
PROJECT MANAGEMENT AND FULL DESIGN TEAM SERVICES FRAMEWORK SCHEDULE 4

PART B - TEMPLATE ORDER FORM AND TEMPLATE CALL OFF TERMS

TABLE OF CONTENTS

1. Order Form
2. Contract Particulars
3. Contract Conditions
4. Schedules:
 - a. Schedule 1 - Services
 - b. Schedule 2 - Fee Schedule
 - c. Schedule 3 - Third Party Agreements
 - d. Collateral Warranty (Supplier Collateral Warranty in favour of a Beneficiary)- Does not apply
 - e. Collateral Warranty (Key Sub-Consultant Collateral Warranty in favour of a Beneficiary) - Applies
 - f. Parent Company Guarantee - Does not apply
 - g. Novation Agreement
 - h. The Programme
 - i. Key Performance Indicators
 - j. BIM Information Requirements and BIM Model Production and Delivery Table-
 - k. Security Policy
 - l. Business Continuity and Disaster Recovery Plan
 - m. Staff Transfer - Does not apply
 - n. MOD DEFCONS and DEFFORMS- Does not apply
 - o. Collaborative Performance Framework

Date 01/06/2021

ORDER FORM

Between

Government Property Agency (GPA)

And

Tetra Tech Limited

For the provision of

Professional services for design and engineering services -Lot 1

ORDER NUMBER:

THIS CALL OFF CONTRACT is made on 01st of June 2021

PARTIES:

1. **Government Property Agency** whose registered office is at **REDACTED FOIA Section 40, Personal Information**
2. **Tetra Tech Limited** which is a company incorporated in and in accordance with the laws of England and Wales (Company No. **REDACTED FOIA Section 40, Personal Information**) whose registered office address is at **REDACTED FOIA Section 40, Personal Information**

BACKGROUND

- (A) The Minister for the Cabinet Office (the “**Cabinet Office**”) as represented by Crown Commercial Service, a trading fund of the Cabinet Office, without separate legal personality (the “**Authority**”), established a framework for project management and full design team services for the benefit of public sector bodies.
- (B) The Supplier was appointed to the framework and executed the framework agreement (with reference number **RM3741**) which is dated 03 May 2017 (the “**Framework Agreement**”).
- (C) On the *30th March 2021* the Contracting Authority invited the Supplier along with other framework suppliers to tender for the provision of services in accordance with the Call Off Procedure (as defined in the Framework Agreement).]¹
- (D) On the *19th April 2021* the Supplier submitted a tender response and was subsequently selected by the Contracting Authority to perform the Services.]]¹
- (E) The Supplier has agreed to provide the Services in accordance with this Call Off Contract and the Framework Agreement.

IT IS AGREED AS FOLLOWS:

1. The Contract Particulars and Contract Conditions annexed hereto form part of this Call Off Contract.
2. The Contracting Authority will pay the Supplier the Fee and carry out his duties in accordance with the Contract Particulars, Contract Conditions and the Framework Agreement.

¹ Delete paragraphs (C) and (D) if appointment is made by direct award under the Call Off Procedure

3. The Supplier shall perform the Services in accordance with the Contract Particulars, Contract Conditions and the Framework Agreement.
4. This Call Off Contract is the entire agreement between the parties in relation to the Services and supersedes and extinguishes all prior arrangements, understandings, agreements, statements, representations or warranties (whether written or oral) relating thereto.
5. Neither party has been given, nor entered into this Call Off Contract in reliance on any arrangements, understandings, agreements, statements, representations or warranties other than those expressly set out in this agreement.
6. Nothing in clauses 4 or 5 above shall exclude liability in respect of misrepresentations made fraudulently.

Executed under Deed

REDACTED FOIA Section 40, Personal Information

Contract Particulars

Where there is an option in these Contract Particulars for a Clause to apply or not apply or for a deliverable to be required or not required and the relevant selection is not made, then the relevant provision shall be deemed to be 'not applies' or 'not required'.

1	<p><u>PROJECT</u></p> <p>1.1 The Project is: Professional services for design and engineering services -Lot 1</p>												
2	<p><u>SERVICES</u></p> <p>2.1 The Services to be provided by the Supplier is to provide consultants/professionals for the below services as per the job description attached in Schedule 1</p> <table><tr><td>Workplace Design Manager</td></tr><tr><td>Senior Workplace Designer</td></tr><tr><td>Sustainability Manager</td></tr><tr><td>Physical Security Engineer (DV)</td></tr><tr><td>Physical Security Systems Implementation & Integration Engineer (DV)</td></tr><tr><td>MEP Engineer</td></tr><tr><td>Compliance & Handover Manager</td></tr><tr><td>Fire Manager</td></tr><tr><td>Fire Engineer</td></tr><tr><td>CDM Lead</td></tr><tr><td>Design Standards Manager</td></tr><tr><td>Cost Manager</td></tr></table>	Workplace Design Manager	Senior Workplace Designer	Sustainability Manager	Physical Security Engineer (DV)	Physical Security Systems Implementation & Integration Engineer (DV)	MEP Engineer	Compliance & Handover Manager	Fire Manager	Fire Engineer	CDM Lead	Design Standards Manager	Cost Manager
Workplace Design Manager													
Senior Workplace Designer													
Sustainability Manager													
Physical Security Engineer (DV)													
Physical Security Systems Implementation & Integration Engineer (DV)													
MEP Engineer													
Compliance & Handover Manager													
Fire Manager													
Fire Engineer													
CDM Lead													
Design Standards Manager													
Cost Manager													

3	<p><u>TIMESCALES</u></p> <p>3.1 The Programme is: The contract will run till 31st of May 2022 with the option of extending it further by 1 year.</p>												
4	<p><u>FEES AND PAYMENT</u></p> <p>4.1 The Basic Fee is a daily rate in accordance with Schedule 2 (Fees and Payment).</p> <p>4.2 The Final Date For Payment of an instalment of the Fee is: 23 days after the Due Date for payment.</p> <p>4.3 The Due Date for Payment of an instalment of the Fee is 7 days after the date of receipt of the Supplier’s invoice.</p> <p>4.4 The interest rate for late payment is 2% per annum above the Bank of England base rate in force from time to time]</p>												
5	<p><u>PERSONNEL</u></p> <p>REDACTED FOIA Section 40, Personal Information</p>												
6	<p><u>NOTICES</u></p> <p>6.1 Notices under this Call Off Contract shall be submitted to:</p> <table><tr><td>To the Contracting Authority</td><td>To the Supplier</td></tr></table> <p>REDACTED FOIA Section 40, Personal Information</p>	To the Contracting Authority	To the Supplier										
To the Contracting Authority	To the Supplier												
7	<p><u>INSURANCE</u></p> <p>7.1 The Supplier shall maintain the following insurances in accordance with Clause 18 of this Call Off Contract:</p> <table><tr><th>Insurance</th><th>Level of cover</th><th>Period following completion of the Services or earlier termination</th></tr><tr><td>Public Liability Insurance</td><td>As required under Framework Schedule 14 (Annex 1 - Part A)</td><td>12 months</td></tr><tr><td>Employer’s Liability Insurance</td><td>As required under Framework Schedule 14 (Annex 1 - Part C)</td><td>12 months</td></tr><tr><td>Professional Indemnity Insurance</td><td>£10,000,000 in respect of each claim without limit to the number of claims except for claims arising out of pollution or contamination, where the minimum amount of cover applies in the aggregate in any one</td><td>12 years</td></tr></table>	Insurance	Level of cover	Period following completion of the Services or earlier termination	Public Liability Insurance	As required under Framework Schedule 14 (Annex 1 - Part A)	12 months	Employer’s Liability Insurance	As required under Framework Schedule 14 (Annex 1 - Part C)	12 months	Professional Indemnity Insurance	£10,000,000 in respect of each claim without limit to the number of claims except for claims arising out of pollution or contamination, where the minimum amount of cover applies in the aggregate in any one	12 years
Insurance	Level of cover	Period following completion of the Services or earlier termination											
Public Liability Insurance	As required under Framework Schedule 14 (Annex 1 - Part A)	12 months											
Employer’s Liability Insurance	As required under Framework Schedule 14 (Annex 1 - Part C)	12 months											
Professional Indemnity Insurance	£10,000,000 in respect of each claim without limit to the number of claims except for claims arising out of pollution or contamination, where the minimum amount of cover applies in the aggregate in any one	12 years											

		period of insurance and except for claims arising out of asbestos where a lower level may apply in the aggregate] (£10m for Lot 1, £5m for other Lots)													
8	<u>LIABILITY</u> 8.1 The Supplier’s limitation of liability under Clause 23 of the Call Off Contract is: £ 10,000,000 for each and every claim 8.2 The liability period in Clause 24 (Liability Period) and Clause 5 (Records, Audit Access and Open Book Data) of the Call Off Contract is: 12 years from completion of the Services														
9	<u>COLLATERAL AND NOVATION AGREEMENTS</u> 9.1 The Key Sub-Consultants are: <table><tr><th>Discipline</th><th>Name (if known)</th></tr><tr><td colspan="2"></td></tr></table> 9.2 The Supplier shall procure each of the following documents in the form annexed to the Call Off Contract: <table><tr><th>Document</th><th>Particulars</th></tr><tr><td>Collateral Warranty/ Warranties from the Supplier in favour of</td><td>Not Required</td></tr><tr><td>Collateral Warranty/Warranties from Key Sub-Consultants in favour of</td><td>Not Required</td></tr><tr><td>Parent Company Guarantee</td><td>Not Required</td></tr></table> 9.3 Clause 14.7 (Novation) does not apply			Discipline	Name (if known)			Document	Particulars	Collateral Warranty/ Warranties from the Supplier in favour of	Not Required	Collateral Warranty/Warranties from Key Sub-Consultants in favour of	Not Required	Parent Company Guarantee	Not Required
Discipline	Name (if known)														
Document	Particulars														
Collateral Warranty/ Warranties from the Supplier in favour of	Not Required														
Collateral Warranty/Warranties from Key Sub-Consultants in favour of	Not Required														
Parent Company Guarantee	Not Required														
10	<u>DISPUTE RESOLUTION</u> 10.1 The nominating body for the Adjudicator is: the Institution of Civil Engineers 10.2 The dispute resolution mechanism is: Arbitration. If neither, or both are selected, then Litigation applies. 10.3 If arbitration is selected, then: <ul style="list-style-type: none">• The arbitration procedure is the London Court of International Arbitration Rules;• The number of arbitrators shall be one• The place where arbitration is to be held is London• The language to be used in the arbitration proceedings shall be English• The governing law of the contract shall be the substantive law of England and Wales														

	<ul style="list-style-type: none"> If the parties cannot agree the identity of the arbitrator then the nominating body shall be: Institution of Civil Engineers
11	<p><u>KEY PERFORMANCE INDICATORS</u></p> <p>11.1 Clause 33 (Key Performance Indicators) applies</p>
12	<p><u>BUILDING INFORMATION MODELLING (“BIM”)</u></p> <p>12.1 Clause 34 (Building Information Modelling) does not apply</p> <p>12.2 A BIM Protocol does not apply.</p> <p>12.3 If a BIM Protocol does <u>not</u> apply:</p> <ul style="list-style-type: none"> The BIM Information Manager REDACTED FOIA Section 40, Personal Information The BIM Information Requirements are set out in document B2IM-FAG-XX-XX-SP-IM-000001 dated 24th May 2021 appended as a Schedule to this Call Off Contract The BIM Model Production and Delivery Table is the building information model production and delivery table appended as a Schedule to this Call Off Contract;
13	<p><u>SECURITY REQUIREMENTS</u></p> <p>13.1 Clause 26 (Security Requirements) applies</p> <p>13.2 If Clause 26 (Security Requirements) applies, the Security Policy is to be agreed.</p>
14	<p><u>PROTECTION OF CONTRACTING AUTHORITY DATA</u></p> <p>14.1 Clause 28 (Protection of Contracting Authority Data) applies</p> <p>14.2 If Clause 28 (Protection of Contracting Authority Data) applies, the Business Continuity and Disaster Recovery Plan is to be agreed</p>
15	<p><u>STAFF TRANSFER</u></p> <p>15.1 Clause 31 (Staff Transfer) does not apply</p>
16	<p><u>MOD ADDITIONAL CLAUSES AND ACCESS TO MOD SITES</u></p> <p>16.1 Clause 32 (MOD Additional Clauses and Access to MOD Sites) does not apply</p> <p>16.2 If Clause 32 applies, then the MOD Terms and Conditions are listed in the MOD DEFCONS and DEFFORMS Schedule appended to this Call Off Contract and they shall apply to this Call Off Contract.</p>
17	<p><u>QUALITY MANAGEMENT POINTS</u></p>

	17.1 Clause 35 (Quality Management Points) applies
18	<p>COLLABORATIVE PERFORMANCE FRAMEWORK</p> <p>• OMIT DO NOT USE</p> <p>18.1 Clause 36 (Collaborative Performance Framework) [applies/ does not apply]</p> <p>18.2 If Clause 36 applies:</p> <ul style="list-style-type: none"> • The Collaborative Performance Framework is: [insert document reference and attach as a Schedule to this Call Off Contract] • The Failure Level is: [insert failure level]
19	<p>LAW OF THE CONTRACT ALTERNATIVE CLAUSES</p> <p>19.1 Clause 40.1 (Scots Law) does not apply</p> <p>19.2 Clause 40.2 (Northern Ireland Law) does not apply</p>

Contract Conditions

1. INTERPRETATION

1.1 The definitions and rules of interpretation in this clause apply to the whole of this agreement.

“Additional Fee” the amount payable by the Contracting Authority to the Supplier for the Additional Services under this agreement;

“Additional Services” the services set out in Part 2 of Schedule 1 or otherwise agreed in writing by the Contracting Authority and Supplier;

“Auditor” means:

- (a) the Customer’s internal and external auditors;
- (b) the Customer’s statutory or regulatory auditors;
- (c) the Comptroller and Auditor General, their staff and/or any appointed representatives of the National Audit Office;
- (d) HM Treasury or the Cabinet Office;
- (e) any party formally appointed by the Customer to carry out audit or similar review functions; and
- (f) successors or assigns of any of the above;

“Basic Fee” the amount payable by the Contracting Authority to the Supplier for the Core Services under this agreement;

“Beneficiary” the Contracting Authority, any Contractor, any Purchaser, any Tenant, any Landowner and any Funder;

“BIM Documents” the BIM Model Production and Delivery Table and the BIM Information Requirements;

“BIM Information Manager” the person identified in the Contract Particulars as such;

“BIM Information Requirements” the document identified in the Contract Particulars as such;

“BIM Model Production and Delivery Table”	the document identified in the Contract Particulars as such;
“BIM Protocol”	the building information modelling protocol appended as a Schedule to this agreement (if any);
“Building Contract”	a building contract to be entered into between the Contracting Authority and the Contractor in relation to the Project;
“Business Continuity and Disaster Recovery plan”	means the document referred to as the ‘Business Continuity and Disaster Recovery Plan’ in the Contract Particulars;
“CDM Regulations”	the Construction (Design and Management) Regulations 2015;
“Call Off Commencement Date”	the date when the Supplier begins performing the Services, regardless of the date of this agreement;
“Call Off Contract”	the Order Form to which these Contract Conditions are appended, together with the Contract Particulars and these Contract Conditions;
“Call Off Contract Period”	the period beginning on the Call Off Commencement Date and expiring on completion of the Services;
“Change of Control”	a change of control within the meaning of Section 450 of the Corporation Tax Act 2010;
“Collateral Warranty”	a collateral warranty in the relevant form as a Schedule to this agreement;
“Commercially Sensitive Information”	<p>means the Supplier’s Confidential Information listed in the Framework Agreement at Schedule 17 (Commercially Sensitive Information) comprised of commercially sensitive information:</p> <p>(a) relating to the Supplier, its intellectual property rights or its business or information which the Supplier has notified in writing to the Contracting Authority that, if disclosed by the Contracting Authority, would cause the Supplier</p>

significant commercial disadvantage or material financial loss; and

(b) that constitutes a trade secret;

“Confidential Information”

is any information, however it is conveyed, that relates to the business, personnel, affairs, developments, trade secrets, ideas, concepts, schemes, information, knowledge, techniques, methodology, and without limiting the above anything else in the nature of know-how, together with all information derived from any of the above, and any other information clearly designated as being confidential (whether or not it is marked “confidential”) or which ought reasonably to be considered to be confidential.

“Construction Products Regulations”

the Construction Products Regulations 2013 (SI 2013/1387), the Construction Products Regulation (305/2011/EU), the Construction Products Regulations 1991 (SI 1991/1620) and the Construction Products Directive (89/109/EC);

“Contractor”

the building contractor employed under the Building Contract;

“Contract Conditions”

these Contract Conditions appended to the Order Form;

“Contract Particulars”

the Contract Particulars appended to the Order Form;

“Contracting Authority Data”

means:

(a) the data, Material, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, including any Contracting Authority’s Confidential Information, and which:

(i) are supplied to the Supplier by or on behalf of the Contracting Authority; or

(ii) the Supplier is required to generate, process, store or transmit pursuant to this agreement; or

	(b) any Personal Data for which the Contracting Authority is the Data Controller;
“Contracting Authority’s Representative”	the person identified in the Contract Particulars, who may be replaced from time to time under clause 7;
“Control”	means control in either senses defined in sections 450 and 1124 of the Corporation Tax Act 2010;
“Core Services”	the services set out in Part 1 of Schedule 1 and any services required from the Supplier by a Third Party Agreement;
“Data Controller”	has the meaning given to it in the Data Protection Act 1998 as amended from time to time;
“Data Protection Legislation”	means the Data Protection Act 1998, as amended from time to time and all applicable laws and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner or relevant Government department in relation to such legislation;
“DOTAS”	the Disclosure of Tax Avoidance Schemes rules which require a promoter of tax schemes to tell HM Revenue and Customs of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 7 of the Finance Act 2004 and as extended to National Insurance Contributions by the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012, SI 2012/1868 made under s.132A Social Security Administration Act 1992;
“Environmental Information Regulations or EIRs”	means the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government department in relation to such regulations;
“Fee”	the Basic Fee and the Additional Fee (if any);

“FOIA”	means the Freedom of Information Act 2000 as amended from time to time and any subordinate legislation made under that Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government department in relation to such legislation;
“Fraud”	means any offence under legislation creating offences in respect of fraudulent acts (including the Misrepresentation Act 1967) or at common law in respect of fraudulent acts including acts of forgery;
“Funder”	means a person providing finance in connection with the Project;
“General Anti-Abuse Rule”	<ul style="list-style-type: none"> (a) the legislation in Part 5 of the Finance Act 2013; and (b) any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements to avoid national insurance contributions;
“Guarantor”	means the person identified as such in the Contract Particulars;
“Halifax Abuse Principle”	the principle explained in the CJEU Case C- 255/02 Halifax and others;
“Information”	has the meaning given under section 84 of the Freedom of Information Act 2000 as amended from time to time;
“Insolvent”	<p>a party is insolvent if:</p> <ul style="list-style-type: none"> (a) it suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply; or (b) it commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (being a company) for the sole purpose of a scheme for a solvent

amalgamation of that party with one or more other companies or the solvent reconstruction of that party; or

- (c) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or on connection with its winding up (being a company) other than for the sole purpose of a scheme for its solvent amalgamation with one or more other companies or its solvent reconstruction; or
- (d) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed over it (being a company); or
- (e) the holder of a qualifying floating charge over its assets (being a company) has become entitled to appoint or has appointed, an administrative receiver; or
- (f) a person becomes entitled to appoint a receiver over its assets or a receiver is appointed over its assets; or
- (g) being an individual, it is the subject of a bankruptcy petition or order; or
- (h) a creditor or encumbrancer of it attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within ten Working Days; or
- (i) any event occurs, or proceeding is taken, in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in paragraphs (a) to (h) above (inclusive); or
- (j) it suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business;

“Key Personnel”

the Supplier’s personnel, identified in the Contract Particulars as such and as may be removed or replaced from time to time under clause 7;

“Key Sub-Consultants”	means those sub-consultants identified as such in the Contract Particulars;
“Key Sub-Contractors”	means any sub-contractor which is listed in Framework Schedule 7 (Key Sub-Contractors);
“Landowner”	means any party who holds a freehold or leasehold interest in any land or property forming part of the Project;
“Law”	means any legislation or any judgement of a relevant court of law;
“Material”	all designs, drawings, models, plans, specifications, design details, photographs, brochures, reports, feasibility studies, planning submissions, notes of meetings, CAD materials, calculations, data, databases, schedules, programmes, bills of quantities, budgets and any other materials provided in connection with the Project and all updates, amendments, additions and revisions to them and any works, designs, or inventions incorporated or referred to in them for any purpose relating to the Project;
“Novation Agreement”	means the template deed of novation appended as a Schedule to this agreement;
“Occasion of Tax Non-Compliance”	<p>(a) any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 is found on or after April 2013 to be incorrect as a result of:</p> <p>(i) a Relevant Tax Authority successfully challenging the Supplier under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle;</p> <p>(ii) the failure of an avoidance scheme which the Supplier was involved in, and which was, or should have been, notified to a Relevant Tax Authority under the DOTAS or any equivalent or similar regime;</p>

	(b) the Supplier's tax affairs give rise on or after 1 April 2013 to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Call Off Commencement Date or to a penalty for civil fraud or evasion.
"Parent Company Guarantee"	a parent company guarantee in the template form attached to this agreement from the Guarantor and executed as a deed;
"Permitted Uses"	without limitation the design, construction, completion, reconstruction, modification, refurbishment, development, maintenance, facilities management, funding, disposal, letting, fitting-out, advertisement, decommissioning, demolition, reinstatement, extension, building information modelling and repair of any part of or the whole of the Project;
"Personal Data"	has the meaning given to it in the Data Protection Act 1998 as amended from time to time;
"Processing"	has the meaning given to it in the Data Protection Legislation but, for the purposes of this agreement, it shall include both manual and automatic processing and "Process" and "Processed" shall be interpreted accordingly;
"Professional Team"	the Supplier and any designers appointed by the Contracting Authority in relation to the Project and other organisations or individuals notified by the Contracting Authority to the Supplier;
"Programme"	the programme to be agreed by the Supplier and the Contracting Authority, setting out key dates and time periods for (a) completing key activities; (b) issuing Material and other documents; and (c) providing information relating to the Project, as may be adjusted from time to time by agreement between the Contracting Authority and the Supplier;
"Prohibited"	any materials, equipment, products or kits that are generally accepted, or suspected, in the construction industry at the relevant time as: (a) posing a threat to the health and safety of any person;

- (b) posing a threat to the structural stability, performance or physical integrity of the Project or any part or component of the Project;
- (c) reducing, or possibly reducing, the normal life expectancy of the Project or any part or component of the Project;
- (d) not being in accordance with any Law, British Standard, relevant code of practice, good building practice or any applicable agrément certificate issued by the British Board of Agrément; or
- (e) having been supplied or placed on the market in breach of the Construction Products Regulations;

“Prohibited Act” means:

- (a) to directly or indirectly offer, promise or give any person working for or engaged by the Contracting Authority or any other public body a financial or other advantage to:
 - (i) induce that person to perform improperly a relevant function or activity; or
 - (ii) reward that person for improper performance of a relevant function or activity;
- (b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this agreement;
- (c) committing any offence:
 - (i) under the Bribery Act 2010; or
 - (ii) under legislation creating offences concerning Fraud; or
 - (iii) at common law concerning Fraud; or

- (iv) committing (or attempting or conspiring to commit) Fraud
- (v) any activity, practice or conduct which would constitute one of the offences listed under (c) above if such activity, practice or conduct had been carried out in the UK;

“Project”	means the project described in the Contract Particulars;
“Project Lead”	means the member of the Professional Team notified by the Contracting Authority to the Supplier as the lead consultant, if any, or such other replacement lead consultant that may be appointed by the Contracting Authority from time to time and notified to the Supplier;
“Property”	means property described in the Contract Particulars;
“Purchaser”	any party (other than any Tenant) who may enter into any agreement for the purchase of any freehold or leasehold interest in the property comprising the Project;
“Relevant Requirements”	means all applicable legislation relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State for Justice pursuant to section 9 of the Bribery Act 2010;
“Relevant Tax Authority”	means HM Revenue and Customs, or, if applicable, a tax authority in the jurisdiction in which the Supplier is established;
“Request for Information”	means a request for information or an apparent request relating to this agreement or the provision of the Services or an apparent request for such information under the FOIA or the EIRs;
“Required Standard”	the reasonable skill, care and diligence to be expected of a qualified and experienced member of the Supplier’s profession undertaking the Services in relation to projects of a similar size, scope, complexity and character to the Project;
“Security Policy”	means the Contracting Authority’s security policy, if any, identified in the Contract Particulars;

“Services”	the Core Services and the Additional Services (if any);
“Staff Transfer Schedule”	the Staff Transfer Schedule appended as a Schedule to this agreement;
“Supplier Personnel”	all directors, officers, employee, agents, consultants and contractors of the Supplier and/or of any sub-consultant engaged in the performance of the Supplier’s obligations under this agreement including the Supplier’s Representative;
“Supplier’s Representative”	the person identified in the Contract Particulars as the Supplier’s Representative who may be replaced from time to time under clause 7;
“Tenant”	any party who may enter into any lease or agreement for the grant of a leasehold interest in the whole or any part of the Project;
“Third Party Agreements”	any agreement between the Contracting Authority and a third party relating to the Project and which: <ul style="list-style-type: none"> (a) a copy, or relevant extract, is attached at Schedule 3; or (b) the Contracting Authority notifies the Supplier in writing after the date of this agreement enclosing a copy or relevant extracts.
“Transferring Customer Employees”	has the meaning given in the Staff Transfer Schedule;
“VAT”	value added tax imposed by the Value Added Tax Act 1994, or any similar tax in addition to or replacing it from time to time.
“Working Day”	a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business;

- 1.2 Terms defined in the Order Form to which these Contract Conditions are annexed apply to this agreement. Capitalized terms not defined in this agreement have the meaning given to them in the Framework Agreement. Terms for which no interpretation is provided shall have the meaning ordinarily given to them by the legal profession where appropriate but otherwise shall be interpreted in accordance with their dictionary meaning.

- 1.3 Reference to 'this agreement' means this Call Off Contract.
- 1.4 Clause, Schedule and paragraph headings shall not affect the interpretation of this agreement.
- 1.5 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors or permitted assigns.
- 1.6 The Schedules form part of this agreement and shall have effect as if set out in full in the body of this agreement. Any reference to this agreement includes the Schedules.
- 1.7 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.8 Unless the context otherwise requires, words in the singular shall include the plural and in the plural include the singular.
- 1.9 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.10 A reference to any party shall include that party's personal representatives, successors and permitted assigns.
- 1.11 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.
- 1.12 A reference to legislation is a reference to all legislation having effect in the United Kingdom from time to time, including:
- (a) directives, decisions and regulations of the Council or Commission of the European Union;
 - (b) acts of Parliament;
 - (c) orders, regulations, consents, licences, notices and bye-laws made or granted;
 - (i) under any act of Parliament; or
 - (ii) under any directive, decision or regulation of the Council or Commission of the European Union; or
 - (iii) By a local authority or by a court of competent jurisdiction; and

- (d) any mandatory codes of practice issued by a statutory body.
- 1.13 A reference to legislation is a reference to that legislation as amended, modified, consolidated, re-enacted or replaced from time to time and to all subordinate legislation made under it from time to time.
- 1.14 Any reference to a party's consent or approval being required is to a consent or approval in writing, which must be obtained before the relevant action is taken or event occurs.
- 1.15 A reference to writing or written excludes faxes but includes e-mail (save where specifically stated otherwise).
- 1.16 Where the words include(s), including or in particular are used in this agreement, they are deemed to have the words "without limitation" following them.
- 1.17 The documents forming this agreement shall be read and taken together. In the event and to the extent only of any conflict or inconsistency in this agreement, the following order of precedence shall prevail:
- (a) the Order Form
 - (b) the Contract Particulars
 - (c) the Contract Conditions (excluding the Schedules)
 - (d) the Framework Agreement
 - (e) Schedule 1 (Services)
 - (f) Schedule 2 (Fees and Payment)
 - (g) where it is stated in the Contract Particulars that Clause 32 (MOD Additional Clauses and Access to MOD Sites) applies, the MOD DEFCONS and DEFFORMS Schedule
 - (h) other Schedules

2. AGREEMENT

- 2.1 The Contracting Authority appoints the Supplier to carry out the Services, subject to and upon the terms of this agreement and the Framework Agreement. This agreement takes effect from the Call Off Commencement Date.

3. SUPPLIER'S OBLIGATIONS

- 3.1 The Supplier warrants and undertakes that it shall comply with the terms of this agreement and the terms of the Framework Agreement.
- 3.2 The Supplier warrants and undertakes that it shall, in the performance of the Services:
- (a) carry out and fulfil, in all respects, its duties under the CDM Regulations in relation to the Project;
 - (b) where the Services include the carrying out of any design of the Project not, without the Contracting Authority's written consent, make any change to the designs or specifications for the Project after they have been settled or approved;
 - (c) where the Services include the administration of the Building Contract, act fairly and impartially when exercising any power to issue certificates and award extensions of time under the relevant Building Contract;
 - (d) comply with any Contracting Authority policies notified to the Supplier prior to the Call Off Commencement Date in force from time to time save that where an Contracting Authority policy comes into force after the date of this agreement, the Supplier is not required to act, in relation to such Contracting Authority policy, in any way that may increase its liability in excess of that which was reasonably foreseeable at the Call Off Commencement Date.
- 3.3 The Supplier warrants and undertakes that it shall exercise the Required Standard:
- (a) when performing the Services;
 - (b) to the extent that the Services include the carrying out of any design of the Project, not to specify for use anything in the Project which is Prohibited at the time of specification or use;
 - (c) to comply with (and to see that the completed Project complies with) Law;
 - (d) to perform the Services and prepare all Material for those elements of the Project for which the Supplier is responsible according to the Programme or, in the absence of a Programme, in sufficient time to facilitate the efficient progress of the Project; and
 - (e) to see that the Project complies with all planning agreements, permissions and conditions and any other applicable consents;

- (f) not to cause or contribute to any breach by the Contracting Authority of any Third Party Agreement provided that, where the Contracting Authority notifies the Supplier of a Third Party Agreement after the date of this agreement, the Supplier is not required to act in any way that may increase its liability in excess of that which was reasonably foreseeable at the Call Off Commencement Date; and
- (g) where it is stated in the Contract Particulars that Clause 34 (Building Information Modelling) applies, to comply with the BIM Documents.

3.4 The Supplier's duties or liabilities under this agreement shall not be negated or diminished by:

- (a) any approval or inspection of:
 - (i) the Project; or
 - (ii) any designs or specifications for the Project; or
 - (b) any testing of any work, goods, materials, plant or equipment; or
 - (c) any omission to approve, inspect or test,
- by or on behalf of the Contracting Authority.

4. CO-OPERATION AND CO-ORDINATION

The Supplier shall:

- a) liaise with and cooperate with other members of the Professional Team;
- b) comply with the reasonable instructions of the Project Lead; and
- c) notify the Contracting Authority if its performance of the Services is delayed, or is likely to be delayed, setting out the cause of the delay and its likely duration.

5. RECORDS, AUDIT ACCESS AND OPEN BOOK DATA

5.1 The Supplier shall keep and maintain for the liability period stated in the Contract Particulars full and accurate records and accounts of the operation of this agreement including the Services provided under it, any sub-contracts and the amounts paid by the Contracting Authority.

5.2 The Supplier shall:

- (a) keep the records and accounts referred to in Clause 5.1 in accordance with Required Standard and Law; and
- (b) afford any Auditor access to the records and accounts referred to in Clause 5.1 at the Supplier's premises and/or provide records and accounts (including copies of the Supplier's published accounts) or copies of the same, as may be required by any of the Auditors from time to time during the Call Off Contract Period and the liability period stated in the Contract Particulars in order that the Auditor(s) may carry out an inspection to assess compliance by the Supplier and/or its sub contracts of any of the Supplier's obligations under this agreement including in order to:
 - (i) verify the accuracy of the Fee and any other amounts payable by the Contracting Authority under this agreement (and proposed or actual variations to them in accordance with this agreement);
 - (ii) verify the costs of the Supplier (including the costs of all sub-contractors and any third party suppliers) in connection with the provision of the Services;
 - (iii) identify or investigate an actual or suspected Prohibited Act, impropriety or accounting mistakes or any breach or threatened breach of security and in these circumstances the Contracting Authority shall have no obligation to inform the Supplier of the purpose or objective of its investigations;
 - (iv) obtain such information as is necessary to fulfil the Contracting Authority's obligations to supply information for parliamentary, ministerial, judicial or administrative purposes including the supply of information to the Comptroller and Auditor General;
 - (v) enable the National Audit Office to carry out an examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Contracting Authority has used its resources;
- (c) Subject to the Supplier's rights in respect of Confidential Information, the Supplier shall on demand provide the Auditor(s) with all reasonable co-operation and assistance in:
 - (i) all reasonable information requested by the Contracting Authority within the scope of the audit;

- (ii) reasonable access to sites controlled by the Supplier and to any Supplier equipment used in the provision of the Services; and
 - (iii) access to the Supplier Personnel.
- (d) The parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Clause 5, unless the audit reveals a default by the Supplier in which case the Supplier shall reimburse the Contracting Authority for the Contracting Authority's reasonable costs incurred in relation to the audit.
- (e) This Clause does not constitute a requirement or agreement for the purposes of section 6(3)(d) of the National Audit Act 1983 for the examination, certification or inspection of the accounts of the Supplier and the carrying out of an examination under Section 6(3)(d) of the National Audit Act 1983 in relation to the Supplier is not a function exercisable under this agreement.

6. SUPPLIER'S AUTHORITY

Unless the Contracting Authority has provided its prior written approval the Supplier has no authority to:

- (a) make (or instruct the Contractor or any member of the Professional Team to make) any material alteration to the Project or its Services;
- (b) vary, terminate or waive compliance with the terms of:
 - (i) any Building Contract;
 - (ii) the appointment of any member of the Professional Team; or
 - (iii) any Third Party Agreement;
- (c) enter into any contract, commitment or undertaking on behalf of the Contracting Authority; or
- (d) without prejudice to clause 3.2(c), issue any instruction or notice under any Building Contract, the appointment of any member of the Professional Team or any Third Party Agreement that:
 - (i) delays any of the Project; or
 - (ii) increases the cost of any of the Project.

7. REPRESENTATIVES AND PERSONNEL

- 7.1 The Contracting Authority's Representative has full authority to act on the Contracting Authority's behalf in connection with this agreement, provided that the Contracting Authority's Representative shall have no authority to:
- (a) terminate the Supplier's engagement under this agreement; or
 - (b) agree or instruct any Additional Services that increase the Fee by more than the sums stated in the Contract Particulars.
- 7.2 The Supplier shall ensure that the Supplier's Representative and the Key Personnel:
- (a) devote sufficient time and attention fulfilling their respective roles;
 - (b) are not removed without the Contracting Authority's prior written consent (such consent not to be unreasonably withheld or delayed), except in the event of (i) death; (ii) permanent incapacity; (iii) an illness making the relevant individual unavailable for work; or (iv) the relevant individual leaving the Supplier's employment.
- 7.3 The Contracting Authority may at any time instruct the Supplier to remove any person engaged in performing the Services if, in the Contracting Authority's reasonable opinion and after discussion with the Supplier's Representative, that person's performance or conduct is or continues to be unsatisfactory. The Supplier shall remove any such person promptly.
- 7.4 Any personnel appointed by the Supplier to replace staff removed under clause 7.2(b) or clause 7.3 shall be subject to the written approval of the Contracting Authority (such approval not to be unreasonably withheld or delayed).

8. REMUNERATION

- 8.1 The Contracting Authority shall pay:
- (a) the Basic Fee as full remuneration for the Core Services; and
 - (b) the Additional Fee as full remuneration for any Additional Services.
- 8.2 The Fee shall be the Supplier's entire remuneration under this agreement.
- 8.3 Unless specifically excluded in Schedule 2 (Fees and Payment) any and all expenses and disbursements that the Supplier incurs in connection with the provision of the Services are deemed to be included in the Fee. Any expenses or disbursements

payable by the Contracting Authority to the Supplier shall be included within the next invoice after they are incurred and paid by the Contracting Authority in accordance with clause 9.1.

- 8.4 The Contracting Authority shall pay the Supplier any VAT properly chargeable on the Services. Any amount expressed as payable to the Supplier under this agreement is exclusive of VAT unless stated otherwise.

9. PAYMENT

- 9.1 Subject to clause 33, the Basic Fee shall be calculated and paid in instalments in accordance with Schedule 2 (Fees and payment). If not set out in Schedule 2 (Fees and payment), the Fee shall be paid at intervals of not less than one month, beginning one month after the Supplier begins performing the Services.
- 9.2 The Supplier shall submit to the Contracting Authority an invoice for each instalment of Fee, together with timesheets and any supporting documents that are reasonably necessary to check the invoice. The invoice and supporting documents (if any) shall specify the sum that the Supplier considers will become due on the payment due date in respect of the instalment of the Fee, and the basis on which that sum is calculated.
- 9.3 Payment shall be due on the date stated in the Contract Particulars.
- 9.4 No later than five days after payment becomes due, the Contracting Authority shall notify the Supplier of the sum that the Contracting Authority considers to have been due at the payment due date in respect of the payment and the basis on which that sum is calculated (the Payment Notice). Where clause 33 applies, the Contracting Authority shall adjust the sum due in accordance with the Key Performance Indicator Schedule.
- 9.5 The final date for payment shall be the date stated in the Contract Particulars.
- 9.6 Subject to clause 9.10 and unless the Contracting Authority has served a notice under clause 9.7, the Contracting Authority shall pay the Supplier the sum referred to in the Payment Notice under clause 9.4 (or, if the Contracting Authority has not served a Payment Notice under clause 9.4, the sum referred to in the invoice referred to in clause 9.2) (in this clause 9, the notified sum) on or before the final date for payment of each invoice.
- 9.7 Not less than five days before the final date for payment (in this clause 9, the prescribed period), the party who is to make payment, the “payer”, may give to the other party notice that it intends to pay less than the notified sum (in this clause 9, a pay less notice). Any pay less notice shall specify:

- (a) the sum that the payer considers to be due on the date the notice is served;
and
 - (b) the basis on which that sum is calculated.
- 9.8 If the payer fails to pay an amount due to the other party by the final date for payment and fails to give a pay less notice under clause 9.7, simple interest shall be added to the unpaid amount from the final date for payment until the actual date of payment. This shall be calculated on a daily basis at the interest rate stated in the Contract Particulars. The parties acknowledge that the payer's liability under this clause 9.8 is a substantial remedy for the purposes of section 9(1) of the Late Payment of Commercial Debts (Interest) Act 1998.
- 9.9 In the event that the sum specified in the Contracting Authority's payment notice at clause 9.4 is a negative figure showing a balance due to the Contracting Authority to be paid by the Supplier, the Supplier shall, subject to any pay less notice given under clause 9.7, pay the sum specified in the Contracting Authority's payment notice to the Contracting Authority by the final date for payment. Where a pay less notice is given by the Supplier to the Contracting Authority, the payment to be made on or before the final date for payment shall not be less than the amount stated as due in the pay less notice.
- 9.10 Notwithstanding clause 9.6 and clause 9.7 and without prejudice to clause 13, if the Supplier becomes Insolvent after the prescribed period, the Contracting Authority shall not be required to pay the Supplier the notified sum on or before the final date for payment.

Payment of sub-consultants

- 9.11 The Supplier shall ensure that all sub-contracts contain a provision:
 - (a) requiring the Supplier to pay any undisputed sums which are due from it to the sub-consultant within a specified period not exceeding thirty (30) days from the receipt of a valid invoice;
 - (b) requiring that any invoices submitted by a sub-consultant shall be considered and verified by the Supplier in a timely fashion and that undue delay in doing so shall not be sufficient justification for failing to regard an invoice as valid and undisputed;
 - (c) requiring the sub-contractor to include in any sub-contract which it in turn awards suitable provisions to impose, as between the parties to that sub-

contract, requirements to the same effect as those required by sub-clauses (a) and (b) directly above; and

- (d) conferring a right to the Contracting Authority to publish the Supplier's compliance with its obligation to pay undisputed invoices within the specified payment period.

9.12 The Supplier shall pay any undisputed sums which are due from it to a sub-consultant within thirty (30) days from receipt of a valid invoice.

9.13 Any invoices submitted by a sub-contractor to the Supplier shall be considered and verified by the Supplier in a timely fashion. Undue delay in doing so shall not be sufficient justification for the Supplier failing to regard an invoice as valid and undisputed.

9.14 Notwithstanding any provision of Clauses 17 (Confidentiality) and 27 (Publicity and Branding) if the Supplier notifies the Contracting Authority that the Supplier has failed to pay an undisputed sub-contractor's invoice within thirty (30) days of receipt, or the Contracting Authority otherwise discovers the same, the Contracting Authority shall be entitled to publish the details of the late or non-payment (including on government websites and in the press).

Recovery of sums due from Supplier

9.15 Where the Contracting Authority is a Crown Body and any sum of money is recoverable from or payable by the Supplier under this agreement, such sum may be deducted from or reduced by the amount of any sum or sums then due or which at any time after may become due to the Supplier under this agreement or any other contract with any Department or Office of Her Majesty's Government.

9.16 Where the Contracting Authority is not a Crown Body and any sum of money is recoverable from or payable by the Supplier under this agreement or any other contract between the Supplier and the Contracting Authority, such sum may be deducted from or reduced by the amount of any sum or sums then due or which at any time after may become due to the Supplier under this agreement or any other contract with the Contracting Authority.

10. ADJUSTMENT OF THE FEE AND ADDITIONAL SERVICES

Adjustment of the Fee

10.1 Subject to Clause 10.2, the Fee shall be adjusted if the performance of the Services is materially delayed or disrupted due to:

- (a) a change in the scope, size, complexity or duration of the Project; or
- (b) any other cause outside the Supplier's reasonable control and which it could not reasonably have foreseen at the date of this agreement,

provided that the Supplier shall not be entitled to any adjustment of the Fee where delay or disruption arises from the Supplier's default or negligence, or the default or negligence of the Supplier's sub-contractors or suppliers (if any).

10.2 The Supplier shall notify the Contracting Authority of its intention to claim an adjustment to the Fee as soon as reasonably practicable and in any event within 8 weeks after it becomes aware of any material delay or disruption to the Services. The Supplier's notice shall include a written estimate of:

- (a) the proposed adjustment to the Fee; and
- (b) the likely effect of the delay or disruption on the Services and the Programme.

10.3 The notice by the Supplier of its intention to claim under Clause 10.2 is a condition precedent to the Supplier's entitlement to claim an adjustment to the Fee. Provided the Supplier has given notice in accordance with Clause 10.2 the Fee shall be adjusted by a reasonable amount by reference to the time charges set out in Part 2 of Schedule 2 (unless the parties agree an alternative amount).

Additional Services

10.4 The Supplier shall notify the Contracting Authority as soon as reasonably practicable if it becomes apparent that Additional Services are likely to be required, identifying the required services and a written estimate of cost of the Additional Service and its effect on the Programme. The Supplier shall provide such further and better particulars of the written estimate of cost as may be requested by the Contracting Authority.

10.5 The Supplier shall perform an Additional Service on receipt of a written instruction to do so by the Contracting Authority but the Contracting Authority shall not be obliged to accept, nor shall the Contracting Authority be bound by, any written estimate provided by the Supplier.

10.6 Unless the parties agree otherwise, the Additional Fee shall be a reasonable amount calculated by reference to the time charges set out in Part 2 of Schedule 2 (Fees and payment), provided that no Additional Fee shall be payable if the requirement for an

Additional Service arises from the Supplier's default or negligence, or the default or negligence of the Supplier's sub-consultants or suppliers (if any).

- 10.7 Any Additional Fee payable by the Contracting Authority shall be included in the next invoice following performance of the Additional Service to which it relates.

11. SUSPENSION

- 11.1 The Contracting Authority may, at any time, suspend performance of all or part of the Services by giving written notice to the Supplier. The Supplier shall resume performance of the Services as soon as reasonably practicable after receiving a written notice to do so from the Contracting Authority.

- 11.2 If:

- (a) subject to Clause 9.7, the Contracting Authority fails to pay in full the notified sum to the Supplier under this agreement by the final date for payment under clause 9; and
- (b) the Contracting Authority has not given a pay less notice complying with Clause 9,

the Supplier may suspend the performance of any or all of its Services and other obligations under this agreement by giving not less than seven days' notice to the Contracting Authority of its intention to do so and stating the ground or grounds on which it intends to suspend performance.

- 11.3 In the event of a suspension by the Supplier in accordance with this agreement, the Contracting Authority shall pay the Supplier a reasonable amount in respect of costs and expenses reasonably incurred by the Supplier as a result of any exercise of its right referred to in clause 11.2 and such payment shall be the Supplier's sole compensation for suspension of its Services and obligations under this agreement.

12. TERMINATION

- 12.1 The Contracting Authority may terminate the Supplier's engagement under this agreement at any time by giving ten (10) Working Days notice in writing to the Supplier.
- 12.2 Either party may immediately terminate the Supplier's engagement under this agreement by giving written notice to the other party if:

- (a) the other party is in material breach of its obligations under this agreement and fails to remedy that breach within ten (10) Working Days of receiving written notice requiring it to do so; or
- (b) the other party becomes Insolvent.

12.3 If the Supplier becomes Insolvent this is deemed to be a breach of this agreement.

Change of Control

12.4 The Supplier shall notify the Contracting Authority immediately in writing and as soon as the Supplier is aware (or ought reasonably to be aware) that it is anticipating, undergoing, undergoes or has undergone a Change of Control and provided such notification does not contravene any Law.

12.5 The Supplier shall ensure that any notification made pursuant to Clause 12.4 shall set out full details of the Change of Control including the circumstances suggesting and/or explaining the Change of Control.

12.6 The Customer may terminate this agreement by issuing notice to the Supplier within six (6) months of:

- (a) being notified in writing that a Change of Control is anticipated or in contemplation or has occurred; or
- (b) where no notification has been made, the date that the Contracting Authority becomes aware that a Change of Control is anticipated or is in contemplation or has occurred,

but shall not be permitted to terminate where the prior written consent of the Contracting Authority has been given in respect of the Change of Control.

13. CONSEQUENCES OF TERMINATION

13.1 On termination in accordance with clause 12 the Contracting Authority shall pay the Supplier:

- (a) any amount properly due for payment under this agreement at the date of termination; and
- (b) a fair and reasonable proportion of the next instalment of the Fee together with any expenses and disbursements commensurate with the Services properly performed at the date of termination provided that:

- (i) the Supplier shall have first submitted to the Contracting Authority an application for payment in the form of an invoice for the amount considered by the Supplier to be payable pursuant to this clause; and
 - (ii) the provisions of clause 9 shall apply to such invoice as if it were an application for payment of a part of the Fee as provided for therein.
- 13.2 If the Supplier's engagement under this agreement is terminated by the Contracting Authority in accordance with Clause 12.2(a) (material breach) or Clause 12.2(b) (Supplier is Insolvent) the Supplier shall pay the Contracting Authority the reasonable cost of procuring a replacement professional consultant to carry out any unperformed Services, to the extent that such cost exceeds the Fee (or, where the Fee is yet to be determined, the Contracting Authority's reasonable estimate of the Fee). Any such cost shall be deducted from the amount payable to the Supplier under clause 13.1 and if any shortfall remains following such deduction the Contracting Authority may claim it as a debt due from the Supplier.
- 13.3 Payment under clause 13.1 shall be the Supplier's sole entitlement to compensation for termination of its engagement under this agreement.
- 13.4 Except where expressly stated herein, the Contracting Authority shall not be liable to the Supplier for:
 - (a) any costs, expenses, disbursements or losses;
 - (b) any loss of profits, loss of fees, loss of chance or other similar losses; or
 - (c) any indirect losses or consequential losses,arising out of termination or suspension of the Supplier's engagement under this agreement.
- 13.5 Termination of the Supplier's engagement under this agreement shall not affect the accrued rights of either party under this agreement and the provisions of this agreement shall continue to bind the parties for as long as necessary to give effect to their respective rights and obligations.

14. ASSIGNMENT, SUB-CONTRACTING AND NOVATION

Assignment

- 14.1 The Contracting Authority may assign the benefit of this agreement to any person with an interest in the Project.

- 14.2 The Contracting Authority shall notify the Supplier of any assignment. If the Contracting Authority fails to do this, the assignment shall still be valid.
- 14.3 The Supplier shall not contend that any person to whom the benefit of this agreement is assigned under clause 14.1 may not recover any sum under this agreement because that person is an assignee and not a named party to this agreement.
- 14.4 The Supplier may not assign or transfer its obligations under this agreement to any other person.

Sub-Contracting

- 14.5 The Supplier may sub-contract the performance of the Services without the Contracting Authority's prior written consent to Key Sub-Consultants and any Key Sub-Contractors.
- 14.6 Save for clause 14.5 the Supplier shall not sub-contract the performance of any of the Services without the Contracting Authority's prior written consent.

Novation

- 14.7 This Clause 14.7 shall only apply if it is stated in the Contract Particulars that Clause 14.6 applies. If this Clause 14.7 applies then, notwithstanding any provision of this agreement restricting the Contracting Authority's right to assign or transfer the benefit or burden of this agreement, within five (5) Working Days of receiving a written request from the Contracting Authority, the Supplier shall:
- (a) enter into a deed of novation with the Contracting Authority and the Contractor in the form of the Novation Agreement; and
 - (b) enter into a Collateral Warranty in favour of the person who is the Contracting Authority immediately before novation takes place.

15. COLLATERAL AGREEMENTS

Collateral Warranties

- 15.1 Where stated in the Contract Particulars that the Supplier shall procure a Collateral Warranty from the Supplier in favour of a beneficiary, then within ten (10) Working Days of receiving a written request from the Contracting Authority to do so, the Supplier shall enter into a Collateral Warranty as a deed in favour of any beneficiary identified in the relevant part of the Contract Particulars.

- 15.2 Where stated in the Contract Particulars that the Supplier shall procure a Collateral Warranty from Key Sub-Consultants in favour of a beneficiary, then within ten (10) Working Days of receiving a written request from the Contracting Authority to do so, the Supplier shall procure a Collateral Warranty executed as a deed from the relevant Key Sub-Consultant in favour of each of the Contracting Authority any Beneficiary identified in the relevant part of the Contract Particulars.
- 15.3 The Supplier shall provide to the Contracting Authority a certified copy of each Key Sub-Consultant's appointment within 7 days of its execution (the Supplier may redact commercially sensitive pricing information).
- 15.4 If the Supplier fails to enter into or to provide the relevant Collateral Warranty as required by this Clause 15 (Collateral Warranties) then, notwithstanding any other term of this agreement, and in addition to any other right or remedy of the Contracting Authority, the Basic Fee and, if any, the Additional Fee, shall be reduced by 25% for each outstanding Collateral Warranty, until such time as the relevant Collateral Warranty has been provided.

Parent Company Guarantee

- 15.5 Where stated in the Contract Particulars that the Supplier shall procure a parent company guarantee, the Supplier shall no later than the date of the Call Off Commencement Date procure the execution and delivery of a parent company guarantee in favour of the Contracting Authority in the form of the Parent Company Guarantee. The parent company guarantee shall be given by the Guarantor.
- 15.6 If the Supplier does not procure execution and delivery of the parent company guarantee in accordance with Clause 15.5 then, notwithstanding any other term of this agreement, the Contracting Authority shall not be liable to make any further payment to the Supplier under this agreement until the Supplier has procured such execution and delivery.

16. COPYRIGHT

- 16.1 The Supplier grants to the Contracting Authority, with immediate effect, an irrevocable, non-exclusive, non-terminable, royalty-free licence to copy and make full use of any Material prepared by, or on behalf of, the Supplier for any purpose relating to any of the Project, including any of the Permitted Uses.
- 16.2 The licence in Clause 16.1 carries the right to grant sub-licences and is transferable to third parties without the consent of the Supplier.

- 16.3 Subject to Clause 34.3, the Supplier shall not be liable for use of the Material for any purpose other than that for which it was prepared and/or provided.
- 16.4 The licence in clause 16.1 allows the Contracting Authority to use the Material in connection with any extension of the Project, but not to reproduce the designs contained in the Material in any such extension.
- 16.5 The Supplier warrants to the Contracting Authority that the use of the Material for any Permitted Uses will not infringe any copyright, moral right, related right, patent, design right, database right, trademark, service mark, trade name or other intellectual property right such as know-how, trade secrets or inventions (whether patentable or not) of any third party, and the Supplier shall indemnify the Contracting Authority on demand and as a debt from and against any and all losses, expenses, liabilities, claims, costs or proceedings whatsoever arising the Supplier's breach of this warranty.
- 16.6 The Contracting Authority may, at any time (whether before or after completion of the Services, or after termination of the Supplier's engagement under this agreement), request a copy or copies of (some or all of) the Material from the Supplier. On the Contracting Authority's payment of the Supplier's reasonable charges for providing the copy (or copies), the Supplier shall provide the copy (or copies) to the Contracting Authority.

17. CONFIDENTIALITY

- 17.1 For the purposes of this Clause 17, the term "Disclosing Party" shall mean a Party which discloses or makes available directly or indirectly its Confidential Information and "Recipient" shall mean the Party which receives or obtains directly or indirectly Confidential Information.
- 17.2 Except to the extent set out in Clause 17 or where disclosure is expressly permitted elsewhere in this agreement, the Recipient shall:
- (a) treat the Disclosing Party's Confidential Information as confidential and keep it in secure custody (the nature of the secure custody shall depend upon the form in which such materials are stored and the nature of the Confidential Information contained in those materials); and
 - (b) not disclose the Disclosing Party's Confidential Information to any other person except as expressly set out in this agreement or without obtaining the owner's prior written consent;

- (c) not use or exploit the Disclosing Party's Confidential Information in any way except for the purposes anticipated under this agreement; and
- (d) immediately notify the Disclosing Party if it suspects or becomes aware of any unauthorised access, copying, use or disclosure in any form of any of the Disclosing Party's Confidential Information.

17.3 The Recipient shall be entitled to disclose the Confidential Information of the Disclosing Party where:

- (a) the Recipient is required to disclose the Confidential Information by Law, provided that Clause 29 (Freedom of Information) shall apply to disclosures required under the FOIA or the EIRs;
- (b) the need for such disclosure arises out of or in connection with:
 - (i) any legal challenge or potential legal challenge against the Contracting Authority arising out of or in connection with this agreement;
 - (ii) the examination and certification of the Contracting Authority's accounts (provided that the disclosure is made on a confidential basis) or for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Contracting Authority is making use of any Services provided under this agreement; or
 - (iii) the conduct of a Central Government Body review in respect of this agreement; or
- (c) the Recipient has reasonable grounds to believe that the Disclosing Party is involved in activity that may constitute a criminal offence under the Bribery Act 2010 and the disclosure is being made to the Serious Fraud Office.

17.4 If the Recipient is required by Law to make a disclosure of Confidential Information, the Recipient shall as soon as reasonably practicable and to the extent permitted by Law notify the Disclosing Party of the full circumstances of the required disclosure including the relevant Law and/or regulatory body requiring such disclosure and the Confidential Information to which such disclosure would apply.

17.5 Subject to Clause 17.2, the Supplier may only disclose the Confidential Information of the Contracting Authority on a confidential basis to:

- (a) Supplier Personnel who are directly involved in the provision of the Services and need to know the Confidential Information to enable performance of the Supplier's obligations under this agreement; and
- (b) its professional advisers for the purposes of obtaining advice in relation to this agreement.

17.6 Where the Supplier discloses Confidential Information of the Contracting Authority pursuant to Clause 17.5, it shall remain responsible at all times for compliance with the confidentiality obligations set out in this agreement by the persons to whom disclosure has been made.

17.7 The Contracting Authority may disclose the Confidential Information of the Supplier:

- (a) to any Central Government Body on the basis that the information may only be further disclosed to Central Government Bodies;
- (b) to the British Parliament and any committees of the British Parliament or if required by any British Parliamentary reporting requirement;
- (c) to the extent that the Contracting Authority (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;
- (d) on a confidential basis to a professional adviser, consultant, supplier or other person engaged by any of the entities described in Clause 17.7(a) (including any benchmarking organisation) for any purpose relating to or connected with this agreement;
- (e) on a confidential basis for the purpose of the exercise of its rights under this agreement; or
- (f) to a proposed transferee, assignee or novatee of, or successor in title to the Contracting Authority,

and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Contracting Authority under Clause 17.3.

17.8 Nothing in Clause 17 shall prevent a Recipient from using any techniques, ideas or Material gained during the performance of this agreement in the course of its normal

business to the extent that this use does not result in a disclosure of the Disclosing Party's Confidential Information or an infringement of intellectual property rights.

- 17.9 In the event that the Supplier fails to comply with Clauses 17.2 to 17.5, the Contracting Authority shall be entitled to terminate this agreement for material breach.

18. INSURANCE

Professional Indemnity Insurance

- 18.1 The Supplier shall take out and maintain professional indemnity insurance covering its potential liability under this agreement in an amount and under such terms as stated in the Contract Particulars, provided that such insurance is available at commercially reasonable rates and terms. The Supplier shall maintain that professional indemnity insurance:

- (a) with reputable insurers lawfully carrying on insurance business in the United Kingdom and the European Union;
- (b) on customary and usual terms and conditions prevailing for the time being in the insurance market.

- 18.2 Any increased or additional premium required by insurers because of the Supplier's claims record or other acts, omissions, matters or things particular to the Supplier shall be deemed to be within commercially reasonable rates and terms.

- 18.3 The Supplier shall immediately inform the Contracting Authority if the Supplier's required professional indemnity insurance ceases to be available at commercially reasonable rates and terms, so that the Supplier and the Contracting Authority can discuss how best to protect the respective positions of the Contracting Authority and the Supplier regarding the Project without that insurance.

Public Liability Insurance and Employer's Liability Insurance

- 18.4 The Supplier shall effect and maintain third party public liability insurance and employer's liability insurance in accordance with Framework Schedule 14 (Insurance Requirements).

Evidence of Insurance

- 18.5 Whenever the Contracting Authority reasonably requests, the Supplier shall send the Contracting Authority evidence that the Supplier's insurance required by this Clause 18 is in force, including, if required by the Contracting Authority, an original letter

from the Supplier's insurers or brokers confirming the Supplier's then current insurance and that the premiums for that insurance have been paid in full at the date of that letter.

19. DISPUTES

- 19.1 Subject to either party's right to adjudicate at any time, the parties shall use their reasonable endeavours to resolve any dispute or difference between them through negotiation or mediation.
- 19.2 Notwithstanding any other provision of this agreement either party may refer a dispute arising under this agreement to adjudication at any time under Part I of the Scheme for Construction Contracts (England and Wales) Regulations.
- 19.3 Where the Contract Particulars state that the dispute resolution mechanism is Arbitration, then any dispute arising out of or in connection with this agreement, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration under the London Court of International Arbitration (LCIA) Rules, which Rules are deemed to be incorporated by reference into this clause. The particulars of any such arbitration are set out in the Contract Particulars.

20. NOTICES

- 20.1 Subject to clause 20.4, any notice required to be given under this agreement shall be in writing and shall be delivered personally, or sent by e-mail or pre-paid first-class post or recorded delivery or by commercial courier, to each party required to receive the notice, as set out in the Contract Particulars or as otherwise specified by the relevant party by notice in writing to each other party.
- 20.2 Any notice shall be deemed to have been duly received:
- (a) if delivered by e-mail, when delivered to the recipients e-mail server and evidenced by a delivery receipt; or
 - (b) if delivered personally, when left at the address and for the contact referred to in this clause; or
 - (c) if sent by pre-paid first-class post or recorded delivery, at 9.00 am on the second Working Day after posting; or
 - (d) if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.

20.3 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action or where applicable, any arbitration or adjudication or other method of dispute resolution.

20.4 Notices under clauses 11 (Suspension), 12 (Termination) and 14.2 (Assignment) shall not be given by e-mail and e-mail shall not be an effective means of service for such notices.

21. THIRD PARTY RIGHTS

A person who is not a party to this agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement. This clause does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

22. ENTIRE AGREEMENT

This agreement constitutes the whole agreement between the parties and supersedes and extinguishes all previous agreements between the parties relating to its subject matter. Each party acknowledges that, in entering into this agreement, it has not relied on, and shall have no right or remedy in respect of, any statement, representation, assurance or warranty (whether made negligently or innocently) other than as expressly set out in this agreement. Nothing in this clause shall limit or exclude any liability for fraud.

23. LIMITATION OF LIABILITY

Without affecting any other limitation in this agreement, the Supplier's liability under or in connection with this agreement shall be limited to the amount set out in the Contract Particulars. This limit shall apply however that liability arises including a liability arising by tort (including the tort of negligence) or arising for breach of statutory duty. Provided that this clause 23 shall not exclude or limit the Supplier's liability for:

- (a) death or personal injury caused by the Supplier's negligence; or
- (b) fraud or fraudulent misrepresentation.

24. LIABILITY PERIOD

The Parties agree that, notwithstanding any terms and effect of the Limitation Act 1980 to the contrary, any action or proceedings under or in connection with this agreement may be commenced against the Supplier up until the expiry of the date stated in the Contract Particulars and the Supplier agrees that, for the purposes of the Limitation Act 1980 it shall not seek to rely on any failure to commence any such action or proceedings within any shorter

period (whether prescribed by the Limitation Act 1980 or otherwise) as a defence to any such action or proceedings.

25. 25. PREVENTION OF FRAUD AND BRIBERY

25.1 The Supplier represents and warrants that neither it, nor to the best of its knowledge any Supplier Personnel, have at any time prior to the Call Off Commencement Date:

- (a) committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or
- (b) been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.

25.2 The Supplier shall not during the Call Off Contract Period:

- (a) commit a Prohibited Act; and/or
- (b) do or suffer anything to be done which would cause the Contracting Authority or any of the Contracting Authority's employees, consultants, contractors, sub-contractors or agents to contravene any of the Relevant Requirements or otherwise incur any liability in relation to the Relevant Requirements.

25.3 The Supplier shall during the Call Off Contract Period:

- (a) establish, maintain and enforce, and require that its sub-consultants establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Relevant Requirements and prevent the occurrence of a Prohibited Act;
- (b) keep appropriate records of its compliance with its obligations under Clause 25.3(a) and make such records available to the Contracting Authority on request;
- (c) if so required by the Contracting Authority, within twenty (20) Working Days of the Call Off Commencement Date, and annually thereafter, certify to the Contracting Authority in writing that the Supplier and all persons associated with it or its sub-consultants or other persons who are supplying the Services in connection with this agreement are compliant with the Relevant

Requirements. The Supplier shall provide such supporting evidence of compliance as the Contracting Authority may reasonably request; and

- (d) have, maintain and where appropriate enforce an anti-bribery policy (which shall be disclosed to the Contracting Authority on request) to prevent it and any Supplier Personnel or any person acting on the Supplier's behalf from committing a Prohibited Act.

25.4 The Supplier shall immediately notify the Contracting Authority in writing if it becomes aware of any breach of Clause 25.1, or has reason to believe that it has or any of the Supplier Personnel have:

- (a) been subject to an investigation or prosecution which relates to an alleged Prohibited Act;
- (b) been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act; and/or
- (c) received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this Call Off Contract or otherwise suspects that any person or Party directly or indirectly connected with this agreement has committed or attempted to commit a Prohibited Act.

25.5 If the Supplier makes a notification to the Contracting Authority pursuant to Clause 25.4, the Supplier shall respond promptly to the Contracting Authority's enquiries, co-operate with any investigation, and allow the Contracting Authority to audit any books, records and/or any other relevant documentation in accordance with Clause 5 (Records, Audit Access and Open Book Data).

25.6 If the Supplier breaches Clause 25.3, the Contracting Authority may by notice:

- (a) require the Supplier to remove from performance of this agreement any Supplier Personnel whose acts or omissions have caused the Supplier's breach; or
- (b) immediately terminate this agreement for material breach.

25.7 Any notice served by the Contracting Authority under Clause 25.4 shall specify the nature of the Prohibited Act, the identity of the Party who the Contracting Authority believes has committed the Prohibited Act and the action that the Contracting

Authority has elected to take (including, where relevant, the date on which this agreement shall terminate).

26. SECURITY REQUIREMENTS

26.1 This Clause 26 shall only apply if it is stated in the Contract Particulars that Clause 26 applies. If this clause applies, then:

- (a) the Supplier shall comply with and procure that the Supplier Personnel comply with the Security Policy and the requirements of the Security Management Plan (if any);
- (b) the Supplier shall ensure that the Security Management Plan (if any) produced by the Supplier fully complies with the Security Policy.

26.2 The Contracting Authority shall notify the Supplier of any changes or proposed changes to the Security Policy.

27. PUBLICITY AND BRANDING

27.1 The Supplier shall not:

- (a) make any press announcements or publicise this agreement in any way; or
- (b) use the Contracting Authority's name or brand in any promotion or marketing or announcement,

without the Contracting Authority's prior written consent.

27.2 Each Party acknowledges to the other that nothing in this agreement either expressly or by implication constitutes an endorsement of any products or services of the other Party and each Party agrees not to conduct itself in such a way as to imply or express any such approval or endorsement.

28. PROTECTION OF CONTRACTING AUTHORITY DATA

28.1 This Clause 28 shall only apply if it is stated in the Contract Particulars that Clause 28 applies.

28.2 The Supplier shall not delete or remove any proprietary notices contained within or relating to the Contracting Authority Data.

28.3 The Supplier shall not store, copy, disclose, or use the Contracting Authority Data except as necessary for the performance by the Supplier of its obligations under this agreement or as otherwise approved in writing by the Contracting Authority.

- 28.4 To the extent that the Contracting Authority Data is held and/or Processed by the Supplier, the Supplier shall supply that Contracting Authority Data to the Contracting Authority as requested by the Contracting Authority and in the format (if any) specified by the Contracting Authority from time to time in writing.
- 28.5 The Supplier shall take responsibility for preserving the integrity of Contracting Authority Data and preventing the corruption or loss of Contracting Authority Data.
- 28.6 The Supplier shall perform secure back-ups of all Contracting Authority Data and shall ensure that up-to-date back-ups are stored off-site at an approved location in accordance with any Business Continuity and Disaster Recovery Plan. The Supplier shall ensure that such back-ups are available to the Contracting Authority (or to such other person as the Contracting Authority may direct) at all times upon request and are delivered to the Contracting Authority at no less than six (6) Monthly intervals (or such other intervals as may be agreed in writing between the Parties).
- 28.7 The Supplier shall ensure that any system on which the Supplier holds any Contracting Authority Data, including back-up data, is a secure system that complies with the Security Policy and the Security Management Plan (if any).
- 28.8 If at any time the Supplier suspects or has reason to believe that the Contracting Authority Data is corrupted, lost or sufficiently degraded in any way for any reason, then the Supplier shall notify the Contracting Authority immediately and inform the Contracting Authority of the remedial action the Supplier proposes to take.
- 28.9 If the Contracting Authority Data is corrupted, lost or sufficiently degraded as a result of a default by the Supplier so as to be unusable, the Contracting Authority may:
- (a) require the Supplier (at the Supplier's expense) to restore or procure the restoration of Contracting Authority Data to the extent and in accordance with the requirements specified in any Business Continuity and Disaster Recovery Plan or as otherwise required by the Contracting Authority, and the Supplier shall do so as soon as practicable but not later than five (5) Working Days from the date of receipt of the Contracting Authority's notice; and/or
 - (b) itself restore or procure the restoration of Contracting Authority Data, and shall be repaid by the Supplier any reasonable expenses incurred in doing so to the extent and in accordance with the requirements specified in any Business Continuity and Disaster Recovery Plan or as otherwise required by the Contracting Authority.

29. FREEDOM OF INFORMATION

29.1 The Supplier acknowledges that the Contracting Authority is subject to the requirements of the FOIA and the EIRs. The Supplier shall:

- (a) provide all necessary assistance and cooperation as reasonably requested by the Contracting Authority to enable the Contracting Authority to comply with its Information disclosure obligations under the FOIA and EIRs;
- (b) transfer to the Contracting Authority all Requests for Information relating to this agreement that it receives as soon as practicable and in any event within two (2) Working Days of receipt;
- (c) provide the Contracting Authority with a copy of all Information belonging to the Contracting Authority requested in the Request for Information which is in its possession or control in the form that the Contracting Authority requires within five (5) Working Days (or such other period as the Contracting Authority may reasonably specify) of the Contracting Authority's request for such Information; and
- (d) not respond directly to a Request for Information unless authorised in writing to do so by the Contracting Authority.

29.2 The Supplier acknowledges that the Contracting Authority may be required under the FOIA and EIRs to disclose Information (including Commercially Sensitive Information) without consulting or obtaining consent from the Supplier. The Contracting Authority shall take reasonable steps to notify the Supplier of a Request for Information (in accordance with the Secretary of State's Section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this agreement) the Contracting Authority shall be responsible for determining in its absolute discretion whether any Commercially Sensitive Information and/or any other information is exempt from disclosure in accordance with the FOIA and/or the EIRs.

30. PROMOTING TAX COMPLIANCE

30.1 The Supplier warrants that it has notified the Contracting Authority of any Occasion of Tax Non-Compliance or any litigation in which it is involved relating to any Occasion of Tax Non-Compliance.

30.2 If, at any point during the Call Off Contract Period, an Occasion of Tax Non-Compliance occurs, the Supplier shall:

- (a) notify the Contracting Authority in writing of such fact within five (5) Working Days of its occurrence; and
- (b) promptly provide to the Contracting Authority:
 - (i) details of the steps that the Supplier is taking to address the Occasion of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors that it considers relevant; and
 - (ii) such other information in relation to the Occasion of Tax Non-Compliance as the Contracting Authority may reasonably require.

30.3 In the event that the Supplier breaches the warranty under Clause 30.1 fails to comply with this Clause 30 and/or does not provide details of proposed mitigating factors which in the reasonable opinion of the Contracting Authority are acceptable, then the Contracting Authority shall be entitled, without prejudice to its other rights and remedies, to terminate this agreement for material breach.

31. STAFF TRANSFER

31.1 This Clause 31 shall only apply if it is stated in the Contract Particulars that Clause 31 applies. If this Clause 31 applies, then the definitions contained in the Staff Transfer Schedule apply to this Clause.

31.2 The Parties agree that :

- (a) where the commencement of the provision of the Services or any part of the Services results in one or more Relevant Transfers, the Staff Transfer Schedule shall apply as follows:
 - (i) where the Relevant Transfer involves the transfer of Transferring Customer Employees, Part A of the Staff Transfer Schedule shall apply;
 - (ii) where the Relevant Transfer involves the transfer of Transferring Former Supplier Employees, Part B of the Staff Transfer Schedule shall apply;
 - (iii) where the Relevant Transfer involves the transfer of Transferring Customer Employees and Transferring Former Supplier Employees, Parts A and B of the Staff Transfer Schedule shall apply; and
 - (iv) Part C of Staff Transfer Schedule shall not apply;

- (b) where commencement of the provision of the Services or a part of the Services does not result in a Relevant Transfer, Part C of Staff Transfer Schedule shall apply and Parts A and B of Staff Transfer Schedule shall not apply; and
 - (c) Part D of the Staff Transfer Schedule shall apply on the expiry or termination of the Services or any part of the Services;
- 31.3 The Supplier shall both during and after the Call Off Contract Period indemnify the Contracting Authority on demand and as a debt against all Employee Liabilities that may arise as a result of any claims brought against the Contracting Authority by any person where such claim arises from any act or omission of the Supplier or any Supplier Personnel.

32. MOD ADDITIONAL CLAUSES AND ACCESS TO MOD SITES

- 32.1 This Clause 32 shall only apply if it is stated in the Contract Particulars that Clause 32 applies.
- 32.2 The following defined terms apply to this agreement:
 - “**MoD Terms and Conditions**” means the additional MOD terms conditions stated to apply to this agreement in the Contract Particulars;
 - “**Site**” shall include any of Her Majesty’s Ships or Vessels and Service Stations.
 - “**Officer in charge**” shall include Officers Commanding Service Stations, Ships’ Masters or Senior Officers, and Officers superintending Government Establishments.
- 32.3 The Supplier confirms that it has had the opportunity to review the MoD Terms and Conditions and has raised all due diligence questions in relation to those documents with the Contracting Authority prior to the Call Off Commencement Date.
- 32.4 Where required by the Contracting Authority, the Supplier shall take such actions as are necessary to ensure that the MoD Terms and Conditions constitute legal, valid, binding and enforceable obligations on the Supplier.
- 32.5 The Contracting Authority shall issue passes for those representatives of the Supplier who are approved for admission to the Site and a representative shall not be admitted unless in possession of such a pass. Passes shall remain the property of the Contracting Authority and shall be surrendered on demand or on completion of the supply of the Services.

- 32.6 The Supplier Personnel when employed within the boundaries of a Site, shall comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force for the time being for the conduct of personnel at that Site. When on board ship, compliance shall be with the Ship's Regulations as interpreted by the Officer in charge. Details of such rules, regulations and requirements shall be provided, on request, by the Officer in charge.
- 32.7 The Supplier shall be responsible for the living accommodation and maintenance of its representatives while they are employed at a Site. Sleeping accommodation and messing facilities, if required, may be provided by the Contracting Authority wherever possible, at the discretion of the Officer in charge, at a cost fixed in accordance with current Ministry of Defence regulations. The status to be accorded to the Supplier's personnel for messing purposes shall be at the discretion of the Officer in charge who shall, wherever possible, give his decision before the commencement of this agreement where so asked by the Supplier. When sleeping accommodation and messing facilities are not available, a certificate to this effect may be required by the Contracting Authority and shall be obtained by the Supplier from the Officer in charge. Such certificate shall be presented to the Contracting Authority with other evidence relating to the costs of this agreement.
- 32.8 The Supplier shall make such arrangements through the Technical Branch named for this purpose in this agreement. When such transport is not available within a reasonable time, or in circumstances where the Supplier wishes its representatives to accompany material for installation which it is to arrange to be delivered, the Supplier shall make its own transport arrangements. The Contracting Authority shall reimburse the Supplier's reasonable costs for such transport of its representatives on presentation of evidence supporting the use of alternative transport and of the costs involved. Transport of the Supplier Personnel locally overseas which is necessary for the purpose of this agreement shall be provided wherever possible by the Ministry of Defence, or by the Officer in charge and, where so provided, shall be free of charge.
- 32.9 Treatment in a Service hospital or medical centre, dental treatment, the provision of dentures or spectacles, conveyance to and from a hospital, medical centre or surgery not within the Site and transportation of the Supplier Personnel back to the United Kingdom, or elsewhere, for medical reasons, shall be charged to the Supplier at rates fixed in accordance with current Ministry of Defence regulations.
- 32.10 Accidents to the Supplier Personnel which ordinarily require to be reported in accordance with Health and Safety at Work etc Act 1974, shall be reported to the Officer in charge so that the Inspector of Factories may be informed.

- 32.11 No assistance from public funds, and no messing facilities, accommodation or transport overseas shall be provided for dependants or members of the families of the Supplier Personnel. Medical or necessary dental treatment may, however, be provided for dependants or members of families on repayment at current Ministry of Defence rates.

33. KEY PERFORMANCE INDICATORS

- 33.1 This Clause 33 shall only apply if it is stated in the Contract Particulars that Clause 33 applies.
- 33.2 If this Clause 33 applies, then the Parties are bound to the rights, duties, obligations and liabilities of the Parties set out in the Key Performance Indicator Schedule appended as a Schedule to this agreement. The Contracting Authority shall apply the Key Performance Indicator Schedule to amend the amount of the Fee that is payable under Clause 9.

34. BUILDING INFORMATION MODELLING

- 34.1 This Clause 34 shall only apply if it is stated in the Contract Particulars that Clause 34 applies.

Where a BIM Protocol Applies

- 34.2 If the Contract Particulars states a BIM Protocol applies, then the Contracting Authority and the Supplier shall:
- (a) comply with their respective obligations set out in the BIM Protocol;
 - (b) have the benefit of any rights granted to them in the BIM Protocol; and
 - (c) have the benefit of any limitations or exclusions of their liability contained in the BIM Protocol.

Where a BIM Protocol Does Not Apply

- 34.3 If the Contract Particulars state that a BIM Protocol does not apply then:
- (a) if it is stated in the Contract Particulars that the Supplier is to act as the BIM Information Manager, the Supplier shall act as a the BIM Information Manager for the Project as more fully set out in the BIM Documents;
 - (b) if it is not stated in the Contract Particulars that the Supplier is to act as the BIM Information Manager, the Supplier shall comply with the reasonable

instructions of the BIM Information Manager in relation to the BIM Documents;

- (c) The Contracting Authority grants to the Supplier, with immediate effect, an irrevocable, non-exclusive, non-terminable, royalty-free licence (or, as the case may be, sub-licence) including the right to grant sub-licences (or, as the case may be, sub-sub-licences), to copy and make full use of the Material produced in accordance with the BIM Documents by or on behalf of the Contracting Authority (including any produced by the Contractor or another member of the Professional Team) for the purpose of performing the Services and complying with the BIM Documents;
- (d) Clause 16.3 shall have no effect and neither Party shall be liable to the other for:
 - (i) any use of Material created by (or on behalf of) it for any purpose other than that for which that Material was prepared and/or provided; or
 - (ii) any amendment or modification of Material produced in accordance with the BIM Documents, except where such amendment or modification:
 - (A) was made with the consent (not to be unreasonably withheld) of the party that produced it (or on whose behalf it was produced);
 - (B) was permitted by the BIM Documents; or
 - (C) was made for a Permitted Use following termination of the engagement of the party that produced it (or on whose behalf it was produced) in relation to the Project.

35. QUALITY MANAGEMENT POINTS

- 35.1 This Clause 35 shall only apply if it is stated in the Contract Particulars that Clause 35 applies.
- 35.2 The Supplier shall accrue Quality Management Points in accordance with the Quality Table set out below. The Supplier shall accrue Quality Management Points for the failures listed on the Quality Table whether arising from an audit by the Supplier, the Contracting Authority or the relevant accreditation body.

- 35.3 If the Supplier fails to comply with the Supplier's quality management system, the Supplier shall accrue Quality Management Points from the date when the failure is identified in accordance with the Quality Table. The number of Quality Management Points accrued by the Supplier shall reduce in accordance with the Quality Table.
- 35.4 The Supplier shall maintain a register of the number of Quality Management Points in effect, showing when Quality Management Points are accrued and when they are removed.
- 35.5 If the number of Quality Management Points in effect at any time is more than 25 points, the Supplier and the Contracting Authority shall meet within one week to consider ways of reducing the number of Quality Management Points in effect to 25 or less and to avoid the Supplier accruing further Quality Management Points. The Supplier shall submit a report to the Contracting Authority within one week of the meeting setting out:
- (a) the actions agreed at the meeting; and
 - (b) any other actions which the Supplier proposes to take immediately to reduce the number of Quality Management Points in effect to 25 or less and to avoid accruing further Quality Management Points.
- 35.6 If the Contracting Authority does not accept the Supplier's proposals or the Supplier does not take the agreed actions, the Contracting Authority shall serve a quality warning notice on the Supplier. Within one week of receipt of the quality warning notice, the Supplier shall submit a report to the Contracting Authority setting out the actions which the Supplier has taken and what further or alternative actions he proposes to take to reduce the number of Quality Management Points in effect to 25 or less.
- 35.7 The Supplier shall take such action as set out in the Supplier's reports until the number of Quality Management Points in effect is reduced to 25 or less. The Supplier shall submit weekly up date reports to the Contracting Authority setting out the actions he has taken, the results of those actions and the actions which are still to be taken by him.
- 35.8 Failure by the Supplier to take actions to reduce the number of Quality Management Points in effect to 25 or less is deemed to be a material breach by the Supplier of its obligations under this agreement and the Contracting Authority shall have the right to terminate this agreement in accordance with clause 12.2 (Termination).

Quality Table

Failure	Quality Management Points	Period of effect
Failure to have a complete Quality Plan in place and operating	25	Until audit confirms that Quality Plan complete and operating
The Quality Plan does not comply with the requirements of this contract	10 per failure	Until audit confirms that Quality Plan complies
Failure to raise a Non-Conformity report	5 per Non-Conformity	6 months
Failure to raise a corrective action report	5 per Non-Conformity	6 months
Failure to correct Quality Plan in manner set out in a corrective action report (see note 1 below)	10 per failure	Until failure corrected
Failure to implement recommendations in audit report (see note 1 below)	5 per recommendation	Until audit confirms that recommendation implemented
Failure to carry out internal audit	25 per audit	Until audit carried out
Carrying out work without release of hold point	10 per item	6 months
Failure to make records available for inspection by the <i>Employer</i>	10 per failure	Until the records are made available
Failure to allow access for <i>Employer</i> audits	10 per failure	Until <i>Employer</i> audit is carried out
Failure by <i>Consultant</i> to accrue Quality Management Points that should have been accrued	The number of Quality Management Points that should have been accrued	Applicable to the failure that should have accrued Quality Management Points
	plus an additional number of Quality Management Points equivalent to the Quality Management Points that should have been accrued	6 months
Note 1: For these failures additional Quality Management Points are accrued at each audit until an audit confirms that rectification/correction/implementation/action has taken place.		

~~36. COLLABORATIVE PERFORMANCE FRAMEWORK OMIT DO NOT USE~~ This Clause 36 shall only apply if it is stated in the Contract Particulars that Clause 36 applies.

~~36.1 If this Clause 36 applies, then the Supplier's performance shall be measured in accordance with the Collaborative Performance Framework.~~

~~36.2 If the Supplier's performance, measured in accordance with the Collaborative Performance Framework, is below the Failure Level then this shall be deemed to be a material breach by the Supplier of its obligations under this agreement and the Contracting Authority shall have the right to terminate this agreement in accordance with clause 12.2 (Termination).~~

37. NON-WAIVER

37.1 No failure or delay by the Contracting Authority to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy.

37.2 No single or partial exercise of any right or remedy provided under this agreement or by law shall prevent or restrict the further exercise of that or any other right or remedy.

38. SEVERANCE

If any provision of this agreement is declared invalid, unenforceable or illegal by the courts, such provision may be severed from this agreement and such invalidity, unenforceability or illegality shall not prejudice or affect the validity, enforceability and legality of the remaining provisions of this agreement.

39. GOVERNING LAW AND JURISDICTION

This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales. Subject to Clause 19 (Disputes) the parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this agreement.

40. ALTERNATIVE LAW OF CONTRACT

40.1 SCOTS LAW

40.1.1 Governing Law and Jurisdiction (Clause 39)

40.1.1.1 References to “England and Wales” in the original Clause 39 of this Call Off Contract (Governing Law and Jurisdiction) shall be replaced with “Scotland”.

40.1.1.2. Where legislation is expressly mentioned in this Call Off Contract the adoption of Clause 40.1 shall have the effect of substituting the equivalent Scots legislation.

40.2 NORTHERN IRELAND LAW

40.2.1 Governing Law and Jurisdiction (Clause 39)

40.2.1.1 References to “England and Wales” in the original Clause 39 of this Call Off Contract (Governing Law and Jurisdiction) shall be replaced with “Northern Ireland”.

40.2.1.2 Where legislation is expressly mentioned in this Call Off Contract the adoption of Clause 00.2 shall have the effect of substituting the equivalent Northern Ireland legislation.

Schedule 1 - Services

Part 1. Core Services

REDACTED FOIA Section 43, Commercial Interests

Part 2. Additional services

Schedule 2 - Fees and payment

Part 1. Basic Fee

REDACTED FOIA Section 43, Commercial Interests

Part 2. Additional Services

Schedule 3 - Third Party Agreements

Schedule - Collateral Warranty

Form of Supplier Collateral Warranty in favour of a Beneficiary and Form of Key Sub-Consultant
Collateral Warranty in favour of a Beneficiary.

Dated _____ 20[]

(1) [Supplier/Key Sub-Consultant]

(2) [Beneficiary]

Supplier's Collateral Warranty

relating to the

[insert details of Project]

Date:

Parties

- (1) [FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (Supplier).
- (2) [FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (Beneficiary).

Introduction

- A [Insert Contracting Authority's details] (the "Contracting Authority") has engaged the Supplier to perform the Services in relation to the Project.
- B The Beneficiary, as [NATURE OF BENEFICIARY'S INTEREST], has an interest in the Project.
- C The Contracting Authority requires the Supplier to enter into a collateral warranty in favour of the Beneficiary.
- D The Supplier has agreed to enter into this agreement with the Beneficiary, for the benefit of the Beneficiary.
- E The Beneficiary has paid £10 to the Supplier as consideration under this agreement the receipt and sufficiency of which the Supplier acknowledges.

Agreed terms

1 INTERPRETATION

The following definitions and rules of interpretation apply in this agreement.

1.1 Definitions:

Material	all [designs,] drawings, models, plans, [specifications, design details,] photographs, brochures, reports, feasibility studies, planning submissions, notes of meetings, CAD materials, calculations, data, databases, schedules, programmes, bills of quantities, budgets and any other materials provided in connection with the Project and all updates, amendments, additions and revisions to them and any works, [designs,] or inventions incorporated or referred to in them for any purpose relating to the Project.
Permitted Uses	without limitation the design, construction, completion, reconstruction, modification, refurbishment, development, maintenance, facilities management, funding, disposal, letting, fitting-out, advertisement, decommissioning, demolition, reinstatement, extension, building information modelling and repair of the Property and the Project.
Professional Appointment	a contract in writing dated [DATE] between the Contracting Authority and the Supplier.
Project	[DESCRIPTION OF PROJECT].
Property	[DESCRIPTION OF PROPERTY].

Required Standard the reasonable skill, care and diligence to be expected of a qualified and experienced member of the Supplier's profession undertaking the Services in relation to projects of a similar size, scope, complexity and character to the Project.

Services the services referred to in the Professional Appointment, performed by or on behalf of the Supplier under the Professional Appointment.

- 1.2 Clause headings shall not affect the interpretation of this agreement.
- 1.3 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's personal representatives, successors and permitted assigns.
- 1.4 A reference to a company includes any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural include the singular.
- 1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.7 A reference to any party shall include that party's personal representatives, successors and permitted assigns.
- 1.8 A reference to legislation is a reference to all legislation having effect in the United Kingdom from time to time, including:
- 1.8.1 directives, decisions and regulations of the Council or Commission of the European Union;
 - 1.8.2 acts of Parliament;
 - 1.8.3 orders, regulations, consents, licences, notices and bye-laws made or granted;
 - (a) under any act of Parliament; or
 - (b) under any directive, decision or regulation of the Council or Commission of the European Union; or
 - (c) By a local authority or by a court of competent jurisdiction; and
 - 1.8.4 any mandatory codes of practice issued by a statutory body.
- 1.9 A reference to legislation is a reference to that legislation as amended, modified, consolidated, re-enacted or replaced from time to time and to all subordinate legislation made under it from time to time.
- 1.10 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.
- 1.11 A reference to writing or written does not include fax or email.
- 1.12 A reference to a document is a reference to that document as varied or novated (in each case, other than in breach of this agreement) at any time.
- 1.13 References to clauses are to the clauses of this agreement.

- 1.14 Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

2 COMPLY WITH PROFESSIONAL APPOINTMENT

2.1 The Supplier warrants to the Beneficiary that:

2.1.1 it has and shall continue to comply with the Professional Appointment:

2.1.2 it has exercised and shall continue to exercise the Required Standard:

- (a) when performing the Services;
- (b) to comply with (and to see the completed Project complies with) any legislation;
- (c) to perform the Services and prepare all Material for those elements of the Project for which the Supplier is responsible in sufficient time to facilitate the efficient progress of the Project; and
- (d) to see that the Project complies with all planning agreements, permissions and conditions.

2.2 In proceedings for breach of this clause 2, the Supplier may:

2.2.1 rely on any limit of liability or other term of the Professional Appointment; and

2.2.2 raise equivalent rights of defence as it would have had if the Beneficiary had been named as a joint client, with the Contracting Authority, under the Professional Appointment (for this purpose not taking into account any set-off or counterclaim against the actual client under the Professional Appointment).

2.3 The Supplier's duties or liabilities under this agreement shall not be negated or diminished by:

2.3.1 any approval or inspection of:

- (a) the Property; or
- (b) the Project; or
- (c) any designs or specifications for the Property or the Project; or

2.3.2 any testing of any work, goods, materials, plant or equipment; or

2.3.3 any omission to approve, inspect or test,

by or on behalf of the Beneficiary or the Contracting Authority.

2.4 This agreement shall not negate or diminish any other duty or liability otherwise owed to the Beneficiary by the Supplier.

3 PROFESSIONAL INDEMNITY INSURANCE

- 3.1 The Supplier shall maintain professional indemnity insurance for an amount of at least £*[insert level of professional indemnity insurance required to be maintained under the Professional Appointment]* [in respect of each claim without limit to the number of claims except for claims arising out of pollution or contamination, where the minimum amount of cover applies in the aggregate in any one period of insurance and except for claims arising out of asbestos where a lower level may apply in the aggregate] for a period beginning on the date of this agreement and ending *[12 years/6 years]* after the date of practical completion of the Project, provided that such insurance is available at commercially reasonable rates and terms. The Supplier shall maintain that professional indemnity insurance:
- 3.1.1 with reputable insurers lawfully carrying on insurance business in the United Kingdom or European Union; and
 - 3.1.2 on customary and usual terms and conditions prevailing for the time being in the insurance market.
- 3.2 Any increased or additional premium required by insurers because of the Supplier's claims record or other acts, omissions, matters or things particular to the Supplier shall be deemed to be within commercially reasonable rates and terms.
- 3.3 The Supplier shall immediately inform the Beneficiary if the Supplier's required professional indemnity insurance ceases to be available at commercially reasonable rates and terms, so that the Supplier and the Beneficiary can discuss how best to protect the respective positions of the Beneficiary and the Supplier regarding the Project and the Property, without that insurance.
- 3.4 Whenever the Beneficiary reasonably requests, the Supplier shall send the Beneficiary evidence that the Supplier's professional indemnity insurance is in force, including, if required by the Beneficiary, an original letter from the Supplier's insurers or brokers confirming the Supplier's then current professional indemnity insurance and that the premiums for that insurance have been paid in full at the date of that letter.

4 COPYRIGHT

- 4.1 The Supplier grants to the Beneficiary, with immediate effect, an irrevocable, non-exclusive, non-terminable, royalty-free licence to copy and make full use of any Material prepared by, or on behalf of, the Supplier for any purpose relating to the Project and the Property, including any of the Permitted Uses.
- 4.2 The licence in clause 4.1 allows the Beneficiary to use the Material in connection with any extension of the Project, but not to reproduce the designs contained in the Material in any such extension.
- 4.3 This licence carries the right to grant sub-licences and is transferable to third parties without the consent of the Supplier.
- 4.4 The Supplier shall not be liable for use of the Material for any purpose other than that for which it was prepared and/or provided.
- 4.5 The Beneficiary may request a copy (or copies) of some or all of the Material from the Supplier. On the Beneficiary's payment of the Supplier's reasonable charges for providing the copy (or copies), the Supplier shall provide the copy (or copies) to the Beneficiary.

5 LIABILITY PERIOD

The Beneficiary may not commence any legal action against the Supplier under this agreement after **[12 years][6 years]** from the date of practical completion of all of the Project.

6 ASSIGNMENT

6.1 The Beneficiary may assign the benefit of this agreement:

6.1.1 on two occasions to any person with an interest in the Project; and

6.1.2 without counting as an assignment under clause 6.1.1:

(a) by way of security to a funder (including any reassignment on redemption of security); or

(b) to and from subsidiary or other associated companies within the same group of companies as the Beneficiary so long as that assignee company remains within the same group of companies as the Beneficiary.

6.2 The Beneficiary shall notify the Supplier of any assignment. If the Beneficiary fails to do this, the assignment shall still be valid.

6.3 The Supplier shall not contend that any person to whom the benefit of this agreement is assigned under clause 6.1 may not recover any sum under this agreement because that person is an assignee and not a named party to this agreement.

7 THIRD PARTY RIGHTS

A person who is not a party to this agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement.

8 GOVERNING LAW

This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

9 JURISDICTION

Each party irrevocably agrees that the courts of England and Wales shall have non-exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

This agreement has been entered into as a deed on the date stated at the beginning of it.

Schedule - Parent Company Guarantee

DEED OF GUARANTEE

THIS DEED OF GUARANTEE is made the day of 20[]

BETWEEN:

- (1) [Insert the name of the Guarantor] [a company incorporated in England and Wales] with number [insert company no.] whose registered office is at [insert details of the Guarantor's registered office here] [OR] [a company incorporated under the laws of [insert country], registered in [insert country] with number [insert number] at [insert place of registration], whose principal office is at [insert office details] ("Guarantor"); and
- (2) [Insert the name of the Contracting Authority] which is a company incorporated in and accordance with the laws of [] (Company No. [] whose registered office address is at [] ("Beneficiary")

WHEREAS:

- (A) The Guarantor has agreed, in consideration of the Beneficiary entering into the Call Off Contract with the Supplier, to guarantee all of the Supplier's obligations under the Call Off Contract.
- (B) It is the intention of the Parties that this Deed of Guarantee be executed and take effect as a deed.

The Beneficiary has paid £10 to the Guarantor as consideration under this Deed of Guarantee the receipt and sufficiency of which the Guarantor acknowledges

1. DEFINITIONS AND INTERPRETATION

In this Deed of Guarantee:

- 1.1 unless defined elsewhere in this Deed of Guarantee or the context requires otherwise, defined terms shall have the same meaning as they have for the purposes of the Call Off Contract;
- 1.2 the words and phrases below shall have the following meanings:

Call Off Contract	means the agreement in writing between the Beneficiary and the Supplier dated [insert date of Call Off Contract];
Supplier	means the Supplier as defined in the Call Off Contract;
"Guaranteed Obligations"	means all obligations and liabilities of the Supplier to the Beneficiary under the Call Off Contract together with all obligations owed by the Supplier to the Beneficiary that are supplemental to, incurred under, ancillary to or calculated by reference to the Call Off Contract;
- 1.3 references to this Deed of Guarantee and any provisions of this Deed of Guarantee or to any other document or agreement (including to the Call Off Contract) are to be construed as references to this Deed of Guarantee, those provisions or that

document or agreement in force for the time being and as amended, varied, restated, supplemented, substituted or novated from time to time;

- 1.4 unless the context otherwise requires, words importing the singular are to include the plural and vice versa;
- 1.5 references to a person are to be construed to include that person's assignees or transferees or successors in title, whether direct or indirect;
- 1.6 the words "other" and "otherwise" are not to be construed as confining the meaning of any following words to the class of thing previously stated where a wider construction is possible;
- 1.7 unless the context otherwise requires, reference to a gender includes the other gender and the neuter;
- 1.8 unless the context otherwise requires, references to an Act of Parliament, statutory provision or statutory instrument include a reference to that Act of Parliament, statutory provision or statutory instrument as amended, extended or re-enacted from time to time and to any regulations made under it;
- 1.9 unless the context otherwise requires, any phrase introduced by the words "including", "includes", "in particular", "for example" or similar, shall be construed as illustrative and without limitation to the generality of the related general words;
- 1.10 references to Clauses and Schedules are, unless otherwise provided, references to Clauses of and Schedules to this Deed of Guarantee; and
- 1.11 references to liability are to include any liability whether actual, contingent, present or future.

2. GUARANTEE AND INDEMNITY

- 2.1 The Guarantor irrevocably and unconditionally guarantees and undertakes to the Beneficiary to procure that the Supplier duly and punctually performs all of the Guaranteed Obligations now or hereafter due, owing or incurred by the Supplier to the Beneficiary.
- 2.2 The Guarantor irrevocably and unconditionally undertakes upon demand to pay to the Beneficiary all monies and liabilities which are now or at any time hereafter shall have become payable by the Supplier to the Beneficiary under or in connection with the Call Off Contract or in respect of the Guaranteed Obligations as if it were a primary obligor.
- 2.3 If at any time the Supplier shall fail to perform any of the Guaranteed Obligations, the Guarantor, as primary obligor, irrevocably and unconditionally undertakes to the Beneficiary that, upon first demand by the Beneficiary it shall, at the cost and expense of the Guarantor:
 - 2.3.1 fully, punctually and specifically perform such Guaranteed Obligations as if it were itself a direct and primary obligor to the Beneficiary in respect of the Guaranteed Obligations and liable as if the Call Off Contract had been entered into directly by the Guarantor and the Beneficiary; and

- 2.3.2 as a separate and independent obligation and liability, indemnify and keep the Beneficiary indemnified against all losses, damages, costs and expenses (including VAT thereon, and including, without limitation, all court costs and all legal fees on a solicitor and own client basis, together with any disbursements,) of whatever nature which may result or which such Beneficiary may suffer, incur or sustain arising in any way whatsoever out of a failure by the Supplier to perform the Guaranteed Obligations save that, subject to the other provisions of this Deed of Guarantee, this shall not be construed as imposing greater obligations or liabilities on the Guarantor than are purported to be imposed on the Supplier under the Call Off Contract.
- 2.4 As a separate and independent obligation and liability from its obligations and liabilities under Clauses 2.1 to 2.3 above, the Guarantor as a primary obligor irrevocably and unconditionally undertakes to indemnify and keep the Beneficiary indemnified on demand against all losses, damages, costs and expenses (including VAT thereon, and including, without limitation, all legal costs and expenses), of whatever nature, whether arising under statute, contract or at common law, which such Beneficiary may suffer or incur if any obligation guaranteed by the Guarantor is or becomes unenforceable, invalid or illegal as if the obligation guaranteed had not become unenforceable, invalid or illegal provided that the Guarantor's liability shall be no greater than the Supplier's liability would have been if the obligation guaranteed had not become unenforceable, invalid or illegal.
- 3. OBLIGATION TO ENTER INTO A NEW CONTRACT**
- 3.1 If the Call Off Contract is terminated for any reason, whether by the Beneficiary or the Supplier, or if the Call Off Contract is disclaimed by a liquidator of the Supplier or the obligations of the Supplier are declared to be void or voidable for any reason, then the Guarantor will, at the request of the Beneficiary enter into a contract with the Beneficiary in terms mutatis mutandis the same as the Call Off Contract and the obligations of the Guarantor under such substitute agreement shall be the same as if the Guarantor had been original obligor under the Call Off Contract or under an agreement entered into on the same terms and at the same time as the Call Off Contract with the Beneficiary.
- 4. DEMANDS AND NOTICES**
- 4.1 Any demand or notice served by the Beneficiary on the Guarantor under this Deed of Guarantee shall be in writing, addressed to:
- 4.1.1 [Address of the Guarantor in England and Wales]
- 4.1.2 For the Attention of [insert details]
- or such other address in England and Wales as the Guarantor has from time to time notified to the Beneficiary in writing in accordance with the terms of this Deed of Guarantee as being an address for the receipt of such demands or notices.
- 4.2 Any notice or demand served on the Guarantor or the Beneficiary under this Deed of Guarantee shall be deemed to have been served:
- 4.2.1 if delivered by hand, at the time of delivery; or

- 4.2.2 if posted, at 10.00 a.m. on the second Working Day after it was put into the post.
- 4.3 In proving service of a notice or demand on the Guarantor or the Beneficiary it shall be sufficient to prove that delivery was made, or that the envelope containing the notice or demand was properly addressed and posted as a prepaid first class recorded delivery letter.
- 4.4 Any notice purported to be served on the Beneficiary under this Deed of Guarantee shall only be valid when received in writing by the Beneficiary.
- 5. BENEFICIARY'S PROTECTIONS**
- 5.1 The Guarantor shall not be discharged or released from this Deed of Guarantee by any arrangement made between the Supplier and the Beneficiary (whether or not such arrangement is made with or without the assent of the Guarantor) or by any amendment to or termination of the Call Off Contract or by any forbearance or indulgence whether as to payment, time, performance or otherwise granted by the Beneficiary in relation thereto (whether or not such amendment, termination, forbearance or indulgence is made with or without the assent of the Guarantor) or by the Beneficiary doing (or omitting to do) any other matter or thing which but for this provision might exonerate the Guarantor.
- 5.2 This Deed of Guarantee shall be a continuing security for the Guaranteed Obligations and accordingly:
- 5.2.1 it shall not be discharged, reduced or otherwise affected by any partial performance (except to the extent of such partial performance) by the Supplier of the Guaranteed Obligations or by any omission or delay on the part of the Beneficiary in exercising its rights under this Deed of Guarantee;
- 5.2.2 it shall not be affected by any dissolution, amalgamation, reconstruction, reorganisation, change in status, function, control or ownership, insolvency, liquidation, administration, appointment of a receiver, voluntary arrangement, any legal limitation or other incapacity, of the Supplier, the Beneficiary, the Guarantor or any other person;
- 5.2.3 if, for any reason, any of the Guaranteed Obligations shall prove to have been or shall become void or unenforceable against the Supplier for any reason whatsoever, the Guarantor shall nevertheless be liable in respect of that purported obligation or liability as if the same were fully valid and enforceable and the Guarantor were principal debtor in respect thereof; and
- 5.2.4 the rights of the Beneficiary against the Guarantor under this Deed of Guarantee are in addition to, shall not be affected by and shall not prejudice, any other security, guarantee, indemnity or other rights or remedies available to the Beneficiary.
- 5.3 The Beneficiary shall be entitled to exercise its rights and to make demands on the Guarantor under this Deed of Guarantee as often as it wishes and the making of a demand (whether effective, partial or defective) in respect of the breach or non performance by the Supplier of any Guaranteed Obligation shall not preclude the

Beneficiary from making a further demand in respect of the same or some other default in respect of the same Guaranteed Obligation.

- 5.4 The Beneficiary shall not be obliged before taking steps to enforce this Deed of Guarantee against the Guarantor to obtain judgment against the Supplier or the Guarantor or any third party in any court, or to make or file any claim in a bankruptcy or liquidation of the Supplier or any third party, or to take any action whatsoever against the Supplier or the Guarantor or any third party or to resort to any other security or guarantee or other means of payment. No action (or inaction) by the Beneficiary in respect of any such security, guarantee or other means of payment shall prejudice or affect the liability of the Guarantor hereunder.
- 5.5 The Beneficiary's rights under this Deed of Guarantee are cumulative and not exclusive of any rights provided by law and may be exercised from time to time and as often as the Beneficiary deems expedient.
- 5.6 Any waiver by the Beneficiary of any terms of this Deed of Guarantee, or of any Guaranteed Obligations shall only be effective if given in writing and then only for the purpose and upon the terms and conditions, if any, on which it is given.
- 5.7 Any release, discharge or settlement between the Guarantor and the Beneficiary shall be conditional upon no security, disposition or payment to the Beneficiary by the Guarantor or any other person being void, set aside or ordered to be refunded pursuant to any enactment or law relating to liquidation, administration or insolvency or for any other reason whatsoever and if such condition shall not be fulfilled the Beneficiary shall be entitled to enforce this Deed of Guarantee subsequently as if such release, discharge or settlement had not occurred and any such payment had not been made. The Beneficiary shall be entitled to retain this security after as well as before the payment, discharge or satisfaction of all monies, obligations and liabilities that are or may become due owing or incurred to the Beneficiary from the Guarantor for such period as the Beneficiary may determine.

6. GUARANTOR INTENT

- 6.1 Without prejudice to the generality of Clause 5 (Beneficiary's protections), the Guarantor expressly confirms that it intends that this Deed of Guarantee shall extend from time to time to any (however fundamental) variation, increase, extension or addition of or to the Call Off Contract and any associated fees, costs and/or expenses.

7. RIGHTS OF SUBROGATION

- 7.1 The Guarantor shall, at any time when there is any default in the performance of any of the Guaranteed Obligations by the Supplier and/or any default by the Guarantor in the performance of any of its obligations under this Deed of Guarantee, exercise any rights it may have:
 - 7.1.1 of subrogation and indemnity;
 - 7.1.2 to take the benefit of, share in or enforce any security or other guarantee or indemnity for the Supplier's obligations; and
 - 7.1.3 to prove in the liquidation or insolvency of the Supplier,

only in accordance with the Beneficiary's written instructions and shall hold any amount recovered as a result of the exercise of such rights on trust for the Beneficiary and pay the same to the Beneficiary on first demand. The Guarantor hereby acknowledges that it has not taken any security from the Supplier and agrees not to do so until Beneficiary receives all moneys payable hereunder and will hold any security taken in breach of this Clause on trust for the Beneficiary.

8. DEFERRAL OF RIGHTS

8.1 Until all amounts which may be or become payable by the Supplier under or in connection with the Call Off Contract have been irrevocably paid in full, the Guarantor agrees that, without the prior written consent of the Beneficiary, it will not:

8.1.1 exercise any rights it may have to be indemnified by the Supplier;

8.1.2 claim any contribution from any other guarantor of the Supplier's obligations under the Call Off Contract;

8.1.3 take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Beneficiary under the Call Off Contract or of any other guarantee or security taken pursuant to, or in connection with, the Call Off Contract;

8.1.4 demand or accept repayment in whole or in part of any indebtedness now or hereafter due from the Supplier; or

8.1.5 claim any set off or counterclaim against the Supplier;

8.2 If the Guarantor receives any payment or other benefit or exercises any set off or counterclaim or otherwise acts in breach of this Clause 8, anything so received and any benefit derived directly or indirectly by the Guarantor therefrom shall be held on trust for the Beneficiary and applied in or towards discharge of its obligations to the Beneficiary under this Deed of Guarantee.

9. REPRESENTATIONS AND WARRANTIES

9.1 The Guarantor hereby represents and warrants to the Beneficiary that:

9.1.1 the Guarantor is duly incorporated and is a validly existing company under the laws of its place of incorporation, has the capacity to sue or be sued in its own name and has power to carry on its business as now being conducted and to own its property and other assets;

9.1.2 the Guarantor has full power and authority to execute, deliver and perform its obligations under this Deed of Guarantee and no limitation on the powers of the Guarantor will be exceeded as a result of the Guarantor entering into this Deed of Guarantee;

9.1.3 the execution and delivery by the Guarantor of this Deed of Guarantee and the performance by the Guarantor of its obligations under this Deed of Guarantee including, without limitation entry into and performance of a contract pursuant to Clause 3) have been duly authorised by all necessary corporate action and do not contravene or conflict with:

- (a) the Guarantor's memorandum and articles of association or other equivalent constitutional documents;
 - (b) any existing law, statute, rule or regulation or any judgment, decree or permit to which the Guarantor is subject; or
 - (c) the terms of any agreement or other document to which the Guarantor is a Party or which is binding upon it or any of its assets;
- 9.1.4 all governmental and other authorisations, approvals, licences and consents, required or desirable, to enable it lawfully to enter into, exercise its rights and comply with its obligations under this Deed of Guarantee, and to make this Deed of Guarantee admissible in evidence in its jurisdiction of incorporation, have been obtained or effected and are in full force and effect; and
- 9.1.5 this Deed of Guarantee is the legal valid and binding obligation of the Guarantor and is enforceable against the Guarantor in accordance with its terms.

10. PAYMENTS AND SET-OFF

- 10.1 All sums payable by the Guarantor under this Deed of Guarantee shall be paid without any set-off, lien or counterclaim, deduction or withholding, howsoever arising, except for those required by law, and if any deduction or withholding must be made by law, the Guarantor will pay that additional amount which is necessary to ensure that the Beneficiary receives a net amount equal to the full amount which it would have received if the payment had been made without the deduction or withholding.
- 10.2 The Guarantor shall pay interest on any amount due under this Deed of Guarantee at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment.
- 10.3 The Guarantor will reimburse the Beneficiary for all legal and other costs (including VAT) incurred by the Beneficiary in connection with the enforcement of this Deed of Guarantee.

11. GUARANTOR'S ACKNOWLEDGEMENT

- 11.1 The Guarantor warrants, acknowledges and confirms to the Beneficiary that it has not entered into this Deed of Guarantee in reliance upon, nor has it been induced to enter into this Deed of Guarantee by any representation, warranty or undertaking made by or on behalf of the Beneficiary (whether express or implied and whether pursuant to statute or otherwise) which is not set out in this Deed of Guarantee.

12. ASSIGNMENT

- 12.1 The Beneficiary shall be entitled to assign or transfer the benefit of this Deed of Guarantee at any time to any person without the consent of the Guarantor being required and any such assignment or transfer shall not release the Guarantor from its liability under this Guarantee.
- 12.2 The Guarantor may not assign or transfer any of its rights and/or obligations under this Deed of Guarantee.

13. SEVERANCE

- 13.1 If any provision of this Deed of Guarantee is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if this Deed of Guarantee had been executed with the invalid, illegal or unenforceable provision eliminated.

14. THIRD PARTY RIGHTS

- 14.1 A person who is not a Party to this Deed of Guarantee shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Deed of Guarantee. This Clause does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

15. GOVERNING LAW

- 15.1 This Deed of Guarantee and any non-contractual obligations arising out of or in connection with it shall be governed by and construed in all respects in accordance with English law.
- 15.2 The Guarantor irrevocably agrees for the benefit of the Beneficiary that the courts of England shall have jurisdiction to hear and determine any suit, action or proceedings and to settle any dispute which may arise out of or in connection with this Deed of Guarantee and for such purposes hereby irrevocably submits to the jurisdiction of such courts.
- 15.3 Nothing contained in this Clause shall limit the rights of the Beneficiary to take proceedings against the Guarantor in any other court of competent jurisdiction, nor shall the taking of any such proceedings in one or more jurisdictions preclude the taking of proceedings in any other jurisdiction, whether concurrently or not (unless precluded by applicable law).
- 15.4 The Guarantor irrevocably waives any objection which it may have now or in the future to the courts of England being nominated for the purpose of this Clause on the ground of venue or otherwise and agrees not to claim that any such court is not a convenient or appropriate forum.
- 15.5 [The Guarantor hereby irrevocably designates, appoints and empowers [the Supplier] [a suitable alternative to be agreed if the Supplier's registered office is not in England or Wales] either at its registered office or on facsimile number [insert fax no.] from time to time to act as its authorised agent to receive notices, demands, service of process and any other legal summons in England and Wales for the purposes of any legal action or proceeding brought or to be brought by the Beneficiary in respect of this Deed of Guarantee. The Guarantor hereby irrevocably consents to the service of notices and demands, service of process or any other legal summons served in such way.]

[Guidance Note: Include the above provision when dealing with the appointment of English process agent by a non English incorporated Guarantor]

IN WITNESS whereof the Guarantor has caused this instrument to be executed and delivered as a Deed the day and year first before written.

EXECUTED as a DEED by

[Insert name of the Guarantor] acting by [Insert/print names]

Director

Director/Secretary

Schedule - Novation Agreement

(insert template novation agreement)

REDACTED FOIA Section 40, Personal Information