

DRAFT

DATED _____ 2009

[CONSULTANT] (1)

and

HOMES AND COMMUNITIES AGENCY (2)

PANEL APPOINTMENT OF CONSULTANT

Relating to Economics Panel

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DRAFT

THIS CONTRACT is made the

day of

2009

BETWEEN:

- (1) [] [of] [(Company Number []) [whose registered address is at [] (the "**Consultant**")]; and
- (2) **HOMES AND COMMUNITIES AGENCY** having its principal place of business at 110 Buckingham Palace Road, London SW1W 9SA carrying on business under the name English Partnerships (the "**Agency**").

WHEREAS:

- A The Agency wishes to establish a panel ("Panel") of consultants for the Consultancy Period in relation to economic consultancy expertise so that the Agency may from time to time entirely at its discretion call upon the consultants on the Panel to provide the Services.
- B The Consultant has tendered for the Panel.
- C Pursuant to that process, the Agency wishes to appoint the Consultant onto the Panel on the terms and conditions set out in this Contract, which the Consultant hereby accepts.

NOW IT IS HEREBY AGREED as follows:

1 DEFINITIONS AND INTERPRETATIONS

- 1.1 For the purposes of this Contract, unless the context requires otherwise, the following words and phrases shall have the following meanings:-
- a) "Area" means the area or areas set out in Part 2 of Schedule 5 or as otherwise notified to the Consultant by the Agency;
- b) "Agency Data" means
- (i) 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:
- (A) supplied to the Consultant by or on behalf of the Agency; or
- (B) which the Consultant is required to generate, process, store or transmit pursuant to this Agreement; or
- (ii) any Personal Data for which the Agency is the Data Controller;
- c) "Agency's Financial Memorandum" means the financial memorandum or guidance relating to the Agency from time to time in force;
- d) "Agency's IT and Communication Procedures" means the information technology and communication procedures of the Agency from time to time in force;
- e) "Agency Property" means all property of the Agency including without limitation, all Records, keys, security passes, credit cards, equipment, documents, papers, magnetic discs, tapes or other software storage media, film, videos and photographs which belong to the Agency or relate to its business or affairs issued to or otherwise in the Consultant's custody;

- f) "Agency System" means the Agency's computing environment (consisting of hardware, software and/or telecommunications networks or equipment) used by the Agency or the Consultant in connection with this Agreement which is owned by or licensed to the Agency by a third party and which interfaces with the Consultant System or which is necessary for the Agency to receive the Consultancy Services;
- g) "Breach of Security" means the occurrence of unauthorised access to or use of the Agency Premises, the Sites, the Consultancy Services, the Consultant System or any ICT or data (including the Agency's Data) used by the Agency or the Consultant in connection with this Agreement;
- h) "Commencement Date" means the date specified in Part 1 of Schedule 5 or, where no date is specified, the date of this Contract, the date on and from which the Consultant is appointed to provide Services in accordance with the provisions of this Contract or such other date as may be subsequently agreed between the parties in writing;
- i) "Confidential Information" means information which is not in the public domain and which incorporates information as to the Agency's commercial or strategic planning, intentions, modus operandi, finances, all information disclosed by the Agency to the Consultant or which the Consultant receives from any third party at the election of, or for the benefit of, the Agency together with all data, proposals, projects, plans and specifications which are created by the Consultant in the course of the Consultant's performance of the Contract or at the direction of the Agency;
- j) "Consultant Equipment" means the hardware, computer and telecoms devices and equipment supplied by the Consultant or its Sub-contractors (but not hired, leased or loaned from the Agency) for the provision of the Consultancy Services;
- k) "Consultant System" means the information and communications technology system used by the Consultant in performing the Consultancy Services including the Software, the Consultant Equipment and related cabling (but excluding the Agency System);
- l) "Consultant's Fees" means the fees payable to the Consultant by the Agency under the Contract and calculated in accordance with the provisions of Schedule 2;
- m) "Consultancy Period" means the period set out in Part 1 of Schedule 5, subject to extension in accordance with Clause 3 or such other period as ends on the date of termination of this Contract;
- n) "Date Compliant" means that no previous or future date change has had or will have any adverse impact on the performance or functionality of the Consultant System;
- o) "Default" means any breach of the obligations of the relevant party (including but not limited to fundamental breach or breach of a fundamental term) or any other default, act, omission, negligence or statement of the relevant party, its employees, servants, agents or Sub-contractors in connection with or in relation to the subject-matter of this Agreement and in respect of which such party is liable to the other;
- p) "Deputy Designated Person" means the person nominated by the Consultant and approved by the Agency in accordance with Clause 10;
- q) "Designated Person" means the person nominated by the Consultant and approved by the Agency in accordance with Clause 10;
- r) "EIR" means the Environmental Regulations 2004;

- s) "EIR Exemption" means any applicable exemption to the Environmental Information Regulations;
- t) "Euro Compliant" means that:
 - (i) the introduction of the euro within any part of the UK shall not affect the performance or functionality of any relevant items nor cause such items to malfunction, end abruptly, provide invalid results or adversely affect the Agency's business;
 - (ii) all currency-reliant and currency-related functions (including all calculations concerning financial data) of any relevant items enable the introduction and operation of the euro; and
 - (iii) in particular each and every relevant item shall, to the extent it performs or relies upon currency-related functions (including all calculations concerning financial data):
 - (A) be able to perform all such functions in any number of currencies and/or in euros;
 - (B) during any transition phase applicable to the UK, be able to deal with multiple currencies and in relation to the euro and the national currency of UK dual denominations;
 - (C) recognise accept, display and print all the euro currency symbols and alphanumeric codes which may be adopted by any government and other European Union body in relation to the euro;
 - (D) incorporate protocols for dealing with rounding and currency conversion;
 - (E) recognise data irrespective of the currency in which it is expressed (which includes the euro) and express any output data in the national currency of the UK and/or the euro; and
 - (F) permit the input of data in euro and display an outcome in euro where such data, supporting the Agency's normal business practices, operates in euro and/or the national currency of the UK;
- u) "Exempted Information" means any Confidential Information of the Contractor that has been designated by the Parties as falling or potentially falling within the absolute exemption relating to Confidentiality in Section 41 of FOIA as listed from time to time in Schedule 11 to this Contract;
- v) "the FOIA" means the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner in relation to such legislation;
- w) "FOIA Exemption" means any applicable exemption to FOIA including, but not limited to, confidentiality (section 41 FOIA), trade secrets (section 43 FOIA) and prejudice to commercial interests (section 43 FOIA);
- x) "Good Industry Practice" means the exercise of that degree of skill, care, prudence, efficiency, foresight and timeliness as would be expected from a leading company within the relevant industry or business sector;

- y) "ICT Environment" means the Agency System and the Consultant System;
- z) "Incumbent Consultant" means such other consultant who may, at or prior to the Commencement Date, be or have been engaged in the provision of services to the Agency, similar or the same as the Services to be provided by the Consultant under this Contract;
- aa) "Information" has the meaning given under section 84 of FOIA;
- bb) "Instruction" means an Instruction from the Agency to the Consultant pursuant to and in accordance with Clause 2 of this Contract.
- cc) "Intellectual Property Rights" shall include without limitation all rights to, and any interests in, any patents, designs, trade marks, copyright, know-how, trade secrets and any other proprietary rights or forms of intellectual property (protectable by registration or not) in respect of any technology, concept, idea, data, program or other software (including source and object codes), specification, plan, drawing, schedule, minutes, correspondence, scheme, formula, programme, design, system, process logo, mark, style, or other matter or thing, existing or conceived, used, developed or produced by any person;
- dd) "IT Security Officers" shall have the same meaning as set out in the Manual of Protective Security.
- ee) "Key Personnel" means the persons listed in Schedule 4;
- ff) "Law" means any applicable law, statute, bye-law, regulation, order, regulatory policy, guidance or industry code, rule of court or directives or requirements of any Regulatory Body, delegated or subordinate legislation or notice of any Regulatory Body;
- gg) "Loss or Damage" means any damage or destruction caused to property of, or otherwise suffered by, the Agency (including any loss of profits or loss of use resulting from such damage or destruction) and any other loss, direct or indirect, charge, cost, expense, liability or increased liability howsoever arising suffered or incurred by the Agency;
- hh) "Malicious Software" means any software program or code intended to destroy, interfere with, corrupt, or cause undesired effects on program files, data or other information, executable code or application software macros, whether or not its operation is immediate or delayed, and whether the malicious software is introduced wilfully, negligently or without knowledge of its existence;
- ii) "Manual of Protective Security" means the Cabinet Office Manual of Protective Security (available from the Cabinet Office Security Policy Division).
- jj) "month" means calendar month;
- kk) "Nominated Officer" means the official of the Agency or other person employed in such capacity, from time to time appointed by the Agency to act on its behalf for the purpose of managing the Contract;
- ll) "Premises" means the premises from time to time occupied, owned or leased by the Agency;
- mm) "Project Tendering Procedure" means the tendering procedure required by the Agency from time to time for individual projects. The tendering procedure is that

outlined in Schedule 7 or such other procedure from time to time prescribed by the Agency and notified to the Consultant.

- nn) "Programme" means a programme or timetable or extended programme or timetable, if any, prepared by the Agency and agreed by the parties to this Contract which regulates or specifies the period or periods for the provision of the Services or any part of them, for the performance of any activities ancillary to the provision of the Services or for the preparation and submission of reports in connection with the provision of the Services;
- oo) "Records" means all deeds, records, plans, drawings, specifications, reports, calculations and technical documentation together with related correspondence, files, electronically stored data and other papers relating to the Agency and its activities;
- pp) "Regulatory Bodies" means those government departments and regulatory, statutory and other entities, committees and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in this Agreement or any other affairs of the Agency and "Regulatory Body" shall be construed accordingly;
- qq) "Request for Information" shall have the meaning set out in FOIA or any request for information under EIR.
- rr) "Retail Price Index" means the Index shown in Table 18.3 "General Index of Retail Prices" in the column headed "All Items" in the Monthly Digest of statistics published by the Office of National Statistics;
- ss) "Security Plan" means the Consultant's security plan prepared pursuant to paragraph 2 of Schedule 13 (Security Requirements and Plan) an outline of which is set out in Appendix 2
- tt) "Security Policy" means the Agency's security policy referred to in Schedule 13 (Security Requirements and Plan) and annexed at Appendix 3;
- uu) "Services" means the services to be provided by the Consultant in accordance with this Contract, (including but not limited to those set out in Schedule 3, any extension of variation of those Services and any other Services that the Agency may from time to time request);
- vv) "Site" means any premises from which the Consultancy Services are provided or from which the Consultant manages, organises or otherwise directs the provision or the use of the Consultancy Services or where any part of the Consultant's system is situated or where any physical interface with the Agency System takes place;
- ww) "Software" means the Consultant Software and Third Party Software;
- xx) "Special Conditions" means the special conditions (if any) applying to the provision of Services under this Contract set out in Schedule 10;
- yy) "Staff Vetting Procedures" means the series of checks made by the Consultant on all Consultant Personnel as set out in Schedule 12;
- zz) "Standards" means the Agency's internal policies and procedures and Government codes of practice;
- aaa) "Third Party Software" means software which is proprietary to any third party which is or will be used by the Consultant for the purposes of providing the Consultancy Services;

- 1.2 Unless the context requires otherwise, words importing the singular shall include the plural and vice versa, and the masculine gender shall include the feminine and neuter and vice versa.
- 1.3 References to Recitals, Clauses and Schedules are, unless otherwise stated, references to recitals to, clauses of and schedules to this Contract.
- 1.4 Any reference to a "person" shall as the context may require be construed as a reference to any individual, firm, company, body corporate, corporation, trust, government department, state, agency or any association or partnership (whether or not having a separate legal entity).
- 1.5 The expressions "Agency" and "Consultant" shall include their respective successors and permitted assigns, any person to whom the Agency shall novate this Contract and any person to whom the Consultant shall sub-contract in accordance with Clause 27 of this Contract.
- 1.6 The headings and the use of bold type in this Contract are inserted for convenience only and shall not affect the construction or interpretation of this Contract.
- 1.7 The Schedules form part of this Contract and shall be interpreted and construed as though set out in the main body of this Contract.
- 1.8 Any reference in this Contract to the Consultant's negligence or breach of contract, default or omission in relation to the Consultant's contractual duties shall be construed as including a reference to a breach of contract, default or omission in relation to the Consultant's contractual duties or the negligence of anyone for whom the Consultant is vicariously liable or anyone for whom the Consultant is responsible or anyone engaged by the Consultant to assist in the provision of the Services whether the Consultant is vicariously liable or not.
- 1.9 References to any Act of Parliament or statutory provision shall be deemed to include any treaty, statute, statutory instrument, directive, bye-law, instrument, order or regulation deriving authority therefrom or any other like legislation or document and any amendment, modification or re-enactment thereof.
- 1.10 Where the Consultant is a partnership, then each partner shall be jointly and severally liable under this Contract and each Instruction. The term "Consultant" shall be deemed to include any additional partner or partners who may be admitted into the partnership of the Consultant during the currency of this Contract. This Contract shall not automatically terminate upon the death, retirement or reorganisation of one or more members of such partnership.
- 1.11 The Services the Consultant provides pursuant to an Instruction shall be governed by and construed in accordance with this Contract, irrespective of whether or not the Instruction specifically refers to this Contract.
- 1.12 In this Contract, references to the Contract shall also include, where appropriate, any Instruction.

2 APPOINTMENT AND GENERAL OBLIGATIONS OF THE CONSULTANT

- 2.1 The Consultant hereby agrees to provide the Services to the Agency in the Area for the duration of the Consultancy Period upon and subject to the terms and conditions of this Contract.
- 2.2 The scope of the Services set out in Schedule 3 may be extended or varied at any time by the Agency, by notice in writing served upon the Consultant, to the extent that the Agency considers such extension or variation to be necessary. In addition to the Services

set out in Schedule 3 (as extended or varied), the Consultant shall provide such other services as the Agency may from time to time reasonably request.

- 2.3 The Agency may from time to time, in relation to a particular project, request the Consultant to provide certain information and/or documentation in accordance with the Project Tendering Procedure. If, following the Project Tendering Procedure, the Agency wishes to instruct the Consultant in relation to that particular project, the Agency will issue an Instruction to the Consultant.
- 2.4 Any Instruction will be issued to the Consultant by the Agency in accordance with Schedule 6 or otherwise as from time to time prescribed by the Agency and notified to the Consultant and where applicable such Instruction will be accompanied by a Programme.
- 2.5 The Consultant shall comply with any reasonable Instruction from time to time issued by the Agency relating to the provision of the Services.
- 2.6 The Consultant shall identify any deficiencies in the Instruction or information received by it from the Agency of which it is or becomes aware, and shall notify the Nominated Officer in writing of such deficiencies and seek such clarification and additional information from the Nominated Officer (or such other officer as the Agency may from time to time direct) as the Consultant may require to enable it to provide the Services to which the Instruction relates.
- 2.7 For the avoidance of doubt, no payments shall be made for any Services supplied by the Consultant for which no Instruction has been given by the Agency in accordance with this Contract.
- 2.8 The Consultant shall comply with and shall provide the Services in accordance with and subject to all policies, regulations, procedures and guidelines which may from time to time be issued by the Agency and notified to the Consultant including, without limitation, the Agency's Financial Memorandum and so far as is reasonably practicable Agency's IT and Communication Procedures
- 2.9 The Consultant shall have proper regard to the Agency's statutory objects, any Act of Parliament applicable to the Agency and any other obligations imposed upon the Agency in or by any contract, agreement or arrangement of which the Consultant has notice and shall provide the Services in such manner and at such times exercising the skill and care and diligence required by Clause 6.1 so as to ensure that no act, omission or default of the Consultant in relation thereto shall knowingly constitute, cause or contribute to any breach by the Agency of any such obligations.
- 2.10 The Consultant shall co-operate with and provide such information and assistance as any other consultant employed by the Agency may reasonably require for the proper and timely performance of the services being provided by such other consultant. The Consultant shall request from such other consultant any information and assistance as the Consultant may reasonably require in connection with the provision by it of the Services and the Agency will, if necessary, confirm to such other consultant that such information and assistance may be provided to the Consultant.
- 2.11 The Consultant shall at all times exercise due care and propriety when dealing with third parties in connection with the Contract and shall ensure that no commitments are entered into without the Agency's written consent.
- 2.12 The Consultant acknowledges and accepts that the Agency may appoint more than one consultant in respect of the Services and the Agency gives no guarantee or warranty as to the amount of work, if any, and the consequent fee income, if any, which the Consultant may expect under the Contract. The Consultant shall have no claim at law or

otherwise against the Agency if the Agency elects not to instruct the Consultant to carry out any of the Services, or if the Agency appoints any other person to undertake work or services that the Consultant may be qualified to perform.

- 2.13 The Consultant acknowledges and accepts that other bodies (such as, but not limited to, the Olympic Delivery Authority, Urban Regeneration Companies, UDC's, the London Organising Committee for the Olympic Games, Local Authorities and the Regeneration Development Agencies and the like) may wish to draw down services from the Agency's Consultants and that such appointment would be based on the existing terms of this Contract with any changes to be mutually agreed.
- 2.14 The Consultant shall at all times consult fully with the Agency and keep the Agency properly informed of all matters arising in relation to the Services. In addition, as and when requested by the Agency so to do, the Consultant shall liaise with, and provide all such information as the Agency may reasonably require and which is within the Consultant's possession or control to any other person notified to the Consultant by the Agency.
- 2.15 The Consultant shall give an early warning by notifying the Agency as soon as it becomes aware of any matter which could;
- a) Increase the Consultant's Fees (including but not limited to where additional instructions are issued by the Agency).
 - b) Delay completion of the Services.
 - c) Change the Programme.
 - d) Impair the usefulness of the Services to the Agency or affect the work of the Agency, a Agency's contractor or another consultant.

3 THE OPTION

- 3.1 The Agency shall have the option to extend the Consultancy Period for a period not exceeding two years on the same terms and conditions as this Agreement.
- 3.2 The Agency will notify the Consultant in writing, no later than 2 months prior to expiry of the Consultancy Period of its intention to exercise the option set out in Clause 3.1.

4 TRANSITIONAL PROVISIONS

- 4.1 The Incumbent Consultant, if any, will, if instructed by the Agency, be responsible for completing the provision of services in relation to which it has been instructed by the Agency prior to the Commencement Date.
- 4.2 Unless otherwise directed by the Agency, following expiry of the Consultancy Period, the Consultant shall diligently complete the provision of Services, in accordance with the terms of this Contract, which it has been instructed by the Agency to provide prior to expiry of the Consultancy Period.

5 PERFORMANCE

- 5.1 The Consultant shall in providing the Services comply with the Special Conditions (if any).
- 5.2 During the Consultancy Period, the Agency shall, upon giving reasonable notice to the Consultant, be entitled to inspect and examine any of the work being performed as part of the provision of the Services at any reasonable time at the Consultant's premises, the Agency's premises or at such other location as the Agency reasonably requires. The

Consultant shall make available all facilities as the Agency may reasonably require in connection with such inspection and examination.

- 5.3 The Consultant shall deliver all interim and draft reports and the final reports either in accordance with any Programme, this Contract or as otherwise notified by the Agency, on or before such reasonable date or dates as the Nominated Officer or the Agency officer responsible for Instructions relating to Services shall specify.

6 CONFLICTS OF INTEREST

- 6.1 During the Consultancy Period, the Consultant shall not provide Services to any third party in connection with a project in conflict with the business of the Agency without the prior written approval of the Agency.
- 6.2 In relation to each Instruction, the Consultant will take all reasonable steps to identify whether or not a conflict of interest arises or is likely to arise between the Consultant, the Agency and a third party or parties in relation to such Instruction. If a conflict does or may arise, the Consultant must forthwith notify the Agency of such potential or actual conflict and propose a means by which the conflict can be avoided or minimised.
- 6.3 If a potential or actual conflict is not resolved to the satisfaction of the Agency, and the prior approval of the Agency pursuant to Clause 6.1 is refused, the Consultant shall, if so directed by the Agency, cease to provide the Services in relation to which it has been instructed.
- 6.4 In the event that the Consultant does cease to provide Services pursuant to this Clause 5, the Consultant shall be liable for the additional cost to the Agency (if any) of having to engage an alternative consultant.

7 DUTY OF CARE

- 7.1 The Consultant shall provide the Services and duties hereunder in a proper and efficient manner with reasonable skill, care and diligence and in accordance with the terms and conditions of the Contract and in particular in accordance with any Instruction and where applicable the Programme.
- 7.2 The Consultant shall act at all times in good faith and in the best interests of the Agency in connection with the provision of the Services and this Contract.
- 7.3 The Consultant shall ensure that work done in connection with the provision of the Services is carried out by suitably qualified and/or competent members of the Consultant's staff experienced in work of a similar size, scope and complexity to that instructed by the Agency, under proper management and supervision by the Designated Person.

8 RELIANCE ON THE CONSULTANT'S SKILL AND CARE

- 8.1 The Consultant acknowledges and accepts that the Agency is reliant upon the Consultant's reasonable professional skill, care and judgement and will ensure that all works in respect of which the Consultant is instructed by the Agency pursuant hereto are properly, adequately and safely carried out in accordance with the Agency's requirements.
- 8.2 Where, in the performance of the Services, the Consultant seeks or is obliged to seek the Agency's approval or agreement to any matter or thing, the giving or confirming of the same by the Agency shall not in any way derogate from the duty of care owed to the

Agency by the Consultant pursuant to this Contract or otherwise and shall not diminish any obligation upon the Consultant's part in respect thereof.

- 8.3 This Contract shall not negate or diminish any duty or obligation owed to the Agency by the Consultant in equity, at common law or pursuant to statute or European law.

9 NOMINATED OFFICER

The Consultant shall in the first instance direct all communications with the Agency to the Nominated Officer who shall have full authority to act on behalf of the Agency for all purposes in connection with the Contract unless otherwise notified to the Consultant by the Agency in writing.

10 DESIGNATED PERSON

- 10.1 The Consultant shall nominate, for the Agency's approval, two senior individuals in its employment as the Designated Person and Deputy Designated Person to direct, control and manage the overall provision of the Services by the Consultant.
- 10.2 The Designated Person (and if they shall be unavailable, the Deputy Designated Person) shall receive and act on any instructions or directions given by the Agency and shall be responsible for maintaining direct and regular contact with the Agency.
- 10.3 The Consultant shall not replace the Designated Person and/or the Deputy Designated Person without prior consultation with and written consent from the Agency.
- 10.4 The Agency may at any time request the removal and replacement of the Designated Person and/or the Deputy Designated Person in which event the Consultant shall remove the Designated Person and/or the Deputy Designated Person (as the case may be) and nominate a replacement for the Agency's approval in accordance with Clause 9.1.
- 10.5 The Designated Person and the Deputy Designated Person shall each have full authority to act on behalf of the Consultant for all purposes in connection with this Contract and the Agency shall be entitled to rely on such authority for all purposes.

11 PERSONNEL: GENERAL MATTERS

- 11.1 The Consultant shall use the Key Personnel to provide the Services.
- 11.2 The Consultant shall be responsible for ensuring that all staff who are or may at any time undertake work in relation to the Contract have the appropriate qualifications and/or experience and are properly supervised.
- 11.3 The Consultant shall not, without the prior written approval of the Agency, appoint any additional person to provide the Services, or appoint any person in place of any of the Key Personnel, the Designated Person or the Deputy Designated Person.
- 11.4 The Consultant shall not, and shall take all reasonable steps to procure that no employee, servant or agent of the Consultant engaged in the provision of the Services shall, unlawfully discriminate within the meaning and scope of the provisions of the Sex Discrimination Act 1975, the Race Relations Act 1976, the Disability Discrimination Act 1995 or the Human Rights Act 1998.
- 11.5 The Consultant shall indemnify the Agency against all claims and proceedings, and all costs and expenses incurred in connection therewith, made or brought against the Agency by any person in respect of loss, damage or distress caused to that person by the disclosure, loss or destruction by the Consultant, its employees, servants or agents, of

any "Personal Data" as defined in Section 1(1) of the Data Protection Act 1998 save where the Agency has authorised such disclosure or destruction.

- 11.6 The Agency shall have the right, after discussion with the Designated Person, to require the removal of any person engaged in the performance of the Contract if, in the opinion of the Agency, that person's conduct or performance is or has been unsatisfactory. The Consultant will replace such person promptly with a person who shall previously have been approved in writing by the Agency.
- 11.7 The Consultant shall ensure that its employees and anyone for whom it is vicariously liable or otherwise engages comply with any fire, safety and security guidelines and/or other Instructions issued by the Agency or its representatives whilst on the Premises.

12 VESTING OF MATERIAL, COPYRIGHT AND PUBLICATION OF RESULTS

- 12.1 All legal and equitable interest in any physical documents and the media upon which the same is recorded and all Intellectual Property Rights therein created by the Consultant or its employees, sub-contractors and sub-consultants in performance of the Contract shall vest in the Agency; save that the Consultant may retain a file copy of such records or data as may be required by the Consultant as evidence or otherwise in connection with any legal or regulatory requirements or recommendations by its professional body or insurers.
- 12.2 In the event of information, data, designs, concepts, drawings, plans, inventions, sketches, specifications, concepts or records being recorded or maintained on any electronic or magnetic, optical or other machine readable medium, including but not limited to the hard disc drives of computing systems, the Consultant shall upon demand deliver up all such machine readable medium together with any copies thereof. If the same shall form a fixed and irremovable part of a larger system, the Consultant shall provide the Agency with a copy of all data and material so recorded and shall, upon written request to do so, delete and remove all records and data so held by the Consultant and forthwith provide the Agency with written confirmation of completion of such deletion and removal.
- 12.3 By way of confirmation and perfection of legal title, the Consultant agrees to assign, or procure the assignment, to the Agency for the sum of £1 all Intellectual Property Rights created or developed pursuant to the Contract including any created or developed by sub-contractors or sub-consultants commissioned to carry out the Services or any part thereof and shall take such steps and provide such assistance as the Agency may reasonably require in defence or protection of the Intellectual Property Rights.
- 12.4 Save as otherwise agreed in the Special Conditions and except where it is necessary in connection with the proper provision of the Services by the Consultant, the Consultant shall not, without the written consent of the Agency, reproduce any material mentioned in Clause 12.1 or do any other act in respect of such material which is restricted by the Agency's Intellectual Property Rights therein.
- 12.5 The Consultant shall indemnify the Agency in respect of any Loss or Damage the Agency may incur in the event that any Intellectual Property Rights assigned by this Clause 11 are found to be invalid or impaired in any way or in the event of any claim by any third party that the exercise of the rights assigned by this Clause 12 infringes the rights of such third party.

13 DUTY OF CONFIDENTIALITY

- 13.1 Each Party recognises that under this Agreement it may receive Confidential Information belonging to the other.

- 13.2 Each Party agrees to treat all Confidential Information belonging to the other as confidential and not to disclose such Confidential Information or any other confidential information relating to the Agency or the Services arising or coming to its attention in the course of providing the Services to the Agency to any third party without the prior written consent of the other Party and agrees not to use such Confidential Information for any purpose other than that for which it is supplied under this Agreement.
- 13.3 The obligations of confidence referred to in Clause 13.2 shall not apply to any Confidential Information which:
- a) is in, or which comes into, the public domain otherwise than by reason of a breach of this Agreement or of any other duty of confidentiality relating to that information; or
 - b) is obtained from a third party without that third party being under an obligation (express or implied) to keep the information confidential; or
 - c) is lawfully in the possession of the other Party before the date of this Agreement and in respect of which that Party is not under an existing obligation of confidentiality; or
 - d) is independently developed without access to the Confidential Information of the other Party.
- 13.4 Each Party will be permitted to disclose Confidential Information to the extent that it is required to do so:
- a) to enable the disclosing party to perform its obligations under this Agreement; or
 - b) by any applicable law or by a court, arbitral or administrative tribunal in the course of proceedings before it including without limitation any requirement for disclosure under FOIA, EIR or the Code of Practice on Access to Government Information and the Consultant acknowledges that any lists or schedules provided by it outlining Confidential Information are of indicative value only and the Agency may nevertheless be obliged to disclose such confidential information; or
 - c) by any Regulatory Body (including any investment exchange) acting in the course of proceedings before it or acting in the course of its duties; or
 - d) in order to give proper instructions to any professional adviser of that Party who also has an obligation to keep any such Confidential Information confidential.
- 13.5 The Consultant shall ensure that all Confidential Information obtained from the Agency under or in connection with this Agreement:-
- a) is given only to such of its employees, professional advisors or consultants engaged to advise it in connection with this Agreement as is strictly necessary for the performance of this Agreement and only to the extent necessary for the performance of this Agreement;
 - b) is treated as confidential and not disclosed (without the Agency's prior written approval) or used by any such staff or professional advisors or consultants otherwise than for the purposes of this Agreement;
 - c) where it is considered necessary in the opinion of the Agency the Consultant shall ensure that such staff, professional advisors or consultants sign a confidentiality undertaking before commencing work in connection with this Agreement.

- 13.6 Nothing in this Clause 13 shall prevent the Agency:-
- a) disclosing any Confidential Information for the purpose of:-
 - (i) the examination and certification of the Agency's accounts; or
 - (ii) any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Agency has used its resources; or
 - b) disclosing any Confidential Information obtained from the Consultant:-
 - (i) to any other department, office or agency of the Crown; or
 - (ii) to any person engaged in providing any services to the Agency for any purpose relating to or ancillary to this Agreement or any person conducting an Office of Government Commerce gateway review;
 - c) provided that in disclosing information under Clause 13.6 (a) or (b) the Agency discloses only the information which is necessary for the purpose concerned and requires that the information is treated in confidence and that a confidentiality undertaking is given where appropriate.
- 13.7 Nothing in this Clause 13 shall prevent either Party from using any techniques, ideas or know-how gained during the performance of the Agreement in the course of its normal business, to the extent that this does not result in a disclosure of Confidential Information or an infringement of Intellectual Property Rights.

14 AGENCY DATA

- 14.1 The Consultant shall not delete or remove any proprietary notices contained within or relating to the Agency Data.
- 14.2 The Consultant shall not store, copy, disclose, or use the Agency Data except as necessary for the performance by the Consultant of its obligations under this Agreement or as otherwise expressly authorised in writing by the Agency.
- 14.3 To the extent that Agency Data is held and/or processed by the Consultant, the Consultant shall supply that Agency Data to the Agency as requested by the Agency in the format specified in Schedule 3.
- 14.4 The Consultant shall take responsibility for preserving the integrity of Agency Data and preventing the corruption or loss of Agency Data.
- 14.5 The Consultant shall perform secure back-ups of all Agency Data and shall ensure that up-to-date back-ups are stored off-site. The Consultant shall ensure that such back-ups are available to the Agency at all times upon request and are delivered to the Agency at no less than *[insert period]* monthly intervals.
- 14.6 The Consultant shall ensure that any system on which the Consultant holds any Agency Data, including back-up data, is a secure system that complies with the Security Policy.
- 14.7 If the Agency Data is corrupted, lost or sufficiently degraded as a result of the Consultant's Default so as to be unusable, the Agency may:

- a) require the Consultant (at the Consultant's expense) to restore or procure the restoration of the Agency Data and the Consultant shall do so as soon as practicable but not later than 7 Working Days; and/or
- b) itself restore or procure the restoration of Agency Data, and shall be repaid by the Consultant any reasonable expenses incurred in doing so.

14.8 If at any time the Consultant suspects or has reason to believe that Agency Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the Consultant shall notify the Agency immediately and inform the Agency of the remedial action the Consultant proposes to take.

15 STAFFING SECURITY

15.1 The Consultant shall comply with the Staff Vetting Procedures in respect of all Consultant Personnel employed or engaged in the provision of the Consultancy Services. The Consultant confirms that all Consultant Personnel employed or engaged by the Consultant at the Commencement Date were vetted and recruited on a basis that is equivalent to and no less strict than the Staff Vetting Procedures.

15.2 The Consultant shall provide training on a continuing basis for all Consultant Personnel employed or engaged in the provision of the Consultancy Services in compliance with the Security Policy and Security Plan.

16 PROVISION OF INFORMATION

16.1 The Agency shall make available free of charge such information in its possession as the Consultant may reasonably require for the proper performance of its duties under the Contract.

16.2 The Consultant shall not be responsible for any delay in the provision of the Services to the extent that the same results from any failure or delay by the Agency to supply information in compliance with Clause 16.1.

17 INSURANCE

17.1 The Consultant shall take out and maintain policies of insurance as are set out in Schedule 1 and shall otherwise comply with the provisions of Schedule 1. The Consultant agrees to maintain such insurance at all times until 12 years after expiry of the Consultancy Period (or, if later, 12 years after the date upon which the Consultant completes the provision of Services pursuant to an Instruction), provided that such insurance continues to be available at commercially reasonable rates and upon commercially reasonable terms which it would not be imprudent for the Consultant to accept having regard (inter alia) to the premium charged, the terms proposed and the duties undertaken by the Consultant in relation to any task or works in respect of which the Consultant is instructed pursuant hereto.

17.2 The Consultant shall, if required by the Agency, produce to it documentary proof that insurance satisfying the requirements of Clause 17.1 is being maintained by it.

17.3 If the Consultant becomes in default of its obligations to insure or continue to insure as set out in this Clause 17, the Consultant shall pay or allow to the Agency on demand any sum of money reasonably expended by the Agency to effect insurance against any risk or amount in respect of which the default shall have occurred and the Agency may deduct such sum (or part thereof) from any sums due or to become due to the Consultant under this Contract.

- 17.4 The Consultant warrants to the Agency that prior to the execution of this Contract it has (if required by the terms of its insurance) made full disclosure to its insurers of the existence and contents of this Contract, and as may otherwise be required to fulfil its obligations of good faith and full and frank disclosure to its insurers, and they have not advised the Consultant that the cover required under this Contract is, or may be, declined.
- 17.5 Any insurance required to be taken out by the Consultant under this Contract shall not include any condition which may adversely affect the rights of the Agency to proceed directly against the insurers pursuant to and in the circumstances contemplated by the Third Parties (Rights Against Insurers) Act 1930. The Consultant shall not compromise, settle or waive any claim which it may have under any insurance policy taken out in accordance with this Contract, in respect of any liability which the Consultant may incur under this Contract, which may in any way prejudice the ability of the Agency to recover the full amount of any claim the Agency may be lawfully entitled to.
- 17.6 For the avoidance of doubt, it is agreed that nothing in this Clause 17 shall relieve the Consultant from any of his obligations and liabilities under the Contract.

18 INDEMNITY

The Consultant shall indemnify and hold harmless the Agency against any liability which the Agency may incur to any person whatsoever and against any claims, demands, costs and/or expenses sustained, incurred or payable by the Agency to the extent that the same arises by reason of any breach of this Contract or an Instruction or any tortious act or omission on the Consultant's part (and/or any third party to whom the Consultant has subcontracted the performance of the Consultant's obligations or part thereof) in the performance of the Consultant's obligations under and in connection with this Contract and any Instruction.

19 LOSS OR DAMAGE

- 19.1 If in connection with the provision of Services and/or the Consultant's appointment under the Contract, any Loss or Damage arises or the Consultant becomes aware that any Loss or Damage has arisen, or is likely to arise, as a result of the negligence, breach of statutory or contractual duty, omission or default of or by the Consultant, the Consultant shall as soon as is reasonably practicable notify the Agency of the actual or likely Loss or Damage and, unless the Agency otherwise directs, use all reasonable endeavours at its own expense to prevent, limit and (to the extent it is able) make good such Loss or Damage. For the avoidance of doubt, the Consultant shall not be paid for any work undertaken by it or on its behalf in making good such Loss or Damage.
- 19.2 If the Consultant is unable to make good any Loss or Damage in accordance with Clause 16.1 to the reasonable satisfaction of the Agency, who shall have absolute discretion, the Consultant shall indemnify and keep indemnified the Agency from and against all Loss or Damage it may suffer, or incur, including remedying the same.
- 19.3 No liability shall attach to the Consultant pursuant to Clause 19.1 and/or Clause 19.2 to the extent that:
- a) the Loss or Damage would not have arisen but for the neglect or default by the Agency, or any other consultant or agent appointed by the Agency from whom the Agency is able to recover in full in respect of such Loss or Damage;
 - b) the circumstances giving rise to the Loss or Damage are outside the reasonable control of, and not reasonably foreseeable by, the Consultant;
 - c) the Loss or Damage is fully mitigated by the Agency.

- 19.4 Clause 19.3 shall not operate so as to limit the Consultant's liability in connection with Loss or Damage relating to personal injury to or the death of any persons caused or contributed to by the Consultant, its employees, agents or servants or any sub-contractors or sub-consultants engaged by the Consultant and/or any of their employees, servants or agents.
- 19.5 The Agency shall forthwith notify the Consultant of any claim made or threatened, or proceedings brought, against it in respect of any Loss or Damage for which the Consultant may be liable under this Clause 19.
- 19.6 No action or proceedings under or arising out of or in connection with this Contract whether in contract or in tort, negligence, for breach of statutory duty or otherwise shall be commenced against the Consultant after the expiry of 12 years after the completion of the Services or such earlier dates as may be prescribed by law.

20 REMEDIES AND WAIVERS

- 20.1 No delay or omission on the part of the Agency in exercising any right, power or remedy provided by law or under this Contract or any other documents referred to in it shall prejudice the rights, powers or remedies of any party contained in this Contract or operate as a waiver of any of the same.
- 20.2 A waiver by the Agency of a breach of or default under any of the terms of this Contract, whether by conduct or otherwise, shall not constitute a waiver of any other previous or subsequent breach or default, shall not affect the other terms of this Contract and shall not prevent the Agency from subsequently requiring compliance with the waived obligation. Any such waiver must be in writing and may be given subject to any conditions thought fit by the Agency. Unless otherwise expressly stated, any waiver shall be effective only in the particular instance and only for the purpose for which it is given.
- 20.3 The single or partial exercise of any right, power or remedy provided by law or under this Contract shall not preclude or impair any other or further exercise thereof or the exercise of any other right, power or remedy.
- 20.4 The rights, powers and remedies provided in this Contract are cumulative and are in addition to and without prejudice to any rights or remedies provided by law.

21 TERMINATION AND SUSPENSION OF THE CONTRACT

- 21.1 Without prejudice to any rights and remedies which the Agency may possess whether by virtue of the terms of this Contract and/or at law or otherwise the Agency may, by notice in writing, at any time, notify the Consultant of a failure to perform, or of its election to suspend, postpone or cancel any work being carried out by the Consultant pursuant to the Contract either as a whole or in relation to any individual task or matter (including for the avoidance of doubt any Instruction) in respect of which the Consultant may have been instructed.
- 21.2 Where the Consultant has been notified in accordance with Clause 21.1 of its failure to perform, the Agency may, without prejudice to any other remedy it may have:-
- a) request from the Consultant that, at the Consultant's own expense and as specified by the Agency, it reschedules and carries out the work in a manner satisfactory to the Agency, which may include rectifying work done or repeating the provision of any of the Services within such period as the Agency may specify by such written notice; or
 - b) withhold or reduce payments to the Consultant, as the Agency shall deem appropriate in each particular case.

- 21.3 If the provision of Services is suspended, postponed or cancelled in accordance with Clause 21.1 for longer than 6 months, the Consultant may request in writing that the provision of those Services by it be resumed and, unless written instructions to resume are given by the Agency to the Consultant within 28 days after such request, the employment of the Consultant in relation to the suspended, postponed or cancelled Services shall determine upon expiry of such 28 day period.
- 21.4 Without prejudice to any other right it may have to terminate this Contract and/or any Instruction, the Agency may at any time, and without giving reasons, serve written notice on the Consultant of its intention to terminate the Contract and/or any Instruction, and the Contract and/or any Instruction shall be terminated with immediate effect upon service of such notice.
- 21.5 Subject to the provisions of Clause 21.1 the Consultant may, upon giving reasonable notice to the Agency serve written notice on the Agency of its intention to terminate the Contract and the Contract shall, upon expiry of such notice be terminated.

22 CONSEQUENCES OF TERMINATION

- 22.1 In the event that this Contract and/or any Instruction is terminated, or that the provision of Services by the Consultant is suspended, postponed or cancelled by the Agency, the following provisions shall apply:
- a) the Consultant shall take immediate steps to bring an end to the Services concerned or, as the Agency may direct, complete the Services concerned in an orderly manner, but with all reasonable speed and economy and shall within such period from the date of such termination, suspension, postponement or cancellation as the Agency shall specify deliver to the Agency all Agency Property in its possession or under its control or any material in respect of which the Intellectual Property Rights are vested in a form usable by the Agency together with all correspondence and documentation in the possession or control of the Consultant relating to the Services. The Consultant hereby relinquishes any lien on such material to which it may be entitled;
 - b) any sum or amount due or accruing from the Consultant to the Agency may be set off against any sum or amount due or accruing from the Agency to the Consultant as the Agency in its absolute discretion considers reasonable and appropriate in the circumstances;
 - c) the Consultant shall submit an invoice to the Agency within 28 days of such termination, suspension, postponement or cancellation setting out its bona fide assessment of its fees up to and including the date of termination, suspension, postponement or cancellation together with a narrative. Such fees may include, at the discretion of the Agency, all reasonable costs necessarily and properly incurred by the Consultant in relation to the orderly cessation of the provision of the Services;
 - d) the Agency may make all arrangements which are in its view necessary to procure the orderly completion of the Services including entering into similar contractual arrangements to those set out in this Contract with a third party;
 - e) where the Contract has been terminated by reason of failure to perform as specified in Clause 18.1 and the total costs reasonably and properly incurred by the Agency by reason of such arrangements exceed the amount that would have been payable to the Consultant for the completion of the Services which the Consultant had been instructed to provide the excess shall be recoverable from the Consultant and may be set off against any amount withheld by the Agency under clause 22.1(a) or otherwise;

f) the Agency shall pay the Consultant's invoice in accordance with Clause 23 and Schedule 2. In the event that the suspended, postponed or cancelled Services are resumed the Agency's payment pursuant hereto shall be regarded as payment on account of the Consultant's fees payable in respect of the resumed Services.

22.2 Save as expressly set out in this Contract, the Consultant shall not be entitled to any compensation or loss and/or expense, loss of profit or damages whatsoever for suspension, postponement or cancellation of the Services or termination of the Contract and/or any Instruction.

22.3 The provisions of this Contract shall continue to bind each party insofar as and for as long as may be necessary to give effect to their respective rights and obligations hereunder.

23 REMUNERATION

23.1 The Agency shall pay the Consultant's Fees in consideration for the complete and satisfactory provision of the Services.

23.2 The Consultant's Fees shall be determined and shall be payable in accordance with Schedule 2.

24 CORRUPTION

24.1 The Consultant undertakes that neither it nor its employees, servants, advisers or agents shall receive or agree to receive from any person, or offer or agree to give to, or procure for, any person, any gift or consideration of any kind, as an inducement or reward for doing or forbearing to do or having done or forborne to do any action in relation to the obtaining or the execution of the Contract or any other contract to which the Agency is a party.

24.2 In the event of a breach of Clause 24.1, or the Consultant or any person employed by it or acting on its behalf (with or without its knowledge), committing any offence under the Prevention of Corruption Act 1906 or the Prevention of Corruption Act 1916 in relation to the Contract or any other contract to which the Agency is party, the Agency shall be entitled to recover from the Consultant the amount or value of any gift or consideration received, or paid or procured by the Consultant, its employees, representatives or on its behalf.

24.3 The Consultant shall not conspire with any person to do any of the acts mentioned in this Clause 24.

25 ANTI-MONEY LAUNDERING

25.1 The Consultant will comply with any anti-money laundering legislation relevant to its business or the Services including but not limited to the proceeds of Crime Act 2002, the Terrorism Act 2000 and the Money Laundering Regulations 2003.

25.2 In the event that the Consultant remits monies to the Agency, the Consultant will endeavour to ensure that monies are transferred from an account held with a UK or EU authorised credit institution. In any event, the Consultant will satisfy itself as to the source of the funds being remitted, and, in particular, that it does not suspect the funds to represent the proceeds of crime.

25.3 The Consultant will respond to any request from the Agency as to the source of any monies received by the Agency and will assist the Agency in any investigations as to potential money laundering, whether on request from the Agency or any relevant law enforcement agency.

25.4 The Consultant will indemnify the Agency in respect of any loss to the Agency resulting, directly or indirectly, from the Consultant's failure to comply with this Clause 25.

26 THIRD PARTY RIGHTS

This Contract is not intended to nor shall it create any rights, entitlements, claims or benefits enforceable by any person that is not a party to it. Accordingly, no person shall derive any benefit or have any right, entitlement or claim in relation to this Contract by virtue of the Contracts (Rights of Third Parties) Act 1999.

27 SERVICE OF NOTICES

27.1 Any notice or other communication to be made or given under this Contract shall be in writing and may be delivered by hand, or prepaid first class post.

27.2 Any such notice or other communication shall be addressed as provided in Clause 27.4, and if so addressed, shall be deemed to have been duly given or made as follows:

- a) if delivered by hand, on the first Business Day following delivery;
- b) if sent by prepaid first class post, on the second Business Day after posting if the address of the recipient is in the country of despatch, otherwise on the seventh Business Day after posting.

27.3 In proving service, it shall be sufficient to prove that the envelope containing the notice or other communication was properly addressed and delivered either by hand to that address or into the custody of the postal authorities as a prepaid first class post letter.

27.4 The relevant addressee and address of each party for the purposes of this Contract, subject to 27.5, are as set out in Part 3 of Schedule 5.

27.5 Either party may notify the other party to this Contract of a change to its name, relevant addressee or address provided that such notification shall be in accordance with this Clause 27.

27.6 For the purposes of this Clause 27, "Business Day" means any day which is not a Saturday, a Sunday or a public holiday in the place at or to which the notice is left or sent.

28 ACCOUNTS, DOCUMENTS ETC

28.1 During the Consultancy Period and for a period of 2 years after the date of expiry of the Consultancy Period or termination of the Contract, if requested by the Agency, the Consultant shall at its own cost retain at premises approved by the Agency such accounts, documents (including working documents) and records as the Agency or the Nominated Officer may request.

28.2 Upon written request by the Agency, the Consultant shall as soon as practicable provide to the Agency any document mentioned in Clause 28.1.

29 ASSIGNMENT

29.1 The Consultant shall not, without the prior written consent of the Agency, assign, delegate, charge or transfer any right or obligation under the Contract, to any other person.

29.2 The Agency may assign, delegate, charge or transfer any right or obligation under the Contract to any successor body with the consent of the Consultant save in respect of a statutory transfer where such consent will not be required.

30 SUB-CONTRACTORS AND SPECIALIST ADVICE

- 30.1 Save as otherwise agreed or specified in the Special Conditions (if any) the Consultant shall not, without the prior written consent of the Nominated Officer (or as otherwise expressly stated in the Special Conditions) sub-contract, whether in whole or in part, to any person its obligation to provide the Services to the Agency or otherwise delegate any of its obligations under the Contract.
- 30.2 Any sub-contracts entered into, subject to Clause 30.1, must be in writing and in a form prescribed by or otherwise approved in advance by the Agency. All such contracts should, so far as practicable and appropriate, be in a form similar to the form of this Contract and any sub-contractor appointed thereunder will, in the event that the Agency so elects, be required to enter into a direct contractual relationship with the Agency in a form required by the Agency and to owe it a duty of care. The Consultant shall ensure that any Intellectual Property Rights designed, created, developed or made by any sub-contractor shall vest in and belong to the Agency.
- 30.3 The Consultant will not obtain Counsel's or other legal opinion or otherwise engage the services of Counsel or other legal specialists on behalf of the Agency without the prior written authority of the person appointed from time to time as the Head of the Legal Services Department of the Agency and the Nominated Officer.
- 30.4 If, subject to the provisions of this Clause 30, the Consultant engages the services of another person to provide a report to the Consultant and/or the Agency, the Consultant will, if required by the Agency, procure that the person providing such report enters into a direct contractual relationship with any third party intending to rely on the contents of such report (in a form required by the Agency or the third party as appropriate), thereby affording such third party a duty of care and enabling it to rely upon the contents of such report.
- 30.5 Save as otherwise agreed in Schedule 2, fees payable under sub-contracts shall be paid by the Consultant and provided for in the invoice to be submitted to the Agency in accordance with Clause 23.
- 30.6 In relation to any sub-contracting pursuant to Clause 30.1:
- a) the Consultant shall be responsible to the Agency in law or otherwise for all such sub-contracted work and such sub-contracting shall not modify, diminish, reduce or in any other way affect the liability and/or obligations of the Consultant under this Contract and/or at law or otherwise;
 - b) the Consultant's Fees shall not be increased by any amounts payable by the Consultant to its sub-contractors;
 - c) the Consultant shall be liable to the Agency for the tortious acts and omissions of the person performing any sub-contracted work; and
 - d) the Consultant shall procure appropriate warranties from the person performing any sub-contracted work (in a form required by the Agency).

31 WARRANTIES

- 31.1 The Consultant warrants, represents and undertakes for the duration of the Consultancy Period that:
- a) all personnel used to provide the Consultancy Services will be vetted in accordance with Good Industry Practice and the Security Policy;

- b) it has and will continue to hold all necessary (if any) regulatory approvals from the Regulatory Bodies necessary to perform the Consultant's obligations under this Agreement;
- c) in performing its obligations under this Agreement, all Software used by or on behalf of the Consultant will:
 - (i) be currently supported versions of that Software; and
 - (ii) perform in all material respects in accordance with its specification,
- d) as at the Commencement Date all statements and representations in the Consultant's **[Response to the ITT - or insert names of any other documents to be warranted correct - e.g. Pricing Models/Implementation Plan etc.]** are to the best of its knowledge, information and belief, true and accurate and that it will advise the Agency of any fact, matter or circumstance of which it may become aware which would render any such statement or representation to be false or misleading;
- e) the Consultant System and assets used in the performance of the Consultancy Services:
 - (i) will be free of all encumbrances and defects;
 - (ii) will be Date Compliant; and
 - (iii) will be Euro Compliant.
- f) it shall at all times comply with Law in carrying out its obligations under this Agreement.

32 SECURITY REQUIREMENTS

32.1 The Consultant shall comply, and shall procure the compliance of the Consultant Personnel, with the Security Policy and the Security Plan and the Consultant shall ensure that the Security Plan produced by the Consultant fully complies with the Security Policy.

32.2 The Agency shall notify the Consultant of any changes or proposed changes to the Security Policy.

Malicious Software

32.3 The Consultant shall, as an enduring obligation throughout the Consultancy Period, use the latest versions of anti-virus definitions available from an industry accepted anti-virus software vendor to check for and delete Malicious Software from the ICT Environment.

32.4 Notwithstanding clause 32.3, if Malicious Software is found, the parties shall co-operate to reduce the effect of the Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of Agency Data, assist each other to mitigate any losses and to restore the Consultancy Services to their desired operating efficiency.

32.5 Any cost arising out of the actions of the parties taken in compliance with the provisions of clause 32.4 shall be borne by the parties as follows:

- a) by the Consultant where the Malicious Software originates from the Consultant Software, the Third Party Software or the Agency Data (whilst the Agency Data was under the control of the Consultant); and

- b) by the Agency if the Malicious Software originates from the Agency Software or the Agency Data (whilst the Agency Data was under the control of the Agency).

33 NOVATION

At the request of the Agency from time to time, whether before or after the completion of the Services, the Consultant shall execute as deeds and deliver to the Agency within seven days of any such request a deed of novation in relation to this Contract or a particular Instruction in the form set out in Schedule 9 with such amendments as the Agency may reasonably require in favour of a third party.

34 AUTHORITY

- 34.1 The Consultant shall have no authority to act on the Agency's behalf in relation to any of the following matters without the prior written consent of the Agency:
 - a) the making of any alteration to or omission from the design of a project approved or agreed by the Agency;
 - b) save in an emergency the issuing of any instruction, giving of any approval or doing of any other thing which would or might increase the cost of a project or which would or might delay completion of a project;
 - c) entering into any agreement, or agreeing any amendment to the terms of any contract which the Agency enters into in connection with a project or the waiver, abandonment or settlement of any right, remedy or claim which the Agency may have against any party.

35 STATUS AND TAX LIABILITIES

- 35.1 Where the Consultant is an individual:
 - a) it is the intention of the parties that the Consultant shall have the status of a self-employed person and shall not be entitled to any pension, bonus or other fringe benefits from the Agency. It is agreed that the Consultant shall be responsible for all income tax liabilities and National Insurance or similar contributions in respect of the Consultant's Fees; and
 - b) on execution of the Contract, the Consultant shall provide the Agency with documentary evidence of the Consultant's self-employed status; such evidence to include the Schedule D number and any such other written evidence as satisfies or is requested by the Agency's tax inspector.
- 35.2 Where the Consultant is not an individual the Consultant shall be responsible for making appropriate PAYE deductions for tax and National Insurance contributions from the remuneration the Consultant pays to its employees.
- 35.3 The Consultant agrees to indemnify and keep indemnified the Agency in respect of any claims that may be made by the relevant authorities against the Agency in respect of income tax or National Insurance or similar contributions relating to the Services.

36 GENERAL

- 36.1 The Consultant shall comply with the provisions of Schedule 8.
- 36.2 This Contract and the other documents referred to herein constitute the entire agreement between the parties relating to the Services to be provided by the Consultant and supersede any previous agreements or arrangements and undertakings between the parties in respect of the provision of Services by the Consultant. The Consultant

acknowledges that in entering into this Contract it has not relied on any representation, warranty or undertaking save as set out in this Contract and the other documents referred to herein. Neither party shall have any claim in misrepresentation against the other save in respect of any representation, warranty or undertaking made fraudulently by the other party.

- 36.3 All additions, amendments and/or variations to this Contract must be annexed to this Contract and be in writing and shall only be binding if signed or initialled by the duly authorised representatives of the Agency and of the Consultant.
- 36.4 Nothing in this Contract shall create or be deemed to create any agency or partnership between the parties.
- 36.5 If any provision of this Contract is held by any court or other competent authority to be void or unenforceable in whole or in part, the other provisions of this Contract and the remainder of the affected provisions shall continue to be valid.
- 36.6 The Consultant is required to comply with any reasonable Programme and/or deadlines provided to it in writing by the Agency from time to time, provided that the Agency agrees that it may, at the reasonable request of the Consultant, from time to time extend the period(s) and/or the date(s) included in any Programme by giving written notice to the Consultant whereupon time shall again be of the essence in relation to the revised Instruction.
- 36.7 The Consultant shall have due regard in the performance of the Services to the Agency's budget requirements for each project and/or Instruction. If the Consultant becomes aware of any circumstances which may cause those budget requirements to be exceeded, the Consultant shall inform the Agency without delay.
- 36.8 The Consultant shall execute and deliver all such instruments and other documents and shall take all such actions as the Agency may from time to time reasonably require in order to give full effect to the provisions of this Contract.
- 36.9 Save as otherwise agreed in the Special Conditions neither party to the Contract shall be liable for any breach of its obligations under the Contract resulting from causes beyond its reasonable control including, but not limited to, fires, labour disputes (of its own or other employees), insurrection, war, invasion, act of foreign enemies or hostilities (whether war to be declared or not), civil war, rebellion, revolution, riots, delays in transportation, inability to obtain supplies or regulations of any civil or military authority.
- 36.10 If a default due to a force majeure event (as specified in Clause 34.9) shall continue for more than four weeks then the party not in default shall be entitled to terminate the Contract and/or any existing Instruction issued under this Contract. Neither party shall have any liability to the other in respect of the termination of the Contract and/or any Instruction as a result of such an event.
- 36.11 The Agency and the Consultant shall act as stated in this Contract and in a spirit of mutual trust and co-operation.

37 CHOICE OF LAW AND JURISDICTION

The Contract shall be governed by and construed in all respects in accordance with the laws of England and the Consultant agrees to submit to the exclusive jurisdiction of the English courts.

THE COMMON SEAL of _____)

HOMES AND COMMUNITIES AGENCY)
Was hereunto affixed in the presence of)

Authorised Signatory

.....

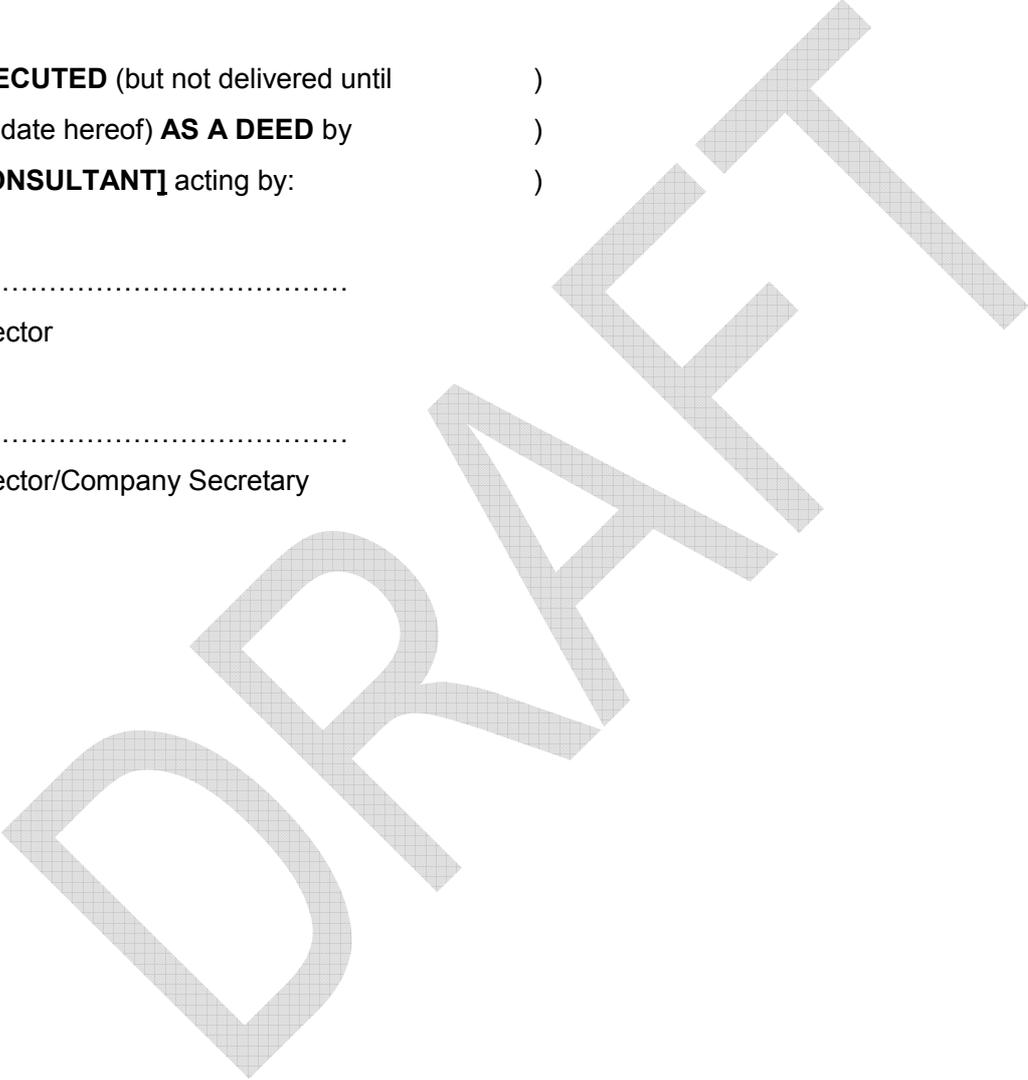
EXECUTED (but not delivered until)
the date hereof) **AS A DEED** by)
[CONSULTANT] acting by:)

.....

Director

.....

Director/Company Secretary



SCHEDULE 1

INSURANCE

In accordance with Clause 16 of this Contract, the Consultant shall take out and maintain the following insurances upon the following terms and conditions:

1. INSURANCE

1.1 Insurance for a sum of not less than:-

£5m (five million pounds) Professional Indemnity

£5m (five million pounds) Public Liability

£5m (five million pounds) Employer Liability

in respect of each and every claim.

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SCHEDULE 2

CONSULTANT'S FEES

PART 1 – GENERAL PROVISIONS

1. The basis for calculation of the Consultant's Fees shall be as set out in Part 2 of this Schedule 2.
2. For the avoidance of doubt and except where otherwise provided in this Contract, the amount payable to the Consultant for the provision of the Services shall be inclusive of all costs of staff and materials and all other expenses whatsoever and howsoever incurred by the Consultant in discharging its obligations under the Contract.
3. Without prejudice to any other provision of this Schedule, the Consultant shall submit with its invoice, such records as the Agency may reasonably require such as time sheets, expenses incurred, invoices paid or any other documents which would enable the Agency to verify the information and the amounts referred to in that invoice together with any other specific information required pursuant to this Schedule 2. Unless otherwise agreed, the Consultant shall provide with its invoice a report in relation to its invoice in such detail and form as from time to time shall be notified to the Consultant by the Agency.
4. The Agency shall use its reasonable endeavours to pay the Consultant within 30 days of the receipt of a satisfactory invoice, provided that the Agency has issued an electronic Instruction and it is satisfied that the Services for which the invoice relates have been performed fully, and the fees in respect of such invoice have been properly determined, in accordance with the Contract.
5. The Consultant's Fees are exclusive of Value Added Tax (VAT) and the Agency shall pay to the Consultant the amount of any VAT chargeable in respect of such fees at the rate and in the manner prescribed by law.
6. Wherever under the Contract any sum of money is recoverable from, or payable by, the Consultant, that sum may be deducted from any sum then due, or which at any later time may become due, to the Consultant under the Contract or under any other contract with the Agency.
7. Subject to the prior approval of the Nominated Officer or such other officer as the Agency shall direct, the Consultant shall be entitled to reimbursement of the expenses and disbursements set out in Part 4 of this Schedule 2.
8. The Consultant shall not be entitled to any payment in respect of time (including travelling time) spent on reviewing the general management of matters undertaken by the Consultant, the progress of work and the review of procedures, charging rates, working practices or other similar tasks.
9. Where any incomplete transaction or project is revived or a further transaction or project is negotiated with an alternative party and existing work is capable of being incorporated into the new transaction or project then an allowance will be made in favour of the Agency in respect of such work. Such allowance will be equal to the fee paid for the incomplete work or such lesser sum as may be agreed between the Agency and the Consultant.
10. The hourly charge out rate set out in Part 3 of Schedule 2 and any expenses or disbursements set out in Part 4 of Schedule 2 shall be reviewed annually by the Agency

and will be increased at the absolute discretion of the Agency having regard to the annual Retail Price Index.

PART 2 – BASIS OF CALCULATION

11. The method of calculation of the Consultant's Fees (time charge, percentage, lump sum or other) and the timing of any payment to the Consultant (monthly, interim, final account or other) shall be as set out in the Instruction. The Agency may during the currency of contract require all invoices raised by the Consultant in respect of the services to be issued electronically via the Agency's extranet.
12. In respect of any time charge work, before commencing work the Consultant must provide the Agency with:
 - (a) an estimate of the total cost of such work; and
 - (b) the rate applicable to such work.
13. Any time spent in excess of, or work requiring more experienced personnel than set out in the estimate in paragraph 11 must be agreed with the Agency.

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PART 3 – TENDER FORM

(The completed tender form including all the fee rates should be included here.)

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PART 4 - EXPENSES AND DISBURSEMENTS

14. Subject to the prior approval of the Nominated Officer or such other officer as the Agency shall direct, the Consultant shall be entitled to reimbursement of the following expenses and disbursements:
 - (a) printing, or reproduction of, drawings, plans, maps, photographs or other such documents;
 - (b) bulk photocopying (where the number of pages copied exceeds 200);
 - (c) courier or other extraordinary delivery costs;
 - (d) car travel at the rate of 45 pence per mile for the first 10,000; 25 pence per mile thereafter;
 - (e) air, sea or rail fares at economy or second class rates; and
 - (f) other extraordinary expenses or disbursements as may be pre-authorized in writing by the Agency.
15. Subject to this Part 4 of Schedule 2, the expenses and disbursements to be claimed pursuant to an Instruction shall be capped at 5% of the Consultant's Fee for that Instruction.
16. Subject to this Part 4 of Schedule 2, the Consultant shall not be entitled to claim payment for travelling time in attending the Agency's offices or other locations during the Consultancy Period.
17. Where the Agency deems it necessary for the Consultant to attend meetings at a location other than the Agency's offices or the Consultant's offices, the Consultant will be entitled to claim travelling expenses on an agreed basis.

SCHEDULE 3

THE SERVICES

Consultants will be expected to provide economic consultancy expertise on a broad range of projects in relation to HCA's national and regional programmes and those of our partners that include amongst others:

- Developing HCA's land and property portfolio
- Estate Renewal
- Millennium Communities
- Urban Regeneration Companies
- National Coalfields Programme
- Land Stabilisation
- Housing Market Renewal, including Pathfinder areas
- Housing in growth areas
- National Brownfield Strategy
- The Housing Partnership
- The London Wide Initiative for key workers
- The Hospital Sites Programme
- The 2012 Olympic Development
- Land Restoration Trust
- Estate Management of HCA's portfolio of approximately 9000 ha
- Carbon Challenge
- Design for Manufacture

SCHEDULE 4

KEY PERSONNEL

(a list of key personnel should be included here)

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SCHEDULE 5

Part 1

CONSULTANCY PERIOD

The period of 2 years from 1 June 2009 or such shorter or longer period as may be determined by the Agency in accordance with this Contract.

Part 2

The Area shall be National

Part 3

Name of Party for Notification

Address

Agency:

The Consultant:

SCHEDULE 6

INSTRUCTIONS PROCEDURES

1. INSTRUCTIONS

Instructions by HOMES AND COMMUNITIES AGENCY

- (a) All Instructions from the Agency will be issued using the Agency's Instructions Database which may be modified, enhanced, added to or replaced during the Consultancy Period of this Contract.
- (b) The Consultant will receive the Instructions via the Agency's extranet and the Designated Person or the Deputy Designated Person will be responsible for allocating that Instruction to one of the Key Personnel.
- (c) The Key Personnel will accept each Instruction as per the Instructions Database Manual which is available on the Agency's extranet.
- (d) Invoices in respect of individual instructions will only be processed for payment by the Agency where:
 - (i) there exists a current Instruction on the Instructions Database;
 - (ii) the current Instruction is quoted on the invoice; and
 - (iii) invoiced in accordance with Schedule 2
- (e) The Consultant will create a transaction correspondence file on receipt of every Instruction. Plans relating to the Instruction will be sent via the DX system or pre-paid first class post along with any relevant archived files.
- (f) The Consultant will be responsible for ensuring that all Key Personnel are provided with their own log-in names and passwords and that log-in names and passwords are erased when Key Personnel no longer provide the Services.

1.2 Instructions by other bodies pursuant to Clause 2.13 of the Contract.

- (a) Instructions from other bodies pursuant to Clause 2.13 of the Contract shall be in a form to be mutually agreed between the other body and the Consultant.

SCHEDULE 7

PROJECT TENDERING PROCEDURE

The Public Contracts Regulations 2006 (SI 2006 No.5) introduced new rules on the application of framework agreements in public sector contracts. The Agency has endeavoured to structure its Project Tendering Procedure in accordance with the current Regulations, in so far as this has been possible. Thus the operation of the Panel will include a Project Tendering Procedure as an integral step between becoming a member of a relevant Panel ("Panel Member") and being appointed or commissioned for an individual piece of work.

The Agency believes it would be impractical and wasteful for all Panel Members to compete for every piece of work commissioned, irrespective of scale. For this reason the Agency has decided to operate a sliding scale whereby very small commissions – under £5,000 will be awarded with no competition, for commissions between £5,001 and £25,000 the Agency will ask 3 Panel Members to compete. For commissions above £25,000 the Agency will conduct a mini-competition involving all capable framework members.

The Agency will endeavour to manage the Panel with the aim that over the life of the Panel all Panel Members will get a fair and equal chance to submit a proposal although the amount of work they are actually awarded will be dependent on the evaluation of their bids. Limiting the number asked to compete for smaller commissions will enable Panel Members to focus their resources where they have a better chance of winning.

The Project Tendering Procedure is summarised below.

- **Below £5,000**

Selection from the Panel without any further competition.

- **Between £5,001 and £25,000**

3 Panel Members for the relevant subset of the Panel will be invited to submit a basic proposal to include :-

- Brief statement on how commission would be undertaken.
- Proposed staff
- Timescale
- Provision of a lump sum fixed fee/or fee proposal based on tendered fee rates (depending on the particular circumstances)

- **Above £25,000**

A mini-competition involving all capable framework members from the Panel will be invited to respond to an outline brief with a proposal to include information such as:-

- Proposal to describe how the commission would be undertaken, an outline of the approach, an assessment of the commission being offered.
- Staff proposed together with a resource schedule
- Proposals for management of the commission
- Programme

- Provision of a lump sum fixed fee/or fee proposal based on tendered fee rates (depending on the particular circumstances)

In all cases further information will be issued with the invitation to participate in a Project Tendering Procedure.

Award criteria for work over £5,000 are as follows:-

- 80% of the marks will be awarded for the following in rank order:-
 - Quality
 - Technical merit of proposal
 - Staff and other Resources
 - Management and Communication
 - Programme
- The remaining 20% of the marks will be awarded for price

The Agency reserves the right, where the risks attached to the project are higher than normal to adopt a higher level of competition than would be indicated by the estimated contract value. This will be the exception and the level of competition will not be increased beyond that outlined for above OJEU threshold considerations.

SCHEDULE 8

COMPUTER SYSTEMS, DATA PROTECTION OBLIGATIONS, FREEDOM OF INFORMATION, AGENCY PROPERTY, STORAGE AND MAINTENANCE OF RECORDS

1 COMPUTER SYSTEMS

- 1.1 The Consultant warrants to the Agency that all computer systems to be used by the Consultant in and about the performance of its obligations under the Contract will protect data being or to be transferred between the parties, that the Consultant will use industry recognised and regularly updated virus checking software, will use all reasonable endeavours not to transfer virus infected data, has a responsible firewall policy and such is communicated regularly to the Agency.
- 1.2 The Consultant warrants to the Agency that all computer systems which will be used by the Consultant in and about the performance of its obligations under the Contract are, and shall remain for the duration of the Consultancy Period, compatible with the Agency's systems to such a degree as reasonably required to fully and effectively transfer data and comply with recognised industry standards in this regard.
- 1.3 The Consultant shall ensure, so far as it is reasonably practicable to do so, that it adheres to the Agency's IT and Communication Procedures and IT Policy Statement as issued from time to time and notified by the Agency to the Consultant.

2. DATA PROTECTION OBLIGATIONS

- 2.1 For the purposes of this Schedule "**Personal Data**", "**Data Processor**", "**Data Subject**", "**Data Controller**" and "**Process**" shall have the meanings ascribed to them in the Data Protection Act 1998 (the "DPA") as amended or re-enacted from time to time.
- 2.2 The Consultant warrants and represents that it has obtained all necessary registrations, notifications and consents required by the DPA to process Personal Data for the purposes of performing its obligations under this Agreement.
- 2.3 The Consultant undertakes that to the extent that the Consultant and/or any of its employees receives, has access to and/or is required to process Personal Data on behalf of the Agency ("**the Agency's Personal Data**") for the purpose of providing the Services, it will at all times comply with the provisions of the DPA for the time being in force, including without limitation the Data Protection Principles set out in Schedule 1 of the DPA. In particular, the Consultant agrees to comply with the requirements and obligations imposed on the Data Controller in the Seventh Data Protection Principle set out in the DPA namely:
- 2.3.1 the Consultant shall at all material times have in place and maintain appropriate technical and organisational security measures designed to safeguard against accidental or unlawful destruction, accidental loss, alteration, unauthorised or unlawful disclosure of or access to the Agency's Personal Data and any person it authorises to have access to any the Agency's Personal Data will respect and maintain the confidentiality and security of the Agency's Personal Data. This includes the obligation to comply with any records management, operational and/or information security policies operated by the Agency, when providing the Services on the Agency's premises and/or accessing their manual and/or automated information systems. These measures shall be appropriate to the harm

which might result from any unauthorised Processing, accidental loss, destruction or damage to the Personal Data which is to be protected;

- 2.3.2 the Consultant shall only process Personal Data for and on behalf of the Agency for the purpose of performing the Services in accordance with this Agreement, or as is required by Law or any Regulatory Body, and where necessary only on written Instructions from the Agency to ensure compliance with the DPA;
- 2.3.3 the Consultant shall allow the Agency to audit the Consultant's compliance with the requirements of this Clause 10 on reasonable notice and/or, at the Agency's request, provide the Agency with evidence of the Consultant's compliance with the obligations within this Clause 10.
- 2.4 The Consultant undertakes not to disclose or transfer any of the Agency's Personal Data to any third party without the prior written consent of the Agency save that without prejudice to Clause 10.3 the Consultant shall be entitled to disclose the Agency's Personal Data to employees and third parties to whom such disclosure is reasonably necessary in order for the Consultant to carry out the Services, or to the extent required under a court order.
- 2.5 The Consultant shall:
 - 2.5.1 take reasonable steps to ensure the reliability of any Consultant Personnel who have access to the Personal Data;
 - 2.5.2 ensure that all Consultant Personnel required to access the Personal Data are informed of the confidential nature of the Personal Data and comply with the obligations set out in this Clause 10;
 - 2.5.3 ensure that none of Consultant Personnel publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Agency;
 - 2.5.4 provide a written description of the technical and organisational methods employed by the Consultant for processing Personal Data (within the timescales required by the Agency); and
 - 2.5.5 not Process Personal Data outside the European Economic Area without the prior written consent of the Agency and, where the Agency consents to a transfer, to comply with:
 - (a) the obligations of a Data Controller under the Eighth Data Protection Principle set out in Schedule 1 of the Data Protection Act 1998 by providing an adequate level of protection to any Personal Data that is transferred; and
 - (b) any reasonable instructions notified to it by the Agency.
- 2.6 The Consultant agrees to use all reasonable efforts to assist the Agency to comply with such obligations as are imposed on the Agency by the DPA. For the avoidance of doubt, this includes the obligation to:
 - 2.6.1 provide to the Agency such access as may be reasonably required from time to time to all Personal Data stored or processed in the provision of the

Services under this Agreement in order to enable the Agency to meet its obligations to respond to access requests from Data Subjects under the DPA;

- 2.6.2 provide the Agency with reasonable assistance in complying with any request for information served on the Agency under Section 7 of the DPA; and
- 2.6.3 notify the Agency (within five Working Days) about the receipt of any such request received by the Consultant under Section 7 of the DPA or complaint or request relating to the Agency's obligations under the DPA and not disclose or release any information (including the Agency's Personal Data) in response to such a request or complaint without first consulting with the Agency, where the information sought relates to the Agency, its employees, agents and/or its business operations;
- 2.6.4 provide the Agency with full co-operation and assistance in relation to any complaint of request made, including by:
 - (a) providing the Agency with full details of the complaint or request;
 - (b) complying with a data access request within the relevant timescales set out in the DPA and in accordance with the Agency's instructions;
 - (c) providing the Agency with any Personal Data it holds in relation to a Data Subject (within the timescales required by the Agency); and
 - (d) providing the Agency with any information requested by the Agency;
- 2.7 The Consultant shall comply at all times with the DPA and shall not perform its obligations under this Agreement in such a way as to cause the Agency to breach any of its applicable obligations under the DPA.
- 2.8 The Consultant shall indemnify the Agency against all claims and proceedings and all liability, losses, costs and expenses incurred in connection therewith by the Agency as a result of the Consultant's destruction of and/or damage to any of the Agency's Personal Data processed by the Consultant, its employees, agents, or any breach of or other failure to comply with the obligations in the DPA and/or this Clause 10 by the Consultant, its employees, agents or sub-contractors.
- 2.9 The Consultant shall appoint and identify an individual within its organisation authorised to respond to enquiries from the Agency concerning the Consultant's Processing of the Agency's Personal Data and will deal with all enquiries from the Agency relating to such Personal Data promptly, including those from the Information Commissioner and will to the extent reasonably necessary co-operate with and assist in ensuring compliance with any Data Subject rights of data access, correction, blocking, suppression or deletion relating to the Agency's Personal Data and in the defence or management of any enforcement action or assessment by the Information Commissioner or any other competent authority in relation thereto.
- 2.10 The Consultant undertakes to include obligations no less onerous than those set out in this Clause 10, in all contractual arrangements with agents engaged by the Consultant to provide the Services to the Agency.

3 FREEDOM OF INFORMATION

- 3.1 The Consultant acknowledges that the Agency is subject to legal duties which may require the release of information under FOIA and/or EIR and that the Agency may be under an obligation to provide Information subject to a Request for Information.
- 3.2 The Agency shall be responsible for determining in its absolute discretion whether:-
- 3.2.1 any Information is Exempted Information or remains Exempted Information; or
- 3.2.2 any Information is to be disclosed in response to a Request for Information;
- and in no event shall the Consultant respond directly to a Request for Information to which the Agency is required to respond to, except to confirm receipt of the Request for Information and that the Request for Information has been passed to the Agency unless otherwise expressly authorised to do so by the Agency.
- 3.3 Subject to clause 1.4 below, the Consultant acknowledges that the Agency may be obliged under FOIA or EIR to disclose Information:-
- 3.3.1 without consulting the Consultant; or
- 3.3.2 following consultation with the Consultant and having taken (or not taken, as the case may be) its views into account.
- 3.4 Without in any way limiting Clauses 1.2 and 1.3, in the event that the Agency receives a Request for Information, the Agency will, where appropriate, as soon as reasonably practicable notify the Consultant.
- 3.5 The Consultant will assist and co-operate with the Agency as requested by the Agency to enable the Agency to comply with its disclosure requirements under FOIA and EIR within the prescribed periods for compliance and in particular without limitation will (and shall procure that its agents and sub-contractors will), at their own cost:
- 3.5.1 transfer any Request for Information received by the Consultant to the Agency as soon as practicable after receipt and in any event within two Working Days of receiving a request for information;
- 3.5.2 provide all such assistance as may be required from time to time by the Agency and supply such data or information as may be requested by the Agency;
- 3.5.3 provide the Agency with any data or information in its possession or power in the form that the Agency requires within five Working Days (or such other period as the Agency may specify) of the Agency requesting that Information;
- 3.5.4 permit the Agency to inspect such as requested from time to time
- 3.6 Nothing in this Agreement will prevent the Agency from complying with any valid order, decision, enforcement or practice recommendation notice issued to it by the Information Commissioner under FOIA and / or EIR in relation to any Exempted Information.

4. AGENCY PROPERTY

- 4.1 Neither the Consultant, nor any other person, shall have a lien or other rights over any Agency Property, and the Consultant shall take all such steps as may be reasonably necessary to ensure that the Agency's title in the Agency Property and the existence of any such lien or other right, are brought to the notice of any other person dealing with the Agency Property.

4.2 Upon the Agency's written request and in any event upon termination of the Contract, the Consultant will immediately deliver up to the Agency or the Nominated Officer, at the expense and risk of the Consultant, all Agency Property, and the Consultant will not, without the prior written consent of the Agency, retain any copies thereof.

5. STORAGE AND MAINTENANCE OF THE RECORDS

5.1 The Records (including any additions made thereto during the Consultancy Period) are and shall remain Agency Property. The Consultant shall have no lien or other rights in respect of the Records.

5.2 The Consultant shall request such Records as it requires for the purposes of carrying out work in accordance with the Agency's Instructions and will hold them to the order of the Agency and shall return the Records (including any additions made thereto during the Consultancy Period) to the Agency on demand at any time, and in any event at the end of the Consultancy Period.

5.3 The Consultant shall keep the Records in a safe and secure place at the Consultant's premises.

5.4 The Consultant shall maintain and up-date the Records to ensure that the Records properly reflect at any given time the current state of Programmes or projects on which the Consultant is involved and the Agency's title to property or other assets in the Area.

5.5 The Consultant shall, if required, allow the Agency or any person acting on its authority access, at any time, to the Consultant's premises for the purpose of inspecting or removing the Records. The Consultant shall provide the Agency with such copies of the Records as may reasonably be required.

5.6 The Consultant shall return the Records to the Agency at the end of the Consultancy Period and/or on demand at any time.

SCHEDULE 9

DEED OF NOVATION

DRAFT

DATED _____ 2009

[EMPLOYER] (1)

[CONSULTANT] (2)

[SUCCESSOR] (3)

DEED OF NOVATION

RE []

SCHEDULE 10

SPECIAL CONDITIONS

References to paragraphs are to paragraphs in this Schedule.

References to clauses are to Clauses in the main body of the Contract

In addition to and notwithstanding the terms, conditions, provisions, warranties and obligations set out elsewhere in this Contract relating to the Consultant the following provisions shall also apply. Where there is a conflict or inconsistency between this Schedule and any other part of the Contract, the schedule shall take precedence.

1 DEFINITIONS

For the purposes of this Schedule unless the context requires otherwise the following words and phrases shall have the following meanings:

"Contractor" means any works contractor or contractors for the time being appointed or to be appointed by the Agency in connection with a Project (if any), and shall include the Contractor's employees, agents, sub-contractors and suppliers;

"Other Consultancy Contracts" means the contracts entered into or to be entered into by the Agency and each of the Other Consultants;

"Other Consultants" means any other consultants for the time being appointed or to be appointed by the Agency in connection with a Project and shall include the Other Consultants' employees, agents and sub-consultants;

"Project" means a project or projects in relation to which the Consultant has been instructed and any part or section of it, and includes the Works;

"Services" mean any function required by the Agency from the Consultant

"Site" means a project or projects in relation to which the Consultant has been instructed and any part thereof;

"Works" means the works to be carried out and completed by the Contractor under the Works Contract, or (where relevant) the completed development.

"Works Contract" means the contract or contracts entered into or to be entered into by the Agency and the Contractor for the carrying out and completion of the Works (if any);

2 ADDITIONAL CONSULTANT'S WARRANTIES

- 2.1 In performing the Services the Consultant shall have regard to the obligations of the Agency under the Other Consultancy Contracts and the Works Contract and any other contract entered into by the Agency in respect of a Project (**PROVIDED THAT** copies of the same, or of the relevant part or parts, shall have been supplied or made available to the Consultant) and shall not, by reason of any act, omission or default of the Consultant, constitute, cause or contribute to any breach by the Agency of any of the Agency's obligations under the Other Consultancy Contracts and/or the Works Contract and/or any such other contract.
- 2.2 The Consultant has supplied, and shall continue to supply, drawings and information at all stages of a Project so as not to delay or disrupt completion of each stage of the design and construction of a Project in accordance with the relevant Programme and/or Instruction.
- 2.3 The Consultant further warrants, without prejudice to the generality of clauses 6 and 7, that in exercising the standard of care set out in clauses 6 and 7, to the extent that it is obliged to select or approve substances or materials for use in a Project and/or is responsible for supervising or monitoring or inspecting the Works:
- (a) it will act in accordance with the guidance contained in the publication, "Good Practice in the Selection of Construction Materials" (1997, by Tony Sheehan, Ove Arup & Partners, published by the British Council for Offices and the British Property Federation) and will ensure that the materials used in the Works comply with such guidelines and current best practice; and
 - (b) No substances or materials generally known to be deleterious at the time of specification or use and no materials or substances which are prohibited by the Works Contract, or which do not comply with any applicable British Standard or European Standard or any applicable Code of Practice, shall be selected or approved for use or used in a Project

PROVIDED THAT where in the opinion of the Consultant this results in any conflict with any relevant statutory requirements, or where the construction of any part of a Project in accordance with this Contract or any Instruction or Programme would be prejudiced through lack of suitable substances or materials, then the Consultant shall immediately notify the Agency in writing specifying the conflict or prejudice which has arisen and the substance or material which the Consultant wishes to specify or use and the Consultant shall not specify or use the same without in each case the prior written consent of the Agency.

- 2.4 The Consultant further warrants that:
- (a) it has complied with and will continue to comply with the requirements of Regulations 11 and 18 of the Construction (Design and Management) Regulations 2007 in relation to the design of all "Structures" as therein defined in relation to which it is instructed by the Agency pursuant to this Contract; and
 - (b) it will ensure that any Project in respect of which the Consultant is instructed by the Agency pursuant to this Contract has all necessary planning, building regulation, listed building, highway, drainage, public health, environmental, fire, health, safety and/or any other statutory or regulatory required consents, permissions or approvals before the Works are commenced and/or completed as appropriate, and that the Works are designed and, insofar as the Consultant is responsible for site supervision, carried out in accordance with all such applicable statutory or regulatory requirements, consents, permissions or approvals.

- 2.5 Without prejudice to Clause 11, Where there are rights vested in the Consultant by virtue of Chapter IV (Moral Rights) of Part I of the Copyright Designs and Patents Act 1988 the Consultant hereby irrevocably waives any such rights in relation to the Works or the Services and the Intellectual Property Rights, and shall obtain a written waiver from any of the Consultant's agents or employees who may have or obtain any such rights.

3. ADJUDICATION

- 3.1 Where pursuant to this Contract or Part II of the Housing Grants, Construction and Regeneration Act 1996 a dispute or difference is referred to adjudication, that adjudication shall be governed by and conducted in accordance with the Adjudication Rules of the Technology and Construction Solicitors' Association, which are incorporated herein by reference. The decision of the adjudicator shall be binding on the parties until the dispute or difference is finally determined by a court or by agreement in writing.

4 HEALTH & SAFETY, ETC

- 4.1 The Consultant must comply at all times with all statutory requirements including without limitation the provisions of the Health & Safety at Work etc. Act 1974 ("HS Act") and in particular the Construction (Design and Management) Regulations 2007 ("CDM Regulations") insofar as they affect the Consultant's obligations under this Contract (and without prejudice to the generality of the foregoing):

- (a) Where for the purposes of a Project the Consultant is a **Designer** or **CDM Coordinator** as defined in the CDM Regulations, the Consultant shall comply with the obligations of a Designer, or CDM Coordinator (if other than the Consultant) as appropriate under the CDM regulations; and
- (b) The Consultant shall co-operate fully with the CDM Coordinator (where not the Consultant) and the Principal Contractor as defined in the CDM Regulations appointed under the CDM Regulations; and
- (c) The Consultant shall ensure that the Consultant allocates adequate resources to enable it to comply with its obligations in this Contract and the CDM Regulations; and
- (d) The Consultant shall co-operate with all other persons involved in a Project as designers to consider the prevention of risks and protection of persons who may be exposed to risks;

and the Consultant must not by any act or omission do anything that would cause the Agency to breach or be prosecuted under the HS Act, and/or the CDM Regulations.

- 4.2 The Consultant shall at all times have due regard to the protection and safety of members of the public and their property, adjoining owners and occupiers and their property, visitors to the Project and their property, and compliance with the requirements of the Health and Safety Executive, the HS Act and all rules codes and regulations made thereunder (including the CDM Regulations) and all other legislation and laws relating to the health and safety of workers, and to the undertaking of construction works.

5 PROCUREMENT

- 5.1 Where the Consultant is required to secure the provision of goods and services on behalf of the Agency or as an element of any appointment, this shall be effected in accordance with clauses 2.8 and 2.9.
- 5.2 Where the Consultant is required to secure tenders on behalf of the Agency, this shall be regulated in accordance with clauses 2.8 and 2.9.

6 THIRD PARTIES

- 6.1 At the request of the Agency from time to time, whether before or after the completion of Services it has been instructed to provide in relation to a Project, the Consultant shall execute as deeds and deliver to the Agency within seven days of any such request:
- (a) one or more deeds of warranty in the form set out in Appendix 1 with such amendments as the Agency may reasonably require in favour of a party or parties:
 - (i) providing or intending to provide finance for a Project or a part thereof;
 - (ii) taking or intending to take a lease or underlease of the premises comprising a Project or a part thereof and/or any person providing or intending to provide finance to any such lessee or underlessee;
 - (iii) purchasing or intending to purchase the Site and/or the premises comprising a Project or a part thereof and/or any person providing or intending to provide finance to any such purchaser.
 - (b) In the event the Agency or its successor, assigns or novates this Contract, a deed of warranty in the form set out in Appendix 1 with such amendments as the Agency may reasonably require, in favour of the Agency.
- 6.2 At the request of the Agency from time to time, whether before or after the completion of Services it has been instructed to provide in relation to a Project, the Consultant shall procure that any person performing any sub-contracted work pursuant to clause [] shall execute as deeds and deliver to the Agency within seven days of any such request any or all of the following:
- (a) one or more deeds of warranty in the form set out in Appendix 1 with such amendments as the Agency may reasonably require in favour of a party or parties:
 - (i) providing or intending to provide finance for a Project or a part thereof;
 - (ii) taking or intending to take a lease or underlease of the premises comprising a Project or a part thereof and/or any person providing or intending to provide finance to any such lessee or under lessee;
 - (iii) purchasing or intending to purchase the Site and/or the premises comprising a Project or a part thereof and/or any person providing or intending to provide finance to any such purchaser.

- (b) a deed of warranty in the form set out in Appendix 1 in favour of the Agency with such amendments as the Agency may reasonably require.

6.3 If the Consultant fails to comply with its obligations under paragraphs 6.1 and 6.2 then the Consultant hereby appoints the Agency as the true and lawful attorney for and in the name of and on behalf of the Consultant pursuant to paragraphs 6.1 and 6.2 and to execute and perfect any such deed, and the Consultant hereby agrees to ratify and confirm whatsoever the Agency shall do or purport to do by virtue of this Power of Attorney and declares the power hereby granted to be irrevocable pursuant to section 4 of the Powers of Attorney Act 1971. The Agency shall immediately copy to the Consultant any deed which it executes and perfects on behalf of the Consultant under this paragraph 6.3.

7 SUSPENSION BY CONSULTANT

Where under Part II of the Housing Grants, Construction and Regeneration Act 1996 the Consultant has a right to suspend performance, it may do so only after having given 14 days written notice to the Agency of its intention to so suspend.

8 SITE STAFF

Where the Agency agrees that a Project warrants full or part-time staff to be deployed on Site to inspect the quality and standards of construction the Consultant shall appoint suitably qualified technical staff to be approved by the Agency in writing. Where site staff are not required the Consultant agrees that visiting inspection by the Consultant is adequate for the proper performance of the Services.

SCHEDULE 11

EXEMPTED INFORMATION

Not Applicable

SCHEDULE 12

STAFF VETTING PROCEDURES

Consultant to provide details of its staff vetting procedures

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SCHEDULE 13

SECURITY REQUIREMENTS AND PLAN

1. PRINCIPLES OF SECURITY

- 1.1 The Consultant acknowledges that the Agency places great emphasis on confidentiality, integrity and availability of information and consequently on the security of the Sites and the security for the Consultant System. The Consultant also acknowledges the confidentiality of Agency Data.
- 1.2 The Consultant shall be responsible for the security of the Consultant System and shall at all times provide a level of security which:
 - 1.2.1 is in accordance with Good Industry Practice and Law;
 - 1.2.2 complies with the Security Policy;
 - 1.2.3 meets any specific security threats to the Consultant System; and
 - 1.2.4 complies with ISO/IEC27002 and ISO/IEC27001 in accordance with paragraph 4 of this schedule.
- 1.3 Without limiting paragraph 1.2, the Consultant shall at all times ensure that the level of security employed in the provision of the Consultancy Services is appropriate to maintain the following at acceptable risk levels (to be defined by the Agency):
 - 1.3.1 loss of integrity of Agency Data;
 - 1.3.2 loss of confidentiality of Agency Data;
 - 1.3.3 unauthorised access to, use of, or interference with Agency Data by any person or organisation;
 - 1.3.4 unauthorised access to network elements, buildings, [the Agency Premises,] [the Sites,] and tools used by the Consultant in the provision of the Consultancy Services;
 - 1.3.5 use of the Consultant System or Consultancy Services by any third party in order to gain unauthorised access to any computer resource or Agency Data; and
 - 1.3.6 loss of availability of Agency Data due to any failure or compromise of the Consultancy Services.

2. SECURITY PLAN

- 2.1 The Consultant shall develop, implement and maintain a Security Plan to apply during the Term (and after the end of the Term (as applicable)) which will be approved by the Agency, tested, periodically updated and audited in accordance with this schedule.
- 2.2 **Development**

2.2.1 The Security Plan will set out the security measures to be implemented and maintained by the Consultant in relation to all aspects of the Consultancy Services and all processes associated with the delivery of the Consultancy Services and shall at all times comply with and specify security measures and procedures which are sufficient to ensure that the Consultancy Services comply with:

- (a) the provisions of this schedule;
- (b) [ISO/IEC27002 and ISO/IEC27001];
- (c) the minimum set of security measures and standards required where the system will be handling Protectively Marked or sensitive information, as determined by the Manual of Protective Security (available from the Cabinet Office Security Policy Division (COSPD));
- (d) any other extant national information security requirements and guidance, as provided by IT Security Officers.

2.2.2 The references to standards, guidance and policies set out in paragraph 2.2.1 shall be deemed to be references to such items as developed and updated and to any successor to or replacement for such standards, guidance and policies, from time to time.

2.2.3 In the event of any inconsistency in the provisions of the above standards, guidance and policies, the Consultant should notify the Agency's Representative of such inconsistency immediately upon becoming aware of the same, and the Agency's Representative shall, as soon as practicable, advise the Consultant which provision the Consultant shall be required to comply with.

2.3 Amendment and Revision

2.3.1 The Security Plan will be fully reviewed and updated by the Consultant annually, or from time to time to reflect:

- (a) emerging changes in Good Industry Practice;
- (b) any change or proposed change to the Consultant System, the Consultancy Services and/or associated processes; and
- (c) any new perceived or changed threats to the Consultant System.
- (d) a reasonable request by the Agency

2.3.2 The Consultant will provide the Agency with the results of such reviews as soon as reasonably practicable after their completion and amend the Security Plan at no additional cost to the Agency.

2.3.3 Any change or amendment which the Consultant proposes to make to the Security Plan (as a result of an Agency request or change to Schedule 2 or otherwise shall not be implemented until approved in writing by the Agency.

3. AUDIT AND TESTING

- 3.1 The Consultant shall conduct tests of the processes and countermeasures contained in the Security Plan ("Security Tests") on an [annual] basis or as otherwise agreed by the parties. The date, timing, content and conduct of such Security Tests shall be agreed in advance with the Agency.
- 3.2 The Agency shall be entitled to send a representative to witness the conduct of the Security Tests. The Consultant shall provide the Agency with the results of such tests (in a form approved by the Agency in advance) as soon as practicable after completion of each Security Test.
- 3.3 Without prejudice to any other right of audit or access granted to the Agency pursuant to this Agreement, the Agency shall be entitled at any time and without giving notice to the Consultant to carry out such tests (including penetration tests) as it may deem necessary in relation to the Security Plan and the Consultant's compliance with and implementation of the Security Plan. The Agency may notify the Consultant of the results of such tests after completion of each such test. Security Tests shall be designed and implemented so as to minimise the impact on the delivery of Consultancy Services. If such tests impact adversely on its ability to deliver the Consultancy Services, the Consultant shall be granted relief against any resultant under-performance for the period of the tests.
- 3.4 Where any Security Test carried out pursuant to this paragraph 3 reveals any actual or potential security failure or weaknesses, the Consultant shall promptly notify the Agency of any changes to the Security Plan (and the implementation thereof) which the Consultant proposes to make in order to correct such failure or weakness. The Consultant shall implement such changes to the Security Plan in accordance with the timetable agreed with the Agency or, otherwise, as soon as reasonably possible. For the avoidance of doubt, where the change to the Security Plan to address a non-compliance with the Security Policy or security requirements, the change to the Security Plan shall be at no additional cost to the Agency. For the purposes of this paragraph 3, a weakness means a vulnerability in security and a potential security failure means a possible breach of the Security Plan or security requirements.

4. COMPLIANCE WITH ISO/IEC 27001

- 4.1 The Consultant shall carry out such regular security audits as may be required by the British Standards Institute in order to maintain delivery of the Consultancy Services in compliance with security aspects of ISO 27001 and shall promptly provide to the Agency any associated security audit reports and shall otherwise notify the Agency of the results of such security audits.
- 4.2 If it is the Agency's reasonable opinion that compliance with the principles and practices of ISO 27001 is not being achieved by the Consultant, then the Agency shall notify the Consultant of the same and give the Consultant a reasonable time (having regard to the extent of any non-compliance and any other relevant circumstances) to become compliant with the principles and practices of ISO 27001. If the Consultant does not become compliant within the required time then the Agency has the right to obtain an independent audit against these standards in whole or in part.
- 4.1 If, as a result of any such independent audit as described in paragraph 3 the Consultant is found to be non-compliant with the principles and practices of ISO 27001 then the Consultant shall, at its own expense, undertake those actions required in order to achieve

the necessary compliance and shall reimburse in full the costs incurred by the Agency in obtaining such audit.

5. BREACH OF SECURITY

5.1 Either party shall notify the other immediately upon becoming aware of any Breach of Security including, but not limited to an actual, potential or attempted breach, or threat to, the Security Plan.

5.2 Upon becoming aware of any of the circumstances referred to in paragraph 5.1, the Consultant shall:

5.2.1 immediately take all reasonable steps necessary to:

- (a) remedy such breach or protect the Consultant System against any such potential or attempted breach or threat; and
- (b) prevent an equivalent breach in the future.

Such steps shall include any action or changes reasonably required by the Agency.

5.2.2 as soon as reasonably practicable provide to the Agency full details (using such reporting mechanism as may be specified by the Agency from time to time) of such actual, potential or attempted breach and of the steps taken in respect thereof.

APPENDIX 1

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DATED _____ 200[]

[CONSULTANT] (1)

[BENEFICIARY] (2)

DEED OF WARRANTY

FROM CONSULTANT

RE []

1.2 Without prejudice to clause 1.1, the Consultant undertakes, represents and warrants to the Beneficiary that:

- (a) it has duly performed, and will hereafter duly perform, its obligations under and pursuant to the terms of the Appointment; and
- (b) it owes to the Beneficiary a duty of care in the performance of all the obligations and duties which the Consultant has agreed to carry out under the Appointment.

2. MATERIALS NOT TO BE USED

2.1 The Consultant undertakes, represents and warrants to the Beneficiary that exercising the skill, care and diligence referred to in clause 1.1, that to the extent that it is obliged to select or approve substances or materials for use in the Works:

- (a) it will act in accordance with the guidance contained in the publication, "Good Practice in the Selection of Construction Materials" (1997, by Tony Sheehan, Ove Arup & Partners, published by the British Council for Offices and the British Property Federation); and
- (b) that no other substances or materials generally known to be deleterious at the time of specification or approval, or which are prohibited by the Building Contract or the Appointment, or which do not comply with any applicable British Standard or European Standard or any applicable Code of Practice, shall be specified or approved by the Consultant for use in the Works.

3. INTELLECTUAL PROPERTY

3.1 To the extent that the Consultant retains such documents and the rights therein, the Consultant, as beneficial owner, grants to the Beneficiary (or shall procure that the beneficial owner grants) with full title guarantee an irrevocable, royalty-free, non-exclusive licence in perpetuity to use and to reproduce all drawings, reports, specifications, bills of quantities, calculations or other similar documents ("**Intellectual Property**") utilised by or prepared or provided by or on behalf of the Consultant in connection with the Works for any purpose related to the Works, including without limitation as to the construction, completion, maintenance, selling, letting, promotion, advertisement, reinstatement, rebuilding, renewal, extension or repair of the Works. The licence hereby granted shall include the right for the Beneficiary to grant sub-licences on like terms, and shall be transferable to third parties **PROVIDED** that:

- (a) the Consultant shall not have any liability for any use by the Beneficiary or anyone else of any of the Intellectual Property for any purpose other than that for which the same were prepared by or on behalf of the Consultant; and
- (b) while the Beneficiary shall be entitled to utilise and copy documents comprising the Intellectual Property for an extension of the Works, the Beneficiary shall not be entitled to reproduce the designs contained in the Intellectual Property for any such extension.

3.2 Where there are rights vested in the Consultant by virtue of Chapter IV (Moral Rights) of Part I of the Copyright Designs and Patents Act 1988 the Consultant hereby irrevocably waives any such rights in relation to the Works and the Intellectual Property, and shall obtain a written waiver from any of the Consultant's agents or employees who may have or obtain any such rights.

3.3 The Consultant hereby undertakes that upon payment of its reasonable copying charges to provide the Beneficiary with copies of all the Intellectual Property from time to time required by the Beneficiary.

4. INSURANCE

4.1 Without prejudice to the Consultant's obligations under this Deed or otherwise at law, the Consultant undertakes and warrants that to the extent it has not already done so it will forthwith procure at its own cost professional indemnity insurance for a sum not less than [£2,000,000] in respect of each and every claim (except in respect of any claim for pollution or contamination where the cover shall be in the aggregate) to cover the Consultant's obligations arising from or relating to the Appointment and this Deed.

4.2 The insurance required hereunder is to be with a reputable and authorised insurance company carrying on insurance business in the United Kingdom, not to be subject to any unusual terms or excesses having regard to the cover which is available in the insurance market to competent consultants of the same discipline as the Consultant with a good claims record.

4.3 The Consultant further undertakes and warrants that the insurance cover required hereunder will be maintained from the date of this Deed for a period of twelve years from the certificate of practical completion (or equivalent certificate), and for such period as it may have any liability to the Beneficiary (howsoever arising) under the Building Contract, or if there is no Building Contract at the date of completion of the Services, then 12 years from the date of completion or abandonment of the Services, and for so long as cover remains available in the market at commercially reasonable rates to competent consultants with a good claims record of the same profession as the Consultant.

4.4 The Consultant shall produce to the Beneficiary, whenever requested and without delay such documentary evidence as the Beneficiary may reasonably require and such other satisfactory evidence that the insurance required is in force, and in any event notify the Beneficiary forthwith upon its inability to obtain cover, or the cancellation of the insurance, or its inability to renew the insurance.

4.5 In the event that the Consultant's insurer makes payment to the Consultant in respect of a claim by or on account of the Beneficiary the Consultant shall:

- (a) pay forthwith upon receipt, and without set-off or deduction, any money received from such insurance to the Beneficiary, and in any event; and
- (b) receive and hold any such money from such insurance on trust for the Beneficiary.

5. ASSIGNMENT

5.1 This Deed or any part or any benefit or interest under it may, without the consent of the Consultant, be assigned by the Beneficiary on no more than three occasions.

5.2 The Consultant cannot assign this Deed or any part or any benefit or interest under it.

6 GENERAL

- 6.1 The Consultant shall in relation to clauses 1.1 and 1.2 of this Deed, have no greater liability to the Beneficiary than if the Beneficiary were named as a co-employer under the Appointment, but for which purposes any counterclaim or set-off by the Consultant shall be disregarded.
- 6.2 No action or proceedings for any breach of this Deed shall be commenced against the Consultant after the expiry of 12 years from the date of the practical completion or equivalent of the Works (as certified under the Building Contract).

7 SEPARATE OBLIGATIONS

- 7.1 This Deed shall have effect notwithstanding any dispute, including as to fees, or the failure (howsoever arising) of any other person to enter into a similar Deed with the Beneficiary and/or the Employer and/or the Contractor.
- 7.2 No approval or inspection of the documents prepared by the Consultant in relation to design of the Works and no approval inspection or testing of any of the Works or any attendance at site meetings by or on behalf of the Beneficiary or any other party shall wholly or partly relieve the Consultant from its obligations under this Deed.

8 NOTICE

Any notice given hereunder shall be made in writing and shall be sent by pre-paid first class post, registered post, recorded delivery or delivered by hand addressed to the Beneficiary or the Consultant (as the case may be) at the address or place of business referred to herein or such other address or place of business last notified in writing by the Beneficiary or the Consultant (as the case may be) to the other.

9 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

For the purposes of the Contracts (Rights of Third Parties) Act 1999 the Beneficiary and the Consultant do not intend to confer, and nothing in this Deed shall be construed as conferring, on a third party a benefit or a right to enforce a term of this Deed.

10 GOVERNING LAW AND JURISDICTION

This Deed is governed by English law, and the parties submit to the non-exclusive jurisdiction of the English courts.

11 INTERPRETATION

11.1 In this Deed:

- (a) Reference to "Beneficiary", "Employer" and "Contractor" includes their successors in title and assigns.
- (b) Headings are for reference only and are not to be used for the interpretation of this Deed.
- (c) Nothing shall give rise to any liability by the Beneficiary to the Consultant.

- (d) Reference to a "person" includes any company, individual, firm, corporation, board, partnership, authority or other body.
- (e) If the Consultant is at any time more than one person any reference to the Consultant shall include each such person (and where the Consultant is a partnership each and all its partners) and any covenants and other obligations expressed or implied shall be deemed to be joint and several covenants and obligations of each such person (and in the case of a partnership joint and several covenants and obligations of each and all its partners).
- (f) Words importing one gender shall include any other gender and words importing the singular shall include the plural and vice versa.

IN WITNESS whereof the parties have executed this document as a Deed on the date shown on the first page.

EXECUTED (but not delivered)
 until the date hereof) **AS A DEED**)
 by **[BENEFICIARY]**)
 acting by:)

.....
 Director

.....
 Director/Company Secretary

NOTE:

Where the Consultant is a partnership each partner to seal.

SIGNED (but not delivered until)
 the date hereof) **AS A DEED** by)
[NAME] in the presence of:)

Witness Signature:

Name:

Address:

Occupation:

NOTE:

The words to apply to each partner

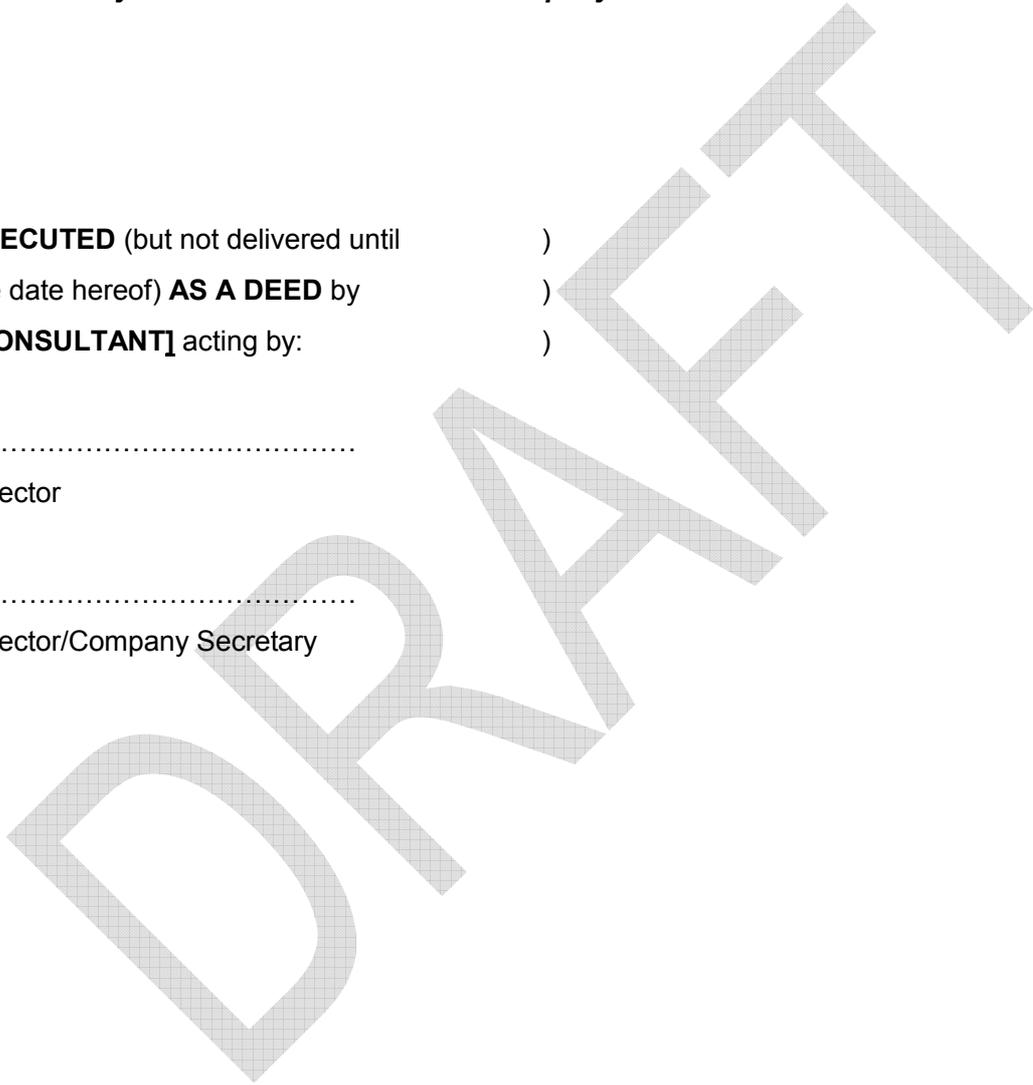
NOTE:

Alternatively where the Consultant is a company

EXECUTED (but not delivered until)
the date hereof) **AS A DEED** by)
[CONSULTANT] acting by:)

.....
Director

.....
Director/Company Secretary



APPENDIX 2
OUTLINE SECURITY PLAN

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APPENDIX 3

SECURITY POLICY

INFORMATION SECURITY POLICY – 3rd PARTIES (Version 1.0)

For the purpose of this policy, '3rd parties' includes any individual or company (including individuals working with the company) to whom access to Homes & Communities Agency's information systems, or information assets, has been granted.

IT IS THE POLICY OF HOMES & COMMUNITIES AGENCY (HCA) THAT 3RD PARTIES, WHO ARE GRANTED ACCESS TO HOMES & COMMUNITIES AGENCY INFORMATION ASSETS, IN ANY FORM, WILL:

1. Protect information provided or made available to them by HCA, from unauthorised access;
2. Ensure the confidentiality of information provided, or made available to them, unless such documents or other materials, data or other information are public knowledge at the time when they are so provided;
3. Ensure the continued integrity of information provided or made available to them; (Safeguarding the accuracy and completeness of information by protecting against unauthorised modification)
4. Adhere to Regulatory and Legislative requirements, including, but not limited to: Data Protection Act 1998, Computer Misuse Act 1990, Regulation of Investigatory Powers Act 2000, and Freedom of Information Act 2000;
5. Ensure that all of its employees who have access to Homes & Communities Agency information assets will have signed a confidentiality document in an agreed format, and are made aware of the requirements of this policy;
6. Report all breaches or weaknesses of information security, actual or suspected, to HCA's Information Security Officer (ISO) for investigation. Where required, the ISO will escalate these internally, and where appropriate, to other relevant third parties;
7. Be aware that monitoring tools will be utilised to monitor all network activity on a regular basis, and independent third parties will be engaged to carry out ethical hacking attacks on a regular basis to ensure the effectiveness of HCA's security implementation against attack
8. Ensure that any access to HCA's information systems is protected with a strong password, and that user access credentials will be held securely, and will not be shared, or disclosed to unauthorised persons
9. Notify HCA's IT Service Desk (01908 353604) in a timely manner, where an employee, or other user, with access to Homes & Communities Agency IT systems, leaves the

organisation, or no longer requires system access, so that such access can be revoked in a timely manner

This Policy has been approved by Sir Bob Kerslake, Chief Executive

Date: 1 December 2008.

It is the responsibility of all third parties, where they have been granted access to Homes & Communities Agency information assets, whether electronically, or by other means, to adhere to the policy.

Failure to comply with this Policy may be deemed as Breach of Agreement.

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