

DATED

22 February 2023

(1) The Rose Learning Trust

(2) ECS Consultants Limited

DEED OF PROFESSIONAL APPOINTMENT

For

Consultancy Services – Principal Designer

Relating to a DFE Decarbonisation project

Fusion21 Heating and Renewables Framework Lot No 6

Fusion21 Project Reference [REDACTED]

CONSULTANT WITH DESIGN RESPONSIBILITY

DATED

PARTIES

- 1 Client **The Rose Learning Trust** [REDACTED] whose registered office is at The Rose Learning Trust Central Office, Stevens Road, Doncaster, South Yorkshire, England, DN4 0LT
- 2 Consultant **ECS Consultants Limited** [REDACTED] whose registered office is at 148 Stockport Road, Cheadle, Cheshire, SK8 2DP

RECITALS

- 1 The Client intends to carry out the Project.
- 2 The Client wishes to appoint the Consultant as a Consultant, in connection with the Project.
- 3 ~~The Client proposes to appoint the Contractor to carry out the construction of the Project. The Client and the Consultant have agreed that the rights and obligations of the Client under this deed shall be novated from the Client to the Contractor upon signature of the Building Contract.~~
- 4 The Client has relied and will continue to rely upon the Consultant's skill and judgment in respect of all matters covered by this deed.

OPERATIVE PROVISIONS

1 Definition and interpretation

- 1.1 Unless the contrary intention appears, the following definitions apply:

<i>Associated Person</i>	means a person (including without limitation an agent, subsidiary or sub-consultant) who performs services for or on the Consultant's behalf;
<i>Bribery Act</i>	the Bribery Act 2010;
<i>Brief</i>	the document set out at schedule 3 outlining the Client's requirements for the Project, as updated by the Client from time to time;

<i>Building Contract</i>	a contract between the Client and the Contractor for the design and construction of the Project, including any subsequent agreement varying or supplementing it;
<i>CDM Regulations</i>	the Construction (Design and Management) Regulations 2015 (SI 51);
<i>Client</i>	includes, except for the purposes of clause 6, any person to whom the benefit of this deed and any rights under it have been validly assigned under clause 12.4;
<i>Confidential Information</i>	all information (written or oral) concerning the business and affairs of either party or the Project which is obtained or received as a result of the discussions leading up to, the entering into or the performance of this deed;
<i>Construction Act</i>	means Part II of the Housing Grants Construction and Regeneration Act 1996 (as amended);
<i>Contractor</i>	the contractor to be appointed by the Client to carry out and complete the design and construction of the Project, including (where the context so admits) the Contractor's employees, agents and Sub-Contractors;
<i>Corrupt Activity</i>	means bribery and/or corruption including, without limitation, any activity, practice or conduct which would or could constitute an offence under sections 1, 2 or 6 Bribery Act whether in connection with the Project or otherwise;
<i>Data Protection</i>	means the General Data Protection Regulation (<i>Regulation (EU) 2016/679</i>) and the Data Protection Act 2018
<i>Due Date</i>	the date of receipt by the Client of the Consultant's proper and agreed accounts in accordance with clause 6.4;
<i>EIRs</i>	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;

Equalities Legislation

means all Laws which makes unlawful discrimination, harassment and/or victimisation on grounds of age, disability, marital or civil partnership status, sexual orientation, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation or temporary or part-time status in employment or otherwise including, without limitation, the Equality Act 2010, the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000, and the Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002 and / or any preceding, successor or amending legislation concerning the same;

FOIA

means the Freedom of Information Act 2000 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation;

Fee

the lump sum stated in schedule 1 or any adjusted sum agreed under clause 7.2 payable to the Consultant for the Services;

Final Date for Payment

the later of 28 (twenty eight) days after (a) the Due Date and (b) receipt of a valid tax invoice addressed to the Client in the amount stated in the Payment Notice;

Fund

any person (acting for himself and, where he leads for a syndicate of persons, as agent and trustee for them) who agrees to provide finance to the Client in connection with the carrying out of the Project or any part of it;

Key Person

the person so named in schedule 1 or any replacement appointed under clause 5.3 or clause 5.4;

<i>Pay Less Notice</i>	a notice setting out the sum which the Client considers to be due to the Consultant on the date of the notice and the basis on which that sum is calculated;
<i>Payment Notice</i>	a notice setting out the sum which the Client considers to have been due to the Consultant on the Due Date and the basis on which that sum is calculated or, if clause 6.5.2 applies, the Consultant's application for payment pursuant to clause 6.4;
<i>Practical Completion</i>	practical completion of the Project as certified pursuant to the terms of the Building Contract;
<i>Principal Designer</i>	the designer so named in schedule 1 or another designer appointed by the Client under regulation 5(1)(a) of the CDM Regulations to perform the specified duties in regulations 11 and 12 of the CDM Regulations;
<i>Programme</i>	the document set out at schedule 4 identifying the estimated time required for executing and completing each element of the Project and the Services, as may be updated by the Client from time to time in liaison with the Consultant, the Project Team and the Contractor;
<i>Project</i>	the proposed development of the Site, more particularly described in the Brief;
<i>Project Leader</i>	the person so named in schedule 1 or any replacement appointed under clause 5.3 or clause 5.4;
<i>Project Manager</i>	the person so named in schedule 1 or another person appointed by the Client to act in its place;
<i>Project Team</i>	collectively those consultants listed in schedule 1 and any additional consultants (other than the Consultant) appointed by the Client in connection with the Project;
<i>Proprietary Material</i>	all drawings, details, plans, specifications, schedules, reports, calculations and other work (and any designs, ideas and concepts contained in them) prepared,

	conceived or developed by or on behalf of the Consultant in the course of or as a result of performing the Services but not including the proprietary material of others;
<i>Public Contracts Regulations</i>	the Public Contracts Regulations 2015 (as amended from time to time) and/or any regulations replacing or succeeding those regulations and references in this deed to particular provisions of those Regulations shall be deemed to be references to the equivalent provisions of any such replacement or successor regulations.
<i>Purchaser</i>	any first purchaser of the Client's interest in the Site or any part of it;
<i>Scheme</i>	Scheme for Construction Contracts 1998, as amended by the Scheme for Construction Contracts (England and Wales) Regulations 1998 (Amendment) (England) Regulations 2011;
<i>Scope</i>	those elements of the Project for which the Consultant has primary responsibility as set out in the Brief;
<i>Services</i>	the services to be performed by the Consultant in connection with the Project as set out in schedule 2, including (except for the purpose of clause 6.1) any additional services instructed by the Client under clause 7.3;
<i>Site</i>	the site defined and described in schedule 1, including any addition or omission to it;
<i>Statutory Requirements</i>	the requirements of the Building Act 1984, the Building Regulations 2010 and all other relevant statutory requirements, codes of practice, regulations and permissions having the force of law and applicable to the Project;
<i>Sub-Contract</i>	an agreement entered into between the Contractor and a Sub-Contractor in connection with the Project;

Sub-Contractor a sub-contractor or supplier (of any tier) employed or engaged on or in connection with the Project or any part of it; and

Tenant any person who intends to enter or has entered into a lease or an agreement for the grant of a leasehold interest in the premises standing or to be constructed on the Site or any part of them.

- 1.2 An obligation on a party to this deed to do an act includes an obligation to procure that it is done.
- 1.3 If a party is placed under a restriction in this deed, the restriction includes an obligation on the party not to permit the infringement of the restriction by any person.
- 1.4 References to liability include, where the context allows, claims, demands, proceedings, damages, losses, costs and expenses.
- 1.5 Words importing the singular meaning shall include, where the context so admits, the plural meaning and vice versa.
- 1.6 Words denoting the masculine gender shall include the feminine and neuter genders and words denoting natural persons shall include corporations and firms and all such words shall be constructed interchangeably in that manner.
- 1.7 The clause and paragraph headings in this deed are for ease of reference only and are not to be taken into account in the construction or interpretation of any provision to which they refer.
- 1.8 Unless the contrary intention appears, references:
- 1.8.1 to numbered clauses and schedules are references to the relevant clause in, or schedule to, this deed; and
- 1.8.2 to a numbered paragraph in any schedule are references to the relevant paragraph in that schedule.
- 1.9 References in this deed to any statutes or statutory instruments include any statute or statutory instrument amending, consolidating or replacing them respectively

from time to time in force, and references to a statute include statutory instruments, regulations and codes of practice made pursuant to it.

- 1.10 If the Consultant is two or more persons, the expression "the Consultant" includes the plural number and obligations in this deed expressed or implied to be made with or by the Consultant are to be treated as made with or by such persons jointly and severally.
- 1.11 References in this Deed to "Consultants" does not imply that any concept of joint and several liability will arise, and each Consultant is liable for its own specified obligations.

2 Consultant's general obligations

- 2.1 The Client appoints the Consultant and the Consultant agrees to perform the Services fully and faithfully in accordance with and subject to the terms of this deed.
- 2.2 The Consultant shall strictly comply with all instructions and directions given to him by the Client on any matter connected with the Project, save that if in the performance of the Services the Consultant has a discretion exercisable as between the Client and/or the Contractor or any other contractor, the Consultant shall exercise his discretion fairly.
- 2.3 The Consultant warrants to the Client that he has exercised and will continue to exercise, in the performance of the Services, all the professional skill, care and diligence which may reasonably be expected of a qualified and competent **Consultant** experienced in the provision of such services in respect of projects of a similar size, scope, nature and complexity to the Project and nothing in this Agreement shall impose on the Consultant any duty more onerous than to use reasonable skill and care and/or any obligation or undertaking to give any express or implied warranty or guarantee as to fitness for purpose or suitability for use.
- 2.4 The Consultant warrants to the Client that, subject to the provisions of clause 2.3 (that the Consultant has exercised the professional skill, care and diligence which may reasonably be expected of a qualified and competent **Consultant** experienced in the provision of such services in respect of projects of a similar size, scope, nature and complexity to the Project) that he has not specified or authorised

for use, will not specify or authorise for use and that he will not knowingly permit the use of in the Project:

- 2.4.1 any of the materials identified as potentially hazardous in the BPF/BCO report Good practice in the selection of construction materials (current edition), other than in accordance with the recommendations as to good practice contained in section 2 of that report; and
- 2.4.2 any other material which (or the use of which as specified by the Consultant) does not comply with relevant British Standard specifications (or their European Union equivalent) and codes of practice and good building practice current at the time of specification or is otherwise generally known within the Consultant's profession at the time of specification to be deleterious or harmful to health or to the durability of the Project in the circumstances in which it is proposed to be used.

The Consultant shall notify the Client promptly if he becomes aware of any proposed or actual use in the Project of any material which falls within clause 2.4.1 and/or 2.4.2 or if any British Standard or European Union specification or code of practice relevant or applicable to the Project or any part of it is altered or amended following specification but before completion of construction.

- 2.5 The Consultant shall comply fully with the requirements of the Brief and in particular shall ensure that the design of those elements of the Project falling within the Services described in Schedule 2 conforms in all respects with those requirements, provided that nothing in this clause shall preclude the exercise of independent skill and judgment by the Consultant in the performance of the Services. The Consultant shall notify the Client forthwith if he considers that any changes to the Brief are necessary or desirable in the interests of the Project.

- 2.6 The Consultant warrants to the Client that:

- 2.6.1 the design carried out by the Consultant for the Project complies and will comply and will enable the Client to comply with the Statutory Requirements (including the CDM Regulations);
- 2.6.2 the Consultant will otherwise comply with the Statutory Requirements in performing the Services; and

- 2.6.3 no act, omission or default of the Consultant in relation to the Services shall constitute, cause or contribute to a breach by the Client of his obligations under the Statutory Requirements.
- 2.7 The Consultant shall comply with all the obligations imposed on him as “designer” under the CDM Regulations insofar as they apply to the Project and shall co-operate with and provide information to the Project Team, the Contractor and the Sub-Contractors as necessary to enable them to comply with their respective obligations under the CDM Regulations in relation to the Project. The Consultant warrants that it has the necessary competence and has allocated or, as appropriate, will allocate adequate resources to comply with its obligations under this clause.
- 2.8 The Consultant shall keep the Client [and the Project Manager as the Client’s agent] fully and properly informed on all aspects of the progress and performance of the Services and shall provide the Client [and the Project Manager] with all such other information in connection with the Project as the Client [and/or the Project Manager] may reasonably require.
- 2.9 ~~The Consultant acknowledges the authority and responsibility of the Project Manager for the overall co-ordination and management of the project and shall fully and properly co-operate and report to the Project Manager on all aspects of the Project relating to the Services~~
- 2.10 The Consultant shall act as the principal design consultant in connection with the Project and shall fully co-ordinate with the Services all design services and the production of design information by the Project Team, the Contractor and Sub-Contractors to the intent that:
- ~~**OR** The Consultant acknowledges the role of the Architect appointed on the Project as the Principal Design Consultant in connection with the Project and shall fully co-operate with him and liaise directly as necessary with the other members of the Project Team, the Contractor and the Sub-Contractors to the intent that:~~
- ~~• the design of the Project is fully integrated;~~
 - ~~• the Project is able to proceed with all reasonable speed and economy in accordance with the Programme; and~~
 - ~~• the cost of executing each element of the Project will not exceed the respective financial limit stated in the Brief~~

The Consultant shall act as and warrants that it has the necessary competence and has allocated or, as appropriate, will allocate adequate resources to comply with its obligations as Principal Designer under the CDM Regulations and that any information provided by the Consultant regarding such competence and resources is accurate and complete in all respects. To the extent that such information ceases to be an accurate and complete representation of such competence and resources, the Consultant shall immediately notify the Client of any material changes.

2.11 The Consultant shall have authority to act on behalf of the Client to the extent required for the proper performance of the Services, but the Consultant shall not without the prior written consent of the Client:

2.11.1 instruct or sanction a substitution of materials;

2.11.2 issue any instruction, notice, statement, consent or approval which will or is likely to delay completion of the Project or increase the cost of any element of the Project;

2.11.3 do anything which will have the effect of compromising or waiving the Client's rights against the Contractor or any of the Project Team; or

2.11.4 take any steps to amend or terminate the Building Contract or any of the appointments of the Project Team or to determine the employment of the Contractor or any of the Project Team under them.

2.12 The liability of the Consultant under this deed shall not be released, diminished or in any other way affected by:

2.12.1 the appointment by the Client of any person to survey the Site or to monitor the carrying out of the Project or to inspect any documents relating to them on behalf of the Client or the failure to appoint such a person;

2.12.2 any approval or consent given or withheld or purported to be given or withheld by or on behalf of the Client; or

2.12.3 any other independent inquiry into any relevant matter which the Client may make or fail to make.

3 Third party obligations

- 3.1 The Consultant shall perform the duties ascribed to him under, and undertakes to the Client that no act, omission or default of the Consultant in relation to the Services shall constitute, cause or contribute to a breach by the Client of his obligations under, any agreement connected with the Site and/or the Project to which the Client is party and of which copies (or relevant extracts) have previously been provided by the Client to the Consultant.
- 3.2 The Consultant shall, as required by the Client, liaise and co-operate with the Fund, any first Purchaser, any first Tenant and any other person who has or may acquire an interest in the whole or any part of the Site and/or the Project (and their respective representatives) and provide them with all such information in connection with the Project as they may reasonably require. The Consultant shall notify the Client of any matter arising in the course of or relating to the Services which may materially affect the respective interests of any such persons in the Site or the Project.
- 3.3 The Consultant shall, within 14 days of the Client's request to do so, execute deeds of warranty in favour of the Fund or any first Purchaser in the form set out in Schedule 8 or in such similar or varied terms as the parties may agree and shall deliver them to the Client. If the Consultant fails to deliver any deed of warranty validly requested under this clause within 14 days of the Client's request, the Client shall not be obliged to make any further payment to the Consultant under this deed until such deed of warranty is delivered to the Client.
- 3.4 Any subsidiary or holding company of the Client or any other subsidiary of the Client's holding company may in its own right enforce any term of this deed. Otherwise, unless the right of enforcement is expressly granted, it is not intended that any third party should have the right to enforce any term of this deed pursuant to the Contracts (Rights of Third Parties) Act 1999.
- 3.5 The parties may rescind or vary this deed without the consent of any third party to whom an express right to enforce any of its terms has been granted.

4 The Client's obligations

- 4.1 The Client shall, if requested by the Consultant, supply to the Consultant in a reasonable time (having regard to the time and nature of the request) any necessary and relevant data and information in the possession of the Client, or

which may only be obtained by the Client, and the Client shall provide or shall request the Project Team and the Contractor to provide the Consultant such assistance as he may reasonably require in the performance of the Services, provided this shall not limit the Consultant's obligation to liaise directly with the Project Team, the Contractor and Sub-Contractors in order to procure the production of information properly to be supplied by them and provided that the Client shall not be liable for any inaccuracy or discrepancy in data or information supplied to the Consultant under this clause.

- 4.2 The Client shall, if requested by the Consultant, in a reasonable time (having regard to the time and nature of the request) give his comments, decisions and instructions on any matter properly referred to the Client by the Consultant.
- 4.3 Any request made to the Client (and DfE Project manager) from the consultant shall be given a minimum of 2 working days for response, this may be extended by the client (and DfE Project manager) pending the nature of the request.

5 Consultant's Team

- 5.1 The Project Leader has full authority to act on behalf of the Consultant for all purposes in connection with this deed and he shall be available at such times and shall devote such time and attention as may be necessary to ensure the proper performance by the Consultant of the Services.
- 5.2 The services of the Key Person shall be available at such times and for as long as may be necessary, and he shall devote such time and attention as may be necessary, to ensure the proper performance by the Consultant of the Services.
- 5.3 The Consultant shall not replace the Project Leader or the Key Person without the prior approval of the Client (such approval not to be unreasonably withheld or delayed) and shall only replace either of them with a person approved by the Client (such approval not to be unreasonably withheld or delayed). Other than in cases of emergency, the Consultant shall ensure that there is an appropriate handover period between the person being replaced and his replacement.
- 5.4 The Client may, after consultation with the Consultant, request the removal of any person engaged in the performance of the Services if, in the Client's reasonable opinion, his performance or conduct is or has been unsatisfactory and the Consultant shall promptly replace him with a person approved by the Client (such approval not to be unreasonably withheld or delayed).

6 Remuneration

- 6.1 The Client shall pay the Consultant the Fee as full remuneration for the proper performance of the Services in accordance with this deed (credit being given for any part of the Fee already paid to the Consultant prior to the date of this deed).
- 6.2 The Fee shall be paid by instalments as provided in Schedule 1 and in accordance with the provisions of clauses 6.4 to 6.8.
- 6.3 The Fee shall only be adjusted in the event of:
 - 6.3.1 Additional Services being required and agreed by the Consultant and the Client in accordance with clause 7;
 - 6.3.2 there being a reduction in the scope of works comprising the Project.
- 6.4 The Consultant shall, on each of the dates set out in schedule 1 or (if no dates are specified) not more frequently than monthly, submit to the Client an invoice in accordance with Schedule 1 for sums due to the Consultant under this deed setting out what the Consultant considers will be due to it on the relevant Due Date and the basis on which that sum is calculated, in such form and with such supporting documentation as may be required or agreed by the Client.
- 6.5 For the purposes of the Construction Act:
 - 6.5.1 within five (5) days of the Due Date the Client shall give a Payment Notice to the Consultant;
 - 6.5.2 if a Payment Notice is not issued in accordance with clause 6.5.1 the Consultant's application for payment shall be treated as the Payment Notice;
 - 6.5.3 if the Client wishes to pay less than the amount stated in the Payment Notice the Client shall issue a Pay Less Notice to the Consultant not less than five (5) days before the Final Date for Payment;
 - 6.5.4 the Client shall pay to the Consultant the amount stated in the Payment Notice or, if issued, the Pay Less Notice by the Final Date for Payment.

- 6.6 In the event that the Consultant has not performed the level or extent of services anticipated by any instalment date whether due to delay in the Project or any default of the Consultant or otherwise the fee anticipated for payment on the relevant instalment date shall be adjusted as shall the remaining fees and instalment dates.
- 6.7 In the event of any adjustment to the Fee pursuant to clause 6.6 the Client and the Consultant shall agree in writing any necessary adjustments to Schedule 1.
- 6.8 Subject to receipt of a duly completed value added tax invoice the Client shall pay to the Consultant the total amount of value added tax properly chargeable to the Consultant on the supply to the Client of any goods or services under this deed provided that the Client shall only be liable to pay value added tax to the Consultant on the VAT exclusive amount of any disbursement or expense which is reimbursable to the Consultant under this deed.
- 6.9 Without prejudice to any other remedy or right it may have the Consultant may suspend performance of any or all of its obligations under this deed if any amount due under this deed is not paid by the Final Date for Payment provided that the Consultant has given the Client at least seven (7) days' notice of its intention to do so stating the ground or grounds on which it is intended to suspend performance. The right to suspend performance shall cease when the Client makes payment in full of the relevant amount
- 6.10 The Late Payment of Commercial Debts (Interest) Act 1998 as amended applies.

7 Additions to the Fee and Additional Services

- 7.1 Subject to clauses 7.2, 7.3 and 9.7 and 16.2, the Fee shall be deemed to be inclusive payment for the Services and all other matters relating to this deed and for all costs, disbursements, expenses and overheads incurred by the Consultant in connection with the Project ~~except for those items listed in Schedule 5 which (if properly and necessarily incurred by the Consultant in connection with the Project with the prior approval of the Client) shall be reimbursed to the Consultant at cost~~
- 7.2 If the nature and scope of the Project or of the Services is materially altered in accordance with the Client's requirements, the Client and the Consultant shall agree a fair and reasonable adjustment to the Fee (and a consequential adjustment to

the instalments set out in schedule 1) to reflect any substantial increase or decrease in the work required of the Consultant resulting from the alteration.

- 7.3 In addition to the Services, the Consultant shall perform any other services in relation to the Project which the Client may reasonably instruct. Subject to clauses 7.4 and 7.5, the Client shall pay an additional fee to the Consultant in respect of any services so instructed, the amount and timing of payment of which shall be agreed between the parties or (if the Client in his sole discretion decides) calculated by reference to the hourly rates in schedule 6.
- 7.4 It is a condition precedent to the Consultant's right to payment under clause 7.3 that, prior to commencing any additional services, he shall notify the Client that he intends to seek additional payment and shall provide to the Client an estimate of such additional payment and that the Client has agreed to this.
- 7.5 Notwithstanding clauses 7.2 and 7.3, the Consultant shall not be entitled to any increase in the Fee nor to any additional payment to the extent that the need for such additional work and/or services results from any negligence, omission or default on the part of the Consultant in the performance of his obligations under this deed.

8 Insurance

- 8.1 Without limiting his other obligations under this Agreement or otherwise at law, the Consultant shall maintain professional indemnity insurance to cover his professional liability under this Agreement, with a limit of indemnity of not less than £5,000,000 in respect of each and every claim but such limit may apply in the aggregate in any year of insurance in relation to claims arising out of pollution and/or contamination, provided that such insurance continues to be available in the European Union market on reasonable terms and at commercially reasonable premium rates to consultants performing services substantially similar to the Services.
- 8.2 The insurance referred to in clause 8.1 shall:
- 8.2.1 be subject only to such conditions and excesses as may be usual in the European Union market at the time; and
- 8.2.2 be maintained with reputable insurers with a place of business in the United Kingdom, from the date of this Agreement and for a period

expiring not less than 12 years after the completion of the Services and notwithstanding the expiry or termination of the Consultant's engagement under this Agreement.

- 8.3 As and when he is reasonably required to do so by the Client, the Consultant shall produce documentary evidence that the insurance required by this clause 8 is being properly maintained.
- 8.4 The Consultant shall promptly notify the Client if at any time he is unable to obtain insurance as required by this clause 8 on reasonable terms and at commercially reasonable premium rates or at all and in that event shall continue to maintain insurance on such terms and with such a limit of indemnity as may then be available to the Consultant.
- 8.5 The Consultant shall not compromise, settle or waive any insurance claim which he may have in respect of any professional liability under this Agreement without the prior consent of the Client, provided that nothing in this clause 8.5 shall preclude the Consultant's insurers from taking over (in the name of the Consultant) the defence of any claim made by the Client under this Agreement and (in that capacity) from conducting and settling it as they see fit.

9 The Proprietary Material

- 9.1 The copyright in the Proprietary Material shall remain vested in the Consultant, but the Consultant grants to the Client an irrevocable royalty-free non-exclusive license to use and to reproduce any or all of the Proprietary Material for any purpose connected with the Project and/or the Site, including (without limitation) the execution and completion of the Project and the subsequent maintenance, letting, occupation, management, sale, advertisement, extension, alteration, reinstatement and repair of the Site or any buildings or structures on the Site.
- 9.2 The Consultant acknowledges and warrants that he is the author (as defined in the Copyright, Designs and Patents Act, 1988) of the Proprietary Material and waives any moral rights, which he might otherwise be deemed to possess under Chapter IV of that Act in respect of the Proprietary Material and of the Project.
- 9.3 Notwithstanding that the copyright in the Proprietary Material remains vested in the Consultant, the Consultant shall not without the prior consent of the Client be entitled to use the Proprietary Material for any purpose connected with the Site other than for the purposes of this deed and the completion of the Project

(notwithstanding the expiry or termination of his engagement under this deed or the abandonment of the Project by the Client).

- 9.4 The Consultant shall, if requested by the Client, execute any documents and do anything required to assure to the Client the rights referred to in clauses 9.1 to 9.3.
- 9.5 The Client acknowledges that the Consultant shall not be liable for the consequences of any use of the Proprietary Material for any purpose, which is inconsistent with that for which it was prepared by the Consultant.
- 9.6 The Consultant shall indemnify the Client against any liability, which the Client may incur by reason of the Consultant infringing or being held to have infringed any copyright or other intellectual property rights of any person.
- 9.7 The Consultant shall, at the request of the Client, provide to the Client such copies of the Proprietary Material (in hard copy or electronic form) as he may reasonably require in connection with the Project, provided that where the Client requires the Consultant to provide in excess of three hard copies of any of the Proprietary Material the Client shall pay the Consultant's reasonable photocopying charges incurred in providing such excess copies.

10 Confidentiality

- 10.1 The Consultant shall not, without the prior consent of the Client, take or authorise the taking of any photographs of the Site or the Project for use in any publicity or advertising nor publish alone or in conjunction with any other person any articles, photographs or other illustrations relating to the Project or any part of it, nor shall he impart to any publication, journal or newspaper or any radio or television programme any information about the Project.
- 10.2 During the term of this deed and after its expiry or termination for any reason, each of the parties undertakes to the other to keep the Confidential Information confidential, except to the extent that:
 - 10.2.1 the Confidential Information was already lawfully known, or became lawfully known to the relevant party independently;
 - 10.2.2 the Confidential Information is in or comes into the public domain other than due to wrongful use or disclosure by the relevant party;

- 10.2.3 disclosure or use is necessary by the relevant party in connection with entry into this deed or for the proper and effective performance of his obligations under this deed (including disclosure by either party to his insurers and professional advisers); or
- 10.2.4 disclosure is required by law to any government, governmental department, agency, regulatory or fiscal body or authority (whether national or foreign).

11 Anti Corruption

11.1 The Consultant undertakes to the Client that:

- 11.1.1 it has not and its current and former directors, officers and employees have not and shall not engage in any Corrupt Activity;
- 11.1.2 it has not and its current and former directors, officers and employees have not and shall not engage in any activity, practice or conduct which could or would place the Client in breach of section 7(1) Bribery Act;
- 11.1.3 it has and shall maintain and implement:
 - 11.1.3.1 procedures to ensure compliance with clauses 11.1.1 and 11.1.2; and
 - 11.1.3.2 adequate procedures designed to prevent any Associated Person from undertaking any Corrupt Activity and/or conduct that would give rise to an offence under section 7 Bribery Act;
- 11.1.4 it shall comply with the Client's Anti-corruption Policy;
- 11.1.5 it shall include undertakings similar to those contained in this clause 11.1 in any contract it may enter into with sub consultants and provisions similar to those contained in clause 11.2 which shall be capable of enforcement directly by the Client pursuant to the Contracts (Rights of Third Parties) Act 1999;
- 11.1.6 from time to time, at the reasonable request of the Client, it will confirm in writing that it has complied with its undertakings under clauses 11.1.1 to 11.1.5 inclusive and will provide any information reasonably requested by the Client in support of such compliance.

- 11.2 The Consultant shall maintain adequate records to assist in verifying its compliance with the provisions of this clause 11 (including without limitation books of account showing all payments made by the Consultant in connection with this deed and shall permit the Client and its third party representatives, on reasonable notice during normal business hours, but without notice in the case of any reasonably suspected breach of clauses 11.1.1 to 11.1.4 inclusive, to access and take copies of such records and to meet with the Consultant's personnel to audit the Consultant's compliance with its obligations under this clause 11. The Consultant shall give all reasonable necessary assistance to the conduct of such audits.
- 11.3 Audit access by any third party representative of the Client in accordance with clause 11.2 shall be subject to such representative agreeing to be bound by confidentiality obligations equivalent to those in clause 10.2 in respect of the information obtained provided that all information obtained may be disclosed to the Client.
- 11.4 The Consultant shall indemnify the Client against any losses, liabilities, damages, costs (including but not limited to legal fees) and expenses incurred by, or awarded against, the Client as a result of any breach of this clause 11 by the Consultant or any breach of provisions equivalent to clauses 11.1 and 11.2 in any contract with a sub consultant.

12 Assignment and Sub-letting

- 12.1 The Consultant shall not assign his interest in this deed or any part of it, nor any right arising under it, to any person without the prior consent of the Client.
- 12.2 The Consultant shall not, without the prior consent of the Client, sub contract the performance of any of the Services. The Consultant shall be fully responsible for any work sub-contracted as if he had performed such work himself.
- 12.3 The Consultant shall not authorise the appointment of any specialist consultant or Sub-Contractor to design any element of the Project falling within the Scope without the prior consent of the Client. No appointment under this clause shall in any event be made unless the Consultant has first confirmed to the Client in writing that, in his reasonable opinion, such specialist is in all respects qualified and competent to carry out such design. The Consultant shall be responsible for checking the design work carried out by any such specialist to ensure that it

complies with the overall design intent and for the co-ordination and integration of such design work into the overall design of the Project.

- 12.4 The Client may at any time assign the benefit of this deed and any rights under it to any person (subject to a maximum of one such assignment). The Client or any other subsidiary of the Client's holding company shall notify the Consultant within a reasonable time of any such assignment.
- 12.5 The Consultant shall, within 14 days of the Client's request, execute a deed of novation in the form set out in schedule 9 and deliver it to the Client and the Consultant authorises the Client to complete such deed of novation contemporaneously with the Building Contract. Following the completion of such deed of novation:
- 12.5.1 all references to the Client in this deed shall (unless the context otherwise requires) be construed as references to the Contractor; and
- 12.5.2 the Consultant shall have due regard to any obligations on the part of the Contractor contained in the Building Contract details of which have been given to the Consultant and shall perform the Services (exercising all the professional skill, care and diligence referred to in clause 2.3) in such manner and at such times that no act, omission or default by the Consultant shall constitute, cause or contribute to any breach by the Contractor of any such obligations.

13 Time for performance

- 13.1 The Consultant shall perform the Services regularly and diligently and (subject to clause 13.2) in accordance with the Programme and so as to enable the Project to proceed in accordance with the Programme.
- 13.2 If at any time the Consultant is prevented or delayed in the performance of the Services for any reason, he shall promptly so notify the Client giving the specific reason for the delay or prevention, together with his best estimate of its effect on the Programme, and shall use all reasonable endeavours to resume and expedite the Services as soon as practicable. The Consultant shall not be treated as being in breach of this deed to the extent that he is delayed in the performance of the Services for reasons beyond his reasonable control.

14 Termination or suspension of Consultant's engagement by Client

- 14.1 The Client may at any time, by not less than seven days' prior notice to the Consultant, terminate the Consultant's engagement under this deed or the performance of any part of the Services.
- 14.2 The Client may at any time, by notice to the Consultant, require the Consultant to suspend performance of the whole or any part of the Services.
- 14.3 If the Client requires the Consultant to suspend the performance of the whole or substantially the whole of the Services under clause 13.2, the Client may at any time within a period of 12 months from the date of such notice require the Consultant to resume performance of the Services. In that event the Consultant shall, as soon as reasonably practicable, resume performance of the Services in accordance with this deed and any payment made under clause 15.2 shall rank as payment on account towards the payments to be made to the Consultant under this deed. If the Client does not require the Consultant to resume the performance of the Services within the period of 12 months referred to in this clause, then either party may thereafter by notice to the other terminate the Consultant's engagement under this deed.

15 Termination of Consultant's engagement By Consultant

- 15.1 In the event of a material breach by the Client of his obligations under this deed which he fails to remedy within 28 days after receiving a notice from the Consultant specifying the breach and requiring its remedy, the Consultant may by notice to the Client immediately terminate his engagement under this deed.

16 Consequences of termination or suspension of Consultant's engagement

- 16.1 On termination of the Consultant's engagement under clause 14 or clause 15 or on suspension of the whole of the Services under clause 14.2, the Consultant shall take immediate steps to bring the Services to an end in an orderly manner (but with all reasonable speed and economy) and shall within 14 days deliver to the Client all the Proprietary Material (whether in the course of preparation or completed) provided that the Consultant shall be entitled to retain copies of them.
- 16.2 If the Consultant's engagement is terminated or the performance of the whole of the Services is suspended, the Client shall (subject to any withholdings, deductions or set offs which the Client is entitled to make and to clauses 16.3, 16.4, 16.5, 16.6

and 16.7) pay to the Consultant that part of the Fee and any other amounts arising under this deed which have already accrued due prior to the date of termination or suspension, plus a fair and reasonable proportion of the next instalment of the Fee having regard to the extent of the Services performed up to the date of termination or suspension, less the amount of any payments previously made by the Client to the Consultant under this deed. In addition the Client shall in the event of a termination (but not of a suspension) reimburse to the Consultant the direct costs wholly and necessarily incurred by the Consultant resulting from the termination, provided that such termination and such costs have not arisen through any negligence, omission or default on the part of the Consultant and that the Consultant has first submitted his account for payment under this deed to the Client on or within 7 days following the termination.

- 16.3 Any amount payable under clause 16.2 shall be subject to the invoicing and payment provisions in clauses 6.4 and 6.5. The due date for payment of such amount shall be the date of termination or suspension (as the case may be).
- 16.4 On termination or suspension of the Consultant's engagement for whatever reason, the Client shall not (except as exclusively set out in clause 16.2) be liable to the Consultant for any loss of profit, loss of contracts or other costs, losses and/or expenses incurred by the Consultant in connection with such termination or suspension.
- 16.5 Termination of the Consultant's engagement for whatever reason shall not (subject to clause 16.4) limit the rights and remedies of either party in relation to any negligence, omission or default of the other party occurring prior to the termination.
- 16.6 The provisions of this deed shall continue to bind the parties for as long as may be necessary to give effect to their respective rights and obligations under it.
- 16.7 Notwithstanding any other term of this deed, the Client shall not be obliged to make any payment whatsoever to the Consultant under clause 16.2 where the Consultant's appointment has been terminated pursuant to clause 14.1 because, on the date of this Agreement:
 - 16.7.1 the Consultant was in one of the situations referred to in Regulation 57(1) of the Public Contracts Regulations (including as a result of the application of Regulation 57(2) of the Public Contracts Regulations) and should therefore have been excluded from the procurement procedure;

16.7.2 the contract should not have been awarded to the Consultant in view of a declaration by the Court of Justice of the European Union in proceedings under Article 258 of the Treaty of the Functioning of the European Union.

17 Miscellaneous

- 17.1 All additions, amendments and variations to this deed shall be binding only if in writing and signed by the duly authorised representatives of both the Client and the Consultant.
- 17.2 This deed supersedes any previous agreement or arrangement between the parties in relation to the Services (whether oral or written) and represents the entire understanding between the parties in relation to the Services.
- 17.3 Notwithstanding the date of this deed, it shall have effect as if it had been executed on the actual commencement of the Services by the Consultant.
- 17.4 The supplier Contract Manager is expected to take an effective approach to managing potential conflicts of interest and must notify the Department Contract Manager (or other as advised) of any highlighted.

18 Notices

- 18.1 A notice or other communication required under this deed shall be given in writing and shall be deemed properly given if it complies with section 196 of the Law of Property Act 1925 (as amended by the Recorded Delivery Service Act 1962). The addresses and numbers for service of the Client and of the Consultant shall be those stated in schedule 1 or such other address or number for service as the party to be served has previously notified to the other.

19 Disputes

- 19.1 Any dispute or difference arising under or in connection with this deed may, in the first instance, be referred to an adjudicator appointed on the request of either party

by the President or a Vice-President for the time being of the Royal Institution of Chartered Surveyors for a decision in accordance with the provisions of Part II of the Housing Grants, Construction and Regeneration Act 1996 incorporating amendments.

- 19.2 The adjudication shall be undertaken in accordance with the rules and provisions of the Scheme, subject to the amendments set out in this clause and the requirement for the Adjudicator to give reasons for his decision. If the adjudicator fails to give his decision in accordance with the provisions of paragraph 20 of the Scheme, the President or a Vice-President for the time being of the Royal Institution of Chartered Surveyors shall appoint another person to act as adjudicator in his place.
- 19.3 Paragraph 7(2) of the Scheme shall be amended by the addition of the following:

“Provided that the referral notice together with accompanying documents shall not exceed 20 single-sided A4 pages in total and any further documentation shall be disregarded by the Adjudicator.”
- 19.4 The Client and the Consultant shall maintain strict confidence in respect of any intention to refer a dispute or difference under this deed to adjudication, or any information relating to any adjudication.
- 19.5 The Adjudicator’s decision shall be binding on the parties (subject to 19.6) and they shall forthwith give effect to its terms, unless the parties agree otherwise or unless and until the dispute or difference is finally determined by the Technology and Construction Court in accordance with clause 19.10.
- 19.6 The Adjudicator’s decision shall be final and binding unless either party serves a notice in writing on the other to refer the dispute or difference for final determination by the Technology and Construction Court, in accordance with clause 19.10, within three months of the Adjudicator’s decision.
- 19.7 Unless the Client and the Consultant agree otherwise, a notice to refer a dispute or difference for final determination by the Technology and Construction Court may not proceed until after completion of the Services or earlier determination of the Consultant’s employment under this deed.
- 19.8 The Adjudicator shall not be liable for anything done or omitted in the discharge or purported discharge of his functions as Adjudicator unless the act or omission is in bad faith, and any employee or agent of the Adjudicator is similarly protected.

19.9 If any dispute or difference arising under this deed raises the same or parallel issues as a related dispute or difference between the Client and any third party which has already been referred to adjudication, the parties shall (wherever practicable) refer the dispute or difference under this deed to the same adjudicator for decision and that adjudicator shall be "the Adjudicator" for the purposes of this deed in relation to the dispute or difference.

19.10 Subject to clauses 19.1 to 19.9, all disputes or differences relating to this deed shall be tried by a judge sitting in the Technology and Construction Court in **London**.

20 Consultant's Liability

20.1 Any claim of any kind arising out of or in connection with the appointment shall be brought only against the Consultant. No claims in respect of the appointment will be brought personally against any of the partners or employees of the Consultant involved in the provision of the Services;

20.2 The maximum aggregate liability of the Consultant in respect of breach of contract or breach of duty or negligence or otherwise arising out or in connection with this appointment shall be limited in total to £5,000,000 for services;

20.3 Save in regard to loss arising from breach of confidentiality, breach of intellectual property rights of any party (including any third party claims against the Member that work undertaken by the Consultant infringes a third party's intellectual property rights), damage to buildings or loss of the Employer's property, liquidated damages, wilful default or gross negligence, the maximum liability of a Consultant for indirect or consequential loss arising from that Consultant's breach, whether in contract or tort shall not exceed £5,000,000.

20.4 Without prejudice to any other exclusion or limitation of liability, damages, loss, expense or costs the liability of the Consultant for any claim or claims under this Agreement shall be further limited to such sum as it would be just and equitable for the Consultant to pay having regard to the extent of his responsibility for the loss of damage giving rise to such claim or claims and on the assumption that all other consultant, contractors, sub-contractors, project managers, advisors have paid to the client such sums as it would be just and equitable for them to pay having regard to the extent of their responsibility for the loss and damage;

- 20.5 Any Claim for breach of contract, breach of duty or negligence or otherwise arising out of or in connection with the appointment shall be brought against the Consultant within six years of the act or omission (or twelve years for a contract executed under deed) alleged to have caused the loss in question;
- 20.6 The Client agrees that the provisions of this clause 20 shall not be affected by the termination of the Consultant's appointment and that the provisions of this clause 20 shall continue in full force and effect notwithstanding any such termination;
- 20.7 This clause 20 shall not apply to any liability which the Consultant may have in relation to death or personal injury caused by the negligence of the Consultant or to any other liability which by law cannot be excluded;
- 20.8 Unless otherwise agreed, the consultant shall not be responsible for the design of the Project, including the selection of materials to be used.

21 Limitation

- 21.1 The Consultant's total liability under this Agreement, whether in contract or in tort or in negligence or breach of statutory duty or otherwise as is permitted by law, shall not exceed the amount of the Consultant's professional indemnity insurance as specified in clause 8. The Consultant's liability is limited to that proportion of the Client's losses for which the Consultant is responsible under this Agreement. No action or proceedings for breach of this Agreement shall be commenced against the Consultant after the expiry of 12 years from the date of completion or earlier termination of the Services.

22 Governing Law

- 22.1 The application and interpretation of this deed shall in all respects be governed by English law.

23 Delegated Authority

- 23.1 The Consultant is to have pre-approved delegated authority levels,

agreed by the Department for Education (DfE), assigned by work packages/elements as stated below. The delegated authority is intended to enable the Consultant to instruct contract variations to the Clients appointed Contractor up to the level stated below only, this is currently based up [REDACTED] of each element of the proposed costs as of contract document - Appendix 8. Any instructions totalling above the values require DfE approval. The below values are subject to change throughout the project and any amendments to the original table can be updated aligned with the contractors submitted cost proposals. Any amendments are subject to further DfE approval.

Element	[REDACTED]
Prelims	£ [REDACTED]
Design Fees	£ [REDACTED]
Enabling Works	£ [REDACTED]
External works	£ [REDACTED]
Windows	£ [REDACTED]
Roof	[REDACTED]
Other Building Fabric	£ [REDACTED]
Bore Hole Field	£ [REDACTED]
Plant Room Construction	[REDACTED]
Plantroom M&E (Heat Pumps and associated equipment)	£ [REDACTED]
Internal Heating Pipework and Emitters	£ [REDACTED]
Electrical works	£ [REDACTED]

Delivered as a deed on the date of this document.

SCHEDULE 1

- 1 **The Site is the area of land situated at** Richmond Hill Primary Academy, Melton Road, Sprotbrough, Doncaster DN5 7SB
- 2 ~~**and shown for identification purposes only on the plan attached as schedule 7.**~~
- 3 The Project Leader is [REDACTED] (ECS Consultants Limited)
- 4 The Key Person is [REDACTED] – The Rose Learning Trust
- 5 The Project Team includes:
 - 5.1 Architect – [REDACTED] .
 - 5.2 Structural Engineer – [REDACTED] .
 - 5.3 Building Services Engineer – [REDACTED] .
 - 5.4 Quantity Surveyor – [REDACTED] .
 - 5.5 Principal Designer – ECS Consultants Limited.
- 6 The Contract will start on **1st October 2022** and will be in effect until the works are completed. Completion of works is subject to approval and sign off by both the Client and Contractor.
- 7 The estimated Contract Value is £177,529.86 exclusive of value added tax.
- 8 ~~Instalments of the Fee payable in accordance with clause 6.2 shall be as follows:
The First Payment to be certified one month after the start of the Project and thereafter the same date in each month or the nearest Business Day in that month until completion of the Project.~~
- 9 The Client's address for service is:
Address: " Richmond Hill Primary Academy, Melton Road, Sprotbrough,
Doncaster DN5 7SB
- 10 The Consultant's address for service is:
Address: 148 Stockport Road, Cheadle, Cheshire SK8 2DP

SCHEDULE 2

The Services

- Contract Document 1 – The Rose Learning Trust and ECS Consultants Limited – Richmond Hill (This document)
- Appendix 1 - ECS Scope Project Tender - RIBA stage 4-7 Delivery Stage Rev C 290922
- Appendix 2 - 16129 - Direct Award Letter – The Rose Learning Trust and ECS - Lot 6 Richmond Hill 4-7
- Appendix 3 - ECS Consultants Insurance document 1
- Appendix 4 - ECS Consultants Insurance document 2
- Appendix 5 - Heating Project Programme
- Appendix 6 - Contract Management Requirements ECS Phase 1
- Appendix 7 - LCHP Phase 1 RIBA stages 4-7 ECS KPI's
- Appendix 8 – ECS delegated authority summary
- Framework Document 1 - ECS Consultants Ltd Framework Agreement
- Framework Document 2 - SECTION C - Quality Questions v2 (1)
- Framework Document 3 - Lot 6 Specification – Part 1
- Framework Document 4 - Lot 6 Specification – Part 2
- Framework Document 5 - Lot 6 Specification – Part 3

SCHEDULE 3

Brief

SCHEDULE 4
Programme

SCHEDULE 5

Exclusions from the Fee

SCHEDULE 6
Hourly Rates

SCHEDULE 7
Plan of the Site

SCHEDULE 8

~~Pro forma deed of warranty~~

SCHEDULE 9
Deed of Novation

Schedule 10

This Schedule is based on the Procurement Policy Note PPN 02/18 produced by the Crown Commercial Service in June 2018.

STANDARD DEFINITIONS

Employer, Party, Agreement: as defined in Section 1 Definitions and Interpretations in the Conditions of contract.

Law: means any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of Section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the Consultant is bound to comply;

Consultant Personnel: means all directors, officers, employees, agents, consultants and contractors of the Consultant and/or of any Sub-Consultant engaged in the performance of its obligations under this Agreement;

GDPR CLAUSE DEFINITIONS:

Data Protection Legislation: (i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time (ii) the DPA 2018 to the extent that it relates to processing of personal data and privacy; (iii) all applicable Law about the processing of personal data and privacy;

Data Protection Impact Assessment: an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data;

Controller, Processor, Data Subject, Personal Data, Personal Data Breach, Data Protection Officer take the meaning given in the GDPR;

Data Loss Event: any event that results, or may result, in unauthorised access to Personal Data held by the Consultant under this Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach;

Data Subject Access Request: 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: Data Protection Act 2018;

GDPR: the General Data Protection Regulation(Regulation (EU) 2016/679);

Joint Controllers: where two or more Controllers jointly determine the purposes and means of processing

LED: Law Enforcement Directive (Directive (EU) 2016/680);

Protective Measures: appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it including those outlined in Schedule 11;

Sub-processor: any third Party appointed to process Personal Data on behalf of the Consultant related to this Agreement.

1 DATA PROTECTION

- 1.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Member is the Controller and the Consultant is the Processor unless otherwise specified in Schedule 11. The only processing that the Consultant is authorised to do is listed in Schedule 11 by the Member and may not be determined by the Consultant.
- 1.2 The Consultant shall notify the immediately if it considers that any of the Member's instructions infringe the Data Protection Legislation.

1.3 The Consultant shall provide all reasonable assistance to the Member in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Customer, include:

- (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 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.

1.4 The Consultant shall, in relation to any Personal Data processed in connection with its obligations under this Agreement:

- (a) process that Personal Data only in accordance with Schedule 11, unless the Consultant is required to do otherwise by Law. If it is so required the Consultant shall promptly notify the Member before processing the Personal Data unless prohibited by Law;
- (b) ensure that it has in place Protective Measures, which are appropriate to protect against a Data Loss Event, which the Controller may reasonably reject (but failure to reject shall not amount to approval by the Controller of the adequacy of the Protective Measures), having taken account of the:
 - (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;
- (c) ensure that :

- (i) the Consultant Personnel do not process Personal Data except in accordance with this Agreement (and in particular Schedule 10);
 - (ii) it takes all reasonable steps to ensure the reliability and integrity of any Consultant Personnel who have access to the Personal Data and ensure that they:
 - (A) are aware of and comply with the Consultant's duties under this clause;
 - (B) are subject to appropriate confidentiality undertakings with the Consultant 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 Member or as otherwise permitted by this Agreement; and
 - (D) have undergone adequate training in the use, care, protection and handling of Personal Data; and
- (d) not transfer Personal Data outside of the EU unless the prior written consent of the Member has been obtained and the following conditions are fulfilled:
 - (i) the Member or the Consultant has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Customer;
 - (ii) the Data Subject has enforceable rights and effective legal remedies;
 - (iii) the Consultant 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 Member in meeting its obligations); and

- (iv) the Consultant complies with any reasonable instructions notified to it in advance by the Member with respect to the processing of the Personal Data;

1.5 Subject to clause 1.6, the Consultant shall notify the Member immediately if it:

- (a) receives a Data Subject Access Request (or purported Data Subject Access 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 processed under this Agreement;
- (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.

1.6 The Consultant's obligation to notify under clause 1.5 shall include the provision of further information to the Member in phases, as details become available.

1.7 Taking into account the nature of the processing, the Consultant shall provide the Member with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 1.5 (and insofar as possible within the timescales reasonably required by the Customer) including by promptly providing:

- (a) the Member with full details and copies of the complaint, communication or request;

- (b) such assistance as is reasonably requested by the Member to enable the Member to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
 - (c) the Customer, at its request, with any Personal Data it holds in relation to a Data Subject;
 - (d) assistance as requested by the Member following any Data Loss Event;
 - (e) assistance as requested by the Member with respect to any request from the Information Commissioner's Office, or any consultation by the Member with the Information Commissioner's Office.
- 1.8 The Consultant shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Consultant employs fewer than 250 staff, unless:
- 1.9 The Consultant shall allow for audits of its Data Processing activity by the Member or the Customer's designated auditor.
- 1.10 Each Party shall designate a data protection officer if required by the Data Protection Legislation.
- 1.11 Before allowing any Sub-processor to process any Personal Data related to this Agreement, the Consultant must:
 - (a) notify the Member in writing of the intended Sub-processor and processing;
 - (b) obtain the written consent of the Customer;
 - (c) enter into a written agreement with the Sub-processor which give effect to the terms set out in this Schedule 10 such that they apply to the Sub-processor; and
 - (d) provide the Member with such information regarding the Sub-processor as the Member may reasonably require.

- 1.12 The Consultant shall remain fully liable for all acts or omissions of any Sub-processor.
- 1.13 The Member may, at any time on not less than 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 Agreement).
- 1.14 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Member may on not less than 30 Working Days' notice to the Consultant amend this agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.

Schedule 11

Processing, Personal Data and Data Subjects

- (i) The Consultant shall comply with any further written instructions with Respect to processing by the Member;
- (ii) Any such further instructions shall be incorporated into this Schedule.

Description	Details
Subject matter of the processing	The Consultant may process Personal Information in the course of fulfilling its obligations under this Agreement as may be strictly necessary for the performance of the contract. Such information may relate to the occupiers of the building(s), the Member's Staff, Agents, representative etc., and members of the public that may be affected.
Duration of the processing	Processing may take place from contract Commencement to contract Termination and /or until the expiry of the retention periods specified below.
Nature and purposes of the processing	<p>Collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data of the individuals covered in the Categories of Data Subject section below for the purposes of:</p> <ul style="list-style-type: none"> • Performing the works/services and resolving any issues • Enabling work/service to be provided as efficiently and effectively as possible • Ensuring the security and safety of all involved • Managing the overall program • Statutory obligations • Enabling the Customer to manage its premises

	<ul style="list-style-type: none"> • Safeguarding issues • Supporting the equality and diversity needs
Type of Personal Data	<ul style="list-style-type: none"> • Person identifiers • Names • Occupation • Contact details (inc phone numbers and Email addresses) • Location data (inc address, UPRN) • Language • Religion • Health data (where relevant to the works) • Carers, guardians, powers or attorney, next of kin • Warning flags
Type of Personal Data	<ul style="list-style-type: none"> • The Employer's Customers • The Employer's Staff • The Employer's Suppliers and Agents • Volunteers • TUPE Information
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	<p>Information will only be retained in order to carry out the works/services under this Agreement and shall be retained by the Data Processor for a period of time to be determined by the Data Controller based on individual business needs / requirements.</p> <p>If requested by the Data Controller, the Data Processor must provide a written declaration confirming that the data has been destroyed.</p>

Executed as a deed by **The Rose**)
Learning Trust)
acting by:

Name 

Position CEO

Signature 

Executed as a deed by **ECS Consultants**)
Limited)
acting by:

Name 

Position Managing Director

Signature 