each category will have a volume threshold.

**B1016 Waste / Rubbish Recycling**

In order to comply with his obligations under the Olympic Park Construction Code of Practice the *ODA* has put in place an Olympic Park waste management facility. The *Contractor*:

- Not used
- removes and segregates all rubbish, debris, surplus material and spoil on a daily basis to the Site waste segregation facility to keep and maintain the Site and the *works* in a clean and tidy condition.
- removes and segregates all rubbish, dirt and residues from voids and cavities in the *works* before closing up and sealing.
- instigates waste recycling on Site for the segregation of waste.
- retains waste transfer documentation on Site for inspection.
- Not used.

Whilst *ODA* provide site wide services for contractors operating on the park the *Contractor* will be permitted to make use of those services. *ODA* will notify the *Contractor* in advance of changes or cessation of services. The *Contractor* to note that from 1<sup>st</sup> January 2012 *LOCOG* will be the park-wide operator.

The *Contractor* is responsible for ensuring that the appointed Waste Management Contractor has all of the necessary regulatory requirements in place.

**B1017 Waste Materials**

The *Contractor* is deemed to be the producer of any waste material arising from the *works* and therefore complies with all relevant legislation.

Prior to any disposal of waste materials off Site, the *Contractor* provides the *Project Manager* with the following information:

- A copy of the carrier's, Certificate of Registration under the Control of Pollution (Amendment) Act 1989;

- The management/disposal facility's Licence Number under Section 35 of the Environmental Protection Act 1990 or section 5 of the Control of Pollution Act 1974, and the name and address of the Licensing Authority;
- In the case of Controlled Waste, a copy of the Transfer Note under Section 34 of the Environmental Protection Act 1990 and Section 2 of the Environmental Protection (Duty of Care) Regulations 1991; and
- In the case of Special Hazardous Waste, a copy of the Consignment Note under The Special Waste Regulations 1996.

**B1018 Permit to Work**

The *Contractor* implements a Permit to Work system, which incorporates the Permit to Proceed system referred to in paragraph S215 of the Site Information and as set out in Appendix 34, for all the following activities:

- Excavations and piling works;
- Work on all live services, including drainage;
- Work on existing fire alarm, security and data installations;
- Work on existing electrical installations;
- Connections to existing services;
- Isolations of existing services;
- Hot work;
- Work of any nature which is likely to cause vibration within the areas surrounding the Working Areas, including those areas above and below the Working Areas, particularly those relating to the use of Mechanical breakers;
- Noisy work or work likely to cause disturbance to users of the remainder of the building;
- Work which may affect the use of the access roads;
- All deliveries/removal of materials which may affect the use of access roads/routes.

The Permit to Work system is operated in respect of any works carried out on existing services (located inside and outside the Site) and other work forming part of the works carried out by or on behalf of the *Contractor* outside the Site.

The ODA's *Delivery Partner - CLM* operates a Site Wide Permit to Work system. Written requests for Permits to Work are submitted by the *Contractor* to the ODA's *Interface Manager* at least ten (10) working days prior to the commencement of the works identified above.

Any delays, obstructions or additional costs incurred by the *Contractor* as a result of compliance with the Site Wide Permit to Work System does not constitute a compensation event or otherwise nor entitle the *Contractor* to a change to the Completion Date or a Key Date.

**B1019 Burning on Site**

The *Contractor* is not permitted to burn any material on Site.

**B1020 Crane Co-Ordination/ Crane Lifting Supervisors**

The *Contractor* complies with the requirements of the 'Lifting Operations and Lifting Equipment Regulations 1998', i.e. LOLER and 'Part 1 of BS7121 Safe Use of Cranes', i.e. BS7121 in respect of the provision of cranes and the safe control of crane lifting operations.

The overall control of crane operations requires the appointment of the following roles:

- Crane Co-ordinator;
- Crane Appointed Person;
- Crane Lifting Supervisor;
- Slingsers/Signallers

<b>B1021 Crane Co-ordinator</b>	The <i>Contractor</i> appoints the 'Crane Co-ordinator' who takes responsibility for the overall control of Site crane lifting operations and the overall logistics associated with Site craneage.
<b>B1022 Crane Appointed Person</b>	The <i>Contractor</i> appoints the 'Crane Appointed Person' who has responsibility for the planning and control of the <i>Contractor's</i> crane provision and/or lifting operations on the Site. The 'Crane Appointed Person' co-ordinates and co-operates with the Project 'Crane Co-ordinator'. Co-ordination is principally via attendance at the weekly crane co-ordination meeting. The 'Crane Appointed Person' complies with reasonable advice and instruction given by the Project 'Crane Co-ordinator'.
<b>B1023 Crane Lifting Supervisor</b>	The <i>Contractor</i> appoints the 'Crane Lifting Supervisor' to supervise the control for all crane lifting operations undertaken by the <i>Contractor</i> . The 'Crane Lifting Supervisor' complies with reasonable advice and instruction given by the 'Crane Co-ordinator'.
<b>B1024 Slingsers/Signallers</b>	The <i>Contractor</i> appoints sufficient numbers of 'Slingsers/Signallers' to provide the necessary duties of slinging and signalling in respect to their crane lifting operations. All Slingsers/Signallers are easily identifiable by wearing a suitably marked orange hi-viz vest which readily distinguishes them from other Site operatives.
<b>B1025 Lifting Plans</b>	<p>The <i>Contractor</i> and his Subcontractors when undertaking crane lifting operations must submit a 'Lifting Plan' (i.e. a Health &amp; Safety Method Statement) identifying their organisation and arrangements for the safe control of their lifting operations and identifying the responsible person.</p> <p>The <i>Contractor</i> ensures that all necessary lifting accessories (i.e. chains/strops/brothers and other similar equipment) are supplied, used, maintained and replaced as necessary for the entire duration of the <i>works</i> in accordance with LOLER.</p> <p>The <i>Contractor</i> is responsible for all temporary engineering <i>works</i> (e.g. crane bases, grillages, holding down bolts, mast ties, mobile crane outrigger placement and other similar equipment) design and verification associated with the provision and use of their crane(s).</p> <p>Verification of temporary engineering <i>works</i> requires a third party engineer (i.e. additional to the temporary engineering <i>works</i> design engineer) to verify the temporary works engineering design and engineering calculations and co-ordinate the design with both the designers of the <i>works</i> and with the CDM Co-ordinator</p> <p>The <i>Contractor</i> is responsible for ensuring the co-ordination and safety of any lifting operations using their craneage which, with their permission, are undertaken by/or on behalf of any other contractor or person.</p> <p>The <i>Contractor</i> gives four weeks notice to the <i>ODA's Interface Manager</i> of his intention to bring any crane on Site and includes all relevant details including dates and times.</p> <p>The <i>Contractor</i> is responsible for applying for all road closures, obtaining all necessary licences and adhering to all relevant statutory requirements.</p>
<b>B1030 Protection of Surface and Groundwater Resources</b>	The <i>Contractor</i> adopts and implements working methods to protect surface and ground water from pollution and adverse impacts including change to flow volume, water levels and quality.

Site drainage, including surface runoff and dewatering effluents, is discharged to sewer or watercourse via the manifold system provided by the ODA. Discharges are not permitted to sewer or watercourse for construction runoff or dewatering effluent employing any other method. The *Contractor* obtains the relevant permissions from the statutory undertaker as agreed with ODA's *Delivery Partner - CLM*. Discharge to watercourses is only be permitted where discharge consent or other relevant approval has been obtained.

Site drainage meets the effluent standards required by the statutory undertaker or Environment Agency as appropriate. The *Contractor* provides and maintains sufficient treatment and any other measures as required to achieve these standards. The *Contractor* provides unrestricted access to the statutory undertaker, the ODA and *Employer*.

The relevant sections of BS6031: Code of Practice for Earthworks for the general control of site drainage and CIRIA Reports C532, C648 and C649 are followed.

The *Contractor* obtains approval from the Environment Agency and British Waterways Board for plans of work that affect any surface or groundwater resource.

The *Contractor* adopts the good working practices detailed in the Environment Agency's Pollution Prevention Guidelines. Storage, handling, use, and disposal of any potentially hazardous materials is in accordance with the relevant statutory provisions and Health and Safety Executive (HSE) Codes of Practice and Guidance notes.

The *Contractor* produces a spill response procedure for works being undertaken, and provides spill kits positioned in identified vulnerable areas. Briefings and toolbox talks on the procedures are given to site personnel to raise awareness.

**B1031  
Construction  
Transport  
Management Plan**

The *Contractor*:

- complies with the ODA's Construction Transport Management Plan for the Olympic Park primary routes and common areas;
- designs and arranges the layout of the Site to provide for segregation of pedestrians and mobile plant and vehicles, and
- produces procedures for reversing activities.

The *Contractor* produces a detailed construction traffic management plan in relation to the *works* when required by the ODA's *Delivery Partner - CLM* to accord with the Olympic Park Code of Construction Practice, the ODA's Logistics Centre requirement and the ODA's Delivery Management System as set out in paragraph B3025 and paragraph B3060 respectively of the Works Information.

The *Contractor's* construction traffic management strategy identifies:

- clear and designated traffic routes to/from the Site (with the agreement of Local Authorities Highways);
- numbers and types of construction vehicles;
- hours of delivery (inc large vehicles out of hours requirements);
- delivery booking regime (no waiting on surrounding roads);
- holding and call up area.

The *Contractor* submits proposals for making deliveries via alternative means such as by river and rail. Such proposals are submitted to the ODA's *Delivery Partner - CLM* for acceptance before implementation. The *Contractor* updates

these documents during the course of the *works*.

#### **B1032 Transport by Road**

The *Contractor* uses the ODA's Delivery Management System (DMS) to make booking requests to deliver all materials, equipment and plant to the Olympic Park (Refer also to paragraphs B1035 and B3060 of the Works Information). The *Contractor* employs a delivery co-ordinator for the *works* to agree the timings of all deliveries by suppliers to the Site with the ODA's *Delivery Partner - CLM*. Once a suitable delivery time is agreed, the *Contractor's* supplier dispatches his delivery to meet that delivery time.

The *Contractor* routes all road deliveries to the Site via an off site logistics centre(s), where delivery vehicles are checked by the ODA's *Delivery Partner - CLM* against the agreed DMS booking schedule and other requirements, marshalled and security checks are undertaken prior to being despatched to the Site. The ODA / ODA's *Delivery Partner - CLM* reserves the right to change pre-agreed delivery bookings if necessary at any time. The location(s) of the off-site logistics centre(s) are situated adjacent to the main transport networks approaching the Olympic Park.

The primary access point for road deliveries to the Olympic Park is the north entrance to the Olympic Park, directly off the A12. The principle routes to the Olympic Park are as follows.

- From the south-east of England, vehicles use either the A2 or the M20 to approach the M25, and then travel anti-clockwise around the M25 before turning south-west onto the A13, then anti-clockwise on the A406 and finally approaching the Olympic Park via the A12;
- For construction deliveries accessing the Olympic Park from south Essex, the route used is via the A13, then anti-clockwise on the A406 and finally approaching the Olympic Park via the A12;
- Construction traffic from the east on the A12 is routed either clockwise or anticlockwise on the M25 and then via the A13 approach or M11 approach to the Olympic Park respectively;
- Construction traffic from the north of England, the north-west and the west of England approaches the Olympic Park clock-wise on the M25, the M11 and the A12.

The ODA reserves the right to change the prescribed routes to the Olympic Park at any time to meet the requirements of prevailing traffic conditions and road works.

All construction traffic complies with the ODA's requirements for security and marshalling.

#### **B1035 Delivery Management**

The *Contractor* develops and implements a delivery management strategy and plan to co-ordinate the delivery of the *Contractor's* suppliers' materials, equipment and plant to Site using the ODA's DMS set out in paragraph B3060 of the Works Information.

The *Contractor's* delivery management strategy demonstrates how they plan to achieve 50% of all deliveries by weight by sustainable means and how he monitors progress against this aspiration. In addition the *Contractor's* delivery management strategy includes a forecast of deliveries to the Site profiled over time. The *Contractor* monitors progress against this delivery profile, updates his forecasts at regular intervals and provides the ODA's *Delivery Partner - CLM* and ODA with the updated information.

As part of the *Contractor's* delivery management strategy, the *Contractor* provides the ODA's *Delivery Partner - CLM* with 12 weekly look-ahead delivery schedules followed by weekly delivery plans.

The *Contractor* uses the DMS provided by the ODA to make booking requests to deliver all materials, equipment and plant to the Site. The *Contractor* employs

a delivery co-ordinator for the works to agree the timings of all deliveries by suppliers to the Site with the ODA's Delivery Partner - CLM. Once a suitable delivery time is agreed, the Contractor's supplier dispatches his delivery to meet that delivery time.

The Contractor is responsible for the necessary loading/unloading and transportation from their supply chains to the final point of use on the Site, including obtaining any necessary consents and permissions for their deliveries and administering the booking of deliveries to the Site. The ODA is responsible for the provision and overall administration of the DMS, including a vehicle tracking system to monitor the movements of delivery vehicles in and out of the Olympic Park, as well as the provision of off-site logistics centre(s) and any marshalling, checking and security therein.

The Contractor co-ordinates and attends all necessary meetings to ensure integration of the works with all other contractors within the Olympic Park. In addition the Contractor liaises with adjacent contractors to ensure coordination.

Whilst ODA provide site wide services for contractors operating on the park the Contractor will be permitted to make use of those services. ODA will notify the Contractor in advance of changes or cessation of services. The Contractor to note that from 1<sup>st</sup> January 2012 LOCOG will be the park-wide operator.

**B1037 The Contractor's Key People**

Not used

**B1038 Sign Board**

The Contractor is responsible for installing sign boards for the Site.

**B1045 Schedules of Condition prior to Works by others**

Where Others require access to finished areas or make use of access ways prior to the Completion Date the Contractor is responsible for agreeing schedules of conditions with the Supervisor. In the absence of such schedules there shall be no adjustment to the total of the Prices for making good damage.

**B1047 Protection of Existing Services and Mains**

The Contractor takes particular care to avoid damage to existing services, electricity mains and all supports, wrapping, lagging or similar. Any damage to the mains or services are notified immediately to the ODA Interface Manager and made good at the Contractor's expense. The ODA Interface Manager makes such arrangements, as in his opinion are necessary, whether by the employment of the Contractor or otherwise to effect the repair of services. The Contractor does not cut, isolate or otherwise interrupt any existing services that are to be maintained without prior notification to and acceptance of the ODA Interface Manager

**B1048 Protection of the Works**

The Contractor is responsible for adequately protecting the works up to Practical Completion against the following:

- Damage arising from weather conditions;
- Construction operations;
- Warping, distortion, humidity or other environmental conditions, which would have an adverse effect upon the works;
- Others.

**B1049 Cleanliness of Highways**

The Contractor is responsible for maintaining the cleanliness of all highways within the Site and at the access(es) to the Site throughout the duration of the Contract.

The ODA is responsible for maintaining the cleanliness of all highways outside the Site but within the Olympic Park. Any contamination of surrounding highways by traffic from the Site is removed immediately at the Contractor's expense. Refer to paragraph B3070 of the Works Information.

The Contractor provides and utilises wheel cleaning equipment at the Site



entrance/exit(s) and maintains them in working condition throughout the construction period.

**B1050 Condition Survey and Access to the Site**

On receiving access to the Site the *Contractor* provides a schedule of condition including photographic records for all areas of the Site and adjoining boundaries relating to the *works* for acceptance by the *ODA Interface Manager* and any relevant parties. The schedule of condition forms part of the Site Information identified in the Contract Data.

The *Contractor* does not commence work until the schedule of condition is accepted by the *ODA Interface Manager*.

**B1051 Use of the Site**

The *Contractor* does not use any portion of the Site for any purpose other than that connected with the *works*.

**B1052 Good Neighbour Policy**

In addition to holding an accreditation under the Considerate Constructors Scheme, the *Contractor* develops and implements a 'Good Neighbour Construction Charter' for the Project.

The *Contractor* pays all Fees and charges in connection with the 'Considerate Constructors Scheme'.

The *Contractor* is required to operate a 'good neighbour' policy and with particular regard to noisy operations, take into account the interests of adjacent and nearby building users.

The *Contractor* takes all reasonable precautions whilst Providing the Works to prevent or reduce nuisance or inconvenience caused by noise to occupiers of adjacent properties and to the general public including ensuring all non-essential mobile phone and radio usage on Site is prohibited.

The *Contractor* is responsible for co-ordinating and maintaining local resident and occupant liaison when Providing the Works with the aim of promoting and maintaining excellent relationships with adjacent facility users, local residents and the general public.

**Local Community Liaison**

The *Contractor* establishes procedures and implements methods of working in accordance with the Olympic Park Code of Construction Practice. This includes:

- Being considerate to the needs of all those who are affected by the construction process and of his impact on the environment. Special attention to be given to the needs of those with sight, hearing or mobility difficulties;
- Keeping the Site clean and in good order and ensure that the surrounding area is kept free from mud, spillage and any unnecessary construction debris;
- Being a good neighbour by undertaking full and regular consultation with neighbours regarding Site activity from pre-start to final handover. Provide site information and viewing facilities where practical;
- Being safe. All construction operations and vehicle operations and vehicle movements to be carried out with care for the safety of passers-by, neighbours and Site personnel;
- Being accountable to the public by providing Site contact details and be available to deal with their concerns and develop good local relations;

**B1053 Conduct**

The *Contractor* ensures that all of his staff, employees and workers and those of his subcontractors dress and conduct themselves appropriately. In particular the *Contractor* ensures those for whom he or his subcontractor's are responsible do not make remarks, noises, gestures, movements or other similar acts that could be considered to be racially, sexually or religiously offensive.

The *ODA Interface Manager* reserves the right to ask the *Contractor* to remove any person/s found to be in breach of this requirement.

**B1057  
Subcontractor Co-  
ordination  
Meetings**

The *Contractor* chairs and minutes Subcontractor co-ordination meetings as required with each, or combinations, of the Subcontractors to review issues such as progress, quality, interfaces and co-ordination between Subcontractors. It may be necessary for other members of the Project Team to attend and the *Contractor* arranges this as and when required. The *Contractor* informs the *Project Manager* of all scheduled meetings. Representatives of the *Project Manager* may attend.

**B1058 Method  
Statements**

The *Contractor* issues all method statements to the *ODA Interface Manager* for information and includes:

- Outline method statement (see paragraph B1059 of the Works Information); and

Detailed method statements (see paragraph B1060 of the Works Information).

## **B1200 DOCUMENT MANAGEMENT**

**B1202 Design Systems and Tools**      ▪ Not used

The Contractor 's document control system is 4 Projects. The Contractor will provide 4 Projects training to the ODA's Interface manager and allow access to the system.

# **B1900 RISK MANAGEMENT**

## **B1905 Risk Management**

- Not used

## **B2600 PUBLIC RELATIONS AND MEDIA\***

\*(The content of this section to be superseded by a forthcoming agreement relating the communications mechanisms that will be used on the Orbit project through agreement between ODA, GLA and ArcelorMittal)

### **B2605 Public Relations & Media Protocols for Contractor's Working on the London 2012 Games**

Communicating information regarding activity on the Olympic Programme is a vital part of the London 2012 Programme and contractors have a key role to play in keeping the ODA informed and facilitating their communication with audiences including local people, stakeholders, the media and members of the public.

The ODA is responsible for the delivery of the venues and infrastructure for the London 2012 Programme (excluding the Orbit Project). The ODA sets out the policies and procedures the *Contractor* complies with. These procedures cover media relations, community relations, marketing, site branding, filming and stakeholder engagement which also covers the Orbit Project.

The ODA is responsible for implementing these policies and procedures;

The ODA's Director of Communications is responsible for external and internal communications in relation to the delivery of the London 2012 Programme. His responsibility is delegated as follows to:

1. the ODA's Head of Media for all contact with the media and site communications related to media issues, including the management of media events on site, responding to media enquiries and to planning communications in advance;
2. the ODA's Head of External Relations for all contact with all external stakeholders at a local, regional and national level and site communications, related to any issues that may have an impact on any of these groups, particularly local residents, together with the collection and internal distribution of this information;
3. the ODA's Marketing Manager for all issues to do with marketing and branding, both on site and at a corporate level;
4. the ODA's Filming Manager for all filming and photography of the site and, on site communications, liaison with contractors to ensure smooth access.

The ODA's Head of Media, Head of External Relations and Marketing Manager comprise the ODA's Communications Team.

The ODA's *Interface Manager* issues to the *Contractor* the names, addresses and telephone numbers of the members of the ODA's Communications Team.

The *Contractor* works with the ODA's *Interface Manager*, the ODA's Head of Media and the ODA's Head of External Relations to coordinate day to day communication on behalf of the ODA and the *Employer* (*Arcelor Mittal*).

All telephone calls, letters and emails from any stakeholder groups, including local authorities, community and residents groups, received by the *Contractor* are immediately referred to the appropriate member of the ODA's Communication Team and concurrently the ODA Interface Manager.

Any media enquiries received by the *Contractor* are immediately referred to the ODA's Head of Media and concurrently the ODA Interface Manager.

Any marketing issues relating to the *works* are referred to the ODA's Marketing Manager and the Employer Ancelor Mittal.

**B2610  
Appointment of a  
Communications  
Representative  
and Their  
Nominated  
Representative(s)**

In Providing the Works and to facilitate effective communications, the *Contractor* provides a Communications Representative to act for themselves and their respective Subcontractors. The Communications Representative is to be in post before the commencement of any *works*. It is not the ODA's intention to stipulate the number of persons (part or whole) that are required to fulfil this role. Availability of the Communications Representative on a 24/7 basis is essential to ensure effective communication particularly during emergencies.

The ODA provides an induction for the Communication Representative with his Communication Team.

**Informing the *Employer's* Communications Team of significant phases and parcels of work**

To ensure timely communication, the *Contractor*, through his Communications Representative, informs the ODA Communications Team at least 28 days before the commencement of any of the main land preparation and construction activities on site. This information includes details such as the scale, nature and precise location(s) of the work, the anticipated duration and staffing levels and any likely impacts that may affect the local area and local communities including for example activity that they can see or hear.

The *Contractor* through, his Communications Representative informs the ODA's Communications Team at least 28 days in advance of all of the details of any new parcel of work within their wider programme that is likely to have an impact which may cause disturbance to the local community, for example piling or other potentially noisy activity.

In both cases this is done by filling out the simple Contractor's Notification of Works form and returning it to the ODA's Communications team.

**Not used**

**2. Weekly planning meeting for Communications Representatives**

The ODA's invites the *Contractor's* Communication Representative to a regular planning meeting to discuss the programme of works identifying communication issues and opportunities

**4. Supporting the *Employer's* stakeholder and public enquiries functions**

The ODA's provides a 24/7 Construction Hotline which receives enquiries and complaints by telephone, letter and email.

The *Contractor* supports the ODA in responding to the public enquires and complaints and responding to requests for information from the ODA's Head of External Relations within 24 hours.

The ODA's Head of External Relations informs the *Contractor* and the ODA's Interface *Manager* when the requests for information are particularly urgent. The *Contractor* responds to urgent enquiries within two hours.

The *Contractor* is represented at stakeholder and community meetings where appropriate, including potentially as a speaker.

The *Contractor*, through his Communication Representative where appropriate and in close liaison with the ODA's Head of External Relations and the Interface

*Manager*, follows through a complaint or enquiry referred to him to resolve and initiates any necessary enforcement or corrective action. The *Contractor* advises the ODA's Head of External Relations and the ODA's Interface *Manager* of the outcome of action taken.

#### **5. Helping arrange and support visits and filming on site**

The *Contractor* facilitates access for visitors to the Site, as instructed by the ODA's Interface *Manager*. The *Contractor* ensures the Site is prepared and safe for visits; and provides a guide if instructed to do so.

Requests for visits or access to the Site received by the *Contractor*, are passed immediately to the appropriate member of the ODA's Communications Team,

Requests to the *Contractor* to film or take photographs on the Site are directed immediately to the ODA's Head of Media. The *Contractor* does not allow filming or photographic access to the Site without the specific agreement of the ODA's Head of Media and Employer (Arcelor Mittal.)

#### **6. Photographic record of work**

The *Contractor* provides access for the ODA's Filming Manager and filming agencies. The ODA's filming agencies will be filming on the Site every week ( subject to agreement of the Employer Arcelor Mittal.)

#### **7. Lines of communication**

The *Contractor's* Communications Representative helps facilitate occasional direct communication between the ODA's Communications Team and other members of the *Contractor's* team.

#### **B2615 Selection of a Communications Representative**

No less than four weeks prior to the starting date, the *Contractor* provides to the ODA's Interface *Manager* :

1. The name(s) and CV(s) of the proposed Communications Representative(s); and
2. The site location, telephone numbers (landline and mobile), and email addresses for the proposed Communications Representative(s) for use both during and outside normal working hours.

This is an important role and the Communications Representative must have sufficient authority to determine and initiate action on the Site should this be necessary. The Communications Representative must have knowledge of the works and be able to deal with public complaints in a sensitive manner.

The ODA's issues the Communications Representative with a Contractor Works Brief template, and with its 'No Marketing Rights Protocol for Suppliers, Consultants and *Contractors*, which governs the use of the London 2012 brand.

#### **B2645 Media and Marketing Guidelines**

The *Contractor* does not deal directly with the media without the specific agreement of the ODA's Head of Media

The *Contractor* assists the ODA's Communications Team to implement Olympic Programme wide marketing activity.

Approval for branding on Site can only be authorised by the ODA's Marketing Manager.

**EXECUTION PAGE**

Executed as a deed by the **OLYMPIC** )  
**DELIVERY AUTHORITY** by affixing its )  
common seal in the presence of: )

Director

Director/Secretary

Executed as a deed by **ARCELORMITTAL** )  
**ORBIT LIMITED** acting by: )

Director

Director/Secretary

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ELVINGER, HOSS & PRUSSEN  
AVOCATS A LA COUR

Olympic Park Legacy Company Limited  
29-35 West Ham Lane, Stratford  
London E15 4PH  
United Kingdom

Luxembourg, [●] September 2010

O/Ref. : PH /ADA  
Re : ArcelorMittal S.A. - Guarantee

Ladies and Gentlemen,

(1) We have acted as Luxembourg counsel to ArcelorMittal S.A. ("AM"), a *société anonyme* incorporated under the laws of Luxembourg, having its registered office at 19, avenue de la Liberté, L-1931 Luxembourg, registered with the *Registre de Commerce et des Sociétés* of Luxembourg (the "RCS") under number B 82.454 as to matters of Luxembourg corporate law in connection with (i) a guarantee dated [●] September 2010 among AM as Guarantor and Olympic Delivery Authority and Olympic Park Legacy Company Limited (the "Guarantee"), pursuant to which AM agreed to guarantee as primary obligor the obligations of ArcelorMittal Orbit Limited ("Orbit") under a construction licence dated [●] September 2010 among Olympic Delivery Authority and Orbit (the "Licence"), (ii) an agreement related to the Orbit at Olympic Park, Stratford, London, dated [●] September 2010 among Olympic Park Legacy Company Limited, Orbit and AM as Guarantor (the "Orbit Agreement") and (iii) a back to back agreement dated [●] September 2010 among Olympic Park Legacy Company Limited, Olympic Delivery Authority, Orbit and AM as Guarantor related to the Orbit Section 106 Agreement between Olympic Delivery Authority and London Development Agency (the "Back to Back Agreement").

(2) For the purpose hereof we have examined the following documents :

- (i) an emailed scanned executed copy of the Guarantee;
- (ii) an emailed scanned executed copy of the Licence;
- (iii) an emailed scanned executed copy of the Orbit Agreement;
- (iv) an emailed scanned executed copy of the Back to Back Agreement;

- (v) a copy of the updated articles of association of AM as of 15 July 2009 (the "Articles");
- (vi) a copy of an excerpt dated [●] September 2010 issued by the RCS with respect to AM (the "Excerpt");
- (vii) a copy of the list of authorised signatories of AM as deposited at the RCS as of 29 July 2010 (the "List");
- ~~(vii)~~(viii) an electronic *certificat de non-inscription d'une décision judiciaire* (certificate as to the non-inscription of a court decision) issued by the RCS dated [●] September 2010 (the "Certificate") certifying that as of [●] September 2010 no court decision as to *inter alia* the *faillite, concordat préventif de faillite, gestion contrôlée, sursis de paiement, liquidation judiciaire, liquidation volontaire* or foreign court decision as to *faillite, concordat* or other analogous procedures according to the Council Regulation (EC) n°1346/2000 of 29 May 2000 on insolvency proceedings ("Regulation 1346/2000") is filed with the RCS in respect of AM.

Words and expressions used herein shall have the meaning given herein when used in this opinion as defined terms.

The documents referred to under (i) to ~~(viii)~~(vii) are referred to as the "Documents" and the Documents referred to under (i) to (iv) are referred to as the "Agreements".

Except for the Documents, we have not, for the purposes of this opinion, examined any contracts, instruments or other documents even if referred to or annexed to as schedules or exhibits to the Documents entered into by, or affecting any of, the parties or any other corporate records, unless expressly listed hereabove. We have not made any other enquiries or searches (whether within this firm or otherwise), except as mentioned herein.

We have made an enquiry on the website of the Bar of Luxembourg (*Barreau de Luxembourg*) ([www.barreau.lu](http://www.barreau.lu)) on [●] September 2010 at [●] (CET) whether bankruptcy proceedings against AM have been filed with the court in Luxembourg. Our enquiry showed that no such procedure had been filed to that time or was currently pending before the court and this was confirmed by the delivery of the Certificates. We have made a company search on AM on the website of the RCS on [●] September 2010. It should be noted that such enquiries are not capable of revealing whether a writ has been served on AM but has not yet been enrolled with the court and thus we cannot opine as to whether a writ has been served on AM but has not yet been enrolled with the court. The file of the RCS as at the time of the search did not include a reference to a pending liquidation procedure in relation to AM. It should be noted that notice of a

winding-up order or a resolution passed may not be filed with the RCS immediately or may, even though filed, not be published on the website of the RCS immediately. Thus, we cannot opine as to whether any liquidation procedure has been initiated.

(3) The present opinion relates only to the laws of the Grand-Duchy of Luxembourg (“Luxembourg”) as the same are in force and are construed at the date hereof in prevailing published court cases and is given on the basis that it will be governed by, and construed in accordance with the laws of Luxembourg. References to any Luxembourg Authority are references to any governmental, official or judicial authority or body in Luxembourg and references to a Luxembourg Court are to any court having judicial authority in Luxembourg. We neither express nor imply any view or opinion on and/or in respect of the laws of any jurisdiction other than Luxembourg, and have made no investigation of any other law (including without limitation the laws or acts referred to in the Documents (other than as to the existence and capacity of AM, Luxembourg law)) which may be relevant to any of the documents submitted to us or the opinions herein contained.

(4) For the purpose of rendering this opinion, we have assumed:

- (a) The genuineness of all signatures, stamps and seals on all documents submitted to us as originals or otherwise, the completeness and conformity to originals thereof of all documents submitted to us as certified, scanned, faxed or e-mailed copies, the authenticity of the originals of such documents and the conformity to the executed originals of all documents examined by us in draft form only and the conformity of the originals to the last drafts reviewed by us;
- (b) Each of the respective parties to the Agreements (other than AM), is duly organised and validly existing under the laws of the jurisdiction of its organisation or incorporation and has full power, authority and legal right to enter into, deliver and perform the Agreements;
- (c) The Agreements have been duly authorised, executed and delivered by each of the parties thereto (other than AM), and that the performance thereof is within the capacity of such parties (other than AM);
- (d) The Agreements constitute legal, valid, binding and enforceable obligations of the parties thereto under the law to which the Agreements are expressed to be subject and any other applicable law;
- (e) The absence of any other arrangements between any of the parties to the Agreements which modify or supersede any of the terms of the Agreements and that the Agreements represent and contain the entirety of the transactions entered into by the parties to the Agreements in or in connection with the transactions contemplated thereby;

- (f) All consents and authorisations required under the laws or regulations of any jurisdiction (other than Luxembourg) for or in connection with the entering into of the Agreements and the execution and enforcement of the obligations under the Agreements have been obtained and are in full force and effect;
- (g) All representations and warranties or covenants to the effectiveness of the Agreements have been satisfied and complied with by all parties save as specifically covered by the opinions given herein;
- (h) The entering into the Agreements is in the best corporate interest of each of the parties thereto and that the transaction is entered into by all parties with a valid *rationale* and without the intention to defraud any creditors or third parties and does not constitute a misappropriation of corporate assets;
- (i) No foreign law adversely affects the opinions set out herein;
- (j) None of the parties to the Agreements (other than AM, for the purposes of opinion (5) (b)) has passed a voluntary winding-up resolution, that no petition has been presented or order made by a court or any other competent authority for the winding-up, dissolution, administration, bankruptcy or for the submission of any such person to the procedures of bankruptcy (where relevant), controlled management or receivership or any analogous proceedings and no analogous proceedings under the law of its place of establishment or incorporation or centre of main interest, as the case may be, or where it carries on its business, have been taken in relation to it and no receiver, manager, trustee or similar officer has been appointed in relation to it or any of its respective assets or revenues;
- (k) All conditions precedent to the effectiveness of each of the Documents have been satisfied and that each of the Agreements is in full force and effect;
- (l) There have been no amendments to the Documents since our receipt of the form delivered to us for the purposes of this opinion;
- (m) No proceedings have been instituted or injunction granted against AM to restrain it from entering into the Guarantee, the Orbit Agreement and/or the Back to Back Agreement or performing any of its obligations thereunder;
- (n) The binding effect of the Agreements and/or other documents on the parties is not affected by duress, undue influence or mistake and the Agreements have not been entered into by any party in connection with money laundering or any other unlawful activity;
- (o) The terms used in the Documents (other than defined terms) carry the meaning ascribed to them in vernacular English;

- (p) The Articles have not been amended or rescinded and are in full force and effect;
- (q) The Excerpt ~~is~~ and the List are up to date, complete and correct;
- (r) The Certificate is true, accurate and up to date;
- (s) AM has its place of principal management and its centre of main interests in Luxembourg and has no establishment outside Luxembourg, in each case as such terms are defined in Regulation 1346/2000 or Luxembourg law, as applicable; and
- (t) The Guarantee, the Orbit Agreement and the Back to Back Agreement have been signed on behalf of AM by Mr Davinder Chugh and Mr Bikhram Agarwal.

(5) As Luxembourg counsel to AM we have been requested to give our legal opinion as to the capacity of AM to enter into the Guarantee, the Orbit Agreement and the Back to Back Agreement, and as to the other limited matters set out below. In such connection, and subject to the above as well as the reservations set out below, we are of the following opinion:

#### **Due incorporation**

- (a) AM is a *société anonyme* (public company limited by shares), validly (on the basis of the Excerpt) existing and duly incorporated and registered under the laws of Luxembourg.

#### **Non-bankruptcy**

- (b) Based solely on the Certificate but subject to the reservations in this respect contained in section (2) and section (6) (ii) of this opinion and with respect to Luxembourg, as of [●] September 2010, AM (i) is not subject to insolvency proceedings (*faillite*) nor (ii) controlled management (*gestion contrôlée*), nor (iii) has entered into a voluntary arrangement with its creditors (*concordat préventif de faillite*) and (iv) is not subject to a suspension of payments (*sursis de paiement*).

#### **Corporate Power**

- (c) AM has the corporate power to enter into and deliver the Guarantee, the Orbit Agreement and the Back to Back Agreement and to perform its obligations thereunder and is bound in respect of the

Guarantee, the Orbit Agreement and the Back to Back Agreement by the joint signature of Mr Davinder Chugh and Mr Bikham Agarwal.

- (d) The execution and delivery of the Guarantee, the Orbit Agreement and the Back to Back Agreement by AM and its performance of its obligations thereunder do not violate or conflict with any Luxembourg law, rules or regulation or the Articles.
- (e) Assuming the obligations under the Guarantee, the Orbit Agreement and the Back to Back Agreement to be assumed by AM are legal, valid and binding obligations of AM under English law, their obligations will be recognised by the Luxembourg Courts, to the extent they have jurisdiction, as legal, valid and binding obligations of AM, enforceable against AM in accordance with their terms.

**Due execution**

- (f) Each of the Agreements to which it is a party has been duly executed on behalf of AM.

**Enforcement**

- (g) The Guarantee, the Orbit Agreement and the Back to Back Agreement are in a proper form to be enforced under the laws of Luxembourg.
- (h) No stamp or registration or similar taxes or charges are payable in Luxembourg in respect of the execution, delivery or performance or to ensure the validity or enforceability of the Guarantee, the Orbit Agreement and the Back to Back Agreement, except in the circumstances set out under reservation (6) (iv) below or in the event of a voluntary registration of the Guarantee, the Orbit Agreement and/or the Back to Back Agreement with the Luxembourg registration tax authorities.
- (i) No recording, filing, registration, notice or other similar action is required in Luxembourg to ensure the legality, validity, binding effect, enforceability or admissibility in evidence of the Guarantee, the Orbit Agreement and/or the Back to Back Agreement except in the circumstances set out under reservation 6 (iv) below.

**No withholding**

- (j) AM is entitled to make all payments under the Guarantee, the Orbit Agreement and the Back to Back Agreement without any deduction or withholding in respect of any taxes in Luxembourg.

**Choice of law, jurisdiction**

- (k) The Luxembourg Courts will recognise and enforce the choice of English law as governing law for the Guarantee, the Orbit Agreement and the Back to Back Agreement in accordance with EU Regulation 593/2008.
- (l) The Luxembourg Courts will give effect to the submission by AM to the jurisdiction of the English courts in the Guarantee.
- (m) A judgement obtained in the English courts under the Guarantee would be enforced by the Luxembourg Courts without re-examination of the merits of the case subject to the provisions set out in EC Regulation No. 44/2001 inter alia on the enforcement of foreign judgements or obtained in any of the territories of the countries having ratified the European Convention of Brussels 1968 excluded from the scope of application of said EU Regulation or in any country which has ratified the Lugano Convention 1988, each as amended, on enforceability of foreign judgements in respect of a judgement by such a court.

**No immunity**

- (n) Neither AM nor any of its assets is entitled to any immunity from suit, execution, attachment or other legal process in Luxembourg in respect of any obligation under the Guarantee and/or the Orbit Agreement and/or the Back to Back Agreement.
- (6) The foregoing opinions are subject to the following reservations:
    - (i) The opinions expressed herein are subject to all limitations resulting from the laws of court controlled administration, liquidation, insolvency, reorganisation, suretyship or similar law of general application affecting creditors' rights;
    - (ii) Corporate documents (including, but not limited to, corporate resolutions, the notice of a winding-up order or resolution and/or the notice of the appointment of a receiver, manager, administrator or administrative receiver) may not be held at the RCS immediately and that there may be a delay in the relevant notice appearing on the file of AM;

- (iii) Powers of attorney or of representation or powers to act may not be held to be irrevocable, and in particular as a result of bankruptcy or similar collective insolvency proceedings or court ordered liquidation of AM or of court appointment of administrators or sequestrators, will be revoked as at zero hour on the day of the relevant court order although they were expressed to be irrevocable;
- (iv) Notwithstanding opinions (5) (h) and (i) above, if proceedings are brought in a Luxembourg Court in connection with the Agreements, the court could order that the Agreements be registered with the tax authorities. If the Luxembourg Court were to so order a registration, an *ad valorem* tax may be payable in the following circumstances:
  - a. If proceedings are taken against AM in a Luxembourg Court to enforce a claim thereunder either directly in such court or, on the basis of a foreign judgment, the claimant will have to register the Agreements and reference in the Agreements to other agreements may also require the registration of such other agreements, and an *ad valorem* registration tax may be payable by the claimant. In case of acknowledgement of debt contained in any document registered, the tax will be established on the basis of the value of the claim evidenced by the relevant agreement at a rate of 0.24%. No such tax will be payable if an enforcement is sought in respect of a judgement within the scope of application of EC Regulation No. 44/2001 inter alia on the enforcement of foreign judgments or obtained in any of the territories of the countries having ratified the European Convention of Brussels 1968 excluded from the scope of application of said EU Regulation or in any country which has ratified the Lugano Convention 1988, each as amended, on enforceability of foreign judgements.
  - b. Any amounts paid by the claimant to the Luxembourg tax authorities on the above basis by way of *ad valorem* tax are recoverable from AM, by operation of Luxembourg law in case of success of the proceedings initiated by the claimant.
  - c. It is however possible for the plaintiff to institute bankruptcy proceedings against AM, if other evidence could be produced to demonstrate that AM was bankrupt and had ceased payments without having made any claim, or sought any award in the Luxembourg courts against AM. Furthermore, the registration of a claim in a bankruptcy procedure in Luxembourg does not give rise to the payment of any *ad*



*valorem* tax as aforesaid, provided the claim is not contested by the bankruptcy liquidator. If however the liquidator does contest the claim and the plaintiff has to pay the necessary *ad valorem* taxes, the said taxes would, if the claim is successful, be recoverable by the plaintiff out of the liquidator's fund taking priority over unsecured creditors.

- (v) Certain obligations other than payment obligations may not be the subject of specific performance pursuant to Luxembourg Court orders, but may result only in damages;
- (vi) A Luxembourg Court may refuse to give effect to a purported contractual obligation to pay costs imposed upon another party in respect of the costs of any unsuccessful litigation brought against that party before a Luxembourg Court and a Luxembourg Court may not award by way of costs all of the expenditures incurred by a successful litigant in proceedings brought before a Luxembourg Court;
- (vii) Claims may become barred under statutory limitations period rules and be subject to the rules of set-off or counterclaim;
- (viii) Provisions in the Agreements providing that the terms thereof can only be amended or varied or provisions thereof can only be waived by an instrument in writing may not be effective. The consent of all parties to an agreement is required to make any amendment thereof enforceable against these parties;
- (ix) A contractual provision allowing for a deemed service of process or notification of court order may not be recognised by a Luxembourg Court;
- (x) Obligations of the parties to indemnify the other parties for criminal penalties or fines imposed on such parties may be considered invalid and unenforceable under Luxembourg law;
- (xi) Provisions having the effect of imposing and increasing any rate of interest or other amount which may be payable on default or breach may, to the extent a Luxembourg Court would consider such rate or amount excessive, be reduced by such court;

- (xii) Any clause purporting, in case of avoidance or annulment of one or more of the provisions or obligations contained in a document or agreement (the "Avoided Obligations"), to maintain the validity of such document or agreement or of the provisions or obligations contained therein other than the Avoided Obligations, may not be upheld by the Luxembourg Courts;
- (xiii) The Luxembourg Courts may require that any judgement obtained in foreign Courts and enforcement of which is being sought in Luxembourg and any documents tabled as evidence be translated into French or German;
- (xiv) Except for those matters specifically addressed in this opinion, we express no opinions to the accuracy of any representations and warranties in any of the Agreements made by or concerning AM or whether AM has complied with or will comply with any covenant or undertaking given by it therein;
- (xv) A Luxembourg Court may stay proceedings brought in such court if concurrent proceedings are brought elsewhere;
- (xvi) A Luxembourg Court may refuse to apply the law of another jurisdiction if it is deemed to be contrary to Luxembourg public order;
- (xvii) Where any obligations of any person are to be performed in a jurisdiction outside Luxembourg, such obligations may not be enforceable under Luxembourg law to the extent that performance thereof would be illegal or contrary to public policy under the laws of such jurisdiction, and any security expressed to secure the performance of such an obligation may therefore be considered unenforceable by a Luxembourg Court;
- (xviii) Enforcement of obligations may be invalidated by reason of fraud;
- (xix) Where any party to the Agreements to which AM is a party is vested with a discretion or may determine a matter in its opinion, Luxembourg law requires that contracts be performed in good faith and consequently that such discretion be exercised reasonably or that such opinion be based on reasonable grounds;
- (xx) Any provision in the Agreements providing that any calculation or certification is to be conclusive and binding will not be effective if such calculation or

certification is fraudulent or erroneous and will not necessarily prevent judicial enquiry into the merits of any claim by any party thereto;

- (xxi) Except as regards opinion (5) (h) and (j) above, we express no opinion as to taxation;
- (xxii) A Luxembourg Court may not give effect to a clause purporting to determine the date on which notice is deemed to have been made;
- (xxiii) The provisions according to which the determination by an expert will be binding on the parties is a valid provision, however the courts may not give effect to such determination if the expert has in its determination committed a gross error (*erreur grossière*).

(7) This opinion is given on the basis that there has been no amendment to or termination or replacement of the documents which we reviewed for the purpose hereof and on the basis of laws of Luxembourg in force and as construed and applied by Luxembourg Courts as at the date of this opinion. This opinion is also given on the basis that we undertake no responsibility to notify the addressee of this opinion (or any other person) of any change in the laws of Luxembourg or their construction, interpretation or application after the date of this opinion or any change of circumstances occurring after the date of this opinion affecting AM which may have any bearing on this opinion. The opinion is governed and construed in accordance with Luxembourg law and the Luxembourg Courts shall have exclusive jurisdiction thereon.

In this opinion Luxembourg legal concepts are translated in English terms and not in their original French terms used in Luxembourg laws. The concepts concerned may not be identical to the concepts described by the same English terms as they exist under the laws of other jurisdictions.

This opinion is limited to the matters herein contained and is for the benefit solely of the addressee set out above and may not be circulated to, or relied upon by, any one else and it may not be quoted or referred to any public document, or filed with any authority or other person without our prior written consent.

Yours faithfully,

Elvinger, Hoss & Prussen

By: \_\_\_\_\_



**DRAFT HEADS OF TERMS - REVENUE SHARING ARRANGEMENTS**

**27 September 2010**

- (1) **THE GREATER LONDON AUTHORITY** of City Hall, The Queen's Walk, More London, London SE1 2AA ("GLA");
- (2) **OLYMPIC PARK LEGACY COMPANY LIMITED** (Company Number 06900359) whose registered office is at 29-35 West Ham Lane, Stratford, London E15 4PH ("OPLC");
- (3) **ARCELORMITTAL ORBIT LIMITED** (Company Number 7208366) whose registered office is at 7<sup>th</sup> Floor, Berkeley Square House, Berkeley Square, London W1J 6DA ("ArcelorMittal"); and
- (4) [REDACTED] ("Artist") (together "the parties")

**Overview**

1. The design for a new permanent visitor attraction in the Olympic Park "the ArcelorMittal Orbit" ("the Orbit") was created by the Artist ("Design") and has been exclusively licensed to the GLA and will be constructed by ArcelorMittal.
2. The GLA is sublicensing the IP rights in the Orbit to LOCOG during the Olympic and Paralympic Games in 2012 ("Games") and to OPLC (50% of which is owned by the GLA) after the Games. One aspect of such licensing to OPLC is for the purpose of granting merchandising rights in the Design (or for allowing the operating company that will be appointed to manage the Orbit to grant such rights ("the Operator")) ("Merchandising Rights").
3. These heads are intended to set out the arrangements which will govern the sharing of revenue from the Merchandising Rights ("Merchandising Revenue"). They are strictly subject to contract ("Revenue Sharing Agreement") and are not legally binding between the parties.

**Principles**

4. The parties recognise the importance of the following principles:
  - 4.1 the ongoing importance of the Artist in the creation of the Design and the realisation of the Orbit.
  - 4.2 acknowledging the Artist's role by sharing in agreed revenues arising from the IP in the Design.

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- 4.3 the Artist's role in maintaining the artistic integrity of the Orbit and in the related merchandising.
- 4.4 The requirement for the Orbit to reasonably maximise its commercial potential in order to meet the demands of; its construction loans, its significant and requisite Operator capital investment to bring the facility up to a non-Games-operable standard, its significant ongoing maintenance costs and its significant general operating costs.
- 4.5 OPLC will be granted a sub-licence of the IP in the Design under a separate agreement, for all the categories of IP related revenue listed below.
- 4.6 OPLC will have exclusive use of all trade marks and domain names incorporating the name "Orbit" and rights in the overall shape, appearance and/or design of the Orbit including, without limitation, copyright and design and image rights.
- 4.7 OPLC shall be responsible for and shall, in accordance with the terms of the Revenue Sharing Agreement, control, the licensing arrangements and the collection of IP Revenue.

### **Period**

5. The Revenue Sharing Agreement shall be for a period equal to the operation of the Orbit by OPLC.
6. The parties shall review in good faith the revenue sharing arrangements not less than six months before the end of the Initial Period.

### **Approvals**

7. A Brand Review Board shall be appointed as soon as reasonably possible after the commencement of the Revenue Sharing Agreement and shall include at least one representative of each of the parties.
8. The Brand Review Board shall meet at times and places to be agreed between the appointed representatives (but no less than twice every year) in order to discuss and agree, having regard to the general principles set out above, the specific principles for the exploitation of the Merchandising Rights and the manner in which merchandising products shall be developed and marketed. This shall include approving the use of specific images, product categories, setting royalty and licensing charges, determining what if any degree of attribution for the Artist is appropriate for any category, agreeing policy for policing infringements and for granting merchandising sub-licences. Recognising the fluctuating and sometimes opportunistic nature of the business OPLC shall have the right to convene meetings as shall be reasonably required and with reasonable notice to all parties.

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The decisions and proposals arising from Brand Review Board shall be set out in a Brand Guide. Any exploitation of the Merchandising Rights in accordance with the Brand Guide shall not require any further approval from any of the parties. It is recognised however that certain categories are unlikely to be an appropriate subject for such treatment and will require the express prior consent of the Artist on a case by case basis, namely anything within Revenue Category B and those commercial uses within Revenue Category A, for example in computer games, which offer considerable scope for damaging and distorting the branding image of the Orbit.

### Categories of Revenue

9. **Category A licensing income** means licence fees, royalties or other income arising from the use of the name or image of the Orbit in films, television programmes, advertising and print media, gaming and other new media activities which translate the image of the structure into different forms.
10. **Category B licensing** means that relating to high quality, top-end products (with an individual retail sale price in excess of £100 subject to yearly increases in line with RPI) such as maquettes, jewellery, limited edition artwork and other exclusive ranges as may be agreed and developed. It is anticipated that Category B licensing income will derive from licence fees or royalties paid by manufacturers.
11. **Category C licensing** means as permitted under the Operator Agreement and relating to standard, relatively low-end branded products (with an individual retail sale price of less than £100 subject to yearly increases in line with RPI) which are designed in the shape of the Orbit or bear an image of the Orbit and are anticipated to include t-shirts, mugs, pencils, key-rings, and postcards. It is anticipated that Category C licensing income will derive from a royalty paid by the Operator based upon the retail purchase price of the products.
12. **Operator Agreement** means a single arrangement entered into with the Operator (or such other party as may be agreed by the Brand Review Board) for the licensing of all Category C products.

### Revenue Sharing

13. The Net Merchandising Revenue (as defined below) shall be shared between OPLC, ArcelorMittal and the Artist in the ratio 1:1:1 for the Operational Period (as defined in the operational agreement between OPLC, ArcelorMittal and ArcelorMittal SA dated [ ] 2010 (the "Operational Agreement")) together with a further period of 10 years after the expiry of the Operational Period (altogether the "Initial Period"). After the expiry of the Initial Period the Net Merchandising Revenue (as defined below) shall be shared between OPLC and the Artist in the ratio 2:1.

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14. During the Operational Period, OPLC's and ArcelorMittal's share of the Net Merchandising Revenue shall be deemed "Revenue" for the purposes of the Operational Agreement and shall be treated accordingly. For the remainder of the Initial Period ArcelorMittal's share of the Net Merchandising Revenue shall be paid into a bank account nominated by ArcelorMittal.
15. **Net Merchandising Revenue** means the gross licence fees, royalties or other income arising directly from the exploitation of the Merchandising Rights in Categories A, B and C less any Directly Associated Costs.
16. **Directly Associated Costs** means:
  - 16.1 All costs incurred in connection with the registration and/or maintenance of the IP in the Design and the name.
  - 16.2 All costs incurred in connection with the licensing of the Design (including rights clearances and image creation) and recovery of payments in connection with such licensing, including without limitation legal costs.
  - 16.3 Where applicable in relation to Category C (subject to agreed arrangements for the licensing and sourcing of products in accordance with the Brand Guide) all direct costs attributable to the manufacture and supply of the products including (but not limited to) import duties, transportation charges, shipping costs and insurance charges.
  - 16.4 Any relevant taxes or government levies.
  - 16.5 Any costs charged by the Operator directly attributable to the licensing including without limitation facility fees for private use of the Orbit and loss of revenue in the event that the Orbit needs to close for filming.
  - 16.6 Those incurred by OPLC in connection with dealing with an alleged infringer of the IP in the Design of the Orbit or dealing with any allegation of infringement of third party IP rights including without limitation any damages, payments in settlement of litigation and royalty payments.
  - 16.7 Any rebates or credits actually given by OPLC to the relevant licensees.
  - 16.8 Any discounts, shrinkage, loss or other factors which impact on the overall cost of the stock items being sold.
17. The Net Merchandising Revenue shall be paid on [ **TBC** ].

**Other Rights**

18. OPLC shall procure that ArcelorMittal shall be entitled to purchase 50 items of Category B merchandising at cost per annum and to use such items as it deems



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appropriate. However, ArcelorMittal may not offer any of these items for sale (other than where the sale proceeds are to be donated to charity).

## ORBIT BASE SPECIFICATION

CCTV and security systems, security scanners, building alarm systems – Note - SRM has a sum of £110k for these items in the Project Brief so these items will be wholly or partially achieved as part of the vertical base build.

Data, network, intercoms, induction loops and general communication systems – Note - In the Project Brief SRM has provided for ducting and risers for these items and some general systems so this item relates only to any additional requirements to meet legacy standard.

Basic FFE – waste management, signage, floor mats, communications devices, clearing and maintenance equipment, queue barriers, reception desk, minimal furniture, etc

Health and safety equipment including first aid, fire etc

Audio systems

Feature lighting – Note - SRM has provided for a sum of £100k for feature lighting in the Project Brief so this item will be partly wholly or partially achieved as part of the vertical base build. OPLC would be happy to explore in partnership with LOCOG secondary sponsorship rights in legacy to secure a feature lighting sponsor.