

CROWN COMMERCIAL SERVICE

PROJECT MANAGEMENT AND FULL DESIGN TEAM SERVICES FRAMEWORK SCHEDULE 4

PART B - ORDER FORM AND CALL OFF TERMS

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Date 22nd September 2022

ORDER FORM

Between

THE SECRETARY OF STATE FOR JUSTICE

and

Turner and Townsend Cost Management Limited

for the provision of

Cost Consultancy Services:

Call-Off Contract for Design 7 Newgate St, London - HMCTS Tribunal Hearing Centre

- BPRN 139/20/6162

ORDER NUMBER: [REDACTED] _____

THIS CALL OFF CONTRACT is made BY DEED the 22nd day of September 2022.

PARTIES:

1. **THE SECRETARY OF STATE FOR JUSTICE** of Ministry of Justice, 102 Petty France, Westminster, London SW1H 9AJ acting as part of the Crown (the "**Contracting Authority**", with such term including the Contracting Authority's successors in title and legal assigns); and
2. **Turner and Townsend Cost Management Limited** which is a company incorporated in and in accordance with the law (Company No. **6458527** whose registered office address is at **Turner and Townsend Cost Management Limited, Calverley Lane, Horsforth, Leeds, LS18 4GH** (the "**Supplier**").

BACKGROUND

- (A) The Minister for the Cabinet Office (the "**Cabinet Office**") as represented by Crown Commercial Service, a trading fund of the Cabinet Office, without separate legal personality (the "**Authority**"), established a framework for project management and full design team services for the benefit of public sector bodies.
- (B) The Supplier was appointed to the framework and executed the framework agreement (with reference number **RM3741**) which is dated the 3rd May 2017 (the "**Framework Agreement**").
- (C) On the 27th October 2020 the Contracting Authority (acting as part of the Crown and in the Framework Agreement is identified as a "Contracting Authority") invited the Supplier, along with other parties to the Framework Agreement, to tender for the provision of services in accordance with the terms and conditions of the Framework Agreement. An updated response was requested 2nd March 2022.
- (D) On the 10th November 2020 the Supplier submitted a tender response to the invitation referred to in Recital (C) and was subsequently selected by the Contracting Authority to enter into this Call Off Contract. An updated response was received 4th January 2022.
- (E) The Contracting Authority hereby appoints the Supplier under this Call Off Contract to provide Project Services in relation to this Project in accordance with the terms and conditions of this Call Off Contract and attached Project Service Order.
- (F) Without prejudice to the generality of Recital (E), where the Supplier is instructed to provide any Project Services in relation to a Project in accordance with this Call Off Contract or otherwise, the Contracting Authority may, in accordance with clause 2B, appoint the Supplier (at its absolute discretion) to enter into a further Partnering Contract in relation to the provision of certain Partnering Services in connection with the Project to which the relevant Project Services relate, following which the duties and obligations of the Supplier in relation to those Project Services undertaken in respect of that Project up to the date of such Partnering Contract and the future Partnering Services in respect of the same shall be subject to the provisions of clause 2B.

- (G) The Supplier acknowledges and agrees that the Contracting Authority has entered into or may enter into one or more agreements in substantially the same form as this Call Off Contract with other suppliers under and in accordance with the terms of the Framework Agreement (each a "**Framework Supplier**") and that the basis of the Supplier's engagement under this Call Off Contract shall be subject always to the provisions of clause 2.5. All references to Fox Court in Turner and Townsend Cost Management Limited response documents shall be considered reference to 7 Newgate St.

IT IS AGREED AS FOLLOWS:

1. This document, the Call Off Contract Particulars, Contract Conditions, Project Services Order and any schedules annexed hereto entered into by the parties pursuant to clause 2A (subject to clause 2B.8) form part of this Call Off Contract.
2. The Contracting Authority will pay the Supplier the relevant Fee for the provision of any Project Services instructed by the Contracting Authority in connection with a Project pursuant to clause 2A and carry out its duties in accordance with this Call Off Contract and the Framework Agreement.
3. Where the Contracting Authority and the Supplier enter into a Partnering Contract in connection with a Project pursuant to clause 2B, the Supplier acknowledges and agrees that:
 - (a) the Contracting Authority will pay the Supplier for the provision of the Partnering Services solely and exclusively in accordance with the provisions of the relevant Partnering Contract; and
 - (b) unless otherwise agreed between the parties pursuant to clause 2B, any part of the Fees previously paid by the Contracting Authority to the Supplier or that are due and payable to the Supplier, prior to the date of the Partnering Contract, in connection with the provision of the Project Services in relation to the Project to which the Partnering Contract relates shall be deemed, once paid to the Supplier, to have been paid by the Contracting Authority on account of any sums payable by the Contracting Authority to the Supplier under the Partnering Contract in respect of the same.
4. The Supplier shall perform the Project Services in accordance with this Call Off Contract and the Framework Agreement. Where the Contracting Authority and the Supplier enter into a Partnering Contract pursuant to clause 2B in relation to a specific Project, the Supplier acknowledges and agrees that it shall perform any Partnering Services strictly in accordance with the requirements of the Partnering Contract.
5. This Call Off Contract is the entire agreement between the parties in relation to the provision of the Project Services for this Project and supersedes and extinguishes all prior arrangements, understandings, agreements, statements, representations or warranties (whether written or oral) relating thereto.
6. Neither party has been given, nor entered into this Call Off Contract in reliance on any arrangements, understandings, agreements, statements, representations or warranties other than those expressly set out in this agreement.

7. Nothing in clauses 5 or 6 above shall exclude liability in respect of misrepresentations made fraudulently.

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

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

Signature:

Printed Name:

Witness Name:

EXECUTED (but not delivered until the date hereof) **AS A DEED** by **TURNER AND TOWNSEND COST MANAGEMENT LIMITED** acting by a director in the presence of a witness:

Director (signature):

Director (printed name):

Witness (signature):

Witness (printed name):

Witness address:

Witness occupation:

Call Off Contract Particulars

0	<p><u>Project</u></p> <p>The Supplier acknowledges and agrees that the Project is for design of 7 Newgate St, London - HMCTS Tribunal Hearing Centre.</p>		
1	<p><u>FEES AND PAYMENT</u></p> <p>In respect of the payment of any Fee in connection with the provision of any Project Services pursuant to a Project Services Order:</p> <ul style="list-style-type: none">the Final Date for Payment of an instalment of the Fee is 30 (thirty) days after the Due Date for Payment;the Due Date for Payment of an instalment of the Fee is the date that the Contracting Authority receives the Supplier’s invoice in respect of the same; andthe interest rate for late payment is 4% (four per cent) above the Bank of England base rate in force from time to time.		
2	<p><u>NOTICES</u>¹</p> <p>All notices under this Call Off Contract and each Project Services Order shall be submitted to:</p>		
	To the Contracting Authority		To the Supplier
	<div></div> <p>Ministry of Justice Post Point 5.42 102 Petty France London SW1H 9AJ</p>		<div></div> <p>Turner and Townsend Cost Management Limited 6th Floor, 55 Spring Gardens, Manchester, M2 2BY United Kingdom</p>
	If <div></div> by <div></div> email: <div></div>		If <div></div> by <div></div> email: <div></div>
3	<p><u>INSURANCE REQUIREMENTS</u></p> <p>In accordance with Clause 18, the insurances that the Supplier is required to take out and maintain in respect of any Project Services provided under an individual Project Services Order are as follows:</p>		
	Insurance	Level of cover	Period of cover
	Third Party Public and Products Liability Insurance	£5,000,000 (five million pounds) for any one occurrence, the number of occurrences being unlimited in any annual period of insurance, but in the aggregate per annum in respect of products liability and £5,000,000	The period commencing on the date of the relevant Project Services Order and concluding twelve (12) months after completion or earlier termination of the relevant Project

¹ **TENDER STAGE COMMENT:** This section will be completed in the execution version of the Call Off Contract.

		(five million pounds) in aggregate per annum in respect of each of the following: pollution; contamination; asbestos; fire resistance and or fire retardant characteristics of external cladding systems; and their individual liabilities (to the extent insured by the relevant policy). The annual limit of liability to the Authority pursuant to this clause will be £20m.	Services.
	Employer's Liability Insurance	The Supplier shall satisfy its statutory obligations in full in relation to taking out and maintaining employer's liability insurance, with the indemnity limit of such insurance being not less than that required by Law at any time.	The period commencing on the date of the relevant Project Services Order and concluding twelve (12) months after completion or earlier termination of the relevant Project Services.
	Professional Indemnity Insurance ²	£10,000,000 (ten million pounds) for any one claim or series of claims arising out of one single incident (provided by way of unlimited reinstatements), including costs and expenses, but £5,000,000 (five million pounds) in aggregate per annum in respect of each of the following: pollution; contamination; asbestos; fire resistance and or fire retardant characteristics of external cladding systems; and their individual liabilities (to the extent insured by the relevant policy).	The period commencing on the date of the relevant Project Services Order and concluding on the expiration of the Liability Period.
	The total aggregate annual limit of liability to the Contracting Authority is £20,000,000 for all claims		

² **TENDER STAGE COMMENT:** The required levels of indemnity for this type of insurance for Lot 1 will be £10m and £5m for Lot 4.

4	<p><u>LIABILITY PERIOD</u></p> <p>Subject to the below in relation to any Project Services provided under a Project Services Order, the Liability Period under this Call Off Contract shall be twelve</p>
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	<p>(12) years from the later of the date on which:</p> <p>(a) the Supplier last performed any duties and/or obligations under or in connection with this Call Off Contract; and (b) this Call Off Contract is terminated, in each case, save in respect of any claims made before such date.</p> <p>Without prejudice to the generality of the above, the Liability Period in respect of each individual Project Services Order shall be twelve (12) years from the later of the date on which:</p> <p>(a) the Supplier last provided any Project Services under or in connection with that Project Services Order;</p> <p>(b) that Project Services Order is terminated;</p> <p>(c) this Call Off Contract is terminated; and</p> <p>(d) a Partnering Contract is entered into between the Contracting Authority and the Supplier in connection with the Partnering Services and the Project (subject to the application of clause 2B.8), in each case, save in respect of any claims made before such date.</p>
5	<p><u>DISPUTE RESOLUTION</u></p> <ul style="list-style-type: none"> • The nominating body for the Adjudicator is the Royal Institute of Chartered Surveyors. • The dispute resolution tribunal is Arbitration and: <ul style="list-style-type: none"> ○ the arbitration procedure shall be conducted in accordance with the Joint Contracts Tribunal edition of the Construction Industry Model Arbitrator Rules ("CIMAR") current at the date of referral; ○ the number of arbitrators shall be one (1); ○ the place where arbitration is to be held is London; ○ the language to be used in the arbitration proceedings shall be English; and ○ the governing law of the contract shall be the substantive law of England and Wales. <p>If the parties cannot agree the identity of the arbitrator then the nominating body shall be the Royal Institute of Chartered Surveyors.</p>
5	<p><u>PROTECTION OF CONTRACTING AUTHORITY DATA</u></p> <ul style="list-style-type: none"> • Clause 28 (Protection of Contracting Authority Data) applies to this Call Off Contract and each Project Services Order.

Contract Conditions

1. INTERPRETATION

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

"Additional Fee" the amount payable by the Contracting Authority to the Supplier for any Additional Project Services instructed by the Contracting Authority in relation to a Project Services Order in accordance with this Call Off Contract;

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

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

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

"Auditor" means:

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

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

Recovery Plan"

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

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

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

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

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

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

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

(a) relating to the Supplier, its intellectual property rights or its business or information which the Supplier has notified in writing to the Contracting Authority that, if disclosed by the Contracting Authority, would cause the Supplier significant commercial disadvantage or material financial loss; and

(b) that constitutes a trade secret;

"Confidential Information" is any information, however it is conveyed, that relates to the business, personnel, affairs, developments, trade secrets, ideas, concepts, schemes, information, knowledge, techniques, methodology, and without limiting the above anything else in the nature of knowhow, together with all information derived from any of the above, and any other information clearly designated as

	being confidential (whether or not it is marked "confidential") or which ought reasonably to be considered to be confidential;
"Contracting Authority Policy"	means, in relation to a specific Project, any policy of the Contracting Authority identified as such in the relevant Project Services Order;
"Contracts Finder"	means the Government's publishing portal for public sector procurement opportunities;
"Construction Products Regulations"	the Construction Products Regulations 2013 (SI 2013/1387) and the Construction Products Regulation (305/2011/EU);
"Constructor"	means any contractor appointed (or to be appointed) by the Contracting Authority in connection with a Project;
"Contract Conditions"	these Contract Conditions;
"Contracting Authority Data"	<p>means:</p> <ul style="list-style-type: none"> (a) the data, Material, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, including any Contracting Authority's Confidential Information, and which: <ul style="list-style-type: none"> (i) are supplied to the Supplier by or on behalf of the Contracting Authority; or (ii) the Supplier is required to generate, process, store or transmit pursuant to this agreement; or (b) any Personal Data for which the Contracting Authority is the Controller;
"Contracting Authority's Representative"	means, in respect of each Project Services Order, the person identified as such in that Project Services Order, who may be replaced from time to time under clause 7;
"Control"	means control in either senses as defined in sections 450 and 1124 of the Corporation Tax Act 2010;

"Controller"	shall have the meaning given to such term in the GDPR;
"Core Service"	means each service identified by a reference number and as more particular described in the Services Schedule;
"Data Loss Event"	means any event that results, or may result, in unauthorised access to Personal Data held by the Supplier under this Call Off Contract and/or actual or potential loss and/or destruction of Personal Data in breach of this Call Off Contract, including any Personal Data Breach;
"Data Protection Legislation"	means: <ul style="list-style-type: none"> (a) the GDPR, the LED and any applicable national implementing Laws, as amended from time to time; (b) (subject to Royal Assent) the DPA 2018, to the extent that it relates to the Processing of Personal Data and privacy; and (c) all applicable Law about the Processing of Personal Data and privacy;
"Data Protection Impact Assessment"	means an assessment by the Controller of the impact of the envisaged Processing on the protection of Personal Data;
"Data Protection Officer"	shall have the meaning given to such term in the GDPR;
"Data Subject"	shall have the meaning given to such term in the GDPR;
"Data Subject Request"	means a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data;
"DOTAS"	the "Disclosure of Tax Avoidance Schemes" rules which require a promoter of tax schemes to tell HM Revenue and Customs of any specified notifiable arrangements or proposals and to provide prescribed information on those

	arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 7 of the Finance Act 2004 and as extended to National Insurance Contributions by the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012, SI 2012/1868 made under s.132A Social Security Administration Act 1992;
"DPA 2018"	means the Data Protection Act 2018 (or such other instrument that brings into force as Law the Data Protection Bill 2017-19, as amended, superseded and/or replaced);
"Effective Date"	means the date of this Call Off Contract;
"Employee Liabilities"	means all claims, actions, proceedings, orders, demands, complaints, investigations (save for any claims for personal injury which are covered by insurance) and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs, expenses and legal costs reasonably incurred in connection with a claim or investigation including in relation to the following: <ul style="list-style-type: none"> (a) redundancy payments including contractual or enhanced redundancy costs, termination costs and notice payments; (b) unfair, wrongful or constructive dismissal compensation; (c) compensation for discrimination on grounds of sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation or claims for equal pay; (d) compensation for less favourable treatment of part-time workers or fixed term employees;

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

"Environmental

Information

Regulations" or "EIRs"

means the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government department in relation to such regulations;

"Fee"

means, in respect of each individual Project Services Order, the Basic Fee and the Additional Fee (if any) in relation to any Project Services provided by the Supplier pursuant to that Project Services Order;

"Fee Schedule"

means Schedule 2 of this Call Off Contract.

"FOIA"

means the Freedom of Information Act 2000 as amended from time to time and any subordinate legislation made under that Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government department in relation to such legislation;

"Former Supplier"

is the Supplier supplying services to the Contracting Authority before the Relevant Transfer Date that are the same as or substantially similar to the Project Services (or any part of the Project Services) and shall include

	any sub-consultant of such supplier (or any subconsultant of any such sub-consultant);
"Framework Supplier"	has the meaning given to such term in Recital G of the Order Form;
"Fraud"	means any offence under legislation creating offences in respect of fraudulent acts (including the Misrepresentation Act 1967) or at common law in respect of fraudulent acts including acts of forgery;
"Funder"	means, in relation to a specific Project, a person providing finance in connection with that Project;
"GDPR"	means the General Data Protection Regulation (Regulation (EU) 2016/679);
"General Anti-Abuse Rule"	means: <ul style="list-style-type: none"> (a) the legislation in Part 5 of the Finance Act 2013; and (b) any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements to avoid national insurance contributions;
"Guarantor"	means, in respect of an individual Project Services Order, the person identified as such in that Project Services Order;
"Halifax Abuse Principle"	the principle explained in the CJEU Case C-255/02 Halifax and others;
"Information"	has the meaning given under section 84 of the Freedom of Information Act 2000 as amended from time to time;
"Initial Term"	means the period of up to two (2) years commencing on the Effective Date;
"Insolvent"	a party is insolvent if: <ul style="list-style-type: none"> (a) being an individual, it:

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

	<p>(iv) has any distress, execution or other process is levied or applied for in respect of the whole or any part of its property, assets or undertaking; or</p> <p>(v) has any composition in satisfaction of its debts or scheme of arrangement of its affairs or compromise or arrangement between it and its creditors and/or members or any class of its creditors and/or members proposed, sanctioned or approved; or</p> <p>(vi) it commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of that party with one or more other companies or the solvent reconstruction of that party; or</p>
	<p>(c) is subject to an event analogous to any of the above in any jurisdiction outside England and Wales;</p>
"Key Performance Indicator Schedule"	<p>means the schedule identified as such (if applicable) in a Project Services Order, which may incorporate, as required by the Contracting Authority on a Projects specific basis and at its sole discretion, content and/or principles derived from the Baseline Key Performance Requirements;</p>
"Key Personnel"	<p>means, in respect of an individual Project Services Order, the Supplier's personnel identified as such in that Project Services Order, as may be removed or replaced from time to time in respect of a Project Services Order under clause 7;</p>

<p>"</p> <p>Key Sub-Consultants"</p>	<p>means, in respect of an individual Project Services Order, those sub-consultants identified as such in a Project Services Order;</p>
<p>"Key Sub-Contractors"</p>	<p>means, in respect of an individual Project Services Order, any sub-contractor which is listed in Schedule 7 of the Framework Agreement (Key Sub-Contractors) and/or identified as such in that Project Services Order;</p>
<p>"Landowner"</p>	<p>means, in relation to a specific Project, any party who holds a freehold or leasehold interest in any land or property forming part of that Project;</p>
<p>"Law"</p>	<p>means any legislation or any judgement of a relevant court of law;</p>
<p>"LED"</p>	<p>means the Law Enforcement Directive (Directive (EU) 2016/680);</p>
<p>"Liability Period"</p>	<p>is the period identified as such in the Call Off Contract Particulars as applying to:</p> <ul style="list-style-type: none"> (a) this Call Off Contract generally; and (b) each Project Services Order specifically (as the context permits);
<p>"Material"</p>	<p>all designs, drawings, models, plans, specifications, design details, photographs, brochures, reports, feasibility studies, planning submissions, notes of meetings, building information modelling (BIM) materials, computer aided design (CAD) materials, calculations, data, databases, schedules, programmes, bills of quantities, budgets and any other materials provided in connection with a Project and all updates, amendments, additions and revisions to them and any works, designs, or inventions incorporated or referred to in them for any purpose relating to that Project;</p>
<p>"MI Report Template"</p>	<p>means the management information report template provided by the Contracting Authority to the Supplier from time to time;</p>

<p>"</p> <p>Novation Agreement"</p>	<p>means a form of deed of novation as provided by the Contracting Authority to the Supplier pursuant to clause 14.7;</p>
<p>"Occasion of Tax Non-Compliance"</p>	<p>(a)</p> <p>any tax return of the Supplier submitted to a Relevant Tax Authority on or after 1 October 2012 is found on or after April 2013 to be incorrect as a result of:</p> <p>(i) a Relevant Tax Authority successfully challenging the Supplier under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle; and/or</p> <p>(ii) the failure of an avoidance scheme which the Supplier was involved in, and which was, or should have been, notified to a Relevant Tax Authority under the DOTAS or any equivalent or similar regime; or</p> <p>(b)</p> <p>the Supplier's tax affairs give rise on or after 1 April 2013 to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Effective Date or to a penalty for civil fraud or evasion;</p>
<p>"Order Form"</p>	<p>means the document entitled "Order Form" to which the Call Off Contract Particulars and these Contract Conditions (and associated schedules) are annexed;</p>
<p>"Parent Company Guarantee"</p>	<p>a parent company guarantee in the form set out at Schedule 5 of this agreement;</p>
<p>"Partnering Contract"</p>	<p>means a PPC2000 contract amended to incorporate the special terms and schedules in the form set out at Schedule 8 of this Call Off Contract, subject to any amendments to the same as specified and/or agreed by the Contracting Authority in accordance with clause 2B;</p>

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"Partnering Services"	means the services, based upon those referred to at Part 3 of the Services Schedule (and, as required by the Contracting Authority, may include one or more Core Service), to be performed by the Supplier under and pursuant to any Partnering Contract entered into between the Contracting Authority and the Supplier, the precise scope of which shall be agreed between the parties in accordance with clause 2B (and shall be defined in any eventual Partnering Contract between the parties as the "Consultant Services");
"Permitted Uses"	without limitation the design, construction, completion, reconstruction, modification, refurbishment, development, maintenance, facilities management, funding, disposal, letting, fitting-out, advertisement, decommissioning, demolition, reinstatement, extension, building information modelling and repair of any part of or the whole of any Project and any other project of the Contracting Authority;
"Personal Data"	shall have the meaning given to such term in the GDPR;
"Personal Data Breach"	shall have the meaning given to such term in the GDPR;
"PPC2000"	means the standard form of contract known as PPC2000 (amended 2008): ACA Standard Form of Contract for Project Partnering (PPC2000);
"Processor"	shall have the meaning given to such term in the GDPR (and "Process" , "Processed" and "Processing" shall be construed accordingly);
"Processing Schedule"	means Schedule 7 of this Call Off Contract (as may be updated and/or replaced from time to time by the Contracting Authority by written notice to the Supplier);
"Professional Team"	means, in relation to a specific Project, any designers and other professional consultants or individuals appointed by the Contracting Authority in relation to that Project;

"Programme"	<p>means, in respect of an individual Project Services Order, the programme referred to as such in that Project Services Order in connection with the relevant Project (or as otherwise agreed between the parties from time to time in writing in respect of that Project) that sets out the key dates and time periods for:</p>
	<ul style="list-style-type: none"> (a) completing key activities in relation to the provision of the Project Services; (b) issuing Material and other documents; and (c) providing information relating to the Project Services and that Project,
	<p>as may be adjusted from time to time by agreement between the Contracting Authority and the Supplier;</p>
"Prohibited"	<p>means, in relation to a specific Project, any materials, equipment, products or kits that are generally accepted, or suspected, in the construction industry at the relevant time as:</p> <ul style="list-style-type: none"> (a) posing a threat to the health and safety of any person; (b) posing a threat to the structural stability, performance or physical integrity of a Project or any part or component of the Project; (c) reducing, or possibly reducing, the normal life expectancy of the Project or any part or component of the Project; (d) not being in accordance with any Law, British Standard, relevant code of practice, good building practice or any applicable agrément certificate issued by the British Board of Agrément; or (e) having been supplied or placed on the market in breach of the Construction Products Regulations;
"Prohibited Act"	<p>means:</p>

- (a) to directly or indirectly offer, promise or give any person working for or engaged by the Contracting Authority or any other public body a financial or other advantage to:
 - (i) induce that person to perform improperly a relevant function or activity; or
 - (ii) reward that person for improper performance of a relevant function or activity;
- (b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this agreement; or
- (c) committing any offence:
 - (i) under the Bribery Act 2010;
 - (ii) under legislation creating offences concerning Fraud;
 - (iii) at common law concerning Fraud;
 - (iv) committing (or attempting or conspiring to commit) Fraud; or
 - (v) any activity, practice or conduct which would constitute one of the offences listed under (c)(i) to (c)(iv) above if such activity, practice or conduct had been carried out in the UK;

"Project"

means, in respect of an individual Project Services Order, the project identified as such in that Project Services Order;

"Project Lead"	means, in respect of an individual Project Services Order, the person identified as such in that Project Services Order;
"Project Services"	means each Core Service (as instructed by the Contracting Authority to clause 2A) and the Additional Project Services (if any) in connection with a Project;
"Project Services Order"	means an order for Project Services in the form set out at Schedule 3 for Design 7 Newgate St, London - HMCTS Tribunal Hearing Centre;
"Protective Measures"	means all appropriate technical and organisational measures to protect, secure and recover Personal Data (as the context permits), which may include pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it;
"Purchaser"	means, in relation to a specific Project, any party (other than any Tenant) who may enter into any agreement for the purchase of any freehold or leasehold interest in the property comprising that Project;
"Relevant Requirements"	means all applicable legislation relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State for Justice pursuant to section 9 of the Bribery Act 2010;
"Relevant Tax Authority"	means HM Revenue and Customs, or, if applicable, a tax authority in the jurisdiction in which the Supplier is established;
"Relevant Transfer"	is a transfer of employment to which the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) applies (as amended or replaced, or any other regulations implementing European Council Directive 77/187/EEC on the approximation of laws of

	European member states relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses, as amended or re-enacted from time to time);
"Relevant Transfer Date"	is, in relation to a Relevant Transfer, the date upon which the Relevant Transfer takes place;
"Request for Information"	means a request for information or an apparent request relating to this agreement or the provision of any Project Services or an apparent request for such information under the FOIA or the EIRs;
"Required Standard"	the reasonable skill, care and diligence to be expected of a qualified and experienced member of the Supplier's profession undertaking the Project Services in relation to projects of a similar size, scope, complexity and character to the relevant Project;
"Schedule"	means a schedule to this Call Off Contract;
"Security Policy"	means, in respect of an individual Project Services Order, the Contracting Authority's security policy, if any, identified in that Project Services Order as applying to the relevant Project;
"Services Schedule"	means Schedule 1;
"Site"	means, in relation to a specific Project, the site of that Project as described in the relevant Project Services Order - specifically 7 Newgate St, London - HMCTS Tribunal Hearing Centre site;
"SME"	means an enterprise falling within the category of micro, small or medium-sized enterprises as defined by the Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises;
"SME Management Information Report"	has the meaning given to such term in clause 39.1;

"Staff Transfer Schedule"	means, in relation to a specific Project, the Staff Transfer Schedule (if any) identified as such in the relevant Project Services Order;
"Sub-Processor"	means any third party appointed to Process Personal Data related to this Call Off Contract on behalf of the Supplier;
"Supplier Personnel"	all directors, officers, employee, agents, consultants and contractors of the Supplier and/or of any subconsultant engaged in the performance of the Supplier's obligations under this agreement including the Supplier's Representative;
"Supplier's Representative"	means, in relation to a specific Project, the person identified as such in the relevant Project Services Order, who may be replaced from time to time under clause 7;
"Technical Standards"	means, in relation to a specific Project, any technical and other standards identified as such in the relevant Project Services Order;
"Tenant"	means, in relation to a specific Project, any party who may enter into any lease or agreement for the grant of a leasehold interest in the whole or any part of that Project;
"Term"	means the Initial Term as extended in accordance with clause 2.2;
"Third Party Agreements"	<p>means, in relation to a specific Project, any agreement between the Contracting Authority and a third party relating to that Project and which:</p> <ul style="list-style-type: none"> (a) a copy, or relevant extract, is attached to the Project Services Order; or (b) the Contracting Authority notifies the Supplier in writing after the date of the relevant Project Services Order enclosing a copy or relevant extracts;
"Transferring"	are those employees of the Contracting Authority to

Contracting whom the Employment Regulations will apply on the **Authority Employees**" Relevant Transfer Date;

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

"VAT" value added tax imposed by the Value Added Tax Act 1994, or any similar tax in addition to or replacing it from time to time;

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

"Working Day" a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

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

1.3 References to "this agreement" means this Call Off Contract.

1.4 Clause, Schedule and paragraph headings shall not affect the interpretation of this agreement.

1.5 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors or permitted assigns.

1.6 The Schedules form part of this agreement and shall have effect as if set out in full in the body of this agreement. Any reference to this agreement includes the Schedules.

1.7 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.

1.8 Unless the context otherwise requires, words in the singular shall include the plural and in the plural include the singular.

- 1.9 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.10 A reference to any party shall include that party's personal representatives, successors and permitted assigns.
- 1.11 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.
- 1.12 A reference to legislation (including "Law") is a reference to all legislation having effect in the United Kingdom from time to time, including:
- (a) directives, decisions and regulations of the Council or Commission of the European Union;
 - (b) acts of Parliament;
 - (c) orders, regulations, consents, licences, notices and bye-laws made or granted;
 - (i) under any act of Parliament; or
 - (ii) under any directive, decision or regulation of the Council or Commission of the European Union; or
 - (iii) By a local authority or by a court of competent jurisdiction; and
 - (d) any mandatory codes of practice issued by a statutory body.
- 1.13 A reference to legislation (including "Law") is a reference to that legislation as amended, modified, consolidated, re-enacted or replaced from time to time and to all subordinate legislation made under it from time to time.
- 1.14 Any reference to a party's consent or approval being required is to a consent or approval in writing, which must be obtained before the relevant action is taken or event occurs.
- 1.15 A reference to writing or written excludes faxes but includes e-mail (save where specifically stated otherwise).
- 1.16 Where the words "include(s)", "including" or "in particular" are used in this agreement, they are deemed to have the words "without limitation" following them.

1.17 The documents forming this agreement shall be read and taken together. In the event and to the extent only of any conflict or inconsistency in this agreement, the following order of precedence shall prevail:

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

2. AGREEMENT

2.1 This Call Off Contract shall commence and take effect on the Effective Date and shall (subject to clause 2.1 and clause 12) automatically terminate on the date of the expiration of the Initial Term.

2.2 The Supplier acknowledges and agrees that:

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

2.3 The rights and obligations of the Contracting Authority and the Supplier under each subsisting Project Services Order and/or Partnering Contract instructed prior to the expiry of the Term or the earlier termination of this Call Off Contract (and the terms

of this Call Off Contract applicable to the same) shall remain in full force and effect unless and until each such Project Services Order and/or Partnering Contract is terminated pursuant to its terms.

2.4 Where the Contracting Authority requires the Supplier to undertake any Project Services or Partnering Services from time to time, the Supplier acknowledges and agrees that the basis upon which it shall be engaged to do so shall be determined strictly in accordance with clause 2A and clause 2B respectively.

2.5 Without prejudice to the generality of clause 2A and clause 2B, the Supplier acknowledges and agrees that:

- (a) it does not have the exclusive right to undertake any Project Services and/or the Partnering Services on behalf of the Contracting Authority under or pursuant to this Call Off Contract or otherwise in relation to any Project;
- (b) the Contracting Authority may, at its absolute discretion, issue instructions to other third parties (including other Framework Suppliers) to carry out works and/or services and tasks which are the same as or similar to any Project Services and/or any Partnering Services that could otherwise be awarded to the Supplier pursuant to this Call Off Contract, including in a situation where the Supplier:
 - (i) is conflicted from providing or otherwise cannot provide or is unavailable to provide any Project Services and/or Partnering Services required by the Contracting Authority in respect of a Project; or
 - (ii) is in material or persistent breach of this Call Off Contract, any Project Services Order and/or any Partnering Contract entered into pursuant to this Call Off Contract or where one of more of the same is terminated;
- (c) the Contracting Authority makes no guarantee to the Supplier that it will be instructed to undertake any Core Services, any Additional Project Services and/or any Partnering Services in connection with any Project; and
- (d) the Supplier shall have no entitlement to make any claim against the Contracting Authority whatsoever (whether in contract, tort or any other basis of law) in respect of, without limitation, any costs, damages, expenses and/or losses (whether direct, indirect, consequential, linked to lost profit, loss of opportunity, loss of goodwill or otherwise) arising out of or in

connection with it not being instructed to undertake any part(s) of any Core Services, any Additional Project Services and/or any Partnering Services in connection with any Project.

2A. PROJECT SERVICES ORDERS

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

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

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

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

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

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

- (a) the Contracting Authority may (as the context permits):
 - (i) request further written clarification from the Supplier on one or more elements of the Supplier's submitted notification; or
 - (ii) respond to a notification submitted by the Supplier pursuant to clause 2A.2 by clarifying and/or revising and reissuing or withdrawing the draft Project Services Order as it considers appropriate,as soon as reasonably practicable upon receiving the Supplier's notification;
- (b) the Supplier shall:
 - (i) respond to any request for further clarification issued by the Contracting Authority pursuant to clause 2A.3(a)(i); or
 - (ii) confirm its acceptance or otherwise to any point of clarification issued by the Contracting Authority pursuant to clause 2A.3(a)(ii),within three (3) Working Days of receiving such request or clarification; and
- (c) the Contracting Authority may, following the resolution of any points of clarification or otherwise in accordance with clause 2A.3(a) and/or clause 2A.3(b), reissue the draft Project Services Order to the Supplier in accordance with clause 2A.3(a)(ii) in its proposed final form and the

provisions of clause 2A.2 shall apply to such reissued draft Project Services Order mutatis mutandis.

- 2A.4 If, in response to a draft Project Services Order, the Supplier confirms its acceptance of the content of the Project Services Order and the Contracting Authority approves the submissions of the Supplier submitted pursuant to clause 2A.2(b)(i) in respect of the same:
- (a) the Contracting Authority will issue an execution form of that Project Services Order to the Supplier as soon as reasonably practicable following its receipt of the Supplier's notification, particularised, populated and finalised to reflect all relevant details and supporting documentation in respect of the relevant Project Services as agreed with the Supplier pursuant to clause 2A.2 and clause 2A.3, and any other information relevant to the Project Services;
 - (b) the Supplier shall sign and return the Project Services Order to the Contracting Authority within two (2) Working Days of receiving the execution form of such Project Services Order, provided always that if the Supplier fails to sign and return the Project Services Order to the Contracting Authority within this period and has not advised the Contracting Authority in writing that it no longer wishes to undertake the Project Services in accordance with the issued Project Services Order, the Supplier shall be deemed to have accepted the content of the Project Services Order in full and be bound by the same as if the Supplier had so signed and returned the Project Services Order to the Contracting Authority; and
 - (c) thereafter undertake the relevant Project Services as instructed by the Contracting Authority pursuant to clause 2A.5 from time to time,

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

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

- (a) not be authorised by the Contracting Authority to commence or otherwise undertake one or more of the Core Services comprising the Project Services as specified in a Project Services Order without first receiving a written instruction from the Contracting Authority to commence the same; and
- (b) have no entitlement to any payment of the whole or part of the Basic Fee that relates to any such part of any Core Service or otherwise where the Supplier commences or otherwise undertakes a Core Service prior to the date of receiving a written instruction to do so from the Contracting Authority (and if it does so, it will be at the Supplier's own cost and risk).

2A.6 The Supplier acknowledges and agrees that:

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

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

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

2B. PARTNERING SERVICES

- 2B.1 The Supplier acknowledges and agrees that:

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

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

- (a) the Contracting Authority will issue a draft form of Partnering Contract to the Supplier for review and approval that sets out (amongst other things):
 - (i) the scope of the Partnering Services required by the Contracting Authority;
 - (ii) (at the Contracting Authority's sole discretion) any performance-based incentivisation measures that will apply to the provision of the Partnering Services; and
 - (iii) what parts of the Partnering Contract (if any) the Contracting Authority requires the Supplier to complete and return for the Contracting Authority's consideration; and
- (b) within seven (7) days of receiving the draft form of Partnering Contract, the Supplier shall issue a written notification to the Contracting Authority:
 - (i) confirming:
 - (A) that the Supplier accepts the content of the draft Partnering Contract;
 - (B) that the Supplier agrees to undertake the scope of the Partnering Services identified in the draft Partnering Contract and can do so within the timeframes specified therein;
 - (C) the identity of the personnel at the Supplier that will undertake the Partnering Services; and
 - (D) the proposed fee payable by the Contracting Authority in consideration of the Supplier providing the Partnering Services (calculated by reference to the rates in the Fee Schedule, provided always that nothing shall preclude the Supplier from proposing a discount to one or more of such rates in connection with a specific Partnering Contract) for approval by the Contracting Authority; or
 - (ii) advising that the Supplier does not agree with the content of the draft Partnering Contract or is unable to provide its confirmation pursuant to clause 2B.2(b)(i) without further clarification from the Contracting Authority on one or more points in relation to the draft Partnering

Contract, providing sufficient detail so as to enable the Contracting Authority to properly evaluate the Supplier's notification.

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

- (a) the Contracting Authority may (as the context permits):
 - (i) request further written clarification from the Supplier on one or more elements of the Supplier's submitted notification; or
 - (ii) respond to a notification submitted by the Supplier pursuant to clause 2B.2 by clarifying and/or revising and reissuing or withdrawing the draft Partnering Contract as it considers appropriate,as soon as reasonably practicable upon receiving the Supplier's notification;
- (b) the Supplier shall:
 - (i) respond to any request for further clarification issued by the Contracting Authority pursuant to clause 2B.3(a)(i); or
 - (ii) confirm its acceptance or otherwise to any point of clarification issued by the Contracting Authority pursuant to clause 2B.3(a)(ii),within three (3) Working Days of receiving such request or clarification; and
- (c) the Contracting Authority may, following the resolution of any points of clarification or otherwise in accordance with clause 2B.3(a) and/or clause 2B.3(b), reissue the draft Partnering Contract to the Supplier in accordance with clause 2B.3(a)(ii) in its proposed final form and the provisions of clause 2B.2 shall apply to such reissued draft Partnering Contract mutatis mutandis.

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

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

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

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

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

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

(a) the Contracting Authority shall, at its sole discretion, have the right to notify the Supplier in writing that it no longer intends to enter into contract with the Supplier in respect of the Partnering Services that are the subject of the relevant Partnering Contract;

(b) in such a circumstance, the Supplier shall not be authorised to execute and/or date and shall be required to return the Partnering Contract to the Contracting Authority within two (2) Working Days of the date of such notice; and

(c) the Contracting Authority may seek to engage another third party to undertake such Partnering Services (including any other Framework Supplier).

2B.6

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

2B.7

The Supplier acknowledges and agrees that:

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

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

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

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

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

3. SUPPLIER'S OBLIGATIONS

3.1 The Supplier warrants and undertakes that it shall comply with the terms of this agreement and the terms of the Framework Agreement.

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

- (a) carry out and fulfil, in all respects, its duties under the CDM Regulations in relation to that Project;
- (b) where such Project Services include the carrying out of any design of the Project not, without the Contracting Authority's written consent, make any change to the designs or specifications for the Project after they have been settled or approved;
- (c) where the Project Services include the administration of a Building Contract in relation to the Project, act fairly and impartially when exercising any power to issue certificates and award extensions of time under that Building Contract; and
- (d) comply with any Contracting Authority Policies and (as applicable) Technical Standards notified to the Supplier prior to the date of the relevant Project Services Order, save that where a Contracting Authority Policy comes into force and/or any Technical Standards are specified by the Contracting

Authority after the date of such Project Services Order, the Supplier is not required to act, in relation to such Contracting Authority Policy and/or Technical Standards, in any way that may materially increase its liability in excess of that which was reasonably foreseeable at that date.

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

- (a) when performing the Project Services;
- (b) to the extent that the Project Services include the carrying out of any design of the Project, not to specify for use anything in the Project which is Prohibited at the time of specification or use;
- (c) to comply with and ensure that the completed Project complies with Law;
- (d) to perform the Project Services and prepare all Material for those elements of the Project for which the Supplier is responsible according to the Programme or, in the absence of a Programme, in sufficient time to facilitate the efficient progress of the Project;
- (e) to comply with all planning agreements, permissions and conditions and any other applicable consents;
- (f) not to cause or contribute to any breach by the Contracting Authority of any Third Party Agreement provided that, where the Contracting Authority notifies the Supplier of a Third Party Agreement after the date of the relevant Project Services Order, the Supplier is not required to act in any way that may increase its liability in excess of that which was reasonably foreseeable as at that date; and
- (g) where it is stated in the Project Services Order that Clause 34 (Building Information Modelling) applies to the Project, to comply with the BIM Documents.

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

- (a) any approval or inspection of:
 - (i) any Project Services;

- (ii) any Materials; or
 - (b) any testing of any work, goods, materials, plant or equipment; or
 - (c) any omission to approve, inspect or test,
- by or on behalf of the Contracting Authority in connection with a Project.

4. CO-OPERATION AND CO-ORDINATION

4.1 In the performance of any and all Project Services instructed by the Contracting Authority in connection with a Project under this Call Off Contract, the Supplier shall: (a) liaise with and cooperate with other members of the Professional Team;

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

5. RECORDS, AUDIT ACCESS AND OPEN BOOK DATA

5.1 The Supplier shall keep and maintain for the Liability Period applicable to each and any Project Services instructed by the Contracting Authority under this Call Off Contract full and accurate records and accounts of the operation of this agreement, including the Project Services provided under it, any sub-contracts and the amounts paid by the Contracting Authority.

5.2 The Supplier shall:

- (a) keep the records and accounts referred to in Clause 5.1 in accordance with Required Standard and Law;
- (b) afford any Auditor access to the records and accounts referred to in Clause 5.1 at the Supplier's premises and/or provide records and accounts (including copies of the Supplier's published accounts) or copies of the same, as may be required by any of the Auditors from time to time during the period referred to 5.1 in order that the Auditor(s) may carry out an inspection to assess compliance by the Supplier and/or its sub contracts of any of the Supplier's obligations under this agreement including in order to:

- (i) verify the accuracy of any Fee(s) and any other amounts payable by the Contracting Authority under this agreement in relation to any Project(s) (and proposed or actual variations to them in accordance with this agreement);
 - (ii) verify the costs of the Supplier (including the costs of all subcontractors and any third party suppliers) in connection with the provision of any Project Services;
 - (iii) identify or investigate an actual or suspected Prohibited Act, impropriety or accounting mistakes or any breach or threatened breach of security and in these circumstances the Contracting Authority shall have no obligation to inform the Supplier of the purpose or objective of its investigations;
 - (iv) obtain such information as is necessary to fulfil the Contracting Authority's obligations to supply information for parliamentary, ministerial, judicial or administrative purposes including the supply of information to the Comptroller and Auditor General; and
 - (v) enable the National Audit Office to carry out an examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Contracting Authority has used its resources;
- (c) subject to the Supplier's rights in respect of Confidential Information, on demand provide the Auditor(s) with all reasonable co-operation and assistance in providing:
- (i) all reasonable information requested by the Contracting Authority within the scope of the audit;
 - (ii) reasonable access to sites controlled by the Supplier and to any Supplier equipment used in the provision of the Project Services; and
 - (iii) access to the Supplier Personnel;
- (d) the parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Clause 5, unless the audit reveals a default by the Supplier in which case the Supplier shall reimburse the Contracting Authority for the Contracting Authority's reasonable costs incurred in relation to the audit; and

- (e) this Clause 5 does not constitute a requirement or agreement for the purposes of section 6(3)(d) of the National Audit Act 1983 for the examination, certification or inspection of the accounts of the Supplier and the carrying out of an examination under Section 6(3)(d) of the National Audit Act 1983 in relation to the Supplier is not a function exercisable under this agreement.

6. SUPPLIER'S AUTHORITY

Unless the Contracting Authority has provided its prior written approval, where the Supplier is instructed to provide any Project Services in respect of a Project under this Call Off Contract, the Supplier has no authority in relation to that Project to:

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

7. REPRESENTATIVES AND PERSONNEL

7.1 The Contracting Authority's Representative has full authority to act on the Contracting Authority's behalf in connection with this agreement, provided that the Contracting Authority's Representative shall have no authority to terminate the Supplier's engagement under this agreement.

7.2 The Supplier shall ensure that the Supplier's Representative and the Key Personnel:

- (a) devote sufficient time and attention fulfilling their respective roles in connection with the Project Services Order in respect of which they are engaged; and
 - (b) are not removed without the Contracting Authority's prior written consent (such consent not to be unreasonably withheld or delayed), except in the event of (i) death; (ii) permanent incapacity; (iii) an illness making the relevant individual unavailable for work; or (iv) the relevant individual leaving the Supplier's employment.
- 7.3 The Contracting Authority may at any time instruct the Supplier to remove any person engaged in performing any Project Services if, in the Contracting Authority's reasonable opinion and after discussion with the Supplier's Representative, that person's performance or conduct in respect of the relevant Project is or continues to be unsatisfactory. The Supplier shall remove any such person promptly.
- 7.4 Any personnel appointed by the Supplier to replace staff removed under clause 7.2(b) or clause 7.3 shall be subject to the written approval of the Contracting Authority (such approval not to be unreasonably withheld or delayed).

8. REMUNERATION

- 8.1 In respect of each Project Services Order, the Contracting Authority shall pay to the Supplier:
 - (a) the Basic Fee as full remuneration for each Core Service as instructed by the Contracting Authority; and
 - (b) the Additional Fee as full remuneration for any Additional Project Services, in relation to the relevant Project from time to time.
- 8.2 The Supplier acknowledges and agrees that the sum(s) referred to at clause 8.1 shall be the Supplier's entire remuneration in connection with a Project Services Order (and otherwise under this agreement).
- 8.3 Unless specifically excluded in a Project Services Order, any and all expenses and disbursements that the Supplier incurs in connection with the provision of any Project Services in relation to a Project are deemed to be included in the Fee stated in the relevant Project Services Order. Any expenses or disbursements payable by the Contracting Authority to the Supplier shall be included within the next invoice submitted by the Supplier in relation to the relevant Project Services Order after

they are incurred and paid by the Contracting Authority in accordance with clause 9.1.

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

9. PAYMENT

9.1 Subject to clause 34, the Basic Fee for any Project Services provided by the Supplier in connection with a Project shall be calculated and paid in instalments in accordance with the Project Services Order pursuant to which such Project Services are instructed under this Call Off Contract. If a Project Services Order does not specify the frequency at which the Supplier will be entitled to submit an invoice to the Contracting Authority in relation to any Project Services provided under that Project Services Order, the Fee shall be paid at intervals of not less than one month, beginning one month after the Supplier first performs any part of the Project Services instructed by the Contracting Authority under a Project Services Order.

9.2 The Supplier shall submit to the Contracting Authority an invoice for each instalment of Fee payable in connection with a Project Services Order, together with timesheets and any supporting documents that are reasonably necessary to check the invoice, as well as with any further information that might be specified by the Contracting Authority in writing from time to time. Each invoice and supporting documents (if any) shall specify the sum that the Supplier considers will become due on the payment due date in respect of the instalment of the Fee under that Project Services Order, and the basis on which that sum is calculated.

9.3 Payment under each Project Services Order shall be "**due**" on the date stated in the Call Off Contract Particulars.

9.4 No later than 5 days after payment becomes due pursuant to clause 9.3, the Contracting Authority shall notify the Supplier of the sum that the Contracting Authority considers to have been due at the payment due date in respect of the payment and the basis on which that sum is calculated (the "**Payment Notice**"). Where clause 34 applies, the Contracting Authority shall adjust the sum due in accordance with the Key Performance Indicator Schedule.

9.5 The "**final date for payment**" under each Project Services Order shall be the date stated in the Call Off Contract Particulars.

- 9.6 Subject to clause 9.10 and unless the Contracting Authority has served a notice under clause 9.7, the Contracting Authority shall pay the Supplier the sum referred to in the Payment Notice in relation to a Project Services Order under clause 9.4 (or, if the Contracting Authority has not served a Payment Notice under clause 9.4, the sum referred to in the invoice referred to in clause 9.2) (in this clause 9, the "**notified sum**") on or before the final date for payment of each invoice.
- 9.7 Not less than 5 days before the final date for payment under a Project Services Order (in this clause 9, the "**prescribed period**"), the party who is to make payment (the "**payer**") may give to the other party notice that it intends to pay less than the notified sum (in this clause 9, a "**pay less notice**"). Any pay less notice shall specify:
- (a) the sum that the payer considers to be due on the date the notice is served; and
 - (b) the basis on which that sum is calculated,
- in connection with the relevant Project Services Order.
- 9.8 If the payer fails to pay an amount due to the other party by the final date for payment under a Project Services Order and fails to give a pay less notice under clause 9.7, simple interest shall be added to the unpaid amount from the final date for payment until the actual date of payment. This shall be calculated on a daily basis at the interest rate stated in the relevant Project Services Order. The parties acknowledge that the payer's liability under this clause 9.8 is a substantial remedy for the purposes of section 9(1) of the Late Payment of Commercial Debts (Interest) Act 1998.
- 9.9 In the event that the sum specified in the Contracting Authority's payment notice in relation to a Project Services Order at clause 9.4 is a negative figure showing a balance due to the Contracting Authority to be paid by the Supplier, the Supplier shall, subject to any pay less notice given under clause 9.7, pay the sum specified in the Contracting Authority's payment notice to the Contracting Authority by the relevant final date for payment. Where a pay less notice is given by the Supplier to the Contracting Authority, the payment to be made on or before the final date for payment shall not be less than the amount stated as due in the pay less notice.
- 9.10 Notwithstanding clause 9.6 and clause 9.7 and without prejudice to clause 13, if the Supplier becomes Insolvent after the prescribed period, the Contracting Authority shall not be required to pay the Supplier the notified sum on or before the final date for payment under any Project Services Orders whatsoever.

Payment of sub-consultants

9.11 The Supplier shall ensure that all sub-contracts entered into in relation to any Project Services instructed under this Call Off Contract contain a provision:

- (a) requiring the Supplier to pay any undisputed sums which are due from it to the sub-consultant within a specified period not exceeding 30 days from the receipt of a valid invoice;
- (b) requiring that any invoices submitted by a sub-consultant shall be considered and verified by the Supplier in a timely fashion and that undue delay in doing so shall not be sufficient justification for failing to regard an invoice as valid and undisputed;
- (c) requiring the sub-contractor to include in any sub-contract which it in turn awards suitable provisions to impose, as between the parties to that subcontract, requirements to the same effect as those required by sub-clauses (a) and (b) directly above; and
- (d) conferring a right to the Contracting Authority to publish the Supplier's compliance with its obligation to pay undisputed invoices within the specified payment period.

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

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

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

Recovery of sums due from Supplier

9.15 If any sum of money is recoverable from or payable by the Supplier under this agreement, such sum may be deducted from or reduced by the amount of any sum or sums then

due or which at any time after may become due to the Supplier under this agreement (including in respect of any other Project Services Order), any other contract with the Contracting Authority and/or (where the Contracting Authority is a Crown Body) any other contract with any Department or Office of Her Majesty's Government.

10. ADJUSTMENT OF THE FEE AND ADDITIONAL SERVICES

Adjustment of the Fee

10.1 Subject to Clause 10.2, the Fee in relation to any Project Services provided (or to be provided) in relation to a Project Services Order shall be adjusted if the performance of the relevant Project Services is materially delayed or disrupted due to:

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

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

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

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

10.3 The notice by the Supplier of its intention to claim under Clause 10.2 is a condition precedent to the Supplier's entitlement to claim an adjustment to the Fee in relation to Project Services provided (or to be provided) in relation to a Project Services

Order. Provided the Supplier has given notice in accordance with Clause 10.2 the relevant Fee shall be adjusted by a reasonable amount by reference to the Fee Schedule (unless the parties agree an alternative amount).

Additional Project Services

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

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

10.6 Unless the parties agree otherwise, the Additional Fee in relation to any Additional Project Services shall be a reasonable amount calculated by reference to the time charges set out in the relevant Project Services Order, provided that no Additional Fee shall be payable if the requirement for an Additional Project Service arises from the Supplier's default or negligence, or the default or negligence of the Supplier's sub-consultants or suppliers (if any).

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

11. SUSPENSION

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

11.2 If:

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

the Supplier may suspend the performance of any or all of the Project Services to which such outstanding sums relate and other obligations under this agreement by

giving not less than seven days' notice to the Contracting Authority of its intention to do so and stating the ground or grounds on which it intends to suspend performance.

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

12. TERMINATION

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

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

at any time by giving ten (10) Working Days' notice in writing to the Supplier.

12.2 Either party may immediately terminate the Supplier's engagement in connection with a Project Services Order by giving written notice to the other party if:

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

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

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

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

Change of Control

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

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

12.6 The Contracting Authority may terminate this agreement and/or any Project Services Orders by issuing notice to the Supplier within six (6) months of:

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

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

13. CONSEQUENCES OF TERMINATION

13.1 In the event of a termination under clause 12 and subject always to clause 13.2, the Contracting Authority shall pay the Supplier:

- (a) in respect of any Project Services Orders so terminated, a fair and reasonable proportion of the next instalment of the Fee(s) for the relevant Project Services, together with any expenses and disbursements commensurate with such Project Services properly performed at the date of termination provided that:
 - (i) the Supplier shall have first submitted to the Contracting Authority an application for payment in the form of an invoice for the amount considered by the Supplier to be payable pursuant to this clause for each affected Project Services Order; and
 - (ii) the provisions of clause 9 shall apply to each such invoice as if it were an application for payment of a part of the relevant Fee(s) as provided for therein; and

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

13.2 If the Supplier's engagement under:

- (a) any Project Services Order is terminated by the Contracting Authority in accordance with clause 12.2(a) (material breach) or clause 12.2(b) (Supplier is Insolvent); and/or
- (b) this agreement by the Contracting Authority in accordance with clause 12.2A(a) (material breach) or clause 12.2A(b) (Supplier is Insolvent),

the Supplier shall pay the Contracting Authority the reasonable cost of procuring a replacement professional consultant to carry out any unperformed Project Services as a consequence of the termination(s). Any such cost shall be deducted from the amount payable to the Supplier under clause 13.1 and if any shortfall remains following such deduction, the Contracting Authority may claim it as a debt due from the Supplier.

13.3 Payment under clause 13.1 shall be the Supplier's sole entitlement to compensation for termination of its engagement under this agreement.

13.4 Except where expressly stated herein, the Contracting Authority shall not be liable to the Supplier for:

- (a) any costs, expenses, disbursements or losses;
- (b) any loss of profits, loss of fees, loss of chance or other similar losses; and/or
- (c) any indirect losses or consequential losses,

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

13.5 Termination of the Supplier's engagement under this agreement and/or any Project Services Order shall not affect the accrued rights of either party under this agreement and/or any Project Services Order and the provisions of this agreement shall continue to bind the parties for as long as necessary to give effect to their respective rights and obligations in respect of the same.

14. ASSIGNMENT, SUB-CONTRACTING AND NOVATION

Assignment

- 14.1 The Contracting Authority may assign the benefit of:
- (a) this agreement to any person at its sole discretion; and
 - (b) any Project Services Order to any person with an interest in the relevant Project.
- 14.2 The Contracting Authority shall notify the Supplier of any assignment pursuant to clause 14.1. If the Contracting Authority fails to do this, the assignment shall still be valid.
- 14.3 The Supplier shall not contend that any person to whom the benefit of this agreement is assigned under clause 14.1 may not recover any sum under this agreement because that person is an assignee and not a named party to this agreement.
- 14.4 The Supplier may not assign or transfer its obligations under this agreement to any other person.

Sub-Contracting

- 14.5 The Supplier may sub-contract the performance of any Project Services in relation to a Project without the Contracting Authority's prior written consent to Key SubConsultants and any Key Sub-Contractors.
- 14.6 Save for clause 14.5 and subject always to the requirements of clause 38, the Supplier shall not sub-contract the performance of any of the Project Services in relation to a Project without the Contracting Authority's prior written consent.

Novation

- 14.7 This Clause 14.7 shall only apply to a Project if it is stated in the relevant Project Services Order that it applies. If this Clause 14.7 so applies then, within five (5) Working Days of receiving a written request from the Contracting Authority, the Supplier shall:
- (a) enter into a deed of novation with the Contracting Authority and the Contractor in relation to the Project Services Order in the form of the Novation Agreement (or, at the Contracting Authority's request, acting reasonably, in the form of any other document intended to have the similar

effect of novating the Supplier's engagement under this Call Off Contract to provide such specific Project Services to a third party); and

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

15. COLLATERAL AGREEMENTS

Collateral Warranties

15.1 Where the requirement is so stated in the Project Services Order for any Project Services, the Supplier shall provide a Collateral Warranty executed as a deed in favour of any Beneficiary in relation to the relevant Project, then within ten (10) Working Days of receiving a written request from the Contracting Authority to do so.

15.2 Where the requirement is so stated in the Project Services Order for any Project Services, the Supplier shall procure a Collateral Warranty executed as a deed from a Key Sub-Consultant in favour of any Beneficiary within ten (10) Working Days of receiving a written request from the Contracting Authority to do so.

15.3 The Supplier shall provide to the Contracting Authority a certified copy of each Key Sub-Consultant's appointment in relation to a Project within 7 days of its execution (the Supplier may redact commercially sensitive pricing information).

15.4 If, in relation to a Project Services Order, the Supplier fails to enter into or to provide a Collateral Warranty as required by this Clause 15 (Collateral Warranties) then, notwithstanding any other term of this agreement, and in addition to any other right or remedy of the Contracting Authority, the Basic Fee and, if any, the Additional Fee, under that Project Services Order shall be reduced by 25% for each outstanding Collateral Warranty, until such time as the relevant Collateral Warranty has been provided.

15.4A Where the Contracting Authority and the Supplier enter into a Partnering Contract in relation to a Project pursuant to clause 2B, the Supplier acknowledges and agrees that:

- (a) in accordance with the terms of that Partnering Contract, the Supplier may be required by the Contracting Authority to provide one or more further collateral warranties in favour of any Beneficiary or other identified third party in respect of the Partnering Services (in the form of collateral warranty specified in the Partnering Contract); and

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

Parent Company Guarantee

15.5 Where the requirement is so stated in the Project Services Order for any Project Services, the Supplier shall no later than the date of that Project Services Order procure the execution and delivery of a Parent Company Guarantee by its Guarantor, executed as a deed, in favour of the Contracting Authority in the form of the Parent Company Guarantee.

15.6 If, in relation to a Project Services Order, the Supplier does not procure execution and delivery of a Parent Company Guarantee in accordance with Clause 15.5 then, notwithstanding any other term of this agreement, the Contracting Authority shall not be liable to make any further payment to the Supplier under or in connection with that Project Services Order until the Supplier has procured such execution and delivery.

15.6A Where the Contracting Authority and the Supplier enter into a Partnering Contract in relation to a Project pursuant to clause 2B, the Supplier acknowledges and agrees that:

- (a) in accordance with the terms of that Partnering Contract, the Supplier may be required by the Contracting Authority to provide to the Contracting Authority (in its capacity as the "Client" under the Partnering Contract) a further parent company guarantee in favour of the Contracting Authority in respect of the Partnering Services (in substantially the same form as the Parent Company Guarantee, amended to reflect the context within which the Partnering Services will be provided); and
- (b) to the extent that the terms of that Partnering Contract are expressed as applying retrospectively to any Project Services provided by the Supplier under this Call Off Contract in connection with the relevant Project up to the date of the Partnering Contract, such parent company guarantee shall be expressed as, once executed, superseding and replacing the Parent Company Guarantee previously provided by the Supplier to the Contracting Authority

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

16. COPYRIGHT

16.1 The Supplier grants to the Contracting Authority, with immediate effect, an irrevocable, non-exclusive, non-terminable, royalty-free licence to copy and make full use of any Material prepared by, or on behalf of, the Supplier under or pursuant to this agreement for any purpose relating to any Projects, including any of the Permitted Uses.

16.2 The licence in Clause 16.1 carries the right to grant sub-licences and is transferable to third parties without the consent of the Supplier.

16.3 Subject to Clause 35.3, the Supplier shall not be liable for use of the Material for any purpose other than that for which it was prepared and/or provided.

16.4 The licence in clause 16.1 allows the Contracting Authority to use the Material relating to a Project in connection with any extension of that Project, but not to reproduce the designs contained in the Material in any such extension.

16.5 The Supplier warrants to the Contracting Authority that the use of the Material for any Permitted Uses will not infringe any copyright, moral right, related right, patent, design right, database right, trademark, service mark, trade name or other intellectual property right such as know-how, trade secrets or inventions (whether patentable or not) of any third party, and the Supplier shall indemnify the Contracting Authority on demand and as a debt from and against any and all losses, expenses, liabilities, claims, costs or proceedings whatsoever arising from the Supplier's breach of this warranty.

16.6 The Contracting Authority may, at any time (whether before or after completion of the Project Services, or after termination of the Supplier's engagement under this agreement and/or any Project Services Order(s)), request a copy or copies of (some or all of) the Material from the Supplier. On the Contracting Authority's payment of the Supplier's reasonable charges for providing the copy (or copies), the Supplier shall provide the copy (or copies) to the Contracting Authority.

17. CONFIDENTIALITY

17.1 For the purposes of this Clause 17, the term "**Disclosing Party**" shall mean a party which discloses or makes available directly or indirectly its Confidential Information and "**Recipient**" shall mean the party which receives or obtains directly or indirectly Confidential Information.

17.2 Except to the extent set out in Clause 17 or where disclosure is expressly permitted elsewhere in this agreement, the Recipient shall:

- (a) treat the Disclosing Party's Confidential Information as confidential and keep it in secure custody (the nature of the secure custody shall depend upon the form in which such materials are stored and the nature of the Confidential Information contained in those materials);
- (b) not disclose the Disclosing Party's Confidential Information to any other person except as expressly set out in this agreement or without obtaining the owner's prior written consent;
- (c) not use or exploit the Disclosing Party's Confidential Information in any way except for the purposes anticipated under this agreement; and
- (d) immediately notify the Disclosing Party if it suspects or becomes aware of any unauthorised access, copying, use or disclosure in any form of any of the Disclosing Party's Confidential Information.

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

- (a) the Recipient is required to disclose the Confidential Information by Law, provided that Clause 30 (Freedom of Information) shall apply to disclosures required under the FOIA or the EIRs;
- (b) the need for such disclosure arises out of or in connection with:
 - (i) any legal challenge or potential legal challenge against the Contracting Authority arising out of or in connection with this agreement;
 - (ii) the examination and certification of the Contracting Authority's accounts (provided that the disclosure is made on a confidential basis) or for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Contracting Authority is making use of any Project Services provided under this agreement; or
 - (iii) the conduct of a Central Government Body review in respect of this agreement; or

- (c) the Recipient has reasonable grounds to believe that the Disclosing Party is involved in activity that may constitute a criminal offence under the Bribery Act 2010 and the disclosure is being made to the Serious Fraud Office.
- 17.4 If the Recipient is required by Law to make a disclosure of Confidential Information, the Recipient shall as soon as reasonably practicable and to the extent permitted by Law notify the Disclosing Party of the full circumstances of the required disclosure including the relevant Law and/or regulatory body requiring such disclosure and the Confidential Information to which such disclosure would apply.
- 17.5 Subject to Clause 17.2, the Supplier may only disclose the Confidential Information of the Contracting Authority on a confidential basis to:
 - (a) Supplier Personnel who are directly involved in the provision of a Project Services and need to know the Confidential Information to enable performance of the Supplier's obligations under this agreement and/or any Project Services Orders; and
 - (b) its professional advisers for the purposes of obtaining advice in relation to the same.
- 17.6 Where the Supplier discloses Confidential Information of the Contracting Authority pursuant to Clause 17.5, it shall remain responsible at all times for compliance with the confidentiality obligations set out in this clause 17 by the persons to whom disclosure has been made.
- 17.7 The Contracting Authority may disclose the Confidential Information of the Supplier:
 - (a) to any Central Government Body on the basis that the information may only be further disclosed to Central Government Bodies;
 - (b) to the British Parliament and any committees of the British Parliament or if required by any British Parliamentary reporting requirement;
 - (c) to the extent that the Contracting Authority (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;
 - (d) on a confidential basis to a professional adviser, consultant, supplier or other person engaged by any of the entities described in Clause 17.7(a) and/or 17.7(b) (including any benchmarking organisation) for any purpose relating to or connected with this agreement and/or any Project;

- (e) on a confidential basis for the purpose of the exercise of its rights under this agreement and/or any Project Services Order; or
- (f) to a proposed transferee, assignee or novatee of, or successor in title to the Contracting Authority,

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

17.8 Nothing in Clause 17 shall prevent a Recipient from using any techniques, ideas or Material gained during the performance of this agreement in the course of its normal business to the extent that this use does not result in a disclosure of the Disclosing Party's Confidential Information or an infringement of intellectual property rights.

17.9 In the event that the Supplier fails to comply with Clauses 17.2 to 17.5, the Contracting Authority shall be entitled to terminate this agreement and/or any Project Services Order(s) for material breach.

18. INSURANCE

Professional Indemnity Insurance

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

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

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

18.3 The Supplier shall immediately inform the Contracting Authority if the Supplier's required professional indemnity insurance ceases to be available at commercially reasonable rates and terms, so that the Supplier and the Contracting Authority can

discuss how best to protect the respective positions of the Contracting Authority and the Supplier regarding the relevant Project without that insurance.

Public Liability Insurance and Employer's Liability Insurance

18.4 The Supplier shall:

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

Evidence of Insurance

18.5 Whenever the Contracting Authority reasonably requests, the Supplier shall send the Contracting Authority evidence that the Supplier's insurance required by this Clause 18 is in force, including, if required by the Contracting Authority, an original letter from the Supplier's insurers or brokers confirming the Supplier's then current insurance and that the premiums for that insurance have been paid in full at the date of that letter.

19. DISPUTES

19.1 Subject to either party's right to adjudicate at any time, the parties shall use their reasonable endeavours to resolve any dispute or difference between them arising out of or in connection with this Call Off Contract through negotiation or mediation.

19.2 Notwithstanding any other provision of this agreement either party may refer a dispute arising under this agreement to adjudication at any time under Part I of the Scheme for Construction Contracts (England and Wales) Regulations.

19.3 Without prejudice to the generality of clause 19.2, where the Call Off Contract Particulars state that the dispute resolution tribunal is Arbitration, then any dispute arising out of or in connection with this agreement, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration under the Joint Contracts Tribunal edition of the Construction Industry Model Arbitrator Rules ("CIMAR") current at the date of referral, which are deemed to be incorporated into this Call Off Contract by reference into this clause. The particulars of any such arbitration are set out in the Call Off Contract Particulars.

20. NOTICES

20.1 Subject to clause 20.4, any notice required to be given under or in connection with this agreement (including in relation to any Project Services Order) shall be in writing and shall be delivered personally, or sent by e-mail or pre-paid first-class post or recorded delivery or by commercial courier, to each party required to receive the notice, as set out in the Call Off Contract Particulars or as otherwise specified by the relevant party by notice in writing to each other party.

20.2 Any notice shall be deemed to have been duly received:

- (a) if delivered by e-mail, when delivered to the recipient's e-mail server and evidenced by a delivery receipt;
- (b) if delivered personally, when left at the address and for the contact referred to in this clause;
- (c) if sent by pre-paid first-class post or recorded delivery, at 9.00 am on the second Working Day after posting; or
- (d) if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.

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

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

21. THIRD PARTY RIGHTS

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

22. ENTIRE AGREEMENT

This agreement constitutes the whole agreement between the parties and supersedes and extinguishes all previous agreements between the parties relating to its subject matter. Each party acknowledges that, in entering into this agreement, it has not relied on, and shall have

no right or remedy in respect of, any statement, representation, assurance or warranty (whether made negligently or innocently) other than as expressly set out in this agreement. Nothing in this clause shall limit or exclude any liability for fraud.

23. LIMITATION OF LIABILITY

Without affecting any other limitation in this agreement, the Supplier's liability under or in connection with each Project Services Order shall be limited to the amount set out in that Project Services Order and this limit shall apply however that liability arises including a liability arising by tort (including the tort of negligence) or arising for breach of statutory duty, provided that this Clause 23 shall not exclude or limit the Supplier's liability for death or personal injury caused by the Supplier's negligence and/or fraud or fraudulent misrepresentation.

24. LIABILITY PERIOD

The Parties agree that, notwithstanding any terms and effect of the Limitation Act 1980 to the contrary, any action or proceedings under or in connection with this agreement and/or a Project Services Order (as the context permits) may be commenced against the Supplier up until the expiry of the relevant Liability Period and the Supplier agrees that, for the purposes of the Limitation Act 1980 it shall not seek to rely on any failure to commence any such action or proceedings within any shorter period (whether prescribed by the Limitation Act 1980 or otherwise) as a defence to any such action or proceedings.

25. PREVENTION OF FRAUD AND BRIBERY

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

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

25.2 The Supplier shall not:

- (a) commit a Prohibited Act; and/or

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

25.3 The Supplier shall:

- (a) establish, maintain and enforce, and require that its sub-consultants establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Relevant Requirements and prevent the occurrence of a Prohibited Act;
- (b) keep appropriate records of its compliance with its obligations under Clause 25.3(a) and make such records available to the Contracting Authority on request;
- (c) if so required by the Contracting Authority, within twenty (20) Working Days of the Call Off Commencement Date, and annually thereafter, certify to the Contracting Authority in writing that the Supplier and all persons associated with it or its sub-consultants or other persons who are supplying the Project Services in connection with this agreement are compliant with the Relevant Requirements. The Supplier shall provide such supporting evidence of compliance as the Contracting Authority may reasonably request; and
- (d) have, maintain and where appropriate enforce an anti-bribery policy (which shall be disclosed to the Contracting Authority on request) to prevent it and any Supplier Personnel or any person acting on the Supplier's behalf from committing a Prohibited Act.

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

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

a project services order or otherwise suspects that any person or party directly or indirectly connected with this agreement has committed or attempted to commit a Prohibited Act.

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

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

(a) require the Supplier to remove from performance of this agreement any Supplier Personnel whose acts or omissions have caused the Supplier's breach; or

(b) immediately terminate this agreement for material breach.

25.7 Any notice served by the Contracting Authority under Clause 25.4 shall specify the nature of the Prohibited Act, the identity of the party who the Contracting Authority believes has committed the Prohibited Act and the action that the Contracting Authority has elected to take (including, where relevant, the date on which this agreement shall terminate).

26. SECURITY REQUIREMENTS

26.1 This Clause 26 shall only apply to a Project Services Order if it is stated in that Project Services Order that this Clause 26 applies. If this clause applies, then:

(a) the Supplier shall, in the performance of the relevant Project Services, comply with and procure that the Supplier Personnel comply with the Security Policy;

(b) the Supplier shall ensure that any security management plan produced by the Supplier in relation to a Project fully complies with the Security Policy during the performance of the relevant Project Services.

26.2 The Contracting Authority shall notify the Supplier of any changes or proposed changes to a Security Policy in relation to a Project from time to time.

27. PUBLICITY AND BRANDING

27.1 The Supplier shall not:

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

without the Contracting Authority's prior written consent.

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

28. PROTECTION OF CONTRACTING AUTHORITY DATA

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

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

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

28.4 To the extent that the Contracting Authority Data is held and/or Processed by the Supplier, the Supplier shall supply that Contracting Authority Data to the Contracting Authority as requested by the Contracting Authority and in the format (if any) specified by the Contracting Authority from time to time in writing.

28.5 The Supplier shall take responsibility for preserving the integrity of Contracting Authority Data and preventing the corruption or loss of Contracting Authority Data.

28.6 The Supplier shall perform secure back-ups of all Contracting Authority Data and shall ensure that up-to-date back-ups are stored off-site at an approved location in accordance with any Business Continuity and Disaster Recovery Plan. The Supplier shall ensure that such back-ups are available to the Contracting Authority (or to such other person as the Contracting Authority may direct) at all times upon request and are delivered to the Contracting Authority at no less than six (6) monthly intervals (or such other intervals as may be agreed in writing between the Parties).

28.7 The Supplier shall ensure that any system on which the Supplier holds any Contracting Authority Data, including back-up data, is a secure system that complies with the Security Policy.

28.8 If at any time the Supplier suspects or has reason to believe that the Contracting Authority Data is corrupted, lost or sufficiently degraded in any way for any reason, then the Supplier shall notify the Contracting Authority immediately and inform the Contracting Authority of the remedial action the Supplier proposes to take.

28.9 If the Contracting Authority Data is corrupted, lost or sufficiently degraded as a result of a default by the Supplier so as to be unusable, the Contracting Authority may:

- (a) require the Supplier (at the Supplier's expense) to restore or procure the restoration of Contracting Authority Data to the extent and in accordance with the requirements specified in any Business Continuity and Disaster Recovery Plan or as otherwise required by the Contracting Authority, and the Supplier shall do so as soon as practicable but not later than five (5) Working Days from the date of receipt of the Contracting Authority's notice; and/or
- (b) itself restore or procure the restoration of Contracting Authority Data, and shall be repaid by the Supplier any reasonable expenses incurred in doing so to the extent and in accordance with the requirements specified in any Business Continuity and Disaster Recovery Plan or as otherwise required by the Contracting Authority.

29. DATA PROTECTION

29.1 The parties acknowledge and agree that for the purposes of the Data Protection Legislation:

- (a) the Contracting Authority is the Controller and the Supplier is the Processor; and
- (b) the only Processing that the Supplier is authorised to do by the Contracting Authority is listed in the Processing Schedule and may not be determined by the Supplier.

29.2 The Supplier shall notify the Contracting Authority immediately if it considers that any of the Contracting Authority's instructions under or in connection with this Call Off Contract infringe the Data Protection Legislation.

29.3 The Supplier shall provide all reasonable assistance to the Contracting Authority in the preparation of any Data Protection Impact Assessment prior to commencing any

Processing under or in connection with this Call Off Contract (and any Project Services Orders issued hereunder) and such assistance may, at the discretion of the Contracting Authority, include the provision of:

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

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

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

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

termination of this Call Off Contract (or a Project Services Order, as the context permits) unless the Supplier is required by Law to retain the Personal Data.

29.5 Subject to clause 29.6, the Supplier shall notify the Contracting Authority immediately if it:

- (a) receives a Data Subject Request (or purported Data Subject Request);
- (b) receives a request to rectify, block or erase any Personal Data;
- (c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
- (d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data that is or may be Processed under this Call Off Contract;
- (e) receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law;
or
- (f) becomes aware of a Data Loss Event.

29.6 The Supplier's obligation to notify under clause 29.5 shall include the provision of further information to the Contracting Authority in phases, as details become available.

29.7 Taking into account the nature of the Processing, the Supplier shall provide the Contracting Authority with full assistance in relation to either party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 29.5 (and insofar as possible within the timescales reasonably required by the Contracting Authority) including by promptly providing:

- (a) the Contracting Authority with full details and copies of the complaint, communication or request;
- (b) such assistance as is reasonably requested by the Contracting Authority to enable the Contracting Authority to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;
- (c) the Contracting Authority, at its request, with any Personal Data it holds in relation to a Data Subject;

- (d) assistance as requested by the Contracting Authority following any Data Loss Event; and
- (e) assistance as requested by the Contracting Authority with respect to any request from the Information Commissioner's Office, or any consultation by the Contracting Authority with the Information Commissioner's Office.

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

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

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

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

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

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

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

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

29.14 The:

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

30. FREEDOM OF INFORMATION

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

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

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

31. PROMOTING TAX COMPLIANCE

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

31.2 If, at any point during the period that the Supplier is engaged under this Call Off Contract and/or any Project Services Order, an Occasion of Tax Non-Compliance occurs, the Supplier shall:

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

31.3 In the event that the Supplier breaches the warranty under Clause 31.1 fails to comply with this Clause 31 and/or does not provide details of proposed mitigating factors which in the reasonable opinion of the Contracting Authority are acceptable, then the Contracting Authority shall be entitled, without prejudice to its other rights and remedies, to terminate this agreement and/or any Project Services Order for material breach.

32. STAFF TRANSFER

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

32.2 The Parties agree that :

- (a) where the commencement of the provision of the Project Services or any part of the Project Services under a Project Services Order results in one or more Relevant Transfers, the Staff Transfer Schedule shall apply as follows:
 - (i) where the Relevant Transfer involves the transfer of Transferring Contracting Authority Employees, Part A of the Staff Transfer Schedule shall apply;
 - (ii) where the Relevant Transfer involves the transfer of Transferring Former Supplier Employees, Part B of the Staff Transfer Schedule shall apply;
 - (iii) where the Relevant Transfer involves the transfer of Transferring Contracting Authority Employees and Transferring Former Supplier Employees, Parts A and B of the Staff Transfer Schedule shall apply; and
 - (iv) Part C of Staff Transfer Schedule shall not apply;
- (b) where commencement of the provision of the Project Services or a part of the Project Services under a Project Services Order does not result in a Relevant Transfer, Part C of Staff Transfer Schedule shall apply and Parts A and B of Staff Transfer Schedule shall not apply; and
- (c) Part D of the Staff Transfer Schedule shall apply on the expiry or termination of the Project Services or any part of the Project Services under a Project Services Order;

32.3 The Supplier shall indemnify the Contracting Authority on demand and as a debt against all Employee Liabilities that may arise as a result of any claims brought against the Contracting Authority by any person where such claim arises from any act or omission of the Supplier or any Supplier Personnel.

33. NOT USED

34. KEY PERFORMANCE INDICATORS

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

34.2 If this Clause 34 applies, then the Parties are bound to the rights, duties, obligations and liabilities of the Parties set out in the Key Performance Indicator Schedule appended to the relevant Project Services Order and the Contracting Authority shall apply the Key Performance Indicator Schedule to amend the amount of the Fee that is payable under Clause 9 under that Project Services Order.

35. BUILDING INFORMATION MODELLING

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

Where a BIM Protocol Applies

35.2 If a Project Services Order states a BIM Protocol applies to the relevant Project, then the Contracting Authority and the Supplier shall:

- (a) comply with their respective obligations set out in the BIM Protocol;
- (b) have the benefit of any rights granted to them in the BIM Protocol; and
- (c) have the benefit of any limitations or exclusions of their liability contained in the BIM Protocol,

in connection with that Project.

Where a BIM Protocol Does Not Apply

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

- (a) if it is stated in the Project Services Order that the Supplier is to act as the BIM Information Manager, the Supplier shall act as a the BIM Information Manager for the Project as more fully set out in the BIM Documents;
- (b) if it is not stated in the Project Services Order that the Supplier is to act as the BIM Information Manager, the Supplier shall comply with the reasonable instructions of the BIM Information Manager in relation to the BIM Documents;

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

36. QUALITY MANAGEMENT POINTS

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

36.2 The Supplier shall accrue Quality Management Points in accordance with the Quality Table set out below. The Supplier shall accrue Quality Management Points for the failures listed on the Quality Table whether arising from an audit by the Supplier, the Contracting Authority or the relevant accreditation body.

36.3 If the Supplier fails to comply with the Supplier's quality management system, the Supplier shall accrue Quality Management Points from the date when the failure is

identified in accordance with the Quality Table. The number of Quality Management Points accrued by the Supplier shall reduce in accordance with the Quality Table.

36.4 The Supplier shall maintain a register of the number of Quality Management Points in effect, showing when Quality Management Points are accrued and when they are removed.

36.5 If the number of Quality Management Points in effect at any time is more than 25 points, the Supplier and the Contracting Authority shall meet within one week to consider ways of reducing the number of Quality Management Points in effect to 25 or less and to avoid the Supplier accruing further Quality Management Points. The Supplier shall submit a report to the Contracting Authority within one week of the meeting setting out:

- (a) the actions agreed at the meeting; and
- (b) any other actions which the Supplier proposes to take immediately to reduce the number of Quality Management Points in effect to 25 or less and to avoid accruing further Quality Management Points.

36.6 If the Contracting Authority does not accept the Supplier's proposals or the Supplier does not take the agreed actions, the Contracting Authority shall serve a quality warning notice on the Supplier. Within one week of receipt of the quality warning notice, the Supplier shall submit a report to the Contracting Authority setting out the actions which the Supplier has taken and what further or alternative actions he proposes to take to reduce the number of Quality Management Points in effect to 25 or less.

36.7 The Supplier shall take such action as set out in the Supplier's reports until the number of Quality Management Points in effect is reduced to 25 or less. The Supplier shall submit weekly up-date reports to the Contracting Authority setting out the actions he has taken, the results of those actions and the actions which are still to be taken by him.

36.8 Failure by the Supplier to take actions to reduce the number of Quality Management Points in effect to 25 or less is deemed to be a material breach by the Supplier of its obligations under this agreement and the Contracting Authority shall have the right to terminate the relevant Project Services Order in accordance with clause 12.2A (Termination).

Quality Table

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

	plus an additional number of Quality Management Points equivalent to the Quality Management Points that should have been accrued	6 months
Note 1: For these failures additional Quality Management Points are accrued at each audit until an audit confirms that rectification/correction/implementation/action has taken place.		

37. COLLABORATIVE PERFORMANCE FRAMEWORK

37.1 This Clause 37 shall only apply to a Project Services Order if it is stated in that Project Services Order that Clause 37 applies.

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

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

38. IMPROVING VISIBILITY OF SUB-CONTRACT OPPORTUNITIES

38.1 The Supplier shall:

- (a) subject to clause 38.3, advertise on Contracts Finder all sub-contract opportunities arising from or in connection with the provision of any Project Services in relation to this Call Off Contract above a minimum threshold of twenty-five thousand pounds (£25,000) that arise during the Term;
- (b) within ninety (90) days of awarding a sub-contract to a sub-consultant (including any Key Sub-Consultant and Key Sub-Contractor), update the notice on Contracts Finder with details of the successful sub-contractor;
- (c) monitor the number, type and value of the sub-contract opportunities placed on Contracts Finder advertised and awarded in its supply chain during the Term;

- (d) provide reports on the information at clause 38.1(c) to the Contracting Authority (and such other public body as the Contracting Authority may require from time to time) in the format and frequency as reasonably specified by the Contracting Authority; and
 - (e) promote Contracts Finder to its suppliers and encourage those organisations to register on Contracts Finder.
- 38.2 Each advert referred to at clause 38.1(a) above shall provide a full and detailed description of the sub-contract opportunity with each of the mandatory fields being completed on Contracts Finder by the Supplier.
- 38.3 The obligation at clause 38.1(a) shall only apply in respect of sub-contract opportunities arising after the Effective Date.
- 38.4 Notwithstanding clause 38.1, the Contracting Authority may by giving its prior written approval, agree that a sub-contract opportunity is not required to be advertised on Contracts Finder.

39. **MANAGEMENT CHARGES AND INFORMATION**

- 39.1 In addition to any other information-related requirements set out in this Call Off Contract, the Supplier agrees and acknowledges that it shall, at no charge, provide timely, full, accurate and complete SME management information reports to the Contracting Authority (each an "**SME Management Information Report**") which incorporates the data described in the MI Report Template which is:
- (a) the total contract revenue received directly on a specific contract;
 - (b) the total value of sub-contracted revenues under the contract (including revenues for non-SMEs and non-VCSEs); and
 - (c) the total value of sub-contracted revenues to SMEs and VCSEs.
- 39.2 Each SME Management Information Report shall be provided in the correct format as required by the MI Report Template and any guidance issued by the Contracting Authority from time to time.
- 39.3 Following the issue by the Contracting Authority to the Supplier of the first MI Report Template, the Contracting Authority may change the MI Report Template from time to time (including the data required and/or format of the same) on at least thirty (30) days' written notice of the same, with such notice specifying the date from which the replacement or amended MI Report Template must be used.

39.4 The Supplier further agrees and acknowledges that it may not make any amendment to any current MI Report Template without the prior written approval of the Contracting Authority.

40. NON-WAIVER

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

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

41. SEVERANCE

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

42. GOVERNING LAW AND JURISDICTION

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

Subject to Clause 1919 (Disputes) the parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this agreement.

