

CROWN COMMERCIAL SERVICE

PROJECT MANAGEMENT AND FULL DESIGN TEAM SERVICES FRAMEWORK SCHEDULE 4

PART B - TEMPLATE ORDER FORM AND TEMPLATE CALL OFF TERMS

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Date: 18th January 2019

ORDER FORM

Between

THE SECRETARY OF STATE FOR JUSTICE

and

JACOBS UK LTD

for the provision of

cost consultancy services:

London and East of England region

CCS REFERENCE NUMBER: PMFDTS-0159-2018

MOJ ORDER NUMBER: con_16173

THIS CALL OFF CONTRACT is made BY DEED the 18th day of January 2019.

PARTIES:

1. **THE SECRETARY OF STATE FOR JUSTICE** of Ministry of Justice, 102 Petty France, Westminster, London SW1H 9AJ acting as part of the Crown (the "**Contracting Authority**", with such term including the Contracting Authority's successors in title and legal assigns); and
2. **Jacobs UK Ltd** which is a company incorporated in and in accordance with the laws of England and Wales (Company No. **02594504**) whose registered office address is at **1180 Eskdale Road, Winnersh, Wokingham, Berkshire, RG41 5TU** (the "**Supplier**").

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 3rd May 2017 (the "**Framework Agreement**").
- (C) On the **14th of June 2018** the Contracting Authority (acting as part of the Crown and in the Framework Agreement is identified as a "Contracting Authority") invited the Supplier, along with other parties to the Framework Agreement, to tender for the provision of services in accordance with the terms and conditions of the Framework Agreement.
- (D) On the **23rd of July 2018**, the Supplier submitted a tender response to the invitation referred to in Recital (C) and was subsequently selected by the Contracting Authority to enter into this Call Off Contract.
- (E) The Contracting Authority hereby appoints the Supplier under this Call Off Contract so that the Contracting Authority may, from time to time, instruct the Supplier via one or more Project Services Orders to provide Project Services in relation to one or more Projects in accordance with the terms and conditions of this Call Off Contract.
- (F) Without prejudice to the generality of Recital (E), where the Supplier is instructed to provide any Project Services in relation to a Project in accordance with this Call Off Contract or otherwise, the Contracting Authority may, in accordance with clause 2B, appoint the Supplier (at its absolute discretion) to enter into a further Partnering Contract in relation to the provision of certain Partnering Services in connection with the Project to which the relevant Project Services relate, following which the duties and obligations of the Supplier in relation to those Project Services undertaken in respect of that Project up to the date of such Partnering Contract and the future Partnering Services in respect of the same shall be subject to the provisions of clause 2B.

- (G) The Supplier acknowledges and agrees that the Contracting Authority has entered into or may enter into one or more agreements in substantially the same form as this Call Off Contract with other suppliers under and in accordance with the terms of the Framework Agreement (each a "**Framework Supplier**") and that the basis of the Supplier's engagement under this Call Off Contract shall be subject always to the provisions of clause 2.5.

IT IS AGREED AS FOLLOWS:

1. This document, the Call Off Contract Particulars, Contract Conditions, any schedules annexed hereto and each and every Project Services Order entered into by the parties pursuant to clause 2A (subject to clause 2B.8) form part of this Call Off Contract.
2. The Contracting Authority will pay the Supplier the relevant Fee for the provision of any Project Services instructed by the Contracting Authority in connection with a Project pursuant to clause 2A and carry out its duties in accordance with this Call Off Contract and the Framework Agreement.
3. Where the Contracting Authority and the Supplier enter into a Partnering Contract in connection with a Project pursuant to clause 2B, the Supplier acknowledges and agrees that:
 - (a) the Contracting Authority will pay the Supplier for the provision of the Partnering Services solely and exclusively in accordance with the provisions of the relevant Partnering Contract; and
 - (b) unless otherwise agreed between the parties pursuant to clause 2B, any part of the Fees previously paid by the Contracting Authority to the Supplier or that are due and payable to the Supplier, prior to the date of the Partnering Contract, in connection with the provision of the Project Services in relation to the Project to which the Partnering Contract relates shall be deemed, once paid to the Supplier, to have been paid by the Contracting Authority on account of any sums payable by the Contracting Authority to the Supplier under the Partnering Contract in respect of the same.
4. The Supplier shall perform the Project Services in accordance with this Call Off Contract and the Framework Agreement. Where the Contracting Authority and the Supplier enter into a Partnering Contract pursuant to clause 2B in relation to a specific Project, the Supplier acknowledges and agrees that it shall perform any Partnering Services strictly in accordance with the requirements of the Partnering Contract.
5. This Call Off Contract is the entire agreement between the parties in relation to the provision of the Project Services and supersedes and extinguishes all prior arrangements, understandings, agreements, statements, representations or warranties (whether written or oral) relating thereto.
6. 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.
7. Nothing in clauses 5 or 6 above shall exclude liability in respect of misrepresentations made fraudulently.

EXECUTED AS A DEED by the parties on the date which first appears in this Deed

EXECUTED (but not delivered until the)
date hereof) **AS A DEED** by **THE**)
SECRETARY OF STATE FOR JUSTICE)
(**ACTING AS PART OF THE CROWN**) by)
affixing hereto its common seal in the
presence of a witness:

Witness (signature):

Witness (printed name):

Witness address:

Witness occupation:

EXECUTED (but not delivered until the
date hereof) **AS A DEED** by **Jacobs UK
Limited** acting by a director in the
presence of a witness:

Director (signature):

Director (printed name):

Witness (signature):

Witness (printed name):

Witness address:

Witness occupation:

Call Off Contract Particulars

0	<u>REGION</u> The Supplier acknowledges and agrees that the geographical area of the Projects covered by this Call Off Contract includes: - the geographical region stated on the front cover of the Order Form (and as more particularly described in the invitation to tender documentation previously provided by the Contracting Authority to the Supplier dated the 14th of June 2018 with reference number PMFDT5-0159-2018) (the "Region"); and (at the Contracting Authority's absolute discretion) such other regions located outside of the Region that are the subject of a separate agreement in substantially the same form as this Call Off Contract between the Contracting Authority and another Framework Supplier (a "Other Region"), where a Framework Supplier in such Other Region: - is conflicted from providing or otherwise cannot provide or is unable to provide the services required by the Contracting Authority in respect of a project in that Other Region; or - is in material or persistent breach of such agreement with the Contracting Authority and/or any order or contract for services issued by the Contracting Authority thereunder or has had its agreement and/or any such order or contract terminated. The Supplier Acknowledges and agrees: - that it does not have the exclusive right to undertake any services or any of the Core Services under or pursuant to this Call-Off Contract and the Contracting authority, at its sole and exclusive discretion, may issue instruction to other regional providers or third parties to carry out services and tasks in relation to this Call-Off Contract which are the same as or similar to the services or Core Services - the Contracting Authority makes no guarantee to the Supplier that it will be awarded any Core Service Work
1	<u>FEES AND PAYMENT</u> In respect of the payment of any Fee in connection with the provision of any Project Services pursuant to a Project Services Order: - the Final Date for Payment of an instalment of the Fee is 30 (thirty) days after the Due Date for Payment; - the Due Date for Payment of an instalment of the Fee is the date that the Contracting Authority receives the Supplier's invoice in respect of the same; and - the interest rate for late payment is 4% (four per cent) above the Bank of England base rate in force from time to time.
2	<u>NOTICES</u> All notices under this Call Off Contract and each Project Services Order shall be submitted to:

	<table><tr><td>To the Contracting Authority</td><td>To the Supplier</td></tr><tr><td>[Redacted]</td><td>[Redacted]</td></tr><tr><td>If by email: [Redacted]</td><td>If by email: [Redacted]</td></tr></table>	To the Contracting Authority	To the Supplier	[Redacted]	[Redacted]	If by email: [Redacted]	If by email: [Redacted]						
To the Contracting Authority	To the Supplier												
[Redacted]	[Redacted]												
If by email: [Redacted]	If by email: [Redacted]												
3	<u>INSURANCE REQUIREMENTS</u> In accordance with Clause 18, the insurances that the Supplier is required to take out and maintain in respect of any Project Services provided under an individual Project Services Order are as follows: <table><tr><th>Insurance</th><th>Level of cover</th><th>Period of cover</th></tr><tr><td>Third Party Public and Products Liability Insurance</td><td>£10,000,000 (ten million pounds) for any one occurrence, the number of occurrences being unlimited in any annual period of insurance, but in the aggregate per annum in respect of products liability and pollution liability (to the extent insured by the relevant policy).</td><td>The period commencing on the date of the relevant Project Services Order and concluding twelve (12) months after completion or earlier termination of the relevant Project Services.</td></tr><tr><td>Employer's Liability Insurance</td><td>The Supplier shall satisfy its statutory obligations in full in relation to taking out and maintaining employer's liability insurance, with the indemnity limit of such insurance being not less than that required by Law at any time.</td><td>The period commencing on the date of the relevant Project Services Order and concluding twelve (12) months after completion or earlier termination of the relevant Project Services.</td></tr><tr><td>Professional Indemnity Insurance</td><td>£5,000,000 (five million pounds) for any one claim or series of claims arising out of one single incident (provided by way of unlimited reinstatements), including costs and expenses, but in the aggregate per annum for liability arising out of pollution or contamination (to the extent insured by the relevant policy) and £5,000,000 (five million pounds) for any one claim and in the aggregate per annum in respect of liability arising out of asbestos (to the extent insured by the relevant</td><td>The period commencing on the date of the relevant Project Services Order and concluding on the expiration of the Liability Period.</td></tr></table>	Insurance	Level of cover	Period of cover	Third Party Public and Products Liability Insurance	£10,000,000 (ten million pounds) for any one occurrence, the number of occurrences being unlimited in any annual period of insurance, but in the aggregate per annum in respect of products liability and pollution liability (to the extent insured by the relevant policy).	The period commencing on the date of the relevant Project Services Order and concluding twelve (12) months after completion or earlier termination of the relevant Project Services.	Employer's Liability Insurance	The Supplier shall satisfy its statutory obligations in full in relation to taking out and maintaining employer's liability insurance, with the indemnity limit of such insurance being not less than that required by Law at any time.	The period commencing on the date of the relevant Project Services Order and concluding twelve (12) months after completion or earlier termination of the relevant Project Services.	Professional Indemnity Insurance	£5,000,000 (five million pounds) for any one claim or series of claims arising out of one single incident (provided by way of unlimited reinstatements), including costs and expenses, but in the aggregate per annum for liability arising out of pollution or contamination (to the extent insured by the relevant policy) and £5,000,000 (five million pounds) for any one claim and in the aggregate per annum in respect of liability arising out of asbestos (to the extent insured by the relevant	The period commencing on the date of the relevant Project Services Order and concluding on the expiration of the Liability Period.
Insurance	Level of cover	Period of cover											
Third Party Public and Products Liability Insurance	£10,000,000 (ten million pounds) for any one occurrence, the number of occurrences being unlimited in any annual period of insurance, but in the aggregate per annum in respect of products liability and pollution liability (to the extent insured by the relevant policy).	The period commencing on the date of the relevant Project Services Order and concluding twelve (12) months after completion or earlier termination of the relevant Project Services.											
Employer's Liability Insurance	The Supplier shall satisfy its statutory obligations in full in relation to taking out and maintaining employer's liability insurance, with the indemnity limit of such insurance being not less than that required by Law at any time.	The period commencing on the date of the relevant Project Services Order and concluding twelve (12) months after completion or earlier termination of the relevant Project Services.											
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		policy.	
4	<u>LIABILITY PERIOD</u> Subject to the below in relation to any Project Services provided under a Project Services Order, the Liability Period under this Call Off Contract shall be twelve (12) years from the later of the date on which: (a) the Supplier last performed any duties and/or obligations under or in connection with this Call Off Contract; and (b) this Call Off Contract is terminated, in each case, save in respect of any claims made before such date. Without prejudice to the generality of the above, the Liability Period in respect of each individual Project Services Order shall be twelve (12) years from the later of the date on which: (a) the Supplier last provided any Project Services under or in connection with that Project Services Order; (b) that Project Services Order is terminated; (c) this Call Off Contract is terminated; and (d) a Partnering Contract is entered into between the Contracting Authority and the Supplier in connection with the Partnering Services and the Project (subject to the application of clause 2B.8), in each case, save in respect of any claims made before such date.		
5	<u>DISPUTE RESOLUTION</u> • The nominating body for the Adjudicator is the Royal Institute of Chartered Surveyors. • The dispute resolution tribunal is Arbitration and: ○ the arbitration procedure shall be conducted in accordance with the Joint Contracts Tribunal edition of the Construction Industry Model Arbitrator Rules ("CIMAR") current at the date of referral; ○ the number of arbitrators shall be one (1); ○ the place where arbitration is to be held is London; ○ the language to be used in the arbitration proceedings shall be English; and ○ the governing law of the contract shall be the substantive law of England and Wales. If the parties cannot agree the identity of the arbitrator then the nominating body shall be the Royal Institute of Chartered Surveyors.		
5	<u>PROTECTION OF CONTRACTING AUTHORITY DATA</u> • Clause 28 (Protection of Contracting Authority Data) applies to this Call Off Contract and each Project Services Order.		

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 any Additional Project Services instructed by the Contracting Authority in relation to a Project Services Order in accordance with this Call Off Contract;

"Additional Project Services" includes any services set out in Part 2 of Schedule 1 or that are otherwise agreed in writing by the Contracting Authority and Supplier in relation to an individual Project Services Order (excluding any Project Services that are identified in the relevant Project Services Order);

"Adjudicator" means the party identified as such in the Call Off Contract Particulars;

"Arbitration" means the process identified as such in the Call Off Contract Particulars;

"Auditor" means:

- (a) the Contracting Authority's internal and external auditors;
- (b) the Contracting Authority'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 Contracting Authority to carry out audit or similar review functions; and

	(f) successors or assigns of any of the above;
"Baseline Key Performance Requirements"	means the Contracting Authority's baseline requirements relating to the use of key performance indicators on a Project as set out at Schedule 9 of this Call Off Contract;
"Basic Fee"	the amount payable by the Contracting Authority to the Supplier for the provision of each Core Service instructed by the Contracting Authority pursuant to an individual Project Services Order and as determined in accordance with the rates set out in the Fee Schedule or as otherwise agreed between the parties pursuant to clause 2A;
"Beneficiary"	in relation to a specific Project, the Contracting Authority (as the context permits), any Constructor, 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 as such in a Project Services Order as such;
"BIM Information Requirements"	the document identified as such in a Project Services Order;
"BIM Model Production and Delivery Table"	the document identified as such in a Project Services Order;
"BIM Protocol"	the building information modelling protocol (if any) identified as such in a Project Services Order;
"Building Contract"	a building contract entered (or that may be entered) into between the Contracting Authority and a Constructor in connection with a Project, as notified by the Contracting Authority to the Supplier from time to time in writing (whether in substantially the same terms as the Partnering Contract or otherwise);
"Business Continuity and Disaster"	means the plan set out at Schedule 6 of this Call Off Contract;

Recovery Plan"

"Call Off Contract" the Order Form to which these Contract Conditions are appended, the Call Off Contract Particulars and these Contract Conditions;

"Call Off Contract Particulars" means the document entitled "Call Off Contract Particulars" forming part of this Call Off Contract;

"CDM Regulations" the Construction (Design and Management) Regulations 2015;

"Change of Control" a change of control within the meaning of Section 450 of the Corporation Tax Act 2010;

"Collaborative Performance Framework" means the document identified as such (if applicable) in a Project Services Order;

"Collateral Warranty" a collateral warranty in the relevant form set out at Schedule 4 of this agreement;

"Commercially Sensitive Information" means the Supplier's Confidential Information listed in the Framework Agreement at Schedule 17 (Commercially Sensitive Information) comprised of commercially sensitive information:

- (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 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;
"Contracting Authority Policy"	means, in relation to a specific Project, any policy of the Contracting Authority identified as such in the relevant Project Services Order;
"Contracts Finder"	means the Government's publishing portal for public sector procurement opportunities;
"Construction Products Regulations"	the Construction Products Regulations 2013 (SI 2013/1387) and the Construction Products Regulation (305/2011/EU);
"Constructor"	means any contractor appointed (or to be appointed) by the Contracting Authority in connection with a Project;
"Contract Conditions"	these Contract Conditions;
"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 Controller;
"Contracting Authority's Representative"	means, in respect of each Project Services Order, the person identified as such in that Project Services Order, who may be replaced from time to time under clause 7;

"Control"	means control in either senses as defined in sections 450 and 1124 of the Corporation Tax Act 2010;
"Controller"	shall have the meaning given to such term in the GDPR;
"Core Service"	means each service identified by a reference number and as more particular described in the Services Schedule;
"Data Loss Event"	means any event that results, or may result, in unauthorised access to Personal Data held by the Supplier under this Call Off Contract and/or actual or potential loss and/or destruction of Personal Data in breach of this Call Off Contract, including any Personal Data Breach;
"Data Protection Legislation"	means: (a) the GDPR, the LED and any applicable national implementing Laws, as amended from time to time; (b) (subject to Royal Assent) the DPA 2018, to the extent that it relates to the Processing of Personal Data and privacy; and (c) all applicable Law about the Processing of Personal Data and privacy;
"Data Protection Impact Assessment"	means an assessment by the Controller of the impact of the envisaged Processing on the protection of Personal Data;
"Data Protection Officer"	shall have the meaning given to such term in the GDPR;
"Data Subject"	shall have the meaning given to such term in the GDPR;
"Data Subject Request"	means a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data;
"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;

"DPA 2018"

means the Data Protection Act 2018 (or such other instrument that brings into force as Law the Data Protection Bill 2017-19, as amended, superseded and/or replaced);

"Effective Date"

means the date of this Call Off Contract;

"Employee Liabilities"

means all claims, actions, proceedings, orders, demands, complaints, investigations (save for any claims for personal injury which are covered by insurance) and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs, expenses and legal costs reasonably incurred in connection with a claim or investigation including in relation to the following:

- (a) redundancy payments including contractual or enhanced redundancy costs, termination costs and notice payments;
- (b) unfair, wrongful or constructive dismissal compensation;
- (c) compensation for discrimination on grounds of sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation or claims for equal pay;
- (d) compensation for less favourable treatment of

part-time workers or fixed term employees;

- (e) outstanding debts and unlawful deduction of wages including any "Pay As You Earn" and national insurance contributions in relation to payments made by the Contracting Authority or the Replacement Supplier to a Transferring Supplier Employee which would have been payable by the Supplier or the sub-consultant if such payment should have been made prior to the date of the Relevant Transfer(s);
- (f) claims whether in tort, contract or statute or otherwise; and
- (g) any investigation by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body and of implementing any requirements which may arise from such investigation;

"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"	means, in respect of each individual Project Services Order, the Basic Fee and the Additional Fee (if any) in relation to any Project Services provided by the Supplier pursuant to that Project Services Order;
"Fee Schedule"	means Schedule 2 of this Call Off Contract.
"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;
"Former Supplier"	is the Supplier supplying services to the Contracting Authority before the Relevant Transfer Date that are the

	same as or substantially similar to the Project Services (or any part of the Project Services) and shall include any sub-consultant of such supplier (or any sub-consultant of any such sub-consultant);
"Framework Supplier"	has the meaning given to such term in Recital G of the Order Form;
"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, in relation to a specific Project, a person providing finance in connection with that Project;
"GDPR"	means the General Data Protection Regulation (Regulation (EU) 2016/679);
"General Anti-Abuse Rule"	means: (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, in respect of an individual Project Services Order, the person identified as such in that Project Services Order;
"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;
"Initial Term"	means the period of two (2) years commencing on the Effective Date;
"Insolvent"	a party is insolvent if:

- (a) being an individual, it:
 - (i) is the subject of a bankruptcy order or has a bankruptcy petition filed against them;
 - (ii) enters into an individual voluntary arrangement, a deed of arrangement or any other composition or arrangement with their creditors in satisfaction of their debts; or
 - (iii) has any distress, execution or other process levied or applied for in respect of the whole or any part of any of their property or assets; or
- (b) being a body corporate, it:
 - (i) has an order made for its winding up or a petition is presented or a meeting is convened for the purpose of considering a resolution for its winding up or any such resolution is passed (except for any members' voluntary winding up for the purposes of amalgamation or reconstruction on terms previously approved by the Contracting Authority);
 - (ii) has a receiver (including an administrative receiver) or manager appointed in respect of the whole or any part of its property, assets or undertaking;
 - (iii) has an administrator appointed (whether by the court or otherwise) or any step taken (whether in or out of court) for the appointment of an administrator or any notice given of an intention to appoint an administrator;

- (iv) has any distress, execution or other process is levied or applied for in respect of the whole or any part of its property, assets or undertaking; or
 - (v) has any composition in satisfaction of its debts or scheme of arrangement of its affairs or compromise or arrangement between it and its creditors and/or members or any class of its creditors and/or members proposed, sanctioned or approved; or
 - (vi) 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) is subject to an event analogous to any of the above in any jurisdiction outside England and Wales;

"Key Performance Indicator Schedule"

means the schedule identified as such (if applicable) in a Project Services Order, which may incorporate, as required by the Contracting Authority on a Project-specific basis and at its sole discretion, content and/or principles derived from the Baseline Key Performance Requirements;

"Key Personnel"

means, in respect of an individual Project Services Order, the Supplier's personnel identified as such in that Project Services Order, as may be removed or replaced from time to time in respect of a Project Services Order under clause 7;

"Key Sub-Consultants"	means, in respect of an individual Project Services Order, those sub-consultants identified as such in a Project Services Order;
"Key Sub-Contractors"	means, in respect of an individual Project Services Order, any sub-contractor which is listed in Schedule 7 of the Framework Agreement (Key Sub-Contractors) and/or identified as such in that Project Services Order;
"Landowner"	means, in relation to a specific Project, any party who holds a freehold or leasehold interest in any land or property forming part of that Project;
"Law"	means any legislation or any judgement of a relevant court of law;
"LED"	means the Law Enforcement Directive (Directive (EU) 2016/680);
"Liability Period"	is the period identified as such in the Call Off Contract Particulars as applying to: (a) this Call Off Contract generally; and (b) each Project Services Order specifically (as the context permits);
"Material"	all designs, drawings, models, plans, specifications, design details, photographs, brochures, reports, feasibility studies, planning submissions, notes of meetings, building information modelling (BIM) materials, computer aided design (CAD) materials, calculations, data, databases, schedules, programmes, bills of quantities, budgets and any other materials provided in connection with a 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 that Project;
"MI Report Template"	means the management information report template provided by the Contracting Authority to the Supplier from time to time;

"Novation Agreement"	means a form of deed of novation as provided by the Contracting Authority to the Supplier pursuant to clause 14.7;
"Occasion of Tax Non-Compliance"	(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: (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; and/or (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; or (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 Effective Date or to a penalty for civil fraud or evasion;
"Order Form"	means the document entitled "Order Form" to which the Call Off Contract Particulars and these Contract Conditions (and associated schedules) are annexed;
"Other Region"	has the meaning given to such term in item 0 of the Order Form;
"Parent Company Guarantee"	a parent company guarantee in the form set out at Schedule 5 of this agreement;
"Partnering Contract"	means a PPC2000 contract amended to incorporate the special terms and schedules in the form set out at Schedule 8 of this Call Off Contract, subject to any

amendments to the same as specified and/or agreed by the Contracting Authority in accordance with clause 2B;

"Partnering Services" means the services, based upon those referred to at Part 3 of the Services Schedule (and, as required by the Contracting Authority, may include one or more Core Service), to be performed by the Supplier under and pursuant to any Partnering Contract entered into between the Contracting Authority and the Supplier, the precise scope of which shall be agreed between the parties in accordance with clause 2B (and shall be defined in any eventual Partnering Contract between the parties as the **"Consultant Services"**);

"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 any Project and any other project of the Contracting Authority;

"Personal Data" shall have the meaning given to such term in the GDPR;

"Personal Data Breach" shall have the meaning given to such term in the GDPR;

"PPC2000" means the standard form of contract known as PPC2000 (amended 2008): ACA Standard Form of Contract for Project Partnering (PPC2000);

"Processor" shall have the meaning given to such term in the GDPR (and **"Process"**, **"Processed"** and **"Processing"** shall be construed accordingly);

"Processing Schedule" means Schedule 7 of this Call Off Contract (as may be updated and/or replaced from time to time by the Contracting Authority by written notice to the Supplier);

"Professional Team" means, in relation to a specific Project, any designers and other professional consultants or individuals

appointed by the Contracting Authority in relation to that Project;

"Programme"

means, in respect of an individual Project Services Order, the programme referred to as such in that Project Services Order in connection with the relevant Project (or as otherwise agreed between the parties from time to time in writing in respect of that Project) that sets out the key dates and time periods for:

- (a) completing key activities in relation to the provision of the Project Services;
- (b) issuing Material and other documents; and
- (c) providing information relating to the Project Services and that Project,

as may be adjusted from time to time by agreement between the Contracting Authority and the Supplier;

"Prohibited"

means, in relation to a specific Project, 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 a 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; or
- (c) committing any offence:
 - (i) under the Bribery Act 2010;
 - (ii) under legislation creating offences concerning Fraud;
 - (iii) at common law concerning Fraud;
 - (iv) committing (or attempting or conspiring to commit) Fraud; or
 - (v) any activity, practice or conduct which would constitute one of the offences listed under (c)(i) to (c)(iv) above if such activity, practice or conduct had been carried out in the UK;

"Project"

means, in respect of an individual Project Services

	Order, the project identified as such in that Project Services Order;
"Project Lead"	means, in respect of an individual Project Services Order, the person identified as such in that Project Services Order;
"Project Services"	means each Core Service (as instructed by the Contracting Authority to clause 2A) and the Additional Project Services (if any) in connection with a Project;
"Project Services Order"	means an order for Project Services in the form set out at Schedule 3;
"Protective Measures"	means all appropriate technical and organisational measures to protect, secure and recover Personal Data (as the context permits), which may include pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it;
"Purchaser"	means, in relation to a specific Project, 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 that Project;
"Region"	has the meaning given to such term in item 0 of the Order Form;
"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;

"Relevant Transfer"	is a transfer of employment to which the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) applies (as amended or replaced, or any other regulations implementing European Council Directive 77/187/EEC on the approximation of laws of European member states relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses, as amended or re-enacted from time to time);
"Relevant Transfer Date"	is, in relation to a Relevant Transfer, the date upon which the Relevant Transfer takes place;
"Request for Information"	means a request for information or an apparent request relating to this agreement or the provision of any Project 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 Project Services in relation to projects of a similar size, scope, complexity and character to the relevant Project;
"Schedule"	means a schedule to this Call Off Contract;
"Security Policy"	means, in respect of an individual Project Services Order, the Contracting Authority's security policy, if any, identified in that Project Services Order as applying to the relevant Project;
"Services Schedule"	means Schedule 1;
"Site"	means, in relation to a specific Project, the site of that Project as described in the relevant Project Services Order;
"SME"	means an enterprise falling within the category of micro, small or medium-sized enterprises as defined by the Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized

	enterprises;
"SME Management Information Report"	has the meaning given to such term in clause 39.1;
"Staff Transfer Schedule"	means, in relation to a specific Project, the Staff Transfer Schedule (if any) identified as such in the relevant Project Services Order;
"Sub-Processor"	means any third party appointed to Process Personal Data related to this Call Off Contract on behalf of the Supplier;
"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"	means, in relation to a specific Project, the person identified as such in the relevant Project Services Order, who may be replaced from time to time under clause 7;
"Technical Standards"	means, in relation to a specific Project, any technical and other standards identified as such in the relevant Project Services Order;
"Tenant"	means, in relation to a specific Project, any party who may enter into any lease or agreement for the grant of a leasehold interest in the whole or any part of that Project;
"Term"	means the Initial Term as extended in accordance with clause 2.2;
"Third Party Agreements"	means, in relation to a specific Project, any agreement between the Contracting Authority and a third party relating to that Project and which: (a) a copy, or relevant extract, is attached to the Project Services Order; or (b) the Contracting Authority notifies the Supplier in

writing after the date of the relevant Project Services Order enclosing a copy or relevant extracts;

"Transferring Contracting Authority Employees" are those employees of the Contracting Authority to whom the Employment Regulations will apply on the Relevant Transfer Date;

"Transferring Former Supplier Employees" are, in relation to a Former Supplier, those employees of the Former Supplier to whom the Employment Regulations will apply on the Relevant Transfer Date

"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;

"VCSE" means a non-governmental organisation that is value-driven and which principally reinvests its surpluses to further social, environmental or cultural objectives; and

"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. Capitalised 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 References 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 (including "Law") 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 (including "Law") 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 Call Off Contract Particulars;
 - (c) (in respect of any Project Services) the relevant Project Services Order;
 - (d) the Contract Conditions (excluding the Schedules);
 - (e) the Framework Agreement;
 - (f) Schedule 1 (Services Schedule);
 - (g) Schedule 2 (Fee Schedule);
 - (h) Schedule 8 (Partnering Contract); and
 - (i) other Schedules.

2. AGREEMENT

- 2.1 This Call Off Contract shall commence and take effect on the Effective Date and shall (subject to clause 2.1 and clause 12) automatically terminate on the date of the expiration of the Initial Term.
- 2.2 The Supplier acknowledges and agrees that:
- (a) the Contracting Authority may, at its sole discretion, extend the duration of the Initial Term on multiple occasions up to a maximum duration of two (2) years in addition to the Initial Term, by giving the Supplier written notice of any such extension not less than fifteen (15) days' notice of such extension before the date on which the Term would have so expired; and
 - (b) unless otherwise agreed with the Contracting Authority in writing, all rates and prices as set out in the Fee Schedule shall remain fixed for the full duration of the Term (including as extended pursuant to this clause 2.2) and shall not be subject to any adjustment and/or indexation at any time during the Term.

- 2.3 The rights and obligations of the Contracting Authority and the Supplier under each subsisting Project Services Order and/or Partnering Contract instructed prior to the expiry of the Term or the earlier termination of this Call Off Contract (and the terms of this Call Off Contract applicable to the same) shall remain in full force and effect unless and until each such Project Services Order and/or Partnering Contract is terminated pursuant to its terms.
- 2.4 Where the Contracting Authority requires the Supplier to undertake any Project Services or Partnering Services from time to time, the Supplier acknowledges and agrees that the basis upon which it shall be engaged to do so shall be determined strictly in accordance with clause 2A and clause 2B respectively.
- 2.5 Without prejudice to the generality of clause 2A and clause 2B, the Supplier acknowledges and agrees that:
- (a) it does not have the exclusive right to undertake any Project Services and/or the Partnering Services on behalf of the Contracting Authority under or pursuant to this Call Off Contract or otherwise in relation to any Project;
 - (b) the Contracting Authority may, at its absolute discretion, issue instructions to other third parties (including other Framework Suppliers) to carry out works and/or services and tasks which are the same as or similar to any Project Services and/or any Partnering Services that could otherwise be awarded to the Supplier pursuant to this Call Off Contract, including in a situation where the Supplier:
 - (i) is conflicted from providing or otherwise cannot provide or is unavailable to provide any Project Services and/or Partnering Services required by the Contracting Authority in respect of a Project; or
 - (ii) is in material or persistent breach of this Call Off Contract, any Project Services Order and/or any Partnering Contract entered into pursuant to this Call Off Contract or where one of more of the same is terminated;
 - (c) the Contracting Authority makes no guarantee to the Supplier that it will be instructed to undertake any Core Services, any Additional Project Services and/or any Partnering Services in connection with any Project; and
 - (d) the Supplier shall have no entitlement to make any claim against the Contracting Authority whatsoever (whether in contract, tort or any other

basis of law) in respect of, without limitation, any costs, damages, expenses and/or losses (whether direct, indirect, consequential, linked to lost profit, loss of opportunity, loss of goodwill or otherwise) arising out of or in connection with it not being instructed to undertake any part(s) of any Core Services, any Additional Project Services and/or any Partnering Services in connection with any Project.

2A. PROJECT SERVICES ORDERS

2A.1 At any time prior to the expiration of the Term, the Contracting Authority may enter into a Project Services Order with the Supplier in connection with a Project in accordance with clause 2A.2 to clause 2A.7 (inclusive).

2A.2 Where the Contracting Authority wishes to instruct the Supplier to provide Project Services under a Project Services Order in connection with a Project:

- (a) the Contracting Authority will issue a draft form of Project Services Order to the Supplier for review and approval that sets out (amongst other things):
 - (i) the scope of the Project Services required by the Contracting Authority;
 - (ii) which (if any) optional requirements as referred to in the template Project Services Order annexed at Schedule 3 of this Call Off Contract will apply to the Project Services; and
 - (iii) what parts of the Project Services Order (if any) the Contracting Authority requires the Supplier to complete and return for the Contracting Authority's consideration; and
- (b) within seven (7) days of receiving the draft form of Project Services Order, the Supplier shall issue a written notification to the Contracting Authority:
 - (i) confirming:
 - (A) that the Supplier accepts the content of the draft Project Services Order;
 - (B) that the Supplier agrees to undertake the scope of the Project Services identified in the draft Project Services Order and can do so within the timeframes specified therein;
 - (C) the identity of the Key Personnel that will undertake the

Project Services; and

(D) the proposed Basic Fee payable by the Contracting Authority in consideration of the Supplier providing the Project Services (calculated by reference to the rates in the Fee Schedule, provided always that nothing shall preclude the Supplier from proposing a discount to one or more of such rates in connection with a specific Project Services Order) for approval by the Contracting Authority; or

(ii) advising that the Supplier does not agree with the content of the draft Project Services Order or is unable to provide its confirmation pursuant to clause 2A.2(b)(i) without further clarification from the Contracting Authority on one or more points in relation to the draft Project Services Order, providing sufficient detail so as to enable the Contracting Authority to properly evaluate the Supplier's notification.

2A.3 Following the Contracting Authority's receipt of a notification issued by the Supplier in response to a draft Project Services Order pursuant to clause 2A.2 or any response issued by the Supplier pursuant to clause 2A.3(b) below:

(a) the Contracting Authority may (as the context permits):

(i) request further written clarification from the Supplier on one or more elements of the Supplier's submitted notification; or

(ii) respond to a notification submitted by the Supplier pursuant to clause 2A.2 by clarifying and/or revising and reissuing or withdrawing the draft Project Services Order as it considers appropriate,

as soon as reasonably practicable upon receiving the Supplier's notification;

(b) the Supplier shall:

(i) respond to any request for further clarification issued by the Contracting Authority pursuant to clause 2A.3(a)(i); or

(ii) confirm its acceptance or otherwise to any point of clarification issued by the Contracting Authority pursuant to clause 2A.3(a)(ii),

within three (3) Working Days of receiving such request or clarification; and

(c) the Contracting Authority may, following the resolution of any points of clarification or otherwise in accordance with clause 2A.3(a) and/or clause

2A.3(b), reissue the draft Project Services Order to the Supplier in accordance with clause 2A.3(a)(ii) in its proposed final form and the provisions of clause 2A.2 shall apply to such reissued draft Project Services Order mutatis mutandis.

2A.4 If, in response to a draft Project Services Order, the Supplier confirms its acceptance of the content of the Project Services Order and the Contracting Authority approves the submissions of the Supplier submitted pursuant to clause 2A.2(b)(i) in respect of the same:

- (a) the Contracting Authority will issue an execution form of that Project Services Order to the Supplier as soon as reasonably practicable following its receipt of the Supplier's notification, particularised, populated and finalised to reflect all relevant details and supporting documentation in respect of the relevant Project Services as agreed with the Supplier pursuant to clause 2A.2 and clause 2A.3, and any other information relevant to the Project Services;
- (b) the Supplier shall sign and return the Project Services Order to the Contracting Authority within two (2) Working Days of receiving the execution form of such Project Services Order, provided always that if the Supplier fails to sign and return the Project Services Order to the Contracting Authority within this period and has not advised the Contracting Authority in writing that it no longer wishes to undertake the Project Services in accordance with the issued Project Services Order, the Supplier shall be deemed to have accepted the content of the Project Services Order in full and be bound by the same as if the Supplier had so signed and returned the Project Services Order to the Contracting Authority; and
- (c) thereafter undertake the relevant Project Services as instructed by the Contracting Authority pursuant to clause 2A.5 from time to time,

provided that the Contracting Authority may at its sole discretion from time to time elect to effect the execution of a Project Services Order electronically on prior written notice to the Supplier of its requirements and procedures to effect execution in such a manner.

2A.5 Without prejudice to the generality of clause 2A.4(c), the Supplier acknowledges and agrees that it shall:

- (a) not be authorised by the Contracting Authority to commence or otherwise undertake one or more of the Core Services comprising the Project Services as specified in a Project Services Order without first receiving a written

instruction from the Contracting Authority to commence the same; and

- (b) have no entitlement to any payment of the whole or part of the Basic Fee that relates to any such part of any Core Service or otherwise where the Supplier commences or otherwise undertakes a Core Service prior to the date of receiving a written instruction to do so from the Contracting Authority (and if it does so, it will be at the Supplier's own cost and risk).

2A.6 The Supplier acknowledges and agrees that:

- (a) at any time during the period referred to in clause 2A.4(b):
 - (i) the Contracting Authority shall, at its sole discretion, have the right to notify the Supplier in writing that it no longer intends to enter into contract with the Supplier in respect of the Project Services that are the subject of the relevant Project Services Order; and
 - (ii) in such a circumstance:
 - (A) the deemed acceptance provisions of clause 2A.4(b) shall not apply to that Project Services Order;
 - (B) the Supplier shall not be authorised to execute and/or date; and
 - (C) the Supplier shall be required to return the Project Services Order to the Contracting Authority within two (2) Working Days of the date of such notice; or
- (b) otherwise seeks to incorporate into the Project Services Order any amendments to its content when returning the executed Project Services Order to the Contracting Authority following the completion of the process referred to in clause 2A.2 and clause 2A.3 (as appropriate), the Contracting Authority shall, at its sole discretion, have the ability to terminate the Project Services Order immediately on written notice to the Supplier,

and, in either case (and without prejudice to any other provision of this Call Off Contract), the Contracting Authority may seek to engage another third party (including any other Framework Supplier) to undertake such Project Services at no liability to the Supplier whatsoever arising out of or in connection with any failure by the Contracting Authority to enter into that Project Services Order with the Supplier (whether in contract, tort or any other basis of law).

2A.7 Notwithstanding any other provision of this Call Off Contract, the Contracting Authority may (at its sole discretion) decline to enter into a draft or agreed form of Project Services Order with the Supplier at any time and in such a circumstance, the Contracting Authority shall have no liability to the Supplier whatsoever arising out of or in connection with any failure by the Contracting Authority to enter into that Project Services Order with the Supplier (whether in contract, tort or any other basis of law).

2B. PARTNERING SERVICES

2B.1 The Supplier acknowledges and agrees that:

- (a) at any time prior to the expiration of the Term, the Contracting Authority may enter into a Partnering Contract with the Supplier in connection with a Project in accordance with clause 2B.2 to clause 2B.8 (inclusive); and
- (b) where the Contracting Authority has already entered into a contract with a Constructor in substantially the same form as the Partnering Contract in connection with the Project as at the date that the Contracting Authority wishes to engage the Supplier in connection with that Project, the term "**Partnering Contract**" in this clause 2B shall be construed as being a written agreement by which the Supplier shall agree to become a party to such existing agreement as an additional consultant (and not contractor) party on the terms and conditions set out therein.

2B.2 Where the Contracting Authority wishes to instruct the Supplier to provide Partnering Services under a Partnering Contract in connection with a Project:

- (a) the Contracting Authority will issue a draft form of Partnering Contract to the Supplier for review and approval that sets out (amongst other things):
 - (i) the scope of the Partnering Services required by the Contracting Authority;
 - (ii) (at the Contracting Authority's sole discretion) any performance-based incentivisation measures that will apply to the provision of the Partnering Services; and
 - (iii) what parts of the Partnering Contract (if any) the Contracting Authority requires the Supplier to complete and return for the Contracting Authority's consideration; and
- (b) within seven (7) days of receiving the draft form of Partnering Contract, the

Supplier shall issue a written notification to the Contracting Authority:

- (i) confirming:
 - (A) that the Supplier accepts the content of the draft Partnering Contract;
 - (B) that the Supplier agrees to undertake the scope of the Partnering Services identified in the draft Partnering Contract and can do so within the timeframes specified therein;
 - (C) the identity of the personnel at the Supplier that will undertake the Partnering Services; and
 - (D) the proposed fee payable by the Contracting Authority in consideration of the Supplier providing the Partnering Services (calculated by reference to the rates in the Fee Schedule, provided always that nothing shall preclude the Supplier from proposing a discount to one or more of such rates in connection with a specific Partnering Contract) for approval by the Contracting Authority; or
- (ii) advising that the Supplier does not agree with the content of the draft Partnering Contract or is unable to provide its confirmation pursuant to clause 2B.2(b)(i) without further clarification from the Contracting Authority on one or more points in relation to the draft Partnering Contract, providing sufficient detail so as to enable the Contracting Authority to properly evaluate the Supplier's notification.

2B.3 Following the Contracting Authority's receipt of a notification issued by the Supplier in response to a draft Partnering Contract pursuant to clause 2B.2 or any response issued by the Supplier pursuant to clause 2B.3(b) below:

- (a) the Contracting Authority may (as the context permits):
 - (i) request further written clarification from the Supplier on one or more elements of the Supplier's submitted notification; or
 - (ii) respond to a notification submitted by the Supplier pursuant to clause 2B.2 by clarifying and/or revising and reissuing or withdrawing the draft Partnering Contract as it considers appropriate,

as soon as reasonably practicable upon receiving the Supplier's notification;

(b) the Supplier shall:

(i) respond to any request for further clarification issued by the Contracting Authority pursuant to clause 2B.3(a)(i); or

(ii) confirm its acceptance or otherwise to any point of clarification issued by the Contracting Authority pursuant to clause 2B.3(a)(ii),

within three (3) Working Days of receiving such request or clarification; and

(c) the Contracting Authority may, following the resolution of any points of clarification or otherwise in accordance with clause 2B.3(a) and/or clause 2B.3(b), reissue the draft Partnering Contract to the Supplier in accordance with clause 2B.3(a)(ii) in its proposed final form and the provisions of clause 2B.2 shall apply to such reissued draft Partnering Contract mutatis mutandis.

2B.4 If, in response to a draft Partnering Contract, the Supplier confirms its acceptance of the content of the Partnering Contract and the Contracting Authority approves the submissions of the Supplier submitted pursuant to clause 2B.2(b)(i) in respect of the same:

(a) the Contracting Authority will issue an execution form of that Partnering Contract to the Supplier as soon as reasonably practicable following its receipt of the Supplier's notification, particularised, populated and finalised to reflect all relevant details and supporting documentation in respect of the relevant Partnering Services as agreed with the Supplier pursuant to clause 2B.2 and clause 2B.3, and any other information relevant to the Partnering Services;

(b) the Supplier shall sign and return (but not date) the Partnering Contract to the Contracting Authority within ten (10) Working Days of receiving the execution form of such Partnering Contract and in any event prior to commencing the Partnering Services in respect of the same (but the Supplier shall not have any authority to date a Partnering Contract unless expressly authorised in writing by the Contracting Authority); and

(c) the Contracting Authority, following its receipt of the Supplier's duly executed Partnering Contract, shall date the same and confirm to the Supplier in writing that the Partnering Services is effective and binding as between the parties,

provided that the Contracting Authority may at its sole discretion from time to time elect to effect the execution of a Partnering Contract electronically on prior written notice to the Supplier of its requirements and procedures to effect execution in such a manner.

2B.5 Where the Supplier fails to sign and return a Partnering Contract within the period specified in clause 2B.4 and/or otherwise requests and/or seeks to incorporate into the Partnering Contract any amendments to its content following the completion of process referred to in clause 2B.2 and clause 2B.3 (as appropriate):

- (a) the Contracting Authority shall, at its sole discretion, have the right to notify the Supplier in writing that it no longer intends to enter into contract with the Supplier in respect of the Partnering Services that are the subject of the relevant Partnering Contract;
- (b) in such a circumstance, the Supplier shall not be authorised to execute and/or date and shall be required to return the Partnering Contract to the Contracting Authority within two (2) Working Days of the date of such notice; and
- (c) the Contracting Authority may seek to engage another third party to undertake such Partnering Services (including any other Framework Supplier).

2B.6 Notwithstanding any other provision of this Call Off Contract, the Contracting Authority may (at its sole discretion) decline to enter into a draft or agreed form of Partnering Contract with the Supplier at any time and in such a circumstance it shall have no liability to the Supplier whatsoever arising out of or in connection with any failure by it to enter into that Partnering Contract with the Supplier (whether in contract, tort or any other basis of law).

2B.7 The Supplier acknowledges and agrees that:

- (a) it shall be the duty of the Supplier to, if awarded a Partnering Contract pursuant to the provisions of this clause 2B, notify the Contracting Authority (as appropriate) of any error, omission or discrepancy of which it becomes aware as between the terms of this Call Off Contract and any Project Services provided in respect of the relevant Project and the Partnering Contract prior to executing the Partnering Contract and to put forward proposals to resolve such error, omission or discrepancy fairly and constructively, whilst minimising any adverse effect on this Call Off Contract, the Partnering Contract and/or the Project, provided always that any such proposal shall be subject to prior approval by the Contracting Authority at its absolute

discretion; and

- (d) it shall be responsible for and bear the costs of the consequences of any error or omission in, or any discrepancy between, this Call Off Contract and the Partnering Contract.

2B.8 Where the Contracting Authority enters into a Partnering Contract with the Supplier pursuant to this clause 2B (and save as otherwise set out in the Partnering Contract):

- (a) the respective rights and liabilities of the Contracting Authority and the Supplier in respect of all matters with which this Call Off Contract is concerned in relation to any Project Services provided by the Supplier in relation to the Project that are the subject of the Partnering Contract prior to the date of the Partnering Contract shall become subject solely to the terms and conditions of the Partnering Contract; and
- (b) the Supplier acknowledges and agrees that the terms of the Partnering Contract shall be expressed as retrospectively governing such Project Services and other activities of the Supplier performed (or as required to be performed) by the Supplier or on the Supplier's behalf under this Call Off Contract in connection with that Project,

provided always that the Contracting Authority shall not be relieved of its obligations under this Call Off Contract to pay to the Supplier any undisputed sums that are the subject of an invoice submitted by the Supplier and assessed by the Contracting Authority pursuant to and in accordance with clause 8 as at the date that the Partnering Contract is entered into in accordance with this clause 2B, with the Supplier having no entitlement to receive and/or the ability to claim from the Contracting Authority any:

- (i) further sums relating to the provision of any Project Services in connection with the Project that is the subject of the Partnering Contract under this Call Off Contract after the relevant due date(s) for such undisputed sums; and
- (ii) payment under the Partnering Contract in relation to any Project Services that it has performed under and pursuant to this Call Off Contract in connection with such Project.

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 any and all Project Services instructed by the Contracting Authority in connection with a Project under this Call Off Contract:

- (a) carry out and fulfil, in all respects, its duties under the CDM Regulations in relation to that Project;
- (b) where such Project 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 Project Services include the administration of a Building Contract in relation to the Project, act fairly and impartially when exercising any power to issue certificates and award extensions of time under that Building Contract; and
- (d) comply with any Contracting Authority Policies and (as applicable) Technical Standards notified to the Supplier prior to the date of the relevant Project Services Order, save that where a Contracting Authority Policy comes into force and/or any Technical Standards are specified by the Contracting Authority after the date of such Project Services Order, the Supplier is not required to act, in relation to such Contracting Authority Policy and/or Technical Standards, in any way that may materially increase its liability in excess of that which was reasonably foreseeable at that date.

3.3 The Supplier warrants and undertakes that it shall, in the performance of any and all Project Services instructed by the Contracting Authority in connection with a Project under this Call Off Contract, it shall exercise the Required Standard:

- (a) when performing the Project Services;
- (b) to the extent that the Project 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 ensure that the completed Project complies with Law;
- (d) to perform the Project 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;

- (e) to comply 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 the relevant Project Services Order, the Supplier is not required to act in any way that may increase its liability in excess of that which was reasonably foreseeable as at that date; and
- (g) where it is stated in the Project Services Order that Clause 34 (Building Information Modelling) applies to the Project, to comply with the BIM Documents.

3.4 The Supplier's duties or liabilities under this agreement and/or any Project Services Order shall not be negated or diminished by:

- (a) any approval or inspection of:
 - (i) any Project Services;
 - (ii) any Materials; 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 in connection with a Project.

4. CO-OPERATION AND CO-ORDINATION

4.1 In the performance of any and all Project Services instructed by the Contracting Authority in connection with a Project under this Call Off Contract, 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 Contracting Authority; and
- (c) notify the Contracting Authority if its performance of the Project 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 applicable to each and any Project Services instructed by the Contracting Authority under this Call Off Contract full and accurate records and accounts of the operation of this agreement, including the Project 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;
 - (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 period referred to 5.1 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 any Fee(s) and any other amounts payable by the Contracting Authority under this agreement in relation to any Project(s) (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 any Project 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; and
 - (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, on demand provide the Auditor(s) with all reasonable co-operation and assistance in providing:
 - (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 Project 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; and
- (e) this Clause 5 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, where the Supplier is instructed to provide any Project Services in respect of a Project under this Call Off Contract, the Supplier has no authority in relation to that Project to:

- (a) make (or instruct the Constructor or any member of the Professional Team to make) any material alteration to the Project or its Project 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, 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 terminate the Supplier's engagement under this agreement.
- 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 in connection with the Project Services Order in respect of which they are engaged; and
 - (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 any Project Services if, in the Contracting Authority's reasonable opinion and after discussion with the Supplier's Representative, that person's performance or conduct in respect of the relevant Project 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 In respect of each Project Services Order, the Contracting Authority shall pay to the Supplier:

- (a) the Basic Fee as full remuneration for each Core Service as instructed by the Contracting Authority; and
 - (b) the Additional Fee as full remuneration for any Additional Project Services, in relation to the relevant Project from time to time.
- 8.2 The Supplier acknowledges and agrees that the sum(s) referred to at clause 8.1 shall be the Supplier's entire remuneration in connection with a Project Services Order (and otherwise under this agreement).
- 8.3 Unless specifically excluded in a Project Services Order, any and all expenses and disbursements that the Supplier incurs in connection with the provision of any Project Services in relation to a Project are deemed to be included in the Fee stated in the relevant Project Services Order. Any expenses or disbursements payable by the Contracting Authority to the Supplier shall be included within the next invoice submitted by the Supplier in relation to the relevant Project Services Order 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 Project 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 34, the Basic Fee for any Project Services provided by the Supplier in connection with a Project shall be calculated and paid in instalments in accordance with the Project Services Order pursuant to which such Project Services are instructed under this Call Off Contract. If a Project Services Order does not specify the frequency at which the Supplier will be entitled to submit an invoice to the Contracting Authority in relation to any Project Services provided under that Project Services Order, the Fee shall be paid at intervals of not less than one month, beginning one month after the Supplier first performs any part of the Project Services instructed by the Contracting Authority under a Project Services Order.
- 9.2 The Supplier shall submit to the Contracting Authority an invoice for each instalment of Fee payable in connection with a Project Services Order, together with timesheets and any supporting documents that are reasonably necessary to check the invoice, as well as with any further information that might be specified by the Contracting Authority in writing from time to time. Each 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 under that Project Services

Order, and the basis on which that sum is calculated.

- 9.3 Payment under each Project Services Order shall be "**due**" on the date stated in the Call Off Contract Particulars.
- 9.4 No later than 5 days after payment becomes due pursuant to clause 9.3, 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 34 applies, the Contracting Authority shall adjust the sum due in accordance with the Key Performance Indicator Schedule.
- 9.5 The "**final date for payment**" under each Project Services Order shall be the date stated in the Call Off 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 in relation to a Project Services Order 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 5 days before the final date for payment under a Project Services Order (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,
- in connection with the relevant Project Services Order.
- 9.8 If the payer fails to pay an amount due to the other party by the final date for payment under a Project Services Order 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 relevant Project Services Order. 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 in relation to a Project Services Order 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 relevant 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 under any Project Services Orders whatsoever.

Payment of sub-consultants

- 9.11 The Supplier shall ensure that all sub-contracts entered into in relation to any Project Services instructed under this Call Off Contract 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 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 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 If 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 (including in respect of any other Project Services Order), any other contract with the Contracting Authority and/or (where the Contracting Authority is a Crown Body) any other contract with any Department or Office of Her Majesty's Government.

10. ADJUSTMENT OF THE FEE AND ADDITIONAL SERVICES

Adjustment of the Fee

- 10.1 Subject to Clause 10.2, the Fee in relation to any Project Services provided (or to be provided) in relation to a Project Services Order shall be adjusted if the performance of the relevant Project 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 the Project Services Order,

provided that the Supplier shall not be entitled to any adjustment of the relevant 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 in relation to a Project Services Order as soon as reasonably practicable and in any event within 8 weeks after it becomes aware of any material delay or disruption to the Project 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 Project 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 in relation to Project Services provided (or to be provided) in relation to a Project Services Order. Provided the Supplier has given notice in accordance with Clause 10.2 the relevant Fee shall be adjusted by a reasonable amount by reference to the Fee Schedule (unless the parties agree an alternative amount).

Additional Project Services

10.4 The Supplier shall notify the Contracting Authority as soon as reasonably practicable if it becomes apparent that Additional Project Services are likely to be required in relation to a Project, identifying the required services and a written estimate of cost of the Additional Project Services and its effect on the relevant 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 Additional Projects Services in relation to a Project 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 in relation to any Additional Project Services shall be a reasonable amount calculated by reference to the time charges set out in the relevant Project Services Order, provided that no Additional Fee shall be payable if the requirement for an Additional Project 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 Project Services to which it relates.

11. SUSPENSION

11.1 The Contracting Authority may, at any time, suspend performance of all or part of any Project Services instructed under a Project Services Order by giving written notice to the Supplier. The Supplier shall resume performance of any suspended Project 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 in relation to a Project Services Order by the relevant final date for payment under clause 9; and
- (b) the Contracting Authority has not given any pay less notice complying with Clause 9 in relation to a Project Services Order,

the Supplier may suspend the performance of any or all of the Project Services to which such outstanding sums relate 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 pursuant to clause 11.2, 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 any Project Services and its obligations under this agreement.

12. TERMINATION

- 12.1 The Contracting Authority may terminate the Supplier's engagement under:

- (a) this agreement; and/or
- (b) any Project Services Order,

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 in connection with a Project Services Order by giving written notice to the other party if:

- (a) the other party is in material breach of its obligations under that Project Services Order 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.

- 12.2A Without prejudice to the generality of clause 12.2, the Contracting Authority may immediately terminate the Supplier's engagement under this agreement by giving written notice to Supplier if the Supplier:

- (a) in material breach of its obligations under this agreement and fails to remedy the breach within ten (10) Working Days of receiving written notice from the

Contracting Authority requiring it to do so; or

(b) 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 Contracting Authority may terminate this agreement and/or any Project Services Orders 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 In the event of a termination under clause 12 and subject always to clause 13.2, the Contracting Authority shall pay the Supplier:

- (a) in respect of any Project Services Orders so terminated, a fair and reasonable proportion of the next instalment of the Fee(s) for the relevant Project Services, together with any expenses and disbursements commensurate with such Project 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 for

each affected Project Services Order; and

- (ii) the provisions of clause 9 shall apply to each such invoice as if it were an application for payment of a part of the relevant Fee(s) as provided for therein; and

- (b) where this Call Off Contract is terminated only, any amount properly due for payment under this agreement at the date of termination that is not already accounted for by clause 13.1(a).

13.2 If the Supplier's engagement under:

- (a) any Project Services Order is terminated by the Contracting Authority in accordance with clause 12.2(a) (material breach) or clause 12.2(b) (Supplier is Insolvent); and/or
- (b) this agreement by the Contracting Authority in accordance with clause 12.2A(a) (material breach) or clause 12.2A(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 Project Services as a consequence of the termination(s). 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; and/or
- (c) any indirect losses or consequential losses,

arising out of termination or suspension of the Supplier's engagement under this agreement and/or any Project Services Order.

13.5 Termination of the Supplier's engagement under this agreement and/or any Project Services Order shall not affect the accrued rights of either party under this agreement and/or any Project Services Order 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 in respect of the same.

14. ASSIGNMENT, SUB-CONTRACTING AND NOVATION

Assignment

- 14.1 The Contracting Authority may assign the benefit of:
- (a) this agreement to any person at its sole discretion; and
 - (b) any Project Services Order to any person with an interest in the relevant Project.
- 14.2 The Contracting Authority shall notify the Supplier of any assignment pursuant to clause 14.1. 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 any Project Services in relation to a Project without the Contracting Authority's prior written consent to Key Sub-Consultants and any Key Sub-Contractors.
- 14.6 Save for clause 14.5 and subject always to the requirements of clause 38, the Supplier shall not sub-contract the performance of any of the Project Services in relation to a Project without the Contracting Authority's prior written consent.

Novation

- 14.7 This Clause 14.7 shall only apply to a Project if it is stated in the relevant Project Services Order that it applies. If this Clause 14.7 so applies then, 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 relation to the Project Services Order in the form of the

Novation Agreement (or, at the Contracting Authority's request, acting reasonably, in the form of any other document intended to have the similar effect of novating the Supplier's engagement under this Call Off Contract to provide such specific Project Services to a third party); and

- (b) enter into a Collateral Warranty in favour of the person who is the Contracting Authority immediately before such novation takes place.

15. COLLATERAL AGREEMENTS

Collateral Warranties

- 15.1 Where the requirement is so stated in the Project Services Order for any Project Services, the Supplier shall provide a Collateral Warranty executed as a deed in favour of any Beneficiary in relation to the relevant Project, then within ten (10) Working Days of receiving a written request from the Contracting Authority to do so.
- 15.2 Where the requirement is so stated in the Project Services Order for any Project Services, the Supplier shall procure a Collateral Warranty executed as a deed from a Key Sub-Consultant in favour of any Beneficiary within ten (10) Working Days of receiving a written request from the Contracting Authority to do so.
- 15.3 The Supplier shall provide to the Contracting Authority a certified copy of each Key Sub-Consultant's appointment in relation to a Project within 7 days of its execution (the Supplier may redact commercially sensitive pricing information).
- 15.4 If, in relation to a Project Services Order, the Supplier fails to enter into or to provide a 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, under that Project Services Order shall be reduced by 25% for each outstanding Collateral Warranty, until such time as the relevant Collateral Warranty has been provided.
- 15.4A Where the Contracting Authority and the Supplier enter into a Partnering Contract in relation to a Project pursuant to clause 2B, the Supplier acknowledges and agrees that:
 - (a) in accordance with the terms of that Partnering Contract, the Supplier may be required by the Contracting Authority to provide one or more further collateral warranties in favour of any Beneficiary or other identified third party in respect of the Partnering Services (in the form of collateral warranty specified in the Partnering Contract); and

- (b) to the extent that the terms of that Partnering Contract are expressed as applying retrospectively to any Project Services provided by the Supplier under this Call Off Contract in connection with the relevant Project up to the date of the Partnering Contract, each such collateral warranty shall be expressed as, once executed, superseding and replacing the Collateral Warranty previously provided by the Supplier in favour of the relevant Beneficiary pursuant to clauses 15.1 to 15.4 (inclusive) in respect of those Project Services.

Parent Company Guarantee

- 15.5 Where the requirement is so stated in the Project Services Order for any Project Services, the Supplier shall no later than the date of that Project Services Order procure the execution and delivery of a Parent Company Guarantee by its Guarantor, executed as a deed, in favour of the Contracting Authority in the form of the Parent Company Guarantee.
- 15.6 If, in relation to a Project Services Order, the Supplier does not procure execution and delivery of a 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 or in connection with that Project Services Order until the Supplier has procured such execution and delivery.
- 15.6A Where the Contracting Authority and the Supplier enter into a Partnering Contract in relation to a Project pursuant to clause 2B, the Supplier acknowledges and agrees that:
 - (a) in accordance with the terms of that Partnering Contract, the Supplier may be required by the Contracting Authority to provide to the Contracting Authority (in its capacity as the "Client" under the Partnering Contract) a further parent company guarantee in favour of the Contracting Authority in respect of the Partnering Services (in substantially the same form as the Parent Company Guarantee, amended to reflect the context within which the Partnering Services will be provided); and
 - (b) to the extent that the terms of that Partnering Contract are expressed as applying retrospectively to any Project Services provided by the Supplier under this Call Off Contract in connection with the relevant Project up to the date of the Partnering Contract, such parent company guarantee shall be expressed as, once executed, superseding and replacing the Parent Company Guarantee previously provided by the Supplier to the Contracting Authority

in respect of those Project Services pursuant to clauses 15.5 to 15.6 (inclusive).

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 under or pursuant to this agreement for any purpose relating to any Projects, 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 35.3, 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 relating to a Project in connection with any extension of that 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 from the Supplier's breach of this warranty.
- 16.6 The Contracting Authority may, at any time (whether before or after completion of the Project Services, or after termination of the Supplier's engagement under this agreement and/or any Project Services Order(s)), 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);
- (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 30 (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 Project 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 a Project Services and need to know the Confidential Information to enable performance of the Supplier's obligations under this agreement and/or any Project Services Orders; and
 - (b) its professional advisers for the purposes of obtaining advice in relation to the same.
- 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 clause 17 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) and/or 17.7(b) (including any benchmarking organisation) for any purpose relating to or connected with this agreement and/or any Project;
 - (e) on a confidential basis for the purpose of the exercise of its rights under this

agreement and/or any Project Services Order; 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 and/or any Project Services Order(s) 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 each Project Services Order in an amount and under such terms as stated in the Call Off 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; and
- (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 relevant Project without that insurance.

Public Liability Insurance and Employer's Liability Insurance

18.4 The Supplier shall:

- (a) effect and maintain third party liability insurance and employer's liability insurance covering its potential liability under each Project Services Order in an amount and under such terms as stated in the Call Off Contract Particulars; and
- (b) each such insurance shall include an indemnity to principal clause and waiver of subrogation in favour of the Contracting Authority.

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 arising out of or in connection with this Call Off Contract 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 Without prejudice to the generality of clause 19.2, where the Call Off Contract Particulars state that the dispute resolution tribunal 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 Joint Contracts Tribunal edition of the Construction Industry Model Arbitrator Rules ("CIMAR") current at the date of referral, which are deemed to be incorporated into this Call Off Contract by reference into this clause. The particulars of any such arbitration are set out in the Call Off Contract Particulars.

20. NOTICES

- 20.1 Subject to clause 20.4, any notice required to be given under or in connection with this agreement (including in relation to any Project Services Order) 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 Call Off 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 recipient's e-mail server and evidenced by a delivery receipt;
 - (b) if delivered personally, when left at the address and for the contact referred to in this clause;
 - (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 each Project Services Order shall be limited to the amount set out in that Project Services Order and 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 death or personal injury caused by the Supplier's negligence and/or 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 and/or a Project Services Order (as the context permits) may be commenced against the Supplier up until the expiry of the relevant Liability Period 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. 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 Effective 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:

- (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:

- (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 Project 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 and/or a project services order 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 to a Project Services Order if it is stated in that Project Services Order that this Clause 26 applies. If this clause applies, then:
- (a) the Supplier shall, in the performance of the relevant Project Services, comply with and procure that the Supplier Personnel comply with the Security Policy;
 - (b) the Supplier shall ensure that any security management plan produced by the Supplier in relation to a Project fully complies with the Security Policy during the performance of the relevant Project Services.
- 26.2 The Contracting Authority shall notify the Supplier of any changes or proposed changes to a Security Policy in relation to a Project from time to time.

27. PUBLICITY AND BRANDING

- 27.1 The Supplier shall not:
- (a) make any press announcements or publicise this agreement, any Project Services Order and/or any Partnering Contract 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, any Project Services order and/or any Partnering Contract 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 Call Off 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 and/or in connection with any Project 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.

- 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. DATA PROTECTION

- 29.1 The parties acknowledge and agree that for the purposes of the Data Protection Legislation:
- (a) the Contracting Authority is the Controller and the Supplier is the Processor; and
 - (b) the only Processing that the Supplier is authorised to do by the Contracting Authority is listed in the Processing Schedule and may not be determined by the Supplier.
- 29.2 The Supplier shall notify the Contracting Authority immediately if it considers that any of the Contracting Authority's instructions under or in connection with this Call Off Contract infringe the Data Protection Legislation.
- 29.3 The Supplier shall provide all reasonable assistance to the Contracting Authority in the preparation of any Data Protection Impact Assessment prior to commencing any Processing under or in connection with this Call Off Contract (and any Project Services Orders issued hereunder) and such assistance may, at the discretion of the Contracting Authority, include the provision of:

- (a) a systematic description of the envisaged Processing operations and the purpose of the Processing;
- (b) an assessment of the necessity and proportionality of the Processing operations in relation to the relevant Project Services;
- (c) an assessment of the risks to the rights and freedoms of Data Subjects; and
- (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

29.4 The Supplier shall, in relation to any Personal Data that is Processed in connection with its obligations under this Call Off Contract:

- (a) Process that Personal Data only in accordance with the Processing Schedule, unless the Supplier is required to do otherwise by Law;
- (b) if it is so required, the Supplier shall promptly notify the Contracting Authority before Processing the Personal Data unless prohibited by Law;
- (c) ensure that it has in place Protective Measures, which are appropriate to protect against a Data Loss Event, which the Contracting Authority may reasonably reject (but a failure to so reject shall not amount to approval by the Contracting Authority of the adequacy of the Protective Measures), having taken account of the:
 - (i) nature of the data to be protected;
 - (ii) harm that might result from a Data Loss Event;
 - (iii) state of technological development; and
 - (iv) cost of implementing any measures;
- (d) ensure that:
 - (i) the Supplier Personnel do not Process any Personal Data except in accordance with this Call Off Contract (and in particular the Processing Schedule);
 - (ii) it takes all reasonable steps to ensure the reliability and integrity of any Supplier Personnel who have access to the Personal Data and ensure that they:

- (A) are aware of and comply with the Supplier's duties under this clause 29;
 - (B) are subject to appropriate confidentiality undertakings with the Supplier or any Sub-Processor;
 - (C) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Contracting Authority or as otherwise permitted by this Call Off Contract; and
 - (D) have undergone adequate training in the use, care, protection and handling of Personal Data; and
- (e) not transfer Personal Data outside of the European Union unless the prior written consent of the Contracting Authority has been obtained and the following conditions are fulfilled:
- (i) the Contracting Authority or the Supplier has provided appropriate safeguards in relation to the transfer (whether in accordance with Article 46 of the GDPR or Article 37 of the LED) as determined by the Contracting Authority;
 - (ii) the Data Subject has enforceable rights and effective legal remedies;
 - (iii) the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Contracting Authority in meeting its obligations); and
 - (iv) the Supplier complies with any reasonable instructions notified to it in advance by the Contracting Authority with respect to the Processing of the Personal Data; and
- (f) at the written direction of the Contracting Authority, delete or return Personal Data (and any copies of it) to the Contracting Authority on termination of this Call Off Contract (or a Project Services Order, as the context permits) unless the Supplier is required by Law to retain the Personal Data.

- 29.5 Subject to clause 29.6, the Supplier shall notify the Contracting Authority immediately if it:
- (a) receives a Data Subject Request (or purported Data Subject Request);
 - (b) receives a request to rectify, block or erase any Personal Data;
 - (c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
 - (d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data that is or may be Processed under this Call Off Contract;
 - (e) receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
 - (f) becomes aware of a Data Loss Event.
- 29.6 The Supplier's obligation to notify under clause 29.5 shall include the provision of further information to the Contracting Authority in phases, as details become available.
- 29.7 Taking into account the nature of the Processing, the Supplier shall provide the Contracting Authority with full assistance in relation to either party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 29.5 (and insofar as possible within the timescales reasonably required by the Contracting Authority) including by promptly providing:
- (a) the Contracting Authority with full details and copies of the complaint, communication or request;
 - (b) such assistance as is reasonably requested by the Contracting Authority to enable the Contracting Authority to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;
 - (c) the Contracting Authority, at its request, with any Personal Data it holds in relation to a Data Subject;
 - (d) assistance as requested by the Contracting Authority following any Data Loss Event; and
 - (e) assistance as requested by the Contracting Authority with respect to any

request from the Information Commissioner's Office, or any consultation by the Contracting Authority with the Information Commissioner's Office.

29.8 The Supplier shall maintain complete and accurate records and information to demonstrate its compliance with this clause 29, provided that this requirement does not apply where the Supplier employs fewer than two hundred and fifty (250) staff unless:

- (a) the Contracting Authority determines that the Processing is not occasional;
- (b) the Contracting Authority determines the Processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and
- (c) the Contracting Authority determines that the Processing is likely to result in a risk to the rights and freedoms of Data Subjects.

29.9 Without prejudice to any other provision of this Call Off Contract, the Supplier shall allow for audits of its Data Processing activity by the Contracting Authority or the Contracting Authority's designated auditor.

29.10 The Supplier shall designate a data protection officer in connection with this Call Off Contract and all Project Services Orders issued hereunder if required by the Data Protection Legislation.

29.11 Before allowing any Sub-Processor to Process any Personal Data related to this Call Off Contract and/or any Project Services Order, the Supplier must:

- (a) notify the Contracting Authority in writing of the intended Sub-Processor and Processing;
- (b) obtain the written consent of the Contracting Authority;
- (c) enter into a written agreement with the Sub-Processor which give effect to the terms set out in this clause 29 such that they apply to the Sub-Processor; and
- (d) provide the Contracting Authority with such information regarding the Sub-Processor as the Contracting Authority may reasonably require.

29.12 The Supplier shall remain fully liable for all acts or omissions of any Sub-Processor that Processes any Personal Data pursuant to clause 29.11.

29.13 The Contracting Authority may, at any time on not less than thirty (30) Working Days' notice, revise this clause by replacing it with any applicable "controller to processor" standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Call Off Contract).

29.14 The:

- (a) parties agree to take account of any guidance issued by the Information Commissioner's Office in connection with the Processing of any Personal Data under or in connection with this Call Off Contract and each Project Services Order; and
- (b) Contracting Authority may on not less than thirty (30) Working Days' notice to the Supplier amend this Call Off Contract to ensure that it complies with any guidance issued by the Information Commissioner's Office.

30. FREEDOM OF INFORMATION

30.1 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 in relation to this agreement and/or any Project Services Order instructed hereunder;
- (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.

30.2 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.

31. PROMOTING TAX COMPLIANCE

31.1 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.

31.2 If, at any point during the period that the Supplier is engaged under this Call Off Contract and/or any Project Services Order, 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.

31.3 In the event that the Supplier breaches the warranty under Clause 31.1 fails to comply with this Clause 31 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 and/or any Project Services Order for material breach.

32. STAFF TRANSFER

32.1 This Clause 32 shall only apply to a Project Services Order if it is stated in that Project Services Order that Clause 32 applies. If this Clause 32 applies, then the definitions contained in the Staff Transfer Schedule referred to in the relevant Project Services

Order apply to this Clause.

32.2 The Parties agree that :

- (a) where the commencement of the provision of the Project Services or any part of the Project Services under a Project Services Order 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 Contracting Authority 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 Contracting Authority 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 Project Services or a part of the Project Services under a Project Services Order 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 Project Services or any part of the Project Services under a Project Services Order;

32.3 The Supplier shall 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.

33. NOT USED

34. KEY PERFORMANCE INDICATORS

34.1 This Clause 34 shall only apply to a Project Services Order if it is stated in that Project Services Order that Clause 34 applies.

- 34.2 If this Clause 34 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 to the relevant Project Services Order and the Contracting Authority shall apply the Key Performance Indicator Schedule to amend the amount of the Fee that is payable under Clause 9 under that Project Services Order.

35. BUILDING INFORMATION MODELLING

- 35.1 This Clause 35 shall only apply to a Project Services Order if it is stated in that Project Services Order that Clause 35 applies.

Where a BIM Protocol Applies

- 35.2 If a Project Services Order states a BIM Protocol applies to the relevant Project, 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,

in connection with that Project.

Where a BIM Protocol Does Not Apply

- 35.3 If a Project Services Order states that a BIM Protocol does not apply to the relevant Project then:

- (a) if it is stated in the Project Services Order 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 Project Services Order 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 as from the date of the relevant Project Services Order, 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 a member of the Professional Team) for the purpose of performing the Project Services and complying with the BIM Documents in connection with the Project only;

- (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 relevant Project.

36. QUALITY MANAGEMENT POINTS

- 36.1 This Clause 36 shall only apply to a Project Services Order if it is stated in that Project Services Order that Clause 36 applies.
- 36.2 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.
- 36.3 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.
- 36.4 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.

- 36.5 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.
- 36.6 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.
- 36.7 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.
- 36.8 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 the relevant Project Services Order in accordance with clause 12.2A (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

Failure	Quality Management Points	Period of effect
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 Contracting Authority	10 per failure	Until the records are made available
Failure to allow access for <i>Contracting Authority</i> audits	10 per failure	Until <i>Contracting Authority</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.		

37. COLLABORATIVE PERFORMANCE FRAMEWORK

- 37.1 This Clause 37 shall only apply to a Project Services Order if it is stated in that Project Services Order that Clause 37 applies.
- 37.2 If this Clause 36 applies, then the Supplier's performance shall be measured in accordance with the Collaborative Performance Framework.
- 37.3 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 the relevant Project Services Order in accordance with clause 12.2A (Termination).

38. IMPROVING VISIBILITY OF SUB-CONTRACT OPPORTUNITIES

- 38.1 The Supplier shall:
- (a) subject to clause 38.3, advertise on Contracts Finder all sub-contract opportunities arising from or in connection with the provision of any Project Services in relation to this Call Off Contract above a minimum threshold of twenty-five thousand pounds (£25,000) that arise during the Term;
 - (b) within ninety (90) days of awarding a sub-contract to a sub-consultant (including any Key Sub-Consultant and Key Sub-Contractor), update the notice on Contracts Finder with details of the successful sub-contractor;
 - (c) monitor the number, type and value of the sub-contract opportunities placed on Contracts Finder advertised and awarded in its supply chain during the Term;
 - (d) provide reports on the information at clause 38.1(c) to the Contracting Authority (and such other public body as the Contracting Authority may require from time to time) in the format and frequency as reasonably specified by the Contracting Authority; and
 - (e) promote Contracts Finder to its suppliers and encourage those organisations to register on Contracts Finder.
- 38.2 Each advert referred to at clause 38.1(a) above shall provide a full and detailed description of the sub-contract opportunity with each of the mandatory fields being completed on Contracts Finder by the Supplier.
- 38.3 The obligation at clause 38.1(a) shall only apply in respect of sub-contract opportunities arising after the Effective Date.

- 38.4 Notwithstanding clause 38.1, the Contracting Authority may by giving its prior written approval, agree that a sub-contract opportunity is not required to be advertised on Contracts Finder.

39. **MANAGEMENT CHARGES AND INFORMATION**

- 39.1 In addition to any other information-related requirements set out in this Call Off Contract, the Supplier agrees and acknowledges that it shall, at no charge, provide timely, full, accurate and complete SME management information reports to the Contracting Authority (each an "**SME Management Information Report**") which incorporates the data described in the MI Report Template which is:
- (a) the total contract revenue received directly on a specific contract;
 - (b) the total value of sub-contracted revenues under the contract (including revenues for non-SMEs and non-VCSEs); and
 - (c) the total value of sub-contracted revenues to SMEs and VCSEs.
- 39.2 Each SME Management Information Report shall be provided in the correct format as required by the MI Report Template and any guidance issued by the Contracting Authority from time to time.
- 39.3 Following the issue by the Contracting Authority to the Supplier of the first MI Report Template, the Contracting Authority may change the MI Report Template from time to time (including the data required and/or format of the same) on at least thirty (30) days' written notice of the same, with such notice specifying the date from which the replacement or amended MI Report Template must be used.
- 39.4 The Supplier further agrees and acknowledges that it may not make any amendment to any current MI Report Template without the prior written approval of the Contracting Authority.

40. **NON-WAIVER**

- 40.1 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.
- 40.2 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.

41. SEVERANCE

If any provision of this agreement or a Project Services Order 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.

42. GOVERNING LAW AND JURISDICTION

This agreement and any Project Services Order 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 19.19 (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.

SCHEDULE 1 - SERVICES SCHEDULE

Part 1. Core Services

The descriptions of the Core Services described in this Schedule 1 should be read in conjunction with the terms and conditions of the Call Off Contract and the RIBA Plan of Work 2013.

PROJECT MANAGEMENT & FULL DESIGN TEAM SERVICES PROCUREMENT

CORE SERVICE DISCIPLINE 3 - COST MANAGEMENT SERVICES

Ref	Scope of Services	D&B (2 Stage Open Book)
1.0	General Services	
1.1	Provide the Services for all Work Plan stages unless instructed otherwise by the Contracting Authority	
1.2	Attend regular meetings in order to progress the Cost Information, consult and liaise with the Project Lead in the preparation and development of the Project Roles Table, Design Responsibility Matrix, Technology Strategy and Design Programme. Identify activities to be undertaken and responsibility for the activities in accordance with the Project Roles Table, Design Responsibility Matrix, Technology Strategy and Design Programme. Undertake and take responsibility for actions to be undertaken by the Project Lead.	
1.3	Consult and liaise with other suppliers on the Project Team to ensure that the Services provided by the Supplier are fully coordinated with the services provided by those suppliers.	
1.4	Where there is duplication between the Services provided by the Supplier and the services of another supplier(s), the Supplier shall assist the Project Lead to resolve the service duplication by agreement with the supplier(s) concerned. The Supplier shall implement the actions the Project Lead confirms in writing.	
1.5	Participate in the operation of an Early Warning System.	
1.6	Co-operate at all times with the Principal Designer and provide information and Risk Assessments as required.	
1.7	Attend meetings with the Contracting Authority, Project Lead, Lead Designer, other suppliers and the Contractor as necessary.	
1.8	Attend and contribute to workshops and exercises with other suppliers to carry out value engineering, value management, environmental performance improvement initiatives and risk management. Contribute to recommendations for Contracting Authority approval based on the results of these exercises to deliver the best overall value for money.	
1.9	Participate in the Change Control Procedure and monitor development of the Cost Information against the Project Budget and Project Programme.	
1.10	Work closely with the Contracting Authority, other suppliers and all stakeholders to foster a partnering culture. The culture will embody the principles of mutual trust and co-operation with an overall aim of delivering a successful project to the Project Brief, Project Budget and the Project Programme.	

Ref	Scope of Services	D&B (2 Stage Open Book)
1.11	Provide the Services for all Work Plan stages outside the UK if required. Costings and specification to be discussed and agreed on a project level not Call Off Contract level.	
2.0	RIBA Stage 0 - Strategic Definition	
2.1	Provide comments to the Project Lead and attend workshops to discuss the Business Case and to develop the Strategic Brief for the project.	
2.2	Review findings from post project evaluations from relevant projects and contribute to the Sustainability Checkpoint to inform the approach to the Strategic Definition for the Project.	
2.3	Provide contributions to the Project Lead to establish the Project Brief, the Initial Project Budget and the Project Programme.	
2.4	Provide contributions to the Project Lead to draft the Project Execution Plan.	
3.0	RIBA Stage 1 - Preparation & Brief	
3.1	Lead and manage the contribution in respect of budgetary considerations to the development of the Initial Project Brief and prepare the Project Budget. The Initial Project Brief shall include Project Objectives, Quality Objectives, Project Outcomes, environmental performance/Sustainability Aspirations, Project Budget and Project Programme and all other parameters, risks and/or constraints.	
3.2	Review Site Information and Project Information and provide comments and attend workshops, as required, to assist the development of the Initial Project Brief.	
3.3	Contribute to the agreement of the procurement route and the standard form of Building Contract.	
3.4	Provide comment for the development of the Project Roles Table and Contractual Tree by the Project Lead.	
3.5	Provide comment to the Project Lead and Lead Designer for the preparation of the Information Exchange and Technology Strategy for the Initial Project Brief.	
3.6	Lead and manage the Cost Information contribution to the preparation of option appraisals that meet the Initial Project Brief. Options produced by the Project Team should collectively address: - Built Form: including building size, shape, orientation, sub-division, shading, weather and noise protection etc. - Construction standards: including floor load capacities, column to column spans, insulation, fire protection, glazing ratios, thermal and noise insulation, thermal capacity, natural and artificial illumination, ventilation etc. - Structural and hard surfacing materials, foundations, temporary structures etc.: - Engineering Services and components: including heating, hot water, cooling, ventilation, lighting, communications, lifting or transportation equipment and public health systems etc.; their operational relationships, methods of control and means of energy supply, distribution and recovery etc. - Foul and surface water drainage, attenuation and rainwater harvesting	

Ref	Scope of Services	D&B (2 Stage Open Book)
	- External paving and surfacing, roads, car parks and footpaths	
3.7	Lead and manage the Cost Information contribution to the preparation of the Feasibility Study for the Contracting Authority preferred option(s)	
3.8	Contribute to the update of the Project Programme. Lead and manage the update of the Project Budget.	
3.9	Contribute to the preparation of the Handover Strategy and Risk Assessments in preparation for Concept Design stage and contribute to the Sustainability Checkpoint and the development of the Project Execution Plan.	
3.10	Assist in the selection one or more specialists, where appropriate and legally compliant, to provide input into option appraisals and/or the Feasibility Study in consultation with the Contracting Authority and the Project Team.	
4.0	RIBA Stage 2 - Concept Design	
4.1	Prepare the preliminary Cost Information.	
4.2	Update the preliminary Cost Information and the Project Budget for the agreed changes to the Concept Design, Site Information and Project Information in compliance with the Change Control Procedures and the Information Exchanges and contribute to the production of the Final Project Brief.	
4.3	Contribute to the development of the Sustainability Strategy, the Maintenance and Operational Strategy and the Sustainability Checkpoint.	
4.4	Contribute to the development of the Handover Strategy and review and update Risk Assessments.	
4.5	Contribute to the Construction Strategy and the development of the Health and Safety Strategy.	
4.6	Contribute to the review and update of the Project Execution Plan.	
4.7	Contribute to the review and update of the Project Programme.	
4.8	Comply with the Information Exchange requirements.	
4.9	Contribute to the selection of a list of tenderers.	
4.10	Contribute to the preparation of the Employer's Requirements.	
4.11	Contribute to the preparation of the tender documentation.	
4.12	Contribute to the assessment of tenders and the preparation of the tender report. The assessment should include the review and evaluation of the alignment of all pricing and cash-flow information in each of the Contractor's Proposals with the Employer's Requirements set out in the tender documentation. and the further review and evaluation of responses to any clarifications from the tenderers.	
4.13	Assist in the agreement of the detailed content and the finalisation of the contract documentation (for pre-construction activities).	
5.0	RIBA Stage 3 - Developed Design	

Ref	Scope of Services	D&B (2 Stage Open Book)
5.1	Update the preliminary Cost Information and the Project Budget for the agreed changes to the Developed Design, Site Information and Project Information in compliance with the Change Control Procedures and the Information Exchanges and contribute to the production of the Final Project Brief.	
5.2	Contribute to the development of the Project Strategies.	
5.3	Contribute to the review and update of the Sustainability Strategy and the Maintenance and Operational Strategy and contribute to the Sustainability Checkpoint.	
5.4	Contribute to the review and update of the Handover Strategy and review and update Risk Assessments.	
5.5	Contribute to the review and update of the Construction Strategy and the Health and Safety Strategy.	
5.6	Contribute to the review and update of the Project Execution Plan.	
5.7	Contribute to the review and update of the Design Programme and Project Programme.	
5.8	Comply with the Information Exchange requirements.	
5.9	Contribute to the selection of a list of tenderers.	
5.10	Contribute to the preparation of the Employer's Requirements.	
5.11	Contribute to the preparation of the tender documentation	
5.12	Contribute to the assessment of tenders and the preparation of the tender report. The assessment should include the review and evaluation of the alignment of all pricing and cash-flow information in each of the Contractor's Proposals with the Employer's Requirements set out in the tender documentation. and the further review and evaluation of responses to any clarifications from the tenderers.	
5.13	Assist in the agreement of the detailed content and the finalisation of the contract documentation (for pre-construction activities).	
5.14	Lead the assessment of the submission from the selected tenderer of pricing information and cash-flows, to ensure alignment with the contract documentation (for pre-construction activities) and the further review and evaluation of responses to any clarifications from the tenderer.	
6.0	RIBA Stage 4 - Technical Design	
6.1	Update the Cost Information and the Project Budget for the agreed changes to the Technical Design, Site Information and Project Information in compliance with the Change Control Procedures and the Information Exchanges and contribute to the production of the Final Project Brief.	
6.2	Contribute to the review and update of the Sustainability Strategy and the Maintenance and Operational Strategy and contribute to the Sustainability Checkpoint.	

Ref	Scope of Services	D&B (2 Stage Open Book)
6.3	Contribute to the review and update of the Handover Strategy and review and update Risk Assessments.	
6.4	Contribute to the review and update of the Construction Strategy and the Health and Safety Strategy	
6.5	Contribute to the review and update of the Project Execution Plan.	
6.6	Contribute to the review and update of the Design Programme and Project Programme.	
6.7	Comply with the Information Exchange requirements.	
6.8	Contribute to the selection of a list of tenderers.	
6.9	Contribute to the preparation of the Employer's Requirements.	
6.10	Contribute to the preparation of the tender documentation	
6.11	Contribute to the assessment of tenders and the preparation of the tender report. The assessment should include the review and evaluation of the alignment of all pricing and cash-flow information in each of the Contractor's Proposals with the Employer's Requirements set out in the tender documentation. and the further review and evaluation of responses to any clarifications from the tenderers.	
6.12	Assist in the agreement of the detailed content and the finalisation of the contract documentation.	
6.13	Lead the assessment of the submission from the selected tenderer of pricing information and cash-flows, to ensure alignment with the contract documentation (for pre-construction activities) and the further review and evaluation of responses to any clarifications from the tenderer.	
7.0	RIBA Stage 5 - Construction	
7.1	Contribute, as necessary, to the provision of information to the Contract Administrator to assist contract administration.	
7.2	Attend regular progress meetings with the Contractor and other members of the Project Team and provide ongoing advice on the overall cost of the project in relation to the Project Budget and recommend any corrective action that may be necessary. Undertake valuations of the works in accordance with the provisions of the Building Contract and provide cashflow updates to the Project Lead and the Contracting Authority.	
7.3	In consultation with the Contracting Authority and the Project Team, ensure that rigorous cost control is undertaken in accordance with Change Control Procedures and provide estimates of cost in connection therewith and negotiate the costs of approved changes with the Contractor.	
7.4	Visit the site at such intervals as are necessary in order to be fully aware of all matters which could affect the cost of the project.	

Ref	Scope of Services	D&B (2 Stage Open Book)
7.5	Produce financial statements at monthly intervals, or at such other intervals as shall be agreed with the Contracting Authority that demonstrate the current financial position of the project and a forecast of the cost at completion and submit to the Project Lead and the Contracting Authority.	
7.6	Contribute to the review and update of the Project Programme.	
7.7	Contribute to the review and update of the Sustainability Strategy and contribute to the Sustainability Checkpoint.	
7.8	Contribute to the review and update of the Construction Strategy and the Health and Safety Strategy.	
7.9	Monitor the compilation of the 'As Constructed' Information is provided in accordance with the Construction Programme.	
7.10	Contribute to the implementation of the Handover Strategy	
7.11	Comply with the Information Exchange requirements.	
7.12	In consultation with the Contracting Authority and the Project Team, contribute to the preparation of a planned maintenance programme for the project, post handover, and contribute to recommendations for the procurement of the planned maintenance.	
7.13	Lead the assessment of the submission from the selected tenderer of pricing information and cash-flows, to ensure alignment with the contract documentation and the further review and evaluation of responses to any clarifications from the tenderer.	
7.14	Alert the Project Lead, the Contract Administrator and the Contracting Authority other members of the Project Team to the possibility of receiving claims from the Contractor. If such claims are submitted, advise the Project Lead and the Contracting Authority.	
7a.1	Assist the Contract Administrator with all activities in connection with the adjudication of disputes between the Contracting Authority and the Contractor.	
7a.2	In co-operation with the other members of the Project Team concerned, evaluate claims and make recommendations.	
8.0	RIBA Stage 6 - Handover & Close-Out	
8.1	Undertake tasks listed in Handover Strategy and contribute to the Sustainability Checkpoint.	
8.2	Agree the final account, or equivalent, in accordance with the Building Contract.	
8.3	Provide a detailed statement of final cost to the Contracting Authority, Project Lead and Contract Administrator.	
8.5	Contribute to the provision of information to the Contract Administrator to assist administration of the contract.	

Ref	Scope of Services	D&B (2 Stage Open Book)
8.6	Contribute to the update of the Project Information.	
9.0	RIBA Stage 7 - In-Use	
9.1	Undertake the tasks listed in the Handover Strategy.	
9.2	Contribute to the Post Occupancy Evaluation	
9.3	Contribute to the update of Project Information in response to ongoing Contracting Authority Feedback	
9.4	Contribute to the post completion defect rectification process in accordance with GSL requirements.	
9.5	Contribute to the post completion monitoring process in accordance with GSL requirements.	
9.6	Contribute to the review of Project Performance, Project Outcomes, the Sustainability Checkpoint and the outcome of any research and development aspects	

Part 2. Additional Project Services

Any services in addition to those specified in a Project Services Order (but excluding the Partnering Services), which may include one or more Core Service that otherwise is not identified in a Project Services Order as at the date of that Project Services Order.

Part 3. Partnering Services

To be agreed and updated in conjunction with the Supplier as required.

SCHEDULE 2 - FEE SCHEDULE

[Redacted]

SCHEDULE 3 - PROJECT SERVICES ORDER

[TO BE ISSUED ON THE HEADED PAPER OF THE CONTRACTING AUTHORITY]

[INSERT ADDRESS OF THE SUPPLIER]

Project Services Order reference: [INSERT REFERENCE]

[INSERT DATE]

Dear Sirs

[INSERT NAME OF PROJECT] - PROJECT SERVICES ORDER

Capitalised terms used in this Project Services Order shall have the meaning given to such terms in the call-off contract between us dated [INSERT DATE] in relation to [INSERT LOT DESCRIPTION] (the "Call Off Contract"), as awarded pursuant to and in accordance with the Crown Commercial Service framework dated [INSERT DATE] with reference RM3741.

Any schedules and other documents referred to in this Project Services Order form are deemed to form part of this Project Services Order.

In accordance with the terms of the Call Off Contract, we hereby instruct you to undertake the Project Services identified below in accordance with the requirements of this Project Services Order and in full compliance with the terms and conditions of the Call Off Contract:

1	<u>PROJECT</u> • The Project is [insert details] at the Site. • The Site is [insert details].
2	<u>PROJECT SERVICES</u> Subject to clause 2A.5 of the Call Off Contract, the Supplier shall provide the following Project Services in connection with the Project as set out in the Services Schedule (as supplemented by any Additional Project Services instructed by the Contracting Authority from time to time): • [Insert details of the Core Service(s) to be provided.]
3	<u>PROJECT LEAD, PROJECT PROGRAMME, THIRD PARTY AGREEMENTS AND TECHNICAL STANDARDS</u> • The Project Lead is [insert location] of [insert organisation]. • The Programme for the Project Services is set out at [insert location] of this Project Services Order. • [The Third Party Agreements applicable to the Project are set out at [insert location].] • [The Contracting Authority Policies applicable to the Project are set out at [insert location].]

	The Technical Standards applicable to the Project are set out at [insert location].														
4	<u>FEES AND PAYMENT</u> The Basic Fee is a [fixed fee of £[insert agreed fixed fee]] OR [time related fee] which shall be payable by reference to the following instalments: <table border="1"> <thead> <tr> <th>Milestone</th><th>Sum payable (£ excl. VAT)</th></tr> </thead> <tbody> <tr> <td>[Insert details]</td><td>[Insert sum]</td></tr> <tr> <td>[Insert details]</td><td>[Insert sum]</td></tr> <tr> <td>[Insert details]</td><td>[Insert sum]</td></tr> </tbody> </table>	Milestone	Sum payable (£ excl. VAT)	[Insert details]	[Insert sum]	[Insert details]	[Insert sum]	[Insert details]	[Insert sum]						
Milestone	Sum payable (£ excl. VAT)														
[Insert details]	[Insert sum]														
[Insert details]	[Insert sum]														
[Insert details]	[Insert sum]														
5	<u>PERSONNEL</u> - The Supplier's Key Personnel in connection with the provision of the Project Services are: <table border="1"> <thead> <tr> <th>Name</th><th>Role/position</th></tr> </thead> <tbody> <tr> <td>[Name]</td><td>[Position]</td></tr> <tr> <td>[Name]</td><td>[Position]</td></tr> <tr> <td>[Name]</td><td>[Position]</td></tr> </tbody> </table> - The Contracting Authority's Representative in connection with this Project Services Order is [insert details]. - The Supplier's Representative in connection with this Project Services Order is [insert details].	Name	Role/position	[Name]	[Position]	[Name]	[Position]	[Name]	[Position]						
Name	Role/position														
[Name]	[Position]														
[Name]	[Position]														
[Name]	[Position]														
6	<u>COLLATERAL AND NOVATION AGREEMENTS</u> - The Key Sub-Consultants in relation to the Project Services are: <table border="1"> <thead> <tr> <th>Discipline</th><th>Name (if known)</th></tr> </thead> <tbody> <tr> <td>[Insert discipline]</td><td>[Insert name]</td></tr> <tr> <td>[Insert discipline]</td><td>[Insert name]</td></tr> <tr> <td>[Insert discipline]</td><td>[Insert name]</td></tr> </tbody> </table> - The Key Sub-Contractors in relation to the Project Services are [insert details]. - The Supplier shall procure each of the following documents in the relevant form identified in the Call Off Contract in connection with the Project Services: <table border="1"> <thead> <tr> <th>Document</th><th>Required</th></tr> </thead> <tbody> <tr> <td>Collateral Warranty from the Supplier in favour of [any Beneficiary]</td><td>[Yes / no]</td></tr> <tr> <td>Collateral Warranty from each Key Sub-Consultant [and Key Sub-Contractor] in favour of [any Beneficiary]</td><td>[Yes / no]</td></tr> </tbody> </table>	Discipline	Name (if known)	[Insert discipline]	[Insert name]	[Insert discipline]	[Insert name]	[Insert discipline]	[Insert name]	Document	Required	Collateral Warranty from the Supplier in favour of [any Beneficiary]	[Yes / no]	Collateral Warranty from each Key Sub-Consultant [and Key Sub-Contractor] in favour of [any Beneficiary]	[Yes / no]
Discipline	Name (if known)														
[Insert discipline]	[Insert name]														
[Insert discipline]	[Insert name]														
[Insert discipline]	[Insert name]														
Document	Required														
Collateral Warranty from the Supplier in favour of [any Beneficiary]	[Yes / no]														
Collateral Warranty from each Key Sub-Consultant [and Key Sub-Contractor] in favour of [any Beneficiary]	[Yes / no]														

	<table border="1"> <tr> <td>[Insert discipline]</td><td>[Yes / no]</td></tr> <tr> <td>Parent Company Guarantee</td><td>[Yes / no]</td></tr> <tr> <td>Guarantor (if a Parent Company Guarantee is required)</td><td>[Insert name / Not applicable]</td></tr> </table> Clause 14.7 (Novation) [does / does not] apply.	[Insert discipline]	[Yes / no]	Parent Company Guarantee	[Yes / no]	Guarantor (if a Parent Company Guarantee is required)	[Insert name / Not applicable]
[Insert discipline]	[Yes / no]						
Parent Company Guarantee	[Yes / no]						
Guarantor (if a Parent Company Guarantee is required)	[Insert name / Not applicable]						
7	<u>KEY PERFORMANCE INDICATORS</u> - Clause 33 (Key Performance Indicators) [applies/ does not apply] to this Project Services Order. [The Key Performance Indicator Schedule is set out at [insert location] of this Project Services Order.]						
8	<u>BUILDING INFORMATION MODELLING (“BIM”)</u> - Clause 34 (Building Information) [applies/ does not apply] to this Project Services Order. - A BIM Protocol [applies/ does not apply] to this Project Services Order [and is set out at [insert location] of this Project Services Order]. - If a BIM Protocol <u>does not</u> apply to this Project Services Order: - the BIM Information Manager is [insert name / the Supplier]; - the BIM Information Requirements are set out in [insert location] of this Project Services Order; - the BIM Model Production and Delivery Table is the building information model production as set out in [insert location] of this Project Services Order.						
9	<u>SECURITY REQUIREMENTS</u> - Clause 26 (Security Requirements) [applies/ does not apply] to this Project Services Order. [If Clause 26 (Security Requirements) applies to this Project Services Order, the Security Policy is as set out at [insert location] of this Project Services Order.]						
11	<u>STAFF TRANSFER</u> - Clause 31 (Staff Transfer) [applies/ does not apply] to this Project Services Order. [If Clause 31 (Staff Transfer) applies to this Project Services Order, the Staff Transfer Schedule is as set out at [insert location] of this Project Services Order.]						
13	<u>QUALITY MANAGEMENT POINTS</u> Clause 35 (Quality Management Points) [applies / applies/ does not apply] to this Project Services Order.						
14	<u>COLLABORATIVE PERFORMANCE FRAMEWORK</u> Clause 36 (Collaborative Performance Framework) [applies / applies/ does not						

	apply] to this Project Services Order. • [If Clause 36 applies to this Project Services Order: ○ the Collaborative Performance Framework is as set out at [insert location] of this Project Services Order; and ○ the Failure Level is [insert failure level].]
15	<u>LIABILITY</u> • The Supplier's limitation of liability under Clause 23 of the Call Off Contract in respect of this Project Services Order is: £5,000,000 for each and every claim.

By signing and returning a copy of this Project Services Order to us, you confirm that you agree to be bound by its terms. Other than signing this Project Services Order in the manner below, you are not authorised to make any amendments to this Project Services Order whatsoever and should any such amendments be made by you after your receipt of the same, this Project Services Order shall be deemed to be invalid and of no contractual effect.

Signed for and on behalf of The Secretary of State for Justice:

Name - signature: _____
Name - printed: _____
Date: _____

Signed for and on behalf of Jacobs UK Limited by:

Name - signature: _____
Name - printed: _____
Date: _____

SCHEDULE 4 - 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 Project 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 Site and the Project.
Professional Appointment	a contract in writing dated [DATE] between the Contracting Authority and the Supplier.
Project	[DESCRIPTION OF PROJECT].

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

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

Site [DESCRIPTION OF SITE].

- 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 Project Services;
 - (b) to comply with (and to see the completed Project complies with) any legislation;
 - (c) to perform the Project 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 Site; or
 - (b) the Project; or
 - (c) any designs or specifications for the Site 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 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 Site, 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 Site, 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 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 5 - 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 6 - BUSINESS CONTINUITY AND DISASTER RECOVERY PLAN

The Supplier shall submit a draft Business Continuity and Disaster Recovery Plan in-line with the response requirement as part of the tender exercise for review and incorporation into this Schedule 6. This should be submitted within one month following the date of execution of this Call Off Contract.

SCHEDULE 7 - PROCESSING SCHEDULE

1. The Supplier shall comply with any written instructions with respect to Processing by the Contracting Authority.
2. Any such further instructions shall be incorporated into this Schedule.

Description	Details										
Subject matter of the processing	Any Personal Data concerning the Contracting Authority's staff or the staff of other suppliers to the Contracting Authority will be collected to support the provision of the Supplier's obligations under this Call Off Contract.										
Duration of the processing	Total duration of processing: For the term of this Call Off Contract. Retention of individual subject records: As specified in the Contracting Authority's data retention policy.										
Nature and purposes of the processing	Personal Data processed by the Supplier shall be that which is required for the purposes outlined in the table below: <table border="1"> <thead> <tr> <th>Purpose</th><th>Description</th></tr> </thead> <tbody> <tr> <td>Contract and performance management</td><td>Ensure that the Supplier can discharge its contractual obligations and allow for the monitoring of its performance against contractual requirements.</td></tr> <tr> <td>Safeguarding the public</td><td>Safeguard the public and personnel, for example, recording any threatening or violent behaviour by the subject or others at the premises and sharing this information where appropriate.</td></tr> <tr> <td>Assist Criminal Justice Agencies</td><td>Assist criminal justice agencies with criminal enquiries or provide them with advice.</td></tr> <tr> <td>Equality Act obligations</td><td>Assist the Contracting Authority and the Supplier meet their obligations under the Equality Act 2010.</td></tr> </tbody> </table>	Purpose	Description	Contract and performance management	Ensure that the Supplier can discharge its contractual obligations and allow for the monitoring of its performance against contractual requirements.	Safeguarding the public	Safeguard the public and personnel, for example, recording any threatening or violent behaviour by the subject or others at the premises and sharing this information where appropriate.	Assist Criminal Justice Agencies	Assist criminal justice agencies with criminal enquiries or provide them with advice.	Equality Act obligations	Assist the Contracting Authority and the Supplier meet their obligations under the Equality Act 2010.
Purpose	Description										
Contract and performance management	Ensure that the Supplier can discharge its contractual obligations and allow for the monitoring of its performance against contractual requirements.										
Safeguarding the public	Safeguard the public and personnel, for example, recording any threatening or violent behaviour by the subject or others at the premises and sharing this information where appropriate.										
Assist Criminal Justice Agencies	Assist criminal justice agencies with criminal enquiries or provide them with advice.										
Equality Act obligations	Assist the Contracting Authority and the Supplier meet their obligations under the Equality Act 2010.										
Type of Personal Data being Processed	The Supplier shall process the types of Personal Data described in the table below.										

	Personal Data Category	Personal Data Types
	Contracting Authority personnel and the personnel of other Contracting Authority suppliers.	Name Contact Details
Categories of Data Subject	The Supplier shall process Personal Data about the following categories of Data Subject:	
	Category of Data Subject	Notes
	Contracting Authority personnel and the personnel of other Contracting Authority suppliers	Required to ensure the Supplier has the necessary contacts to be able to provide its obligations under this Call Off Contract.
Plan for return and destruction of the data once the processing is complete UNLESS requirement under union or member state law to preserve that type of data	At the end of the term of this Call Off Contract, any Personal Data to be retained in line with the Contracting Authority's data retention policy shall be securely transferred to the Contracting Authority or other nominated party in accordance with any requirements provided to the Supplier from time to time.	
	For Personal Data where the data retention period defined in the Contracting Authority's data retention policy has expired, Personal Data shall be destroyed.	

SCHEDULE 8 - PARTNERING CONTRACT

Establishment:

Project:

BPRN:

PROJECT PARTNERING AGREEMENT

Project Partnering Agreement (as amended)

Clauses 1.3 and 1.5 The Partnering Team shall include the following Consultants whose roles, expertise and responsibilities are further described in the Project Brief and Consultant Services Schedules and who shall be paid in accordance with the Partnering Terms and the Consultant Payment Terms:



*Reference in
Partnering Terms*

Client Representative

Cost Consultant

Principal Designer/CDM Co-ordinator

[Technical Assessor]

The Partnering Team is listed in **Annexure A, Appendix A** to this Project Partnering Agreement.

Clauses 1.3, 1.6 and
10.2

The Partnering Team shall include the following Specialists whose roles, expertise and responsibilities are or shall be further described in the Project Brief, the Project Proposals and the Joining Agreements and who shall be paid in accordance with the Specialist Payment Terms:

*[Insert details of any
current and
prospective Specialist
Partnering Team
members]*

[]

Clause 2

The Partnering Documents shall comprise the following as each signed and dated for the purpose of identification by the Partnering Team members:

- this Project Partnering Agreement and the Partnering Terms;
- the Partnering Timetable comprising []; **Annexure A, Appendix G**
- Consultant Services Schedules and Consultant Payment Terms for [];
- the Project Brief incorporating any Constructor's Services Schedule and comprising []; **Annexure B**
- the Project Proposals comprising []; **Annexure C**
- the Price Framework comprising [];



*Reference in
Partnering Terms*

- the KPIs and Targets comprising []; **Annexure A, Appendix K**
 - the Risk Register comprising []; **Annexure B**
- and any additional and amended Partnering Documents developed in accordance with the Partnering Terms.

Clause 3.3

The Core Group shall comprise

For the Client: []

For the Constructor: []

For the Client Representative: []

For the Cost Consultant: []

For the Principal Designer/CDM Co-ordinator: []

[For the Technical Assessor: []]

The membership of the Core Group is provided in **Annexure A, Appendix B** to this Project Partnering Agreement

Clause 3.9

*[Delete if not
applicable]*

The Interested Parties and their involvement in the Project shall comprise:

[The Governor, Head of Works and Head of Security at the relevant establishment]

[The local District Council]

[The Technical Assessor]¹

And/or such additional parties as are specified pursuant to the Project Brief

Interested Parties additional to the Partnering Team are as listed in **Annexure A, Appendix E** to this Project Partnering Agreement

¹ Where not appointed as a member of the Partnering Team



*Reference in
Partnering Terms*

In accordance with clause 3.9, the Partnering Team shall work together and individually in accordance with the Partnering Documents to establish the maximum practical involvement of the Interested Parties as listed below.

As set out in the Project Execution Plan (set out in the Project Brief) the Client Representative shall manage a Third Party Communication Plan which shall set out responsibilities for communicating with and sending information to the relevant Interested Parties.

Clause 4.1 Additional objectives for the Partnering Team members shall comprise:

*[Delete if not
applicable]*

Clause 5.2 The authority of the Client Representative shall be subject to the following restrictions:

The Client Representative shall not, without the Client's prior written consent amend or vary any of the Partnering Documents or give instructions (save in respect of an emergency in which case the Client Representative shall immediately notify the Client) which could:

- make any changes to the Project Brief;
- agree to any change to the Completion Date;
- increase or decrease the overall cost or quality of the Project or cause delay in completion of the Project; or
- detrimentally affect the interests of any Partnering Team Member.

Clause 5.6 The Partnering Adviser shall be:

[]

Clause 8 The Lead Designer shall be:

the Constructor

Clause 8 The Design Team shall comprise:



*Reference in
Partnering Terms*

[The Constructor]

Clauses 8.3 and 8.6

The design development process described in clause 8 of the Partnering Terms shall be amended as follows:

- At sub-clause 8.3(i), delete the margin heading "Outline designs and alternative solutions" and insert:

"Option Appraisal"

- At sub-clause 8.3(i), delete "Outline designs for the Project including such alternative solutions for the integrated design, supply and construction of the Project and insert:

"an option appraisal for the Project according with the requirements set out in the [Project Brief] (an "Option Appraisal")"

- At Sub-clause 8.3(iii) delete the margin heading "Development of designs" and insert:

"Feasibility Study"

At sub-clause 8.3(iii) delete "such outline designs and "in the fourth line and insert:

"Option Appraisal"

At sub-clause 8.3(iii) delete "there" and insert:

"a feasibility study for the Project according with the requirements set out in the [Project Brief] ("Feasibility Study")"

Clause 8.4

The following Site surveys and investigations shall be commissioned or undertaken by the following Partnering Team members:

As detailed in the Project Brief

Clauses 1.6 and 10.11

The Client shall appoint the following Specialists direct:

*[Delete if not
applicable]*



*Reference in
Partnering Terms*

[] noted in **Annexure A, Appendix N** to this Project Partnering Agreement.

Clause 13.2 The shared savings arrangements, shared added value and pain/gain Incentives between Partnering Team members are:

Those arrangements and measures established pursuant to the Strategic Alliance Agreement

Clause 13.3 The Incentives that link payment to achievement of the Date for Completion or any KPI Targets are:

Such Incentives and/or Targets as are established pursuant to the Strategic Alliance Agreement

Clauses 19.3 and 19.4 The amounts of third party liability insurance and professional indemnity insurance / product liability insurance of each Partnering Team member shall be:

<u>Third party liability</u>	<u>Professional indemnity / product liability</u>	<u>Partnering Team member</u>
£10m	£10m	Constructor (Lot 1)
£10m	£10m	Client Representative (Lot 1)
£10m	£5m	Cost Consultant (Lot 4)
£10m	£10	Principal Designer/CDM Co-ordinator (Lot 1)



*Reference in
Partnering Terms*

for each and every claim
with the number of
claims unlimited

for each and every claim
with the number of claim
unlimited and maintained
for a period of twelve (12)
years from the date of the
Client Representative's
notice that the
Constructor has fulfilled
its obligations pursuant to
clause 21.5 of the
Partnering Terms

Clause 20.9

The rate of interest on late payment shall be:

four per cent (4%) above the base rate of the Bank of England current on the date the payment becomes overdue and the Partnering Team members agree that this is a substantial remedy for the purposes of the Late Payment Act

Clause 20.13

The Client [is] [is not] a "contractor" for the purposes of the Finance Act.

*[Delete
appropriate]* as

²[Clause 20.18

A Bank Account shall be used.

The Bank shall be: []

Clause 21.4

The Defects Liability Period shall be:

Twelve (12) months from Project Completion

Clause 21.4

The time limits for rectification of defects shall be:

- For items which represent a breach of security or health and safety risk or where the continuing safe and comfortable occupancy of any part of the establishment affected by the works is seriously prejudiced: respond and rectify or make safe within two (2) hours and

² Insert only if a project bank account is required.

*Reference in
Partnering Terms*

rectify as soon as possible and in any event no later than forty eight (48) hours of notification by the Client Representative

- For items which result in discomfort or could, if ignored, represent a breach of security or a health & safety risk: rectify as soon as possible and in any event no later than five (5) Working Days from notification by the Client Representative
- For any other item, which cannot in the reasonable opinion of the Client Representative be left until the end of Defects Liability Period: rectify as soon as possible and in any event no later than twenty-eight (28) Working Days from notification by the Client Representative

Clause 22.1

The duty of care and warranties of the Partnering Team members described in clause 22 of the Partnering Terms shall be amended as follows:

The Constructor accepts full responsibility to the Client for the design, supply, construction and completion of the Project in accordance with the Partnering Documents including the selection and standards of all materials, goods, equipment and workmanship forming part of the Project and including any design and other work undertaken in relation to the Project before or after the date of the Commencement Agreement by any other Partnering Team member, but without prejudice to the duty of care of each Partnering Team member (other than the Client) to the Constructor in respect of its contribution to the design, supply, construction and completion of the Project.

The responsibility of each of the Partnering Team members for loss or damage suffered by any other Partnering Team member shall be limited to that proportion of the other Partnering Team member's loss or damage as it would be just and equitable to require that Partnering Team member to pay having regard to the extent of that Partnering Team member's responsibility for such loss or damage and on the basis that each other Partnering Team member shall be deemed to have paid such proportion as it would be just and equitable for them to pay having regard to the extent of their responsibility.

Clause 22.2

The following collateral warranties shall be provided:

- In favour of the Client from any Specialist with material design responsibility within ten (10) Working Days of the Client Representative's request or ten (10)



*Reference in
Partnering Terms*

Working Days of that Specialist's appointment in connection with the Project (whichever is sooner) in the form set out in the Project Brief.

- In favour of the Client from the any sub-contractor or sub-consultant of a Specialist with material design responsibility within ten (10) Working Days of the Client Representative's request or ten (10) Working Days of that sub-contractor or sub-consultant's appointment in connection with the Project (whichever is sooner) in the form set out in the Project Brief

Clause 25.2

The following rights of assignment shall apply:

The Client may novate, assign or transfer the Partnering Contract or any part, share or interest in the Partnering Contract on two (2) occasions without the consent of any other members of the Partnering Team. No other member of the Partnering Team may assign, novate or transfer the Partnering Contract or any part, share or interest in the Partnering Contract without the Client's prior written consent.

Clauses 25.4, 27.6 and
27.7

The applicable law and the courts with jurisdiction shall be those of:

English law and the Court of England and Wales

Clause 26.8

Clause 26.8 of the Partnering Terms applies.

Clause 27.2

Under the Problem-Solving Hierarchy each of the following individuals in the following sequence shall have a period of [] ([]) Working Days to agree a solution with the individuals stated above or below their respective names, failing which the notified difference or dispute shall be referred to the next named individual in the sequence (if any):

Client	(1)	(2)	(3)
Constructor	(1)	(2)	(3)
Client Representative	(1)	(2)	(3)



*Reference in
Partnering Terms*

[other Consultant Partnering Team members]	(1)	(2)	(3)
[Specialist Partnering Team members]	(1)	(2)	(3)

Clause 27.4 and
Appendix 5 Part 1 The Conciliator shall be:

*[Delete if not
applicable]*

Clause 27.6 and
Appendix 5 Part 3 Any dispute or difference may be referred to an arbitrator in accordance with the procedure set out in Part 3 of Appendix 5, who in the absence of agreement shall be appointed by:

The President of the Royal Institute of Chartered Surveyors. [Any arbitration shall be conducted in accordance with the JCT edition of the Construction Industry Model Arbitrator Rules current at the date of referral.]

Clause 27.8 The limitation period shall be:

Twelve (12) years from the date of the Client Representative's notice that the Constructor has fulfilled its obligations pursuant to clause 21.5 of the Partnering Terms.

Clause 28 The following Special Terms shall apply:

Special Term 28.1 Definitions

Confidential Information means the Client's Confidential Information and/or the Partnering Team member's Confidential Information;

Constructor's Personnel means all employees, agents, consultant and Specialists of the Constructor;

Crown means the Government of the United Kingdom (including the Northern Ireland Executive Committee and the Northern Ireland Departments, the Scottish Executive



*Reference in
Partnering Terms*

and the National Assembly for Wales) including but not limited to government ministers, government departments, government in particular bodies and government agencies;

Employer Data means:

- (a) the Data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which are:
 - (i) supplied to the Constructor by or on behalf of the *Employer*; or
 - (ii) which the Constructor is required to generate, process, store or transmit pursuant to the Contract; or
- (b) any Personal Data for which the Client is the Data Controller.

Fraud means any offence under the law creating offences in respect of fraudulent acts or at common law in respect of fraudulent acts in relation to the Crown or defrauding or attempting to defraud or conspiring to defraud the Crown by their personnel in connection with the receipt of monies from the Client;

Intellectual Property Rights means:

- (a) copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, trade marks, rights in Internet domain names and website addresses and other rights in trade names, designs including BIM, know-how, trade secrets and other rights in Confidential Information;
- (b) applications for registration, and the right to apply for registration, for any of the rights listed at (a) that are capable of being registered in any country or jurisdiction; and
- (c) all other rights having equivalent or similar effect in any country or jurisdiction.

Know-How means all ideas, concepts, schemes, information, knowledge, techniques, methodology, and anything else in the nature of know how relating to the Services but excluding know how already in the possession of the Client or any other Partnering Team member before the date of the Project Partnering Agreement;



Reference *in*
Partnering Terms

Personnel means all employees, agents, Consultants and Specialists of any Partnering Team member;

Strategic Alliancing Agreement means the Strategic Alliancing Agreement dated 17th April 2012 between the Client and the Constructor and others.

In line 1 of the definition of Final Account delete "20.15" and insert "20.16(i)"

Special Term 28.2 Health and Safety

Add new sub-clauses after clause 7.2 as follows:

- 7.2.1 The Constructor shall promptly notify the Client of any health and safety hazards which may arise in connection with the performance of the Project. The Client shall promptly notify the Constructor of any health and safety hazards which may exist or arise at the Site and which may affect the Constructor in the performance of the Project.

Add new sub-clauses to Clause 15.3 as follows:

- 15.3(vii) the Constructor shall comply with any health and safety measures implemented by the Client in respect of employees and other individuals working on the Site.
- 15.3(viii) the Constructor shall notify the Client immediately in the event of any incident occurring in the performance of the Project on Site where that incident causes any personal injury or damage to property which could give rise to personal injury.
- 15.3 (ix) the Constructor shall ensure that any Health and Safety policy statement (as required by the Health and Safety at Work etc. Act 1974) is made available to the Client on request.

Special Term 28.3 Security and Vetting

Insert as new clause 7.6

- 7.6 In this clause:

Personnel Vetting Procedure means the Client's procedures for the vetting of the Constructor's and any Partnering Team members' employees and all other individuals for whom they are responsible other than the Client's Personnel (hereinafter referred to as **Personnel**) as advised to the other Partnering Team members by the Client.



*Reference in
Partnering Terms*

Client's Personnel means all employees, agents, Consultants and Specialists of the Client.

Independent Safeguarding Authority is a non-departmental public body sponsored by the Home Office set up under the provisions of the Safeguarding Vulnerable Groups Act 2006 and which is responsible for the decision-making and maintenance of two lists covering the children's and vulnerable adults' sectors.

Relevant Conviction means a conviction that is relevant to the provision of the Project or as listed by the Client and/or relevant work of the Client.

The Vetting and Barring Scheme means the scheme set up under the provisions of the Safeguarding Vulnerable Groups Act 2006.

- i Where Personnel are required to have a pass for admission to the Site the Client, subject to satisfactory completion of approval procedures, shall arrange for passes to be issued. Personnel who cannot produce a proper pass when required to do so by any of the Client's Personnel, or who contravene any conditions on the basis of which a pass was issued, may be refused admission to the Site or required to leave the Site if already there.
- ii The Constructor and/or any other Partnering Team member as the case may be shall promptly return any pass if at any time the Client so requires or if the person to whom the pass was issued ceases to be involved in the performance of the Project. The Constructor and any other Partnering Team member as the case may be shall promptly return all passes on completion or earlier termination of their appointment under the Partnering Contract.
- iii Personnel attending the Site may be subject to a search at any time. Strip searches are only conducted on the specific authority of the Client under the same rules and conditions applying to the Client's Personnel. The Partnering Team members are referred to the Prison Rules 1999 Part III and the



*Reference in
Partnering Terms*

Prison (Amendment) Rules 2005 and the Young Offender Institute Rules 2000 Part III and the Young Offender Institute (Amendment) Rules 2008.

- iv The Client, whose decision is final and conclusive, reserves the right under the Partnering Contract to refuse to admit to, or to withdraw permission to remain on, the Site or any premises occupied by or on behalf of the Client:

- any Personnel or
- any person employed or engaged by a specialist, agent or servant of the Constructor or any other Partnering Team member

whose admission or continued presence is, in the opinion of the Client, undesirable.

- v If and when directed by the Client, each other Partnering Team member shall provide a list of the names and addresses, National Insurance numbers, periods of employment, immigration status and tax exemption certificates of all persons who it is expected may require admission in connection with the Partnering Contract to the Site or any premises occupied by or on behalf of the Client, specifying the capacities in which they are concerned with the Project and giving such other particulars as the Client may reasonably desire.
- vi Personnel engaged within the boundaries of a Government establishment shall comply with rules, regulations and requirements (including those relating to security arrangements) as may be in force from time to time for the conduct of Personnel when at that establishment and when outside that establishment.

*Reference in
Partnering Terms*

- vii If any Partnering Team member shall fail to comply with ii and v the Client, (whose decision is final and conclusive) may decide that such failure is prejudicial to the interests of the Crown; and if the relevant member of the Partnering Team does not comply with the Client's reasonable requests within two (2) months of the date of a written notice from the Client so to do, then the Client may terminate the appointment of the Partnering Team member as if a breach had occurred under clause 26.4(ii) or clause 26.3 of the Partnering Contract, provided that such termination does not prejudice or affect any right of action or remedy which has accrued or thereafter accrues to the Client.
- viii Partnering Team members shall bear the costs of complying with the requirements notices, instructions or decisions received from the Client in relation to their obligations in respect of information relating to individuals.
- ix No Partnering Team member shall employ any person where the Partnering Team member knows, or by reason of the circumstances which might reasonably be expected to know, that the person concerned is involved in any unlawful procurement of Social Security benefits or tax exemptions in connection with his employment by the Partnering Team member. No Partnering Team member shall make, facilitate or participate in the procurement of any unlawful payments to any person employed by them, whether in the nature of Social Security fraud, evasion of tax or otherwise.
- x The Partnering Team members shall comply with the Client's procedures for the vetting of Personnel in respect of all persons to be employed or engaged to carry out and complete the Project. The Constructor and other Partnering Team members shall confirm



*Reference in
Partnering Terms*

that all persons employed or engaged by them or that will be employed or engaged by them in relation to the Partnering Contract are vetted and recruited on a basis that is equivalent to and no less strict than the Personnel Vetting Procedures.

- xi The Client may require any other Partnering Team member to ensure that any person employed to carry out and complete the Project has undertaken a Criminal Records Bureau check as per the Personnel Vetting Procedures or any other security check as may be required by the Client from time to time. Each Partnering Team member shall ensure that no person who discloses that he/she has a Relevant Conviction, or is found by that Partnering Team member to have a Relevant Conviction (whether as a result of a police check or through the Criminal Records Bureau check or otherwise) is employed or engaged to carry out and complete the Project.
- xii Individuals, including those held in lawful custody or on probation shall be regarded as vulnerable persons under the Safeguarding Vulnerable Groups Act 2006. Where the Client deems it necessary, any other Partnering Team member shall provide a list of Personnel who are to carry out and complete the Project that are vetted by the Independent Safeguarding Authority. The Client may in its sole discretion refuse access to the Site by any Personnel who do not successfully complete the vetting procedures under the Vetting and Barring Scheme.
- xiii Whilst on the Site all Personnel shall comply with all security measures implemented by the Client in respect of staff and other persons attending the Site. The Client shall provide copies of its written security procedure to the other Partnering Team member on request. The Partnering Team members and all their Personnel shall be prohibited from taking any

*Reference in
Partnering Terms*

photographs on the Site unless the Client has given prior written consent and a representative of the Client is present so as to have full control over the subject matter of each photograph to be taken.

- xiv The Constructor shall take measures needed to prevent Personnel from taking, publishing or otherwise circulating such photographs.
- xv The Client shall have the right to carry out any search of any Personnel or of vehicles used by the Constructor and other Partnering Team members at the Site.
- xvi The other Partnering Team members shall co-operate with any investigation relating to security which is carried out by the Client or by any person who is responsible to the Client for security matters, and when required by the Client:
 - take all reasonable measures to make any Personnel identified by the Client available to be interviewed by the Client, or by a person who is responsible to the Client for security matters, for the purposes of the investigation. All Personnel have the right to be accompanied by and to be advised or represented to the other person whose attendance at the interview is acceptable to the Client; and
 - subject to any legal restriction on their disclosure, provide all documents, records or other material of any kind which may reasonable be required by the Client or by a person who is responsible to the Client for security matters, for the purposes of the investigation, so long as the provision of that material does not prevent the Constructor



Reference in
Partnering Terms

from carrying out and completing the Project. The Client has the right to retain any such material for use in connection with the investigation and, so far as possible, provide the Constructor with a copy of any material retained.

Special Term 28.4 Information Security

Insert as new clause 25.6

[Using additional defined terms as they appear in the Strategic Alliancing Agreement:]

25.6.1 Each Partnering Team member shall:

- identify, keep and disclose to the Client upon request a record of those members of the Personnel and any Specialists with access to or who are involved in handling Client Data (users) and
- provide to the Client details of its policy for reporting, managing and recovering from information risk incidents, including losses of protected Personal Data and ICT security incidents and its procedures for reducing risk and raising awareness; and
- immediately report information security incidents to the Client. Significant actual or potential losses of Personal Data may be shared with the Information Commissioner and the Cabinet Office by the Client.

25.6.2 The Partnering Team members shall protect Client Data whose release or loss could cause harm or distress to individuals. The Partnering Team members shall handle all such Client Data as if it were confidential while it is processed or stored by the Partnering Team members or Specialists, applying the measures set out in clauses 25.6.1 to 27.6.9 (inclusive).

25.6.3 When Client Data is held on paper it shall be kept secure at all times, locked away when not in use or the premises on which it is held shall be secured. If Client Data held on paper is transferred it shall be by an approved secure form of transfer with confirmation of receipt. When Client Data is held and accessed on ICT systems on secure premises, the Constructor shall apply the minimum protections for information set out in the Project Brief, or equivalent measures, as well as any additional protections as needed as a result of the Client's risk assessment. Where in exceptional circumstances



*Reference in
Partnering Terms*

equivalent measures are adopted the relevant Partnering Team member shall obtain the Client's prior approval in writing.

25.6.4 Wherever possible, Client Data should be held and accessed on paper or ICT systems on secure premises protected as above. The Partnering Team members shall not use removable media (including laptops, removable discs, CD-ROMs, USB memory sticks, PDAs and media card formats) for storage or access to such Data where possible. Where the Client agrees that this is not possible, the Partnering Team members shall work to the following hierarchy, recording the reasons for a particular approach not being adopted in a particular case or a particular business area:

- best option; hold and access data on ICT systems on secure premises;
- second best option:; secure remote access, so that Data can be viewed or amended without being permanently stored on the remote computer. This is possible for Client Data over the internet using products meeting the FIPS 140-2 standard or equivalent, unless otherwise agreed with the Client; and
- third best option: secured transfer of Client Data to a remote computer on a secure site on which it will be permanently stored. Both the Client Data at rest and the link should be protected at I the FIPS 140-2 standard or equivalent. Protectively marked Client Data shall not be stored on privately owned computers unless they are protected in this way;
- in all cases the remote computer should be password protected, configured so that its functionality is minimised to its intended business use only, and have up to date software patches and anti-virus software.

25.6.5 Where the Client agrees that it is not possible to avoid the use of removable media, the Partnering Team members shall apply all of the following conditions:

- the Client Data transferred to the removal media should be the minimum necessary to achieve the business purposes, both in terms of the numbers of people covered by the Client Data and the Client Data held. Where possible only anonymised Client Data should be held;



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- the removal media should be encrypted to a standard of at least FPIS 140-2 or equivalent in addition to being protected by an authentication mechanism, such as a password;
 - user rights to transfer Client Data to removable media shall be carefully considered and strictly limited to ensure that this is only provided where absolutely necessary for business purposes and subject to monitoring by the relevant Partnering Team member and the Client; and
 - the individual responsible for the removable media should handle it themselves, or if they entrust it to others as if it were the equivalent or a large amount of their own cash.
- 25.6.6 Where the Client agrees that the second condition of encryption cannot be applied due to business continuity and disaster recovery considerations, such unprotected Client Data shall only be recorded, moved, stored and monitored with strong controls.
- 25.6.7 All material that has been used for confidential Client Data should be subject to controlled disposal. The Partnering Team members shall:
- destroy paper records containing protected Personal Data by incineration, pulping or shredding so that reconstruction is unlikely and
 - dispose of electronic media that has been used for protected Personal Data through secure destruction, overwriting, erasure or degaussing for re-use.
- 25.6.8 The Partnering Team members shall have appropriate mechanisms in place in order to comply with the Client's requirements as set out in this clause including adequate training in handling confidential Data for the Constructor's/Partnering Team Personnel.
- 25.6.9 The Partnering Team members shall:
- put in place arrangements to log activity of Data users in respect of electronically held protected personal information and for managers to check the arrangements are being properly conducted, with a particular focus on those working remotely and those with higher levels of functionality. Summary records of managers' activity shall



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be shared with the Client and be available for inspection by the Information Commissioner's office on request;

- minimise the number of users with access to the Client Data.

Special Term 28.5 Confidentiality

Delete clause 25.5 and insert as follows

25.5 In this clause:

- **Commercially Sensitive Information** means the information listed in Appendix [] (Commercially Sensitive Information).
- **Confidential Information** means the Client's Confidential Information and/or the Partnering Team members' Confidential Information as the context permits.
- **Partnering Team member's Confidential Information** means any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, Know-how, personnel and suppliers of the Constructor and the other Partnering Team members (other than the Client), including Intellectual Property Rights, together with all information derived from the above, and any other information clearly designated as being confidential (whether or not it is marked as "confidential") or which ought reasonably to be considered to be confidential including the Commercially Sensitive Information.
- **Client's Confidential Information** means all Personal Data and any information, however it is conveyed, that relates to the business affairs, developments, trade secrets, know-how, personnel and suppliers of the Client, including all Intellectual Property Rights, 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.

25.5.1 Except where disclosure is expressly permitted elsewhere in the Partnering Contract, each Partnering Team member:

- shall treat all Confidential Information as confidential and safeguard it accordingly and



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- shall not disclose Confidential Information to any other person without the owner's prior written consent.
- 25.5.2 The Partnering Team members' obligations in relation to Confidential Information do not apply to the extent that:
- the disclosure is a requirement of Law placed upon the party making the disclosure, including any requirements for disclosure under the FOIA, Code of Practice on Access to Government Information or the Environmental Information Regulations;
 - the information was in the possession of the party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
 - the information was obtained from a third party without obligation of confidentiality;
 - the information was already in the public domain at the time of disclosure otherwise than by a breach of the Partnering Contract; or
 - it is independently developed without access to other Partnering Team members or Client's Confidential Information.
- 25.5.3 The other Partnering Team members shall only disclose the Client's Confidential Information relevant to the carrying out and completion of the Project to the Personnel who are directly involved in carrying out and completing the Project, and shall ensure that the Personnel are aware of and comply with their obligations in respect of Confidential Information.
- 25.5.3 The other Partnering Team members shall not, and shall procure that the Personnel do not, use of any of the Client's Confidential Information received otherwise than for the purposes of the Partnering Contract.
- 25.5.4 At the written request of the Client, any other Partnering Team member shall procure that the Personnel identified in the Client's notice sign a confidentiality undertaking on similar terms to the Partnering Contract prior to commencing any work in accordance with the Partnering Contract.
- 25.5.5 Nothing in the Partnering Contract shall prevent the Client from disclosing the other Partnering Team members' Confidential Information:
- to any Crown body or any other Contracting Authority on the understanding that they are entitled to further disclose the Confidential Information to other Crown bodies or other Contracting Authorities on the basis that the information is confidential and is not



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to be disclosed to a third party which is not part of any Crown body or any Contracting Authority;

- to any contractor, consultant or other person engaged by the Client or any person conducting an Office of Government Commerce gateway review;
- for the purpose of the examination and certification of the Client's accounts, or
- for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Client has used its resources.

25.5.6 The Client shall use its reasonable endeavours to ensure that any government department, Contracting Authority, employee, third party or Specialist to whom any other Partnering Team member's Confidential Information is disclosed is made aware of the Client's obligations of confidentiality.

25.5.7 Nothing prevents any other Partnering Team member from using any techniques, ideas or know-how gained during the performance of the Partnering Contract in the course of its normal business to the extent that this use does not result in a disclosure of any other Partnering Team member's or Client's Confidential Information or an infringement of Intellectual Property Rights .

25.5.8 The Partnering Team members acknowledge that, subject to the foregoing provisions regarding each Partnering Team member's Confidential information, the content of this contract is not Confidential Information. Notwithstanding any other term of the Partnering Contract, the other Partnering Team hereby give consent for the Client to publish the Partnering Contract in its entirety, including from time to time agreed changes to the Partnering Contract, to the general public. Prior to the publication the Client may, at its sole discretion, in whole or in part, redact information for one or more of the following grounds:

- i national security;
- ii personal data;
- iii information protected by intellectual property law;



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- iv information which is not in the public interest to disclose (under a Freedom of Information Act analysis);
- v third party confidential information;
- vi IT security; or
- vii Prevention of fraud.

Special Term 28.6 Fraud and prevention of corruption

Insert new clause 25.7:

- 25.7.1 The Partnering Team members shall take all reasonable steps to prevent Fraud.
- 25.7.2 Each Partnering Team member shall notify the Client immediately if it has any reason to suspect that any Fraud has occurred or is occurring or is likely to occur.

Special Term 28.7 CDM Regulations and SWMP Regulations

Amend clause 7.1 as follows:

After the words: "the term "principal contractor"" insert the words: "for the purposes of both the CDM Regulations and the Site Waste Management Plans Regulations 2008 (the **SWMP Regulations**) ". Delete the full stop after the words "the Constructor" and add the words: " or, if he ceases to be the Constructor , such other Constructor as the Client will appoint pursuant to regulation 14(2) of the CDM Regulations and regulation 4(1) of the SWMP Regulations."

Special Term 28.8 Employment and skills

Clause 28.1 In **Appendix 1**, the following definitions shall be inserted:

Employment and Skills Strategy – the Client's Employment and Skills Strategy forming part of the Project Brief;

ESP - the Project-specific Employment and Skills Plan produced by the Constructor and forming part of the Project Proposals to be complied with and implemented by the Constructor in order to execute the Employment and Skills Strategy;

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Method Statement - the Project-specific method statement produced by the Constructor and forming part of the Project Proposals which sets out in detail how the Constructor shall implement the ESP"

- Clause 28.8.1** **Clause 14.1** shall be amended by the insertion of the following at the end of the clause:
- "(xiii) development and finalisation by the Constructor of the ESP and the Method Statement"
- Clause 28.8.2** Pursuant to **clause 7.6** the Constructor shall comply with and implement the ESP and Method Statement in accordance with the Employment and Skills Strategy.
- Clause 28.8.3** The Constructor shall nominate an individual to liaise with the Client Representative and provide the Client Representative with information as required to demonstrate the Constructor's compliance with the ESP and Method Statement.
- Clause 28.8.4** The Client Representative shall provide to the Constructor information it has available to enable the Constructor to comply with and implement the ESP and Method Statement, including the details listed in the Employment and Skills Strategy.
- Clause 28.8.5** The Constructor shall provide to the Client Representative on a monthly basis, in accordance with the Partnering Timetable and the Project Timetable, a report outlining the achievements during the previous month against the ESP and Method Statement and the employment and skills KPI and Targets contained in **Annexure A, Appendix K** to this Project Partnering Agreement, and provide details of the various employment and skills activities delivered in the month. The Client Representative shall be responsible for monitoring the Constructor's compliance with and implementation of the ESP and Method Statement, and such monitoring shall form part of the Client's assessment of the employment and skills KPI and Targets.
- Clause 28.8.6** **Insert in clause 23.6** (Post-Project Completion review), after the words, "KPI and Targets," the following words: "(including the employment and skills KPI and Targets), and its compliance with and implementation of the ESP and the Method Statement".



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Clause 28.8.7 Any and all costs relating to compliance with and implementation of the ESP and Method Statement by the Constructor are included in the Price Framework.

Clause 28.8.8 **Insert new clause 17.9:**

" Where any Change agreed or established in accordance with this clause 17 has the effect of substantially increasing or decreasing the Agreed Maximum Price, the Constructor may propose a corresponding and proportionate amendment to the employment and skills output figures contained in the ESP, the Method Statement and any relevant KPIs and Targets. The Client and the Client Representative shall consider any such proposal made by the Constructor and shall seek to agree any amendments with the Constructor."

Special Term 28.9 Payment

Delete clause 20 and insert:

Payment obligations

20.1 The Client shall be responsible for payment to the Consultants of all agreed amounts stated in the Consultant Payment Terms and for payment to the Constructor of all agreed amounts in respect of Constructor's Services, in respect of Pre-Construction Activities and comprising the Agreed Maximum Price, plus in each case VAT (if applicable), and in each case subject to and adjusted in accordance with these Partnering Terms.

Payment applications and due dates for payment

20.2 Subject to any agreed payment milestones, activity schedules or cashflows and any other payment arrangements set out in the Price Framework and the Consultant Payment Terms and any Pre-Construction Agreement, applications for payment of amounts due to the Consultants and the Constructor shall be submitted respectively by each Consultant and the Constructor to the Client and the Client Representative at the intervals stated in the Price Framework, the Consultant Payment Terms and any Pre-Construction Agreement or (if no intervals are stated) at the end of each calendar month.



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Each application for payment shall state the sum the relevant Consultant or the Constructor considers to be due to it on the due date for payment and the basis on which that sum is calculated and shall be accompanied by such details as are stated in the Project Brief and such further information as the Client Representative may reasonably require. The due date for payment in respect of each application for payment shall be the date of receipt by the Client of the relevant application, submitted in accordance with this clause 20.2.

Interim payments to Constructor – payment notices and final date for payment

- 20.3 Within five (5) days from receipt of each application for payment made by the Constructor in accordance with clause 20.2, clause 20.15 or when otherwise required by these Partnering Terms, the Client Representative shall issue to the Constructor and the Client a payment notice, calculated in accordance with clause 20.5, specifying the sum the Client Representative considers to have been due on the due date for payment and the basis on which that sum is calculated. Subject to any notice issued in accordance with clause 20.7, the Client shall pay to the Constructor the sum stated as due in the payment notice by the final date for payment. Subject to any revised periods stated in the Price Framework, the final date for payment shall be the later of twenty (20) Working Days from the due date for payment and fifteen (15) Working Days from the date of receipt by the Client of any required VAT invoice from the Constructor in the same sum as the payment notice.

Payment to Consultants – payment notices and final date for payment

- 20.4 Within five (5) days from receipt by the Client of each application for payment made by a Consultant in accordance with clause 20.2 the Client shall issue a payment notice to each Consultant, calculated according to the relevant Consultant Payment Terms on the basis of the Consultant Services provided and taking into account sums due pursuant to clauses 20.10 and 20.17, specifying the sum the Client considers to have been due on the due date for payment and the basis on which that sum is



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calculated. Subject to any notice issued in accordance with clause 20.7, the Client shall pay to the relevant Consultant the amount stated as due in the relevant payment notice by the final date for payment. Subject to any revised periods stated in the Consultant Payment Terms, the final date for payment shall be the later of thirty (30) Working Days from the due date for payment and twenty five (25) Working Days from the date of receipt by the Client from the relevant Consultant of any required VAT invoice in the same sum as the payment notice.

Content of Constructor valuations

- 20.5 The amount payable under each application for payment by the Constructor shall be calculated in accordance with the Price Framework to establish the value of the Constructor's Services properly performed, or the value of any Pre-Construction Activities properly performed or the value of that part of the Project properly progressed, including the value of any unfixed materials, goods and equipment on and off Site intended for the Project (subject to clause 15.4 and if and to the extent provided in the Price Framework), less the total of all amounts previously paid, and adjusted to reflect shared savings, shared added value and pain/gain Incentives pursuant to clause 13.2, any Incentives that link payment to achievement of the Date for Completion or any KPI Targets pursuant to clause 13.3 and any sums due pursuant to clauses 17.3, 17.4, 18.5 or 18.6 and taking into account sums due pursuant to clauses 20.10 and 20.17.

Default notice

- 20.6 If the Client Representative or the Client does not issue a payment notice in accordance with clause 20.3 or clause 20.4 respectively:
- (i) the relevant Consultant's application for payment under clause 20.2 or the Constructor's application under clause 20.4 or clause 20.15 shall be treated as the payment notice;
 - (ii) subject to any notice issued in accordance with clause 20.7, the Client shall pay the amount stated



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as due in the application for payment by the final date for payment.

Pay less notice

20.7 Not later than two (2) Working Days before the final date for payment of any sum due, the payer or (in respect of payments due to the Constructor) the Client Representative may give notice to the payee pursuant to Section 111(3) of the HGCRA, specifying the sum that the payer or (in respect of payments due to the Constructor) the Client Representative considers to be due on the date the notice is served and the basis on which that sum is calculated. If a notice is issued under this clause 20.7:

- (i) the payer shall pay the amount stated in such notice by the final date for payment;
- (ii) the payee shall reissue any required VAT invoice to reflect the sum stated in the such notice.

Adjustment of notices

20.8 The issue of any notice or VAT invoice or the payment of any amount by the payer shall not in any way affect the right of the payer or any payee to contend that:

- (i) any Consultant Services or Constructor's Services or Pre-Construction Activities or the Project have or have not been properly valued; and/or
- (ii) that any amount has been improperly paid or withheld.

In calculating any notice, the payer or (in the case of payments to the Constructor) the Client Representative shall be entitled to reconsider and, if necessary, adjust any assessment made in arriving at any previous notice.

Notices not approved

20.9 The issue of any notice or VAT invoice or the payment of any amount shall not:

- (i) constitute or imply or be evidence of the Client's approval or acceptance of any part of any Consultant Services or



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Constructor's Services or Pre-Construction Activities or the Project; or

- (ii) in any way affect the responsibilities of any Partnering Team member under the Partnering Contract.

Interest on late payment

- 20.10 Any delay in a due payment beyond the final date stated in clause 20.3, clause 20.4 or clause 20.16 shall entitle the payee to be paid interest at the percentage specified in the Project Partnering Agreement, and the Partnering Team members confirm that such interest is a substantial remedy for late payment in compliance with Section 9 of the Late Payment Act.

Fluctuation

- 20.11 Amounts in the Price Framework and Consultant Payment Terms shall be subject only to such fluctuation provisions, if any, as are set out in the Price Framework and Consultant Payment Terms.

Payment of Specialists

- 20.12 The Constructor shall pay all Specialists (other than Specialists appointed pursuant to clause 10.11) the amounts to which they are entitled in accordance with the Specialist Payment Terms (with provision for interest on late payment equivalent to clause 20.10), shall maintain full records of all amounts payable and paid to each Specialist and shall make these records available to the Client Representative on request.

Inspection of Financial Records

- 20.13 Each Partnering Team member shall allow the Client Representative to visit its offices and to inspect its financial records in relation to the Project at any time subject to reasonable prior notice.

Statutory deduction

- 20.14 Where the Client is a "contractor" for the purposes of the Finance Act, then not later than fifteen (15) Working Days prior to the Constructor's first application for payment in relation to the Project, and at any other time upon request, the

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Constructor shall either provide the Client with evidence that the Constructor is entitled to be paid without the statutory deduction referred to in the Finance Act or inform the Client in writing that it is not entitled to be paid without such statutory deduction (and in the latter case the Constructor shall immediately inform the Client if it subsequently becomes entitled to be paid without such statutory deduction) and the Client shall be entitled to receive from the Constructor evidence supporting the Constructor's stated entitlement to be paid without such statutory deduction.

Payment on Project Completion

- 20.15 Within twenty (20) Working Days following Project Completion (or any other period stated in the Price Framework), the Client Representative shall prepare and issue to the Client and the Constructor an account confirming the balance of the Agreed Maximum Price due as between the Client and the Constructor, calculated in accordance with clause 20.5. The Client and the Constructor shall seek to agree the amount of that balance, taking into account any adjustment provided for in these Partnering Terms and subject to deduction of any amount stated as a Retention in the Price Framework. On or after forty (40) Working Days following Project Completion (or any revised period stated in the Price Framework) the Constructor shall issue a payment application in accordance with clause 20.2 and the due date for payment shall be the date of receipt by the Client of such application.

Final Account

- 20.16 The following procedures shall apply in relation to the Final Account:
- (i) Within twenty (20) Working Days following notice to the Client and the Constructor by the Client Representative confirming satisfaction of the Constructor's obligations under clause 21.4 as to rectification of defects (or on such earlier date as the Client and the Constructor may agree), the Client Representative shall prepare and issue to the Client and the Constructor a Final Account (calculated in accordance with clause 20.5 and taking into account any adjustment provided for in these Partnering Terms) for agreement between the Client and the Constructor.



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- (ii) On or after forty (40) Working Days of the notice confirming satisfaction of the Constructor's obligations under clause 21.4 (or any revised period stated in the Price Framework) the Constructor or the Client (as the case may be) shall make an application for payment which shall state the sum the Constructor or the Client considers to be due to it and the basis on which that sum is calculated and which shall be accompanied by such details as are stated in the Project Brief and such further information as the Constructor or the Client Representative may reasonably require. Such application shall either be in the agreed amount or if agreement is not reached then in such amount as the payer or (in respect of payments due to the Constructor) the Client Representative considers to be due on the due for payment. The due date for payment in respect of the application shall be the date of receipt by the payer of such application.
- (iii) Within five (5) days of the due date for payment the payer or the Client Representative shall issue to the payee a payment notice setting out the sum the payer considers to have been due on the due date for payment and the basis on which that sum is calculated. Such notice shall be calculated in accordance with clause 20.5. Subject to any revised periods in the Price Framework, the final date for payment shall be the later of twenty (20) Working Days from the due date for payment and fifteen (15) Working Days from the date of receipt by the payer of any required VAT invoice in the same sum as the payment notice.
- (iv) If a payment notice is not issued in accordance with clause 20.16(iii) the application for payment pursuant to clause 26.16(ii) shall be treated as the payment notice. Subject to any notice issued in accordance with clause 20.7 the payer shall pay the sum stated as due in the payment notice or the application for payment by the final date for payment.
- (v) The Final Account, when agreed, shall be conclusive evidence as to the balance of the Agreed Maximum Price due between the Client and the Constructor.

Suspension of performance

- 20.17 If the Client fails to make any payment due in accordance with this clause 20 by the stated final date for payment, and if such failure shall continue for seven (7) days after the Constructor or a Consultant has given the Client written notice of its intention to



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suspend performance of any or all of its obligations and the grounds for such intended suspension, then the Constructor or such Consultant may suspend performance of any or all of its obligations under the Partnering Contract until payment is received in full. Where the Constructor or a Consultant exercises such right of suspension it shall be entitled to a reasonable amount in respect of costs and expenses reasonably incurred by it as a result of the exercise of the right.

Special Term 28.10 Termination

Clause 26.1 Delete existing wording and marginal note 'Termination for unforeseeable reasons' and insert new wording and a marginal note as follows:

Termination at anytime

26.1 Notwithstanding any other provision of the Partnering Contract, the Client may terminate the appointments of the other Partnering Team members under the Partnering Contract at any time. In such circumstances the Client shall give the Partnering Team members not less than twenty (20) Working Days prior notice, within which period the Partnering Team members shall cease all activities under the Partnering Contract in an orderly manner.

Upon expiry of that period the Client Representative shall issue a payment notice to the Constructor pursuant to clause 20.3 and the Client shall issue a notice to each Consultant pursuant to clause 20.4 each in respect of the total amount properly due up to the date of termination (including the value of all materials, goods and equipment in respect of which the Constructor has made commitment in accordance with the Project Timetable prior to the date of termination and has transferred unencumbered ownership to the Client and the Constructor's reasonable costs under clause 26.9) and the Client shall pay such amount in accordance with clause 20.

Clause 26.4 In lines 9 – 10 of final paragraph delete "the Client shall not be bound to make any further payment to the Constructor" and insert "no further sum shall become due to the Constructor"

In line 12 of final paragraph delete "prior to the date of termination".

Clause 26.6 Second line, after the words '..., by reason of' insert 'the exercise by the Client of emergency powers or by reason of'

Clause 26.9 Insert "26.1", prior to "26.2" in line 2.



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Clause 26.17 Insert new clause 26.17:

"In the event of a Partnering Team member suffering an event of insolvency as described in Section 113(2) to Section 113(5) of the HGCRA:

- (i) the payer need not pay any sum that has already become due to the payee insofar as the payer has given or gives a notice in accordance with clause 20.7;
- (ii) the payer need not pay any sum that has already become due to the payee if the event occurs after the date on which the notice in relation to that sum is due in accordance with clause 20.7."

Special Term 28.11 Possession

Clauses 6.4 and 15.3(i) All parts of the Site will be in the exclusive possession of the Constructor until the period immediately prior to the Completion Date when the Client may need access to agreed areas of the Site in order to commence installation of agreed fixtures and fittings. The arrangements for this period of non-exclusive possession will be set out in the Commencement Agreement.

Special Term 28.12 Asbestos

Notwithstanding Clauses 15.3(v), 18.1(iii), 18.1(iv) and 19.1 the risk of loss or damage to the Project and the Site occasioned by asbestos shall remain with the Client provided always that, in the event that the Constructor discovers any asbestos the Constructor shall take all steps that would be expected of a reasonable Constructor and, if the asbestos is to be removed, shall appoint and adequately supervise any Specialist involved in the removal of the same.

Special Term 28.13 Partnering Team members' employees

Clause 7.8 Add additional Clause 7.8 as follows;

"The Client shall be entitled to require any of the Partnering Team members' employees to be replaced if in the reasonable opinion of the Client that person's performance is unsatisfactory and/or that person has breached the Security Requirements of the Client set out in the Project Brief. Such person shall be replaced with a person of at least the same



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experience and expertise at the expense of the relevant Partnering Team member and subject to the Client's approval (such approval not to be unreasonably withheld or delayed)."

Special Term 28.14 Inspection of financial records

Clause 20.12 Clause 20.12 shall be deleted in its entirety and replaced with the following:

- (1) Each Partnering Team member shall allow the Client Representative (or the Cost Consultant on behalf of the Client Representative) to visit its offices and to inspect its financial records in relation to the Project at any time subject to reasonable prior notice;
- (2) The Constructor shall use reasonable endeavours to ensure that a clause is inserted into the Specialist Contracts of the key Specialists (in this case any Specialist supplying any goods or services or undertaking any works in excess of 5% of the value of the Agreed Maximum Price) specifically stating that the Client Representatives (or the Cost Consultant on behalf of the Client Representative) shall be entitled to visit the Specialist's offices and to inspect its financial records in relation to the Project at any time subject to reasonable prior notice.

Special Term 28.15 Intellectual Property Rights

Delete clause 9.2 and replace with the following:

The Intellectual Property Rights in all designs and other documents prepared by or on behalf of each Partnering Team member in relation to the Project and the work executed from them shall be the property of and vested in the Client who reserves the right to replace such designs and/or documents or to execute or to have executed works (including the Project and all and any future projects) in accordance with such designs and/or documents as may be required by the Client of the Client.

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The Client hereby grants to the Constructor and other Partnering Team members an irrevocable non-exclusive, royalty free licence (carrying the right to grant sub-licences) to use for the duration of this Project only and only for purposes directly relating to completion of the Project any Intellectual Property Rights relating to the works which are or become vested in or are licensed to the Client.

Special Term 28.16 Specialist Contracts

Add new clause 10.15 to read:

- 10.15 The Constructor shall ensure that all Specialist Contracts contain back to back provisions with the Partnering Contract, including without limitation as to the absence of retention or discount arrangements, and shall cooperate in all measures taken by the Client or Client Representative to monitor compliance with this clause.

Special Term 28.17 Incentives

Add new clause 13.6 as follows:

- 13.6 The Partnering Team members shall operate the Shared Savings Scheme set out in Appendix [].

Special Term 28.18 Not Used**Special Term 28.19 Adjudication (Part 2 of Appendix 5)**

Renumber existing paragraphs 4 and 5 as paragraphs 9 and 10 respectively.

Insert new paragraph 4:

"The Adjudicator shall be appointed and the dispute or difference referred to him/her within seven (7) days following the giving of a notice by any Partnering Team member requiring a dispute or difference to be so referred."

Insert new paragraph 5:

"The Adjudicator shall reach his/her decision within twenty eight (28) days of the date of referral, or such longer period as is agreed by the Partnering Team members in dispute after the dispute has been referred. The Adjudicator may extend the period of twenty eight (28) days by up to fourteen (14) days with the consent of the Partnering Team member who referred the dispute or difference."

Insert new paragraph 6:



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"The Adjudicator shall act impartially and may take the initiative in ascertaining the facts and the law."

Insert new paragraph 7:

"The Adjudicator may correct his/her decision so as to remove a clerical or typographical error arising by accident or omission within five (5) days of communicating his/her decision to the Partnering Team members in dispute."

Insert new paragraph 8:

"The Adjudicator's decision shall be binding until the dispute is finally determined by legal proceedings, by arbitration (if the Partnering Contract provides for arbitration) or the Partnering Team members otherwise agree to arbitration or by agreement."

Insert new paragraph 10:

"If the Model Adjudication Procedure fourth edition is the edition current at the date of the relevant notice:

- (i) delete paragraph 29 and insert "Not used."
- (ii) delete paragraph 30 and insert "Not used."
- (iii) insert "as amended" at the end of the definition of 'Act'

Special Term 28.20 Extensions of time

In line 1 of Clause 18.3 (xii) insert "any or all of" before "its obligations".

[Special Term 28.21 Liquidated damages

Insert new Clauses 21.7 and 21.8:

- "21.7 If the Constructor fails to complete the Project by the Date for Completion the Client shall (provided that the Client Representative has issued a notice in writing to the Constructor to that effect) be entitled either to:
- (i) require the Constructor to pay to the Client liquidated and ascertained damages at the rate of [] pounds (£[]) per day for the period between the Date for Completion and the Completion Date and the Client may recover the same as a debt; or



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- (ii) deduct from monies otherwise due to the Constructor liquidated and ascertained damages at the rate of [] pounds (£[]) per day for the period between the Date for Completion and the Completion Date.

21.8 If the Client fixes a later Completion Date the Client shall pay or repay to the Constructor any amounts recovered allowed or paid under Clause 21.7 for the period up to such later Completion Date **provided that** the fixing of such later Completion Date shall not invalidate the Client Representative's notice as to deduction of liquidated and ascertained damages and the payment or repayment or the amounts under this clause shall be limited to the net difference between the amounts deducted and the amounts properly due after the fixing by the Client Representative of the later completion date. Interest shall not be payable by the Client on any amounts payable or repayable under this clause."]

Special Term 28.22 - Data Protection

Insert the following new definitions in **Appendix 1**:

"Controller"	shall have the meaning given to such term in the GDPR;
"Data Loss Event"	means any event that results, or may result, in unauthorised access to Personal Data held by a Partnering Team member under this Partnering Contract and/or actual or potential loss and/or destruction of Personal Data in breach of this Partnering Contract, including any Personal Data Breach;
"Data Protection Legislation"	means: (a) the GDPR, the LED and any applicable national implementing Laws as amended from time to time; (b) (subject to Royal Assent) the



*Reference in
Partnering Terms*

	DPA 2018 to the extent that it relates to Processing of Personal Data and privacy; and (c) all applicable Law about the Processing of Personal Data and privacy;
"Data Protection Impact Assessment"	means an assessment by the relevant Controller of the impact of the envisaged Processing on the protection of Personal Data;
"Data Protection Officer"	shall have the meaning given to such term in the GDPR;
"Data Subject"	shall have the meaning given to such term in the GDPR;
"Data Subject Request"	means a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data;
"DPA 2018"	means the Data Protection Act 2018 (or such other instrument that brings into force as Law the Data Protection Bill 2017-19, as amended, superseded and/or replaced);
"GDPR"	means the General Data Protection Regulation (Regulation (EU) 2016/679);
"LED"	means the Law Enforcement Directive (Directive (EU) 2016/680);
"Personal Data"	shall have the meaning given to such term in the GDPR;
"Personal Data Breach"	shall have the meaning given to such term in the GDPR;
"Processor"	shall have the meaning given to such



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	term in the GDPR (and "Process", "Processed" and "Processing" shall be construed accordingly);
"Processing Schedule"	means the schedule set out at Appendix P of Annexure A of the Project Partnering Agreement (as may be updated and/or replaced from time to time by the Client by written notice to the Partnering Team members);
"Protective Measures"	means all appropriate technical and organisational measures to protect, secure and restore Personal Data (as the context permits) which may include pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it;
"Sub-Processor"	means any third party appointed to Process Personal Data related to this Partnering Contract on behalf of a Partnering Team member;

Insert a new clause 25.8 with the marginal heading "**Data Protection**" as follows:

"25.8 Data Protection

25.8.1 The Client and the Partnering Team members acknowledge and agree that for the purposes of the Data Protection Legislation:

- (i) the Client is the Controller and each Partnering Team member (as the context



*Reference in
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permits) is a Processor; and

- (ii) the only Processing that a Partnering Team member is authorised to do by the Client is listed in the Processing Schedule and may not be determined by any Partnering Team member.

25.8.2 A Partnering Team member shall notify the Client immediately if it considers that any of the Client's instructions under or in connection with this Partnering Contract infringe the Data Protection Legislation.

25.8.3 Each Partnering Team member shall provide all reasonable assistance to the Client in the preparation of any Data Protection Impact Assessment prior to commencing any Processing under or in connection with this Partnering Contract and such assistance may, at the discretion of the Client, include the provision of:

- (i) a systematic description of the envisaged Processing operations and the purpose of the Processing;
- (ii) an assessment of the necessity and proportionality of the Processing operations in relation to the Project;
- (iii) an assessment of the risks to the rights and freedoms of Data Subjects; and
- (iv) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

25.8.4 Each Partnering Team member shall, in relation to any Personal Data that is Processed in connection with its obligations under this Partnering Contract:

- (i) Process that Personal Data only in accordance with the Processing Schedule, unless that



*Reference in
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Partnering Team member is required to do otherwise by Law;

- (ii) if it is so required, promptly notify the Client before Processing the Personal Data unless prohibited by Law;
- (iii) without prejudice to the generality of clause 25.6, ensure that it has in place Protective Measures, which are appropriate to protect against a Data Loss Event, which the Client may reasonably reject (but a failure to so reject shall not amount to approval by the Client of the adequacy of the Protective Measures), having taken account of the:
 - (a) nature of the data to be protected;
 - (b) harm that might result from a Data Loss Event;
 - (c) state of technological development; and
 - (d) cost of implementing any measures;
- (iv) ensure that:
 - (a) its personnel do not Process any Personal Data except in accordance with this Partnering Contract (and in particular the Processing Schedule); and
 - (b) it takes all reasonable steps to ensure the reliability and integrity of its personnel who have access to the Personal Data and ensure that they:
 - (A) are aware of and comply with the Partnering Team member's duties under this



*Reference in
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- clause 25.8;
 - (B) are subject to appropriate confidentiality undertakings with that Partnering Team member or any Sub-Processor;
 - (C) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Client or as otherwise permitted by this Partnering Contract; and
 - (D) have undergone adequate training in the use, care, protection and handling of Personal Data; and
 - (v) not transfer Personal Data outside of the European Union unless the prior written consent of the Client has been obtained and the following conditions are fulfilled:
 - (a) the Client or that Partnering Team member has provided appropriate safeguards in relation to the transfer (whether in accordance with Article 46 of the GDPR or Article 37 of the LED) as determined by the Client;
 - (b) the Data Subject has enforceable rights and effective legal remedies;
 - (c) that Partnering Team member complies with its obligations under the Data Protection Legislation by providing an adequate level of



Reference in
Partnering Terms

protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Client in meeting its obligations); and

(d) that Partnering Team member complies with any reasonable instructions notified to it in advance by the Client with respect to the Processing of the Personal Data; and

(vi) at the written direction of the Client, delete or return Personal Data (and any copies of it) to the Client on termination of its engagement under this Partnering Contract unless that Partnering Team member is required by Law to retain the Personal Data.

25.8.5 Subject to clause 25.8.6, a Partnering Team member shall notify the Client immediately if it:

- (i) receives a Data Subject Request (or purported Data Subject Request);
- (ii) receives a request to rectify, block or erase any Personal Data;
- (iii) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
- (iv) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data that is or may be Processed under this Partnering Contract;
- (v) receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or



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- (vi) becomes aware of a Data Loss Event.
- 25.8.6 A Partnering Team member's obligation to notify under clause 25.8.5 shall include the provision of further information to the Client in phases, as details become available.
- 25.8.7 Taking into account the nature of the Processing, each Partnering Team member shall provide the Client with full assistance in relation to their respective obligations under Data Protection Legislation and any complaint, communication or request made under clause 25.8.5 (and insofar as possible within the timescales reasonably required by the Client) including by promptly providing:
- (i) the Client with full details and copies of the complaint, communication or request;
 - (ii) such assistance as is reasonably requested by the Client to enable the Client to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;
 - (iii) the Client, at its request, with any Personal Data it holds in relation to a Data Subject;
 - (iv) assistance as requested by the Client following any Data Loss Event; and
 - (v) assistance as requested by the Client with respect to any request from the Information Commissioner's Office, or any consultation by the Client with the Information Commissioner's Office.
- 25.8.8 Each Partnering Team member shall maintain complete and accurate records and information to demonstrate its compliance with this clause 25.8, provided that this requirement does not apply where a Partnering Team



*Reference in
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member employs fewer than two hundred and fifty (250) staff unless:

- (i) the Client determines that the Processing is not occasional;
- (ii) the Client determines the Processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and
- (iii) the Client determines that the Processing is likely to result in a risk to the rights and freedoms of Data Subjects.

25.8.9 Without prejudice to any other provision of this Partnering Contract, each Partnering Team member shall allow for audits of its Data Processing activity by the Client or the Client's designated auditor.

25.8.10 Each Partnering Team member shall designate a data protection officer in connection with this Partnering Contract and all Project Services Orders issued hereunder if required by the Data Protection Legislation.

25.8.11 Before allowing any Sub-Processor to Process any Personal Data related to this Partnering Contract and/or any Project Services Order, a Partnering Team member must:

- (i) notify the Client in writing of the intended Sub-Processor and Processing;
- (ii) obtain the written consent of the Client;
- (iii) enter into a written agreement with the Sub-Processor which give effect to the terms set out in this clause 25.8 such that they apply to the Sub-Processor; and



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- (d) provide the Client with such information regarding the Sub-Processor as the Client may reasonably require.
- 25.8.12 Each Partnering Team member shall remain fully liable for all acts or omissions of any Sub-Processor that Processes any Personal Data pursuant to clause 25.8.11.
- 25.8.13 The Client may, at any time on not less than thirty (30) Working Days' notice, revise this clause by replacing it with any applicable "controller to processor" standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Partnering Contract).
- 25.8.14 The:
 - (i) Client and the Partnering Team members agree to take account of any guidance issued by the Information Commissioner's Office in connection with the Processing of any Personal Data under or in connection with this Partnering Contract; and
 - (ii) Client may on not less than thirty (30) Working Days' notice to the Partnering Team members amend this Partnering Contract to ensure that it complies with any guidance issued by the Information Commissioner's Office.
- 25.8.15 In this clause 25.8, the term "**Partnering Team member**" includes the Constructor."

Special Term 28.23 - Management Charges and Information

Insert the following new definitions in **Appendix 1**:



Reference in
Partnering Terms

"SME"	means an enterprise falling within the category of micro, small or medium-sized enterprises as defined by the Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises;
"SME Management Information Report"	has the meaning given to such term in clause 25.9.1;
"VCSE"	means a non-governmental organisation that is value-driven and which principally reinvests its surpluses to further social, environmental or cultural objectives;

Insert a new clause 25.9 with the marginal heading "**Management Charges and Information**" as follows:

"25.9 Management Charges and Information

25.9.1 In addition to any other information-related requirements set out in this Partnering Contract, each Partnering Team member agrees and acknowledges that it shall, at no charge, provide timely, full, accurate and complete SME management information reports to the Client (each an "**SME Management Information Report**") which incorporates the data described in the MI Reporting Template which is:

- (i) the total contract revenue received directly on a specific contract;
- (ii) the total value of sub-contracted revenues under the contract (including revenues for non-SMEs and non-VCSEs); and
- (iii) the total value of sub-contracted revenues to SMEs and VCSEs,

entered into by that Partnering Team member in



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connection with the Project.

- 25.9.2 Each SME Management Information Report shall be provided by a Partnering Team member in the correct format as required by the MI Reporting Template and any guidance issued by the Client from time to time.
- 25.9.3 Following the issue by the Client to the Partnering Team members of the first MI Reporting Template, the Client may change the MI Reporting Template from time to time (including the data required and/or format of the same) on at least thirty (30) days' written notice to the Partnering Team members of the same, with such notice specifying the date from which the replacement or amended MI Reporting Template must be used.
- 25.9.4 Each Partnering Team member further agrees and acknowledges that it may not make any amendment to any current MI Reporting Template without the prior written approval of the Client.
- 25.9.5 In this clause 25.9, the term "**Partnering Team member**" includes the Constructor."

Special Term 28.24 - Improvising Visibility of Sub-Contract Opportunities

Insert the following new definitions in **Appendix 1**:

"Contracts Finder"	means the Government's publishing portal for public sector procurement opportunities;
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Insert a new clause 25.10 with the marginal heading "**Improvising Visibility of Sub-Contract Opportunities**" as follows:

"25.10 Improvising Visibility of Sub-Contract Opportunities

- 25.10.1 Each Partnering Team member shall:
- (i) subject to clause 25.10.3, advertise on Contracts Finder all sub-contract opportunities arising from or in connection with the provision of any works



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and/or services in relation to this Partnering Contract above a minimum threshold of twenty-five thousand pounds (£25,000) that arise during the term of that Partnering Team's engagement under this Partnering Contract in connection with the Project;

- (ii) within ninety (90) days of awarding a sub-contract to a sub-consultant, update the notice on Contracts Finder with details of the successful sub-contractor;
- (iii) monitor the number, type and value of the sub-contract opportunities placed on Contracts Finder advertised and awarded in its supply chain during the term of that Partnering Team's engagement under this Partnering Contract in connection with the Project;
- (iv) provide reports on the information at clause 25.10.1(iii) to the Client (and such other public body as the Client may require from time to time) in the format and frequency as reasonably specified by the Client; and
- (v) promote Contracts Finder to its suppliers and encourage those organisations to register on Contracts Finder.

- 25.10.2 Each advert referred to at clause 25.10.1 above shall provide a full and detailed description of the sub-contract opportunity with each of the mandatory fields being completed on Contracts Finder by the relevant Partnering Team member.
- 25.10.3 The obligation at clause 25.10.3(i) shall only apply in respect of sub-contract opportunities arising after the date of this Partnering Contract (or, where a Partnering Team member joins this Partnering Contract by way of a Joining Agreement, the date of such Joining Agreement).
- 25.10.4 Notwithstanding clause 25.10.1, the Client may by giving its prior written approval, agree that a sub-contract opportunity is not required to be advertised on Contracts Finder.



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25.10.5 In this clause 25.10, the term "**Partnering Team member**" includes the Constructor."

Special Term 28.25 - Promoting Tax Compliance

Insert the following new definitions in **Appendix 1**:

"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;
"Halifax Abuse Principle"	the principle explained in the CJEU Case C-255/02 Halifax and others;
"Occasion of Tax Non-Compliance"	(c) any tax return of a Partnering Team member 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: (i) a Relevant Tax Authority successfully challenging that Partnering Team member 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;



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	and/or (ii) the failure of an avoidance scheme which that Partnering Team member 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; or (d) a Partnering Team member'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 date of this Partnering Contract (or Joining Agreement, as the context permits) or to a penalty for civil fraud or evasion;
"Relevant Tax Authority"	means, in respect of each Partnering Team member, HM Revenue and Customs, or, if applicable, a tax authority in the jurisdiction in which that Partnering Team member is established;

Insert a new clause 25.11 with the marginal heading **"Tax Compliance"** as follows:

"25.11 Tax Compliance

- 25.11.1 Each Partnering Team member warrants that it has notified the Client of any Occasion of Tax Non-Compliance or any litigation in which it is involved relating to any Occasion of Tax Non-Compliance.
- 25.11.2 If, at any point during the period that a Partnering Team member is engaged under this Partnering Contract, an Occasion of Tax Non-Compliance occurs, that Partnering Team member shall:
- (i) notify the Client in writing of such fact within five (5) Working Days of its occurrence; and
 - (ii) promptly provide to the Client:



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- (a) details of the steps that it 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
- (b) such other information in relation to the Occasion of Tax Non-Compliance as the Client may reasonably require.

25.11.3 In the event that a Partnering Team member breaches the warranty under clause 25.11.1, fails to comply with this clause 25.11 generally and/or does not provide details of proposed mitigating factors which in the reasonable opinion of the Client are acceptable, then the Client shall be entitled, without prejudice to its other rights and remedies, to terminate the engagement of that Partnering Team member immediately on written notice under clause 26.3 or clause 26.4 (as the context permits) without any obligation to allow that Partnering Member an opportunity to remedy the breach in question."

Special Term 28.26 - Retrospective Effect

Insert a new **clause 3.8** with the marginal heading "**Retrospective Effect**" with the following wording:

"3.8 Retrospective Effect

Notwithstanding the date of this Partnering Contract (or the date of a Partnering Team member's Joining Agreement, as the context permits), where a Partnering Team member has performed any works and/or services in connection with the Project prior to the date of the Partnering Contract or its Joining Agreement (as the context permits), the duties and obligations contained in this Partnering Contract shall be deemed to have applied to the carrying out of any of such works and/or services prior to such date [and all payments made to a Partnering Team member in respect of works and/or services carried out by that Partnering Team member prior to the date of this Partnering Contract or Joining Agreement, as the context permits, shall be treated as payments on account of sums due under this Partnering Contract]."



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PROJECT PARTNERING AGREEMENT

Reference *in*
Partnering Terms

Project Bank Account

[Delete *as*
appropriate]

The provisions set out in Appendix 9 [are not incorporated into the Partnering Contract] [are incorporated in the Partnering Contract and the Project Partnering Agreement and Partnering Terms shall have effect as so amended].



ANNEXURES TO THE PROJECT PARTNERING AGREEMENT

Annexure	Contents
A	Appendices to the Project Partnering Agreement A Partnering Team B Core Group C Insurance Requirements D Consultant Services Schedules E Interested Parties F Delegated Authority of the Client Representative G Partnering Timetable H Project Execution Plan J Form of Collateral Warranty K Key Performance Indicators L Value Engineering and Shared Savings M Specialists who are Partnering Team members N Specialists appointed by the Client O Problem Solving Hierarchy
B	The Project Brief The 4.20 Meeting The Pre Construction Health and Safety Plan The Risk Register
C	The Project Proposals
D	The Constructor Services and Constructor Fees A. A summary of the services to be undertaken by the Constructor from the date of this Project Partnering Agreement to the date of the Commencement Agreement ("The Constructor Services") B. A summary of the fees due to the Constructor for the Constructor Services



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PROJECT PARTNERING AGREEMENT

THE SECRETARY OF STATE FOR JUSTICE

of
Ministry of Justice
4th Floor,
102 Petty France
London SW1H 9AJ

(the “**Client**”)

EXECUTED AS A DEED by the **Client** by affixing
hereto its common seal in the presence of

or Acting by

Authorised signatory _____

Authorised signatory _____



Ministry
of Justice

PROJECT PARTNERING AGREEMENT

Whose registered office is situated at

(the “Cost Consultant”)

EXECUTED AS A DEED by (the “Cost Consultant”)

By affixing hereto its common seal
in the presence of

or Acting by

Director _____

Director/Secretary _____



Ministry
of Justice

PROJECT PARTNERING AGREEMENT

Whose registered office is situated at

(the “Client Representative”)

EXECUTED AS A DEED by (the “Client Representative”)

By affixing hereto its common seal
in the presence of

or Acting by

Director _____

Director/Secretary _____



Ministry
of Justice

PROJECT PARTNERING AGREEMENT

Whose registered office is situated at

(the “Principal Designer/CDM Coordinator”)

EXECUTED AS A DEED by (the “Principal Designer/CDM Co-ordinator”)

By affixing hereto its common seal
in the presence of

or Acting by

Director _____

Director/Secretary _____



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of Justice

PROJECT PARTNERING AGREEMENT

Whose registered office is situated at

(the “Constructor and Lead Designer”)

EXECUTED AS A DEED by (the “Constructor and Lead Designer”)

By affixing hereto its common seal
in the presence of

or Acting by

Director _____

Director/Secretary _____

.

Please note - if the Constructor or the Client requires the Constructor’s design specialists to be Partnering Team members then further signature pages must be added to the Agreement



Annexure A

Appendix P

Processing Schedule

Description	Details								
Subject matter of the processing	Any Personal Data concerning the Client's staff or the staff of other suppliers to the Client will be collected to support the provision of the Partnering Team members' obligations under this Partnering Contract.								
Duration of the processing	Total duration of processing: For the term of this Partnering Contract. Retention of individual subject records: As specified in the Client's data retention policy.								
Nature and purposes of the processing	Personal Data processed by a Partnering Team member shall be that which is required for the purposes outlined in the table below: <table> <tr> <th>Purpose</th><th>Description</th></tr> <tr> <td>Contract and performance management</td><td>Ensure that the relevant Partnering Team member can discharge its contractual obligations and allow for the monitoring of its performance against contractual requirements.</td></tr> <tr> <td>Safeguarding the public</td><td>Safeguard the public and personnel, for example, recording any threatening or violent behaviour by the subject or others at the premises and sharing this information where appropriate.</td></tr> <tr> <td>Assist Criminal Justice Agencies</td><td>Assist criminal justice agencies with criminal enquiries or provide them with advice.</td></tr> </table>	Purpose	Description	Contract and performance management	Ensure that the relevant Partnering Team member can discharge its contractual obligations and allow for the monitoring of its performance against contractual requirements.	Safeguarding the public	Safeguard the public and personnel, for example, recording any threatening or violent behaviour by the subject or others at the premises and sharing this information where appropriate.	Assist Criminal Justice Agencies	Assist criminal justice agencies with criminal enquiries or provide them with advice.
Purpose	Description								
Contract and performance management	Ensure that the relevant Partnering Team member can discharge its contractual obligations and allow for the monitoring of its performance against contractual requirements.								
Safeguarding the public	Safeguard the public and personnel, for example, recording any threatening or violent behaviour by the subject or others at the premises and sharing this information where appropriate.								
Assist Criminal Justice Agencies	Assist criminal justice agencies with criminal enquiries or provide them with advice.								



	Equality Act obligations	Assist the Client and the relevant Partnering Team member meet their obligations under the Equality Act 2010.
Type of Personal Data being Processed	Each Partnering Team member shall process the types of Personal Data described in the table below.	
	Personal Data Category	Personal Data Types
	Client personnel and the personnel of other Client suppliers.	Name
		Contact Details
Categories of Data Subject	Each Partnering Team member shall process Personal Data about the following categories of Data Subject:	
	Category of Data Subject	Notes
	Client personnel and the personnel of other Client suppliers	Required to ensure the relevant Partnering Team member has the necessary contacts to be able to provide its obligations under this Partnering Contract.
Plan for return and destruction of the data once the processing is complete UNLESS requirement under union or member state law to preserve that type of data	At the end of the term of this Partnering Contract, any Personal Data to be retained in line with the Client's data retention policy shall be securely transferred to the Client or other nominated party in accordance with any requirements provided to the Partnering Team members from time to time. For Personal Data where the data retention period defined in the Client's data retention policy has expired, Personal Data shall be destroyed.	

Annexure B

Form of Risk Register

(see clauses 12.9 and 18.1 of Partnering Terms)

Risk	Likelihood of Risk	Impact of Risk on Term Programme	Partnering Team member(s) responsible for Risk Management	Risk Management Action	Action Period/Deadline

Guidance note: The Risk Register should state clearly the nature of each risk, its likelihood and impact on the Project (including any anticipated financial impact and proposed risk allowance), the Partnering Team member(s) responsible for Risk Management actions, the agreed Risk Management actions (including actions to reduce the likelihood of each risk and to reduce its financial and other impact) and the agreed periods/deadlines for completing such actions.

Risk Management actions and periods/deadlines should be integrated with the Partnering Timetable and, to the extent that further Risk Management actions are agreed to be undertaken after signature of the Commencement Agreement should be integrated with the Project Timetable.

Risk Management actions should meet the requirements of clause 12.9 of the Partnering Terms.

SCHEDULE 9 - BASELINE KEY PERFORMANCE REQUIREMENTS

1. The Contracting Authority may, at its sole discretion, incorporate into a Key Performance Indicator Schedule for a Project, one or more of the following key performance indicators (each as more particularly described in the Framework Agreement):
 - (a) key performance indicator 2 (KPI 2): delivery to price of consultant's services;
 - (b) key performance indicator 4 (KPI 4): delivery to programme of consultant's services;
 - (c) key performance indicator 5 (KPI 5): delivery of consultant's services to specifications and required standards and quality (including handover documents and Building Information Modelling artefacts);
 - (d) key performance indicator 6 (KPI 6): consultant's resources and staff continuity;
 - (e) key performance indicator 7 (KPI 7): cost and management information reporting; and
 - (f) key performance indicator 9 (KPI 9): health and safety compliance with the CDM Regulations.
2. The Contracting Authority reserves the right to modify and/or supplement such key performance indicators to reflect its Project-specific requirements from time to time.
3. During the Term, the Contracting Authority may arrange a meeting with the Supplier to agree how key performance indicators will be used in connection with future Project Services Orders (and, as required, Partnering Contracts) and how such key performance indicators will work in practice.
4. The Contracting Authority will also notify to the Supplier in writing the content, format and reporting cycle for each key performance indicator as stated in a Key Performance Indicator Schedule for a particular Project.
5. The Contracting Authority reserves the right to adopt and implement its own "Project Performance Indicator" and "Cost Component Breakdown" processes in connection with the management and assessment of key performance indicators in relation to its Projects, details of which the Supplier is deemed to have already received (with further copies being available from the Contracting Authority by written request).
6. The Contracting Authority will also specify in each Key Performance Indicator Schedule for a Project its performance thresholds, triggers for corrective action, and a pain/gain mechanism based upon those set out in the Framework Agreement.

SCHEDULE 10 - Suppliers submitted Proposal
[Redacted]