# PROJECT PARTNERING AGREEMENT

**Appendix J to the Project Partnering Agreement**

**Forms of Collateral Warranty**

# PROJECT PARTNERING AGREEMENT

**PART 1 – CONSTRUCTOR COLLATERAL WARRANTY**

**THIS DEED** is made the [ ] day of [ ]

# BETWEEN

1. [ ] (company number [ ]) whose registered office is at [ ] (the "**Beneficiary**"); and
2. [ ] (company number [ ]) whose registered office is at [ ] (the "**Constructor**").

# WHEREAS

1. The Client has entered into a Partnering Contract with the Constructor.
2. The Beneficiary has an interest in the whole or part of the PETP Package and, accordingly, in the Appointment.
3. The Constructor has agreed to enter into this Deed in favour of the Beneficiary in relation to the Beneficiary's above-mentioned interest in the PETP Package pursuant to and in accordance with the terms of the Partnering Contract.

**NOW** in consideration of £10.00 (ten pounds) paid by the Beneficiary to the Constructor (receipt of which the Constructor hereby acknowledges) **IT IS HEREBY AGREED** as follows:

# INTERPRETATION

In this Deed (and unless otherwise stated), the following capitalised terms shall have the meanings ascribed to them below:

|  |  |
| --- | --- |
| "**Appointment**" | means the Constructor's appointment under the Partnering Contract to design and construct the PETP Package and as more particularly defined in the PETP Package Commencement Agreement; |
| "**Client**" | means the Secretary of State for the Ministry of Justice of the Ministry of Justice, 102 Petty France, London SW1H 9AJ (acting as part of the Crown) (with such expression including its successors and assigns); |
| "**Intellectual Property Rights**" | has the meaning given to such term in the Partnering Contract; |
| "**limitation period**" | has the meaning given to the term "limitation period" in the Partnering Contract; |
| "**Materials**" | all designs, drawings, models, plans, specifications, design details, photographs, brochures, reports, notes of meetings, digital construction and building information modelling (BIM) data, computer aided design (CAD) materials, calculations, schedules, programmes, bills of quantities, budgets and any other data, documents and/or materials of any type and/or nature produced or |

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|  |  |
| --- | --- |
|  | procured by or on behalf of the Constructor in connection with the Partnering Contract and all updates, amendments, additions and revisions to them and any works, designs, or inventions incorporated or referred to in them for any purpose relating to the same from time to time; |
| "**Partnering Contract**" | means an amended ACA Standard Form of Contract for Project Partnering (PPC2000) (Amended 2008) between the Client and multiple parties, including the Constructor, dated [ ][1](#_bookmark2); |
| "**Partnering Obligations**" | means the duties and obligations of the Constructor under the Partnering Contract in relation to the Appointment; |
| "**PETP Package**" | has the meaning given to the term "PETP Package" in the PETP Package Commencement Agreement; |
| "**PETP Package Commencement Agreement**" | means the "PETP Package Commencement Agreement" (as defined in the Partnering Contract) dated [ ] in relation to the PETP Package and issued pursuant to the Partnering Contract; |
| **“PETP Package Date for**  **Completion”** | has the meaning given to the term “PETP Package Date for Completion” in the Partnering Contract; and |
| "**Project**" | has the meaning given to such term in the Partnering Contract. |

1. **DUTY OF CARE**

The Constructor warrants to the Beneficiary that:

* 1. it has duly performed and observed, and will continue to duly perform and observe, its Partnering Obligations; and
  2. without limiting the generality of clause [2.1,](#_bookmark0) it has:
     1. exercised and will continue to exercise the standard of care specified at clause 22.1 of the Partnering Contract in the performance of its Partnering Obligations; and
     2. complied and will comply with the provisions of clause 8.2A of the Partnering Contract ("Deleterious Materials") in the performance of its Partnering Obligations.

# COPYRIGHT

* 1. The Constructor shall retain Intellectual Property Rights in its Materials and hereby grants to the Beneficiary an irrevocable, royalty-free, worldwide and non-exclusive licence in perpetuity to use, copy and reproduce the Materials for any purpose whatsoever in connection with the PETP Package, including in connection with the execution, completion, extension, maintenance, letting, management, sale, advertisement, alteration, reinstatement and repair of the PETP Package, with this licence carrying the right for the licensee to grant sub-licences, being transferable to third parties and subsisting notwithstanding the determination (for any reason) of the

1 If the Constructor has joined the Partnering Contract by way of a Joining Agreement, this entry should be updated

accordingly.

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Constructor's employment under the Partnering Contract, provided always that the Constructor shall not be liable for any such use by the Beneficiary of the Materials for any purpose other than that for which the same were prepared and provided by the Constructor to the Client pursuant to the Partnering Contract.

* 1. The Constructor waives absolutely all "moral rights" (as defined in Part 1 of Chapter IV of the Copyright, Designs and Patents Act 1988) that it may have in its Materials and, where it is not the author of the Materials, shall procure a waiver from the author of such moral rights that the author may have in respect of the Materials.

# INSURANCE

Without prejudice to the requirements of clause 19 of the Partnering Contract ("Insurance and Security"), the Constructor warrants to the Beneficiary that:

* 1. it shall maintain professional indemnity insurance covering (inter alia), all liability under this Deed in respect of defects or insufficiency in design, upon customary and usual 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:
     1. in an amount not less than £[ ] ([ ] pounds) 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 £[ ] ([ ] pounds) 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); and
     2. for the full duration of the limitation period,

provided always that such insurance is available at commercially reasonable rates (and increased or additional premium required by insurers by reason of the Constructor's own claims record or other acts, omissions, matters or things particular to the Constructor shall be deemed to be within commercially reasonable rates);

* 1. the professional indemnity insurance procured and maintained by the Constructor pursuant to clause [4.1](#_bookmark3) shall not include any term or condition to the effect that the Constructor must discharge any liability before being entitled to recover from the insurers, or any other term or condition which might adversely affect the rights of any person to recover from the insurers pursuant to the Third Parties (Rights Against Insurers) Act 1930, or the Third Parties (Rights Against Insurers) Act (Northern Ireland) 1930, or any amendment or re-enactment thereof;
  2. it shall not, without the prior approval in writing of the Beneficiary, settle or compromise with the insurers any claim which the Constructor may have against the insurers and which relates to a claim by the Beneficiary against the Constructor, or by any act or omission lose or prejudice the Constructor’s right to make or proceed with such a claim against the insurers;

# PROJECT PARTNERING AGREEMENT

* 1. it shall immediately inform the Beneficiary if such professional indemnity insurance ceases to be available at commercially reasonable rates;
  2. it shall fully co-operate 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 commercially reasonable rates if the Beneficiary undertakes in writing to reimburse the Constructor in respect of the net cost of such insurance to the Constructor above commercially reasonable rates or, if the Beneficiary effects such insurance at rates at or above commercially reasonable rates, reimbursing the Beneficiary in respect of what the net cost of such insurance to the Beneficiary would have been at commercially reasonable rates; and
  3. as and when it is reasonably requested to do so by the Beneficiary, the Constructor shall produce for inspection documentary evidence that its professional indemnity insurance is being maintained.

# ASSIGNMENT

This Deed may be assigned by the Beneficiary and its successors and assignees on a maximum of two (2) occasions without the prior consent of the Constructor being required and the Constructor undertakes with the Beneficiary not to contend that any person to whom this Deed may be assigned will be precluded from recovering under this Deed any loss resulting from any breach of this Deed either by reason that the person is an assignee and not the original party to this Deed or by reason that the Beneficiary named in this Deed or any intermediate owner of the Beneficiary's interest in the PETP Package and/or the Appointment shall escape loss resulting from such breach by reason of the disposal of such interest.

# NOTICES

Any notice to be given by the Constructor under this Deed shall be deemed to be duly given if it is delivered by hand at or sent by registered post or recorded delivery to the above mentioned address of the Beneficiary or to the principal business address of the Beneficiary for the time being, and any notice to be given by the Beneficiary hereunder shall be deemed to be duly given if it is addressed to the Constructor and delivered by hand at or sent by registered post or recorded delivery to the above mentioned address of the Constructor or to the principal business address of the Constructor for the time being and, in the case of any such notices, the same shall if sent by registered post or recorded delivery be deemed to have been received forty eight (48) hours after being posted.

# AUTHORITY OF BENEFICIARY

The Beneficiary has no authority to issue any direction or instruction to the Constructor in relation to performance of the Partnering Contract.

# LIABILITY OF BENEFICIARY

The Beneficiary has no liability to the Constructor in respect of any sums due under the Partnering Contract.

# DELAY

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Notwithstanding any other provision of this Deed, the Constructor shall have no liability to the Beneficiary in respect of delay and/or failure to complete the PETP Package by the PETP Package Date for Completion.

# NO GREATER LIABILITY

Notwithstanding any other provision of this Deed:

* 1. the Constructor shall have no greater liability in value and/or duration arising out of or in connection with this Deed (excluding rights of set off and counterclaim) than it would have done if, in lieu of this Deed, the Beneficiary had been named as the "Client" instead of the Client in the Appointment; and
  2. the Constructor shall be entitled in any action or proceedings by the Beneficiary under or in connection with this Deed to rely on any limitation in relation to the Appointment and to raise the equivalent rights in defence of liability (save for set-off and/or counterclaim) as it would have against the Client in respect of the same.

# LIABILITY PERIOD

The obligation of the Constructor under this Deed shall cease on the expiration of the limitation period in relation to the PETP Package, save in respect of any cause of action under this Deed where proceedings have been commenced during such limitation period.

# EXTRANEOUS RIGHTS

* 1. This Deed shall not negate or diminish any duty or liability otherwise owed by the Constructor under the Appointment and/or under the Partnering Contract.
  2. This Deed may be executed in any number of counterparts all of which when taken together shall constitute one and the same instrument.
  3. 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 Client is deemed to be a party to this Deed.

# LAW

The construction, validity and performance of this Deed shall be governed by English law and the parties agree to submit to the non-exclusive jurisdiction of the English courts.

**IN WITNESS WHEREOF** this collateral warranty has been executed and delivered as a **DEED**

on the day and year first before written

[EXECUTION BLOCKS FOR THE RELEVANT PARTIES TO BE INSERTED]

# PROJECT PARTNERING AGREEMENT

**PART 2 – SUB-CONTRACTOR COLLATERAL WARRANTY**

**THIS DEED** is made the [ ] day of [ ]

# BETWEEN

1. [ ] (company number [ ]) whose registered office is at [ ] (the "**Beneficiary**"); [and]
2. [ ] (company number [ ]) whose registered office is at [ ] (the "**Sub-Contractor**"); and
3. [ ] (company number [ ]) whose registered office is at [ ] (the "**Partnering Team Member**").

# WHEREAS

* 1. The [Client / Beneficiary][2](#_bookmark4) has entered into a Partnering Contract with the Partnering Team Member.
  2. The Partnering Team Member has entered into the Sub-Contract with the Sub- Contractor.
  3. The Beneficiary has an interest in the whole or part of the works and/or services provided by the Sub-Contractor pursuant to the Sub-Contract.
  4. The Sub-Contractor has agreed to enter into this Deed in favour of the Beneficiary in relation to the Beneficiary's above-mentioned interest in the Sub-Contract pursuant to and in accordance with the terms of the Sub-Contract.

**NOW** in consideration of £10.00 (ten pounds) paid by the Beneficiary to the Sub-Contractor (receipt of which the Sub-Contractor hereby acknowledges) **IT IS HEREBY AGREED** as follows:

# INTERPRETATION

In this Deed (and unless otherwise stated), the following capitalised terms shall have the meanings ascribed to them below:

|  |  |
| --- | --- |
| ["**Client**" | means **The Secretary of State for The Ministry Of Justice of the Ministry of Justice**, 102 Petty France, London SW1H 9AJ (acting as part of the Crown) (with such expression including its successors and assigns);][3](#_bookmark5) |
| "**Intellectual Property Rights**" | means all:  (a) copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in |

2 This entry should read "Client" where the collateral warranty is in favour of a party other than the MoJ. Otherwise, it should read "Beneficiary."

3 Where the MoJ is the beneficiary under this collateral warranty, this definition should be deleted.

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# PROJECT PARTNERING AGREEMENT

|  |  |
| --- | --- |
|  | inventions, trade marks, rights in internet domain names and website addresses and other rights in trade names, designs (including building information modelling), know- how, trade secrets and other rights in confidential information;   1. applications for registration, and the right to apply for registration, for any of the rights listed at (a) that are capable of being registered in any country or jurisdiction; and 2. all other rights having equivalent or similar effect in any country or jurisdiction; |
| "**limitation period**" | means the limitation period applicable to the appointment of the Partnering Team Member under the Partnering Contract and shall be construed in accordance with the term "limitation period" as defined in the Partnering Contract; |
| "**Partnering Contract**" | means an amended ACA Standard Form of Contract for Project Partnering (PPC2000) (Amended 2008) between the Client and multiple parties, including the Partnering Team Member, dated [ ][4](#_bookmark8); |
| "**Project**" | means [ ][5](#_bookmark9); |
| "**Sub-Contract**" | means the sub-contract between the Partnering Team Member and the Sub-Contractor dated [ ] under which the Sub- Contractor has agreed to perform the Sub-Contractor's Obligations; and |
| "**Sub-Contractor's Obligations**" | means the duties and obligations of the Sub-Contractor under the Sub-Contract in connection with the Project (as more particularly described in the Sub-Contract). |

1. **DUTY OF CARE**

The Sub-Contractor warrants and undertakes to the Beneficiary that:

* 1. it has performed and shall continue to perform all of the Sub-Contractor's Obligations under or arising out of the Sub-Contract; and
  2. it has exercised and shall continue to exercise in the performance of the Sub- Contractor's Obligations all of the reasonable skill and care to be expected of a properly qualified and competent specialist of the Sub-Contractor's profession experienced in the provision of professional services for projects of a similar size, scope, value, character and complexity to the Project.

# PROHIBITED MATERIALS

Without prejudice to the generality of clause [2.2,](#_bookmark1) the Sub-Contractor warrants to the Beneficiary that it has exercised and shall continue to exercise the standard of skill and

4 If the Partnering Team Member has joined the Partnering Contract by way of a Joining Agreement, this entry should be updated accordingly.

5 This entry should be updated to identify the precise type of works and/or services being provided by the Sub-Sub-

Contractor (i.e. on a PETP project-wide or PETP Package-specific basis).

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care required by clause [2.2](#_bookmark6) to ensure that it has not and shall not specify, authorise, cause or allow to be used in the Project any products or materials which:

* 1. do not conform with British or European Standards (where appropriate) or Codes of Practice (or where no such standard exists do not conform with a British Board of Agrément Certificate);
  2. are generally known to members of the Sub-Contractor's profession to be deleterious in the particular circumstances in which they are specified for use, to health and safety and/or the durability of buildings or structures;
  3. do not comply with the guidance set out in "Good Practice in the Selection of Construction Materials 2011" published by the British Council of Offices; and/or
  4. are specifically prohibited under the Sub-Contract.

and the Sub-Contractor shall, as soon as reasonably practicable, notify the Beneficiary if it becomes aware of any proposed or actual specification and/or use in the Project of any materials which do not comply with this clause [3.](#_bookmark7)

# COPYRIGHT

The Sub-Contractor:

* 1. hereby grants to the Beneficiary an irrevocable, non-exclusive and royalty free licence to copy and use all such designs and documents prepared by or on behalf of the Sub-Contractor pursuant to the Sub-Contract for any purpose whatsoever relating to the Project together with the right to transfer and sub- license such rights for the same purposes;
  2. shall ensure that the licence referred to in clause [4.1](#_bookmark10) shall have the support of such rights from third parties as are necessary to allow the grant of the licence referred to in that clause;
  3. shall not be liable for the use of any design or document that it prepares for any purpose other than that for which it was agreed to be prepared as stated in, or reasonably inferred from, the Sub-Contract; and
  4. warrants to the Beneficiary that no design or document that it prepares pursuant to and nothing else it contributes to the Sub-Contract shall infringe any Intellectual Property Rights and undertakes to indemnify the Beneficiary in respect of any legal liability and related costs arising out of or in connection with any such infringement of any Intellectual Property Rights.

# INSURANCE

The Sub-Contractor warrants to the Beneficiary that:

* 1. it shall maintain professional indemnity insurance covering (inter alia), all liability under this Deed in respect of defects or insufficiency in design, upon customary and usual 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:

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* + 1. in an amount not less than £[ ] ([ ] pounds) for [any one occurrence or series of occurrences arising out of any one event][6](#_bookmark11); and
    2. for the full duration of the limitation period,

provided always that such insurance is available at commercially reasonable rates (and increased or additional premium required by insurers by reason of the Sub-Contractor's own claims record or other acts, omissions, matters or things particular to the Sub-Contractor shall be deemed to be within commercially reasonable rates);

* 1. the professional indemnity insurance procured and maintained by the Sub- Contractor pursuant to clause [4.1](#_bookmark3) shall not include any term or condition to the effect that the Sub-Contractor must discharge any liability before being entitled to recover from the insurers, or any other term or condition which might adversely affect the rights of any person to recover from the insurers pursuant to the Third Parties (Rights Against Insurers) Act 1930, or the Third Parties (Rights Against Insurers) Act (Northern Ireland) 1930, or any amendment or re- enactment thereof;
  2. it shall not, without the prior approval in writing of the Beneficiary, settle or compromise with the insurers any claim which the Sub-Contractor may have against the insurers and which relates to a claim by the Beneficiary against the Sub-Contractor, or by any act or omission lose or prejudice the Sub- Contractor’s right to make or proceed with such a claim against the insurers;
  3. it shall immediately inform the Beneficiary if such professional indemnity insurance ceases to be available at commercially reasonable rates;
  4. it shall fully co-operate 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 commercially reasonable rates if the Beneficiary undertakes in writing to reimburse the Sub-Contractor in respect of the net cost of such insurance to the Sub-Contractor above commercially reasonable rates or, if the Beneficiary effects such insurance at rates at or above commercially reasonable rates, reimbursing the Beneficiary in respect of what the net cost of such insurance to the Beneficiary would have been at commercially reasonable rates; and
  5. as and when it is reasonably requested to do so by the Beneficiary, the Sub- Contractor shall produce for inspection documentary evidence that its professional indemnity insurance is being maintained.

# ASSIGNMENT

This Deed may be assigned by the Beneficiary and its successors and assignees on a maximum of two (2) occasions without the prior consent of the Sub-Contractor being required and the Sub-Contractor undertakes with the Beneficiary not to contend that any person to whom this Deed may be assigned will be precluded from recovering under this Deed any loss resulting from any breach of this Deed either by reason that the person is an assignee and not the original party to this Deed or by reason that the

6 To be completed on a Sub-Contract-specific basis.

# PROJECT PARTNERING AGREEMENT

Beneficiary named in this Deed or any intermediate owner of the Beneficiary's interest in the Project and/or the Sub-Contract shall escape loss resulting from such breach by reason of the disposal of such interest.

# NOTICES

Any notice to be given by the Sub-Contractor under this Deed shall be deemed to be duly given if it is delivered by hand at or sent by registered post or recorded delivery to the above mentioned address of the Beneficiary or to the principal business address of the Beneficiary for the time being, and any notice to be given by the Beneficiary hereunder shall be deemed to be duly given if it is addressed to the Sub-Contractor and delivered by hand at or sent by registered post or recorded delivery to the above mentioned address of the Sub-Contractor or to the principal business address of the Sub-Contractor for the time being and, in the case of any such notices, the same shall if sent by registered post or recorded delivery be deemed to have been received forty eight (48) hours after being posted.

# FURTHER WARRANTIES

The Sub-Contractor shall within fourteen (14) calendar days of the Beneficiary’s request to do so, execute, in favour of any persons who have acquired or shall acquire any interest in or over the Project and/or the Sub-Contract or any part thereof, a collateral warranty in the form of this Deed, excluding this clause, or a similar form reasonably required by the Beneficiary, and deliver the same to the Beneficiary.

# AUTHORITY OF BENEFICIARY

The Beneficiary has no authority to issue any direction or instruction to the Sub- Contractor in relation to performance of the Sub-Contract unless and until the Beneficiary has issued a notice to the Sub-Contractor pursuant to clause [11.](#_bookmark12)

# LIABILITY OF BENEFICIARY

The Beneficiary has no liability to the Sub-Contractor in respect of any sums due under the Sub-Contract unless and until the Beneficiary has issued a notice to the Sub- Contractor pursuant to clause [11.](#_bookmark12)

# STEP-IN

* 1. The Sub-Contractor agrees that, in the event of the determination of the Sub- Contract by the Partnering Team Member, the Sub-Contractor will, if so required by notice in writing given by the Beneficiary and subject to clause [11.2](#_bookmark14) accept the instructions of the Beneficiary or its appointee to the exclusion of the Partnering Team Member in respect of the Sub-Contract upon the terms and conditions of the Sub-Contract.
  2. The Sub-Contractor agrees that:
     1. it will not, without first giving the Beneficiary not less than twenty-one

(21) days' notice in writing (the "**Step-In Period**"), exercise any right it may have to terminate the Sub-Contract or to treat the same as having been repudiated or to discontinue the performance of the Sub-Contract to be executed by the Sub-Contractor thereto; and

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* + 1. its right to terminate the Sub-Contract or treat the same as having been repudiated or discontinue performance shall cease if, within the Step-In Period and subject to clause [11.3,](#_bookmark15) the Beneficiary gives notice in writing to the Sub-Contractor requiring the Sub-Contractor to accept the instructions of the Beneficiary or its appointee to the exclusion of the Partnering Team Member in respect of the Sub-Contractor's engagement upon the terms and conditions of the Sub-Contract.
  1. In respect of any notice given by the Beneficiary under clause [11.1](#_bookmark13) and/or clause [11.2:](#_bookmark14)
     1. it shall be a condition precedent to the effectiveness of such notice that the Beneficiary or its appointee accepts liability for payment of the sums payable to the Sub-Contractor under the Sub-Contract and for performance of the Partnering Team Member's obligations, including payment of any sums outstanding at the date of such notice;
     2. upon its issue, the Sub-Contract shall continue in full force and effect as if no right of termination on the part of the Sub-Contractor had arisen and the Sub-Contractor shall be liable to the Beneficiary and its appointee under the Sub-Contract in lieu of its liability to the Partnering Team Member; and
     3. if the notice requires the Sub-Contractor to accept the instructions of the Beneficiary's appointee, the Beneficiary shall be liable to the Sub- Contractor as guarantor for the payment of all sums from time to time due to the Sub-Contractor from the Beneficiary's appointee.
  2. The Partnering Team Member has agreed to be a party to this Deed for the purposes of acknowledging that the Sub-Contractor shall not be in breach of the Sub-Contract by complying with the obligations imposed on it by this clause [11.](#_bookmark12)
  3. Where:
     1. the Sub-Contractor has given rights similar to those contained in this clause [11](#_bookmark12) (or their equivalent) to any other third party (the "**Equivalent Step-In Rights**"); and
     2. the Beneficiary serves a notice on the Sub-Contractor seeking to exercise its rights under this clause [11,](#_bookmark12)

the Beneficiary shall, subject to clause [11.6,](#_bookmark17) have no ability to exercise its rights under this clause [11](#_bookmark12) where such third party has priority to exercise the Equivalent Step-In Rights, with the order of priority being as follows:

1. **highest priority** – the Secretary of State for the Ministry of Justice (of the Ministry of Justice, 102 Petty France, London SW1H 9AJ) (acting as part of the Crown);
2. **second highest priority** – the Beneficiary; and
3. **lowest priority** – any other third party.

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* 1. If the situation described in clause [11.5](#_bookmark16) arises, the Sub-Contractor shall:
     1. notify the relevant third party that has priority to exercise the Equivalent Step-In Rights within five (5) days of receiving the Beneficiary's notice advising that it is seeking to exercise its own rights under this under this clause [11;](#_bookmark12)
     2. use reasonable endeavours to secure written confirmation from such party as to whether:
        1. its wishes to exercise; or
        2. waives the right to exercise,

its Equivalent Step-In Rights as soon as reasonable practicable;

* + 1. notify the Beneficiary of the decision of such third party in writing (with this decision being final); and
    2. the Step-In Period shall be deemed to be extended for a period equivalent to the period during which the Sub-Contractor is awaiting written confirmation from the relevant third party pursuant to clause [11.6.2.](#_bookmark18)

# NO GREATER LIABILITY

Notwithstanding any other provision of this Deed:

* 1. the Sub-Contractor shall have no greater liability in value and/or duration arising out of or in connection with this Deed (excluding rights of set off and counterclaim) than it would have done if, in lieu of this Deed, the Beneficiary had been named as the "Partnering Team Member" instead of the Partnering Team Member in the Sub-Contract; and
  2. the Sub-Contractor shall be entitled in any action or proceedings by the Beneficiary under or in connection with this Deed to rely on any limitation in the Sub-Contract and to raise the equivalent rights in defence of liability (save for set-off and/or counterclaim) as it would have against the Partnering Team Member under the Sub-Contract.

# LIABILITY PERIOD

The obligation of the Sub-Contractor under this Deed shall cease on the expiration of the limitation period, save in respect of any cause of action under this Deed where proceedings have been commenced during such limitation period.

# EXTRANEOUS RIGHTS

* 1. This Deed shall not negate or diminish any duty or liability otherwise owed by the Sub-Contractor under the Sub-Contract.
  2. This Deed may be executed in any number of counterparts all of which when taken together shall constitute one and the same instrument.

# PROJECT PARTNERING AGREEMENT

* 1. 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 Partnering Team Member is deemed to be a party to this Deed.

# LAW

The construction, validity and performance of this Deed shall be governed by English law and the parties agree to submit to the non-exclusive jurisdiction of the English courts.

**IN WITNESS WHEREOF** this collateral warranty has been executed and delivered as a **DEED**

on the day and year first before written

[EXECUTION BLOCKS FOR THE RELEVANT PARTIES TO BE INSERTED]

# PROJECT PARTNERING AGREEMENT

**PART 3 – SUB-SUB-CONTRACTOR COLLATERAL WARRANTY**

**THIS DEED** is made the [ ] day of [ ]

# BETWEEN

1. [ ] (company number [ ]) whose registered office is at [ ] (the "**Beneficiary**"); [and]
2. [ ] (company number [ ]) whose registered office is at [ ] (the "**Sub-Sub-Contractor**"); and
3. [ ] (company number [ ]) whose registered office is at [ ] (the "**Sub-Contractor**").

# WHEREAS

* 1. The Sub-Contractor has entered into the Sub-Sub-Contract with the Sub-Sub- Contractor.
  2. The Beneficiary has an interest in the whole or part of the works and/or services provided by the Sub-Sub-Contractor pursuant to the Sub-Sub-Contract.
  3. The Sub-Sub-Contractor has agreed to enter into this Deed in favour of the Beneficiary in relation to the Beneficiary's above-mentioned interest in the Sub-Sub-Contract pursuant to and in accordance with the terms of the Sub-Sub-Contract.

**NOW** in consideration of £10.00 (ten pounds) paid by the Beneficiary to the Sub-Sub-Contractor (receipt of which the Sub-Sub-Contractor hereby acknowledges) **IT IS HEREBY AGREED** as follows:

# INTERPRETATION

In this Deed (and unless otherwise stated), the following capitalised terms shall have the meanings ascribed to them below:

|  |  |
| --- | --- |
| "**Intellectual Property Rights**" | means all:   1. copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, trade marks, rights in internet domain names and website addresses and other rights in trade names, designs (including building information modelling), know- how, trade secrets and other rights in confidential information; 2. applications for registration, and the right to apply for registration, for any of the rights listed at (a) that are capable of being registered in any country or jurisdiction; and |

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|  |  |
| --- | --- |
|  | (c) all other rights having equivalent or similar effect in any country or jurisdiction; |
| "**limitation period**" | means the period of twelve (12) years following the earlier of:   1. the completion of the Sub-Sub-Contractor's obligations under the Sub-Sub-Contract; or 2. the termination of the Sub-Sub-Contract; |
| "**Project**" | means [ ][7](#_bookmark20); |
| "**Sub-Sub- Contract**" | means the sub-sub-contract between the Sub-Contractor and the Sub-Sub-Contractor dated [ ] under which the Sub- Sub-Contractor has agreed to perform the Sub-Sub-Contractor's Obligations; and |
| "**Sub-Sub- Contractor's**  **Obligations**" | means the duties and obligations of the Sub-Sub-Contractor under the Sub-Sub-Contract in connection with the Project (as more  particularly described in the Sub-Sub-Contract). |

1. **DUTY OF CARE**

The Sub-Sub-Contractor warrants and undertakes to the Beneficiary that:

* 1. it has performed and shall continue to perform all the Sub-Sub-Contractor's Obligations under or arising out of the Sub-Sub-Contract; and
  2. it has exercised and shall continue to exercise in the performance of the Sub-Sub- Contractor's Obligations all of the reasonable skill and care to be expected of a properly qualified and competent specialist of the Sub-Sub-Contractor's profession experienced in the provision of professional services for projects of a similar size scope value character and complexity to the Project.

# PROHIBITED MATERIALS

Without prejudice to the generality of clause [2.2](#_bookmark19) the Sub-Sub-Contractor warrants that it has exercised and shall continue to exercise the standard of skill and care required by clause [2.2](#_bookmark6) to ensure that it has not and shall not specify, authorise, cause or allow to be used in the Project any products or materials which:

* 1. do not conform with British or European Standards (where appropriate) or Codes of Practice (or where no such standard exists do not conform with a British Board of Agrément Certificate);
  2. are generally known to members of the Sub-Sub-Contractor's profession to be deleterious in the particular circumstances in which they are specified for use, to health and safety and/or the durability of buildings or structures;
  3. do not comply with the guidance set out in "Good Practice in the Selection of Construction Materials 2011" published by the British Council of Offices; and/or

7 This entry should be updated to identify the precise type of works and/or services being provided by the Sub-Sub-

Contractor (i.e. on a PETP project-wide or PETP Package-specific basis).

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# PROJECT PARTNERING AGREEMENT

* 1. are specifically prohibited under the Sub-Sub-Contract.

and the Sub-Sub-Contractor shall, as soon as reasonably practicable, notify the Beneficiary if it becomes aware of any proposed or actual specification and/or use in the Project of any materials which do not comply with clause [3.](#_bookmark7)

# COPYRIGHT

The Sub-Sub-Contractor:

* 1. hereby grants to the Beneficiary an irrevocable, non-exclusive and royalty free licence to copy and use all such designs and documents prepared by or on behalf of the Sub-Sub-Contractor pursuant to the Sub-Sub-Contract for any purpose whatsoever relating to the Project together with the right to transfer and sub-license such rights for the same purposes;
  2. shall ensure that the licence referred to in clause [4.1](#_bookmark10) shall have the support of such rights from third parties as are necessary to allow the grant of the licence referred to in that clause;
  3. shall not be liable for the use of any design or document that it prepares for any purpose other than that for which it was agreed to be prepared as stated in, or reasonably inferred from, the Sub-Sub-Contract; and
  4. warrants to the Beneficiary that no design or document that it prepares pursuant to and nothing else it contributes to the Sub-Sub-Contract shall infringe any Intellectual Property Rights and undertakes to indemnify the Beneficiary in respect of any legal liability and related costs arising out of or in connection with any such infringement of any Intellectual Property Rights.

# INSURANCE

The Sub-Sub-Contractor warrants to the Beneficiary that:

* 1. it shall maintain professional indemnity insurance covering (inter alia), all liability under this Deed in respect of defects or insufficiency in design, upon customary and usual 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:
     1. in an amount not less than £[ ] ([ ] pounds) for [any one occurrence or series of occurrences arising out of any one event][8](#_bookmark22); and
     2. for the full duration of the limitation period,

provided always that such insurance is available at commercially reasonable rates (and increased or additional premium required by insurers by reason of the Sub-Sub-Contractor's own claims record or other acts, omissions, matters or things particular to the Sub-Sub-Contractor shall be deemed to be within commercially reasonable rates);

8 To be completed on a Specialist Appointment-specific basis.

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# PROJECT PARTNERING AGREEMENT

* 1. the professional indemnity insurance procured and maintained by the Sub-Sub- Contractor pursuant to clause [5.1](#_bookmark21) shall not include any term or condition to the effect that the Sub-Sub-Contractor must discharge any liability before being entitled to recover from the insurers, or any other term or condition which might adversely affect the rights of any person to recover from the insurers pursuant to the Third Parties (Rights Against Insurers) Act 1930, or the Third Parties (Rights Against Insurers) Act (Northern Ireland) 1930, or any amendment or re- enactment thereof;
  2. it shall not, without the prior approval in writing of the Beneficiary, settle or compromise with the insurers any claim which the Sub-Sub-Contractor may have against the insurers and which relates to a claim by the Beneficiary against the Sub-Sub-Contractor, or by any act or omission lose or prejudice the Sub-Sub-Contractor’s right to make or proceed with such a claim against the insurers;
  3. it shall immediately inform the Beneficiary if such professional indemnity insurance ceases to be available at commercially reasonable rates;
  4. it shall fully co-operate 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 commercially reasonable rates if the Beneficiary undertakes in writing to reimburse the Sub-Sub-Contractor in respect of the net cost of such insurance to the Sub-Sub-Contractor above commercially reasonable rates or, if the Beneficiary effects such insurance at rates at or above commercially reasonable rates, reimbursing the Beneficiary in respect of what the net cost of such insurance to the Beneficiary would have been at commercially reasonable rates; and
  5. as and when it is reasonably requested to do so by the Beneficiary, the Sub- Sub-Contractor shall produce for inspection documentary evidence that its professional indemnity insurance is being maintained.

# ASSIGNMENT

This Deed may be assigned by the Beneficiary and its successors and assignees on a maximum of two (2) occasions without the prior consent of the Sub-Sub-Contractor being required and the Sub-Sub-Contractor undertakes with the Beneficiary not to contend that any person to whom this Deed may be assigned will be precluded from recovering under this Deed any loss resulting from any breach of this Deed either by reason that the person is an assignee and not the original party to this Deed or by reason that the Beneficiary named in this Deed or any intermediate owner of the Beneficiary's interest in the Project and/or the Sub-Sub-Contract shall escape loss resulting from such breach by reason of the disposal of such interest.

# NOTICES

Any notice to be given by the Sub-Sub-Contractor under this Deed shall be deemed to be duly given if it is delivered by hand at or sent by registered post or recorded delivery to the above mentioned address of the Beneficiary or to the principal business address of the Beneficiary for the time being, and any notice to be given by the Beneficiary hereunder shall be deemed to be duly given if it is addressed to the Sub-Sub-Contractor and delivered by hand at or sent by registered post or recorded delivery to the above

# PROJECT PARTNERING AGREEMENT

mentioned address of the Sub-Sub-Contractor or to the principal business address of the Sub-Sub-Contractor for the time being and, in the case of any such notices, the same shall if sent by registered post or recorded delivery be deemed to have been received forty eight (48) hours after being posted.

# FURTHER WARRANTIES

The Sub-Sub-Contractor shall within fourteen (14) calendar days of the Beneficiary’s request to do so, execute, in favour of any persons who have acquired or shall acquire any interest in or over the Project and/or the Sub-Sub-Contract or any part thereof, a collateral warranty in the form of this Deed, excluding this clause, or a similar form reasonably required by the Beneficiary, and deliver the same to the Beneficiary.

# AUTHORITY OF BENEFICIARY

The Beneficiary has no authority to issue any direction or instruction to the Sub-Sub- Contractor in relation to performance of the Sub-Sub-Contract unless and until the Beneficiary has issued a notice to the Sub-Sub-Contractor pursuant to clause **Error! Reference source not found.**.

# LIABILITY OF BENEFICIARY

The Beneficiary has no liability to the Sub-Sub-Contractor in respect of any sums due under the Sub-Sub-Contract unless and until the Beneficiary has issued a notice to the Sub-Sub-Contractor pursuant to clause [11.](#_bookmark23)

# STEP-IN

* 1. The Sub-Sub-Contractor agrees that, in the event of the determination of the Sub-Sub-Contract by the Sub-Contractor, the Sub-Sub-Contractor will, if so required by notice in writing given by the Beneficiary and subject to clause [11.2](#_bookmark25) accept the instructions of the Beneficiary or its appointee to the exclusion of the Sub-Contractor in respect of the Sub-Contract upon the terms and conditions of the Sub-Contract.
  2. The Sub-Sub-Contractor agrees that:
     1. it will not, without first giving the Beneficiary not less than twenty-one

(21) days' notice in writing (the "**Step-In Period**"), exercise any right it may have to terminate the Sub-Sub-Contract or to treat the same as having been repudiated or to discontinue the performance of the Sub- Sub-Contract to be executed by the Sub-Sub-Contractor thereto; and

* + 1. its right to terminate the Sub-Sub-Contractor or treat the same as having been repudiated or discontinue performance shall cease if, within the Step-In Period and subject to clause [11.3,](#_bookmark26) the Beneficiary gives notice in writing to the Sub-Sub-Contractor requiring the Sub-Sub- Contractor to accept the instructions of the Beneficiary or its appointee to the exclusion of the Sub-Contractor in respect of the Sub-Sub- Contract upon the terms and conditions of the Sub-Sub-Contract.
  1. In respect of any notice given by the Beneficiary under clause [11.1](#_bookmark24) and/or clause [11.2:](#_bookmark25)

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# PROJECT PARTNERING AGREEMENT

* + 1. it shall be a condition precedent to the effectiveness of such notice that the Beneficiary or its appointee accepts liability for payment of the sums payable to the Sub-Sub-Contractor under the Sub-Sub-Contract and for performance of the Sub-Contractor's obligations, including payment of any sums outstanding at the date of such notice;
    2. upon its issue, the Sub-Sub-Contract shall continue in full force and effect as if no right of termination on the part of the Sub-Sub-Contractor had arisen and the Sub-Sub-Contractor shall be liable to the Beneficiary and its appointee under the Sub-Sub-Contract in lieu of its liability to the Sub-Contractor; and
    3. if the notice requires the Sub-Sub-Contractor to accept the instructions of the Beneficiary's appointee, the Beneficiary shall be liable to the Sub- Sub-Contractor as guarantor for the payment of all sums from time to time due to the Sub-Sub-Contractor from the Beneficiary's appointee.
  1. The Sub-Contractor has agreed to be a party to this Deed for the purposes of acknowledging that the Sub-Sub-Contractor shall not be in breach of the Sub- Sub-Contract by complying with the obligations imposed on it by this clause [11.](#_bookmark23)
  2. Where:
     1. the Sub-Sub-Contractor has given rights similar to those contained in this clause [11](#_bookmark23) (or their equivalent) to any other third party (the "**Equivalent Step-In Rights**"); and
     2. the Beneficiary serves a notice on the Sub-Sub-Contractor seeking to exercise its rights under this clause [11,](#_bookmark23)

the Beneficiary shall, subject to clause [11.6,](#_bookmark17) have no ability to exercise its rights under this clause [11](#_bookmark23) where such third party has priority to exercise the Equivalent Step-In Rights, with the order of priority being as follows:

1. **highest priority** – the Secretary of State for the Ministry of Justice (of the Ministry of Justice, 102 Petty France, London SW1H 9AJ) (acting as part of the Crown);
2. **second highest priority** – the Beneficiary; and
3. **lowest priority** – any other third party.
   1. If the situation described in clause [11.5](#_bookmark16) arises, the Sub-Sub-Contractor shall:
      1. notify the relevant third party that has priority to exercise the Equivalent Step-In Rights within five (5) days of receiving the Beneficiary's notice advising that it is seeking to exercise its own rights under this under this clause [11;](#_bookmark23)
      2. use reasonable endeavours to secure written confirmation from such party as to whether:
         1. its wishes to exercise; or

# PROJECT PARTNERING AGREEMENT

* + - 1. waives the right to exercise,

its Equivalent Step-In Rights as soon as reasonable practicable;

* + 1. notify the Beneficiary of the decision of such third party in writing (with this decision being final); and
    2. the Step-In Period shall be deemed to be extended for a period equivalent to the period during which the Sub-Sub-Contractor is awaiting written confirmation from the relevant third party pursuant to clause [11.6.2.](#_bookmark18)

# NO GREATER LIABILITY

Notwithstanding any other provision of this Deed:

* 1. the Sub-Sub-Contractor shall have no greater liability in value and/or duration arising out of or in connection with this Deed (excluding rights of set off and counterclaim) than it would have done if, in lieu of this Deed, the Beneficiary had been named as the "Sub-Contractor" instead of the Sub-Contractor in the Sub-Sub-Contract; and
  2. the Sub-Sub-Contractor shall be entitled in any action or proceedings by the Beneficiary under or in connection with this Deed to rely on any limitation in the Sub-Sub-Contract and to raise the equivalent rights in defence of liability (save for set-off and/or counterclaim) as it would have against the Sub-Contractor under the Sub-Sub-Contract.

# LIABILITY PERIOD

The obligation of the Sub-Sub-Contractor under this Deed shall cease on the expiration of the limitation period, save in respect of any cause of action under this Deed where proceedings have been commenced during such limitation period.

# EXTRANEOUS RIGHTS

* 1. This Deed shall not negate or diminish any duty or liability otherwise owed by the Sub-Sub-Contractor under the Sub-Sub-Contract.
  2. This Deed may be executed in any number of counterparts all of which when taken together shall constitute one and the same instrument.
  3. 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 Sub-Contractor is deemed to be a party to this Deed.

# LAW

The construction, validity and performance of this Deed shall be governed by English law and the parties agree to submit to the non-exclusive jurisdiction of the English courts.

# PROJECT PARTNERING AGREEMENT

**IN WITNESS WHEREOF** this collateral warranty has been executed and delivered as a **DEED**

on the day and year first before written

[EXECUTION BLOCKS FOR THE RELEVANT PARTIES TO BE INSERTED]

# PROJECT PARTNERING AGREEMENT

**PART 4 – THIRD PARTY RIGHTS NOTICE**

[*ADDRESSEE DETAILS*] [*DATE*] 20[*YEAR*]

Dear Sirs

**Subject:** Notice of Third Party Rights

**Partnering Contract:** An amended ACA Standard Form of Contract for Project Partnering (PPC2000) (Amended 2008) between (1) The Secretary of State for the Ministry of Justice; and (2) multiple parties, including [*CONSTRUCTOR*] dated [*DATE*][9](#_bookmark27)

**PETP Package:** [*INSERT DETAILS OF PACKAGE*] (as more particularly described in a "PETP Package Commencement Agreement" dated [*DATE*] and issued in accordance with the terms of the Partnering Contract)

This notice of third party rights (the "**Notice of Third Party Rights**") is issued pursuant to the Partnering Contract and relates to the above-mentioned PETP Package. Unless otherwise stated, all capitalised terms in this Notice of Third Party Rights have the meaning ascribed to them in the Partnering Contract.

Pursuant to clause 22.2 of the Partnering Contract and the Project Partnering Agreement forming part of the same, we hereby notify [*INSERT NAME AND DETAILS*] that the rights set out in Part 5 of Appendix J of the Project Partnering Agreement are hereby vested in [*INSERT NAME*] (company number [*INSERT COMPANY NUMBER*] and whose registered office is at [*INSERT ADDRESS*]) as [*INSERT NATURE OF BENEFICIARY'S INTEREST IN THE PETP*

*PACKAGE*], who shall constitute a "Beneficiary" under this Notice of Third Party Rights for the purposes of clause 22.2 of the Partnering Contract and the Project Partnering Agreement.

The Beneficiary and its permitted assignees shall accordingly be entitled to enforce the rights set out in Part 5 of Appendix J of the Project Partnering Agreement as provided for in such Project Partnering Agreement. For the purposes of this Beneficiary, the provisions of paragraph 10 of Part 5 of Appendix J to the Project Partnering Agreement [do/do not] apply.

Notwithstanding whether you sign and return the acknowledgement below to us or not, the rights granted to the Beneficiary by this Notice of Third Party Rights Notice shall take effect from the date on which you receive the same. We should, however, be grateful if you sign and return a copy of this notice in acknowledgement of receipt.

Yours faithfully

For and on behalf of [*INCLUDE DETAILS OF THE CLIENT'S SENDER*]

**cc. *[Insert details of contact at Beneficiary]***

We hereby confirm receipt of the Notice of Third Party Rights to [*INSERT DETAILS OF BENEFICIARY*] in accordance with our engagement on the PETP Package known as [INSERT

9 If the Constructor has joined the Partnering Contract by way of a Joining Agreement, this should be updated

accordingly.

# PROJECT PARTNERING AGREEMENT

DETAILS] (reference number: [*INSERT REFERENCE NUMBER*) pursuant to the terms of the Partnering Contract dated [*INSERT DATE*] (to which we are a party)*.*

Signed [Partner][Member][Director]

# PROJECT PARTNERING AGREEMENT

**PART 5 – THIRD PARTY RIGHTS SCHEDULE**

**THIRD PARTY RIGHTS PROVIDED BY A CONSTRUCTOR**

The Client and Constructor agree that:

# INTERPRETATION

In this Schedule, all capitalised terms shall have the meanings ascribed to them in the Partnering contract unless otherwise specified below:

|  |  |
| --- | --- |
| "**Appointment**" | means the Constructor's appointment under the Partnering Contract to design and construct the PETP Package and as more particularly defined in the PETP Package Commencement Agreement; |
| "**Beneficiary**" | means the party identified as such in the Third Party Rights Notice; |
| "**Partnering Obligations**" | means the duties and obligations of the Constructor under the Partnering Contract in connection with the Appointment; |
| "**PETP Package**" | has the meaning given to the term "PETP Package" in the PETP Package Commencement Agreement; |
| "**PETP Package Commencement Agreement**" | means the "PETP Package Commencement Agreement" (as defined in the Partnering Contract) as more particularly described in the Third Party Rights Notice; and |
| "**Third Party Rights Notice**" | means the written notice issued to the Constructor in substantially the form set out at Part 4 of Appendix J of the Partnering Contract notifying the Constructor of the Beneficiary's interest in the whole  or part of the PETP Package. |

# DUTY OF CARE

The Constructor warrants to the Beneficiary that:

* 1. it has duly performed and observed, and will continue to duly perform and observe, its Partnering Obligations; and
  2. without limiting the generality of paragraph [2.1,](#_bookmark28) it has:
     1. exercised and will continue to exercise the standard of care specified at clause 22.1 of the Partnering Contract in the performance of its Partnering Obligations; and
     2. complied and will comply with the provisions of clause 8.2A of the Partnering Contract ("Deleterious Materials") in the performance of its Partnering Obligations.

# COPYRIGHT

The Constructor warrants that any Intellectual Property Rights in all designs and other documents prepared by or on behalf of it pursuant to its Appointment that vest in the

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# PROJECT PARTNERING AGREEMENT

Client pursuant to clause 9.2 ("Intellectual Property Rights") of the Partnering Contract do not and shall not infringe the rights of any third party and are capable of being sub- licenced by the Client to the Beneficiary for any purpose whatsoever relating to the PETP Package including, without limitation, the construction, completion, maintenance, letting, promotion, advertisement, reinstatement, repair and extension of the PETP Package.

# INSURANCE

Without prejudice to the requirements of clause 19 of the Partnering Contract ("Insurance and Security"), the Constructor warrants to the Beneficiary that:

* 1. it shall maintain professional indemnity insurance covering (inter alia), all liability under this Schedule in respect of defects or insufficiency in design, upon customary and usual 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:
     1. in an amount not less than that specified in the Project Partnering Agreement; and
     2. for the full duration of the limitation period,

provided always that such insurance is available at commercially reasonable rates (and increased or additional premium required by insurers by reason of the Constructor's own claims record or other acts, omissions, matters or things particular to the Constructor shall be deemed to be within commercially reasonable rates);

* 1. the professional indemnity insurance procured and maintained by the Constructor pursuant to paragraph [4.1](#_bookmark3) shall not include any term or condition to the effect that the Constructor must discharge any liability before being entitled to recover from the insurers, or any other term or condition which might adversely affect the rights of any person to recover from the insurers pursuant to the Third Parties (Rights Against Insurers) Act 1930, or the Third Parties (Rights Against Insurers) Act (Northern Ireland) 1930, or any amendment or re- enactment thereof;
  2. it shall not, without the prior approval in writing of the Beneficiary, settle or compromise with the insurers any claim which the Constructor may have against the insurers and which relates to a claim by the Beneficiary against the Constructor, or by any act or omission lose or prejudice the Constructor’s right to make or proceed with such a claim against the insurers;
  3. it shall immediately inform the Beneficiary if such professional indemnity insurance ceases to be available at commercially reasonable rates;
  4. it shall fully co-operate 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 commercially reasonable rates if the Beneficiary undertakes in writing to reimburse the Constructor in respect of the net cost of such insurance to the Constructor above commercially reasonable rates or, if the Beneficiary effects

such insurance at rates at or above commercially reasonable rates, reimbursing

# PROJECT PARTNERING AGREEMENT

the Beneficiary in respect of what the net cost of such insurance to the Beneficiary would have been at commercially reasonable rates; and

* 1. as and when it is reasonably requested to do so by the Beneficiary, the Constructor shall produce for inspection documentary evidence that its professional indemnity insurance is being maintained.

# ASSIGNMENT

This Schedule may be assigned by the Beneficiary and its successors and assignees on a maximum of two (2) occasions without the prior consent of the Constructor being required and the Constructor undertakes with the Beneficiary not to contend that any person to whom this Schedule may be assigned will be precluded from recovering under this Schedule any loss resulting from any breach of this Schedule either by reason that the person is an assignee and not the original party to this Schedule or by reason that the Beneficiary named in this Schedule or any intermediate owner of the Beneficiary's interest in the PETP Package and/or the Appointment shall escape loss resulting from such breach by reason of the disposal of such interest.

# NOTICES

Any notice to be given by the Constructor under this Schedule shall be deemed to be duly given if it is delivered by hand at or sent by registered post or recorded delivery to the above mentioned address of the Beneficiary or to the principal business address of the Beneficiary for the time being, and any notice to be given by the Beneficiary hereunder shall be deemed to be duly given if it is addressed to the Constructor and delivered by hand at or sent by registered post or recorded delivery to the above mentioned address of the Constructor or to the principal business address of the Constructor for the time being and, in the case of any such notices, the same shall if sent by registered post or recorded delivery be deemed to have been received forty eight (48) hours after being posted.

# AUTHORITY OF BENEFICIARY

The Beneficiary has no authority to issue any direction or instruction to the Constructor in relation to performance of the Partnering Contract unless and until the Beneficiary has issued a notice to the Constructor pursuant to paragraph [9.](#_bookmark29)

# LIABILITY OF BENEFICIARY

The Beneficiary has no liability to the Constructor in respect of any sums due under the Partnering Contract unless and until the Beneficiary has issued a notice to the Constructor pursuant to paragraph [9.](#_bookmark29)

# STEP-IN

* 1. The Constructor agrees that, in the event of the determination of the Appointment by the Client, the Constructor will, if so required by notice in writing given by the Beneficiary and subject to clause [9.2](#_bookmark31) accept the instructions of the Beneficiary or its appointee to the exclusion of the Client in respect of the Appointment upon the terms and conditions of the Partnering Contract.
  2. The Constructor agrees that:

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# PROJECT PARTNERING AGREEMENT

* + 1. it will not, without first giving the Beneficiary not less than twenty-one

(21) days' notice in writing (the "**Step-In Period**"), exercise any right it may have to terminate the Partnering Contract or to treat the same as having been repudiated or to discontinue the performance of the Appointment to be executed by the Constructor thereto; and

* + 1. its right to terminate the Appointment or treat the same as having been repudiated or discontinue performance shall cease if, within the Step-In Period and subject to paragraph [9.3,](#_bookmark32) the Beneficiary gives notice in writing to the Constructor requiring the Constructor to accept the instructions of the Beneficiary or its appointee to the exclusion of the Client in respect of the Appointment upon the terms and conditions of the Partnering Contract.
  1. In respect of any notice given by the Beneficiary under paragraph [9.1](#_bookmark30) and/or paragraph [9.2:](#_bookmark31)
     1. it shall be a condition precedent to the effectiveness of such notice that the Beneficiary or its appointee accepts liability for payment of the sums payable to the Constructor in relation to the Appointment under the Partnering Contract and for performance of the Client's obligations in relation to the Appointment, including payment of any sums outstanding at the date of such notice;
     2. upon its issue, the Partnering Contract shall continue in full force and effect as if no right of termination on the part of the Constructor had arisen and the Constructor shall be liable to the Beneficiary and its appointee under the Partnering Contract in lieu of its liability to the Client; and
     3. if the notice requires the Constructor to accept the instructions of the Beneficiary's appointee, the Beneficiary shall be liable to the Constructor as guarantor for the payment of all sums from time to time due to the Constructor from the Beneficiary's appointee.
  2. The Client has agreed to be a party to this Schedule for the purposes of acknowledging that the Constructor shall not be in breach of the Partnering Contract by complying with the obligations imposed on it by this paragraph [9.](#_bookmark29)

# NO GREATER LIABILITY

Notwithstanding any other provision of this Schedule:

* 1. the Constructor shall have no greater liability in value and/or duration arising out of or in connection with this Schedule (excluding rights of set off and counterclaim) than it would have done if, in lieu of this Schedule, the Beneficiary had been named as the "Client" instead of the Client in the Appointment; and
  2. the Constructor shall be entitled in any action or proceedings by the Beneficiary under or in connection with this Schedule to rely on any limitation in relation to the Appointment and to raise the equivalent rights in defence of liability (save for set-off and/or counterclaim) as it would have against the Client in respect of the same.

# PROJECT PARTNERING AGREEMENT

1. **LIABILITY PERIOD**

The obligation of the Constructor under this Schedule shall cease on the expiration of the limitation period in relation to the PETP Package, save in respect of any cause of action under this Schedule where proceedings have been commenced during such limitation period.

# EXTRANEOUS RIGHTS

This Schedule shall not negate or diminish any duty or liability otherwise owed by the Constructor to the Client.

# LAW

The construction, validity and performance of this Schedule shall be governed by English law and the parties agree to submit to the non-exclusive jurisdiction of the English courts.