Huntingdon District Council - Development Management Agreement in connection with Huntingdon Leisure Centre
RAG Risk Report

No.	Issue	Proposed Action / Amendment	R A	HDC Comments 14/04/26
1	Commencement Date and Planning Risk The DMA commences immediately on signing with no trigger event. A sizable fee is payable from day one (60% of the total amount to be paid to Alliance) regardless of whether any necessary consents are in place and the building contract has been entered into. We understand planning permission has already been obtained, however the commencement date should be in line with the date of the Building Contract to avoid HDC incurring Alliance's Management Fees before HDC are satisfied the Contractor is procured and ready to commence works.	The commencement date of the DMA could be amended so that it is the same as the date of the Building Contract, acting as a condition precedent to the DMA becoming fully operative and payments to Alliance becoming due. This would offer some protection as you will then not be paying Alliance until the building contract has been entered into and you can have more confidence that the project will be progressed.	A	Agreed - draft as per suggestion Signature of Building Contract and DMA to be linked together to reduce financial exposure of HDC.
2	Payment to Alliance As set out above, 60% of Alliance's total fee is payable at the outset of the project, with the remaining 40% to be apportioned evenly across payments over the course of the project. There is a risk that paying Alliance so much at the outset of the project disincentivises them from delivering the services after they have already received such a large up front payment.	You could seek to renegotiate the payment terms so that no up-front lump sum is paid upon executing the DMA, or that the lump sum paid at the outset is not as large as 60% of the total fee payable to Alliance.	A	30% to be paid on signature of DMA and Building Contract. 70% to be cashflowed thereafter across duration of Contract.
3	HDC Bears the Financial / Economic Risk HDC must indemnify Alliance against all liability Alliance incurs under the Building Contract and Third Party Agreements. All costs, including on contractor insolvency, ultimately flow back to HDC. Based on the fees Alliance is taking, you may expect Alliance to take on more risk in the event of contractor insolvency or any other event that could increase the costs of the project. Should Alliance's contractor cease trading, the Council will be responsible for any additional costs re-procuring a contractor to complete a smaller works package and may be left.	We could redraft the agreement to provide that Alliance have more liability for costs if things go wrong. Please note that we do not anticipate Alliance will readily agree to these amendments.	R	Alliance to bear at least some responsibility - Browne Jacobson to re-draft to place more responsibility on Alliance in the event costs rise due to their actions.
4 recours and the	Alliance's Liability is Heavily Capped Alliance's liability is limited to its own Delivery Fee. HDC's only realistic e for defects, delay or quality issues will be against the Contractor Consultants directly via collateral warranties, not against Alliance.	You may want to try and negotiate an uplift to Alliance's liability cap, or a separate, higher cap for losses arising from Alliance's wilful default or negligence. However, it's worth noting that Alliance may be reluctant to accept any increase to their risk exposure. It is therefore vital that HDC obtains executed collateral warranties from Contractor and all Consultants within 20 Working Days of the DMA being signed (as currently set out in the DMA), all with appropriate liability caps. It may also be helpful for the DMA to list all the Consultants/Sub-contractors by trade so HDC know who to expect them from. Separately, we understand that the NHS is or will be a tenant at the property, and therefore consideration should be given as to whether the also NHS require a warranty if any works are being carried out in the NHS's demise, as the DMA contains no obligations on Alliance to procure warranties to other parties with an interest.	R	As a minimum, CWs to be provided by Main Contractor, design Sub-Contractors and all Consultants. Retention to be held back on provision of warranties. Suggest: £50k for Main Contractor CW £20k for each Sub Contractor CW £10k for each Consultant CW Include for provision for CW in favour of NHS and for uplift in Alliance liability.
4	Delivery of Performance Bond / Parent Company Guarantee Although a performance bond can be specified as being required by completing the particulars as appropriate, if one is not provided there is limited recourse available to HDC. Given we would expect the bond to be to a value of at least 10% of the contract sum, we would expect there to be some provisions included to encourage the Contractor to provide the necessary performance bond.	You may want to include a bond retention clause that allows you to withhold payment until the bond they are required to provide has been put in place and delivered to HDC. This could be a percentage of sums that would otherwise be payable, or a complete retention of all sums until the total value of the performance bond is withheld (or a mix of these two approaches). Please note this could apply equally to a parent company guarantee but we are not certain of the identity of the Contractor/their parent company and whether a PCG will be provided.	R	Agreed Performance Bond as a minimum and retention to be held against provision of it. Figure TBC. We understand Universal have a parent company and so PCG should be sought also.
5	Payment timescales under the DMA are tight (10 Working Days for most invoices, with Pay Less Notices required at least 3 days before the final payment date). There is currently no mechanism for HDC to independently verify the sums it is asked to pay or dispute them.	If required, we could draft provisions in the DMA that would give HDC greater control over the project, including rights to independent surveying and monitoring, as well as a clear mechanism for HDC to issue instructions to Alliance and raise any issues or concerns as they arise. At the least, we would usually expect to see provisions enabling a representative to attend inspections prior to the certificates of practical completion or of making good defects being issued and for Alliance to procure that the individual issuing those certificates has regard to any reasonable submissions made by your representative prior to issuing those certificates. You could include formal procedures to address payment and invoicing disputes, covering Alliance's internal management process for handling Pay Less Notices and the cost for variations. HDC's independent representative should have the right to conduct site visits for the purposes of making valuations and proposing Pay Less Notices to Alliance. The payment timeframe should also be extended to afford HDC adequate time to dispute invoices and issue Pay Less Notices.	R	Re-draft to fifteen working days payment time and one day for Pay Less Notice. Need to include provisions for independent monitoring surveyor to inspect and review on behalf of HDC. Also need to include for Alliance to pay independent monitoring surveyor fees.
6	Payment for all Materials You will be responsible for all payments due to the Contractor, regardless of whether those payments relate to materials stored on site. We understand that given the current industry and wider economic climate, contractors are increasingly paying for materials in advance to mitigate the risk of delays or price increases for those materials,	You may want to consider whether HDC's payment obligation should be limited to materials that are physically on site unless it has been agreed otherwise by HDC's representatives. Tying HDC's obligation to pay only for on-site materials would provide a practical safeguard against HDC bearing the cost of materials that have merely been ordered but not yet delivered and the risk involved in evidencing ownership should the Contactor cease trading during the course of the works. We also note that there is no provision for vesting certificates, if Alliance are unwilling to accept the above position you could seek to amend the DMA so that payment for off-site materials will only be required where Alliance are able to provide a vesting certificate to HDC evidencing that title in materials stored off-site will pass to HDC upon payment.	A	Vesting certificates for offsite materials to be provided as a minimum, noting that refusing any off site material payments will likely bring cost uplifts as Contractor looks to protect themself against inflation.
7	Insurance Obligations Sit with HDC We understand that insurance option C will likely be selected in the building contract, which means that HDC must procure and maintain all Building Contract Policies, including insurance for 1. The works themselves and 2. the existing structure in Joint Names Policies covering both Alliance, HDC and the Building Contractor. Alliance has no obligation to maintain insurance.	HDC to discuss with its own insurance team (and broker if necessary) to confirm such cover can be obtained. If it is not possible to put this position in place the insurance provisions within the Building Contract will then need to be updated to reflect the cover that will be in place.	A	NCS to draft email for HDC insurers to outline query for them to review

8	Practical Completion of the Works does not mean the leisure centre will be operationally ready The current definition of Practical Completion does not require the installation and testing of the Equipment. The Equipment is dealt with separately within the DMA to the Building Contract with the required equipment to be inserted in a schedule and Alliance will then instructing the Equipment Supplier to deliver and install the Equipment at the leisure centre. To provide a true turnkey solution, the Building Contract could be updated to provide that the scope of works includes the installation of the Equipment. The DMA could then be amended to define Practical Completion as the point at which the leisure centre is operationally ready.	You could look to amend the DMA to replace the definition of practical completion with one which reflects when the centre is ready for operation. Alternatively, you could seek to include the provision and installation of the equipment within the scope of works to be carried out under the Building Contract and amend the Building Contract's Practical Completion criteria to expressly require all Equipment to have been installed, tested and found to be operational before Practical Completion can be certified.	A	Equipment to be added into Building Contract, which brings PC in line with installation of equipment. Contract will be sectional, so this will only apply to sections where equipment is to be provided?
9	Short timeframe to test Equipment and risk of Deemed Acceptance HDC has only 10 Working Days from installation to inspect Equipment and notify Alliance of defects (or return a Certificate of Acceptance). Failure to do so results in deemed acceptance and HDC will lose the ability to raise any further issues or reject the Equipment.	The DMA could be amended to provide a longer period than 10 Working Day window to allow adequate time for testing.	A	See point 8 above
10	Branding and Marketing Clause 15.1 currently requires HDC to allow Alliance and DLL branding on all external facades and hoardings, with DLL having absolute discretion over the requirement. We understand HDC does not wish to have any external organisations' branding on the external facades or external fabric of the building.	Propose an amendment to clause 15.1 to carve out external facades and the external fabric of the building from the branding obligation. At a minimum, amend so that the size, form and location of any logos must be agreed with HDC (not to be unreasonably withheld), and remove DLL's absolute discretion.	G	Agreed to carve out external fabric as recommended and provide for HDC approval of any internal branding, removing DLL discretion
11	Termination Triggers Automatic Step-In If the DMA is terminated for any reason (including Alliance's default), HDC is obliged to step in to Alliance's shoes in the Building Contract, any Consultant appointments and Equipment supply contracts.	If this is of concern to HDC we could amend the step-in provisions so that step-in is an option for HDC rather than automatic upon termination. However, we anticipate that this will not be accepted by Alliance (or the various counterparties to the agreements) as without an obligation to step-in Alliance will be left as the Employer under the various contracts with no right to reimbursement for its costs following termination of the DMA. One solution to this could be the insertion of a back-to-back "termination at will" mechanisms being included throughout the suite of contracts so that if the DMA is terminated and HDC elects not to step in, the Building Contract, Consultant Appointments and Equipment supply contracts are also terminated.	G	Agreed - make step-in optional rather than automatic. Also include 'termination at will'.
12	Standard of Care and Reasonable Endeavours Alliance's standard of care is measured by its own professional standards (not those of a design and build contractor), and its key delivery obligations (including completing on time and within budget) are expressed on a "reasonable endeavours" basis only, not as absolute obligations. Note that this is somewhat of a moot point given Alliance's low level of liability reported upon above.	You may want to seek to strengthen the standard of care to require "all the reasonable skill, care and diligence to be expected of a qualified and experienced design and build contractor undertaking services of a similar nature, value, complexity and timescale to the Project" and make the obligation to meet the key deliverables an absolute obligation or an "all" reasonable endeavours obligation.	A	Agreed - re-draft as proposed
13	IP Licence Conditional on Payment HDC's licence to use the Material Alliance prepares (e.g. design and as-built documentation) is conditional on payment of the Management Fee. HDC could risk losing access to such critical project documentation in the event of any payment dispute.	Amend clause 7.3 to remove the conditionality on payment, so that the licence to use designs is unconditional once granted.	A	Agreed - re-draft as proposed
14	Cost Savings and Value Improvements There is a clause which provides that Alliance is encouraged to propose changes to the design and specification that may benefit HDC, although as it offers no benefit to Alliance we suspect it will not in practice be used.	You may want to amend the clause to provide that there is motivation to Alliance in the form of a share of any savings made as a result of value engineering exercises. This approach is not without risk however, as Alliance may claim their share of savings that would have been achieved anyway.	G	Leave as drafted. HDC are comfortable with current position.
15	Programme There is an obligation to agree a project programme but there is no obligation to keep the programme updated and provide a copy of the updated programme to HDC every time there is a change to that programme or at regular intervals.	You may want to amend clause 4 to include an obligation to keep the programme updated to reflect the works being carried out and to provide HDC with copies of that programme each time it is updated.	G	Agreed - re-draft as proposed
16	Lack of a drawdown schedule You will be obliged to make all payments due to the Building Contractor and any Equipment Suppliers or Consultants but you are unaware what level of payments may be required over the course of the project.	You may want to provide an obligation to provide a particularised cashflow forecast which will enable you to see when sums will likely need to be paid over the course of the project. We understand your technical advisors would appreciate provision in the DMA for Alliance to issue a revised development cashflow spreadsheet that is aligned with both the Building Contract and a works programme. The DMA could also include provisions on costs reporting and projected final accounts.	G	Agreed - re-draft as proposed

RAG Key:
- R (Red) — High risk: must be addressed. Significant legal or financial exposure for HDC if not resolved.
- A (Amber) — Medium risk: should be addressed or at minimum HDC should be fully aware of the position and take steps to mitigate.
- G (Green) — Low risk: awareness point only or manageable within the current drafting or with minor clarification.