



DATED 25th day of June 2020

**THE SECRETARY OF STATE FOR JUSTICE
(OF THE MINISTRY OF JUSTICE)**

and

WT PARTNERSHIP LIMITED

**NEC3 PROFESSIONAL SERVICES CONTRACT
(APRIL 2013 EDITION)**

FOR THE PROVISION OF

**COST MANAGEMENT SERVICES RELATING TO THE
NEW PRISONS PROGRAMME FORMING PART OF
PRISON ESTATES TRANSFORMATION PROGRAMME**

REDACTED VERSION



THIS FORM OF AGREEMENT is made the 25th day of June 2020

BETWEEN:

- (1) **THE SECRETARY OF STATE FOR JUSTICE** of Ministry of Justice, 102 Petty France, Westminster, London SW1H 9AJ (the "**Employer**", with such term including its successors in title and permitted assigns); and
 - (2) **WT PARTNERSHIP LIMITED** (company number 1130989) whose registered office is situated at AMP House, Dingwall Road, Croydon, CR0 2LX (the "**Consultant**"),
- each a "**Party**" and together the "**Parties**".

RECITALS:

- (A) The *Employer* has entered into a "Strategic Alliancing Agreement" dated 18 July 2014 (as later amended on 18 September 2014) with the *Consultant* and other consultants (the "**Strategic Alliancing Agreement**") pursuant to which the *Employer* may, from time to time and at its sole discretion, enter into one or more contracts with the *Consultant* (or any of the other consultants) for the provision of construction services in connection with the Employer's actual or potential construction projects.
- (B) The *Employer* has procured and entered into various agreements in connection with the design and construction of various prison sites as part of a wider Prison Estate Transformation Project ("**PETP**").
- (C) Further to such agreements, the *Employer* is now in a position where it is able to develop, establish and implement its wider delivery strategy in connection with potentially entering into one or more Project Contracts in relation to the potential (and, as the context permits, actual) design and construction of multiple custodial (and other) facilities across its estate as part of the PETP initiative (together being the "**Project**").
- (D) The *Employer* wishes to appoint the *Consultant* to provide the *services* in connection with the Project on the basis as set out in this contract.
- (E) The *Employer* and the *Consultant* acknowledge and agree that this contract is a "Project Appointment" for the purposes of the Strategic Alliancing Agreement that is entered into pursuant to an initial appointment letter between the *Employer* and *Consultant* dated 8 June 2017.

IT IS AGREED:

1. The *Employer* will pay the *Consultant* the amount due under and carry out its duties in connection with the *services* in accordance with this contract.
2. The *Consultant* will Provide the *Services* and carry out its other obligations in connection with the *services* and the Project, as more particularly described herein, in accordance with this contract.
3. This contract incorporates:
 - 3.1 this Form of Agreement;
 - 3.2 the NEC3 Professional Services Contract (April 2013 edition) main pricing option referred to as "Option E" (time-based contract) (the "**NEC3 PSC**");
 - 3.3 the *conditions of contract* of the NEC3 PSC;



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- 3.4 the NEC3 PSC dispute resolution "Option W2" (used in the United Kingdom when the Housing Grants, Construction and Regeneration Act 1996 applies);
- 3.5 the following secondary options of the NEC3 PSC:
- 3.5.1 Option X8 (Collateral warranty agreements);
- 3.5.2 Option Y(UK)2 (The Housing Grants, Construction and Regeneration Act 1996);
- 3.5.3 Option Y(UK)3 (Contracts (Rights of Third Parties) Act 1999); and
- 3.5.4 Option Z;
- 3.6 Schedule 1: Contract Data;
- 3.7 Schedule 2: Additional Conditions of Contract;
- 3.8 Schedule 3: Scope;
- 3.9 Schedule 4: Consultant Collateral Warranty;
- 3.10 Schedule 5: Template Subconsultant Collateral Warranty;
- 3.11 Schedule 6: Data Protection Schedule; and
- 3.12 any and all other documents referred to in the Contract Data and/or the other documents comprising this contract which are annexed to this contract and/or have been signed for identification purposes by or on behalf of the Parties.
4. This contract shall be governed by and construed in accordance with the law of England and Wales and the Parties hereby irrevocably submit to the non-exclusive jurisdiction of the English courts, provided that other jurisdictions may apply solely for the purpose of giving effect to this clause 4 and for the enforcement of any judgment, order or award given under English jurisdiction.
5. The Parties acknowledge and agree that:
- 5.1 prior to entering into this contract, the *Consultant* has provided services to the *Employer* of a similar type and nature to the *services* in anticipation of entering into this contract (the "**Original Services**");
- 5.2 as at the Contract Date, the *Employer* has paid the *Consultant* for the performance of the Original Services under a temporary arrangement, with the Original Services being provided as ancillary services under a separate PPC2000 (amended 2008) – ACA Standard Form of Contract for Project Partnering between the *Employer*, the *Consultant* and other parties dated 19 February 2018 and as amended and restated on 23 October 2018 (the "**Other Contract**");
- 5.3 as at the Contract Date, the *Consultant* has been paid the sum of nine thousand two hundred and twenty pounds and twenty-eight pence (£9,220.28) in connection with the provision of the Original Services under the Original Contract for the period up to and including 31 May 2020 (the "**Original Services Fee**");
- 5.4 the *Consultant* shall have no entitlement to claim and/or receive payment of the Original Services Fee under this contract, as the *Consultant* has already received payment for the same under the Original Contract;



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- 5.5 the *Consultant* agrees that it shall have no further entitlement to claim and/or receive any further payment under the Original Contract in relation to the Original Services and/or the *services*; and
- 5.6 the obligations, rights and liabilities of the *Consultant* under this contract (but excluding any rights of the *Consultant* under clause 60 to clause 65 (inclusive) of this contract, the provisions of which shall be deemed to not apply to the Original Services) shall take effect in all respects as if the Original Services had always been performed under this contract and any payments made by the *Employer* to the *Consultant* in respect of the same shall (if applicable) be deemed to have been paid on account in respect of the relevant *services* to which such performance relates under the contract.
6. The *Employer* and the *Consultant* acknowledge and agree that the provisions of clause 5.6 are not intended to (and shall not) apply to any services provided by the *Consultant* to the *Employer* solely and exclusively in connection with the design and construction of HMP Wellingborough and/or HMP Glen Parva pursuant to and in accordance with the Original Contract.
7. The Parties acknowledge and agree that this contract may be executed by electronic signature, which shall be considered as an original signature for all intents and purposes and shall have the same force and effect as an original signature (with "electronic signature" in this context including, without limitation, electronically scanned and transmitted versions of an original signature or any other form of signature in electronic form provided by one Party to the other Party).

**IN WITNESS WHEREOF THIS FORM OF AGREEMENT WAS EXECUTED AS A DEED BY THE PARTIES
ON THE DATE FIRST WRITTEN ABOVE**



SIGNED (but not delivered until the date hereof) **AS A DEED** by **THE SECRETARY OF STATE FOR JUSTICE** acting by two authorised signatories:

Authorised signatory (signature):

____{REDACTED}_____

Authorised signatory (signature):

____{REDACTED}_____

EXECUTED (but not delivered until the date hereof) **AS A DEED** by **WT PARTNERSHIP LIMITED** acting by two directors or a director and a company secretary:

Director (signature):

____[REDACTED]_____

Director / company secretary:
(delete as appropriate)

____[REDACTED]_____



SCHEDULE 1

CONTRACT DATA

PART ONE – DATA PROVIDED BY THE *EMPLOYER*

Statements given in all contracts

- 1 General
- The **conditions of contract** are the core clauses and the clauses for main Option E, dispute resolution Option W2, and secondary Option X8, Option Y(UK)2, Option Y(UK)3 and Option Z of the NEC3 Professional Services Contract (April 2013 edition).
 - The **Employer** is:
Name: The Secretary of State for Justice
Address: Ministry of Justice, 102 Petty France, Westminster, London SW1H 9AJ
 - The **BIM Coordinator** is Mace Limited (as identified as Project Consultant below).
 - The **services** are as set out and more particularly described in the Scope.
 - The **Scope** is set out at Schedule 3 of this contract.
 - A **Contractor** is any party identified as such by the *Employer* to the *Consultant* in writing from time to time in connection with the Project (collectively being the "Contractors").
 - The **Project Consultants** are
 - Mace Limited (company number 02410626), whose registered office is at 155 Moorgate, London, EC2M 6XB; and
 - any other party identified as such by the *Employer* to the *Consultant* in writing from time to time in connection with any element of the Project.
 - As at the Contract Date, there are no **Third Party Agreements**.
 - The **Principal Contractor** in respect of any Construction Package is the party notified by the *Employer* to the *Consultant* from time to time in writing (or so other person as the *Employer* may so notify to the *Consultant*).
 - The **Principal Designer** in respect of any Construction Package is the party notified by the *Employer* to the *Consultant* from time to time in writing (or such other person as the *Employer* may so notify to the *Consultant*).
 - The **period for reply**
 - for the *Employer* is two (2) weeks and
 - for the *Consultant* is one (1) week.
 - The **period for retention** is twelve (12) years following the earlier of Completion or the termination of the *Consultant's* engagement under or in connection with this contract.
 - The **language of this contract** is English.
 - The **law of the contract** is the law of England and Wales.
 - The **Adjudicator** is as nominated by the *Adjudicator nominating body* from time to time.
 - The **Adjudicator nominating body** is the Technology and Construction Solicitors Association (TeCSA).



- The **tribunal** is litigation in the courts of England and Wales.
- 2 The Parties' main responsibilities
 - The main responsibilities of the Parties are as set out in the contract.
- 3 Time
 - The **starting date** is: 1 June 2020
 - The *Consultant* submits **revised programmes** at intervals no longer than four (4) weeks.
- 4 Quality
 - The **quality policy statement and quality plan** is not required.
 - The **defects date** is fifty-two (52) weeks from
 - the last date on which the *Consultant* performed any *services* in connection with the Project,
 - the date on which the final Construction Package is certified as having achieved "Completion" (or such equivalent term denoting practical completion of that Construction Package) pursuant to and as defined in the relevant Building Contract entered into by the *Employer* in connection with the Project (if entered into) and
 - the termination of the engagement of the *Consultant* under this contract, whichever occurs first.
- 5 Payment
 - The **assessment interval** is monthly.
 - The **currency of this contract** is pounds sterling (£).
 - The **interest rate** is four (4) per cent per annum above the base rate of the Bank of England.
 - The **Annual Payment Cap** for the first (1st) Contract Year is [REDACTED]
- 8 Indemnity, insurance and liability
 - The **amounts of insurance** and the periods for which the *Consultant* maintains insurance are:

Event / type of coverage	Cover	Period
Failure of the <i>Consultant</i> to exercise the standard of skill and care specified by this contract	Professional indemnity insurance cover of at least five million pounds (£5,000,000) for any one claim or series of claims arising out of one single incident (provided by way of unlimited reinstatements), including costs and expenses, but in the aggregate per annum for liability arising out of pollution or contamination (to the extent insured by the relevant policy) and one million pounds (£1,000,000) for any one claim and in the aggregate per annum in respect of liability arising out of asbestos (to the extent insured by the relevant	Until the expiration of the Liability Period.



	policy).	
Death of or bodily injury to a person (not an employee of the <i>Consultant</i>) or loss of or damage to property resulting from an action or failure to take action by the <i>Consultant</i>	In each case, insurance cover of (£10,000,000) in respect of any one occurrence, the number of occurrences being unlimited in any annual period of insurance, but in the aggregate per annum	Twelve (12) years
Death of or bodily injury to employees of the <i>Consultant</i> arising out of and in the course of their employment in connection with this contract	in respect of products liability and pollution liability (to the extent insured by the relevant policy).	Twelve (12) years

- The *Employer* elects to "self-insure" the existing buildings and property at each Project Site as part of the Project and in doing so accepts all of the *Employer's* associated risks arising out of or in relation to such "self-insurance". In accordance with the *Employer's* decision to "self-insure", the *Employer* does not require any additional premium / cost from the *Consultant* other than as set out above and/or referred to in the Insurance Table.

**Optional
statements**

- The **completion date** for the whole of the *services* is 31 August 2026.
- If no programme is identified in Contract Data: Part Two, the *Consultant* is to submit a first (1st) programme for acceptance within two (2) weeks of the Contract Date.
- The *key dates* and *conditions* to be met are:

No.	Condition to be met	Key date
Not used.	Not used.	Not used.

- The *Consultant* prepares **forecasts of the total Time Charge and expenses** at intervals no longer than every four (4) weeks.
- **Consultant Collateral Warranties** are required in the form set out at Schedule 4.
- The **Template Subconsultant Collateral Warranty** is set out at Schedule 5.
- The **additional conditions of contract** are contained in Schedule 2.



PART TWO – DATA PROVIDED BY THE CONSULTANT

Statements given in all contracts

- The **Consultant** is:
Name: WT Partnership Limited
Address: AMP House, Dingwall Road, Croydon, CRO 2LX
- The **key persons** are:

Name	Job	Responsibilities	Qualifications	Experience
[REDACTED]	Joint Managing Director	Leadership Team representative	[REDACTED]	[REDACTED]
[REDACTED]	Director	Overall management and coordination	[REDACTED]	[REDACTED]
[REDACTED]	Senior Associate Director	Programme Cost Management	[REDACTED]	[REDACTED]
[REDACTED]	Director	Digital Strategy	[REDACTED]	[REDACTED]
[REDACTED]	Senior Associate Director	Programme Cost Management	[REDACTED]	[REDACTED]
[REDACTED]	Associate Director	Cost Management Full Sutton	[REDACTED]	[REDACTED]

- The **staff rates** are:

Name / designation	Rate
[REDACTED]	[REDACTED]
[REDACTED]r	[REDACTED]
Senior Surveyor	[REDACTED]
Surveyor	[REDACTED]

- The Parties agree that the **staff rates** referred to above will be subject to an annual indexation-based adjustment on the following basis
 - the adjustment to each **staff rate** shall be calculated by applying to it the average consumer price index ("**CPI**") monthly rate (as a percentage) for each month during the preceding Contract Year,
 - the percentage adjustment of each **staff rate** shall
 - not result in a negative adjustment, irrespective of any decrease in the average CPI monthly rate during the immediately preceding Contract Year and
 - not exceed a maximum of three per cent (3%) irrespective of the average CPI monthly rate during the preceding Contract Year,



- the first such adjustment shall take place at the end of the first (1st) Contract Year (being 31 March 2021) and shall then take place annually at the end of each subsequent Contract Year,
- the adjustment shall be effective from the first (1st) day of the subsequent Contract Year,
- once a *staff rate* is adjusted, it shall be deemed to replace the original *staff rate* referred to in the above table for the purpose of any future adjustments (in each case, as adjusted on an annual basis pursuant to this contract) and
- any such adjustments shall not be applied retrospectively to any preceding Contract Year(s).

**Optional
statements**

- The *Consultant* does not state any expenses (and confirms that its reasonable disbursements are included in the *staff rates* referred to above).



ADDITIONAL CONDITIONS OF CONTRACT (Z CLAUSES)

The *conditions of contract* of the NEC3 Professional Services Contract (April 2013 edition) are amended and supplemented by the following conditions, incorporated into the contract as the *additional conditions of contract* in accordance with Option Z:

AMENDMENTS TO CORE CLAUSES

Z1 AMENDMENTS TO CLAUSE 1 – GENERAL

Z1.1 In the first bulleted item in clause 11.2(2), insert the following wording after "Completion Date" and before "and":

"and provided to the *Employer* in the final form or in such form as required by the contract (or if no such requirements are so stated, in such form as required by the *Employer*) of all of the Materials required under this contract."

Z1.2 Replace the wording of clause 11.2(5) in its entirety with the following:

"11.2(5) A **Defect** is a failure by the *Consultant* to Provide the Services and/or any part of the services in accordance with

- the requirements of this contract and the Scope,
- applicable law and/or
- any applicable planning agreement, permission, licence, condition, deed or document in connection with any part(s) of the Project which the *Employer* has notified to the *Consultant* or of which the *Consultant* ought reasonably to have been aware given the size, scope, value, character and complexity of the overall Project."

Z1.3 In the definition of "**Others**" at clause 11.2(7), insert "(and including each Contractor)" after "or supplier of the *Consultant*".

Z1.4 In clause 11.2(8), after the word "*Employer*" insert "(which expression includes its successors in title and assigns)".

Z1.5 In clause 11.2(9), after "contract" and before "and all incidental work" insert "and applicable law".

Z1.6 Insert a new clause 11.2A with the marginal heading "**Additional identified and defined terms**": with the following sub-clauses:

"11.2A(1) **Annual Payment Cap** means

- for the first (1st) Contract Year, the sum identified as such in the Contract Data (as may be adjusted on the written agreement of the Parties) and
- for any other Contract Year, the sum agreed by the Parties pursuant to clause 50.6."

"11.2A(2) The term **applicable law** means



- any Act of Parliament or subordinate legislation,
- any statute, statutory instrument, regulation, rule or order made under any statute or directive having the force of law,
- any exercise of the Royal Prerogative,
- any enforceable community right within the meaning of Section 2 of the European Communities Act 1972,
- any rule of equity or common law or the ruling, judgment or order of any Court,
- any planning or building consents, preconditions and/or permissions or regulation and any other official request or requirement made by any Statutory Authority or other body of competent jurisdiction in respect of which the *Consultant* and/or a Subconsultant has a legal obligation to comply,
- any regulation or bye-law of any Statutory Authority which has any jurisdiction with regard to the *services* or with whose systems the *services* are, or are to be, connected, including any statutory provisions and any decision of a relevant authority under such provisions which control the right to develop the Site in connection with which the *services* are to be provided (including, without limitation, any planning permission),
- all orders, rules, regulations, ordinances, notices, guidance notes, schemes, warrants, bye-laws, directives, franchises, licences, permits, circulars and codes of practice issued or raised under or in connection with any of the foregoing and
- any amendment, update, consolidation, replacement or re-enactment of any of the foregoing from time to time."

"11.2A(3) **Beneficiary** means

- in respect of a Consultant Collateral Warranty, any party with a direct operational and/or financial interest in any part(s) of the Project nominated by the *Employer* in writing from time to time and
- in respect of a Subconsultant Collateral Warranty, the *Employer* and any party nominated by the *Employer* in writing from time to time as having an interest in any part(s) of the Project."

"11.2A(4) **BIM** means "building information modelling".

"11.2A(5) **BIM Coordinator** is the party identified as such in Contract Data: Part One and whose responsibility is to ensure implementation of the Digital Construction Requirements and co-ordinate the use of the Building Information Model and input of data into the Building Information Model (or as may be replaced by the *Employer* on written notice to the *Consultant* from time to time)."

"11.2A(6) The **BIM Schedule** is the document identified as such in the Scope."

"11.2A(7) **Building Information Model** means the three dimensional electronic building information model in respect of all or any part(s) of the Project."

"11.2A(8) **Building Contract** means each building contract entered into or to be entered into by the *Employer* and a Contractor in connection with a Construction Package forming part



of the Project, whether pursuant to and in accordance with the terms of any Project Delivery Contract or otherwise."

- "11.2A(9) The **CDM Regulations** are the Construction (Design and Management) Regulations 2015."
- "11.2A(10) **Code of Practice** is the Department for Constitutional Affairs' "Code of practice on the discharge of functions of public authorities under Part 1 of the Freedom of Information Act 2000".
- "11.2A(11) **Construction Package** means a package of construction works (and ancillary services, as necessary) to be undertaken (and, as the context permits, designed) by a Contractor under a Building Contract in connection with the Project."
- "11.2A(12) **Consultant Collateral Warranty** means a collateral warranty in the form set out at the location identified as such in Contract Data: Part One (as applicable)."
- "11.2A(13) **Communications Software** means the cloud-based software application known as "CEMAR", as developed and maintained by Client Managers Toolkit Limited (company number 05430351, whose registered office is at Welland House Meteor Court, Barnett Way, Barnwood, Gloucester, England, GL4 3GG)."
- "11.2A(14) **Confidential Information** is the Employer's Confidential Information and/or the Consultant's Confidential Information (as the context permits)."
- "11.2A(15) **Consultant's Confidential Information** means any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, Know-How, personnel and suppliers of the *Consultant* (other than the *Employer*), including Intellectual Property Rights, together with all information derived from the same, and any other information clearly marked as "confidential" or which ought reasonably to be considered to be confidential."
- "11.2A(16) **Consultant Personnel** means all employees, agents and Subconsultants of the *Consultant* of any type engaged by the *Consultant* in connection with the *services*."
- "11.2A(17) **Contract Date** means the date of the Form of Agreement."
- "11.2A(18) **Contract Year** means
- in respect of the first (1st) such year, the period commencing on the Contract Date and ending on 31 March 2021 and
 - in respect of each following year, the period commencing on 1 April of one calendar year and ending on 31 March of the following calendar year."
- "11.2A(19) **Contractor** means each entity identified as such in (or as notified by the *Employer* to the *Consultant* in accordance with) Contract Data: Part One."
- "11.2A(20) **Controller** has the meaning given to the term "**controller**" in the GDPR."
- "11.2A(21) **Crown** means the government of the United Kingdom (including the Northern Ireland Executive Committee and the Northern Ireland Departments, the Scottish Executive and the National Assembly for Wales and including government ministers, government departments, government in particular bodies and government agencies)."
- "11.2A(22) **Data Loss Event** any event that results, or may result, in unauthorised access to Personal Data held by the Processor under this contract, and/or actual or potential loss



and/or destruction of Personal Data in breach of this contract, including any Personal Data Breach."

- "11.2A(23) **Data Protection Impact Assessment** means an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data."
- "11.2A(24) **Data Protection Laws** means
- the GDPR and the LED,
 - the Data Protection Act 2018 to the extent that it relates to processing of personal data and privacy,
 - all applicable laws about the processing of personal data and privacy."
- "11.2A(25) **Data Protection Officer** has the meaning given to the term "**data protection officer**" in the GDPR."
- "11.2A(26) **Data Protection Schedule** means **Schedule 1**."
- "11.2A(27) **Data Subject** has the meaning given to the term "**data subject**" in the GDPR."
- "11.2A(28) **Data Subject Access Request** means a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Laws to access their Personal Data."
- "11.2A(29) A **DBS Check** means a "standard", "enhanced" or "enhanced with lists" check (or any other equivalent check required by the *Employer* at its sole discretion) undertaken by the Disclosure and Barring Service (or such successor or replacement organisation) from time to time."
- "11.2A(30) **Digital Construction Requirements** means the documents comprising the "BIM2AIM Employer's Information Requirements Suite" that set out the requirements for the use and development of the Building Information Model and input of data into the Building Information Model, as set out in the BIM Schedule (or such other document as the *Employer* may provide to the *Consultant* from time to time)."
- "11.2A(31) The **Disclosure and Barring Service** is a non-departmental public body sponsored by the Home Office established under the provisions of the Protection of Freedoms Act 2012 and which is responsible for the decision-making and maintenance of barring lists covering the children's and vulnerable adults sectors."
- "11.2A(32) **Employer Data** means
- the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which are
 - supplied to the *Consultant* by or on behalf of the *Employer* or
 - which the *Consultant* is required to generate, process, store or transmit pursuant to this contract or
 - any Personal Data for which the *Employer* is the Controller."
- "11.2A(33) **Employer's Confidential Information** means



- the terms of and schedules to this contract and anything referred to herein,
- all information disclosed by the *Employer* to the *Consultant* under or in connection with this contract,
- any information concerning the business and/or financial affairs of the *Employer* which the *Consultant* learns as a result of its relationship with the *Employer* pursuant to this contract and
- all Personal Data which the *Consultant* obtains and/or becomes aware of as a consequence of it being appointed under this contract,

in each case of any type and in any medium (including in writing, given verbally and/or by any other means) whether directly or indirectly and whether disclosed before or after the Contract Date."

"11.2A(34) **Employer's Statement** has the meaning given to that term in clause 51.7 of this contract."

"11.2A(35) **Environmental Information Regulations** means the Environmental Information Regulations 2004, together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations."

"11.2A(36) **FOIA** means the Freedom of Information Act 2000 and any subordinate legislation (as defined in section 84 of the Freedom of Information Act 2000) made under or pursuant to the Freedom of Information Act 2000 from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner or any relevant government department in relation to such Act (including the Code of Practice)."

"11.2A(37) **Form of Agreement** is the document identified as such and to which this Schedule 2 is annexed."

"11.2A(38) **Fraud** means any offence under the law creating offences in respect of fraudulent acts or at common law in respect of fraudulent acts in relation to the Crown or defrauding or attempting to defraud or conspiring to defraud the Crown."

"11.2A(39) **GDPR** means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation)."

"11.2A(40) **Intellectual Property Rights** means any and all

- copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, trade marks, rights in internet domain names and website addresses and other rights in trade names, designs including BIM, Know-How, trade secrets and other rights in Confidential Information,
- applications for registration, and the right to apply for registration, for any of the rights referred to in the above bulleted item that are capable of being registered in any country or jurisdiction and
- all other rights having equivalent or similar effect in any country or jurisdiction."

"11.2A(41) **Know-How** means all ideas, concepts, schemes, information, knowledge, techniques,



methodology, and anything else in the nature of know how relating to the *services* but excluding know how already in the possession of the *Employer* or *Consultant* before the date of this contract."

"11.2A(42) The **LED** means the Law Enforcement Directive (Directive (EU) 2016/680)."

"11.2A(43) The **Liability Period** is the earlier of

- the last date on which the *Consultant* performed any *services* in connection with the Project,
- the date on which the final Construction Package is certified as having achieved "Completion" (or such equivalent term denoting practical completion of that Construction Package) pursuant to and as defined in the relevant Building Contract entered into by the *Employer* in connection with the Project (if entered into) and
- the termination of the engagement of the *Consultant* under this contract."

"11.2A(44) **Materials** means all existing and future designs, technical information, drawings, models, plans, specifications, schedules, design details and digital models and databases (including in relation to BIM), costings, budgets, calculations, bill of quantities, estimates and valuations, any photographs, brochures, reports, notes of meetings, computer aided design (CAD) materials and any other materials, including any data underlying such generated data in any medium (be it physical, hard copy or electronic, including digital), provided by or prepared on behalf of the *Consultant* or, as the context herein requires, any other person, in connection with this contract and/or any part(s) of the Project and all amendments and additions to them and any works, designs or inventions of the *Consultant* (or any other person as the case may be) incorporated or referred to in them."

"11.2A(45) **NEC3 PSC** means the standard form of NEC3 Professional Services Contract (April 2013 edition)".

"11.2A(46) **Original Services** has the meaning given to that term in clause 5.1 of the Form of Agreement."

"11.2A(47) **Original Services Fee** has the meaning given to that term in clause 5.3 of the Form of Agreement."

"11.2A(48) **Personal Data** has the meaning given to the term "**personal data**" in the GDPR."

"11.2A(49) **Personal Data Breach** has the meaning given to "**personal data breach**" under the GDPR."

"11.2A(50) The **Personnel Vetting Procedure** is the *Employer's* procedure for the vetting of the Consultant Personnel as advised to the *Consultant* by the *Employer* in writing from time to time."

"11.2A(51) The **Principal Contractor** for a Construction Package is the party identified as such in (or as notified by the *Employer* to the *Consultant* in accordance with) Contract Data: Part One to fulfil the role of "**principal contractor**" under and as defined in the CDM Regulations."

"11.2A(52) The **Principal Designer** for a Construction Package is the party identified as such in (or as notified by the *Employer* to the *Consultant* in accordance with) Contract Data: Part One to fulfil the role of "**principal designer**" under and as defined in the CDM



Regulations."

- "11.2A(53) **Process** has the meaning given to "**processing**" under the Data Protection Laws (and "**Processed**" and "**Processing**" shall be construed accordingly)."
- "11.2A(54) **Processor** has the meaning given to the term "**processor**" in the GDPR."
- "11.2A(55) **Processor Personnel** means all directors, officers, employees, agents, consultants and contractors of the Processor and/or of any Sub-Processor engaged in the performance of its obligations under this contract."
- "11.2A(56) **Project** has the meaning given to such term in Recital (C) of the Form of Agreement."
- "11.2A(57) **Project Appointment** means any appointment entered into by the *Employer* with a *Project Consultant* in connection with any part(s) of the Project as notified by the *Employer* to the *Consultant* from time to time."
- "11.2A(58) **Project Consultant (or Project Consultant)** means any consultant identified as such in Contract Data: Part One or as is otherwise notified by the *Employer* to the *Consultant* from time to time in writing."
- "11.2A(59) **Project Contracts** means (as applicable) any Project Delivery Contract, each Building Contract and any other agreements entered into by the *Employer* and a Contractor in relation to a Construction Package as may be notified by the *Employer* to the *Consultant* from time to time (including any pre-construction services agreements and enabling works contracts)."
- "11.2A(60) **Project Delivery Contract** means one or more contracts (that are not in themselves Building Contracts) entered or to be entered into between (1) the *Employer* and (2) multiple parties, including one or more Contractors, in connection with the delivery of the Project, as notified by the *Employer* to the *Consultant* in writing from time to time."
- "11.2A(61) **Project Focused** is the principle applied in the consideration of any decision, outcome, solution or resolution in relation to the overall Project, which facilitates or encourages objectively-assessable quality and performance outcomes and (as the Project is publicly funded) with the intent to achieve value for money."
- "11.2A(62) **Project Site** means a site identified by the *Employer* to the *Consultant* in writing from time to time as falling within the remit of the Project (if not already identified in the Scope as at the Contract Date), including any site that is or may be the subject of any Project Delivery Contract and/or a Building Contract."
- "11.2A(63) **Protective Measures** means all appropriate technical and organisational measures, which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it."
- "11.2A(64) **Relevant Conviction** means, save in relation to minor road traffic offences, any previous pending prosecutions, convictions, cautions and binding-over orders (including any spent convictions as contemplated by section 1(1) of The Rehabilitation of Offenders Act 1974 by virtue of the exemptions specified in Part II of Schedule 1 of the Rehabilitation of Offenders Act 1974 (Exemptions) Order 1975 (SI 1975/1023) or any replacement or amendment to that Order)."
- "11.2A(65) **Request for Information** means a request for information relating to this contract or



apparent request for such information under the FOIA or the Environmental Information Regulations."

- "11.2A(66) **Restricted Country** means any country outside the European Economic Area and any country not deemed adequate by the European Commission pursuant to Article 25(6) of Directive 95/46/EC or Article 45(1) of the GDPR (as applicable)."
- "11.2A(67) A **Statutory Authority** is any governmental or local authority, statutory undertaker or other body of competent jurisdiction
- which has any jurisdiction with regard to any part(s) of the Project and/or the services, including any jurisdiction to control development on the Site or any part of it,
 - which has any jurisdiction with regard to the performance of the *Consultant's* obligations under this contract in any jurisdiction (including in relation to national and international waters) where the *Consultant's* obligations under this contract are carried out,
 - with whose requirements the *Employer* and/or the *Consultant* is required or accustomed to comply or
 - with whose systems any part(s) of the Project will be connected."
- "11.2A(68) **Strategic Alliancing Agreement** has the meaning given to such term in Recital (A) of the Form of Agreement."
- "11.2A(69) **Subconsultant Collateral Warranty** means a collateral warranty provided (or to be provided) by a Subconsultant in substantially the form as the Template Subconsultant Collateral Warranty (if applicable)."
- "11.2A(70) **Sub-Processor** means any third party appointed to Process any Personal Data on behalf of that Processor related to this contract ."
- "11.2A(71) **Template Subconsultant Collateral Warranty** means the document set out at Schedule 5."
- "11.2A(72) **Termination Statement** has the meaning given to that term in clause 92.1A(1) of this contract."
- "11.2A(73) The **Third Party Agreements** are the agreements identified as such in Contract Data: Part One (or as are notified by the *Employer* to the *Consultant* as an instruction from time to time)."
- "11.2A(74) **Vetting and Barring Scheme** means the scheme set up under the provisions of the Safeguarding Vulnerable Groups Act 2006."
- "11.2A(75) A **Working Day** is a day other than a Saturday or Sunday, Christmas Day, Good Friday or any other day which, under the Banking and Financial Dealings Act 1971, is a bank holiday in England and Wales."

Z1.7 Insert "and shall be construed in accordance with" after "governed by" in clause 12.2 and insert the following at the end of clause 12.2:

"Without prejudice to the foregoing, the Parties submit to the non-exclusive jurisdiction of the courts of England and Wales provided that the *Employer* has the right in its absolute discretion to enforce a judgment and/or take proceedings in any other jurisdiction in which the *Consultant* is incorporated



or in which any assets of the *Consultant* are or may be situated."

Z1.8 Replace the wording of clause 12.4 in its entirety with the following:

"Without prejudice to the terms and conditions of the Strategic Alliancing Agreement but subject always to clause 5 of the Form of Agreement

- this contract supersedes any previous agreement, arrangement or understanding between the Parties in relation to the matters dealt with in this contract, and this contract represents the entire understanding and agreement between the Parties in relation to such matters and
- the Parties acknowledge and agree that each of them has not relied upon any prior representation by the other in entering into this contract."

Z1.9 Insert a new clause 12.5 with the following wording:

"In this contract

- the phrase "fault" includes negligence, default or breach of contract and/or breach of statutory duty,
- no communication from the *Employer* given in accordance with the provisions of this contract, including any instructions, notices or approvals removes, amends or varies any of the *Consultant's* obligations, responsibilities or liabilities under this contract, including (without limitation) its responsibility to Provide the Services and its liability for Defects,
- where general words are followed or preceded by specific examples, the nature of such specific examples shall not restrict or qualify the natural meaning of the general words and the ejusdem generis rule shall not apply,
- any obligation of the *Consultant* to do any act, matter or thing includes, unless expressly stated otherwise, an obligation to procure that it is done,
- no rule of construction applies to the interpretation of this contract to the advantage or disadvantage of one Party on the basis that such Party prepared this contract or any relevant part of it,
- this contract may be executed in any number of counterparts and by the Parties to it on separate counterparts, each of which when so executed and delivered is an original, and all counterparts together constitute one and the same instrument,
- the *Consultant* is an independent contractor to the *Employer* and this contract does not create any partnership, joint venture or other joint relationship between the *Consultant* on the one hand and the *Employer* on the other hand and none of the *Consultant's* Persons are considered for any purpose to be a servant, employee or agent of the *Employer*,
- clause means each separate numbered clause of the *conditions of contract* (as amended by the *additional conditions of contract*),
- "day" means any continuous period of twenty-four (24) hours,
- "week" means any continuous period of seven (7) days and
- "month" means calendar month."



Z1.10 Insert a new clause 12.6 with the following wording:

"If:

- any provision or clause of this contract is held to be invalid, illegal or unenforceable by any court, such provision shall be severed and the remainder of the provisions of this contract shall continue in full force and effect as if the contract had executed without the provision or clause in question and
- a court holds a provision or condition of this contract to be invalid, illegal and unenforceable and the provision is so fundamental that its removal would prevent the accomplishment of the purpose of the contract, to the extent necessary the Parties shall immediately commence negotiations in good faith to ensure that the purpose of the contract is achieved in the absence of the provision or clause in question."

Z1.11 Replace clause 13.1 with the following wording:

"Unless otherwise notified by the *Employer* from time to time and in writing (but subject always to clause 13.9), all notices, requests, submissions, decisions, consents, approvals, comments, valuations, agreements, opinions, instructions and other communications between the Parties under or in connection with this contract must be in writing and issued by a sender to a recipient by

- hand delivery,
- first class inland (or recorded delivery) post,
- electronic mail and/or
- any electronic means other than electronic mail as may be approved or specified in advance and in writing by the *Employer* from time to time (including pursuant to any communication protocol issued by or on behalf of the *Employer*).

The *Consultant* ensures that

- each and every document (in whatever form, including hard and/or soft (electronic) copy) and/or communication prepared and/or issued by or on behalf of it pursuant to this contract is clearly marked with any document security-related designation specified in the Scope and any communications protocol and/or document security protocol that the *Employer* notifies the *Consultant* of in writing from time to time and
- it will (and ensure that any third parties engaged by it in connection with the Project will) comply with any communications protocol and/or document security protocol of the *Employer* that the *Employer* may issue to the *Consultant* and/or any document security-related requirements specified in the Scope (and that the *Employer* may update and/or replace at its sole discretion) from time to time, at its own cost and without any adjustment to any Completion Date.

Any communication required under this contract from the *Consultant* to Others in connection with the Project is copied simultaneously to the *Employer*."

Z1.12 Replace clause 13.2 with the following:

"Subject always to clause 13.9

- any communication issued by hand is deemed to be received upon delivery to the address of the recipient as set out in the Form of Agreement (or as notified by a Party to the other from time to time and in writing),



- any communication sent by first class inland post and/or recorded delivery post to the address of the recipient (determined by reference to the above) is deemed as having been received two (2) Working Days following the date of posting,
- any communication sent by electronic mail is deemed to have been received on the day of its transmission in legible form unless outside the hours of 09:00 to 18:00 in which case it is treated as having been received at 09:00 on the first (1st) Working Day after its transmission, provided that the recipient has previously confirmed to the sender its electronic mail address in writing and
- (if specified or approved for use pursuant to clause 13.1) any other communication sent by electronic means other than electronic mail shall be deemed to have been received when, in addition to the issue or uploading of the original communication itself, confirmation of the same is provided by the sender to the relevant recipients by one of the above-mentioned means (and in accordance with the rules of receipt referred to therein)."

Z1.13 Insert a new clause 13.9 with the following wording:

"The use of the electronic mail or any other electronic means of communication is not an effective method of communication for

- any notification by the *Consultant* of its intention to suspend performance of its obligations under this contract,
- any notification by a Party in relation to the actual or potential termination of this contract or the employment of the *Consultant* under this contract,
- any invoking by a Party of the procedures applicable under this contract (or under applicable law) in relation to the resolution of disputes or differences and/or any notification of an actual or potential dispute or
- any agreement between the Parties amending the provisions of this contract,

provided that a duplicate copy of any such communication may also be sent to the receiving party (or parties) by electronic mail (or other electronic means) for information only."

Z1.14 Insert the following after "his work" in the second line of clause 14.1:

"or any review or approval of or comment on such work"

Z1.15 At the end of the fifth bulleted item in clause 15.1, replace "or" with ",."

At the end of the sixth bullet in clause 15.1, replace the full stop with "or adversely affect the *Employer* (including by increasing the monies payable by the *Employer* to Others engaged by the *Employer* in connection with any part(s) of the Project),".

In the sixth bulleted item of clause 15.1, insert the following new bulleted items:

- "constitute a Defect,
- constitute a compensation event which has not been previously notified,
- result in a breach of this contract or
- cause a breach of any applicable law or statutory requirements."



At the end of the final paragraph of clause 15.1 insert the following wording as a new sentence:

"In the notification the *Consultant* or the *Employer* states whether the early warning must be dealt with immediately or can wait until the next scheduled risk reduction meeting."

Z1.16 At the end of clause 15.4, insert the following as a new sentence:

"The issuing of a revised Risk Register is not to be treated as an instruction changing the Scope. If the *Consultant* believes that the issue of any Risk Register or any other instruction from the *Employer* (not expressed to be a change to the Scope) should be treated as an instruction changing the Scope (or otherwise gives rise to a compensation event), the *Consultant* (save in circumstances of emergency), before acting on the revised Risk Register or instruction, notifies the *Employer* of the *Consultant's* belief that the Risk Register or instruction gives rise to a change in the Scope or other compensation event and allow the *Employer* time to consider the impact of the revised Risk Register or instruction in relation to the *Consultant's* notice."

Z1.17 Insert a new clause 19A with the marginal heading "**Basis of engagement and non-exclusivity**" as follows:

"19A **Basis of engagement and non-exclusivity**

19A.1 The *Consultant* acknowledges and agrees that

- it is appointed by the *Employer* under this contract solely to provide the *services* and perform its duties and obligations under this contract,
- it does not have the exclusive right to undertake any works and/or services on behalf of the *Employer* in connection with the Project (whether forming part of the Scope or otherwise) and the *Employer* may, at its sole discretion, instruct any other party to carry out works and/or services which are the same as or are similar to those to be undertaken by the *Consultant* under this contract,
- the *Employer* makes no guarantee to the *Consultant* in relation to any minimum value or volume of works and/or services that the *Consultant* will be required to undertake under this contract as part of the *services* and
- the *Consultant* shall have no entitlement to make any claim against the *Employer* whatsoever (whether in contract, tort or any other basis of law) in respect of, without limitation, any costs, damages, expenses and/or losses arising out of or in connection with it not undertaking any minimum value or volume of works and/or services under or in relation to this contract or the Project generally (including in respect of any loss or deferment of anticipated or actual profit, loss of expectation, loss of revenue, loss of turnover, loss of use, loss of opportunity, loss of production, costs of finance, business interruption and/or redeployment of workforce or any similar damage or for any consequential or indirect losses of any other kind).

19A.2 Notwithstanding any other provision of this contract

- the *Employer* may, by way of a written instruction to the *Consultant*, remove or omit all or part of the *services* at any time and for any reason,
- the *Employer* shall have no liability whatsoever to the *Consultant* in respect of any such reduction or omission (whether in contract, tort (including negligence) or otherwise), including in respect of any loss or deferment of anticipated or actual profit, loss of expectation, loss of revenue, loss of turnover, loss of use, loss of



opportunity, loss of production, costs of finance, business interruption and/or redeployment of workforce or any similar damage or for any consequential or indirect losses of any other kind and

- the *Consultant* shall not be entitled to any adjustment to the Completion Date arising out of or in connection with any instruction(s) issued by the *Employer* pursuant to this clause 19A.2,

provided that nothing in this clause 19A.2 shall affect the entitlement of the *Consultant* to be paid for any *services* properly performed under this contract prior to the date of such reduction or omission."

Z2 AMENDMENTS TO CLAUSE 2 – THE PARTIES' MAIN RESPONSIBILITIES

Z2.1 Replace the wording of clause 21.2 with the following:

"The *Consultant* Provides the Services using all of the reasonable skill, care, diligence and prudence to be expected of an appropriately qualified, skilled, competent and experienced professional consultant of the same discipline of the *Consultant* that is experienced in providing services similar in nature, extent and complexity to the *services* in relation to projects of a similar size, scope, value, character and complexity as the Project."

Z2.2 Insert a new clause 21.5 with the following wording:

"The *Consultant* warrants and undertakes to the *Employer* that it has performed and that it shall continue to Provide the Services

- so that the *services* and (insofar as reasonably dependent upon the *services*) each part of the Project will comply with all planning agreements, permissions, conditions, deeds and documents relating to the *services* and/or the relevant parts(s) of the Project which the *Employer* has notified in writing to the *Consultant* or of which the *Consultant* ought reasonably to have been aware and
- at all times and in such manner so as not to cause the *Employer* to breach any of its obligations under any Third Party Agreement and any Project Contracts entered into as at the Contract Date, the content of which the *Consultant* is deemed to have full knowledge of (and in respect of which the *Consultant* shall indemnify the *Employer* for any costs, expenses and/or liabilities of any type incurred by the *Employer* due to any non-compliance by the *Consultant* of this requirement).

Where the *Employer* issues an instruction to the *Consultant* after the Contract Date notifying the *Consultant* of any "Third Party Agreement" and/or "Project Contract" additional to those entered into as at the Contract Date (or of any variations to any such agreements entered into as at the Contract Date), such instruction shall be deemed to constitute a change to the Scope for the purposes of clause 60.1(1)."

Z2.3 Insert new clauses 22.3 to 22.8 (inclusive) with the following wording:

"22.3 If the *Consultant* wishes to replace any *key person* or appoint a new *key person*, it

- gives at least one (1) month's written notice to the *Employer* of its proposal,
- seeks the *Employer's* consent to and consults with the *Employer* concerning the proposed *key person* and
- if requested provides the *Employer* with the curriculum vitae of the proposed *key*



person,

and the provisions of clause 22.4 to clause 22.8 shall apply such any such proposed new or replacement *key persons*.

- 22.4 The *Employer* may interview any proposed new or replacement *key persons*.
- 22.5 The *Employer* notifies the *Consultant* in writing of any objections to the proposed new or replacement *key persons* within two (2) weeks of receipt of the *Consultant's* notice given under clause 22.3. If the *Employer* notifies the *Consultant* of objections, the *Consultant* does not engage the proposed *key person* and may propose another *key person*.
- 22.6 The *Consultant* uses all reasonable endeavours to ensure that a process of skill and knowledge transfer occurs prior to replacement of any *key persons* to ensure continuity in Providing the Services. The *Consultant* shall use all reasonable endeavours to ensure that, where feasible and within the reasonable control of the *Consultant*, there is a handover period of not less than four (4) weeks from the outgoing *key person* to the incoming one.
- 22.7 The *Consultant*, at all relevant times, engages an adequate number of competent, suitably qualified and experienced Consultant Personnel to Provide the Services.
- 22.8 The *Employer* (acting reasonably) may require any member of the Consultant Personnel be replaced if in the reasonable opinion of the *Employer* their performance is unsatisfactory and/or they have breached any security-related requirements referred to in this contract and/or as specified by the *Employer* from time to time, in which case the *Consultant* shall ensure that the relevant member of the Consultant Personnel be replaced by an alternative person / party with at least the same experience and expertise as the outbound member of the Consultant Personnel at no additional cost to the *Employer* (subject always to the *Employer's* prior written approval)."

- Z2.4 Replace the wording of clause 23.3 in its entirety with the following wording:

"If the *services* do not meet a Condition stated for a Key Date by the date stated in this contract and, as a result, the *Employer* incurs additional cost, loss and/or expense of any type

- in carrying (or engaging a third party to carry) out work and/or services and/or
- by paying (or allowing) any sum(s) to any third party,

in connection with the Project, then such additional cost, loss and/or expense that the *Employer* has incurred or will incur shall be recoverable without deduction from the *Consultant* by the *Employer*, either by way of set-off against and/or as a deduction from any sums that are or may become due and payable to the *Consultant* under this contract or otherwise as a debt payable within fourteen (14) days of a written demand from the *Employer* to the *Consultant* for the same."

- Z2.5 In the first line of clause 24.1, replace "work" with "all or part of the *services*".

- Z2.6 Replace the full stop at the end of clause 24.1 with the following wording:

"and the *Consultant* is and remains responsible for the acts and omissions of its Subconsultants."

- Z2.7 In the third line of clause 24.2, after the words "Provide the Services" insert the following wording:

"and/or the *Employer* has reasonable grounds for concern in relation to the Subconsultant's experience, performance on other projects, financial stability, insurance cover or status".



Z2.8 Replace the wording of clause 24.3 in its entirety with the following:

"The *Consultant* submits the proposed conditions of contract for each subcontract to the *Employer* for acceptance. The *Consultant* does not appoint a Subconsultant on the proposed subcontract conditions submitted until the *Employer* has accepted them. A reason for not accepting them is that:

- the *Consultant* has not complied with the requirements of clause 24.2,
- the appointment of the proposed Subconsultant and/or the proposed conditions of contract will not allow the *Consultant* to Provide the Services,
- the terms of the proposed conditions of contract do not, in the *Employer's* reasonable opinion, adequately reflect the terms of this contract or are inconsistent with the terms of this contract,
- the proposed conditions of contract do not include provisions,
 - requiring the Subconsultant to provide rights for the *Employer* to use material prepared by the Subconsultant in accordance with clause 70.1,
 - requiring the Subconsultant to provide a Subconsultant Collateral Warranty and
 - imposing equivalent obligations of confidentiality on the proposed Subconsultant to those required by this contract and
- the conditions do not include a statement that the parties to the subcontract shall act in a spirit of mutual trust and cooperation."

Z2.9 At the end of clause 25.3, insert the following wording as a new sentence:

"The *Consultant* co-ordinates its activities with those of Others as required by this contract and in accordance with the instructions of the *Employer*. The *Consultant* cooperates with the *Employer* and Others in obtaining and providing information which they each need in connection with their works/services."

Z2.10 Insert a new clause 26 with the marginal heading "**Assignment**" with the following wording:

"26 **Assignment**

- 26.1 The *Consultant* does not assign, transfer, charge or otherwise deal with this contract (or any of its rights or obligations under it) nor grant, declare a trust of, create or dispose of any right or interest in it without the prior written consent of the *Employer*.
- 26.2 The *Employer* may assign in whole or in part any benefit or right under this contract at any time to any person."

Z2.11 Insert a new clause 27 with the marginal heading "**Health and Safety**" with the following wording:

"27 **Health and Safety**

- 27.1 Without prejudice to clause 27.2, the *Consultant* shall perform the services having regard to the health and safety of persons involved in the Project and shall comply with
- any codes of practice, guidance notes and recommendations published by the Health and Safety Executive,



- any safety policies produced by the *Employer* and any contractors and
- the "Joint Code of Practice on the Protection from Fire of Construction Sites and Buildings Undergoing Renovation" (as amended from time to time) as published by the Construction Confederation and the Fire Protection Association.

27.2 The *Consultant* promptly notifies the *Employer* of any health and safety hazards which may arise in connection with the performance of its duties and obligations under this contract. The *Employer* promptly notifies the *Consultant* of any health and safety hazards which may exist or arise in connection with the Project from time to time and which may affect the *Consultant* in the performance of its duties and obligations under this contract.

27.3 The *Consultant* notifies the *Employer* immediately in the event of any incident occurring in connection with the performance of its duties and obligations under this contract at any Project Site from time to time (as notified by the *Employer* to the *Consultant*) where that incident causes any personal injury or damage to property which could give rise to personal injury.

27.4 The *Consultant* ensures that its health and safety policy statement (as required by the Health and Safety at Work etc. Act 1974) is made available to the *Employer* on request.

27.5 In respect of each actual and potential Construction Package, the *Consultant* liaises with and co-operates with the Principal Designer and the Principal Contractor in respect of that Construction Package as and when required by such Principal Designer and the Principal Contractor in the performance by it of all functions and duties allocated to it by the CDM Regulations."

Z2.12 Insert a new clause 28 with the marginal heading "**Prohibited Materials**" with the following wording:

"28.1 For the purposes of this clause 28, a material is "**prohibited**" if, in the context of its use or specification in any part(s) of the Project (whether alone, in combination with other materials, or in a particular situation)

- it poses a hazard to the health and safety of any person who may come into contact with it (at any stage of the Project),
- it would or is likely to have the effect of reducing the normal life expectancy of any other material or structure in which the material is incorporated or to which it is affixed,
- it poses a threat to the structural stability, performance or the physical integrity of any part, structure, element or component that is (or may be) the subject of construction works as part of the Project and/or
- it has been prohibited for use in the publication "Good Practice in the Selection of Construction Materials" (published by the British Council for Offices) current at the time of use or specification,

in each case, whether in relation to a specific Construction Package or otherwise.

28.2 The *Consultant* does not specify for use, approve for use and/or accept any materials which at the time the *services* are being carried out are generally accepted or reasonably suspected of

- being prohibited in themselves,



- becoming prohibited when used in a particular situation or in combination with other materials,
- becoming prohibited with the passage of time,
- becoming prohibited without a level of maintenance which is higher than that which would normally be expected of a structure of the type under construction and/or
- being damaged by or causing damage to the structure in which they are incorporated or to which they are affixed."

Z2.13 Insert a new clause 29 with the marginal heading "**Cooperation**" with the following wording:

"29.1 The *Consultant* shall, using the standard of care set out at clause 21.2

- promote collaborative behaviours throughout its organisation and its supply chain in connection with the Project and act collaboratively with the Project Consultants and the Contractor(s) at all times,
- comply with any requirements in the Scope in connection with the cooperation and/or interfacing with the Project Consultants and the Contractor(s) in connection with the Project,
- establish an integrated collaborative team environment in order to encourage proactive, open and efficient sharing of knowledge and information between the *Consultant*, the Project Consultants and the Contractor(s) and
- proactively consult the Project Consultants and the Contractor(s) when seeking to make decisions in relation to the Project,

in each case so far as reasonably practicable on a Project Focused basis.

29.2 The *Consultant* shall work with the Project Consultants and the Contractor(s) (and using the standard of care set out at clause 21.2) to

- (to the extent reasonably within the *Consultant's* control) assist the Project Consultants and the Contractor(s) in performing their obligations under their respective Project Appointments or Building Contract (as the context permits) in respect of which they are reliant upon information provided and/or developed by and/or input provided by the *Consultant* in connection with the *services*,
- share best practice in connection with the Project and
- collaboratively seek to manage and mitigate any potential risks identified in relation to the design and construction of the Project,

on a Project Focused basis.

29.3 The *Consultant* agrees, for the purposes referred to in this clause 29, to promptly supply or allow each Project Consultant access to all information and documentation in its possession or control that is reasonably requested by each Project Consultant in connection with the Project, insofar as the same is

- not subject to disclosure and/or confidentiality restrictions under applicable law or this contract and



- reasonably required by a Project Consultant to properly perform its obligations under its Project Appointment.

29.4 The *Consultant* shall, in complying with its obligations under this clause 29, consult with each Project Consultant and the *Employer* and attend such meetings as and when reasonably requested by the *Employer* to discuss any matters arising under this contract, any Project Appointment and/or in relation to any part(s) of the Project.

29.5 Nothing in this clause 29 shall require the *Consultant* to perform tasks and/or duties which are the responsibility of a Project Consultant under its Project Appointment."

Z3 AMENDMENTS TO CLAUSE 3 – TIME

Z3.1 Replace the wording of clause 30.1 in its entirety with the following:

"The *Consultant* starts work on the *starting date* and Provides the Services regularly, diligently and in accordance with the Accepted Programme to achieve Completion on or before the Completion Date."

Z3.2 After the second bullet point in clause 32.2, insert a new third new bullet point with the following wording:

"following the occurrence of a compensation event,".

Z3.3 Replace the wording of clause 34.4 with the following wording:

"If the *Employer* accepts a quotation for acceleration, he may issue an instruction to the *Consultant* to accelerate, and the *Consultant* proceeds to accelerate in accordance with the instruction. The *Employer* changes the Key Dates, the Completion Date and the Prices appropriately, and the *Consultant* submits a revised programme to the *Employer* for acceptance which reflects the changes."

Z4 AMENDMENT TO CLAUSE 4 – QUALITY

Z4.1 At the end of clause 41.2, insert before the full stop "or deducts this amount from any sum due to the *Consultant*".

Z4.2 Insert a new clause 41.3 with the following wording:

"Nothing in this clause 41 affects any other right or remedy under the contract or at law, including (without limitation) the *Employer's* right to claim damages for a Defect as a breach of contract."

Z5 AMENDMENTS TO CLAUSE 5 – PAYMENT

Z5.1 In line 1 of clause 50.1, replace the wording "an invoice" with "a valid value added tax invoice".

At the end of the first bulleted item in clause 50.1, delete the word "and".

At the end of the second bulleted item in clause 50.1, replace the full stop with the word "and".

Insert a third bulleted item in clause 50.1 with the following wording:

"any other time prior to Completion of the whole of the works when the *Employer* requires an assessment to be made in accordance with clause 51.7 or clause 92.1A.1 of this contract."

Z5.2 Insert a new clause 50.6 with the following wording:



"Notwithstanding any other provision of this contract, the *Consultant* acknowledges and agrees that

- unless otherwise approved by the *Employer* in advance and in writing, the maximum amount that the *Consultant* is entitled to claim (and, subject to the application of this clause 50, clause 51 and Option Y(UK)2, receive) payment for in relation to any *services* provided by the *Consultant* during a specific Contract Year shall not exceed in the aggregate the Annual Payment Cap that applies to that Contract Year and
- the Parties shall (acting reasonably) seek to agree the Annual Payment Cap for each Contract Year (other than the first (1st) Contract Year) as soon as reasonably practicable prior to the commencement of the relevant Contract Year and taking into account any anticipated adjustment to the *staff rates* applicable to that Contract Year by reference to the adjustment mechanism referred to in the Contract Data."

Z5.3 Insert a new clause 50.7 with the following wording:

- "50.7 It is a condition precedent to the validity of an invoice submitted by the *Consultant* (and to the *Consultant's* entitlement to payment in respect thereof) that
- the invoice is in the form required by this contract or otherwise as required by the *Employer* from time to time,
 - the invoice is in respect only of *services* properly carried out in accordance with this contract and
 - insofar as the invoice includes any payment that is the subject of any Key Date, the *Consultant* has fully complied with any Conditions for that Key Date."

Z5.4 Insert a new clause 50.8 with the following wording:

"If the *Employer* gives the *Consultant* a pay less notice under clause Y2.3 of this contract, the *Consultant* issues a revised value added tax invoice showing the revised amount and tax due. The issue of a valid value added tax invoice is a condition precedent to payment by the *Employer* of the amount stated in any Termination Statement."

Z5.5 Insert a new clause 50.9 with the following wording:

"If no pay less notice is issued by the *Employer* under clause Y2.3 of this contract, the amount of the payment to be made by the *Employer* shall be subject (insofar as permitted by law) to the submission of a valid invoice by the *Consultant* which satisfies the conditions set out in clause 50 of this contract".

Z5.6 At the beginning of clause 51.1, replace the first sentence of the clause with the following:

"Subject to any pay less notice under clause Y2.3 of this contract and (insofar as permitted by law) the submission of a valid invoice which satisfies the conditions set out in clause 50 of this contract, each payment is made by the final date for payment detailed in Y(UK)2.2(iii) and Y(UK)2.2(iv)".

Z5.7 At the end of clause 51.1, insert:

"The *Consultant* issues a valid invoice even if the amount which the *Consultant* assesses to be due is zero, or a negative amount insofar as, on balance, sums are only due from the *Consultant* to the *Employer*."

Z5.8 In clause 51.5 delete the words "compounded annually" and replace with the words "simple interest".

Z5.9 Insert a new clause 51.6 with the following wording:



"The *Employer* may in any pay less notice take into account

51.6.1 any correction or modification that should properly be made to any previous payment and

51.6.2 in addition to the *Employer's* common law right of set-off, the amount of any bona fide claim and/or counterclaim for damages, losses, demands, expenses (including reasonable legal and other professional expenses), costs, liabilities and/or fines which the *Employer* may have against the *Consultant* under or arising out of this contract or any other contract to which the *Employer* and the *Consultant* are a party. The foregoing entitlement is in addition to and not in substitution for any other rights of counterclaim, set-off or abatement."

Z5.10 Insert a new clause 51.7 with the following wording:

"The *Employer* may at any time if it considers any sums to be due to the *Employer* (including as a result of correction or modification to a previous payment pursuant to clause 51.6 of this contract) issue a notice to the *Consultant* stating the amount which the *Employer* determines to be due and the basis on which that amount has been calculated (an "**Employer's Statement**"). The amount which the *Employer* determines to be due under an *Employer's Statement* is subject to any pay less notice from the *Consultant* pursuant to clause Y(UK)2.3 of this contract."

Z5.11 Insert a new clause 51.8 with the following wording:

"Payment of the amount due under an *Employer's Statement* in each currency shall be made into the bank account nominated by the *Employer* in this contract."

Z5.12 Insert a new clause 51.9 with the following wording:

"The due date in respect of any payment referred to in clause 51.7 is as detailed in clause Y(UK)2.2(i)."

Z5.13 Insert a new clause 51.10 with the following wording:

"The *Consultant*

- allows the *Employer* (or any representative of the *Employer*) to visit its offices and to inspect its financial records in relation to the services at any time subject to reasonable prior notice and
- uses reasonable endeavours to ensure that a clause is inserted into each subcontract with a Subconsultant that reserves the right of the *Employer* (or any representative of the *Employer*) to visit that Subconsultant's offices and to inspect its financial records in relation to the services at any time subject to reasonable prior notice."

Z6 AMENDMENTS TO CLAUSE 6 – COMPENSATION EVENTS

Z6.1 Replace the first sentence of clause 60.1 with the following wording:

"The following are compensation events, but only to the extent that they are not due to any negligence, default, unlawful act or omission or breach of or failure to comply with this contract by the *Consultant*."

Z6.2 At the end of clause 60.1(1) insert the following:

", save in respect of:

- any change made resolving any ambiguity or inconsistency which the *Consultant* had failed



to notify to the *Employer* as soon as the *Consultant* was aware or reasonably should have been aware of the same,

- any change arising from a failure by the *Consultant* to reply during the *period for reply* or
- any instruction which is stated in this contract not to give rise to a compensation event."

Z6.3 At the end of clause 60.1(12) after the word "contract", insert "following an instruction from the *Employer* to do so, it having been agreed or determined that the *Consultant* was not responsible for the Defect".

Z6.4 In the third line of the final paragraph of clause 61.4, before the word "treated" insert "not".

Z6.5 In the final line of clause 62.6, before the word "treated" insert "not".

Z6.6 Insert a new clause 63.11A with the following wording:

"Where a compensation event or its effect is in part attributable to the *Consultant's* fault or to anything for which the *Consultant* is responsible under this contract, the Prices, the Completion Date or Key Dates shall not be changed to the extent attributable to the *Consultant's* fault. In this contract a "fault" of the *Consultant* includes any failure on the part of the *Consultant* or its Subconsultants (or its or their employees, agents or suppliers) to take any reasonable action to prevent the compensation event or to prevent or mitigate its adverse effects, or any negligence or breach of this contract on the part of the *Consultant* or its Subconsultants (or its or their employees, agents or suppliers)."

Z6.7 In the final line of clause 64.4, before the word "treated" insert "not" and delete the words ", unless the quotation is for a proposed instruction or a proposed changed decision,".

Z6.8 Replace the ", " at the end of the first bullet point in clause 65.1 with "or".

Delete the third bullet point in clause 65.1.

Z7 AMENDMENTS TO CLAUSE 7 – RIGHTS TO MATERIAL

Z7.1 Replace the wording of clause 70.1 in its entirety with the following:

"70.1(1) The copyright in the Material remains vested in the *Consultant* but the *Consultant* hereby grants to the *Employer* an irrevocable, royalty-free, non-exclusive and worldwide licence to copy and use the same and to reproduce the Materials for any and all purposes relating to this contract or any part(s) of the Project (including any works and/or completed works, including design, construction completion, asset management, use, operation and maintenance, replacement, demolition, extension, sale or letting to be undertaken in respect of the same), with this licence including the right to grant sub-licences in the terms of this licence to third parties and is assignable and shall continue in perpetuity notwithstanding the termination of this contract for any reason. The *Consultant* obtains from each Subconsultant equivalent rights for the *Employer* to use Material prepared by the Subconsultant.

70.1(2) The *Consultant* unconditionally and irrevocably waives and uses all reasonable endeavours to procure that Subconsultants unconditionally and irrevocably waive such moral rights as may be conferred by Chapter IV of Part I of the Copyright Designs & Patents Act 1988 or other laws in force from time to time enacted conferring analogous rights.

70.1(3) The *Consultant* warrants that it has not infringed any third party's intellectual property rights in Providing the Services and indemnifies the *Employer* against any and all claims, liability, losses, damage, costs and expenses (including legal costs) arising out of a breach of this



clause 70.1.

70.1(4) The *Consultant* is not responsible for any loss resulting from use of the Material for any purpose which would have been beyond the reasonable contemplation of the Parties at the time at which it was prepared and having regard inter alia to the purposes of the Materials as set out in or reasonably to be inferred from this contract."

Z7.2 Z7.2 Replace the wording of clause 70.3 in its entirety with the following:

"70.3(1) Except where disclosure is expressly permitted elsewhere in this contract (and without prejudice to the requirements of clause 13.1), the *Consultant* shall:

- treat all Confidential Information as confidential and safeguard it accordingly and
- not disclose Confidential Information to any other person without the owner's prior written consent.

70.3(2) The *Consultant's* obligations in relation to Confidential Information pursuant to clause 70.3(1) do not apply to the extent that (and nothing shall prevent the *Employer* from disclosing the *Consultant's* Confidential Information where):

- the disclosure is a requirement of law placed upon the party making the disclosure, including any requirements for disclosure under the FOIA or the Environmental Information Regulations,
- the information was in the possession of the party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner,
- the information was obtained from a third party without obligation of confidentiality,
- the information was already in the public domain at the time of disclosure otherwise than by a breach of this contract or
- it is independently developed without access to the Employer's Confidential Information.

70.3(3) Subject always to the requirements of clause 13.1, the *Consultant* shall only disclose the Employer's Confidential Information relevant to the carrying out and completion of the Project to the Consultant Personnel who are directly involved in carrying out and completing the Project, and shall ensure that the Consultant Personnel are aware of and comply with their obligations in respect of Confidential Information.

70.3(4) The *Consultant* shall not, and shall procure that the Consultant Personnel do not, use of any of the Employer's Confidential Information received otherwise than for the purposes of this contract.

70.3(5) At the written request of the *Employer*, the *Consultant* shall procure that the Consultant Personnel identified in the *Employer's* notice sign a confidentiality undertaking on similar terms to this contract prior to commencing any work in accordance with this contract.

70.3(6) Nothing in this contract shall prevent the *Employer* from disclosing the Consultant's Confidential Information

- to any Crown body or any other public body on the understanding that they are entitled to further disclose the Confidential Information to other Crown bodies or



other public bodies on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Crown body or any public body,

- to any contractor, consultant or other person engaged by the *Employer* or any person conducting a review of the Project,
- for the purpose of the examination and certification of the *Employer's* accounts or
- for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the *Employer* has used its resources.

70.3(7) The *Employer* shall use its reasonable endeavours to ensure that any party to whom the Consultant's Confidential Information is disclosed is made aware of the *Employer's* obligations of confidentiality.

70.3(8) Nothing in this contract shall prevent the *Consultant* from using any techniques, ideas or Know-How gained during the performance of this contract in the course of its normal business to the extent that this use does not result in a disclosure of the Employer's Confidential Information or an infringement of Intellectual Property Rights.

70.3(9) Notwithstanding any other term of this contract, the *Consultant* consents that the *Employer* can publish this contract in its entirety, including from time to time agreed changes to this contract, to the general public. The *Consultant* shall assist and cooperate with the *Employer* in order to make information available to the general public as required by the *Employer* from time to time. Prior to such publication the *Employer* may, at its sole discretion, in whole or in part, redact information for one or more of the following grounds:

- national security;
- personal data;
- information protected by intellectual property law;
- information which is not in the public interest to disclose (under a Freedom of Information Act analysis);
- third party confidential information;
- information technology security; and/or
- the prevention of Fraud.

70.3(10) The *Consultant* shall not, without the prior written agreement of the *Employer*, be entitled to use the Materials for any purpose whatsoever other than for the purposes of this contract, notwithstanding the termination of its appointment under this contract."

Z7.3 Delete clause 70.4 and insert "Not used."

Z7.4 Insert a new clause 70.5 with the following wording:

"The *Consultant* warrants to the *Employer* that:

- the Material created by or on behalf of the *Consultant* (including by any Subconsultant) in



connection with contract is original and

- that the use by the *Employer* of the material provided by the *Consultant* in accordance with the licence at clause 70.1 above will not infringe upon the rights of any third party nor create any other liability for the *Employer* nor otherwise be unlawful."

Z7.5 Insert a new clause 70.6 with the following wording:

"The *Consultant*, before the Completion Date or on notification from the *Employer*, shall without further charge to the *Employer* deliver for the retention and use of the *Employer* the Materials and related information and other items of any kind whatsoever relating to this contract, the *services* and the Project in the *Consultant's* control custody or possession."

Z7.6 After clause 70, insert a new clause 70A with the marginal heading "**Building information modelling**" with the following wording:

"The *Consultant* shall comply with the Digital Construction Requirements at all times and shall input into the Building Information Model in accordance with the Digital Construction Requirements and other documents developed, prepared and/or contributed towards by the *Consultant* in connection with the Project as required by the BIM Coordinator from time to time."

Z7.7 Replace the wording of clause 71 in its entirety with the following:

- "71.1 Subject to clause 71.1, the *Consultant* does not and procures that its Subconsultants do not make any public statement relating to this contract and/or *services* without the prior written consent of the *Employer*, such consent not to be unreasonably withheld.
- 71.2 Nothing in clause 71.1 does not prevent the *Consultant* from complying with any legal obligation placed upon it or from making any announcement required by any securities exchange or regulatory *Employer* or government body to which it subscribes including the London Stock Exchange or the Panel on Takeovers and Mergers.
- 71.3 The *Consultant* does not exhibit or attach to any part of the *Employer's* site any notice or advertisement without the prior written permission of the *Employer*, save where required to comply with applicable law."

Z8 AMENDMENTS TO CLAUSE 8 – INDEMNITY

Z8.1 Insert a new clause 80.2 with the following wording:

"The *Consultant* promptly notifies the *Employer* if any claim or demand is made or action brought against the *Consultant* for infringement or alleged infringement of any intellectual property rights. The *Consultant* at its sole expense conducts any litigation or negotiations arising from any such claim and consults with the *Employer* on all substantive matters arising during the conduct of such litigation or negotiations and takes due account of the interests of the *Employer*."

Z8.2 Insert a new clause 80.3 with the following wording:

"The *Employer* promptly notifies the *Consultant* if any claim or demand is made or action brought against the *Employer* to which clause 80.2 may apply and in the case of any such claim

- the *Employer* does not pay or agree to pay any such claim or make any admissions which are prejudicial to the defence of the claim without the prior written consent of the *Consultant* and
- the *Consultant* may take over conduct of the claim and proceedings at its sole expense.



Z8.3 Replace the wording of clause 81.1 in its entirety with the following wording:

"The *Consultant* provides the insurance stated in Contract Data: Part One as being provided by the *Consultant* with reputable insurers approved by the *Employer* and otherwise in accordance with the Scope and provides professional indemnity insurance to the level of indemnity stated in Contract Data: Part One."

Z8.4 Insert a new clauses 81.3 to 81.5 (inclusive) with the following wording:

"81.3 The insurances to be taken out and maintained by the *Consultant* pursuant to clause 81.1 for the period(s) specified in Contract Data: Part One unless such cover is no longer generally available in the market-place on reasonable terms and at reasonable premiums, provided always that such cover shall not be considered to be unavailable to the *Consultant* at reasonable terms and at reasonable premiums under this clause to the extent that the same are unavailable to the *Consultant* due to the *Consultant's* own claims record or other default.

81.4 The *Consultant* shall immediately inform the *Employer* if the insurances to be taken out and maintained by the *Consultant* pursuant to clause 81.1 cease to be available on reasonable terms and at reasonable premiums in order that the *Consultant* and the *Employer* can discuss means of best protecting the respective positions of the *Employer* and the *Consultant* in connection with this contract in the absence of such insurance.

81.5 As and when reasonably requested to do so by the *Employer* the *Consultant* shall produce for inspection documentary evidence that its professional indemnity insurance is being maintained."

Z8.5 Replace the wording of clause 82.2 in its entirety with "Not used."

Z9 AMENDMENTS TO CLAUSE 9 – TERMINATION

Z9.1 In clause 90.1, replace the words "had an administration order made against it" with "entered administration".

Z9.2 Insert a new clause 90.1A with the marginal heading "**Termination at any time**" with the following wording:

"90.1A.1 Notwithstanding any other provision of this contract

- the *Employer* may terminate this contract at any time and for any reason and
- in such circumstances, the *Employer* gives the *Consultant* not less than thirty (30) days' notice of such termination, within which period the *Consultant* ceases all activities under this contract in an orderly manner.

90.1A.2 Upon the expiry of the period referred to in clause 90.1A.2

- the *Consultant's* engagement under this contract shall terminate,
- the procedure to be followed and the assessment of any further payment that may be due to the *Consultant* arising out of or in connection with the termination under clause 90.1A.1 shall be determined pursuant to clause 91, clause 92.1 and clause 92.1A respectively and
- the payment by the *Employer* to the *Consultant* pursuant to the clause 92.1 and clause 92.1A in connection with the termination shall be the sole and exclusive



remedy of the *Consultant* arising out of or in connection with the termination of this contract (whether in contract, tort (including negligence) or any other basis of law) and the *Consultant* shall have no right to claim any amounts in respect of the termination above and beyond such sums, including (without limitation) amounts in respect of loss or deferment of anticipated or actual profit, loss of expectation, loss of revenue, loss of turnover, loss of use, loss of opportunity, loss of production, costs of finance, business interruption and/or redeployment of workforce or any similar damage or for any consequential or indirect losses of any other kind."

Z9.3 In clause 90.3, at the end of the second bulleted item, replace the full stop with ", " and insert a new third and fourth bulleted item with the following wording:

- "the *Consultant* is in default of its obligations under (and determinable by reference to) clause 106.5 or
- "the *Employer* has (or would have had, save for the prior termination of the Strategic Alliancing Agreement for any reason) a right to terminate this contract pursuant to the terms and conditions of the Strategic Alliancing Agreement."

Z9.4 In clause 91.1, insert a new fifth main bulleted item with the following wording:

"the *Consultant*, upon notification from the *Employer*, delivers to the *Employer* all Material and other items of any kind whatsoever relating to this contract and the Project in the *Consultant's* control, custody or possession."

Z9.5 Insert a new clause 92.1A with the following wording:

92.1A Payment on termination – additional rules

92.1A(1) Within seven (7) days of the *Employer's* assessment of a final payment to or from the *Consultant* pursuant to this clause 92.1

- the Party to whom final payment is due issues a statement to the other Party stating the amount which that Party considers to be due and the basis on which that amount has been calculated in accordance with the *Employer's* assessment under this clause 92.1A (a "**Termination Statement**") and
- in the case of a Termination Statement from the *Consultant*, such Termination Statement includes a valid value added tax invoice showing the correct amount of value added tax properly chargeable in respect of the amount stated as due in the Termination Statement.

92.1A(2) If no pay less notice is issued by the payor in accordance with clause Y2.3 of this contract, the amount of the termination payment to be made is, subject to the provision of

- a pay less notice under clause Y2.3 of this contract and
- the submission of a Termination Statement by the payee together with (in the case of a Termination Statement of the *Consultant*) a valid value added tax invoice showing the correct amount of value added tax properly chargeable in respect of the amount stated as due in the Termination Statement,

the sum stated as due in the Termination Statement.

92.1A(3) The due date in respect of any payment referred to in clause 92.1 is one (1) week after the



date of receipt by the payor of the Termination Statement pursuant to clause 92.1A.1."

Z9.6 In clause 92.1, insert the following at the end of the second bulleted item:

"(provided that the *Consultant* has used reasonable endeavours to mitigate the same)".

Z9.7 After the bulleted list in clause 92.1, insert the following:

"The amounts covered under the preceding bulleted items do not include (and the *Consultant* shall have no entitlement to claim from the *Employer*) any amounts in respect of any loss or deferment of anticipated or actual profit, loss of expectation, loss of revenue, loss of turnover, loss of use, loss of opportunity, loss of production, costs of finance, business interruption and/or redeployment of workforce or any similar damage or for any consequential or indirect losses of any other kind arising out of or in connection with the termination of the *Consultant's* engagement under this contract."

Z9.8 Delete the text of clause 92.2 and insert the following:

"Subject to clause 93.3, where the *Employer* terminates this contract

- because of the insolvency of the *Consultant*,
- because of the substantial failure of the *Consultant* to comply with its obligations or
- in accordance with the third bulleted item of clause 90.3,

the amount due on termination shall be the amount determined in accordance with clause 92.1 less a deduction of the additional cost to the *Employer* of completing the whole of the *services* and after termination the *Employer* shall not be obliged to make any further payment until that additional cost can be fully ascertained. In the event that such additional cost exceeds the amount calculated in accordance with clause 92.1, without prejudice to any other right or remedy of the *Employer*, the *Employer* may recover such excess from the *Consultant* as a debt."

Z9.9 Insert a new clause 93.3:

"No sum is payable in respect of any sum due under this contract if the *Consultant* is "insolvent" as defined in sections 113(2) to (5) of the Housing Grants, Construction and Regeneration Act 1996 (as amended) after the date on which a pay less notice is issued in respect of that sum under clause Y2.3 of this contract."

Z10 NEW CORE CLAUSE 10 – ADDITIONAL PROVISIONS

Z10.1 Insert a new core clause 10 after core clause 9 (Termination) with the heading "**Additional Provisions**".

Z10.2 Insert a new clause 101 with the marginal heading "**Cooperation and coordination**" with the following wording:

"101 **Cooperation and coordination**

101.1 The *Consultant* shall:

- pro-actively provide whatever advice and/or assistance the *Employer*, Others and any Subconsultants may reasonably require in and about the fulfilment of their respective duties and responsibilities in connection with each part of the Project, with such obligations including (but not being limited to)



- assisting in the establishment and development of co-ordinated programmes to meet the Accepted Programme for the production, development, review, refinement, approval, release and circulation of Project-related data (including Material),
- preparing for and attending team co-ordination meetings and actioning any action points arising therefrom for which the *Consultant* is responsible,
- preparing for and attending meetings with and presentations to the *Employer*, Others, any Subconsultants and any governmental, public or statutory bodies, organisations, undertakers or agencies and/or any other third parties with whom the *Employer* is or may be in negotiation or contract,
- communicating any relevant correspondence, data and/or documents to the *Employer*, the *Employer's* designer(s) for the Project, any Subconsultants and any Others as appropriate; and
- providing whatever advice or assistance the *Employer*, Others and any Subconsultants may reasonably require in relation thereto."

Z10.3 Insert a new clause 102 with the marginal heading "**Security and vetting**" with the following wording:

"102 **Security and vetting**

- 102.1 Where the *Employer* advises the *Consultant* that Consultant Personnel are required to have a pass for admission to any Project Site and such Consultant Personnel are identified by the *Consultant* (provided always that the *Consultant* first notifies the *Employer* in writing of such Consultant Personnel within a reasonable period ahead of their scheduled attendance(s) at any such Project Site), the *Employer*, subject to its satisfactory completion of its own approval procedures in respect of such admission by Consultant Personnel, shall arrange for passes to be issued. Consultant Personnel who cannot produce a proper pass when required to do so by any of the *Employer's* personnel, or who contravene any conditions on the basis of which a pass was issued, may be refused admission to the relevant Project Site or required to leave that Project Site if already there.
- 102.2 The *Consultant* shall promptly return any pass issued to any Consultant Personnel pursuant to clause 102.1 if at any time the *Employer* so requires or if the person to whom the pass was issued ceases to be involved in the performance of the *services* at a Project Site. The *Consultant* shall promptly return such passes on completion or earlier termination of their appointment under this contract.
- 102.3 Consultant Personnel attending a Project Site may be subject to a search at any time. Strip searches are only conducted on the specific authority of the *Employer* under the same rules and conditions applying to the *Employer's* personnel. The *Consultant* is deemed to be familiar with the Prison Rules 1999 Part III and the Prison (Amendment) Rules 2005 and the Young Offender Institute Rules 2000 Part III and the Young Offender Institute (Amendment) Rules 2008 and all other applicable law in this regard.
- 102.4 The *Employer*, whose decision is final and conclusive, reserves the right to refuse to admission to, or to withdraw permission to remain on, a Project Site or any premises occupied by or on behalf of the *Employer*, any Consultant Personnel whose admission or continued presence is, in the opinion of the *Employer*, undesirable.
- 102.5 If and when directed by the *Employer*, the *Consultant* shall provide a list of the names and



addresses, national insurance numbers, periods of employment, immigration status and tax exemption certificates of all persons who it is expected may require admission in connection with the contract to a Project Site or any premises occupied by or on behalf of the *Employer*, specifying the capacities in which they are concerned with the Project and giving such other particulars as the *Employer* may reasonably desire.

- 102.6 The *Consultant* shall ensure that its Consultant Personnel undertaking works and/or services within the boundaries of a Government establishment shall comply with rules, regulations and requirements (including those relating to security arrangements) as may be in force from time to time for the conduct of Consultant Personnel when at that establishment and when outside that establishment.
- 102.7 If the *Consultant* fails to comply with clause 102.2 and/or clause 102.5, the *Employer*, (whose decision shall be final and conclusive in the matter) may decide that such failure is prejudicial to the interests of the Crown and if that the *Consultant* does not comply with the *Employer's* reasonable requests within four (4) weeks of the date of a written notice from the *Employer* so to do, then the *Employer* may terminate the appointment of all or any part of the *Consultant's* appointment under this contract as if a breach had occurred under clause 90.3 (without providing the Consultant with a further period of time within which to remedy the default), provided that such termination does not prejudice or affect any right of action or remedy which has accrued or thereafter accrues to the *Employer*.
- 102.8 The *Consultant* shall bear the costs of complying with the requirements, notices, instructions or decisions received from the *Employer* in relation to its obligations in respect of information relating to Consultant Personnel pursuant to this clause 102.
- 102.9 The *Consultant* shall not employ any person that it knows, or by reason of the circumstances which it might reasonably be expected to know, is involved in any unlawful procurement of social security benefits or tax exemptions in connection with his employment by the *Consultant*. The *Consultant* shall not make, facilitate or participate in the procurement of any unlawful payments to any person employed by them, whether in the nature of social security fraud, evasion of tax or otherwise.
- 102.10 The *Consultant* shall comply with the *Employer's* procedures for the vetting of Consultant Personnel in respect of all persons to be employed or engaged to carry out and complete any part(s) of the Project. The *Consultant* shall confirm that all persons employed or engaged by it or that will be employed or engaged by them in relation to the contract are vetted and recruited on a basis that is equivalent to and no less strict than the Personnel Vetting Procedure.
- 102.11 Without prejudice to the generality of this clause 102, the *Employer* may require the *Consultant* to ensure that any person engaged by it in connection with the Project has undertaken a DBS Check as per the Personnel Vetting Procedure (or as otherwise requested by the *Employer*), with the level of DBS Check to be determined by the *Employer* at its sole discretion, or any other security check as may be required by the *Employer* from time to time. The *Consultant* shall ensure that no person who discloses that they have a Relevant Conviction, or is found by that *Consultant* to have a Relevant Conviction (whether as a result of a police check or through the DBS Check or otherwise) is employed or engaged in connection with the Project.
- 102.12 Individuals, including those held in lawful custody or on probation shall be regarded as vulnerable persons under the Safeguarding Vulnerable Groups Act 2006. Where the *Employer* deems it necessary, the *Consultant* shall provide a list of Consultant Personnel who are engaged by it in connection with the services that are vetted by the Disclosure and Barring Service. The *Employer* may in its sole discretion refuse access to a Project Site by any Consultant Personnel who do not successfully complete the vetting procedures under the Vetting and Barring Scheme.



- 102.13 Whilst on a Project Site, the *Consultant* must ensure that its Consultant Personnel comply with all security measures implemented by the *Employer* in respect of staff and other persons attending a Project Site. The *Employer* shall provide copies of its written security procedure to the *Consultant* on request. The *Consultant* and all of its Consultant Personnel shall be prohibited from taking any photographs on a Project Site unless the *Employer* has given prior written consent and a representative of the *Employer* is present so as to have full control over the subject matter of each photograph to be taken.
- 102.14 The *Employer* shall have the right to carry out any search of any Consultant Personnel or of vehicles used by the *Consultant* at a Project Site at its sole discretion from time to time.
- 102.14 The *Consultant* shall co-operate with any investigation relating to security which is carried out by the *Employer* or by any person who is responsible to the *Employer* for security matters, and when required by the *Employer*
- take all reasonable measures to make any Consultant Personnel identified by the *Employer* available to be interviewed by the *Employer* or by a person who is responsible to the *Employer* for security matters, for the purposes of the investigation (and all Consultant Personnel have the right to be accompanied by and to be advised or represented to the other person whose attendance at the interview is acceptable to the *Employer*) and
 - subject to any legal restriction on their disclosure, provide all documents, records or other material of any kind which may reasonably be required by the *Employer* or by a person who is responsible to the *Employer* for security matters, for the purposes of the investigation, so long as the provision of that material does not prevent the *Consultant* from carrying out and completing the *services* (and the *Employer* has the right to retain any such material for use in connection with the investigation and, so far as possible, provide the *Consultant* with a copy of any material retained)."

Z10.4 Insert a new clause 103 with the marginal heading "**Data protection**" with the following wording:

"103 **Data protection**

- 103.1 The Parties acknowledge that for the purposes of the Data Protection Laws, the *Employer* is the Controller and the *Consultant* is the Processor unless otherwise specified in the Data Protection Schedule. The only Processing that the Processor is authorised to do is listed in the Data Protection Schedule by the Controller and may not be determined by the Processor.
- 103.2 The Processor shall notify the Controller immediately if it considers that any of the Controller's instructions infringe the Data Protection Laws.
- 103.3 The Processor shall provide all reasonable assistance to the Controller in the preparation of any Data Protection Impact Assessment prior to commencing any Processing and such assistance may, at the discretion of the Controller, include
- a systematic description of the envisaged Processing operations and the purpose of the Processing,
 - an assessment of the necessity and proportionality of the Processing operations in relation to the *services*,
 - an assessment of the risks to the rights and freedoms of Data Subjects and/or



- the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 103.4 The Processor shall, in relation to any Personal Data that is Processed in connection with its obligations under this contract
- Process that Personal Data only in accordance with the Data Protection Schedule, unless the Processor is required to do otherwise by applicable law (provided that if it is so required, the Processor shall promptly notify the Controller before Processing the Personal Data unless prohibited by applicable law),
 - ensure that it has in place Protective Measures, which are appropriate to protect against a Data Loss Event, which the Controller may reasonably reject (but failure to reject shall not amount to approval by the Controller of the adequacy of the Protective Measures), having taken account of the
 - nature of the data to be protected,
 - harm that might result from a Data Loss Event,
 - state of technological development and
 - cost of implementing any measures and
 - ensure that
 - the Processor Personnel do not Process any Personal Data except in accordance with this contract (and in particular the Data Protection Schedule) and
 - it takes all reasonable steps to ensure the reliability and integrity of any Processor Personnel who have access to the Personal Data and ensure that they
 - are aware of and comply with the Processor's duties under this clause 103,
 - are subject to appropriate confidentiality undertakings with the Processor or any Sub-Processor,
 - are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Controller or as otherwise permitted by this contract and
 - have undergone adequate training in the use, care, protection and handling of Personal Data,
 - not transfer Personal Data outside of the European Union unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled
 - the Controller or the Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with Article 46 of the GDPR or Article 37 of the LED) as determined by the Controller,



- the Data Subject has enforceable rights and effective legal remedies,
 - the Processor complies with its obligations under the Data Protection Law by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Controller in meeting its obligations) and
 - the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the Processing of the Personal Data and
- at the written direction of the Controller, delete or return Personal Data (and any copies of it) to the Controller on termination of the contract unless the Processor is required by applicable law to retain the Personal Data.
- 103.5 Subject to clause 103.6, the Processor shall notify the Controller immediately if it
- receives a Data Subject Access Request (or purported Data Subject Access Request),
 - receives a request to rectify, block or erase any Personal Data,
 - receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Laws,
 - receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data that is Processed under this contract,
 - receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by applicable law and/or
 - becomes aware of a Data Loss Event.
- 103.6 The Processor's obligation to notify under clause 103.5 shall include the provision of further information to the Controller in phases, as details become available.
- 103.7 Taking into account the nature of the Processing, the Processor shall provide the Controller with full assistance in relation to either Party's obligations under Data Protection Laws and any complaint, communication or request made under clause 103.5 (and insofar as possible within the timescales reasonably required by the Controller) including by promptly providing
- the Controller with full details and copies of the complaint, communication or request,
 - such assistance as is reasonably requested by the Controller to enable the Controller to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Laws,
 - the Controller, at its request, with any Personal Data it holds in relation to a Data Subject,
 - assistance as requested by the Controller following any Data Loss Event and



- assistance as requested by the Controller with respect to any request from the Information Commissioner's Office, or any consultation by the Controller with the Information Commissioner's Office.
- 103.8 Unless the Processor employs fewer than two-hundred and fifty (250) staff, the Processor shall maintain complete and accurate records and information to demonstrate its compliance with this clause unless
- the Controller determines that the Processing is not occasional,
 - the Controller determines the Processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR and/or
 - the Controller determines that the Processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 103.9 The Processor shall allow for audits of its Processing activity by the Controller or the Controller's designated auditor.
- 103.10 Each Party shall designate its own Data Protection Officer if required by the Data Protection Law.
- 103.11 Before allowing any Sub-Processor to Process any Personal Data related to this contract, the Processor must
- notify the Controller in writing of the intended Sub-Processor and Processing,
 - obtain the written consent of the Controller,
 - enter into a written agreement with the Sub-Processor which give effect to the terms set out in this clause 103 such that they apply to the Sub-Processor and
 - provide the Controller with such information regarding the Sub-Processor as the Controller may reasonably require.
- 103.12 The Processor shall remain fully liable for all acts or omissions of any of its Sub-Processors.
- 103.13 The Controller may, at any time on not less than thirty (30) Working Days' notice, revise this clause by replacing it with any applicable "Controller" to "Processor" standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this contract).
- 103.14 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Controller may on not less than thirty (30) Working Days' notice to the Processor amend this agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office."
- Z10.5 Insert a new clause 104 with the marginal heading "**Freedom of information**" with the following wording:
- "104 **Freedom of information**
- 104.1 The *Consultant* acknowledges that the *Employer* is subject to the requirements of the FOIA and the Environmental Information Regulations and in such event, the *Consultant* shall assist and cooperate with the *Employer* (at its own expense) to enable it to comply with



these information disclosure requirements.

104.2 The *Consultant* shall and shall ensure that its Consultant Personnel shall provide

- the *Employer* with a copy of all information in its possession, power or control in the form that they require within five (5) days (or such other period as the *Employer*, as the context permits, may notify to the *Consultant*) of receiving a written request from the *Employer* for such information and
- all necessary assistance as is reasonably requested by the *Employer* to enable them to respond to a Request for Information within the time for compliance set out in Section 10 of the FOIA or Regulation 5 of the Environmental Information Regulations, and the *Consultant* shall be liable for and hereby indemnifies the *Employer* from and against all claims, proceedings, damages, liabilities, losses, costs and expenses suffered or incurred by the *Employer* where and to the extent that the same arises in connection with any breach of this clause 104.2 by the *Consultant* and/or its Consultant Personnel.

104.3 If the *Consultant* considers that all or any information provided to the *Employer* under clause 104.2 is a "trade secret" in accordance with section 43(1) of the FOIA, or a duty of confidentiality applies under section 41(1) of the FOIA, or is exempt by the operation of any other provision of FOIA

- it shall ensure that the relevant information and the claimed exemption is clearly identified as such to the *Employer* and
- notwithstanding any such identification, the *Employer* (as the context permits) shall be solely responsible for determining at its absolute discretion whether such information and/or any other information
 - is exempt from disclosure in accordance with the provisions of the Code of Practice, the FOIA or the Environmental Information Regulations or
 - is to be disclosed in response to a Request for Information.

104.4 In no event shall the *Consultant* (or the *Consultant* allow its Consultant Personnel to) respond directly to any requests for information from members of the public unless expressly authorised to do so by the *Employer*.

104.5 The *Consultant* acknowledges that the *Employer* may, acting in accordance with the FOIA or the Environmental Information Regulations, be required to disclose information

- without consulting with the *Consultant* or
- following consultation with that *Consultant* and having considered its views."

Z10.6 Insert a new clause 105 with the marginal heading "**Information security**" with the following wording:

"105 **Information Security**

105.1 The *Consultant* shall

- identify, keep and disclose to the *Employer* upon request a record of those members of the Consultant Personnel and third parties with access to or who are involved in handling Employer Data ("**users**"),



- provide to the *Employer* details of its policy for reporting, managing and recovering from information risk incidents, including losses of protected Personal Data and information and communications technology security incidents and its procedures for reducing risk and raising awareness and
- immediately report information security incidents to the *Employer*,

with the *Consultant* acknowledging that actual or potential losses of Personal Data may be shared with the Information Commissioner and the Cabinet Office by the *Employer*.

- 105.2 The *Consultant* shall protect Employer Data whose release or loss could cause harm or distress to individuals. Without prejudice to the generality of clause 103, the *Consultant* shall handle all such Employer Data as if it were confidential while it is processed or stored by the *Consultant* or Consultant Personnel, applying the measures set out in clauses 105.1 to 105.9 (inclusive).
- 105.3 When Employer Data is held on paper it shall be kept secure at all times, locked away when not in use or the premises on which it is held shall be secured. If Employer Data held on paper is transferred it shall be by an approved secure form of transfer with confirmation of receipt. When Employer Data is held and accessed on information and communications technology systems on secure premises, the *Consultant* shall (so far as is relevant to their role) implement such protection measures as are specified by the *Employer* pursuant to its risk assessment of such storage solution.
- 105.4 Wherever possible, Employer Data should be held and accessed on paper or information and communications technology on secure premises protected as above. The *Consultant* shall not use removable media (including laptops, removable discs, CD-ROMs, USB memory sticks and media card formats) for storage or access to such Employer Data where possible. Where the *Employer* agrees that this is not possible, the *Consultant* shall work to the following hierarchy, recording the reasons for a particular approach not being adopted in a particular case or a particular business area:
- **best option**: hold and access data on information and communications technology systems on secure premises,
 - **second best option**: secure remote access, so that Employer Data can be viewed or amended without being permanently stored on the remote computer, which is possible for Employer Data over the internet using products meeting the FIPS 140-2 standard or equivalent, unless otherwise agreed with the *Employer*,
 - **third best option**: secured transfer of Employer Data to a remote computer on a secure site on which it will be permanently stored, provided that both the Employer Data at rest and the link should be protected at least to the FIPS 140-2 standard or equivalent and protectively marked Employer Data shall not be stored on privately owned computers unless they are protected in this way and
 - in all cases the remote computer should be password protected, configured so that its functionality is minimised to its intended business use only, and have up to date software patches and anti-virus software.
- 105.5 Where the *Employer* agrees in writing that it is not possible to avoid the use of removable media in reference to the storage of Employer Data, the *Consultant* shall implement all of the following conditions
- the Employer Data transferred to the removal media should be the minimum necessary to achieve the business purposes, both in terms of the numbers of



people covered by the Employer Data and the Employer Data held (and where possible, only anonymised Employer Data should be held),

- the removal media should be encrypted to a standard of at least FIPS 140-2 or equivalent in addition to being protected by an authentication mechanism, such as a password,
- user rights to transfer Employer Data to removable media shall be carefully considered and strictly limited to ensure that this is only provided where absolutely necessary for business purposes and subject to monitoring by the *Consultant* and the *Employer* and
- the individual responsible for the removable media should handle it themselves, or if they entrust it to others as if it were the equivalent of a large amount of its own finances.

105.6 Where the *Employer* agrees in writing that the second condition of encryption as referred to in clause 105.5 cannot be applied due to business continuity and disaster recovery considerations, such unprotected Employer Data shall only be recorded, moved, stored and monitored with strong controls.

105.7 All material that has been used for confidential Employer Data should be subject to controlled disposal. The *Consultant* shall

- destroy paper records containing protected Personal Data by incineration, pulping or shredding so that reconstruction is unlikely and
- dispose of electronic media that has been used for protected Personal Data through secure destruction, overwriting, erasure or degaussing for re-use.

105.8 The *Consultant* shall have appropriate mechanisms in place in order to comply with the *Employer's* requirements as set out in this clause 105 including adequate training in handling Employer Data and Confidential Information for their personnel.

105.9 The *Consultant* shall

- put in place arrangements to log the activity of Employer Data users in respect of electronically held protected personal information and for managers to check the arrangements are being properly conducted, with a particular focus on those working remotely and those with higher levels of functionality (and summary records of managers' activity shall be shared with the *Employer* and be available for inspection by the Information Commissioner's office on request) and
- minimise the number of users with access to the Employer Data."

Z10.7 Insert a new clause 106 with the marginal heading "**Fraud, bribery and corruption**" with the following wording:

"106 **Fraud, bribery and corruption**

106.1 The *Consultant* shall take all reasonable steps to prevent Fraud or involvement in Fraud by the *Consultant* and the Consultant Personnel.

106.2 The *Consultant* notifies the *Employer* immediately if it has reason to suspect that any Fraud has occurred or is occurring or is likely to occur.



106.3 The *Consultant*

- shall discharge all of its obligations under this contract and shall otherwise conduct all of its activities relating to this contract in accordance with all applicable laws and regulations in respect of corruption and bribery including, but not limited to, the Bribery Act 2010 (as may be amended, re-enacted, consolidated or replaced from time to time) and
- shall not (whether by act or omission) commit any breach of the Bribery Act 2010 in connection with its activities relating to this contract nor request that the *Employer* (whether by act or omission) or the Consultant Personnel or other party commit any breach of the Bribery Act 2010 (including, but not limited to, the payment of facilitation payments in order to secure customs clearance for deliveries).
- shall not itself or in conjunction with any other person
 - corruptly solicit, receive or agree to receive for itself or for any other person or
 - offer to agree to give any person in the *Employer's* service or in the service of any other party who has a contract with the *Employer* or with any "Additional Client" (as defined in the Strategic Alliances Agreement),

any gift and/or consideration of any kind as an inducement or reward for doing or not doing anything, or for showing favour or disfavour to any person, in relation to this contract or
 - enter into any contract with the *Employer* or with any "Additional Client" (as defined in the Strategic Alliances Agreement) in connection with which commission has been paid or agreed to be paid by it or on its behalf or to its knowledge unless, before any such contract is made, particulars of any such commission, and of the terms and conditions of any agreement for the payment thereof, have been disclosed in writing to the *Employer* and any relevant "Additional Client" (as defined in the Strategic Alliances Agreement),

106.4 The *Consultant* acknowledges that it has been provided with a copy of the anti-bribery and corruption code of conduct of the *Employer* and warrants that it shall at all times comply with that code of conduct (as may be amended, varied or replaced from time to time by written notice from the *Employer*).

106.5 The *Employer* may terminate this contract immediately on written notice if

- the *Employer* is reasonably satisfied that the *Consultant* or anyone employed by it or acting on its behalf (whether with or without the knowledge of the *Consultant*) is in breach of this clause 106,
- the *Consultant* or anyone employed by it or acting on its behalf is convicted of any offence under the Bribery Act 2010 in relation to this contract, and/or any other contract awarded under the Strategic Alliances Agreement, or is convicted of a criminal offence related to business or preferential conduct, or commits an act of grave misconduct in the course of business or profession or
- the *Consultant* is guilty of serious misrepresentation in providing any information



required of it under this contract, and/or any other contract awarded under the Strategic Alliances Agreement,

and if the *Employer* so determines the appointment of the *Consultant* under this contract then the *Employer* shall (on behalf of any relevant "Additional Client" (as defined in the Strategic Alliances Agreement) or in its own right) be entitled to recover from the *Consultant* the amount or value of any such gift, consideration or commission.

106.6 The *Consultant* shall maintain full, accurate and up to date records as necessary to demonstrate its compliance with the requirements of this clause 106 and shall make copies of such records available to the *Employer* on request.

106.7 In this clause 106:

- all references to the *Employer* shall be deemed to include all Ministers of the Crown, Government Departments, Crown Agencies and similar authorities and
- references to the *Consultant* shall be deemed to include a company and every holding company of the *Consultant* for the time being, and every subsidiary for the time being of every such holding company."

Z10.8 Insert a new clause 107 with the marginal heading "**Equal treatment**" with the following wording:

"107 **Equal treatment**

107.1 In this clause 107, the "**Act**" shall mean the Equality Act 2010 and "**Third Party Harassment**" shall have the meaning given to it within Section 40 of the Act.

107.2 The *Consultant* shall take all reasonable steps to prevent any act of Third Party Harassment from occurring.

107.3 The *Consultant* confirms that all of its employees engaged in connection with the *services* have received equality and diversity training in line with the principles contained within the Act and the *Employer* reserves its right to request evidence to substantiate the same.

107.4 The *Consultant* shall indemnify the *Employer* against all costs, claims, liabilities and expenses (including legal expenses on an indemnity basis) incurred in connection with or as a result of any claim or demand by any employee or by any third party in connection with any employee's employment contract (whether in contract, tort, under statute, pursuant to European law or otherwise) in respect of any claim for any act of Third Party Harassment for which the *Employer* may be held liable under the Act as a result of the action and/or inaction of the *Consultant*."

Z10.9 Insert a new clause 108 with the marginal heading "**Strategic Alliances Agreement**" with the following wording:

"108 **Strategic Alliances Agreement**

The parties acknowledge and agree to be bound by the provisions of clauses 12 (Security), 21 (Discrimination), 22 (Change of Control), 26 (Employer Data), 29 (Official Secrets) and 30 (Offender Management Act 2007) of the Strategic Alliances Agreement in full force and effect following the expiry of the Strategic Alliances Agreement."

Z10.10 Insert a new clause 109 with the marginal heading "**Liability period**" with the following wording:

"109 **Liability period**



Notwithstanding the method of executing this contract, the Parties agree and acknowledge that no Party shall commence a claim and/or proceedings against the other Party arising out of or in connection with this contract after the expiration of the Liability Period (provided always that nothing in this clause 109 shall invalidate and/or extinguish any claims and/or proceedings commenced by a Party prior to and concluding after the expiration of the Liability Period)."



AMENDMENTS TO DISPUTE RESOLUTION OPTION W2

Z11 Amendments to Option W2 – Dispute Resolution Procedure (used in the United Kingdom when The Housing Grants, Construction and Regeneration Act 1996 applies)

- Z11.1 In line 1 of clause W2.1(1), delete "is" and insert "may be".
- Z11.2 In the second line of the first bullet of clause W2.3(4), delete the word "after" and replace with "alter".
- Z11.3 After clause W2.3(4), insert a new clause W2.3(4A) with the following wording:
- "The *Adjudicator* has the power to determine more than one dispute under this contract at the same time and, if requested to do so by either Party, determines any matter raised by such Party in the nature of set-off, abatement or counterclaim at the same time as he determines any other matter referred to him."
- Z11.4 Delete the text of clause W2.4(1) and insert the following:
- "A Party may refer any dispute under or in connection with this contract to the *tribunal*."

AMENDMENTS TO SECONDARY OPTION CLAUSES

Z12 Amendments to clause X8 – Collateral warranty agreements

- Z12.1 Replace the wording of clause X8 in its entirety with the following:

"X8 Collateral warranty agreements

- X8.1 Within ten (10) weeks of receiving notification from the *Employer*, the *Consultant* enters into a deed or deeds of Consultant Collateral Warranty in favour of any Beneficiary specified by the *Employer* and the *Consultant* acknowledges and agrees that the *Employer* shall not be bound to make any or all payments to the *Consultant* under this contract until the same is provided by the *Consultant*.
- X8.2 If the Consultant engages a Subconsultant in connection with the Project at any point during the delivery of the *services*, the *Consultant* notifies the *Employer* and procures, within two (2) weeks of two (2) weeks of receiving a request from the *Employer*, a Subconsultant Collateral Warranty in favour of:
- the *Employer*, and/or
 - any Beneficiary specified by the *Employer*,
- and the *Consultant* acknowledges and agrees that if the *Consultant* fails to deliver the same within the time required, the *Consultant* is not entitled to payment of any sums relating to the services or works of such Subconsultant which would otherwise be due and payable under this contract until such relevant collateral warranty is provided."

Z13 Amendments to Y(UK)2 – The Housing Grants, Construction and Regeneration Act 1996

- Z13.1 Replace the wording of the first paragraph of clause Y2.2 in its entirety with:

"Y2.2(1) The date on which a payment becomes due is, where the payment is due from:

- the *Employer* to the *Consultant*, the later of seven (7) days after



- the assessment date and
- the date of receipt by the *Employer* of the *Consultant's* valid value added tax invoice or Termination Statement (as the case may be).
- the *Consultant* to the *Employer*, as detailed in clause 51.7, the date of receipt by the *Consultant* of the Employer's Statement or Termination Statement (as the case may be).

Z13.2 Replace the wording of the second paragraph of clause Y2.2 in its entirety with:

Y2.2(2) The final date for payment is, where a payment is due from

- the *Employer* to the *Consultant*, the later of thirty (30) days after
 - the date on which the payment becomes due; and
 - the date of receipt by the *Employer* of the *Consultant's* valid value added tax invoice.
- the *Consultant* to the *Employer*, as detailed in clause 51.7, thirty (30) days after the due date. "

Z13.3 In the first sentence of clause Y2.3 after "less than the notified sum" insert "in a pay less notice, Employer's Statement or Termination Statement as the case may be". After "the amount is calculated, insert ", even if the amount which the *Employer* determines to be due is zero, or a negative amount insofar as, on balance, sums are only due from the *Consultant* to the *Employer*".

Z13.4 Insert a new sentence at the start of clause Y2.4:

"The *Consultant* exercises its right to suspend performance under the Act by giving the Employer no less than fourteen (14) days' prior notice in writing of its intention to exercise that right."

Z14 Amendments to Y(UK)3 – Contracts (Rights of Third Parties) Act 1999

Z14.1 Replace the wording of clause Y3.1 in its entirety with the following:

"Y3.1 Subject to the provisions of clause 26 and clause X8, nothing contained in this contract shall confer on any person any benefit or right to enforce any term of this contract whether pursuant to the Contracts (Rights of Third Parties) Act 1999 or otherwise."



SCHEDULE 3

THE SCOPE

The Parties acknowledge and agree that this Scope (including each element of the services, the duties and responsibilities of the *Consultant* in respect of the same and the stages in respect of which such services are to be provided, as referred to herein) is intended to apply, as the context requires, on both a Project-wide basis and to each potential and actual Construction Package (and associated Building Contract) forming part of the Project.

References below to “Project” and any terms prefaced by the term “Project” shall be construed accordingly.

Other parties referred to within this Scope, whether as part of the “Project Team” or otherwise, shall include (as the context requires) any and all Project Consultants (or any other third parties) appointed as at the Contract Date by the *Employer* and/or as notified by the *Employer* to the *Consultant* in connection with all or any part(s) of the Project and/or any Construction Package forming part of the same from time to time.

Any parties, documents and/or requirements referred to below in capitalised letters that are not expressly defined in the contract itself shall, if required, be clarified by the *Employer* from time to time in writing without giving rise to a compensation event.

Otherwise, for clarity and for the purposes of this Scope:

- the term “**Contracting Authority**” means the “**Employer**”;
- the term “**Schedule of Services**” means this “**Scope**”; and
- the term “**Supplier**” means the “**Consultant**”.



CORE SERVICE DISCIPLINE 3 - COST MANAGEMENT SERVICES

Ref	Scope of Services
1.0	General Services
1.1	Provide the Services for all Work Plan stages unless instructed otherwise by the Contracting Authority
1.2	Attend regular meetings in order to progress the Cost Information, consult and liaise with the Project Lead in the preparation and development of the Project Roles Table, Design Responsibility Matrix, Technology Strategy and Design Programme. Identify activities to be undertaken and responsibility for the activities in accordance with the Project Roles Table, Design Responsibility Matrix, Technology Strategy and Design Programme. Undertake and take responsibility for actions to be undertaken by the Project Lead.
1.3	Consult and liaise with other suppliers on the Project Team to ensure that the Services provided by the Supplier are fully coordinated with the services provided by those suppliers.
1.4	Where there is duplication between the Services provided by the Supplier and the services of another supplier(s), the Supplier shall assist the Project Lead to resolve the service duplication by agreement with the supplier(s) concerned. The Supplier shall implement the actions the Project Lead confirms in writing.
1.5	Participate in the operation of an Early Warning System.
1.6	Co-operate at all times with the Principal Designer and provide information and Risk Assessments as required.
1.7	Attend meetings with the Contracting Authority, Project Lead, Lead Designer, other suppliers and the Contractor as necessary.
1.8	Attend and contribute to workshops and exercises with other suppliers to carry out value engineering, value management, environmental performance improvement initiatives and risk management. Contribute to recommendations for Contracting Authority approval based on the results of these exercises to deliver the best overall value for money.
1.9	Participate in the Change Control Procedure and monitor development of the Cost Information against the Project Budget and Project Programme.
1.10	Work closely with the Contracting Authority, other suppliers and all stakeholders to foster a partnering culture. The culture will embody the principles of mutual trust and co-operation with an overall aim of delivering a successful project to the Project Brief, Project Budget and the Project Programme. However, agree a single point of contact with the project PPS to avoid separate conversations regarding financial status
1.11	Provide the Services for all Work Plan stages outside the UK if required. Costings and specification to be discussed and agreed on a project level not Call Off Contract level.



	The Cost Consultant will carry out the review of project Cashflow document and ensure that it is regularly updated to align with any revisions to the Consultants programme
	The Cost Consultant will carry out the evaluation of any additional costs incurred by the Employer as a result of any party not achieving a key Date
	The Cost Consultant will contribute to the review and implementation of key Performance Indicators throughout the project, as appropriate to the Consultants appointment.
	The Cost Consultant will review and monitor the Earned Value techniques required for the Project.
	The Cost Consultant will undertake a review of any Specialists and Suppliers selection by Contractors, and may suggest potential tenderers for consideration
	The Cost Consultant will review with assistance from Delivery Partner where required the Activity Schedules (of other Suppliers and Contractors) and the apportionment of cost split within each section
	The Cost Consultant will assist the Delivery Partner in the review for acceptance or non - acceptance any revision proposed by Suppliers to the previously agreed Activity Schedules.
	The Cost Consultant will assist the Delivery Partner with the review and agreement of the Schedule of changes from the Baseline Designs, providing Whole Life Costing advice.
	The Cost Consultant will consistently gather and analyse data to monitor and manage the requirements of the Programme providing management information to support effective decision making
	The Cost Consultant will provide regular Cashflow reporting, Consistent cost data, commercial reporting, capital and whole life cost plans, and input into KPI's, including benchmarking of costs against previous projects at all stages.
	The Cost Consultant will undertake a monthly cost update including forecasts, effects of Compensation Events and Early Warning Notices and the Project Risk Register through to completion to assess likely outturn costs with the assistance of the Delivery Partner where necessary.
	The Cost Consultant will in conjunction with the Delivery Partner, compile Monthly Project Data Sheets to measure progress against programme, actual spend and forecasted cash flow for the financial year
	The Cost Consultant will produce monthly Prison Estates Delivery Dashboard (or as the governance structure requires) providing the board with an overview of projects cost, programme, risk/issues, and project KPIs



	The Cost Consultant will undertake the preparation of any information regarding any Adjudication brought about other Parties within the Programme
	The Cost Consultant will appraise and advice upon any Acceleration quotations submitted by other Parties
	The Cost Consultant will undertake an evaluation of the amounts due as submitted, both in terms of the Payment for Works Done to Date (PWDD) for the Contract works and the value of agreed Compensation Events. This will be provided in accordance with the timescales set out within the Contract
	The Cost Consultant will undertake an evaluation of amounts due, both in terms of the Payment for Works Done to Date (PWDD) for the Contract works and the value of agreed Compensation Events, should the required Party not submit an application
	The Cost Consultant will undertake any evaluation of interest payments due to Parties due to late payment by Employer
	The Cost Consultant will undertake an evaluation of any Pain/Gain percentages during the period and upon completion in accordance with the conditions of the Contract should these be implemented.
	The Cost Consultant will undertake an evaluation of any Price adjustment for Inflation if this clause is implemented in Contracts, utilising any submitted cost information issued by the Parties, and with the assistance of the Delivery Partner where necessary.
	The Cost Consultant will maintain full records of all payments made to Parties for the Programme and Projects.
	The Cost Consultant will undertake an evaluation of any Price adjustment for Change of Law if this clause is implemented in the Contracts, utilising any submitted cost information issued by the Parties, and with the assistance of the Delivery Partner where necessary.
	The Cost Consultant will undertake the evaluation of the Parties share in the event of a termination with the assistance of the Delivery Partner where necessary.
	The Cost Consultant will make regular and frequent visits to the site(s) to evaluate any matters arising which may affect the costs
	The Cost Consultant will undertake the evaluation of the cost incurred by the Employer to rectify a defect not rectified by the Contractors with the assistance of the Delivery Partner.
	The Cost Consultant will agree the final account with the Contractor(s) in accordance with the Contract(s), the main contract or any further development agreement that is required to deliver the scheme ensuring that the Contractor(s) have fulfilled their obligations with regard to the rectification of any defects



	The Cost Consultant will contribute to the provision of information to the Contract Administrator to assist the administration of the contract.
	The Cost Consultant will contribute to the update of the Project Information.

2.0 RIBA Stage 0 - Strategic Definition	
2.1	Provide comments to the Project Lead and attend workshops to discuss the Business Case and to develop the Strategic Brief for the project.
2.2	Review findings from post project evaluations from relevant projects and contribute to the Sustainability Checkpoint to inform the approach to the Strategic Definition for the Project.
2.3	Provide contributions to the Project Lead to establish the Project Brief, the Initial Project Budget and the Project Programme.
2.4	Provide contributions to the Project Lead to draft the Project Execution Plan.

3.0 RIBA Stage 1 - Preparation & Brief	
3.1	Lead and manage the contribution in respect of budgetary considerations to the development of the Initial Project Brief and prepare the Project Budget. The Initial Project Brief shall include Project Objectives, Quality Objectives, Project Outcomes, environmental performance/Sustainability Aspirations, Project Budget and Project Programme and all other parameters, risks and/or constraints.
3.2	Review Site Information and Project Information and provide comments and attend workshops, as required, to assist the development of the Initial Project Brief.
3.3	Contribute to the agreement of the procurement route and the standard form of Building Contract.
3.4	Provide comment for the development of the Project Roles Table and Contractual Tree by the Project Lead.
3.5	Provide comment to the Project Lead and Lead Designer for the preparation of the Information Exchange and Technology Strategy for the Initial Project Brief.



3.6	Lead and manage the Cost Information contribution to the preparation of option appraisals that meet the Initial Project Brief. Options produced by the Project Team should collectively address: <ul style="list-style-type: none"> - Built Form: including building size, shape, orientation, sub-division, shading, weather and noise protection etc. - Construction standards: including floor load capacities, column to column spans, insulation, fire protection, glazing ratios, thermal and noise insulation, thermal capacity, natural and artificial illumination, ventilation etc. - Structural and hard surfacing materials, foundations, temporary structures etc.: - Engineering Services and components: including heating, hot water, cooling, ventilation, lighting, communications, lifting or transportation equipment and public health systems etc.; their operational relationships, methods of control and means of energy supply, distribution and recovery etc. - Foul and surface water drainage, attenuation and rainwater harvesting - External paving and surfacing, roads, car parks and footpaths
3.7	Lead and manage the Cost Information contribution to the preparation of the Feasibility Studies for the Contracting Authority preferred option(s)
3.8	Contribute to the update of the Project Programme. Lead and manage the update of the Project Budget.
3.9	Contribute to the preparation of the Handover Strategy and Risk Assessments in preparation for Concept Design stage and contribute to the Sustainability Checkpoint and the development of the Project Execution Plan.
3.10	Assist in the selection one or more specialists, where appropriate and legally compliant, to provide input into option appraisals and/or the Feasibility Study in consultation with the Contracting Authority and the Project Team.

4.0 RIBA Stage 2 - Concept Design	
4.1	Prepare the preliminary Cost Information.
4.2	Update the preliminary Cost Information and the Project Budget for the agreed changes to the Concept Design, Site Information and Project Information in compliance with the Change Control Procedures and the Information Exchanges and contribute to the production of the Final Project Brief.
4.3	Contribute to the development of the Sustainability Strategy, the Maintenance and Operational Strategy and the Sustainability Checkpoint.
4.4	Contribute to the development of the Handover Strategy and review and update Risk Assessments.
4.5	Contribute to the Construction Strategy and the development of the Health and Safety Strategy.
4.6	Contribute to the review and update of the Project Execution Plan.
4.7	Contribute to the review and update of the Project Programme.
4.8	Comply with the Information Exchange requirements.
4.9	Contribute to the selection of a list of tenderers.
4.10	Contribute to the preparation of the Employer's Requirements.



4.11	Contribute to the preparation of the tender documentation.
4.12	Contribute to the assessment of tenders and the preparation of the tender report. The assessment should include the review and evaluation of the alignment of all pricing and cash-flow information in each of the Contractor's Proposals with the Employer's Requirements set out in the tender documentation. and the further review and evaluation of responses to any clarifications from the tenderers.
4.13	Assist in the agreement of the detailed content and the finalisation of the contract documentation (for pre-construction activities).

5.0	RIBA Stage 3 - Developed Design
5.1	Update the preliminary Cost Information and the Project Budget for the agreed changes to the Developed Design, Site Information and Project Information in compliance with the Change Control Procedures and the Information Exchanges and contribute to the production of the Final Project Brief.
5.2	Contribute to the development of the Project Strategies.
5.3	Contribute to the review and update of the Sustainability Strategy and the Maintenance and Operational Strategy and contribute to the Sustainability Checkpoint.
5.4	Contribute to the review and update of the Handover Strategy and review and update Risk Assessments.
5.5	Contribute to the review and update of the Construction Strategy and the Health and Safety Strategy.
5.6	Contribute to the review and update of the Project Execution Plan.
5.7	Contribute to the review and update of the Design Programme and Project Programme.
5.8	Comply with the Information Exchange requirements.
5.9	Contribute to the selection of a list of tenderers.
5.10	Contribute to the preparation of the Employer's Requirements.
5.11	Contribute to the preparation of the tender documentation
5.12	Contribute to the assessment of tenders and the preparation of the tender report. The assessment should include the review and evaluation of the alignment of all pricing and cash-flow information in each of the Contractor's Proposals with the Employer's Requirements set out in the tender documentation. and the further review and evaluation of responses to any clarifications from the tenderers.
5.13	Assist in the agreement of the detailed content and the finalisation of the contract documentation (for pre-construction activities).
5.14	Lead the assessment of the submission from the selected tenderer of pricing information and cash-flows, to ensure alignment with the contract documentation (for pre-construction activities) and the further review and evaluation of responses to any clarifications from the tenderer.

6.0	RIBA Stage 4 - Technical Design
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6.1	Update the Cost Information and the Project Budget for the agreed changes to the Technical Design, Site Information and Project Information in compliance with the Change Control Procedures and the Information Exchanges and contribute to the production of the Final Project Brief.
6.2	Contribute to the review and update of the Sustainability Strategy and the Maintenance and Operational Strategy and contribute to the Sustainability Checkpoint.
6.3	Contribute to the review and update of the Handover Strategy and review and update Risk Assessments.
6.4	Contribute to the review and update of the Construction Strategy and the Health and Safety Strategy
6.5	Contribute to the review and update of the Project Execution Plan.
6.6	Contribute to the review and update of the Design Programme and Project Programme.
6.7	Comply with the Information Exchange requirements.
6.8	Contribute to the selection of a list of tenderers.
6.9	Contribute to the preparation of the Employer's Requirements.
6.10	Contribute to the preparation of the tender documentation
6.11	Contribute to the assessment of tenders and the preparation of the tender report. The assessment should include the review and evaluation of the alignment of all pricing and cash-flow information in each of the Contractor's Proposals with the Employer's Requirements set out in the tender documentation. and the further review and evaluation of responses to any clarifications from the tenderers.
6.12	Assist in the agreement of the detailed content and the finalisation of the contract documentation.
6.13	Lead the assessment of the submission from the selected tenderer of pricing information and cash-flows, to ensure alignment with the contract documentation (for pre-construction activities) and the further review and evaluation of responses to any clarifications from the tenderer.

7.0	RIBA Stage 5 – Construction
7.1	Contribute, as necessary, to the provision of information to the Contract Administrator to assist contract administration.
7.2	Attend regular progress meetings with the Contractor and other members of the Project Team and provide ongoing advice on the overall cost of the project in relation to the Project Budget and recommend any corrective action that may be necessary. Undertake valuations of the works in accordance with the provisions of the Building Contract and provide cashflow updates to the Project Lead and the Contracting Authority.



7.3	In consultation with the Contracting Authority and the Project Team, ensure that rigorous cost control is undertaken in accordance with Change Control Procedures and provide estimates of cost in connection therewith and negotiate the costs of approved changes with the Contractor.
7.4	Visit the site at such intervals as are necessary in order to be fully aware of all matters which could affect the cost of the project.
7.5	Produce financial statements at monthly intervals, or at such other intervals as shall be agreed with the Contracting Authority that demonstrate the current financial position of the project and a forecast of the cost at completion and submit to the Project Lead and the Contracting Authority.
7.6	Contribute to the review and update of the Project Programme.
7.7	Contribute to the review and update of the Sustainability Strategy and contribute to the Sustainability Checkpoint.
7.8	Contribute to the review and update of the Construction Strategy and the Health and Safety Strategy.
7.9	Monitor the compilation of the 'As Constructed' Information is provided in accordance with the Construction Programme.
7.10	Contribute to the implementation of the Handover Strategy
7.11	Comply with the Information Exchange requirements.
7.12	In consultation with the Contracting Authority and the Project Team, contribute to the preparation of a planned maintenance programme for the project, post handover, and contribute to recommendations for the procurement of the planned maintenance.
7.13	Lead the assessment of the submission from the selected tenderer of pricing information and cash-flows, to ensure alignment with the contract documentation and the further review and evaluation of responses to any clarifications from the tenderer.
7.14	Alert the Project Lead, the Contract Administrator and the Contracting Authority other members of the Project Team to the possibility of receiving claims from the Contractor. If such claims are submitted, advise the Project Lead and the Contracting Authority.
7a.1	Assist the Contract Administrator with all activities in connection with the adjudication of disputes between the Contracting Authority and the Contractor.
7a.2	In co-operation with the other members of the Project Team concerned, evaluate claims and make recommendations.

8.0	RIBA Stage 6 - Handover & Close-Out
8.1	Undertake tasks listed in Handover Strategy and contribute to the Sustainability Checkpoint.
8.2	Agree the final account, or equivalent, in accordance with the Building Contract.
8.3	Provide a detailed statement of final cost to the Contracting Authority, Project Lead and Contract Administrator.



8.5	Contribute to the provision of information to the Contract Administrator to assist administration of the contract.
8.6	Contribute to the update of the Project Information.
9.0	RIBA Stage 7 - In-Use
9.1	Undertake the tasks listed in the Handover Strategy.
9.2	Contribute to the Post Occupancy Evaluation
9.3	Contribute to the update of Project Information in response to ongoing Contracting Authority Feedback
9.4	Contribute to the post completion defect rectification process in accordance with GSL requirements.
9.5	Contribute to the post completion monitoring process in accordance with GSL requirements.
9.6	Contribute to the review of Project Performance, Project Outcomes, the Sustainability Checkpoint and the outcome of any research and development aspects



SCHEDULE 4

CONSULTANT'S COLLATERAL WARRANTY

DATED _____ 20[20]

(1) [INSERT NAME OF CONSULTANT]

(2) [INSERT NAME OF BENEFICIARY]

[(3) THE SECRETARY OF STATE FOR JUSTICE]]¹

CONSULTANT COLLATERAL WARRANTY

relating to

CONSULTANT SERVICES IN CONNECTION WITH THE
[]

¹ This reference to the MoJ should be deleted if the Beneficiary will not benefit from step-in rights under the collateral warranty.



THIS DEED is made on

20[20]

BETWEEN

- (1) [INSERT NAME OF CONSULTANT] (company registration number [INSERT NUMBER]), whose registered office is at [INSERT ADDRESS] (the "Consultant"); [and]
- (2) [INSERT NAME OF BENEFICIARY] (company registration number [INSERT NUMBER]), whose registered office is at [INSERT ADDRESS] (the "Beneficiary", with such term including its successors in title and permitted assigns)[.];[and];
- (3) THE SECRETARY OF STATE FOR JUSTICE of Ministry of Justice, 102 Petty France, Westminster, London SW1H 9AJ (the "Employer", with such term including its successors in title and permitted assigns).²

BACKGROUND

- A The Employer has appointed the Consultant to provide pre-construction services (including design services) in relation to the Project.
- B The Beneficiary has [describe the Beneficiary's interest in the Project].
- C The Consultant has agreed to enter into this Deed with the Beneficiary pursuant to the terms of the Appointment.

AGREED TERMS

1. INTERPRETATION

1.1 In this Deed:

"Appointment" means the contract in the form of an NEC3 Professional Services Contract (April 2013 edition) (as amended) dated [INSERT DATE] between (1) the Employer; and (2) the Consultant, under which the Consultant is providing professional services in relation to the Project (as more particularly described therein);

"Assignee" has the meaning given to such term at clause 6.2;

"Building Contract" has the meaning given to such term in the Appointment;

"Construction Package" has the meaning given to such term in the Appointment;

"Contractor" means [INSERT NAME] (company number [INSERT NUMBER]), whose registered office is at [INSERT ADDRESS];

["Employer" means The Secretary of State for Justice of Ministry of Justice, 102 Petty France, Westminster, London SW1H 9AJ (with such term including its successors in title and permitted assigns)]³

"Liability Period" is the period of twelve (12) years from the earlier of the date of:

² This entry should be deleted if the Beneficiary will not benefit from step-in rights under the collateral warranty.

³ This entry should be used if the Beneficiary will not benefit from step-in rights under the collateral warranty. Otherwise, it should be deleted.



- (a) the last date on which the Consultant performed any services in connection with the Project under the Appointment,
- (b) the date on which the final Construction Package is certified as having achieved "Completion" (or such equivalent term denoting practical completion of the Construction Package) pursuant to and as defined in the relevant Building Contract entered into by the *Employer* in connection with the Project (if entered into) and
- (c) the termination of the engagement of the Consultant under the Appointment,

in each case as determined pursuant to and in accordance with the Appointment;

"Project" has the meaning given to such term in the Appointment;

"Materials" means all existing and future designs, technical information, drawings, models, plans, specifications, schedules, design details and digital models and databases (including in relation to BIM), costings, budgets, calculations, bill of quantities, estimates and valuations, any photographs, brochures, reports, notes of meetings, computer aided design (CAD) materials and any other materials, including any data underlying such generated data in any medium (be it physical, hard copy or electronic, including digital), provided by or prepared on behalf of the Consultant or, as the context herein requires, any other person, in connection with this contract and/or any part(s) of the Project and all amendments and additions to them and any works, designs or inventions of the Consultant (or any other person as the case may be) incorporated or referred to in them; and

"Reasonable Rates and Terms" has the meaning given to such term in clause 4.1.

1.2 In interpreting this Deed:

- 1.2.1 if any party to this Deed is a partnership then the provisions of this Deed will bind each and every such partner jointly and severally;
- 1.2.2 references to the singular shall be deemed to include the plural (and vice versa) and reference to a "person" shall be deemed to include any individual firm unincorporated association or body corporate;
- 1.2.3 references to the Beneficiary shall be deemed to include its successors in title and permitted assigns;
- 1.2.4 any reference to any enactment includes any consolidation, re-enactment, amendment or replacement of it and any subordinate legislation under it;
- 1.2.5 headings to clauses shall be disregarded when construing this Deed; and
- 1.2.6 where the words "include(s)" or "including" are used in this Deed, they are deemed to have the words "without limitation" following them.

2. **SKILL AND CARE**

- 2.1 The Consultant undertakes with and warrants to the Beneficiary that it has carried out and will continue to carry out the duties and obligations on its part to be performed under the Appointment in accordance with the Appointment and with the reasonable skill, care, diligence and prudence to be expected of an appropriately qualified, skilled, competent and experienced professional consultant of the same discipline of the Consultant that is experienced in providing services similar in nature, extent and complexity to the services to be performed by the Consultant under the Appointment in relation to projects of a similar size, scope, value, character and complexity as the Project.



- 2.2 The Consultant shall have no greater liability to the Beneficiary, and shall owe to the Beneficiary no greater a standard of duty under this Deed than would have been owed if the Beneficiary had been named as the Employer under the Appointment. If a claim is brought against the Consultant by the Beneficiary, the Consultant may rely on any defence or limitation available to it under the terms of the Appointment, save that the Consultant may not raise by way of defence or set-off or abatement or to bring any counterclaim in respect of any monies due to it under or in connection with the Appointment. The Consultant may not plead a "no-loss" defence, including one based on an argument that since the Employer under the Appointment has not suffered a loss then the Beneficiary is not entitled to recover a loss it has suffered or that the Beneficiary's loss is irrecoverable because it would not be foreseeable that the Employer under the Appointment would suffer such a loss.

3. COPYRIGHT

- 3.1 The Consultant grants to the Beneficiary and its nominees an irrevocable, royalty-free, non-exclusive and worldwide licence to copy and use the same and to reproduce the Materials for any and all purposes relating to the Appointment or the Project (including any design, construction completion, asset management, use, operation and maintenance, replacement, demolition, extension, sale or letting in relation to the Project), with this licence including the right to grant sub-licences in the terms of this licence to third parties, being assignable and continuing in perpetuity notwithstanding the termination of the Appointment for any reason.
- 3.2 The Consultant shall not be liable for any such use by the Beneficiary or its nominees of any Materials for any purpose other than that for which the same were prepared by the Consultant.
- 3.3 The Beneficiary shall on written request, be entitled to be supplied by the Consultant with copies of any Materials (in either electronic format or hard copy where applicable and/or in such other format as the Beneficiary may reasonably request).
- 3.4 The Consultant unconditionally and irrevocably waives (and shall ensure that any sub-consultants waive), in respect of the Materials and the Project, all moral rights to which the Consultant (or any relevant sub-consultants) may now or at any future time be entitled under the Copyright, Designs and Patents Act 1988 as amended from time to time or under any other applicable laws.
- 3.5 This waiver is made in favour of the Beneficiary and shall extend to the Beneficiary's sub-licensees, assignees and successors in title in accordance with this Deed.
- 3.6 The Consultant warrants that:
- 3.6.1 the Materials (save to the extent that duly authorised sub-consultants have been used to prepare the same) are the Consultant's own original work and that in any event their use in connection with the Project will not infringe the rights of any third party; and
- 3.6.2 where duly authorised sub-consultants are used their work will be original and that the Consultant will obtain the necessary consents in order to grant the licence referred to at clause 3.1.

4. INDEMNITY INSURANCE

- 4.1 The Consultant shall maintain professional indemnity insurance covering (inter alia) its potential liability under this Deed for the given insurance policy year in the event that it breaches this Deed upon market norm terms and conditions prevailing for the time being in the insurance market, and with reputable insurers lawfully carrying on such insurance business in the United Kingdom, in an amount of not less than ten million pounds (£10,000,000) for any one claim or series of claims arising out of one single incident (provided by way of unlimited reinstatements), including costs and expenses, but in the aggregate per annum for liability arising out of pollution or contamination (to the extent insured by the relevant policy) and one million pounds (£1,000,000) for any one claim and in the aggregate per annum in respect of liability arising out of asbestos (to the extent insured by the



relevant policy) until the expiry of the Liability Period, provided always that such insurance is available at commercially affordable rates and on terms such that members of the Consultant's profession generally carry such insurance ("**Reasonable Rates and Terms**").

- 4.2 Any increased or additional premium required by insurers by reason of the Consultant's own claims record or other acts, omissions, matters or things particular to the Consultant shall be deemed to be within Reasonable Rates and Terms.
- 4.3 The Consultant shall immediately inform the Beneficiary if such insurance ceases to be available upon Reasonable Rates and Terms in order that the Consultant and the Beneficiary can discuss means of best protecting their respective positions in respect of the Project in the absence of such insurance.
- 4.4 The Consultant shall co-operate fully with any measures reasonably required by the Beneficiary, including (without limitation) completing any proposals for insurance and associated documents, maintaining such insurance at rates above Reasonable Rates and Terms if the Beneficiary undertakes in writing to reimburse the Consultant in respect of the net cost of such insurance to the Consultant above Reasonable Rates and Terms.
- 4.5 As and when reasonably requested to do so by the Beneficiary the Consultant shall produce for inspection documentary evidence that its professional indemnity insurance is being maintained.
- 4.6 The above obligations in respect of professional indemnity insurance shall continue notwithstanding termination of the Appointment for any reason whatsoever, including (without limitation) breach by the Employer.

5. **LIABILITY PERIOD**

Actions or proceedings for any breach of this Deed may be commenced up to and including but not after the expiry of the Liability Period.

6. **ASSIGNMENT**

- 6.1 The Consultant consents to the benefit of this Deed being assigned two times only provided always that the maximum number of two assignments referred to above shall not be affected by assignments or charges by way of security and their release or assignments to and from subsidiary or other associated companies within the same group of companies as the Beneficiary so long as such assignee company remains within the same group of companies as the Beneficiary.
- 6.2 Despite any other provision of this Deed the Consultant shall not be entitled to contend that any person to whom this Deed is assigned in accordance with clause 6.1 (an "**Assignee**") is precluded from recovering under this Deed any loss incurred by such assignee resulting from any breach of this Deed (whenever happening), by reason that such person is an assignee and not the original named party to this Deed.
- 6.3 The Consultant may not defend any claim brought by the Beneficiary or an Assignee on the basis of a no loss argument whether based on the logic that the Beneficiary or an Assignee has not suffered a recoverable loss because the Consultant or Employer has not suffered that loss or because the Consultant or Employer would not suffer a similar loss because of their different interests in the Project compared to the interest of the Beneficiary or Assignee and/or if assigned that the original Beneficiary has not suffered such loss because it has parted with its interest in the Project or otherwise.



7. [IN EMPLOYER / FUNDER WARRANTY - OBLIGATIONS PRIOR TO TERMINATION OF THE APPOINTMENT BY THE CONSULTANT⁴

7.1 The Consultant shall not exercise nor seek to exercise any right of termination of its employment under the Appointment or discontinue the performance of the Appointment for any reason whatsoever (including any breach on the part of the Employer) without giving not less than twenty-one (21) days' written notice of its intention to do so to the Beneficiary and specifying the grounds for the proposed termination or discontinuance.

7.2 Any period stipulated in the Appointment for the exercise of a right of termination by the Consultant of its employment under the Appointment or to discontinue the performance of the Appointment shall, nevertheless, be extended as may be necessary to take account of the period of notice required under clause 7.1.

7.3 The right of the Consultant to terminate its employment under the Appointment or to discontinue the performance of the Appointment shall cease within the period of twenty-one (21) days referred to in clause 7.1 if the Beneficiary shall give notice to the Consultant:

7.3.1 requiring the Consultant to continue its obligations under the Appointment with the Beneficiary or its nominee;

7.3.2 acknowledging that the Beneficiary or its nominee will assume all the obligations of the Employer under the Appointment; and

7.3.3 undertaking that the Beneficiary or its nominee will discharge all payments which may subsequently become due to the Consultant under the terms of the Appointment and will pay to the Consultant any sums which have been due and payable to him under the Appointment but which remain unpaid.

7.4 Upon service by the Beneficiary or its nominee of a notice complying with the requirements of clause 7.3 the Appointment will continue in full force and effect as if the same had been entered into between the Consultant and the Beneficiary to the exclusion of the Employer.

7.5 Compliance by the Consultant with the provisions of this clause 7 will not be treated as a waiver of any breach on the part of the Employer giving rise to the right of termination nor otherwise prevent the Consultant from exercising its rights after the expiration of the notice issued pursuant to clause 7.1 unless the rights of termination have ceased under the provisions of clause 7.3.

7.6 This clause 7 shall cease to have effect upon the prior exercise by any third person of any similar rights of substitution contained in any other agreement concerning the Project and entered into between the Consultant and such person at the request of the Employer.

7.7 By acting in accordance with clause 7, the Consultant shall not incur any liability to the Employer.]

8. NOTICES

Any notice required to be given under this Deed shall be in writing and shall be deemed to be properly given if delivered personally to the addressee at its address as shown above (or such other address as may be notified in writing from time to time as its address for service).

9. EXTRANEIOUS RIGHTS

9.1 This Deed shall not negate or diminish any duty or liability otherwise owed by the Consultant to the Beneficiary.

⁴ This clause should be deleted if the Beneficiary will not benefit from step-in rights under the collateral warranty.



- 9.2 No approval or inspection of any work or materials (or any type and in any medium) by or on behalf of the Beneficiary and no omission to inspect or test shall negate or diminish any duty or liability of the Consultant arising under this Deed.
- 9.3 This Deed may be executed in any number of counterparts all of which when taken together shall constitute one and the same instrument.
- 9.4 This Deed does not create any right enforceable by any person not a party to it (whether pursuant to the Contracts (Rights of Third Parties) Act 1999 or otherwise) except that a person who is the successor to or the permitted assignee of the rights of the Beneficiary is deemed to be a party to this Deed.

10. **GOVERNING LAW**

This Deed is subject in all respects to English law and the English Courts shall have exclusive jurisdiction with regard to all matters arising under or in connection with it.

This Deed has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

[INSERT EXECUTION BLOCKS FOR THE PARTIES]



SCHEDULE 5

SUBCONSULTANT'S COLLATERAL WARRANTY

DATED _____ 20[20]

(1) [INSERT NAME OF SUBCONSULTANT]

(2) [INSERT NAME OF BENEFICIARY]

[(3) INSERT NAME OF CONSULTANT]]⁵

SUBCONSULTANT COLLATERAL WARRANTY

relating to

SUBCONSULTANT SERVICES IN CONNECTION WITH
[]

⁵ The reference to this party should be deleted if the Beneficiary will not benefit from step-in rights under the collateral warranty. Any collateral warranties in favour of the MoJ should always include step-in rights.



THIS DEED is made on

20[20]

BETWEEN

- (1) [INSERT NAME OF SUBCONSULTANT] (company number [INSERT NUMBER]), whose registered office is at [INSERT ADDRESS] (the "Subconsultant"); [and]
- (2) [INSERT NAME OF BENEFICIARY] (company number [INSERT NUMBER]), whose registered office is at [INSERT ADDRESS] (the "Beneficiary", which term shall include its permitted assigns)[.];and;
- (3) [INSERT NAME OF CONSULTANT] (company number [INSERT NUMBER]), whose registered office is at [INSERT ADDRESS] (the "Consultant", with such term including its successors in title and permitted assigns).⁶

BACKGROUND

- A The [Beneficiary / the Employer]⁷ has entered into the Appointment with the Consultant in connection with the Project.
- B The Consultant has entered into the Sub-Appointment with the Subconsultant, pursuant to which the Consultant has subcontracted elements of its duties and obligations under the Appointment in connection with the Project to the Subconsultant.
- C The Beneficiary has [describe the Beneficiary's interest in the Project].
- D The Subconsultant has agreed to enter into this Deed with the Beneficiary pursuant to the terms of the Sub-Appointment.

AGREED TERMS

1. INTERPRETATION

1.1 In this Deed:

"Appointment" means the contract in the form of an NEC3 Professional Services Contract (April 2013 edition) (as amended) dated [INSERT DATE] between (1) the Employer; and (2) the Consultant, under which the Consultant is providing professional services in relation to the Project (as more particularly described therein);

"Assignee" has the meaning given to such term at clause 6.2;

"Building Contract" has the meaning given to such term in the Appointment;

"Construction Package" has the meaning given to such term in the Appointment;

"Contractor" means [INSERT NAME] (company number [INSERT NUMBER]), whose registered office is at [INSERT ADDRESS];

["Consultant" means [INSERT NAME] (company number [INSERT NUMBER]), whose registered office is at [INSERT ADDRESS] (with such term including its successors in title and permitted assigns)]⁸

⁶ This entry should be deleted if the Beneficiary will not benefit from step-in rights under the collateral warranty.

⁷ If the MoJ is the Beneficiary, the reference to "Employer" should be deleted.

⁸ This entry should be deleted if the Beneficiary will not have step-in rights under the collateral warranty.



"Employer" means The Secretary of State for Justice of Ministry of Justice, 102 Petty France, Westminster, London SW1H 9AJ (with such term including its successors in title and permitted assigns)⁹

"Liability Period" is the period of twelve (12) years from the earlier of the date of:

- (a) the last date on which the Subconsultant performed any services in connection with the Project under the Sub-Appointment,
- (b) the date on which the final Construction Package is certified as having achieved "Completion" (or such equivalent term denoting practical completion of the Construction Package) pursuant to and as defined in the relevant Building Contract entered into by the *Employer* in connection with the Project (if entered into) and
- (c) the termination of the engagement of the Subconsultant under the Sub-Appointment,

in each case as determined pursuant to and in accordance with the Sub-Appointment;

"Project" has the meaning given to such term in the Sub-Appointment;

"Materials" means all existing and future designs, technical information, drawings, models, plans, specifications, schedules, design details and digital models and databases (including in relation to BIM), costings, budgets, calculations, bill of quantities, estimates and valuations, any photographs, brochures, reports, notes of meetings, computer aided design (CAD) materials and any other materials, including any data underlying such generated data in any medium (be it physical, hard copy or electronic, including digital), provided by or prepared on behalf of the Subconsultant or, as the context herein requires, any other person, in connection with this contract and/or any part(s) of the Project and all amendments and additions to them and any works, designs or inventions of the Subconsultant (or any other person as the case may be) incorporated or referred to in them; and

"Reasonable Rates and Terms" has the meaning given to such term in clause 4.1; and

"Sub-Appointment" means the subcontract in the form of an **NEC3 Professional Services Contract (April 2013 edition) (as amended)**¹⁰ dated **[INSERT DATE]** between (1) the Consultant; and (2) the Subconsultant, under which the Subconsultant is providing professional services in relation to the Project.

1.2 In interpreting this Deed:

- 1.2.1 if any party to this Deed is a partnership then the provisions of this Deed will bind each and every such partner jointly and severally;
- 1.2.2 references to the singular shall be deemed to include the plural (and vice versa) and reference to a "person" shall be deemed to include any individual firm unincorporated association or body corporate;
- 1.2.3 references to the Beneficiary shall be deemed to include its successors in title and permitted assigns;
- 1.2.4 any reference to any enactment includes any consolidation, re-enactment, amendment or replacement of it and any subordinate legislation under it;
- 1.2.5 headings to clauses shall be disregarded when construing this Deed; and

⁹ This entry should be deleted if the MoJ is the Beneficiary under the collateral warranty.

¹⁰ This entry should be updated to reflect the form of subcontract being used.



- 1.2.6 where the words "include(s)" or "including" are used in this Deed, they are deemed to have the words "without limitation" following them.

2. SKILL AND CARE

- 2.1 The Subconsultant undertakes with and warrants to the Beneficiary that it has carried out and will continue to carry out the duties and obligations on its part to be performed under the Sub-Appointment in accordance with the Sub-Appointment and with the reasonable skill, care, diligence and prudence to be expected of an appropriately qualified, skilled, competent and experienced professional consultant of the same discipline of the Subconsultant that is experienced in providing services similar in nature, extent and complexity to the services to be provided by the Subconsultant under the Sub-Appointment in relation to projects of a similar size, scope, value, character and complexity as the Project.
- 2.2 The Subconsultant shall have no greater liability to the Beneficiary, and shall owe to the Beneficiary no greater a standard of duty under this Deed than would have been owed if the Beneficiary had been named as the Consultant under the Sub-Appointment. If a claim is brought against the Subconsultant by the Beneficiary, the Subconsultant may rely on any defence or limitation available to it under the terms of the Sub-Appointment, save that the Subconsultant may not raise by way of defence or set-off or abatement or to bring any counterclaim in respect of any monies due to it under or in connection with the Sub-Appointment. The Subconsultant may not plead a "no-loss" defence, including one based on an argument that since the Consultant under the Sub-Appointment has not suffered a loss then the Beneficiary is not entitled to recover a loss it has suffered or that the Beneficiary's loss is irrecoverable because it would not be foreseeable that the Consultant under the Sub-Appointment would suffer such a loss.

3. COPYRIGHT

- 3.1 The Subconsultant grants to the Beneficiary and its nominees an irrevocable, royalty-free, non-exclusive and worldwide licence to copy and use the same and to reproduce the Materials for any and all purposes relating to the Appointment or the Project (including any design, construction completion, asset management, use, operation and maintenance, replacement, demolition, extension, sale or letting in relation to the Project), with this licence including the right to grant sub-licences in the terms of this licence to third parties, being assignable and continuing in perpetuity notwithstanding the termination of the Appointment for any reason.
- 3.2 The Subconsultant shall not be liable for any such use by the Beneficiary or its nominees of any Materials for any purpose other than that for which the same were prepared by the Subconsultant.
- 3.3 The Beneficiary shall on written request, be entitled to be supplied by the Subconsultant with copies of any Materials (in either electronic format or hard copy where applicable and/or in such other format as the Beneficiary may reasonably request).
- 3.4 The Subconsultant unconditionally and irrevocably waives (and shall ensure that any sub-consultants waive), in respect of the Materials and the Project, all moral rights to which the Subconsultant (or any relevant sub-consultants) may now or at any future time be entitled under the Copyright, Designs and Patents Act 1988 as amended from time to time or under any other applicable laws.
- 3.5 This waiver is made in favour of the Beneficiary and shall extend to the Beneficiary's sub-licensees, assignees and successors in title in accordance with this Deed.
- 3.6 The Subconsultant warrants that:
- 3.6.1 the Materials (save to the extent that duly authorised sub-consultants have been used to prepare the same) are the Subconsultant's own original work and that in any event their use in connection with the Project will not infringe the rights of any third party; and



- 3.6.2 where duly authorised sub-consultants are used their work will be original and that the Subconsultant will obtain the necessary consents in relation to clause 3.1.

4. INDEMNITY INSURANCE

- 4.1 The Subconsultant shall maintain professional indemnity insurance covering (inter alia) its potential liability under this Deed for the given insurance policy year in the event that it breaches this Deed upon market norm terms and conditions prevailing for the time being in the insurance market, and with reputable insurers lawfully carrying on such insurance business in the United Kingdom, in an amount of not less than [INSERT FIGURE] million pounds (£[INSERT NUMBER]) for any one claim or series of claims arising out of one single incident (provided by way of unlimited reinstatements), including costs and expenses, but in the aggregate per annum for liability arising out of pollution or contamination (to the extent insured by the relevant policy) and [INSERT FIGURE] million pounds (£[INSERT NUMBER]) for any one claim and in the aggregate per annum in respect of liability arising out of asbestos (to the extent insured by the relevant policy) until the expiry of the Liability Period, provided always that such insurance is available at commercially affordable rates and on terms such that members of the Subconsultant's profession generally carry such insurance ("**Reasonable Rates and Terms**").
- 4.2 Any increased or additional premium required by insurers by reason of the Subconsultant's own claims record or other acts, omissions, matters or things particular to the Subconsultant shall be deemed to be within Reasonable Rates and Terms.
- 4.3 The Subconsultant shall immediately inform the Beneficiary if such insurance ceases to be available upon Reasonable Rates and Terms in order that the Subconsultant and the Beneficiary can discuss means of best protecting their respective positions in respect of the Project in the absence of such insurance.
- 4.4 The Subconsultant shall co-operate fully with any measures reasonably required by the Beneficiary, including (without limitation) completing any proposals for insurance and associated documents, maintaining such insurance at rates above Reasonable Rates and Terms if the Beneficiary undertakes in writing to reimburse the Subconsultant in respect of the net cost of such insurance to the Subconsultant above Reasonable Rates and Terms.
- 4.5 As and when reasonably requested to do so by the Beneficiary the Subconsultant shall produce for inspection documentary evidence that its professional indemnity insurance is being maintained.
- 4.6 The above obligations in respect of professional indemnity insurance shall continue notwithstanding termination of the Sub-Appointment for any reason whatsoever, including (without limitation) breach by the Consultant.

5. LIABILITY PERIOD

Actions or proceedings for any breach of this Deed may be commenced up to and including but not after the expiry of the Liability Period.

6. ASSIGNMENT

- 6.1 The Subconsultant consents to the benefit of this Deed being assigned two times only provided always that the maximum number of two assignments referred to above shall not be affected by assignments or charges by way of security and their release or assignments to and from subsidiary or other associated companies within the same group of companies as the Beneficiary so long as such assignee company remains within the same group of companies as the Beneficiary.
- 6.2 Despite any other provision of this Deed the Subconsultant shall not be entitled to contend that any person to whom this Deed is assigned in accordance with clause 6.1 (an "**Assignee**") is precluded from recovering under this Deed any loss incurred by such assignee resulting from any breach of



this Deed (whenever happening), by reason that such person is an assignee and not the original named party to this Deed.

- 6.3 The Subconsultant may not defend any claim brought by the Beneficiary or an Assignee on the basis of a no loss argument whether based on the logic that the Beneficiary or an Assignee has not suffered a recoverable loss because the Consultant has not suffered that loss or because the Consultant would not suffer a similar loss because of its different interest in the Project compared to the interest of the Beneficiary or Assignee and/or if assigned that the original Beneficiary has not suffered such loss because it has parted with its interest in the Project or otherwise.

7. [IN EMPLOYER / FUNDER WARRANTY – OBLIGATIONS PRIOR TO TERMINATION OF THE APPOINTMENT BY THE CONSULTANT]¹¹

- 7.1 The Subconsultant shall not exercise nor seek to exercise any right of termination of its employment under the Sub-Appointment or discontinue the performance of the Sub-Appointment for any reason whatsoever (including any breach on the part of the Consultant) without giving not less than twenty-one (21) days' written notice of its intention to do so to the Beneficiary and specifying the grounds for the proposed termination or discontinuance.

- 7.2 Any period stipulated in the Sub-Appointment for the exercise of a right of termination by the Subconsultant of its employment under the Sub-Appointment or to discontinue the performance of the Sub-Appointment shall, nevertheless, be extended as may be necessary to take account of the period of notice required under clause 7.1.

- 7.3 The right of the Subconsultant to terminate its employment under the Sub-Appointment or to discontinue the performance of the Sub-Appointment shall cease within the period of twenty-one (21) days referred to in clause 7.1 if the Beneficiary shall give notice to the Subconsultant:

7.3.1 requiring the Subconsultant to continue its obligations under the Sub-Appointment with the Beneficiary or its nominee;

7.3.2 acknowledging that the Beneficiary or its nominee will assume all the obligations of the Consultant under the Sub-Appointment; and

7.3.3 undertaking that the Beneficiary or its nominee will discharge all payments which may subsequently become due to the Subconsultant under the terms of the Sub-Appointment and will pay to the Subconsultant any sums which have been due and payable to him under the Sub-Appointment but which remain unpaid.

- 7.4 Upon service by the Beneficiary or its nominee of a notice complying with the requirements of clause 7.3 the Sub-Appointment will continue in full force and effect as if the same had been entered into between the Subconsultant and the Beneficiary to the exclusion of the Consultant.

- 7.5 Compliance by the Subconsultant with the provisions of this clause 7 will not be treated as a waiver of any breach on the part of the Consultant giving rise to the right of termination nor otherwise prevent the Subconsultant from exercising its rights after the expiration of the notice issued pursuant to clause 7.1 unless the rights of termination have ceased under the provisions of clause 7.

- 7.6 This clause 7 shall cease to have effect upon the prior exercise by any third person of any similar rights of substitution contained in any other agreement concerning the Project and entered into between the Subconsultant and such person at the request of the Consultant.

- 7.7 By acting in accordance with clause 7, the Subconsultant shall not incur any liability to the Consultant.]

¹¹ This clause should be deleted if the Beneficiary will not benefit from step-in rights under the collateral warranty.



8. **NOTICES**

Any notice required to be given under this Deed shall be in writing and shall be deemed to be properly given if delivered personally to the addressee at its address as shown above (or such other address as may be notified in writing from time to time as its address for service).

9. **EXTRANEOUS RIGHTS**

9.1 This Deed shall not negate or diminish any duty or liability otherwise owed by the Subconsultant to the Beneficiary.

9.2 No approval or inspection of any work or materials (of any type and in any medium) by or on behalf of the Beneficiary and no omission to inspect or test shall negate or diminish any duty or liability of the Subconsultant arising under this Deed.

9.3 This Deed may be executed in any number of counterparts all of which when taken together shall constitute one and the same instrument.

9.4 This Deed does not create any right enforceable by any person not a party to it (whether pursuant to the Contracts (Rights of Third Parties) Act 1999 or otherwise) except that a person who is the successor to or the permitted assignee of the rights of the Beneficiary is deemed to be a party to this Deed.

10. **GOVERNING LAW**

This Deed is subject in all respects to English law and the English Courts shall have exclusive jurisdiction with regard to all matters arising under or in connection with it.

This Deed has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

[INSERT EXECUTION BLOCKS FOR THE PARTIES]



SCHEDULE 6

DATA PROTECTION SCHEDULE



DATA PROTECTION SCHEDULE

This Schedule 6 sets out the data processing particulars.

The contact details of the data protection officers for each of the *Employer* and the *Consultant* are as follows:

Party	Name	Email address	Telephone no.
<i>Employer</i>	[REDACTED]	[REDACTED]	[REDACTED]
<i>Consultant</i>	[REDACTED]	[REDACTED]	[REDACTED]

Without prejudice to the generality of clause 104A and this Schedule 6:

- the *Consultant* shall comply with any further written instructions from the *Employer* / Controller in connection with the Processing of any Personal Data in relation to the contract; and
- any such further instruction shall be deemed to be automatically incorporated into this Schedule 6 as from the date of any such instruction.



Description	Details
Identity of the Controller and Processor	<p>The Parties acknowledge and agree that, for the purpose of the Data Protection Laws and clause 104A of this contract:</p> <ul style="list-style-type: none"> the <i>Employer</i> is the Controller; and the <i>Consultant</i> is the Processor.
Permitted Purpose	<p>The <i>Consultant</i> shall be permitted to Process the Personal Data solely to extent required to allow the <i>Consultant</i> to Provide the Services in accordance with this contract (and/or where such Processing is a reasonably incidental requirement of so Providing the Services).</p>
Duration of the Processing	<p>Unless otherwise expressly agreed by the <i>Employer</i> in writing, the duration of the <i>period of retention</i>.</p>
Nature of the Processing	<p>The nature of the Processing means any operations including the collection, recording, organisation, structuring, storage, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, erasure, destruction of Personal Data (whether or not by automated means) for purposes limited to the performance of the <i>Consultant's</i> obligations under and in accordance with the terms of this contract.</p>
Type of Personal Data	<p>These are as follows:</p> <ul style="list-style-type: none"> full name; occupation; workplace / home address; workplace / home telephone number; date of birth; place of birth; age; nationality; next of kin and emergency contact details; email address; national insurance number; tax code; salary or remuneration; photographic facial image; contract type; start date, end date and any reason(s) for early termination; curriculum vitae; passport and driving licence details; visa details; right to work documentation; hours worked and records of absence / annual leave; details of physical and psychological health of medical conditions; information about investigations and criminal proceedings; equalities monitoring information (age, disability, gender, sexual orientation, race, religion belief and ethnicity); and voice recordings from calls.
Categories of Data Subject	<p>These are:</p> <ul style="list-style-type: none"> the <i>Consultant's</i> agents / staff and Subconsultants or suppliers of any type; and any user of the <i>services</i> of any type.



Plan for return and destruction of the Personal Data once the processing is complete	<p>The Personal Data will be retained for the <i>period of retention</i>.</p> <p>The <i>Consultant</i> will ensure that there is an effective policy to control access to computerised data and to prevent unauthorised access at all times. On termination of this contract, all relevant documentation and records will be transferred back to the <i>Employer</i> or to any new provider of the <i>services</i>, which is applicable. Any such transfer of these records will be conducted in accordance with the requirements of the Data Protection Laws.</p> <p>Notwithstanding the above, the <i>Consultant</i> shall either return or destroy the Personal Data upon the expiration of the <i>period of retention</i> at the <i>Employer's</i> election (unless otherwise advised by the <i>Employer</i>).</p>
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