



DATED 25 January 2024

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT
AND
(2) GLEEDS ADVISORY LIMITED

THE REDEVELOPMENT OF HASLAR IRC:
AGREEMENT FOR COST MANAGEMENT SERVICES



CONTENTS

1.	DEFINITIONS & INTERPRETATION.....	5
2.	COMMENCEMENT	24
3.	RETROSPECTIVE EFFECT	24
4.	CONSULTANT'S OBLIGATIONS	25
5.	PERFORMANCE OF THE SERVICES.....	26
6.	SERVICES PROGRAMME	27
7.	BUDGETARY CONSTRAINTS & PROGRAMME REQUIREMENTS	28
8.	REPORTING REQUIREMENTS.....	29
9.	ADDITIONAL SERVICES	29
10.	CO-OPERATION & GOOD FAITH.....	30
11.	LIMITATIONS ON CONSULTANT'S AUTHORITY	31
12.	HEALTH & SAFETY	31
13.	BASIS OF ENGAGEMENT & NON-EXCLUSIVITY	32
14.	OMISSIONS	32
15.	EARLY WARNING & CORRECTIVE ACTION NOTICES	32
16.	PROGRESS MEETINGS & REPORTING	34
17.	KEY PERFORMANCE INDICATORS.....	35
18.	THE SERVICE MANAGER & KEY PERSONNEL	36
19.	SUB-CONTRACTING	37
20.	SECURITY & VETTING	38
21.	COLLATERAL WARRANTIES.....	40
22.	NOT USED	40
23.	INTELLECTUAL PROPERTY	40
24.	INSURANCES	42
25.	PAYMENT	43
26.	INDEXATION	45
27.	IR35 COMPLIANCE	46



28.	PREVENTION OF THE FACILITATION OF TAX EVASION	46
29.	BRIBERY & CORRUPTION	47
30.	CONFLICTS OF INTEREST & REPUTATIONAL RISK	48
31.	CONFIDENTIALITY	49
32.	CHANGE OF CONTROL	51
33.	DATA PROTECTION	51
34.	MALICIOUS CODE	55
35.	FREEDOM OF INFORMATION	56
36.	EQUALITY & DIVERSITY	57
37.	ANTI-SLAVERY & TRAFFICKING	57
38.	AUDIT	58
39.	ORDER OF PRIORITY OF DOCUMENTS	59
40.	WARRANTIES	60
41.	DUE DILIGENCE & NON-RELIANCE	61
42.	TERMINATION & SUSPENSION	61
43.	PROBLEM SOLVING, DISPUTE AVOIDANCE & RESOLUTION	65
44.	ADJUDICATION	66
45.	NO APPROVAL	67
46.	WAIVER	68
47.	CUMULATIVE RIGHTS	68
48.	COUNTERPARTS	68
49.	SEVERANCE	68
50.	ASSIGNMENT	69
51.	ASSIGNMENT & NOVATION	69
52.	LIMITATION OF AUTHORITY'S LIABILITY	70
53.	LIMITATION OF CONSULTANT'S LIABILITY	70
54.	LIABILITY PERIOD	71
55.	NOTICES	71



56.	NO PARTNERSHIP OR AGENCY	72
57.	VARIATIONS	72
58.	COSTS & EXPENSES	72
59.	THIRD PARTY RIGHTS	72
60.	FURTHER ASSURANCE	73
61.	ENTIRE AGREEMENT	73
62.	GOVERNING LAW	73
	SCHEDULE 1 AGREEMENT PARTICULARS	75
	SCHEDULE 2 SERVICES SCHEDULE	78
	SCHEDULE 3 PRICING SCHEDULE	79
	SCHEDULE 4 INDEXATION SCHEDULE	80
	SCHEDULE 5 COLLATERAL WARRANTY SCHEDULE	82
	PART 1 – CONSULTANT COLLATERAL WARRANTY	82
	PART 2 – SUB-CONSULTANT COLLATERAL WARRANTY	89
	SCHEDULE 6 PROJECT PROGRAMME	97
	SCHEDULE 7 SECURITY REQUIREMENTS	98
	SCHEDULE 8 INFORMATION & SECURITY REQUIREMENTS	100
	SCHEDULE 9 DATA PROTECTION SCHEDULE	115
	SCHEDULE 10 KPI SCHEDULE	118



THIS AGREEMENT is made the 25 day of January 2024

BETWEEN:

- (1) **SECRETARY OF STATE FOR THE HOME DEPARTMENT**, whose principal place of business is at 2 Marsham Street, London, SW1P 4DF (the "**Authority**", with such term including the Authority's successors in title and legal assigns); and
- (2) **GLEEDS ADVISORY LIMITED** (company number 06472422), whose registered office is at 95 New Cavendish Street, London, W1W 6XF (the "**Consultant**").

RECITALS:

- (A) Pursuant to a public procurement process undertaken by CCS between 2020 and 2021, CCS has established the CCS Framework.
- (B) The Consultant:
 - i. has been appointed to the CCS Framework following such public procurement process; and
 - ii. is a party to an ACA Framework Alliance Contract (FAC-1) (as amended) dated 1 October 2021 between (1) CCS and (2) the Consultant (and other parties) in relation to a lot forming part of the CCS Framework named "Construction Professional Services" and known as Lot 1 (Built Environment & General Infrastructure) (the "**CCS Framework Agreement**").
- (C) For the purpose of the CCS Framework and the CCS Framework Agreement:
 - i. the Authority is an "Additional Client" that has submitted a "Registration Notice" to and which has been accepted by CCS;
 - ii. CCS has notified the parties to the CCS Framework Agreement that the Authority is an "Additional Client" thereunder; and
 - iii. accordingly, the Authority has the right to issue to the Consultant (and the other parties to the CCS Framework Agreement) a "Project Contract" pursuant to and in accordance with the terms of the CCS Framework Agreement,

with the terms "**Additional Client**", "**Registration Notice**" and "**Project Contract**" having the meanings given to them in the CCS Framework Agreement for the purposes of this Recital (C) only.
- (D) The Authority wishes to appoint a consultant to provide certain professional services in connection with the Project on the basis set out in this Agreement.
- (E) Following the completion of a "Direct Award Procedure" undertaken in accordance with (and as such term is defined in) the CCS Framework Agreement (Jaggaer Unique Reference Number prj_10585) in relation to the above:
 - i. the Authority now wishes to appoint the Consultant under this Agreement to provide the Services referred to in this Agreement; and
 - ii. the Consultant has agreed to enter into this Agreement with the Authority,

on the basis set out in this Agreement, which is a "**Project Contract**" for the purposes of (and as defined in) the CCS Framework Agreement.



1. DEFINITIONS & INTERPRETATION

1.1 Unless the context otherwise requires, the following words and phrases shall have the meanings stated and/or referred to below where used in this Agreement:

"Adjudicator"	means an adjudicator nominated by the Royal Institute of Chartered Surveyors;
"Additional Services"	means any additional services which are not reasonably within the scope of the Standard Services (other than by reason of the default, negligence and/or breach of contract by the Consultant);
"Additional Services Instruction"	has the meaning given to such term in clause 9.3.1;
"Additional Services Quote"	has the meaning given to such term in clause 9.2;
"Affected ICT System"	has the meaning given to such term in clause 34.2;
"Affected Party"	has the meaning given to such term in clause 34.2;
"Affiliate"	means, in relation to the Consultant: <ul style="list-style-type: none"> (a) each holding company and subsidiary of such holding company (excluding the Consultant); (b) each joint venture company in which the Consultant holds at least twenty-five per cent (25%) of the voting rights or where the Consultant has the right to appoint or remove at least twenty-five per cent (25%) of its board of directors; (c) each partnership and/or limited partnership in which the Consultant is a partner (whether a limited or general partner); and/or (d) any limited liability partnership of which the Consultant is a partner;
"Agreement"	means this agreement and all documents, schedules and annexures forming part of and/or referred to in the same;
"Agreement Liability Cap"	means the liability cap as identified as such in the Agreement Particulars;
"Agreement Liability Period"	is the period identified as such in the Agreement Particulars;
"Agreement Particulars"	means Schedule 1 of this Agreement;



"Agreement Records"	has the meaning given to such term in clause 38.1;
"Anti-Slavery Policies"	has the meaning given to such term in clause 37.1.3;
"Anti-Slavery Requirements"	has the meaning given to such term in clause 37.1.1;
"Anti-Slavery Terms"	has the meaning given to such term in clause 37.3.1;
"Anti-Virus Software"	<p>means all software and programs of any type as developed, distributed and continuously maintained and/or updated by a reputable and industry-accepted cybersecurity and anti-virus software developer whose principal purpose is to:</p> <ul style="list-style-type: none"> (a) detect and prevent the infection of an ICT System by Malicious Code; and/or (b) detect and remove Malicious Code from an ICT System and (as the context requires) inoculate that ICT System against such Malicious Code in the future;
"Applicable Law"	<p>means any and all of the following:</p> <ul style="list-style-type: none"> (a) any Act of Parliament or subordinate legislation, any exercise of the Royal Prerogative, any planning or building permission or regulation and any other official request or requirement made by any Statutory Authority or other body of competent jurisdiction in respect of which the Authority and/or the Consultant has a legal obligation to comply; (b) any Rule of equity, common law or the ruling, judgment or order of any Court; and (c) all orders, rules, regulations, ordinances, notices, guidance notes, schemes, warrants, bye-laws, directives, franchises, licences, permits, circulars and codes of practice issued or raised under or in connection with any of the foregoing;
"Authority Data"	<p>means:</p> <ul style="list-style-type: none"> (a) any Materials that: <ul style="list-style-type: none"> (i) are Authority Materials; and/or (ii) the Consultant is required to generate, process, store and/or transmit pursuant to this Agreement; and (b) any Personal Data in respect of which the Authority is the Controller;



"Authority ICT System"	means any ICT System used by the Authority in connection with this Agreement which is owned by and/or licensed to the Authority by a third party and which interfaces with any Consultant ICT System and/or which is provided for use by the Authority in connection with this Agreement (but excluding any Consultant ICT System);
"Authority Materials"	means all Materials prepared by and/or on behalf of the Authority and provided to the Consultant in connection with this Agreement (but excluding any Consultant Materials) at any time;
"Authority's Policies"	means the policies of the Authority as provided by the Authority to the Consultant (in each case, as may be updated, supplemented and/or replaced from time to time);
"BPSS"	means the "Baseline Personnel Security Standard" as more particularly described in the Cabinet Office publication "HMG Personnel Security Controls (Version 2.0 – April 2014)" as may be amended, updated and/or replaced from time to time;
"Business Day"	means a day other than a Saturday or Sunday, Christmas Day or Good Friday or any other day which under the Banking and Financial Dealings Act 1971 is a bank holiday in England and Wales;
"CAN Period"	has the meaning given to such term in clause 15.3.2(a);
"CCS Framework Agreement"	has the meaning given to such term in the "Recitals" section of this Agreement;
"CCS Framework"	means a framework with multiple professional service providers across multiple lots which is known as the "Construction Professional Services" framework (reference number RM6165);
"CCS"	means the Minister for the Cabinet Office as represented by Crown Commercial Service, a trading fund of the Cabinet Office, whose offices are located at 9th Floor, The Capital, Old Hall Street, Liverpool, L3 9PP;
"CDM Regulations"	means the Construction (Design and Management) Regulations 2015 and any and all related guidance issued by the Health and Safety Executive in connection with the same from time to time;
"Central Government Body"	means a body listed in one of the following sub-categories of the "Central Government" classification of the "Public Sector Classification Guide", as published and amended from time to time by the Office for National Statistics: <ul style="list-style-type: none"> (a) government department;



	<ul style="list-style-type: none"> (b) non-departmental public body or assembly sponsored public body (advisory, executive, or tribunal); (c) non-ministerial department; or (d) executive agency;
"CFA 2017"	means the Criminal Finances Act 2017;
"Change of Control Event"	has the meaning given to such term in clause 32.1;
"Change of Control"	means, in relation to the Consultant, a transfer of any part of the share capital of the Consultant (or any holding company of the Consultant) or any Corporate Interest in such shares resulting in any person who does not at the Effective Date have a Controlling Interest in the Consultant (alone or together with any person with whom it is acting in concert, as defined in the "City Code on Takeovers and Mergers" from time to time) directly or indirectly acquiring a Controlling Interest in the Consultant, whether such transfer occurs as a result of one transaction or a series of transactions;
"Code of Practice"	means the Department for Constitutional Affairs' "Code of practice on the discharge of functions of public authorities under Part 1 of the Freedom of Information Act 2000";
"Code of Practice on the Selection of Materials"	means the publication entitled "Good Practice in the Selection of Construction Materials 2011" produced by the British Council for Offices;
"Collateral Warranty Schedule"	means Schedule 5 of this Agreement;
"Collateral Warranty"	<p>means each of the:</p> <ul style="list-style-type: none"> (a) "Consultant Collateral Warranty"; and (b) "Sub-Consultant Collateral Warranty";
"Confidential Information"	<p>means:</p> <ul style="list-style-type: none"> (a) the terms and schedules of this Agreement and anything referred to therein; (b) all Materials and any other information, including all Personal Data, which (however it is conveyed) is provided or otherwise disclosed by a Disclosing Party pursuant to or in anticipation of entering into this Agreement, including in relation to: <ul style="list-style-type: none"> (i) the Disclosing Party's Group; and/or



- (ii) the operations, business, affairs, developments, Intellectual Property Rights, trade secrets, know-how, methods and techniques for construction and/or personnel of the Disclosing Party's Group;
- (c) other Materials and any other information provided by a Disclosing Party pursuant to or in anticipation of entering into this Agreement that is clearly designated as being confidential or equivalent or that ought reasonably to be considered to be confidential (whether or not it is so marked) which comes (or has come) to a Recipient's attention or into its possession in connection with this Agreement;
- (d) discussions, negotiations and/or correspondence between a Disclosing Party and/or any of its directors, officers, employees, consultants or professional advisers and a Recipient or any of its directors, officers, employees, consultants and professional advisers in connection with this Agreement and any and all matters arising therefrom; and
- (e) any and all Materials and information of any type and/or nature derived from any of the above,

in each case excluding any Materials or information:

- (i) already in the possession of a party without an obligation of confidentiality in respect of such Materials and/or information prior to their disclosure by the relevant Disclosing Party;
- (ii) obtained by a party on a non-confidential basis from a third party who is not, to its knowledge or belief, bound by a confidentiality agreement with the relevant Disclosing Party or otherwise prohibited from disclosing the information to that party;
- (iii) already generally available and in the public domain at the time of its disclosure otherwise than by a breach of this Agreement;
- (iv) independently developed by a party without access to the Materials or information referred to above; and/or
- (v) relating to the Consultant's performance under this Agreement,

with the term "**party**" in limbs (i) to (v) above meaning, as the context requires, the Consultant or the Authority;

"Conflict of Interest"

has the meaning given to such term in clause 30.1.1;



"Construction Phase Plan"	means any plan produced in connection with all or part of the Project pursuant to regulation 2 of the CDM Regulations, including any updates and/or revisions to the same from time to time;
"Construction Products Regulations"	means each of the: <ul style="list-style-type: none"> (a) Construction Products Regulations 2013; and (b) Construction Products Regulations (305/2011/EU);
"Consultant Background Materials"	means all Materials: <ul style="list-style-type: none"> (a) owned by the Consultant before the Effective Date; and/or (b) created by the Consultant independently of this Agreement, <p>which, in each case, are or will be used by the Consultant on or after the Effective Date in connection with the performance and discharge of its duties and obligations under or in connection with this Agreement;</p>
"Consultant Collateral Warranty"	means the document identified as such in the Collateral Warranty Schedule;
"Consultant ICT System"	means any ICT System which is owned by the Consultant and/or licensed to the Consultant by a third party and which is operated by the Consultant and/or any of its Consultant Related Parties in connection with this Agreement (and excluding any Authority ICT System);
"Consultant Materials"	means all Consultant Background Materials and/or Foreground Materials (as the context requires);
"Consultant Related Party"	means any employee and/or third party engaged by the Consultant under or in connection with this Agreement, including all sub-consultants at any tier;
"Controller"	has the meaning given to that term in the GDPR;
"Controlling Interest"	means, in relation to the Consultant, a Corporate Interest in shares comprising fifty per cent (50%) or more of the shares in the Consultant (or any holding company of the Consultant) for the time being in issue or otherwise conferring in aggregate of fifty per cent (50%) or more of the total voting rights of the Consultant (or any holding company of the Consultant) conferred by all the shares in the relevant company for the time being in issue and/or the ability to appoint and/or remove fifty per cent (50%) or more by number of the directors of the Consultant (or any holding company of the Consultant);



"Conviction"	means, other than in relation to minor road traffic offences, any previous or pending prosecutions, convictions, cautions and binding-over orders, including any spent convictions as contemplated by section 1(1) of The Rehabilitation of Offenders Act 1974 by virtue of the exemptions specified in Part II of Schedule 1 of the Rehabilitation of Offenders Act 1974 (Exemptions) Order 1975 (SI 1975/1023) or any replacement or amendment to that Order;
"Corporate Interest"	means an interest in any of the shares in the Consultant and/or the right to exercise the votes attached to such share(s) and/or the ability to appoint and/or remove any of its board of directors;
"Corrective Action Notice"	has the meaning given to such term in clause 15.3.1;
"Critical KPI"	means any KPI identified as such in the KPI Schedule;
"Critical KPI Target"	means, in relation to each Critical KPI, the scoring of three (3) or more points by the Consultant against the KPI Standard for that Critical KPI;
"Critical KPI Underperformance"	means a failure by the Consultant to achieve a Critical KPI Target for any single Critical KPI;
"Cross-Claim"	has the meaning given to such term in clause 44.11;
"Crown"	means the government of the United Kingdom (including the Northern Ireland Executive Committee and Northern Ireland Departments, the Scottish Executive and the National Assembly for Wales), including, but not limited to, government ministers, government departments, government offices and government agencies (with "Crown Body" being an emanation of the foregoing);
"Data Loss Event"	means any event that results, or may result, in unauthorised access to Personal Data held by the Processor under this Agreement and/or actual or potential loss and/or destruction of such Personal Data, including any Personal Data Breach;
"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 Laws"	means: <ul style="list-style-type: none"> (a) the GDPR; (b) the LED; (c) the Data Protection Act 2018 (to the extent it relates to Processing of Personal Data and privacy); and



	(d) all applicable laws about the Processing of Personal Data and privacy;
"Data Protection Officer"	has the meaning given to such term in the GDPR;
"Data Protection Schedule"	means Schedule 9 of this Agreement and/or any equivalent schedule that is issued to the Consultant from time to time in connection with the Project;
"Data Subject"	has the meaning given to such term in the GDPR;
"Data Subject Access Request"	means a request made by, or on behalf of, a Data Subject under the Data Protection Laws to access its Personal Data;
"day"	means a calendar day (whether a Business Day or otherwise);
"Deemed Employment"	has the meaning given to such term in clause 27.1;
"Disallowed Cost"	means: <ul style="list-style-type: none"> (a) costs that are not justified by the Consultant's accounts, records and/or narrative-based timesheets (including, but not limited to, duplication of resource, over-resourcing and training costs of the Consultant); (b) costs that have been incurred by the Consultant and which the Consultant intends to recover from the Authority without the Authority prior approval; (c) any costs that are attributable to a change in grading of a person providing the Services during the provision of the Services that have not been notified by the Consultant to the Authority in advance of the effective date of such change, whether resulting in an increase or decrease in the Hourly Rate applicable to such person (provided always that the notified change to the Hourly Rate will still take effect as from the date of any such later notification but not apply retrospectively); (d) any costs in relation to Additional Services that have not been agreed in advance in writing by the Authority and/or any costs incurred by the Consultant that exceed any estimate originally provided the Consultant in its Additional Services Quote for any Additional Services that have not been approved in advance in writing by the Authority (including in relation to any approved updated estimates from time to time); (e) any payments to a Sub-Consultant that:



- (i) are not justified by the Consultant's accounts, records and narrative-based timesheets; and/or
 - (ii) should not have been paid to the Sub-Consultant in accordance with its Sub-Contract;
- (f) costs incurred by the Consultant only because the Consultant did not:
 - (i) comply with the terms of this Agreement; and/or
 - (ii) give notification to the Authority of the preparation for and conduct of an adjudication or proceedings of a tribunal between the Consultant and any Sub-Consultant;
- (g) (in the view of the Authority, acting reasonably) disproportionate costs incurred by the Consultant in the performance of the Services as a consequence of any person not having the necessary experience, professional qualifications and knowledge of the Project to carry out an element of the Services when it did so; and/or
- (h) the cost of:
 - (i) the Consultant correcting its own defaults, errors, underperformance and/or omissions (of any type and nature) under or in connection with this Agreement and the provision of the Services (including in relation to the development, production, revision and/or replacement of any Materials prepared by or on behalf of the Consultant in respect of the same and as incurred to a Sub-Consultant) for any reason and/or undertaking any actions pursuant to and in accordance with a Corrective Action Notice and/or in relation to an Improvement Plan;
 - (ii) resources not used by the Consultant to carry out the Services (after allowing for reasonable availability and utilisation); and/or
 - (iii) the Consultant preparing for and conducting an adjudication and/or any other legal proceedings involving the Authority;

"Disclosing Party"

means a party which discloses or makes available, directly or indirectly, its Confidential Information to a Recipient;



"Disclosing Party's Group"	means: <ul style="list-style-type: none"> (a) where the Disclosing Party is the Consultant, its Consultant Related Parties and its Affiliates; and (b) where the Disclosing Party is the Authority, the Authority and any Central Government Body with whom it or the Consultant interacts in connection with this Agreement;
"Disclosure and Barring Service"	means the body of the same name as established under the Protection of Freedoms Act 2012;
"Due Date for Payment"	means the date identified as such in the Agreement Particulars;
"Early Warning Notice"	has the meaning given to such term in clause 15.2;
"Effective Date"	means the date of this Agreement;
"Engagement"	has the meaning given to such term in clause 27.1;
"Environmental Information Regulations"	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;
"Equality Requirements"	has the meaning given to such term in clause 36.1;
"Final Date for Payment"	means the date identified as such in the Agreement Particulars;
"FOIA"	means the Freedom of Information Act 2000 and any subordinate legislation (as defined in section 84 of the Freedom of Information Act 2000) made under or pursuant to the Freedom of Information Act 2000 from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner or any relevant government department in relation to the Freedom of Information Act 2000 (including the Code of Practice);
"Foreground Materials"	means all Materials: <ul style="list-style-type: none"> (a) created by the Consultant (or a third party on behalf of the Consultant) specifically for the purposes of performing and discharging its duties and obligations; and/or (b) arising out of or in connection with the performance of the Consultant's duties and obligations, under or in connection with this Agreement, but excluding the Consultant Background Materials;



"GDPR"	<p>means:</p> <ul style="list-style-type: none"> (a) Regulation (EU) 2016/679 of the European Parliament and of the European Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation); and (b) Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (United Kingdom General Data Protection Regulation), as it forms part of the law of England and Wales, Scotland and Northern Ireland by virtue of section 3 of the European Union (Withdrawal) Act 2018;
"holding company"	has the meaning given to such term in section 1159 of the Companies Act 2006;
"Hourly Rate"	means each hourly rate as set out in the Pricing Schedule (subject to the application of clause 26 from time to time);
"ICT System"	means an information and communications technology system that principally (but not exclusively) uses computer systems and digital technology to store, retrieve, transmit and/or manipulate data of any type (including all associated and ancillary hardware, software, telecommunications systems, data networks, servers, interfaces, active and passive data back-up systems, devices, peripherals, equipment, infrastructure, ducts, cabling and ancillary fixtures and fittings and power supplies);
"Identifying Party"	has the meaning given to such term in clause 34.2;
"Improvement Notice"	<p>means a written notice issued by the Authority to the Consultant that:</p> <ul style="list-style-type: none"> (a) advises that the Consultant is subject to an on-going Non-Critical KPI Underperformance and/or a Critical KPI Underperformance, providing details of such underperformance by reference to the relevant KPI Standard(s); and (b) specifies the actions to be undertaken by the Consultant, as required by the Authority, in order to remedy such on-going Non-Critical KPI Underperformance and/or Critical KPI Underperformance;
"Improvement Plan"	means the plan prepared and submitted by the Consultant to the Authority in writing that specifies, in response to a notice issued by the Authority pursuant to clause 17.2.1, how the Consultant



will remedy an identified and on-going Non-Critical KPI Underperformance and/or Critical KPI Underperformance;

"Indexation Adjustment"	has the meaning given to such term in clause 26.2;
"Indexation Adjustment Date"	has the meaning given to such term in clause 26.2;
"Indexation Schedule"	means Schedule 4 of this Agreement;
"Individual"	has the meaning given to such term in clause 27.1;
"Information and Security Requirements"	means the information and security requirements set out at Schedule 8 of this Agreement as may be amended, supplemented or replaced from time to time by the Authority (at its sole discretion) and notified to the Consultant;
"Insolvency Event"	<p>means where any of the following events occurs in relation to the affected Party or (as the context requires) any holding company of such affected Party:</p> <ul style="list-style-type: none"> (a) an order is made for its winding-up or a petition or notice is presented or a meeting is convened for the purpose of considering a resolution for its winding-up or any such resolution is passed; (b) a receiver (including any administrative receiver) or similar person is appointed in respect of, or an encumbrancer takes possession of, the whole or any part of any of its property, assets or undertaking or any step is taken by any person to enforce any rights under or pursuant to any security interest or encumbrance of any kind over any of its undertaking, property or assets; (c) an administrator is appointed (whether by the court or otherwise) or any step is taken (whether in or out of court) for the appointment of an administrator or any notice is given of an intention to appoint an administrator; (d) any distress, execution, sequestration or other similar process is levied or applied for in respect of the whole or any part of any of its property, assets or undertaking which is not remedied within fourteen (14) days of the same; (e) any composition in satisfaction of its debts or scheme of arrangement of its affairs or compromise or arrangement between it and its creditors generally (or any class of its creditors) and/or its members is proposed, applied for, sanctioned or approved;



- (f) it is unable to pay its debts for the purposes of the Insolvency Act 1986, or becomes insolvent under any Applicable Law;
- (g) it has applied to court for, or has obtained, a moratorium under Part A1 of the Insolvency Act 1986; or
- (h) an event analogous to any of the above occurs,

in each case, in any jurisdiction where it carries on business or has assets;

"Insolvency Event" has the meaning given to such term in the Agreement;

"Intellectual Property Rights" means any and all current and future intellectual or industrial property rights of any nature anywhere in the world (whether legal or equitable and whether registered or unregistered), including patents, copyrights (including related moral rights), design rights, trademarks, trade secrets, know-how, methodologies, processes and other intellectual property rights of a similar nature (whether or not subsisting in computer software, computer programmes, websites, materials, information, techniques, business methods, drawings, logos, instruction manuals, lists, procedures, marketing methods and procedures and advertising literature), together with any right to apply for or register any of the foregoing;

"Interest Rate" means the rate of three per cent (3%) above the base rate of the Bank of England from time to time;

"ITEPA" means the Income Tax (Earnings and Pensions) Act 2003;

"Joint Fire Code" means the "Joint Code of Practice on the Protection from Fire on Construction Sites and Buildings Undergoing Renovation", as produced by Construction Industry Publications Limited and the Fire Protection Association with the support of the Association of British Insurers, the Chief Fire Officers Association and the London Fire Brigade;

"Key Personnel" means those persons identified as such in the Agreement Particulars;

"KPIs " means the Non-Critical KPIs and Critical KPIs identified as such in the KPI Schedule, as may later be amended, updated and/or replaced by the Authority in accordance with and pursuant to clause 17;

"KPI Schedule" means the Authority's requirements in relation to the KPIs and its assessment methodology in respect of the same as set out in Schedule 10 (as may be updated from time to time);



"KPI Standard"	means the minimum standard of performance in respect of a KPI, as specified in the KPI Schedule;
"LED"	means the Law Enforcement Directive (Directive (EU) 2016/680);
"Malicious Code"	means any software program or code that is intended to destroy, interfere with, corrupt and/or detrimentally affect program files, data or other information, executable code or application software macros, whether or not its operation is immediate or delayed, and whether introduced wilfully, negligently or without knowledge of its existence;
"Materials"	means all technical information, drawings, models, plans, specifications, schedules, digital models and databases (provided that the same do not contain any Personal Data) (including relating to building information modelling (BIM)), costings, budgets, calculations, bill of quantities, estimates and valuations, photographs, brochures, reports, meeting notes, and any other materials, in any medium produced or procured by or on behalf of (as the context requires) the Consultant and/or the Authority in connection with this Agreement and all updates, amendments, additions and revisions to them and any works, designs, or inventions incorporated or referred to in them for any purpose relating to the same;
"Named Employee"	has the meaning given to such term in clause 20;
"Non-Critical KPI Target"	means, in relation to each Non-Critical KPI, the scoring of three (3) or more points by the Consultant against the KPI Standard for that Non-Critical KPI;
"Non-Critical KPI Underperformance"	means a failure by the Consultant to achieve the Non-Critical KPI Targets for two (2) or more Non-Critical KPIs;
"Non-Critical KPI"	means any KPI identified as such in the KPI Schedule;
"Notified Sum"	has the meaning given to such term at clause 25.2.5;
"Official Secrets Acts"	means the Official Secrets Acts 1911 to 1989 (inclusive);
"Open Book Basis"	means an approach to pricing and the disclosure of internal reporting which is fully open and transparent and includes (without limitation) the unrestricted provision to the Authority (or its nominee) of information in connection with the Consultant's engagement under this Agreement from time to time to time (subject to legal professional privilege) to enable the effective assessment and verification of any sums claimed by or paid to the Consultant under this Agreement;
"Other Consultants"	means the consultants identified as such in the Agreement Particulars as at the Effective Date or as otherwise may be



	notified by the Authority to the Consultant from time to time (and any sub-contractors and sub-consultants of such parties);
"Party"	means the Authority or the Consultant as the context requires (and "Parties" means both of the Authority and the Consultant);
"Payment Application"	means an application for payment in relation to the Services that is made pursuant to and in accordance with this Agreement;
"Pay Less Notice"	has the meaning given to such term at clause 25.2.6;
"Payment Application Date"	means the date identified as such in the Agreement Particulars;
"Payment Notice"	has the meaning given to such term at clause 25.2.3;
"Payment Period"	means the period identified as such in the Agreement Particulars;
"Personal Data Breach"	has the meaning given to such term in the GDPR;
"Personal Data"	has the meaning given to such term in the GDPR;
"Pricing Schedule"	means Schedule 3 of this Agreement;
"Principal Contractor"	means the person identified by the Authority from time to time as acting as "principal contractor" (as defined in and pursuant to the CDM Regulations) in connection with the whole or part of the Project as specified in the Agreement Particulars;
"Principal Designer"	means the person identified by the Authority from time to time as acting as "principal designer" (as defined in and pursuant to the CDM Regulations) in connection with the whole or part of the Project as specified in the Agreement Particulars;
"Process"	has the meaning given such term under the Data Protection Laws (and "Processed" and "Processing" shall be construed accordingly);
"Processor"	has the meaning given to such term in the GDPR;
"Processor Personnel"	means all directors, officers, employees, agents, consultants and constructors of the Processor and/or of any Sub-Processor engaged in performing the Processor's obligations under this Agreement;
"Procurement Guidance"	means any guidance issued by the United Kingdom government in connection with the Procurement Regulations from time to time;
"Procurement Regulations"	means the Public Contracts Regulations 2015;



"Procurement Rules"	means the Procurement Regulations and the Procurement Guidance;
"Progress Meeting"	has the meaning given to such term in clause 16.1;
"Progress Report"	has the meaning given to such term in clause 16.3;
"Project"	means the works package identified as such in the Agreement Particulars;
"Project Contractor"	means the party identified as such in the Agreement Particulars (and if no such party is so identified, as notified by the Authority to the Consultant from time to time);
"Project Programme"	means, as at the Effective Date, the programme set out at Schedule 6, as may be updated, supplemented and/or replaced by the Authority by written notice to the Consultant from time to time;
"Project Site"	means the site referred to in the Agreement Particulars (as may be updated and/or revised by the Authority from time to time).
"Protective Measures"	means all appropriate technical and organisational measures 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 such measures adopted by it, including those outlined in the Data Protection Schedule;
"public body"	means a body listed under the heading of "Public Institutional Sectors / Sub-Sectors" in the "Public Sector Classification Guide", as published by the Office for National Statistics and as amended from time to time;
"Quarter"	means a three (3) month period beginning on 1st January, 1st April, 1st July or 1st October in a calendar year, as the context requires (and " Quarterly " shall be construed accordingly);
"Recipient"	means the party which receives or obtains, directly or indirectly, Confidential Information from a Disclosing Party;
"Referring Party"	has the meaning given to such term in clause 44.1;
"Relevant Consents"	means any and all consents, permissions, approvals, licences and/or certificates required under Applicable Laws (including planning and highways approval) in relation to the Services and/or the Project (as the context requires);
"Reputational Risk"	has the meaning given to such term in clause 30.1.2;



"Request for Information"	means a request for information relating to this Agreement or apparent request for such information under the FOIA or the Environment Information Regulations;
"Respondent Party"	has the meaning given to such term in clause 44.1;
"Security Measures"	<p>means any and all active and passive, peremptory, contingent and other physical and procedural security and safeguarding measures, deterrents, countermeasures and precautions, designed, taken, implemented and/or intended (including software and coding solutions, as well as physical and strategic solutions) to:</p> <ul style="list-style-type: none"> (a) maintain the safety of persons and public and personal property; (b) prevent the risk of any person being exposed to actual or potential death, personal injury or any other type of harm howsoever caused (including by fire); (c) prevent the risk of actual or potential damage or harm to public and personal property howsoever caused (including by fire); (d) maintain political, national and/or international security; (e) prevent the access to a location (or part thereof), persons, information and/or any electronic or information technology system by unauthorised persons or parties; and (f) (as the context requires) facilitate the detention or imprisonment (or continued detention or imprisonment) of persons, in accordance with Applicable Law, <p>such as intruder detector systems, lighting systems, closed circuit television and other surveillance systems, natural surveillance models, physical barriers, information technology systems, artificial intelligence systems, communications systems, mechanical and electronic access control systems, screening arches and areas, biometric and physical entry systems, fire security and safety systems, reinforced (blast, bullet and/or vandal resistance) glass, screening areas and strategic layouts;</p>
"Security Requirements"	means the security requirements of the Authority as set out at Schedule 7 of this Agreement as may be amended, supplemented or replaced from time to time by the Authority (at its sole discretion) and notified to the Consultant;
"Services Manager"	means the person identified as such in the Agreement Particulars, or such replacement as shall be approved by the Authority in advance and in writing in accordance with this Agreement;



"Services Programme"	<p>means:</p> <ul style="list-style-type: none"> (a) the programme in relation to the Services identified as such in the Agreement Particulars as at the Effective Date; and (b) each programme in relation to the Services prepared and provided by the Consultant pursuant to and in accordance with clause 6, <p>as the context requires;</p>
"Services Programme Date"	means the date identified as such in the Agreement Particulars;
"Services Schedule"	means Schedule 2 of this Agreement;
"Services"	<p>means:</p> <ul style="list-style-type: none"> (a) the Standard Services; and (b) all Additional Services, <p>as the context requires from time to time;</p>
"Standard of Care"	means all of the reasonable skill, care, diligence and prudence to be expected of an appropriately qualified, skilled, competent and experienced professional of the same discipline as the Consultant (and where the Services involve the provision of design services, a professional designer) that is experienced in the carrying out of such activities for projects of a similar size, scope, value, character and complexity to the Project;
"Standard Services"	means the services, duties and responsibilities to be performed by the Consultant as specified in the Services Schedule;
"Standards and Codes of Practice"	means any and all European and British Standards and/or codes of practice applicable to the design and/or construction of the Project and/or the performance of the Services (including the British Standards and codes of practice published by the British Standards Institution, the Code of Practice on the Selection of Materials and the Joint Fire Code);
"Statutory Authority"	<p>means any governmental or local authority, statutory undertaker or other body of competent jurisdiction:</p> <ul style="list-style-type: none"> (a) which has any jurisdiction with regard to the performance of the Consultant's obligations under this Agreement in any jurisdiction; (b) which has any jurisdiction with regard to any Services and/or any Project, including any jurisdiction to control the development of the Project on the Project Site or any part of it;



	(c) with whose requirements the Authority is required to comply or accustomed to complying; and/or
	(d) with whose systems the Project are or will be connected;
"Sub-Consultant"	means any contractor, consultant and/or supplier engaged by the Consultant in connection with this Agreement under a Sub-Contract;
"Sub-Consultant Collateral Warranty"	means the document identified as such in the Collateral Warranty Schedule;
"Sub-Contract"	means any contract between the Consultant and a Sub-Consultant in relation to the Services;
"Sub-Processor"	means any third party appointed to Process any Personal Data on behalf of a Processor in connection with this Agreement;
"subsidiary"	has the meaning given to such term in section 1159 of the Companies Act 2006 (except that for the purposes of the membership requirement in section 1159(1)(b) and section (1)(c) of the Act, a company shall be treated as a member of another company even if its shares in that other company are registered in the name of its nominee or in the name of a person (or the nominee of that person) who is holding the shares as security);
"Tax Liabilities"	means any income tax, national insurance contributions (including secondary contributions), apprenticeship levy and any other liability, deduction, contribution, assessment or claim (including any interest, fines, penalties or expenses thereon);
"Third Parties Rights Act"	means the Contracts (Rights of Third Parties) Act 1999;
"value for money"	means the most economic, efficient and effective manner appropriate to fulfilling (as the context requires) the requirements of the Authority in relation to the Project; and
"VAT"	means value added tax at the rate prevailing at the time of the relevant supply charged in accordance with the provisions of the Value Added Tax Act 1994.

1.2 In this Agreement:

- 1.2.1 all headings and sub-headings are for ease of reference only and are not to be taken into consideration in the interpretation and/or construction of this Agreement;
- 1.2.2 references to clauses, recitals and schedules (whether capitalised or otherwise) are references to clauses, recitals and schedules of and/or to this Agreement unless expressly stated;



- 1.2.3 references to specific legal or regulatory provisions (including Applicable Law) include any amendment, update, replacement, consolidation and/or re-enactment of the same (in whatever form) from time to time and include any and all subordinate instruments, orders, rules, regulations and byelaws made thereunder and any guidelines issued in respect thereof from time to time;
- 1.2.4 references to specific standards and codes of practice, guidance and/or other instruments include any amendment, update, replacement, consolidation and/or re-enactment of the same from time to time;
- 1.2.5 a reference to a person includes a reference to a firm, a body corporate, an unincorporated association, a partnership or a legal entity or public body of any kind;
- 1.2.6 any reference to a public body shall be deemed to include any successor to such organisation or authority which takes over its functions or responsibilities;
- 1.2.7 words used in this Agreement, regardless of the gender specifically used, shall be deemed and construed to the masculine, feminine or neuter, as the context requires;
- 1.2.8 words expressed in the singular include the plural and vice versa;
- 1.2.9 where general words are followed or preceded by specific examples, the nature of such specific examples shall not restrict or qualify the natural meaning of the general words and the "ejusdem generis" rule shall not apply;
- 1.2.10 an obligation on the Consultant to do any act, matter or thing includes, unless expressly stated otherwise, an obligation to procure that it is done;
- 1.2.11 where the Authority is required to provide its "approval" under this Agreement, such approval shall be in writing (and "approve" and "approved" shall be construed accordingly); and
- 1.2.12 this Agreement shall not be construed or interpreted against or to the disadvantage of the Authority on the grounds that this Agreement represents the Authority's standard terms and conditions of business and/or that this Agreement and/or any particular term or condition hereof may have originated from the Authority.

2. COMMENCEMENT

Subject always to clause 3.1, the Parties' obligations under this Agreement shall start on the Effective Date.

3. RETROSPECTIVE EFFECT

3.1 Notwithstanding the Effective Date, the Parties acknowledge and agree that:

- 3.1.1 this Agreement shall have effect as if it had been executed upon the date that the Consultant first performed any services in relation to the Project (which henceforth shall be deemed to form part of the Services);
- 3.1.2 the duties and obligations contained in this Agreement shall be deemed to apply to such services preceding the Effective Date; and
- 3.1.3 any payments made by the Authority to the Consultant in respect of the same shall be treated as payments on account of sums due under this Agreement.



4. **CONSULTANT'S OBLIGATIONS**

- 4.1 The Consultant shall perform the Services in relation to such part(s) of the Project as the Authority may from time to time direct in accordance with the terms of this Agreement.
- 4.2 The Consultant undertakes and warrants to the Authority that it:
- 4.2.1 has exercised and shall continue to exercise in the performance of the Services the Standard of Care;
 - 4.2.2 shall at all times also have full regard to and comply with:
 - (a) the terms and conditions of this Agreement;
 - (b) the Applicable Laws;
 - (c) the Authority's Policies;
 - (d) the Relevant Consents; and
 - (e) the Standards and Codes of Practice; and
- 4.3 The Consultant shall comply with the reasonable instructions of the Authority under this Agreement (to the extent not inconsistent with the terms of this Agreement and the Services as more particularly described herein).
- 4.4 The Authority shall, as soon as reasonably practicable in the context, from time to time:
- 4.4.1 provide to the Consultant any information in the Authority's possession or control that is reasonably requested by the Consultant in writing that is relevant to the Consultant's obligations under this Agreement and which has not previously been provided to the Consultant by or on behalf of the Authority; and
 - 4.4.2 give such instructions and/or approvals and make decisions (or procure that the Other Consultants and/or the Project Contractor give instructions or approvals and make decisions) as reasonably requested by the Consultant in order to allow the Consultant to comply with its obligations under this Agreement.
- 4.5 The Consultant warrants that where:
- 4.5.1 copies of any reports and/or findings of any investigations carried out in respect of the Project; and/or
 - 4.5.2 details of any preliminary works carried out in respect of the Project,
- have been given to the Consultant by or on behalf of the Authority, the Consultant shall exercise the Standard of Care to have full regard to such reports, findings and preliminary works when carrying out the Services.
- 4.6 Notwithstanding any other provision of this Agreement nothing in clauses 4.2.2(c) – (e), 7.2.3, 7.2.4, 8.1.1 and 8.1.2 shall be interpreted as requiring or having the effect so as to require the Consultant to achieve a higher standard of performance of its obligations than the Standard of Care.



5. PERFORMANCE OF THE SERVICES

5.1 The Consultant acknowledges and agrees that the Authority is relying and is entitled to rely upon the Consultant's professional expertise and judgment in connection with the provision of the Services in connection with the Project.

5.2 The Consultant shall:

5.2.1 generally proceed with the Services regularly and diligently and in any event in accordance with the Services Programme; and

5.2.2 without prejudice to the generality of clause 5.2.1:

- (a) have regard to any and all key dates and/or milestones (of any type and nature) relating to the Project, whether specified in the Services Schedule and/or as notified by or on behalf of the Authority to the Consultant from time to time, including (without limitation) any date(s);
- (b) by which the Authority is obliged (or advises the Consultant that it intends) to provide any materials and/or information to the Other Consultants and/or the Project Contractor and in respect of which the Consultant is responsible for preparing (in whole or in part) under this Agreement;
- (c) on which the Consultant has agreed to meet the Authority, the Other Consultants, the Project Contractor and/or any third parties and/or provide information and/or materials (of any type) pursuant to its obligations under this Agreement; and/or
- (d) that are notified to the Consultant by or on behalf of the Authority from time to time as being critical to the pre-construction, design, construction and commissioning stages of the Project and/or any part thereof in both cases,

and, subject to clause 5.4, the Consultant shall use all reasonable endeavours to see that it performs its duties and obligations under this Agreement so that it shall not, by its own acts and/or omissions, cause such key dates and/or milestones to be missed, delayed or exceeded, with the Consultant acknowledging that a failure by it to satisfy the requirements of this clause 5.2.2 may have an adverse impact upon the ability of the Authority to deliver the Project within its proposed budget for delivering the Project and/or the ability of any other party engaged in relation to or with an interest in the Project (as notified by the Authority to the Consultant from time to time) to satisfy and/or perform and/or satisfy their own obligations in relation to the Project.

5.3 The Consultant shall rectify any defects, errors and/or omissions in any Materials produced by or on behalf of it in connection with the Services as soon as reasonably practicable upon becoming aware (or notified by the Authority) of the same at its own time and cost.

5.4 If at any time the Consultant is prevented or delayed in the performance of its duties and obligations under this Agreement due to:

- 5.4.1 any impediment, prevention or default, whether by act or omission, by the Authority, a member of the Other Consultants and/or the Project Contractor;
- 5.4.2 an instruction of the Authority under this Agreement;
- 5.4.3 the suspension of the Services pursuant to clause 42;



- 5.4.4 the carrying out of work by a statutory undertaker in pursuance of its statutory obligations in relation to the Project, or the failure to carry out the same; or
- 5.4.5 a delay in receipt of any necessary permission or approval of any statutory body, which the Consultant has exercised all reasonable endeavours to avoid,

and save where such events are not in any way consequent upon or necessitated by any negligence, omission, default, breach of contract or breach of statutory duty of the Consultant, its servants or agents or any Consultant or supplier or their respective servants or agents:

- (a) the Consultant shall notify the Authority as soon as possible of the same (but no later than five (5) Business Days following it becoming aware of the occurrence of the delay or prevention), giving the specific reason(s) for such delay or prevention, together with:
 - (i) its best estimate of its effect and the remedial action(s) the Consultant believes are necessary; and
 - (ii) (if appropriate) its proposals for any additional time that the Consultant considers, acting reasonably, that it may be required to expend to address the impact of the relevant event(s) on its performance of the Services (determined by reference to the Hourly Rates or, in the context of any fixed cost agreed pursuant to clause 25.1.2, the Consultant's estimate as to what, if any, adjustment may be required to such fixed cost to address the same);
- (b) the Consultant shall use all reasonable endeavours to, as soon as practicable, resume and expedite the performance of the Services so as to complete the same with all reasonable speed; and
- (c) the Authority shall (acting reasonably) and having due regard to the nature, extent and impact of the relevant event(s) of prevention or delay) notify the Consultant in writing of any adjustments to any of the key dates and/or milestones (of any type and nature) and/or its entitlement to payment relating to the delivery of the Project (as referred to at clause 5.2.2) that it agrees as a consequence of such event(s) of prevention or delay and such adjustment(s) shall be effective from the date of such notification.

6. SERVICES PROGRAMME

- 6.1 If a Services Programme is not identified in the Agreement Particulars as at the Effective Date, the Consultant shall submit a first version of the Services Programme to the Authority within twenty (20) Business Days of the Effective Date and the Authority shall have the right to withhold twenty-five per cent (25%) of all sums that may become due to the Consultant in connection with this Agreement until such time as the first version of the Services Programme is provided that complies with the requirements of this clause 6.
- 6.2 The Consultant shall provide to the Authority a revised and updated version of the Services Programme:
 - 6.2.1 on each Services Programme Date; and/or
 - 6.2.2 (as the context requires) as soon as reasonably practicable after receiving a written request from the Authority for the same.
- 6.3 Each Services Programme submitted by the Consultant pursuant to and in accordance with this clause 6 shall include the following:
 - 6.3.1 the commencement date of the Services;



- 6.3.2 the planned completion date for:
- (a) the Services; and
 - (b) any milestones that apply to the Services;
- 6.3.3 the order and timing of the tasks and operations that the Consultant is required and/or plans to undertake in order to carry out and complete the Services (and to achieve any milestones in respect of the same) in accordance with this Agreement;
- 6.3.4 the dates by which, in order to carry out and complete the Services, the Consultant requires:
- (a) access to a person (including any Other Consultant and/or the Project Contractor), place (including the Project Site) and/or thing;
 - (b) information and/or other materials to be provided by the Authority, any Other Consultant and/or the Project Contractor; and
 - (c) any information, approvals, consents and/or instructions from the Authority, any Other Consultant and/or the Project Contractor;
- 6.3.5 on each Services Programme other than the first version:
- (a) the progress of the Services (and any milestones that apply to the Services);
 - (b) the impact of any completed Services to date on the remaining Services; and
 - (c) how the Consultant plans to deal with any issues that have arisen in connection with the Services and/or the Project; and
- 6.3.6 other information which the Services Schedule requires the Consultant to show on each Services Programme submitted for acceptance.
- 6.4 Within ten (10) Business Days of the Consultant submitting a Services Programme to the Authority pursuant to this clause 6, the Authority will notify the Consultant in writing if it determines, acting reasonably, the Services Programme does not include the information required pursuant to this clause 6 and, within five (5) Business Days of the date of such notice, the Consultant shall submit a further version of the Services Programme to the Authority that addresses the points raised by the Authority.

7. BUDGETARY CONSTRAINTS & PROGRAMME REQUIREMENTS

- 7.1 The Consultant shall, exercising the Standard of Care:
- 7.1.1 have regard to any and all budgetary constraints imposed upon the Project and/or the performance of the Services (and as notified by the Authority to the Consultant) from time to time;
 - 7.1.2 advise the Authority as soon as reasonably practicable upon becoming aware of any elements of the Project or any subsequent instructions issued by the Authority which the Consultant has reason to believe may result in the Authority's budget for all or part of the Project being exceeded; and/or



- 7.1.3 not do or permit to be done anything that would or might cause the Authority's budget for the Project to be exceeded without first obtaining the Authority's prior written consent thereto.

7.2 The Consultant shall:

- 7.2.1 in collaboration with the Authority, the Other Consultants and the Project Contractor, establish and develop a co-ordinated programme for the production, development, review, refinement, approval, release and circulation of any Materials prepared by or on behalf of the Consultant in relation to the Project;
- 7.2.2 use all reasonable endeavours to ensure that such Materials are produced, developed, reviewed, refined, approved, released and circulated in accordance with such programme and any updates and/or revisions thereto agreed between the Consultant, the Authority, the Other Consultants and the Project Contractor;
- 7.2.3 keep the Authority fully, properly and promptly apprised of any and all programme slippages and/or anticipated programme slippages and the likely consequences thereof; and
- 7.2.4 perform the Services and comply with its obligations in or arising out of this Agreement in accordance with such other time constraints as the Authority, acting reasonably, may from time to time agree with the Consultant.

8. **REPORTING REQUIREMENTS**

8.1 The Consultant shall:

- 8.1.1 keep the Authority fully, properly and promptly apprised of any and all pertinent developments concerning those matters which are the Consultant's responsibility under this Agreement as and when they occur;
- 8.1.2 send to the Authority copies of all pertinent correspondence and documents (including minutes of meetings) sent or received by the Consultant in connection with the Project;
- 8.1.3 liaise and co-operate at all times with the Other Consultants and the Project Contractor and shall have regard to the designs and services provided by and to be provided by them and/or any opinion or comments they may have;
- 8.1.4 attend such meetings as may be required by the Authority; and
- 8.1.5 at no additional cost to the Authority, supply the Authority with all such documents and drawings as are reasonably required for the execution of the Project (including without limitation the Materials) as and when requested by the Authority.

- 8.2 Without prejudice to the generality of clause 8.1, the Consultant shall provide the Authority with a written report following each visit to the Project Site in such form and detail as the Authority may reasonably prescribe, reporting on progress of those elements of the Project for which the Consultant is responsible.

9. **ADDITIONAL SERVICES**

- 9.1 From time to time, the Authority may issue a written instruction to the Consultant requesting the Consultant to carry out Additional Services (an "**Additional Services Request**").



- 9.2 Where an Additional Services Request is issued by the Authority pursuant to clause 9.1, the Consultant shall thereafter provide a quote in response to the same (an **"Additional Services Quote"**) setting out the:
- 9.2.1 proposed scope of the requested Additional Services;
 - 9.2.2 the timescale within such Additional Services shall be completed; and
 - 9.2.3 the anticipated person time that will be expended to perform (or proposed fixed cost to perform, as applicable) the relevant Additional Services,
- within five (5) Business Days of receiving the Additional Services Request.
- 9.3 On receiving an Additional Services Quote from the Consultant in accordance with clause 9.2, the Authority shall within a further ten (10) Business Days of its receipt of the Additional Services Quote (or within such other period as the Authority may, acting reasonably, notify to the Consultant during this period) either:
- 9.3.1 confirm in writing that it wishes the Consultant to carry out the relevant Additional Services on the basis specified in Additional Services Quote (an **"Additional Services Instruction"**); or
 - 9.3.2 withdraw the Additional Services Request at no cost to the Authority, following which the Consultant shall not perform those Additional Services.
- 9.4 The Consultant:
- 9.4.1 shall not perform (and the Authority shall have no liability to make any payment to the Consultant in respect of) any Additional Services unless and until the Authority has first issued an Additional Services Instruction to the Consultant in respect of the relevant Additional Services; and
 - 9.4.2 where the Consultant performs any Additional Services before receiving such written confirmation, it shall do so at its own risk and cost.
10. **CO-OPERATION & GOOD FAITH**
- 10.1 The Consultant shall at all times co-operate with and act in good faith towards the Authority, the Other Consultants, the Project Contractor and/or third parties that the Authority advises the Consultant from time to time as having an interest in the Project.
- 10.2 Without prejudice to the generality of clause 10.1, the Consultant shall at all times co-operate with and act in good faith towards any member of the Other Consultants, the Project Contractor and/or any third party who is engaged by the Authority to provide and/or develop designs for any part of the Project and pro-actively provide whatever advice and/or assistance they may reasonably require in relation to the performance of its duties and responsibilities in connection with the Project, including:
- 10.2.1 assisting in the establishment and development of co-ordinated programmes for the production, development, review, refinement, approval, release and circulation of technical data and documents (including the Materials);
 - 10.2.2 producing, developing, reviewing, refining, seeking approval of, releasing and circulating the technical data and documents for which the Consultant is responsible (including the Materials) in accordance with the agreed programme;



10.2.3 preparing for and attending team co-ordination meetings and actioning any action points arising therefrom attributed to the Consultant; and

10.2.4 preparing for and attending meetings with and presentations to (inter alia) public organisations and/or authorities and/or other third parties with an interest in the Project.

11. LIMITATIONS ON CONSULTANT'S AUTHORITY

11.1 The Consultant shall not without the Authority's prior written approval (save where expressly permitted in the Services Schedule):

11.1.1 enter into any contractual or other commitment with any third party for and/or behalf of the Authority;

11.1.2 waive, settle or compromise any contractual or other entitlement that the Authority may have against any third party or which any third party may have against the Authority;

11.1.3 suspend or terminate any contract entered into by the Authority for the performance of any work, services or supplies pursuant to any contract entered into by the Authority;

11.1.4 make any alteration to or omission from the Services; and

11.1.5 make, approve or permit any material alteration or addition to or omission or deviation from those aspects of the design and/or specification of the Project and/or the Project budget, cost plan and/or programme which have previously been approved or agreed by the Authority.

12. HEALTH & SAFETY

12.1 The Principal Contractor and the Principal Designer in respect of the Project are the parties identified as such in the Agreement Particulars (or, if they are not so identified in the Agreement Particulars, may be notified by the Authority to the Consultant in writing from time to time).

12.2 Without prejudice to the requirements of clause 4.2, the Consultant shall at all times:

12.2.1 comply with its obligations under the CDM Regulations in relation to the provision of the Services and the Project;

12.2.2 exercise the Standard of Care, have regard to any Construction Phase Plan(s) and any and all instructions and/or directions issued by the Principal Designer and (as the context requires) the Principal Contractor in connection with the Project; and

12.2.3 co-operate with the Principal Designer and Principal Contractor, the Project Contractor (if not the Principal Designer and/or the Principal Contractor) and the Other Consultants so far as may be necessary to enable them to comply with their respective obligations under the CDM Regulations in relation to the Project,

in each case to the extent applicable to the Services.

12.3 The Consultant shall:

12.3.1 comply with any health and safety measures implemented by the Authority in relation to the Project;

12.3.2 promptly notify the Authority of any health and safety hazards which may arise in connection with the Project;



- 12.3.3 immediately notify the Authority in the event of any incident occurring in the performance of the Project where that incident causes any personal injury or damage to property which could give rise to personal injury; and
- 12.3.4 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 Authority on request.

13. **BASIS OF ENGAGEMENT & NON-EXCLUSIVITY**

13.1 The Consultant acknowledges and agrees that:

- 13.1.1 it is appointed by the Authority under this Agreement solely to provide the Services and to perform its duties and obligations under this Agreement;
- 13.1.2 it does not have the exclusive right to undertake any professional services to be performed and undertaken on behalf of the Authority under or pursuant to this Agreement and the Authority may, at its sole and exclusive discretion, issue instructions to third parties to carry out professional services and/or tasks which are the same as or similar to the professional services as set out in the Services Schedule, whether in relation to the Project or otherwise;
- 13.1.3 the Authority makes no guarantee to the Consultant in relation to any minimum value or value of professional services that the Consultant will be required to undertake under this Agreement as part of the Services; and
- 13.1.4 the Consultant shall have no entitlement to make any claim against the 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 loss of profit, loss of opportunity, loss of goodwill or otherwise) arising out of or in connection with it not being awarded any minimum value and/or volume of professional services under or in relation to this Agreement.

14. **OMISSIONS**

14.1 The Consultant acknowledges and agrees that:

- 14.1.1 the Authority may, at any time by way of a written instruction to the Consultant, remove or omit all or part of the Standard Services and/or any Additional Services instructed under this Agreement; and
- 14.1.2 the Authority shall have no liability whatsoever to the Consultant in respect of any such reduction or omission (whether in contract, tort (including negligence) or otherwise), which shall not give rise to any entitlement for the Consultant to claim for abortive costs, actual or expected loss of payment or profit, loss of revenue, loss of goodwill, loss of opportunity or any direct, consequential or indirect losses or for any other amount under this Agreement,

provided always that nothing in this clause 14.1 shall affect the entitlement of the Consultant to be paid for any part of the Services properly performed in accordance with this Agreement prior to the date of such reduction or omission.

15. **EARLY WARNING & CORRECTIVE ACTION NOTICES**

15.1 Except as otherwise approved by the Authority in advance and in writing:

- 15.1.1 all notices, reports, submissions, decisions, consents, approvals, agreements, opinions, instructions and other communications issued in relation to this Agreement shall be in writing, the effectiveness of which shall be determined pursuant to clause 55; and



- 15.1.2 each and every document (in whatever medium) and/or communication prepared and/or issued by or on behalf of the Consultant pursuant to this Agreement must be clearly marked **"OFFICIAL SENSITIVE"** or with such other security-related designation that the Authority notifies to the Consultant in writing from time to time.
- 15.2 The Consultant shall notify the Authority in writing (as an **"Early Warning Notice"**) as soon as it becomes aware of any actual or potential:
- 15.2.1 default by the Consultant of any of its obligations under this Agreement;
- 15.2.2 Non-Critical KPI Underperformance and/or Critical KPI Underperformance; and
- 15.2.3 adverse effect and/or threat to this Agreement,
- as well as proposing, in the Consultant's reasonable opinion, how any such matter(s) could be avoided or how their impact can be reduced, pursuant to which:
- (a) any such matter(s) shall be noted by the Authority as part of its internal risk register in connection with this Agreement; and
- (b) the Authority and the Consultant shall meet within ten (10) Business Days from the date of such Early Warning Notice to discuss its content and agree in writing the most appropriate course of action to avoid or minimise (as the context requires) such matter(s) (unless a longer time period is agreed by the Authority, acting reasonably) (the **"Early Warning Proposal"**),
- with each Early Warning Notice and Early Warning Proposal being the subject of continued monitoring by the Authority and the Consultant at any future Progress Meetings.
- 15.3 Without prejudice to the generality of clause 15.2:
- 15.3.1 the Authority may issue a written notice to the Consultant at any time (a **"Corrective Action Notice"**) where the Consultant:
- (a) may, in the reasonable opinion of the Authority, fail or has failed to implement any agreed actions on the part of the Consultant as set out an Early Warning Proposal;
- (b) may be, or is subject to and/or affected by, in the reasonable opinion of the Authority:
- (i) any default by the Consultant of any of its obligations under this Agreement; and/or
- (ii) any other adverse circumstance that is affecting or threatening or could affect and/or threaten (as the context requires) this Agreement; and/or
- (c) may, in the reasonable opinion of the Authority (but subject always to the provisions of clause 17), be subject to a Non-Critical KPI Underperformance and/or a Critical KPI Underperformance if the Consultant does not take reasonable steps to avoid the continued and/or anticipated underperformance of its obligations that are assessable by the Authority under this Agreement by reference to the KPI Schedule, as identified by the Authority in the Corrective Action Notice;



- 15.3.2 any Corrective Action Notice issued pursuant to clause 15.3.1 shall:
- (a) set out the minimum period during which the Corrective Action Notice will remain in force (the "**CAN Period**"); and
 - (b) specify any remedial action which the Authority requires the Consultant to undertake as a pre-condition to discharge of the Corrective Action Notice;
- 15.3.3 following the issue of a Corrective Action Notice, the Consultant and the Authority shall meet as soon as reasonably possible (and thereafter, on such further dates as the Authority may reasonably require from time to time) in order to discuss the progress of the Consultant in discharging any remedial actions referred to in the Corrective Action Notice.

16. PROGRESS MEETINGS & REPORTING

- 16.1 The Consultant shall attend a meeting with the Authority on a Quarterly basis (or at such other frequency as the Authority may notify to the Consultant in writing from time to time) on a date to be notified in writing by the Authority to the Consultant no later than five (5) Business Days before the intended date of the meeting (or, as the Authority may agree at its sole discretion, on such other date as it may agree with the Consultant in writing) (each a "**Progress Meeting**") to review and discuss (without limitation):
- 16.1.1 in the context of the provision of the Services generally, details of:
- (a) the delivery of the Services;
 - (b) the status and progress of the Project(s) to which the Services relate (if any);
 - (c) any sums (of any type) paid or anticipated to be paid to the Consultant by the Authority pursuant to and in accordance with this Agreement for the Services as at (or, as the context requires, by) the date of the Progress Meeting;
 - (d) all sums paid by the Consultant to the Authority and any third parties and Consultant Related Parties under and in accordance with the Services; and
 - (e) (to the extent applicable) any rebates received and/or paid by the Consultant in connection with the Services and/or this Agreement;
- 16.1.2 the content of any Progress Reports submitted by the Consultant during the preceding Quarter;
- 16.1.3 the Consultant's progress in relation to achieving the KPIs, including the remedying by the Consultant of any Non-Critical KPI Underperformance and/or Critical KPI Underperformance;
- 16.1.4 any current Early Warning Notices, the progress of any Early Warning Proposals and any current Corrective Action Notices;
- 16.1.5 any marketing initiatives in connection with this Agreement;
- 16.1.6 any case studies to be provided by the Consultant in connection with any completed Services;
- 16.1.7 the performance of the Consultant generally under this Agreement;
- 16.1.8 any anticipated or actual amendments to the Project Programme;



- 16.1.9 the Consultant's likely capacity and ability to undertake, if required, any Services during the following Quarter (and beyond, as appropriate);
- 16.1.10 any potential differences and/or disputes under this Agreements;
- 16.1.11 the health and safety records of the Consultant in connection with any Services; and/or
- 16.1.12 any other item(s) that the Authority notifies to the Consultant in advance of the Progress Meeting.
- 16.2 The Consultant shall ensure that its Services Manager (or such deputy or deputies as the Authority may approve in advance of the Progress Meeting in writing, provided that at least two (2) Business Days' notice of the same is given by the Consultant to the Authority) attends each Progress Meeting.
- 16.3 The Consultant shall provide a written report to the Authority (in a form to be approved by the Authority in writing in advance of the submission of the first of such report) on the first (1st) Business Day of each month throughout the provision of the Services (or at such other frequency and on such other date as the Authority may notify to the Consultant in writing from time to time) (each a **"Progress Report"**) that provides an objective and transparent assessment on the items referred to in clause 16.1.1, clause 16.1.7, clause 16.1.9 and clause 16.1.11, as well as any other items that the Consultant (acting reasonably) determines that the Authority should be aware of in connection with this Agreement on an Open Book Basis.
- 17. KEY PERFORMANCE INDICATORS**
- 17.1 The Consultant shall use all reasonable endeavours to achieve the KPI Standard for each KPI throughout the provision of the Services and the Authority shall provide a written assessment of the Consultant's performance against the KPIs at each Progress Meeting or, at its sole discretion, at such other time(s) as it considers appropriate in the circumstances.
- 17.2 Without prejudice to any other rights or remedies of the Authority under this Agreement (including under clause 42), the Consultant acknowledges and agrees that where it is subject to a Non-Critical KPI Underperformance or Critical KPI Underperformance at any time, the Authority shall have the right to exercise (in its absolute and sole discretion) all or any of the following remedies:
- 17.2.1 the Authority may, by written notice to the Consultant identifying an on-going Non-Critical KPI Underperformance and/or a Critical KPI Underperformance, require the Consultant to prepare and submit an Improvement Plan to the Authority for approval within ten (10) Business Days of the date of the notice, following which:
- (a) where, upon receiving the Improvement Plan, the Improvement Plan is:
- (i) not approved by the Authority, the Authority shall:
- (1) notify the Consultant in writing of such non-approval in writing as soon as is reasonably practicable in the circumstances, specifying why the Improvement Plan is not approved and specifying the Authority's requirements in relation to the content of the Improvement Plan;
- (2) require the Consultant to resubmit an updated Improvement Plan within five (5) Business Days of the date of such notice; and
- (3) unless the Authority specifies otherwise in writing, the process set out at clauses 17.2.1(a)(i)(1) and 17.2.1(a)(i)(2) shall be



repeated until such time as the Authority approves any updated Improvement Plan; or

(ii) approved by the Authority:

- (1) the Authority shall notify the Consultant of such approval in writing as soon as is reasonably practicable in the circumstances; and
- (2) the Consultant shall implement any corrective actions specified in the approved Improvement Plan in accordance with the requirements and within any timescales specified in such agreed Improvement Plan;

17.2.2 the Authority may issue an Improvement Notice to the Consultant, following which the Consultant shall implement any corrective actions specified in the Improvement Notice in accordance with the requirements of the Authority and within any timescales specified by the Authority in the Improvement Notice; and/or

17.2.3 the Authority may, by written notice to the Consultant, require the Consultant to attend one (1) or more meetings with the Authority, at a time and location to be specified by the Authority in writing, to discuss and resolve any issues identified by the Authority in relation to the identified Non-Critical KPI Underperformance or Critical KPI Underperformance in such notice,

and where the Consultant fails to comply with the requirements specified in an agreed Improvement Plan and/or an Improvement Notice issued by the Authority, or fails to remedy any Non-Critical KPI Underperformance and/or a Critical KPI Underperformance in a manner agreed with the Authority at the meeting convened pursuant to clause 17.2.3, the Authority shall be entitled to terminate the engagement of the Consultant under this Agreement with immediate effect in writing.

18. THE SERVICE MANAGER & KEY PERSONNEL

18.1 The Consultant shall appoint the Services Manager to direct and control the overall performance by the Consultant of the Services and the Services Manager, or any replacement approved by the Authority pursuant to clause 18.4 or clause 18.5, shall have full authority to act on behalf of the Consultant for all purposes in connection with this Agreement.

18.2 The Consultant warrants and undertakes to the Authority that the Services Manager shall:

- 18.2.1 assume and maintain direct personal control, management and supervision of the Services to be performed by the Consultant;
- 18.2.2 establish and maintain direct and regular personal contact and communication with the Authority and other members of the Other Consultants and/or the Project Contractor on all matters pertaining to the Consultant's responsibilities under this Agreement;
- 18.2.3 prepare for and make itself available to attend all key meetings with and presentations to, without limitation, public organisations and/or authorities, and/or contractors with whom the Authority is or may be in negotiation; and
- 18.2.4 abstain from any and all other professional appointments and/or responsibilities which might impede or impair the ability of the Services Manager to fulfil the aforementioned functions.



- 18.3 The Consultant warrants that, subject to clause 18.4 and/or clause 18.5, it shall ensure that the Key Personnel maintain a material involvement in and shall be available for as long as may be reasonably necessary for the proper performance by the Consultant of the Services.
- 18.4 The Consultant shall not:
- 18.4.1 remove any of the Key Personnel and/or the Services Manager nor any person approved by the Authority pursuant to this clause 18.4 or clause 18.5 without the prior written approval of the Authority (such approval not to be unreasonably withheld or delayed) and, if such approval is given, the Consultant shall be responsible for replacing such person with a person who has been approved by the Authority in writing; and
- 18.4.2 otherwise appoint other personnel as "Key Personnel" without the Authority's prior approval.
- 18.5 The Authority shall be entitled (acting reasonably and after consultation with the Consultant), to require the removal of any person engaged in the performance of the Services whose, in the Authority's reasonable opinion, performance or conduct is or has been unsatisfactory and the Consultant shall promptly remove such person and replace them with a person previously approved by the Authority in writing pursuant to clause 18.4.
- 18.6 Entry upon and occupation of the Project Site by any of the Consultant's personnel shall be by way of licence only and in the event that the Consultant's engagement under this Agreement is terminated or suspended, the licence shall automatically determine and the Consultant shall procure that its personnel immediately vacate the same.
- 18.7 Without prejudice to clause 20, if any Consultant Related Party disrupts or otherwise adversely affects this Agreement, the Authority may require the exclusion of that individual or organisation from participating in this Agreement and the Consultant shall engage a suitable replacement and notify the Authority accordingly.
- 18.8 The Authority may, by notice to the Consultant, refuse to admit onto or withdraw permission to remain on the Project Site:
- 18.8.1 any Consultant Related Party; or
- 18.8.2 any person employed or engaged by a Consultant Related Party,
- whose admission or continued presence at the Project Site would, in the Authority's reasonable opinion, be undesirable.
19. **SUB-CONTRACTING**
- 19.1 The Consultant shall not without the prior written consent of the Authority:
- 19.1.1 sub-contract to any person the performance of the whole or part of the Services;
- 19.1.2 authorise the appointment of any third party to design any element of the Project falling within the Consultant's discipline,
- and the Consultant shall provide to the Authority a copy of any Sub-Contract that it enters into in connection with the Services within three (3) Business Days of entering into the same.



- 19.2 The Consultant shall ensure that the terms of any Sub-Contract entered into by it pursuant to clause 19.1 includes a provision:
- 19.2.1 equivalent to clause 23, with the Authority being named as a beneficiary to such licence granted thereunder;
 - 19.2.2 requiring any Sub-Consultant appointed by the Consultant:
 - (a) as a design consultant (or with design responsibility);
 - (b) to undertake site investigation and/or surveying services,

in relation to any element of the Project to, as a condition precedent to their entitlement to further payment under its Sub-Contract following a request from the Authority for the same, provide a collateral warranty in the same terms (adjusted for context) as the Collateral Warranty in favour of the Authority and such other parties as the Authority may notify to the Consultant as having an interest in the Project from time to time;
 - 19.2.3 allowing the Consultant to terminate the Sub-Contract if this Agreement is terminated (in each case, for any reason); and
 - 19.2.4 requiring the Sub-Consultant to, on any determination or termination of this Agreement by the Authority or where the Project Site is sold or leased to a third party that is not the Authority, consent to and (if requested by the Authority or the Consultant) effect the novation of its Sub-Contract to the Authority or any person that the Authority nominates with an interest in the Project.
- 19.3 The appointment of any Sub-Consultant pursuant to clause 19.1 to carry out any services on behalf of the Consultant shall not in any way relieve the Consultant of its obligations under this Agreement and the Consultant shall remain wholly responsible for:
- 19.3.1 carrying out and completing the Services in all respects in accordance with this Agreement;
 - 19.3.2 checking the services and/or work carried out (and, as the context requires, any materials and/or supplies provided by a Sub-Consultant) to ensure that it complies with the requirements of this Agreement; and
 - 19.3.3 the co-ordination and integration of such work into the design of the Project.
20. **SECURITY & VETTING**
- 20.1 The Consultant shall:
- 20.1.1 procure that, in respect of all potential individuals and parties to be engaged by the Consultant in connection with this Agreement (whether an employee of the Consultant or any Consultant Related Party) (each a "**Named Employee**"), before attending the Project Site:
 - (a) that Named Employee is questioned as to whether they have any Convictions;
 - (b) a Disclosure and Barring Service check is undertaken in respect of that Named Employee; and
 - (c) save to the extent prohibited by Applicable Law, a copy of the results of such check are notified to the Authority;



- 20.1.2 procure that no person who discloses any Convictions, or who is found to have any Convictions following the results of a Disclosure and Barring Service check, is employed without the prior written consent of the Authority in connection with this Agreement (such consent not to be unreasonably withheld or delayed);
- 20.1.3 save to the extent prohibited by Applicable Law, procure that the Authority is informed if any member of the Consultant's staff (or any employee of a Consultant Related Party), whether a Named Employee or otherwise, involved in connection with this Agreement who, subsequent to their commencement of employment as a member of staff, receives a Conviction or whose previous Convictions become known to the Consultant; and
- 20.1.4 without prejudice to clause 20.1.1 to clause 20.1.3 (inclusive), where the Authority notifies the Consultant that it will be working in a regulated activity with vulnerable groups for the purposes of the Safeguarding Vulnerable Groups Act 2006, or is working in an environment deemed as sensitive and/or vulnerable for any reason by the Authority, comply at its own cost with the requirements of the Authority to the extent relevant to the delivery of the relevant Services and/or Project, which may include (without limitation):
- (a) asking any person acting for or on behalf of the Consultant in connection with the Services and/or Project for the details of any Convictions, obtaining an enhanced Disclosure and Barring Service disclosure (including a barred list) check; and/or
 - (b) complying with the BPSS or similar standard,
- and the results of such disclosures shall be shared with the Authority in writing.

20.2 The Consultant:

- 20.2.1 shall ensure that it and its sub-constructors comply with the Official Secrets Acts and (as the context requires), the provisions of section 11 of the Atomic Energy Act 1946 in the performance of its duties and obligations under this Agreement;
- 20.2.2 shall notify its employees and each of its Consultant Related Parties of their duties pursuant to and in accordance with this clause 20.2; and
- 20.2.3 acknowledges and agrees that it shall comply with and shall ensure that its Consultant Related Parties comply with any security, safeguarding and/or vetting requirements and/or instructions that the Authority notifies the Consultant of in writing from time to time in connection with the attendance of the Consultant at the Project Site.

20.3 The Consultant agrees and acknowledges that at all times during its engagement under this Agreement:

- 20.3.1 it shall comply in all respects with any security requirements specified by the Authority in relation to this provision of the Services and it shall comply in all respects with the Security Requirements;
- 20.3.2 it shall comply with the Information and Security Requirements;
- 20.3.3 the Authority may, without prior notice, search any persons or vehicles engaged or used by the Consultant and/or a Consultant Related Party at the Project Site from time to time and at its sole discretion;
- 20.3.4 at the written request of the Authority the Consultant shall, at its own cost, provide a list of the names, addresses, national insurance numbers and immigration status of all individuals who may require admission to the Project Site, specifying the capacities in which such individuals are engaged by the Consultant in connection with the relevant Project(s) and



provide such further information and details as may be reasonably requested by the Authority; and

- 20.3.5 the Consultant shall ensure that it and all its Consultant Related Parties who have access to the Project Site, an Authority ICT System or Authority Data have been cleared and authorised to access the same pursuant to and in accordance with the BPSS.

- 20.4 Without prejudice to the generality of clauses 20.1 to 20.3 (inclusive), the Authority shall provide to the Consultant (as the context requires), upon receipt of a written request from the Consultant for the same, a written copy of its security policies and procedures current as at the time of the request.

21. COLLATERAL WARRANTIES

- 21.1 Within ten (10) Business Days of receiving a written request from the Authority, the Consultant shall provide to the Authority a Consultant Collateral Warranty in favour of (as stated in the request made by the Authority) any party or parties with an interest in the Project, the Services and/or the Project Site or any part thereof.
- 21.2 Within ten (10) Business Days of receiving a written request from the Authority, the Consultant shall procure that any Sub-Consultant of the type referred to in clause 19.2.2 shall provide to the Authority a Sub-Consultant Collateral Warranty in favour of (as stated in the request made by the Authority) the Authority, any party or parties with an interest in the Project, the Services and/or the Project Site or any part thereof.
- 21.3 Where the Consultant fails to provide a Collateral Warranty as requested by the Authority pursuant to clause 21.1 and/or clause 21.2 within the timescales stated therein, the Consultant shall have no entitlement to any further payment under this Agreement until such times as the outstanding Collateral Warranty (or Collateral Warranties) has (or have) been so provided.

22. NOT USED

23. INTELLECTUAL PROPERTY

- 23.1 The Consultant agrees and acknowledges that:

- 23.1.1 the Intellectual Property Rights in all Consultant Materials shall remain vested in the Consultant, but the Consultant grants to the Authority (and its nominees) in relation to Consultant Materials that relate primarily to this Agreement with full title guarantee an irrevocable, royalty-free, worldwide and non-exclusive licence in perpetuity to use, copy and reproduce its Materials for any purpose whatsoever, including but not limited to in connection with this Agreement and in connection with (but without limitation) the design, construction, completion, operation, extension, maintenance, letting, management, sale, advertisement, alteration, reinstatement and repair of any part of any Project (and any other project of the Authority);
- 23.1.2 the Intellectual Property Rights in all Authority Materials shall remain vested in the Authority but it shall grant to the Consultant and its nominees a non-exclusive and royalty-free licence to copy, use and reproduce such Authority Materials for any purpose in connection with this Agreement, provided always that such licence shall automatically terminate upon the termination of this Agreement;
- 23.1.3 the licence granted under clause 23.1.1 carries the right for the Authority to grant sub-licences, is transferable to third parties (including by way of an assignment and/or novation) and shall subsist notwithstanding the expiry of this Agreement or termination of this Agreement and/or the Consultant's appointment hereunder (for any reason);



- 23.1.4 the rights given to the Authority to assign, novate, transfer and/or otherwise deal with the licence given under clause 23.1.1, pursuant to clause 23.1.3 or otherwise, shall include the right for the Authority to use such means to grant the licence to a Central Government Body or to any body which carries on any of the functions and/or activities that have previously been performed and/or carried on by the Authority at any time;
- 23.1.5 any change in the legal status of the Authority which means that it ceases to be a Central Government Body shall not affect the validity of the licences granted under clause 23.1.1 and, if the Authority ceases to be a Central Government Body, the successor body to the Authority shall be entitled to the benefit of the licence granted in clause 23.1.1; and
- 23.1.6 if a licence granted under clause 23.1.1 is novated as permitted by this clause 23 or there is a change in the Authority's status pursuant to clause 23.1.5, the rights acquired on that novation or change of status shall not extend beyond those previously enjoyed by the Authority.
- 23.2 The Consultant unconditionally and irrevocably agrees to waive, in respect of any Consultant Materials in respect of which it has granted a licence clause 23.1.1, all moral rights to which the Consultant may now or at any future time be entitled under the Copyright, Designs and Patents Act 1988 and/or under any other Applicable Law in respect of the Consultant Materials, with this waiver being made in favour of the Authority and extended to (as the context requires) the sub-licensees, assignees, transferees and successors in title of the Authority.
- 23.3 The Consultant warrants and undertakes that:
- 23.3.1 all Consultant Materials are and will continue to be its own original work (or the original work of Consultant Related Parties, as appropriate);
- 23.3.2 the licence granted in any Consultant Materials pursuant to clause 23.1.1 does not and will not at any time infringe the rights of any third party;
- 23.3.3 it has not and will not infringe the rights of the Authority or any other third party in the use of any Authority Materials to which the licence provided by the Authority pursuant to clause 23.1.2 applies; and
- 23.3.4 it has obtained (and shall maintain at all times) all of the necessary licenses and consents in relation to the Intellectual Property Rights that are used or may be used by it or licenced to and/or by it under or in connection with this Agreement and will provide evidence of the same on the written request of the Authority.
- 23.4 The Consultant shall not be liable for any such use by the Authority or its nominees, sub-licensees, transferees and/or successors in title of any Consultant Materials licenced to the Authority under clause 23.1.1 for any purpose other than that for which the Consultant Materials were prepared and/or provided (as the context requires) by the Consultant.
- 23.5 The Authority shall have no liability whatsoever to the Consultant or any third party whatsoever (whether in contract, tort (including negligence), for breach of duty or otherwise) for any loss or damage of whatever kind and however caused arising out of or in connection with the use of and/or reliance by the Consultant on any Authority Materials (save for fraudulent misrepresentation) in respect of which a licence has been provided in favour of the Consultant pursuant to clause 23.1.2.
- 23.6 The Consultant shall indemnify the Authority and its sub-licensees, assignees, transferees and successors in title against, without limitation, all payments, losses, demands, claims, damages, actions, costs, legal fees, fines, financial penalties and expenses that are paid, made or incurred by the Authority as a consequence of and in relation to any actual and/or alleged infringement of Intellectual Property Rights arising out of or in connection with its Consultant Materials and/or the Consultant's use of the Authority Materials.



24. INSURANCES

24.1 The Consultant shall maintain professional indemnity insurance covering (inter alia) its liabilities under this Agreement upon market terms and conditions prevailing for the time being in the insurance market, and with reputable insurers lawfully carrying on such insurance business in the United Kingdom:

24.1.1 of a type of cover as specified in the Agreement Particulars;

24.1.2 in an amount not less than specified in the Agreement Particulars; and

24.1.3 for the period specified in the Agreement Particulars (but commencing on the Effective Date),

provided always that the said terms and conditions shall not include any term or condition to the effect that the Consultant must discharge any liability before being entitled to recover from the insurers, or any other term or condition which might adversely affect the rights of any person to recover from the insurers pursuant to the Third Parties (Rights Against Insurers) Act 1930, or any amendment or re-enactment thereof.

24.2 The Consultant shall maintain:

24.2.1 third party and public liability cover in connection with its duties and obligations under this Agreement in an amount not less than that stated in the Agreement Particulars; and

24.2.2 employer's liability insurance cover to cover any claim for personal injury to or the death of any person under a contract of service or apprenticeship with the Consultant and arising out of and in the course of the person's employment in connection with this Agreement, providing cover in an amount not less than that specified in the Agreement Particulars (and complying with the requirements of the Employer's Liability (Compulsory Insurance) Act 1969).

24.3 The Consultant shall not:

24.3.1 without the prior approval in writing of the Authority, settle or compromise with the insurers any claim which the Consultant may have against the insurers and which relates to a claim by the Authority against the Consultant, or by any act or omission lose or prejudice the Consultant's right to make or proceed with such a claim against the insurers; and

24.3.2 do anything which might render any of the insurance policies referred to in this clause 24 void or voidable and shall carry out its obligations under this Agreement and shall use all reasonable endeavours to ensure that its servants or agents shall carry out their respective obligations, in a manner that fully complies with all requirements, terms, conditions, stipulations and provisions of such insurances.

24.4 The Consultant shall immediately inform the Authority if any insurances that it is required to take out and maintain pursuant to this clause 24 cease to be available at commercially reasonable rates in order that the Consultant and the Authority can discuss means of best protecting the respective positions of the Authority and the Consultant in respect of the Project in the absence of such insurance.

24.5 The Consultant shall fully co-operate with any measures reasonably required by the Authority, including (without limitation):

24.5.1 completing any proposals for insurance and associated documents;



- 24.5.2 maintaining any insurances that it is required to maintain pursuant to this clause 24 at rates above commercially reasonable rates if the Authority undertakes in writing to reimburse the Consultant in respect of the net cost of such insurance to the Consultant above commercially reasonable rates; or
- 24.5.3 if the Authority effects such insurance at rates at or above commercially reasonable rates, reimbursing the Authority in respect of what the net cost of such insurance to the Authority would have been at commercially reasonable rates.

24.6 As and when reasonably requested to do so by the Authority the Consultant shall produce for inspection documentary evidence (including, if required by the Authority, a broker's certificate) that any insurances that it is required to maintain pursuant to this clause 24 are being maintained.

24.7 The Consultant's obligations to maintain insurance policies under this clause 24 shall in no way negate or limit any or all of its obligations or duties hereunder nor its liability in respect of any breach or non-performance of the same.

24.8 The Consultant's obligations to maintain professional indemnity insurance under clause 21.1 shall continue notwithstanding the termination of this Agreement for any reason whatsoever (including the termination of the Consultant's engagement hereunder).

25. PAYMENT

25.1 Basis of payment

- 25.1.1 Subject to clause 25.1.2 and clause 25.2, the Consultant shall be remunerated for carrying out the Services by reference to the time expended by it in doing so during the period immediately preceding the submission of a Payment Application, as calculated by reference to the Hourly Rate applicable to each person that has carried out the Services so provided during the relevant period on the following basis:

[Time expended] x [Hourly Rate for the relevant grade]
less
Disallowed Cost

- 25.1.2 From time to time, the Authority may agree in writing with the Consultant that an element of the Services may be provided by reference to a fixed cost, with such written agreement (and any qualifications stated therein, such as milestone payments and/or the application of Disallowed Cost to such Services) being deemed to form part of this Agreement as from the date of such agreement.

- 25.1.3 Unless otherwise agreed in writing between the Parties from time to time, all sums payable to the Consultant under this Agreement shall be deemed to be:

- (a) exclusive of VAT; and
- (b) inclusive of all costs, disbursements, expenses and overheads of any kind,

save that, in addition to the Hourly Rates, the Consultant shall be entitled to reimbursement at cost of all statutory fees reasonably and properly incurred by it in the performance of the Services and any payments to third parties.



25.2 Payment procedure

- 25.2.1 As from the Effective Date, the Consultant shall submit to the Authority on each Payment Application Date an invoice (a "**Payment Application**") that sets out the amount that the Consultant considers is due and payable to it in connection with the provision of the Services and the Additional Services undertaken by it since the date of the previous Payment Application (or Effective Date, in respect of the first Payment Application submitted), including as part of such Payment Application on an Open Book Basis:
- (a) full particulars of all items covered by that Payment Application;
 - (b) where the relevant part of the Services have been carried out on a time expended basis pursuant to clause 25.1.1, full details of all time spent by personnel of (or on behalf of) the Consultant in relation to the items covered by that Payment Application, including copies of timesheets and details of the grade of each person that has performed the relevant part of the Services (by reference to the Pricing Schedule);
 - (c) where an element of the Services is subject to a fixed cost as agreed pursuant to clause 25.1.2, details of:
 - (i) the relevant written agreement in relation to the fixed cost between the Parties; and
 - (ii) the basis upon which the Consultant is entitled to payment in relation to such Services (by reference to, as the context requires, any payment milestones that have been agreed in writing between the Parties); and
 - (d) any further details as the Authority may reasonably request from time to time,
- with it being a precondition to the validity of such Payment Application that it is accompanied by a valid VAT invoice.
- 25.2.2 Each Payment Application shall become due for payment on the Due Date for Payment.
- 25.2.3 The Authority shall, not later than five (5) days after the Due Date for Payment, give notice (a "**Payment Notice**") to the Consultant specifying the sum that the Authority considers to be or to have been due at the Due Date for Payment in respect of that Payment Application and the basis upon which that sum is calculated subject to any Pay Less Notice given by the Authority under clause 25.2.6 and the amount of any payment in respect of a Payment Application to be made by the Authority on or before the Final Date for Payment shall be the sum stated as due in the Payment Notice.
- 25.2.4 If a Payment Notice by the Authority in response to a Payment Application is not given in accordance with clause 25.2.3 then the amount of the relevant payment in respect of a Payment Application shall, subject to any Pay Less Notice given under clause 25.2.6, be the sum stated as due in the relevant Payment Application.
- 25.2.5 The Authority shall (subject to the provisions of clauses 25.2.6 and 25.2.7) pay to the Consultant the amount specified in each Payment Application which has become due for payment (the "**Notified Sum**") no later than the Final Date for Payment.



- 25.2.6 If the Authority intends to pay less than the Notified Sum as specified in a Payment Application, the Authority shall, not later than two (2) Business Days before the Final Date for Payment, give the Consultant notice of that intention specifying:
- (a) the sum that the Authority considers to be due to the Consultant at the date the notice is given; and
 - (b) the basis on which that sum is calculated,
- with this notice being a "**Pay Less Notice**."
- 25.2.7 It is immaterial that any amount specified as being due in a Pay Less Notice may be zero and where a Pay Less Notice is given, the payment to be made on or before the Final Date for Payment shall not be less than the amount stated in the Pay Less Notice (the "**Revised Notified Sum**").
- 25.2.8 If the Authority fails to pay the Notified Sum or the Revised Notified Sum (as the context requires) to the Consultant by the Final Date for Payment, the Authority shall pay to the Consultant in addition to the amount not properly paid simple interest thereon for the period until such payment is made at a rate of three per cent (3%) over the base rate of the Bank of England which is current at the Final Date for Payment.
- 25.2.9 The Authority shall be entitled, where it determines in good faith that it has made any overpayment to the Consultant, and pending final determination of the matter in litigation, adjudication or agreement between the Parties in writing, either to:
- (a) deduct an amount equal to such overpayment from any monies due or to become due to the Consultant (subject to the Authority notifying such setting-off in the Payment Notice pertaining to the payment from which such overpaid sums are to be deducted); or
 - (b) recover the same from the Consultant as a debt.

26. INDEXATION

- 26.1 Subject to clause 26.2, the Hourly Rates shall be fixed and shall not be capable of adjustment.
- 26.2 On the second (2nd) anniversary of the Effective Date and annually thereafter (each being an "**Indexation Adjustment Date**"), indexation shall be applied to the Hourly Rates subject to and in accordance with the terms of the Indexation Schedule (each being an "**Indexation Adjustment**").
- 26.3 Following an Indexation Adjustment pursuant to clause 26.2 and the Indexation Schedule, the Hourly Rates in the Pricing Schedule to which the Indexation Adjustment applies at the relevant time shall be deemed to be adjusted accordingly as from the date of the Indexation Adjustment and shall not apply retrospectively to any Services performed by the Consultant prior to such date.
- 26.4 The Consultant shall comply with its obligations under this Agreement at its own cost and expense and shall have no entitlement to payment from the Authority for complying with such obligations.



27. IR35 COMPLIANCE

- 27.1 If the Consultant is, or becomes at any time during the term of its engagement under this Agreement, a limited company or partnership which meets the conditions in section 61O or section 61P of ITEPA, the Consultant shall:
- 27.1.1 promptly advise the Authority whether, if the Services are provided directly by an individual engaged by (or is) the Consultant (the "**Individual**") to the Authority, that Individual would be regarded for income tax purposes as an employee of the Authority or the holder of an office under the Authority (in each case "**Deemed Employment**");
 - 27.1.2 provide to the Authority all information and documentation as the Authority may require to determine whether the engagement of that Consultant by the Authority (the "**Engagement**") is or will be Deemed Employment and, if the Authority does so determine, in order to comply with any legal obligation on the Authority to deduct income tax or national insurance contributions from the fees due in accordance with clause 27.2.
- 27.2 Subject to clause 27.3 and without prejudice to the generality of clause 25.1.2, in respect of payments made to the Consultant in relation to the provision of the Services, the Consultant will pay and/or deduct and account for any Tax Liabilities required by law to be paid or deducted and accounted for by it.
- 27.3 If the Authority determines that the Engagement is one of Deemed Employment, the Authority will deduct income tax and national insurance contributions from the fees paid to the Consultant in order to comply with any legal obligation on the Authority to make such deductions.
- 27.4 The Consultant will indemnify the Authority against any and all legally enforceable Tax Liabilities which the Authority is required to pay or account for to the relevant taxing authority, arising from or made in connection with either the performance of the Services or any payment or benefit received by the Consultant or the Individual in connection with the Services (subject always to the Authority being required to use reasonable endeavours, insofar as it is able to in the circumstances, to mitigate the actual or potential impact and/or value of the same), where such recovery is not prohibited by law, provided that this indemnity will not extend to any Tax Liabilities to the extent that the Authority has made deductions under clause 27.3 in respect of such Tax Liabilities prior to payment to the Consultant.

28. PREVENTION OF THE FACILITATION OF TAX EVASION

- 28.1 The Consultant hereby warrants and confirms to the Authority that:
- 28.1.1 it and its associated persons have not and will not engage in any activity, practice, conduct or thing which would (or the omission of which would) contravene Part 3 of the CFA 2017;
 - 28.1.2 it and (where applicable) its associated persons have maintained at all times and will continue to maintain at all times, reasonable prevention procedures designed to ensure continued compliance with the CFA 2017 by the Consultant and its associated persons and it has taken steps, so far as it is reasonably practicable to do so, to ensure that its associated persons have adhered to such procedures;
 - 28.1.3 it and its associated persons have not been investigated in connection with, or charged with having committed an offence under the CFA 2017; and
 - 28.1.4 it and its associated persons have not received any court orders, warrants or oral or written notices from a government prosecuting authority concerning any actual or alleged violation by it of an offence under the CFA 2017.



28.2 The Consultant shall:

- 28.2.1 comply with any of the Authority's tax compliance policies (as may be notified in writing to the Consultant) and all laws, statutes, regulations, guidance, relevant industry code, or accepted practice relating to tax, the prevention of tax evasion, or an offence under the CFA 2017, as may be updated from time to time;
- 28.2.2 immediately notify the Authority in writing on becoming aware of, or suspecting, any failure to comply with any provision of this clause 28;
- 28.2.3 upon the written request of the Authority, certify to the Authority in writing signed by an officer of the Consultant, compliance with this clause 28, in such form as the Authority may require; and
- 28.2.4 promptly provide such supporting evidence of compliance with this clause 28 as the Authority may request at any time.

28.3 The Consultant shall:

- 28.3.1 ensure that any of its associated persons who are engaged in connection with this Agreement do so only on the basis of written terms (including warranties) equivalent to those applying to or given by the Consultant in this clause 28; and
- 28.3.2 be directly liable to the Authority for any breach by such persons of those terms (including warranties).

28.4 For the purpose of this clause 28, the meaning of prevention procedures and whether a person is associated with another person shall be determined in accordance with sections 44(4), 44(5), 45(3) and 46(4), as applicable of the CFA 2017 (and any guidance issued under section 47 of the CFA 2017).

28.5 The Consultant hereby agrees to indemnify the Authority in respect of any legally enforceable losses, damages, fines, penalties, charges or other costs which the Authority suffers in the event that the Consultant is in breach of this clause 28, to the extent that such recovery is not prohibited by law (subject always to the Authority being required to use reasonable endeavours, insofar as it is able to in the circumstances, to mitigate the actual or potential impact and/or value of the same).

29. **BRIBERY & CORRUPTION**

29.1 The Consultant warrants that:

- 29.1.1 it shall:
 - (a) comply with all Applicable Laws and sanctions relating to anti-bribery and anti-corruption (including the Bribery Act 2010 and Section 117 of the Local Government Act 1972);
 - (b) not engage in any activity, practice or conduct at any time which would constitute an offence under the Bribery Act 2010 if such activity, practice or conduct had been carried out in the United Kingdom;
 - (c) comply with the Authority's anti-bribery and anti-corruption policies as published and updated by the Authority from time to time (whether identified as part of the Authority's Policies or otherwise);



- (d) have, maintain and enforce its own anti-bribery and anti-corruption policies and procedures, including procedures to ensure compliance with the Bribery Act 2010 and the policies referred to in clause 29.1.1(c);
- (e) immediately notify the Authority if a foreign public official becomes an officer or employee of the Consultant or acquires a direct or indirect interest in the Consultant (and the Consultant further warrants that it has no public officials as officers, employees or direct or indirect owners as at the Effective Date); and
- (f) ensure that all Consultant Related Parties comply with this clause 29.1; and

29.1.2 as at the Effective Date, it has not done and none of its officers, Consultant Related Parties or other persons acting with the authority of the Consultant have done anything that would have placed it or them in breach of the obligations at this clause 29.1.

29.2 The Consultant shall indemnify the Authority against all payments, losses, damages, action, costs, fines, financial penalties and expenses that are paid, made or incurred by the Authority as a consequence of the Consultant being in breach of its obligations, representations and/or warranties under this clause 29.

30. CONFLICTS OF INTEREST & REPUTATIONAL RISK

30.1 The Consultant shall take all appropriate steps to ensure that neither it nor any personnel and/or party employed and/or engaged by the Consultant (in whatever capacity) is placed in a position where, in the reasonable opinion of the Authority:

30.1.1 there is or may be an actual conflict or potential conflict, between the pecuniary or personal interests of the Consultant or any Consultant Related Parties and the duties owed to the Authority under the provisions of this Agreement (a "**Conflict of Interest**"); or

30.1.2 the behaviour of the Consultant or any Consultant Related Parties engaged by it is not in the Authority's best interest or might adversely affect the Authority's reputation (a "**Reputational Risk**").

30.2 The Consultant:

30.2.1 warrants that, as at the Effective Date, it is not aware of any actual or potential Conflict of Interest and/or Reputational Risk; and

30.2.2 shall notify and disclose to the Authority full particulars of any behaviour which might give rise to an actual or potential Conflict of Interest and/or Reputational Risk immediately upon becoming aware of the same.

30.3 The Authority may terminate the Consultant's appointment under this Agreement with immediate effect on written notice to the Consultant pursuant to clause 42.2.2(c) and/or take such other steps it deems necessary where, in the reasonable opinion of the Authority, there is or may be an actual or potential Conflict of Interest and/or Reputational Risk that is not capable of being remedied by the Consultant.



31. CONFIDENTIALITY

- 31.1 Except to the extent set out in this clause 31 or where disclosure of any Confidential Information is expressly permitted elsewhere in this Agreement, a Recipient shall:
- 31.1.1 treat a Disclosing Party's Confidential Information as strictly confidential and keep it in secure custody (at a location and in a manner commensurate to the nature, content and sensitivity of the Confidential Information and the medium upon which it is stored);
 - 31.1.2 not disclose a Disclosing Party's Confidential Information to any other person except as expressly set out in this Agreement or without obtaining a Disclosing Party's prior written consent;
 - 31.1.3 not use or exploit a Disclosing Party's Confidential Information in any way except for the purposes anticipated under this Agreement; and
 - 31.1.4 immediately notify the relevant Disclosing Party if it suspects or becomes aware of any unauthorised access, copying, use or disclosure in any form of any of that Disclosing Party's Confidential Information.
- 31.2 Subject always to clause 31.6, where the Recipient is the Authority, a Recipient shall be entitled to disclose the Confidential Information of a Disclosing Party where:
- 31.2.1 the Recipient is required to disclose the Confidential Information under Applicable Law, provided that clause 35 shall apply to any disclosures of Confidential Information required under the FOIA or the Environmental Information Regulations;
 - 31.2.2 the need for such disclosure arises out of or in connection with:
 - (a) any legal challenge or potential legal challenge against the Authority arising out of or in connection with this Agreement;
 - (b) regulations 106, 108, 110 and 112 of the Procurement Regulations;
 - (c) the examination and certification of the accounts of the Authority (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 Authority makes use of the Project; or
 - (d) the conduct of a Central Government Body review in respect of this Agreement; or
 - 31.2.3 that Recipient has reasonable grounds to believe that the relevant Disclosing Party is involved in activity that may constitute a criminal offence under the Bribery Act 2010 and/or any breach of clause 29 and the disclosure is being made to the Serious Fraud Office.
- 31.3 If a Recipient is required by Applicable Law to make a disclosure of Confidential Information, that Recipient shall as soon as reasonably practicable and to the extent permitted by Applicable Law notify the Disclosing Party (or Disclosing Parties) of the full circumstances of the required disclosure including the relevant Applicable Law and/or regulatory body requiring such disclosure and the Confidential Information to which such disclosure would apply.



- 31.4 Subject to clause 31.8, the Consultant, as a Recipient, may disclose the Confidential Information of the Authority on a confidential basis only to:
- 31.4.1 its Consultant Related Parties who are directly involved in the anticipated award of and/or undertaking of the Project and need to know the Confidential Information to enable performance of the Consultant's obligations under this Agreement;
 - 31.4.2 its auditors; and
 - 31.4.3 its professional advisers for the purposes of obtaining advice in relation to this Agreement,
- and where the Consultant discloses any Confidential Information of the Authority pursuant to this clause 31.4, it shall remain responsible at all times for compliance with the confidentiality obligations set out in this Agreement by the persons to whom disclosure has been made.
- 31.5 The Consultant shall not (and shall ensure that its Consultant Related Parties do not):
- 31.5.1 publish, alone or in conjunction with any other party, any articles, illustrations, photographs, videos, press announcements or any other externally focused communications (in each case of any type and in any medium) in relation to this Agreement; or
 - 31.5.2 take photographs on or of the Project Site,
- without the prior written approval of the Authority.
- 31.6 Without prejudice to the generality of clause 31.2, the Consultant acknowledges and agrees that the Authority shall, at its sole discretion, be entitled to disclose and/or publish the Confidential Information of the Consultant, this Agreement in its entirety, in each case as amended from time to time and for any reason, including disclosure:
- 31.6.1 to any Central Government Body for any proper purpose of the Authority;
 - 31.6.2 to parliament and parliamentary committees or if required by any parliamentary reporting requirement;
 - 31.6.3 where, acting reasonably, the Authority deems disclosure necessary or appropriate in the course of carrying out its public functions;
 - 31.6.4 on a confidential basis to a professional adviser, consultant, supplier or other person engaged by any of the entities described in clause 31.6.1 (including any benchmarking organisation) for any purpose relating to or connected with this Agreement; and/or
 - 31.6.5 on a confidential basis to a proposed successor of the Authority in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under this Agreement.
- 31.7 Subject to clause 31.8, in the case of the Consultant only, nothing in this clause 31 shall prevent a Recipient from using any techniques, ideas or know-how 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 its Intellectual Property Rights.
- 31.8 Without prejudice to any other provision of this Agreement, the Consultant warrants and undertakes to the Authority that it shall not (and shall ensure that its Consultant Related Parties shall not) use and/or disclose to any third party any Consultant Materials and/or Authority Materials relating to any



Security Measures in relation to the Project in connection with any other project or matter of any type and at any location without the prior written approval of the Authority (at its sole discretion).

31.9 The Consultant shall ensure that any Consultant Related Party to whom it discloses Confidential Information as expressly permitted pursuant to this clause 31 are subject to obligations of confidentiality and non-disclosure that are no less onerous than those contained in this clause 31.

31.10 The Consultant shall indemnify the Authority against all payments, losses, damages, action, costs, fines, financial penalties and expenses that are paid, made or incurred by the Authority as a consequence of the Consultant and/or its Consultant Related Party being in breach of the requirements of this clause 31.

32. CHANGE OF CONTROL

32.1 The Consultant shall notify the Authority within ten (10) Business Days of it:

32.1.1 becoming aware that it may be subject to a Change of Control (provided always that where to do so would contravene any Applicable Law, the Consultant shall notify the Authority of such proposed Change of Control immediately upon it becoming permitted by Applicable Law to do so); or

32.1.2 (in any event) being subject to a Change in Control,

with each of these circumstances being a "**Change of Control Event**".

32.2 A failure by the Consultant to notify the Authority of a Change of Control Event within the time periods specified in clause 32.1 shall entitle the Authority to terminate the appointment of the Consultant under this Agreement immediately on written notice to the Consultant.

32.3 Following the Authority receiving a notification of a Change of Control Event pursuant to clause 32.1:

(a) the Authority shall undertake and complete its own due diligence on the Consultant to determine (acting reasonably) whether, following such proposed or actual Change of Control, the Consultant shall satisfy or continue to satisfy (without limitation) the economic and financial standing and technical and professional competency requirements that the Consultant, prior to the Change of Control, was required to satisfy as a precondition to being appointed under this Agreement, as communicated in writing to the Consultant as part of the "Direct Award Procedure" referred to at the beginning of this Agreement; and

(b) if the Authority is not satisfied (in its sole discretion) that such requirements will be satisfied by the Consultant if a potential Change of Control occurs or are not satisfied by the Consultant following an actual Change of Control (as the context requires), the Authority shall be entitled to terminate the appointment of the Consultant under this Agreement immediately on written notice to the Consultant.

33. DATA PROTECTION

33.1 The Consultant acknowledges and agrees that:

33.1.1 for the purposes of the Data Protection Laws, the Authority is a Controller and the Consultant is a Processor unless otherwise specified in the Data Protection Schedule; and

33.1.2 the only Processing that the Processor is authorised to do is listed in the Data Protection Schedule by the Controller and may not be determined by the Processor.



-
- 33.2 A Processor shall notify the Controller immediately if it considers that any of the Controller's instructions infringe the Data Protection Laws.
- 33.3 A Processor shall provide all reasonable assistance to the Controller in the preparation of any Data Protection Impact Assessment prior to commencing any Processing and such assistance may, at the discretion of the Controller, include:
- 33.3.1 a systematic description of the envisaged Processing operations and the purpose of the Processing;
 - 33.3.2 an assessment of the necessity and proportionality of the Processing operations in relation to this Agreement;
 - 33.3.3 an assessment of the risks to the rights and freedoms of Data Subjects; and/or
 - 33.3.4 the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 33.4 A Processor shall, in relation to any Personal Data that is Processed in connection with its obligations under this Agreement:
- 33.4.1 Process that Personal Data only in accordance with the Data Protection Schedule, unless the Processor is required to do otherwise by Applicable Law (provided that, if it is so required, the Processor shall promptly notify the Controller before Processing the Personal Data unless prohibited by Applicable Law);
 - 33.4.2 ensure that it has in place Protective Measures 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:
 - (a) the nature of the data to be protected;
 - (b) any harm that might result from a Data Loss Event;
 - (c) the state of technological development; and
 - (d) the cost of implementing any measures;
 - 33.4.3 ensure that:
 - (a) its Processor Personnel do not Process any Personal Data except in accordance with this Agreement (and in particular the Data Protection Schedule); and
 - (b) it takes all reasonable steps to ensure the reliability and integrity of any Processor Personnel who have access to the Personal Data and ensure that they:
 - (i) are aware of and comply with its duties as a Processor under this clause 33;
 - (ii) are subject to appropriate confidentiality undertakings with the Processor or any Sub-Processor;
 - (iii) 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 Controller or as otherwise permitted by this Agreement; and

- (iv) have undergone adequate training in the use, care, protection and handling of Personal Data;
- (c) it does not transfer Personal Data outside of the United Kingdom unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:
 - (i) the Controller or the Processor 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 Controller;
 - (ii) the Data Subject has enforceable rights and effective legal remedies;
 - (iii) the Processor complies with its obligations under the Data Protection Law by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses all reasonable endeavours to assist the Controller in meeting its obligations); and
 - (iv) the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the Processing of the Personal Data; and
- (d) at the written direction of the Controller, it shall delete or return Personal Data (and any copies of it) to the Controller on termination of this Agreement unless the Processor is required by Applicable Law to retain the Personal Data.

33.5 Subject to clause 33.6, a Processor shall notify the Controller immediately if it:

- 33.5.1 receives a Data Subject Access Request (or purported Data Subject Access Request);
- 33.5.2 receives a request to rectify, block or erase any Personal Data;
- 33.5.3 receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Laws;
- 33.5.4 receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data that is Processed under this Agreement;
- 33.5.5 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 Applicable Law; and/or
- 33.5.6 becomes aware of a Data Loss Event.

33.6 A Processor's notification obligation under clause 33.5 includes the provision of further information to the Controller in phases, as details become available.

33.7 Taking into account the nature of the Processing, a Processor shall provide the Controller with full assistance in relation to either Party's obligations under Data Protection Laws and any complaint, communication or request made under clause 33.5 (and insofar as possible within the timescales reasonably required by the Controller) including by promptly providing:

- 33.7.1 the Controller with full details and copies of the complaint, communication or request;



- 33.7.2 such assistance as is reasonably requested by the Controller to enable the Controller to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Laws;
 - 33.7.3 the Controller, at its request, with any Personal Data it holds in relation to a Data Subject;
 - 33.7.4 assistance as requested by the Controller following any Data Loss Event; and
 - 33.7.5 assistance as requested by the Controller with respect to any request from the Information Commissioner's Office, or any consultation by the Controller with the Information Commissioner's Office.
- 33.8 Unless a Processor employs fewer than two-hundred and fifty (250) staff, a Processor shall maintain complete and accurate records and information to demonstrate its compliance with this clause 33 unless the Controller determines that:
- 33.8.1 the Processing is not occasional;
 - 33.8.2 the Processing includes special categories of data under Article 9(1) of the GDPR or Personal Data concerning criminal convictions and offences under Article 10 of the GDPR; and/or
 - 33.8.3 the Processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 33.9 A Processor shall allow for audits of its Data Processing activity by the Controller or the Controller's designated auditor.
- 33.10 The Consultant shall designate its own Data Protection Officer if required by the Data Protection Law.
- 33.11 Before allowing any Sub-Processor to Process any Personal Data related to this Agreement, a Processor must:
- 33.11.1 notify the Controller in writing of the intended Sub-Processor and Processing;
 - 33.11.2 obtain the written consent of the Controller;
 - 33.11.3 enter into a written agreement with the Sub-Processor which gives effect to the terms set out in this clause 33 such that they apply to the Sub-Processor; and
 - 33.11.4 provide the Controller with such information regarding the Sub-Processor as the Controller may reasonably require.
- 33.12 A Processor shall remain fully liable for all acts or omissions of any of its Sub-Processors.
- 33.13 The Controller may, at any time on not less than thirty (30) Business Days' notice, revise this clause 33 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).
- 33.14 The Consultant agrees to take account of any guidance issued by the Information Commissioner's Office and the Controller may on not less than thirty (30) Business Days' notice to the Consultant, amend this Agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.



- 33.15 Each Processor shall be liable for and hereby indemnifies the Controller from and against all claims, proceedings, damages, liabilities, losses, costs and expenses suffered or incurred by the Controller where and to the extent that the same arises in connection with any breach of this clause 33 by that Processor and/or its personnel (of any type) and/or its Consultant Related Parties (as the context requires).
34. **MALICIOUS CODE**
- 34.1 The Consultant shall, at all times during its engagement under this Agreement, ensure that:
- 34.1.1 Anti-Virus Software is installed on its Consultant ICT System;
- 34.1.2 such Anti-Virus Software is used on a continuous basis to:
- (a) identify, detect and/or remove Malicious Code from its Consultant ICT System(s);
 - (b) prevent the transmission of Malicious Code from its Consultant ICT System onto any Authority ICT System or other Consultant ICT System(s); and
 - (c) protect (and inoculate) the Consultant ICT System and protect any Authority ICT System and other Consultant ICT System against Malicious Code;
- 34.1.3 such Anti-Virus Software is maintained and updated on a continuous basis with all (without limitation) anti-virus definitions and signatures that are developed and distributed by the developer of such Anti-Virus Software from time to time;
- 34.1.4 where such Anti-Virus Software is maintained and updated by its developer on a subscription basis, its subscription is maintained on a continuous basis and is not permitted to lapse; and
- 34.1.5 where a piece of Anti-Virus Software ceases to be maintained on a continuous basis by its developer or is discontinued, it is replaced by at least an equivalent piece of Anti-Virus Software.
- 34.2 Without prejudice to the generality of clause 34.1, where (as an **"Identifying Party"**):
- 34.2.1 the Consultant becomes aware of the presence of or exposure to Malicious Code on its Consultant ICT System(s) and / or any Authority ICT System; or
- 34.2.2 the Authority becomes aware of the presence of or exposure to Malicious Code on its Authority ICT Systems and/or any Consultant ICT System,
- each an **"Affected ICT System"**, the Identifying Party shall immediately notify (as the context requires) the other Party who, in the reasonable opinion of the Identifying Party has been exposed to Malicious Code (each an **"Affected Party"**), following which:
- (a) the Identifying Party and each Affected Party shall cooperate to actively minimise the effect and (as the context requires) remove from and/or protect the Affected ICT System(s) from such Malicious Code as soon as reasonably practicable upon becoming aware of its presence on the Affected ICT System(s) or their exposure to the Malicious Code; and



- (b) where such Malicious Code causes (or could cause) a loss of operational efficiency and/or loss or corruption of the Authority Data, the Identifying Party and each Affected Party shall assist each other in order to:
- (i) mitigate the immediate and long-term impact of the Malicious Code on the Affected ICT System(s);
 - (ii) minimise any actual or potential losses of operational efficiency or corruption of Authority Data on such Affected ICT System(s) (including by, as the context requires, restoring any affected Authority Data from the most recent back-ups of the Authority Data); and
 - (iii) protect (and inoculate) the Affected ICT System(s) against the Malicious Code in order to restore and maintain the full security of the Affected ICT Systems and protect the Authority Data from Malicious Code.

34.3 Where an Affected ICT System is affected by Malicious Code that has originated from the Consultant ICT System (including from Authority Data that was under the control of the Consultant at the relevant time), the Consultant from whose Consultant ICT System(s) the Malicious Code originated shall comply with the requirements of clause 34.2 at its own cost and reimburse each Affected Party in full in respect of any costs, losses and expenses arising out of or in connection with presence and impact on and/or removal of such Malicious Code on its Affected ICT System.

35. FREEDOM OF INFORMATION

35.1 The Consultant acknowledges that the Authority is subject to the requirements of the FOIA and the Environmental Information Regulations and in such event, the Consultant shall assist and co-operate with the Authority (at its own expense) to enable them to comply with these information disclosure requirements.

35.2 The Consultant shall and shall ensure that its Consultant Related Parties shall provide:

- 35.2.1 the Authority with a copy of all information in its possession, power or control in the form that they require within five (5) days (or such other period as the Authority may notify to the Consultant) of receiving a written request from the Authority for such information; and
- 35.2.2 all necessary assistance as is reasonably requested by the Authority to enable them to respond to a Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations, and the Consultant shall be liable for and hereby indemnifies the Authority from and against all claims, proceedings, damages, liabilities, losses, costs and expenses suffered or incurred by the Authority where and to the extent that the same arise in connection with any breach of this clause 35.2 by the Consultant and/or its Consultant Related Parties.

35.3 If the Consultant considers that all or any information provided to the Authority under clause 35.2 is a "trade secret" for the purposes of section 43(1) of the FOIA, or a duty of confidentiality applies under section 41(1) of the FOIA, or is exempt by the operation of any other provision of FOIA:

- 35.3.1 it shall ensure that the relevant information and the claimed exemption is clearly identified as such to the Authority when such information is disclosed and/or provided to it; and
- 35.3.2 notwithstanding any such identification, the Authority shall be solely responsible for determining at its absolute discretion whether such Information and/or any other information:
 - (a) is exempt from disclosure in accordance with the provisions of the Code of Practice, the FOIA or the Environmental Information Regulations; or



(b) is to be disclosed in response to a Request for Information.

35.4 In no event shall the Consultant (or shall the Consultant allow a Consultant Related Party to) respond directly to any requests for information from members of the public unless expressly authorised to do so by the Authority.

35.5 Without prejudice to the generality of clause 31.6, the Consultant acknowledges that the Authority may, acting in accordance with the FOIA or the Environmental Information Regulations, be required to disclose information:

35.5.1 without consulting with the Consultant; or

35.5.2 following consultation with the Consultant and having considered its views.

36. **EQUALITY & DIVERSITY**

36.1 The Consultant shall comply with and shall ensure that its Consultant Related Parties comply with:

36.1.1 the Equality Act 2010;

36.1.2 all Applicable Law in relation to human rights, equality, diversity and unlawful discrimination (including in relation to race, sex, sexual orientation, gender and gender reassignment, religion or belief, disability, pregnancy, maternity, marital status, age or otherwise); and

36.1.3 any other requirements and/or instructions that the Authority notifies the Consultant of in writing from time to time in connection with equality and diversity obligations (whether stated as part of the Authority's Policies or otherwise and as provided to the Consultant by the Authority from time to time),

together the "**Equality Requirements**".

36.2 The Consultant shall indemnify the Authority against all payments, losses, damages, action, costs, fines, financial penalties and expenses that are paid, made or incurred by the Authority as a consequence of the Consultant and/or a Consultant Related Party being in breach of the requirements of this clause 36.

36.3 The Consultant agrees that it will provide the Authority with all information reasonably requested by it to allow it to monitor compliance with the Equality Requirements.

37. **ANTI-SLAVERY & TRAFFICKING**

37.1 The Consultant shall, and shall procure that all Consultant Related Parties shall:

37.1.1 comply with all Applicable Law relating to slavery and human trafficking including, without limitation, the Modern Slavery Act 2015 ("**Anti-Slavery Requirements**");

37.1.2 not take or knowingly permit any action to be taken that would or might cause or lead the Authority to be in breach of any Anti-Slavery Requirements;

37.1.3 comply with the Authority's anti-slavery and trafficking policies (whether stated as part of the Authority's Policies or otherwise and as provided to the Consultant by the Authority from time to time) ("**Anti-Slavery Policies**");

37.1.4 have, maintain and enforce its own policies and procedures to ensure compliance with the Anti-Slavery Requirements, the Anti-Slavery Policies and this clause 37;



- 37.1.5 promptly report to the Authority if it becomes aware of any breach or potential breach of the Anti-Slavery Requirements, the Anti-Slavery Policies and this clause 37; and
- 37.1.6 promptly upon the request of the Authority provide it with any information and/or documentation that has been requested in connection with the Anti-Slavery Requirements.
- 37.2 The Consultant warrants to the Authority that neither it nor any other person in its supply chain (including those described in clause 37.1) uses trafficked, bonded, child or forced labour or has attempted to use trafficked, bonded, child or forced labour within its supply chain.
- 37.3 The Consultant shall:
- 37.3.1 ensure that any Consultant Related Party who is performing professional services and/or providing goods in connection with this Agreement does so only on the basis of a written contract which imposes on and secures from such Consultant Related Party terms equivalent to those imposed on the Consultant in this clause 37 (the "**Anti-Slavery Terms**"); and
- 37.3.2 be responsible for the observance and performance by such persons of the Anti-Slavery Terms, and shall be directly liable to the Authority for any breach by such persons of any of the Anti-Slavery Terms.
- 37.4 The Consultant shall indemnify the Authority against all payments, losses, damages, actions, costs, fines, financial penalties and expenses that are paid, made or incurred by the Authority as a consequence of the Consultant and/or a Consultant Related Party being in breach of the requirements of this clause 37.
38. **AUDIT**
- 38.1 The Consultant shall keep and maintain and shall procure that its Consultant Related Parties keep and maintain until the expiration of the Agreement Liability Period, full and accurate reports, records, financial information and accounts in connection with its appointment under this Agreement (and each Consultant Related Party's engagement in connection with the same), including:
- 38.1.1 records of negotiations as to price and terms and conditions and tender documentation;
- 38.1.2 orders placed with any Consultant Related Parties (including in relation to any re-tendering process or replacement of any the Consultant Related Parties);
- 38.1.3 the works, services and/or materials supplied under this Agreement;
- 38.1.4 risk management and special audit documentation;
- 38.1.5 all sums (of any type) received by it pursuant to this Agreement;
- 38.1.6 all sums paid by the Consultant to the Authority and any third parties and Consultant Related Parties; and
- 38.1.7 details of any rebates received and/or paid by the Consultant,
- together the "**Agreement Records**", with all Agreement Records concerning any sums expended and/or received by the Consultant in connection with this Agreement being kept, maintained and (as the context requires) disclosed on an Open Book Basis.



- 38.2 The Consultant shall allow the Authority and any regulatory authority (including, without limitation, the Competition and Markets Authority) such access to its Agreement Records as may be required by the Authority or any regulatory authority from time to time.
- 38.3 Without prejudice to the generality of clause 38.2, the Consultant shall permit and shall procure that all Consultant Related Parties shall permit:
- 38.3.1 the Comptroller and Auditor General (and their appointed representatives) access, free of charge and during normal business hours on reasonable notice, to the Agreement Records for the purposes of the financial audit of the and for carrying out examinations into the economy, efficiency and effectiveness with which the Authority has used resources in connection with this Agreement, as well as provide such explanations as are reasonably required for these purposes; and
- 38.3.2 any regulatory authority (including, without limitation, the Competition and Markets Authority) access, free of charge and during normal business hours on reasonable notice, to the Agreement Records and shall comply with any requirements of such regulatory authority in respect of any audit of the Agreement Records.
- 38.4 Nothing in this clause 38 should be deemed to constitute a requirement or agreement for the examination, certification or inspection of the accounts of the Consultant by the Comptroller and Auditor General under section 6(3)(d) of the National Audit Act 1983.
39. **ORDER OF PRIORITY OF DOCUMENTS**
- 39.1 Subject always to clause 39.2, any conflict, ambiguity and/or inconsistency as between the application and effect of the terms and conditions of this Agreement and any other document referred to in or annexed hereto shall be resolved in the following order of priority and precedence:
- 39.1.1 the body of this Agreement, which shall be deemed to include the recitals and clauses 1 to 62 (inclusive);
- 39.1.2 the Services Schedule; REDACTED
- 39.1.3 the Pricing Schedule; REDACTED
- 39.1.4 the Security Requirements; REDACTED
- 39.1.5 the Information and Security Requirements; REDACTED
- 39.1.6 the Data Protection Schedule; REDACTED
- 39.1.7 the Indexation Schedule; REDACTED
- 39.1.8 the Collateral Warranties Schedule; REDACTED
- 39.1.9 the Project Programme; and REDACTED
- 39.1.10 the KPI Schedule. REDACTED
- 39.2 Where a Party becomes aware of any actual or potential ambiguity, discrepancy and/or conflict as between the terms of and/or any other document referred to in or annexed to this Agreement as referred to in clause 39.1:
- 39.2.1 that Party shall notify the other Party as soon as reasonably practicable; and



- 39.2.2 notwithstanding clause 39.1, the Authority may elect at its sole discretion to instruct the Consultant in writing that, in resolving any ambiguity, discrepancy and/or conflict as between the documents referred to in clause 39.1, the provisions in the ambiguous, discrepant and/or conflicting documents that are the most favourable to the Authority shall prevail and take priority and precedence over such other provisions and the Consultant shall be obliged to comply with the decision of the Authority.

40. **WARRANTIES**

40.1 The Consultant warrants to the Authority that:

- 40.1.1 it is a duly incorporated and validly existing legal entity under the law of its jurisdiction of incorporation;
- 40.1.2 it has the power to own its assets and carry on its business as it is being conducted;
- 40.1.3 it has the power, capacity and authority to enter into, perform and deliver, and has taken and will take all necessary action to authorise its lawful entry into this Agreement and the legally binding transactions contemplated by this Agreement, and to do so does not and shall not conflict with any Applicable Law, its constitutional documents or any agreement or instrument binding on it or any of its assets;
- 40.1.4 this Agreement is executed by its duly authorised representative(s);
- 40.1.5 it is not subject to any contractual obligation that the compliance of is likely to have a material adverse effect on its ability to perform its obligations under this Agreement;
- 40.1.6 no litigation, arbitration or administrative proceedings or investigations of, or before, any court, arbitral tribunal or agency have been threatened and/or commenced that, if determined in favour of a party other than the Consultant, are reasonably likely to have (to the best of its knowledge and belief) a materially adverse effect on its ability to perform its obligations under this Agreement;
- 40.1.7 no judgment or order of a court, arbitral tribunal or other tribunal or any order or sanction of any governmental or other regulatory body has (to the best of its knowledge and belief) been made against it that is reasonably likely to have a materially adverse effect on its ability to perform its obligations under this Agreement;
- 40.1.8 it is not affected by an Insolvency Event;
- 40.1.9 all written statements and representations in any written submissions contained in its Tendered Information remain true, accurate, and are not misleading in any material respects (save as may have been specifically disclosed in writing to the Authority or superseded or varied by this Agreement from time to time); and
- 40.1.10 in respect of itself and each of its Affiliates, in the two (2) years prior to the Effective Date and as from the Effective Date on a continuing basis, it has:
 - (a) conducted and will conduct all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files its accounts;
 - (b) fully complied and will fully comply with all applicable securities laws and regulations in the jurisdiction in which it is established; and



- (c) not performed and will not perform any act or omission with respect to its financial accounting or reporting which could have an adverse effect on the Consultant's position as a continuing business concern or its ability to fulfil its obligations under this Agreement.

40.2 If the Consultant becomes aware that a warranty given by it under clause 40.1 has been breached, is incorrect or is misleading, it shall immediately notify the Authority in writing of the relevant breach, error or inaccuracy in sufficient detail so as to allow the Authority to make an accurate assessment of the disclosed issue(s).

41. **DUE DILIGENCE & NON-RELIANCE**

41.1 The Consultant acknowledges and agrees that, prior to the Effective Date:

- 41.1.1 the Authority has delivered and/or made available to the Consultant all of the information and documents that the Consultant considers necessary and/or relevant for the performance of its obligations under this Agreement; and
- 41.1.2 the Consultant has made its own independent enquiries and has satisfied itself as to the accuracy and adequacy of such information and documents, as well as all of the relevant details relating to this Agreement,

and accordingly, the Consultant shall not be excused from the performance of any of its obligations under this Agreement, nor shall it be entitled to recover any additional costs or charges:

- (a) arising as a result of any misinterpretation of the purpose and/or intent of this Agreement; and/or
- (b) on the grounds of any failure by the Consultant to satisfy itself as to the accuracy and/or adequacy of such information in the manner referred to in clauses 41.1.1; and

41.2 Without prejudice to the generality of clause 41.1 and any liability the Authority may have in respect of fraudulent misrepresentation, the Consultant acknowledges and agrees that in entering into this Agreement, it has not placed and shall not place any reliance upon any statement, representation or warranty made or given by the Authority (in whatever form) in connection with this Agreement, in each case whether negligently or innocently made, which is not reflected in the documents comprising this Agreement, as may be updated from time to time.

42. **TERMINATION & SUSPENSION**

42.1 **Termination by the Authority**

- 42.1.1 The Authority may terminate the Consultant's engagement under this Agreement for any reason on written notice to the Consultant and such termination shall be effective from the date of issue of that notice.
- 42.1.2 The Authority may at any time by at least seven (7) days' written notice to the Consultant, terminate the Consultant's engagement under this Agreement in the event that the Consultant:
- (a) without reasonable cause wholly suspends all or any part of the Services;
- (b) commits a material breach of its obligations under this Agreement which the Consultant fails to remedy within seven (7) days of receiving a written notice from the Authority specifying the breach and requiring its remedy;



- (c) fails to comply with reasonable instructions or reasonable requests;
- (d) refuses or persistently neglects, after notice in writing from the Authority, to correct defective or unacceptable work and/or design and/or remove unsuitable personnel in contravention of the requirements of this Agreement; and/or
- (e) fails to comply with clause 12.

42.2 Where:

- 42.2.1 any of the circumstances referred to in regulation 73(1)(a), 73(1)(b) or 73(1)(c) of the Public Contracts Regulations 2015 apply to the Consultant;
- 42.2.2 the Authority has a right to terminate the appointment of the Consultant in connection with:
 - (a) a Change of Control Event under clause 32;
 - (b) a Non-Critical KPI Underperformance or a Critical KPI Default under clause 17.2;
 - (c) a Conflict of Interest and/or a Reputational Risk under clause 30.3; or
- 42.2.3 without prejudice to clauses 42.2.2 and 42.2.4, the Consultant commits a material and/or persistent and repeated breach of its duties and obligations under this Agreement;
- 42.2.4 the Consultant breaches:
 - (a) clause 23 (Intellectual Property);
 - (b) clause 29 (Bribery and Corruption);
 - (c) clause 33 (Data Protection);
 - (d) clause 36 (Equality and Diversity);
 - (e) clause 37 (Anti-Slavery and Trafficking); and/or
 - (f) clause 40 (Consultant Warranties); and/or
- 42.2.5 any contract between the Consultant and a Central Government Body has been terminated as a consequence of a default of the Consultant in accordance with the terms of that contract,

the Authority may terminate the appointment of the Consultant under this Agreement by written notice to the Consultant with immediate effect.

42.3 Termination by the Consultant

- 42.3.1 The Consultant may at any time upon at least thirty (30) days' written notice to the Authority, terminate its engagement under this Agreement in the event that the Authority:
 - (a) suffers an Insolvency Event; and/or
 - (b) commits a material breach of its obligations under this Agreement which the Authority fails to remedy within twenty-eight (28) days of receiving a written notice from the Consultant specifying the breach and requiring its remedy.



42.4 Suspension of Consultant's engagement

- 42.4.1 The Authority may, at any time on or after the Effective Date, require the Consultant to suspend performance of the whole or part of the Services immediately on receipt of written notice from the Authority.
- 42.4.2 If the Authority at any time exercises its rights to suspend pursuant to clause 42.4.1:
- (a) if the Authority has not required the Consultant to resume performance within a period of six (6) months from the date of such notice, either Party may terminate the Consultant's engagement under this Agreement;
 - (b) the Authority may, at any time prior to service of a termination notice pursuant to clause 42.4.2(b), require the Consultant in writing to resume performance; and
 - (c) if the Authority issues an instruction pursuant to clause 42.4.2(b) the Consultant shall as soon as reasonably practicable resume performance in accordance with this Agreement and any payment made pursuant to clause 42.5.2 shall rank as payment on account towards the payments to be made to the Consultant pursuant to this Agreement.
- 42.4.3 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 Agreement if any amount due under this Agreement is wrongfully withheld after the Final Date for Payment provided that:
- (a) the Consultant has given the Authority at least seven (7) days' written notice of its intention to do so stating the ground or grounds on which it is intended to suspend performance; and
 - (b) the right to suspend performance shall cease when the Authority makes payment in full of the relevant amount.

42.5 Consequences of termination or suspension

- 42.5.1 Upon any termination of the Consultant's engagement under clause 42.1.1, clause 42.1.2 or clause 42.3 or upon suspension of the Services under clause 42.4:
- (a) the Consultant shall:
 - (i) take immediate steps to bring to an end the Services (or relevant parts thereof) in an orderly manner but with all reasonable speed and economy; and
 - (ii) deliver to the Authority within ten (10) days originals of all the Materials relating to the relevant part or parts of the Services terminated or suspended (whether in the course of preparation or completed) provided that the Consultant shall be entitled to retain copies of the same; and
 - (b) the Authority may employ and pay other people to carry out and complete the Services.
- 42.5.2 If the Consultant's engagement is terminated in whole or part pursuant to clause 42.1.1, clause 42.1.2 or clause 42.4.2(a) or is suspended pursuant to clause 42.4.1 by reason of



non-performance of and/or breach by the Consultant or is terminated as a result of the Consultant suffering an Insolvency Event:

- (a) the Authority need not pay to the Consultant any sum that has become due to the extent that the Authority has given or gives a Pay Less Notice in accordance with clause 25.2.6 and no further sums shall become due to the Consultant under this Agreement; and
- (b) in addition to the rights set out in clause 42.4.2(a), the Authority need not pay any sum that has become due if the Consultant becomes insolvent as set out in section 113 of the Housing Grants, Construction and Regeneration Act 1996 after the last date on which a Pay Less Notice could have been issued in relation to that sum in accordance with clause 25.2.6.

42.5.3 If the Consultant's engagement is terminated in whole or part pursuant to clause 42.1.1, clause 42.3 or clause 42.4.2(a) or upon suspension of the Services under clause 42.4.1 for reasons other than non-performance of and/or breach by the Consultant and/or the Consultant suffering an Insolvency Event:

- (a) the Authority shall, subject to any Pay Less Notice, pay to the Consultant that part of any sums which are due (but remain unpaid) as at the date of such termination or suspension; and
- (b) the Consultant shall be entitled to payment for any Services that have been properly performed as at and up to the date of the termination or suspension (as the context requires) and for which a valid Payment Application was not submitted by the Consultant prior to such termination or suspension.

42.5.4 If the Consultant's engagement is suspended pursuant to clause 42.4.3, the Consultant shall be entitled to a reasonable amount in respect of costs and expenses reasonably and properly incurred by the Consultant as a result of such suspension.

42.5.5 Upon any termination and/or suspension of the Consultant's engagement howsoever arising, the Authority's sole liability to the Consultant shall be as set out at clauses 42.5.2 or 42.5.3 and the Authority shall have no liability to the Consultant whatsoever for any loss of profit, loss of contracts or other costs, losses and/or expenses (whether incurred directly or indirectly) arising out of or in connection with such termination and/or suspension.

42.5.6 Termination and/or suspension of the Consultant's engagement howsoever arising shall:

- (a) subject to clause 42.5.5, be without prejudice to the continuing rights and remedies of either Party in relation to any negligence, omission, breach or default of the other prior to such termination and/or suspension;
- (b) not affect the:
 - (i) accrued rights and obligations of the Authority and/or the Consultant under this Agreement as at the effective date of the termination; and
 - (ii) rights and/or obligations of the Authority and the Consultant on a continuing basis under the clauses referred to below:

Clause / schedule	clause / schedule heading
Clause 1	Definitions & Interpretation



Clause 13	Basis of Engagement & Non-Exclusivity
Clause 16	Progress Meetings & Reports
Clause 20	Security & Vetting
Clause 23	Intellectual Property
Clause 24	Insurances
Clause 29	Bribery & Corruption
Clause 30	Conflicts of Interest & Reputational Risk
Clause 31	Confidentiality
Clause 33	Data Protection
Clause 34	Malicious Code
Clause 35	Freedom of Information
Clause 36	Equality & Diversity
Clause 37	Anti-Slavery & Trafficking
Clause 38	Audit
Clause 39	Order of Precedence of Documents
Clause 40	Consultant Warranties
Clause 42	Termination
Clause 43	Problem Solving, Dispute Avoidance & Resolution
Clause 44	Adjudication
Clauses 45 to 62	Miscellaneous

43. PROBLEM SOLVING, DISPUTE AVOIDANCE & RESOLUTION

43.1 Subject always to clause 43.2, where a Party notifies another Party (or Parties, as the context requires) in writing of an actual or potential difference or dispute between them (with each such Party being a "**Relevant Party**" and together the "**Relevant Parties**") arising out of or in connection with this Agreement:

43.1.1 the Relevant Parties shall use all reasonable endeavours in good faith to resolve such difference or dispute as soon as reasonably practicable following the date of such written notification;

43.1.2 where a resolution in relation to the notified difference or dispute cannot be agreed between the Relevant Parties within fifteen (15) Business Days of the date of such notification:

(a) each Relevant Party shall refer the difference or dispute to their respective senior representatives for resolution; and

(b) if the dispute continues to remain unresolved after the period of ten (10) Business Days from the date of such referral:

(i) any Relevant Party may propose, by service of written notice to the other Relevant Party (or Relevant Parties) that the difference or dispute be referred to mediation; and



- (ii) if such proposal is accepted by the other Relevant Party (or Relevant Parties), the mediator(s) (if not appointed by the written agreement of the Relevant Parties within ten (10) Business Days of the service of such written notice) shall be nominated by and the mediation shall be governed by the rules of the Centre for Dispute Resolution; and
- (c) if the difference or dispute referred to mediation is not resolved by such mediation within sixty (60) days of a mediator being appointed or if the Relevant Parties do not agree to refer the dispute to mediation under clause 43.1.2(b), then any of the Relevant Parties may refer the difference or dispute to adjudication.

43.2 Notwithstanding the provisions of clause 43.1, any Party may refer a dispute arising out of or in connection with this Agreement to adjudication at any time pursuant to and in accordance with the provisions of clause 44.

44. ADJUDICATION

44.1 If a dispute or difference arises under this Agreement, either Party may give notice of its intention to refer such dispute or difference to adjudication at any time and shall within seven (7) days thereafter refer the same to the decision of the Adjudicator, with the Party referring such dispute being referred to in this clause 44 as the **"Referring Party"** and the Party responding being referred to as the **"Respondent Party"**.

44.2 Where either Party has given notice of its intention to refer a dispute to adjudication then:

44.2.1 any agreement by the Parties on the appointment of the Adjudicator must be reached and the appointment made in sufficient time so that the dispute or difference can be referred to the Adjudicator within seven (7) days of the date of the notice of intention to refer; and

44.2.2 if the Parties are unable to agree on the appointment of the Adjudicator, then application to the the Royal Institute of Chartered Surveyors for the appointment of the Adjudicator must be made with the object of securing the appointment of and the referral of the dispute or difference to the Adjudicator within seven (7) days of the date of the intention to refer.

44.3 Upon the appointment of the Adjudicator the Parties shall comply with all the directions which he may issue for the purposes of fairly and expeditiously considering the facts and issues in the dispute and so that the Adjudicator shall reach a decision within twenty-eight (28) days of the date of referral to them under clause 44.1 or such longer period as is agreed by the Parties after the dispute has been referred and the Adjudicator may extend the period of twenty-eight (28) days by up to fourteen (14) days with the Referring Party's consent.

44.4 The Adjudicator shall act fairly and impartially and shall take the initiative in ascertaining the facts and the law and shall reach its decision in accordance with the law in relation to this Agreement and shall publish its decision simultaneously to both Parties.

44.5 In determining any dispute referred to it for a decision, the Adjudicator:

44.5.1 shall consider any written representations, statements and expert's reports submitted to it by the Parties (which shall be exchanged between the Parties when the same are supplied to the Adjudicator);

44.5.2 shall afford the Parties the opportunity to address it in a meeting or meetings at which both Parties must be present;

44.5.3 shall permit the Parties to be represented by such legal or other representatives as they shall see fit;



- 44.5.4 shall have the power to require the Parties to produce to it and to the other Party copies of any documents they are able to produce which may assist in the reference (save any which would be privileged from production in Court proceedings) between the Parties relating to the dispute; and
- 44.5.5 shall be entitled to instruct an expert and to take counsel's opinion as to any matter within their field of expertise raised by the reference, but shall not be entitled to delegate its decision(s) to such expert or counsel.
- 44.6 The Adjudicator may in its decision allocate its fees and expenses between the Parties.
- 44.7 The Adjudicator's decision is binding upon the Parties until finally determined by legal proceedings or by agreement.
- 44.8 The Adjudicator may, within five (5) days of giving its decision to the Parties, correct the decision to remove a clerical or typographical error arising by accident or omission.
- 44.9 The Parties hereby agree that the Adjudicator (including any employee or agent of the Adjudicator) appointed in accordance with this clause 44 shall not be liable for anything done or omitted in the discharge or purported discharge of its functions as Adjudicator unless the act or omission is in bad faith.
- 44.10 If either Party does not comply with the decision of the Adjudicator the other Party shall be entitled to take proceedings in the Courts to secure such compliance pending any final determination of the referred dispute or difference pursuant to clause 44.7.
- 44.11 Subject to the provisions of clauses 44.3, 44.4, 44.5 and 44.13, in deciding any dispute referred to it, the Adjudicator shall determine and take into account any matter raised by the Respondent Party to the notice to refer by way of defence or set-off or counter claim (a "**Cross-Claim**"), provided such Cross-Claim arises under this Agreement.
- 44.12 Clauses 44.3 to 44.10 (inclusive) shall apply to any Cross-Claim as they apply to any dispute referred to the Adjudicator pursuant to clause 44.1.
- 44.13 Clauses 44.11 and 44.12 shall not apply to any Cross-Claim if such Cross-Claim is being decided or has been decided by an adjudicator other than the Adjudicator appointed pursuant to clauses 44.1 to 44.3 inclusive to determine the relevant dispute or difference.
45. **NO APPROVAL**
- 45.1 Where, in the performance of the Services, the Consultant seeks or is obliged to seek the Authority's approval or agreement to any matter or thing, the giving or confirming of the same by the Authority shall not in any way derogate from the Consultant's obligations under this Agreement nor diminish, extinguish, exclude, limit or modify any liability on the Consultant's part in respect of this Agreement.
- 45.2 The liability of the Consultant under this Agreement shall not be released, diminished or in any other way affected by an independent enquiry, test or survey into any relevant matter which may be made or carried out by or on behalf of the Authority or by the appointment by the Authority of any independent person firm or company to review and report to the Authority in respect of the Project (including, without limitation, the Services) or by any act or omission which might give rise to an independent liability of such person, firm or company to the Authority.



46. WAIVER

- 46.1 The Consultant acknowledges and agrees that its liability under this Agreement shall not be released, diminished or in any other way affected by:
- 46.1.1 any direction, admission, approach, consent, approval, confirmation, comment, sanction, acknowledgement or advice made or given by or on behalf of the Authority;
 - 46.1.2 any act, omission or delay by or on behalf of the Authority in inspecting approving or informing itself about anything relating to the Services and/or the Project;
 - 46.1.3 any enquiry or inspection into any relevant matter which may be made or carried out by or on behalf of the Authority;
 - 46.1.4 the inclusion of the value of any work, materials or goods in any payment;
 - 46.1.5 the issue of any written confirmation that the Services have been completed or that any defects in same have been rectified; or
 - 46.1.6 the engagement by the Consultant of a Sub-Consultant (whose acts and omissions that Consultant shall be responsible and liable for as if such acts or omissions were its own).
- 46.2 The rights and/or remedies of a Party may only be waived by formal written waiver which is signed by a duly authorised representative of the Party waiving its rights and which makes express and unequivocal reference to the waiver being made pursuant to this clause 46.

47. CUMULATIVE RIGHTS

The rights and remedies provided by this Agreement are cumulative and (except as otherwise provided in this Agreement) are not exclusive of any rights or remedies provided by Applicable Law or in equity and to the extent that any right or remedy provided by this Agreement or by Applicable Law or in equity can be exercised more than once and/or in combination with other rights and/or remedies provided by this Agreement or by Applicable Law or in equity, no single or partial exercise of such right or remedy by a Party shall prevent the further exercise by that Party of that right or remedy or the exercise of any other right or remedy.

48. COUNTERPARTS

This Agreement may be executed in any number of counterparts and by different parties on separate counterparts, each of which when executed and delivered will be an original and all of which together will constitute a single agreement.

49. SEVERANCE

- 49.1 If any provision of this Agreement is found:
- 49.1.1 by any court or administrative body of competent jurisdiction to be invalid or unenforceable, such invalidity or unenforceability will not affect the other provisions of this Agreement which will remain in full force and effect; and
 - 49.1.2 to be invalid or unenforceable but would be valid or enforceable if some part of the provision were deleted, the provision in question will apply with such modification(s) as may be necessary to make it valid.



49.2 The Parties agree, if either of the circumstances described in clause 49.1.1 occur and it is not possible to amend the provision in question in accordance with clause 49.1.2 without materially amending the original intention of the clause, that:

49.2.1 they will use all reasonable endeavours to attempt to substitute for any invalid or unenforceable provision a valid or enforceable provision which achieves to the greatest extent possible the same effect as would have been achieved by the invalid or unenforceable provision; and

49.2.2 the obligations of the Parties under any invalid or unenforceable provision of this Agreement will be suspended while an attempt at such substitution is made.

50. **ASSIGNMENT**

50.1 The Consultant shall not be permitted to assign, novate and/or otherwise dispose all or part of this Agreement without the prior written approval of the Authority.

50.2 The Authority may assign, novate and/or otherwise dispose of its rights and obligations under this Agreement or any part thereof to:

50.2.1 any other Crown Body or public body;

50.2.2 any new body established to perform any of the functions that had previously been performed by the Authority; and

50.2.3 any private sector body which substantially performs the functions of the Authority,

and the Consultant shall, at the Authority's written request, enter into a novation agreement in such form as reasonably specified by the Authority in order to enable the Authority to exercise its rights under this clause 50.2.

50.3 A change in the legal status of the Authority (or that of any party to which this Agreement is assigned, novated and/or otherwise disposed of pursuant to clause 50.2) pursuant to which it ceases to be a "contracting authority" (as defined in Regulation 2(1) of the Procurement Regulations) shall not affect the validity of this Agreement and this Agreement shall continue to be binding on any successor body of the Authority (or that of any party to which this Agreement is assigned, novated and/or otherwise disposed of pursuant to clause 50.2).

51. **ASSIGNMENT & NOVATION**

51.1 The Consultant shall not assign, transfer or charge (or purport to assign, transfer or charge) its interest in this Agreement or any part of this Agreement nor any right arising under this Agreement to any person without the prior written consent of the Authority.

51.2 The Authority may assign, novate and/or otherwise dispose of its rights and obligations under this Agreement or any part thereof to:

51.2.1 any other Crown Body or public body;

51.2.2 any new body established to perform any of the functions that had previously been performed by the Authority; and

51.2.3 any private sector body which substantially performs the functions of the Authority,



and the Consultant shall, at the Authority's written request, enter into a novation agreement in such form as reasonably specified by the Authority in order to enable the Authority to exercise its rights under this clause 50.2.

51.3 A change in the legal status of the Authority (or that of any party to which this Agreement is assigned, novated and/or otherwise disposed of pursuant to clause 50.2) pursuant to which it ceases to be a "contracting authority" (as defined in Regulation 2(1) of the Procurement Regulations) shall not affect the validity of this Agreement and this Agreement shall continue to be binding on any successor body of the Authority (or that of any party to which this Agreement is assigned, novated and/or otherwise disposed of pursuant to clause 50.2).

51.4 The Authority may, by written notice to the Consultant, require the novation of this Agreement to a third party with an interest in undertaking and completing the Project (including any Project Contractor or to an associated party or group member of the Authority in connection with the Project) and the Consultant shall, within fifteen (15) Business Days (or within such other period as the Authority may agree with the Consultant, acting reasonably) execute and deliver to the Authority:

51.4.1 a novation agreement in a form agreed between the Authority and the Consultant (each acting reasonably); and

51.4.2 (if required by the Authority) a post-novation collateral warranty in favour of the Authority in the form of the Collateral Warranty to be provided by or on behalf of the Consultant pursuant to clause 21, amended only to reflect the novation arrangement.

52. **LIMITATION OF AUTHORITY'S LIABILITY**

52.1 The liability of the Authority to the Consultant under or in connection with this Agreement, however that liability arises (including any liability arising by breach of contract, tort (including negligence) or by breach of statutory duty), shall be limited to the aggregate value of the Services properly performed by the Consultant as at the earlier of the date that the Consultant first:

- (a) notified the Authority of its intention to make any potential or actual claim against the Authority; or
- (b) knew (or ought to have known, exercising the Standard of Care) that it may have a right to make such a claim against the Authority.

52.2 The Authority shall have no liability to the Consultant, however that liability arises (including any liability arising by breach of contract, tort (including the tort of negligence) or by breach of statutory duty), for:

52.2.1 loss of profit, loss of contract, loss of business, loss of chance or other similar loss; or

52.2.2 any indirect or consequential loss,

arising out of or in connection with this Agreement.

52.3 Nothing in this clause 52 or elsewhere in this Agreement shall exclude or limit either Party's liability for death or personal injury caused by that Party's negligence.

53. **LIMITATION OF CONSULTANT'S LIABILITY**

The liability of the Consultant to the Authority under or in connection with this Agreement, however that liability arises (including any liability arising by breach of contract, tort (including negligence) or by breach of statutory duty), shall be limited to the sum identified in the Agreement Particulars as the Agreement Liability Cap.



54. **LIABILITY PERIOD**

It is agreed that whatever the manner in which the Parties have executed this Agreement, the period of limitations (in respect of which the Parties hereby waive all and any rights, whether already existing, arising now and/or in the future to raise as a defence to any claim brought under this Agreement under the Limitation Act 1980) applicable to any claim or claims arising out of or in connection with this Agreement shall expire on the expiration of the Agreement Liability Period.

55. **NOTICES**

55.1 Save as specified otherwise in any Authority Policy that may be issued by the Authority to the Consultant from time to time in relation to the issuance and/or receipt of digital correspondence and/or use of digital signatures under or in connection with this Agreement, any notice or other communication required to be given under or in relation to this Agreement (referred to in this clause 55 as a "**notice**") by a Party must be in writing and given by:

55.1.1 personal delivery or by sending it by pre-paid first-class post, recorded delivery or registered post (or registered airmail in the case of an address for service outside the United Kingdom); or

55.1.2 by electronic mail,

to the address and for the attention of the relevant recipient as set out in clause 55.3 or, in the event that alternative contact details have been notified by a Party hereunder to the other Parties in accordance with and making specific reference to this clause 55, to such alternative address(es), provided always that any service of proceedings and/or other documents in any legal action (including in respect of adjudication, arbitration and/or any other method of dispute resolution) by electronic mail alone shall not be permitted and such service shall only be deemed to be effective on the date on which any hard copy of the relevant notice is provided to the intended recipient pursuant to clause 55.2.4.

55.2 Any notice issued by a Party pursuant to clause 55.1 will be deemed to have been received:

55.2.1 if delivered personally, at the time of delivery;

55.2.2 in the case of pre-paid first-class post, recorded delivery or registered post, forty-eight (48) hours from the date of posting if from and to an address in the United Kingdom or Northern Ireland and five (5) days from the date of posting if from and to an address elsewhere;

55.2.3 in the case of registered airmail, five (5) days from the date of posting; and

55.2.4 in the case of electronic mail, at the time of transmission to the intended recipient provided that no error message indicating failure to deliver has been received by the sender and provided further that within twenty-four (24) hours of such transmission a hard copy of the electronic mail is sent by post to the intended recipient in accordance with the provisions of clause 55.1,

in each case:

(a) provided that, if deemed receipt occurs before 09.00 on a Business Day, the notice will be deemed to have been received at 09.00 on that day, and if deemed receipt occurs after 17.00 on a Business Day, or on a day which is not a Business Day, the notice will be deemed to have been received at 09.00 on the next Business Day; and

(b) in proving such service it will be sufficient to prove that the envelope containing such notice was addressed to the address of the relevant Party set out in



clause 55.3 (or as otherwise notified by that Party hereunder) and delivered either to that address or into the custody of the postal authorities as a pre-paid recorded delivery, registered post or airmail letter.

55.3 The postal address and email address of the Authority and the Consultant for the purposes of clause 55.1 are:

For the Authority:	
Address:	[REDACTED]
	[REDACTED]
	[REDACTED]

For the Consultant:	
Address:	[REDACTED]
For the attention of:	[REDACTED]
Email address:	[REDACTED]

56. **NO PARTNERSHIP OR AGENCY**

56.1 Nothing in this Agreement is intended to or shall operate to create a partnership or joint venture of any kind between the Parties or any of them, or to authorise any Party to act as agent for any other or to establish any other fiduciary relationship between the Parties.

56.2 No Party shall have authority to act in the name or on behalf of or otherwise to bind any other Party in any way (including but not limited to the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power) under or in connection with this Agreement.

57. **VARIATIONS**

No variation, addition, amendment and/or modification to the terms and conditions of this Agreement shall be valid unless it is in writing and signed by or on behalf of each of the Parties by a duly authorised representative of each Party.

58. **COSTS & EXPENSES**

Each Party shall be responsible for paying its own costs and expenses incurred in connection with the negotiation, preparation, execution and implementation of this Agreement and of each document referred to therein.

59. **THIRD PARTY RIGHTS**

This Agreement does not create any right enforceable by any person not a party to it (whether pursuant to the Third Parties Rights Act or otherwise) except that a person who is the successor to or the permitted assignee of the rights of the Authority is deemed to be a party to this Agreement.



60. **FURTHER ASSURANCE**

The Consultant shall, at its own expense, use all reasonable endeavours to do or procure to be done all such further acts and things and execute or procure the execution of all such other documents as the Authority may from time to time require for the purpose of giving full effect to the provisions of this Agreement.

61. **ENTIRE AGREEMENT**

This Agreement, together with the documents referred to in it, constitutes the entire agreement and understanding between the Parties in respect of the subject matter of this Agreement and supersedes any previous agreement, understanding or arrangement between the Parties or any of them relating to such subject matter.

62. **GOVERNING LAW**

62.1 This Agreement shall be governed by and construed in accordance with the laws of England and Wales.

62.2 This Agreement and any non-contractual obligations in connection with this Agreement are subject in all respects to English law and the Parties hereby submit to the exclusive jurisdiction of the English Courts, provided that other jurisdictions may apply solely for the purpose of giving effect to this clause 62 and for the enforcement of any judgment, order or award given under English jurisdiction.



Home Office

HASLAR IRC
COST MANAGEMENT SERVICES
EXECUTION VERSION: JANUARY 2024

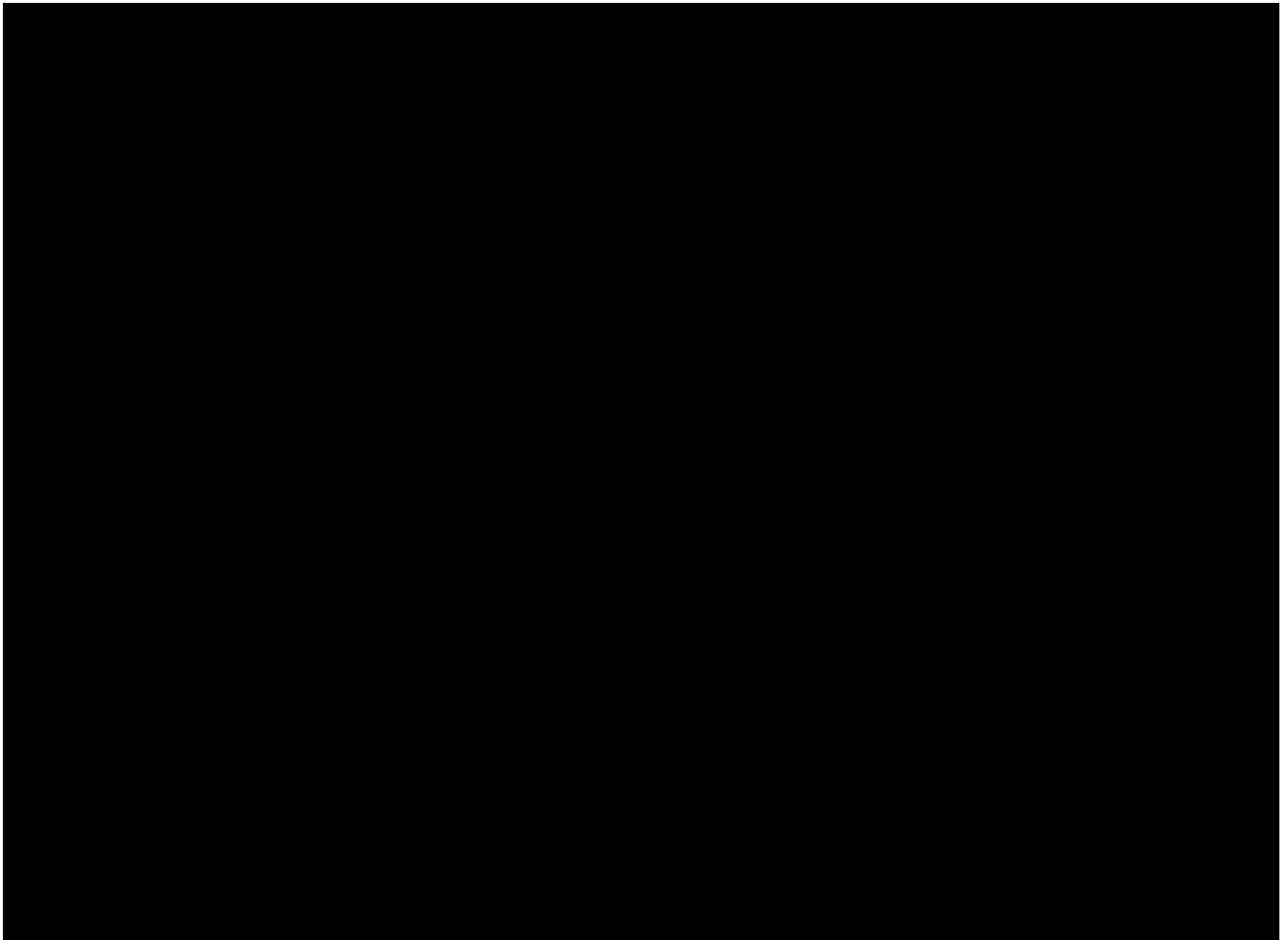
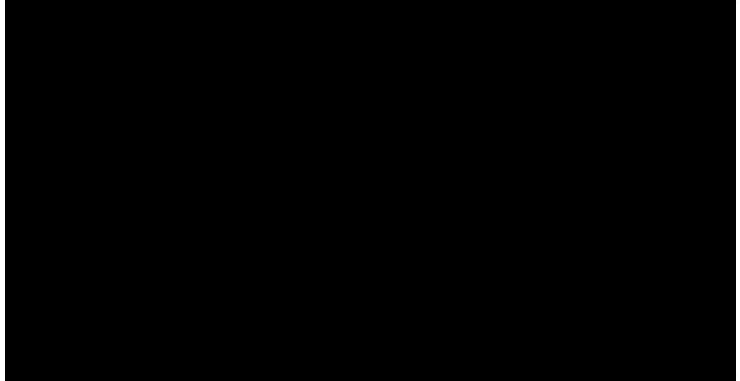
IN WITNESS WHEREOF THIS AGREEMENT HAS BEEN EXECUTED BY THE PARTIES ON THE DATE FIRST WRITTEN ABOVE

SIGNED for and on behalf of THE SECRETARY OF STATE FOR THE HOME DEPARTMENT acting by an authorised signatory:

Authorised signatory (signature):

Authorised signatory (printed name):

Role:





SCHEDULE 1

AGREEMENT PARTICULARS

PART 1 – CONTACT DETAILS

Authority contact details	
Authority representative:	[REDACTED]
Position:	[REDACTED]
Address:	[REDACTED]
Telephone number:	[REDACTED]
Email address:	[REDACTED]

Consultant contact details	
Consultant representative:	[REDACTED]
Position:	[REDACTED]
Address:	[REDACTED]
Telephone number:	[REDACTED]
Email address:	[REDACTED]

PART 2 – THE SERVICES

Standard Services:	As described in the Services Schedule.
Services Manager	
Key Personnel	

PART 3 – PROJECT DETAILS

Project:	The redevelopment of Haslar IRC, as more particular described in the Services Schedule.
Project Site:	[REDACTED]
Project Contractor:	
Principal Contractor	
Principal Designer	
Other Consultants	

PART 4 – SERVICES PROGRAMME



Services Programme	
Services Programme Date	The final Business Day of each month.

PART 5 – PAYMENT DETAILS

Payment Application Date:	The final Business Day of each month.
Due Date for Payment:	Seven (7) days after the date of receipt by the Authority of a valid application for payment to which the relevant Payment Application relates.
Final Date for Payment:	Fourteen (14) days from the Payment Due Date.

PART 6 – INSURANCES

PROFESSIONAL INDEMNITY INSURANCE	
Type of cover	
Amount of cover (£)	
Period of cover	Throughout the Agreement Liability Period.

THIRD PARTY & PUBLIC LIABILITY INSURANCE	
Type of cover	
Amount of cover (£)	
Period of cover	The period during which the Consultant performs any Services under this Agreement.

EMPLOYER'S LIABILITY INSURANCE	
Amount of cover (£)	
Period of cover	The period during which the Consultant performs any Services under this Agreement.

PART 7 – LIABILITY OF THE CONSULTANT

Agreement Liability Cap	
Agreement Liability Period	Twelve (12) years from:



	<p>(a) the date on which the Services have been completed by the Consultant in accordance with this Agreement;</p> <p>(b) if the Services have not been completed by the Consultant, the last date on which the Consultant performed the Services under this Agreement;</p> <p>(c) the date of "Completion" of the Project as certified pursuant to (and as such term is defined in) the building contract between the Authority and the Project Contractor as notified by the Authority to the Consultant from time to time; or</p> <p>(d) the date on which the engagement of the Consultant under this Agreement is terminated,</p> <p>whichever is the later to occur.</p>
--	--



SCHEDULE 2

SERVICES SCHEDULE

REDACTED



SCHEDULE 3

PRICING SCHEDULE

REDACTED



SCHEDULE 4

INDEXATION SCHEDULE

REDACTED

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



SCHEDULE 5

COLLATERAL WARRANTY SCHEDULE

PART 1 – CONSULTANT COLLATERAL WARRANTY

REDACTED



PART 2 – SUB-CONSULTANT COLLATERAL WARRANTY

REDACTED



SCHEDULE 6
PROJECT PROGRAMME

REDACTED

REDACTED

[illegible]

REDACTED

[illegible]



SCHEDULE 9

DATA PROTECTION SCHEDULE

This Schedule sets out the data processing particulars.

The contact details of the data protection officers for each of the Authority and the Consultant are as follows:

Party	Name	Email address	Telephone number

Capitalised terms in this Schedule have the meaning given to them in this Agreement (as the context requires) unless otherwise specified.

Without prejudice to the generality of the Agreement and this Schedule:

- the Consultant shall comply with any further written instructions from the Authority / Controller in connection with the Processing of any Personal Data in relation to this Agreement; and
- any such further instruction shall be deemed to be automatically incorporated into this Schedule as from the date of any such instruction.

Description	Details
Identity of the Controller and Processor	<p>The Parties acknowledge and agree that, for the purpose of the Data Protection Laws and the provisions of the Agreement:</p> <ul style="list-style-type: none"> the Authority is the Controller; and the Consultant is the Processor.
Permitted Purpose	<p>The Consultant shall be permitted to Process the Personal Data solely to the extent required to allow the Consultant to perform its obligations in accordance with this Agreement (and/or where such Processing is a reasonably incidental requirement of performing its obligations in accordance with this Agreement).</p>
Duration of the Processing	<p>Unless otherwise expressly agreed by the Authority in writing, the duration of its engagement under this Agreement.</p>
Nature of the Processing	<p>The nature of the Processing means any operations including the collection, recording, organisation, structuring, storage, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, erasure, destruction of Personal Data (whether or not by automated means) for purposes limited to the performance of the Consultant's obligations under and in accordance with the terms of this Agreement.</p>
Type of Personal Data	<p>These are as follows:</p> <ul style="list-style-type: none"> full name;



	<ul style="list-style-type: none"> • occupation; • workplace / home address; • workplace / home telephone number; • date of birth; • place of birth; • age; • nationality; • next of kin and emergency contact details; • email address; • national insurance number; • tax code; • salary or remuneration; • photographic facial image; • contract type; • start date, end date and any reason(s) for early termination; • curriculum vitae; • passport and driving licence details; • visa details; • right to work documentation; • hours worked and records of absence / annual leave; • details of physical and psychological health of medical conditions; • information about investigations and criminal proceedings; • equalities monitoring information (age, disability, gender, sexual orientation, race, religion belief and ethnicity); and • voice recordings from calls.
Categories of Data Subject	These are:



	<ul style="list-style-type: none"> the Consultant's agents / staff and Sub-Consultants or suppliers of any type; and any user of the Services of any type.
Plan for return and destruction of the Personal Data once the processing is complete	<p>The Personal Data will be retained for the duration of the Consultant's engagement under this Agreement.</p> <p>The Consultant will ensure that there is an effective policy to control access to computerised data and to prevent unauthorised access at all times. On termination of this Agreement, all relevant documentation and records will be transferred back to the Authority. Any such transfer of these records will be conducted in accordance with the requirements of the Data Protection Laws.</p> <p>Notwithstanding the above, the Consultant shall either return or destroy the Personal Data upon the conclusion (or earlier termination) of its engagement under this Agreement at the Authority's election (unless otherwise advised by the Authority).</p>



SCHEDULE 10

KPI SCHEDULE

REDACTED