

DATED

6 January 2028

**(1) THE SECRETARY OF STATE FOR EDUCATION**

-and-

**(2) GLEEDS COST MANAGEMENT LIMITED**

Technical Advisory Services Appointment  
(incorporating the JCT Consultancy Agreement  
as amended herein in respect of Services Agreement Contracts)

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DATED

6 January 2026

**PARTIES**

- (1) **THE SECRETARY OF STATE FOR EDUCATION** of Sanctuary Buildings, Great Smith Street, London, SW1P 3BT (the "**Client**").
- (2) **GLEEDS COST MANAGEMENT LIMITED** a company registered in England (registration number 06472932) whose registered office is at Aurora, Finzels Reach, Counterslip, Bristol, United Kingdom, BS1 6BX (the "**Consultant**").

**BACKGROUND**

- (A) The Client has appointed the Consultant pursuant to a procurement by way of a call-off from Crown Commercial Services RM6165 (Construction Professional Services) framework.
- (B) The Client has appointed a number of other consultants on a similar basis under the same procurement process.
- (C) The Client may wish to appoint the Consultant to provide technical advisory and employer's agent services as more generally described in the Project Services and Principal Designer services (as required under the CDM Regulations and the Building Regulations both as defined in the Service Terms and Conditions) in relation to various projects the Client is carrying out.
- (D) The Consultant has agreed to accept the appointment upon the terms of this Technical Advisory Services Appointment.

**AGREED TERMS**

**1. DEFINITIONS AND INTERPRETATION**

1.1 In this Technical Advisory Services Appointment the words below have the meaning next to them unless the context otherwise requires:

<b>Carbon Reduction Plan</b>	the plan for the reduction of carbon, as submitted by the Consultant in the Consultant's Tender Response.
<b>Client's Representative</b>	the person or persons designated as such and notified to the Consultant.
<b>Client's Brief</b>	as defined in the Service Terms and Conditions.
<b>Commencement Date</b>	the date of this Technical Advisory Services Appointment.
<b>Consultant</b>	the "Consultant" as identified above. For the avoidance of doubt, where used, the terms "Consultant", "Technical Advisor", "TA" and "Employer's Representative" shall each have the same meaning.
<b>Consultant's Tender Response</b>	the Consultant's tender response to the Client's procurement by way of call off from CCS Framework RM6165 (Construction Professional Services) under CCS reference CPS1 – 39515-2025, together with any clarification responses from the Consultant in response to clarifications raised by the Client following receipt of that tender as set out in Schedule 7.

<b>Debarment List</b>	the published list of suppliers under the Procurement Act who are prohibited from participating in public procurement processes due to their past behaviour or circumstances.
<b>Enquiry</b>	a request in such form as the Client issues from time to time to the Consultant indicating that the Client wishes to place an Order with the Consultant for the provision of Project Services and which includes a written description of the location, scope and required timescales of such Project Services and any other relevant documents including the Client's Brief and a partially completed Order form in the form set out in Schedule 3.
<b>Extension Period</b>	as defined in clause 2.1.
<b>Fee Schedule and Rate Card</b>	means the schedule of rates as agreed between the Client and the Consultant and set out at Schedule 5.
<b>Good Industry Practice</b>	that degree of skill, care, prudence and foresight which would ordinarily be expected from time to time from a skilled and experienced technical advisory consultant under the same or similar circumstances.
<b>IR35 Assessment</b>	the "Check Employment Status for Tax" tool provided by HMRC and available at gov.uk.
<b>Offshore</b>	any arrangement where the performance of any part of the Project Services or a solution under this Technical Advisory Services Appointment or any Services Agreement Contract occurs outside the UK.
<b>Order</b>	an order completed and issued by the Client in such form and by such means as are agreed with the Consultant from time to time, including via systems of ordering involving electronic mail or other on-line solutions, substantially in the form set out in Schedule 3 (with such amendments as the Client may require from time to time) to bring into effect a Services Agreement Contract.
<b>Parent Company</b>	Gleeds LLP (registered number OC453959), or such other associated company of the Consultant, which the Client directs the Consultant to procure a parent company guarantee from in accordance with clause 6.6.
<b>Procurement Act</b>	the Procurement Act 2023 and any modification or replacement of the same.
<b>Procurement Regulations</b>	the Procurement Regulations 2024 and any modification or replacement of the same.
<b>Project</b>	the development or project to which a Services Agreement Contract relates and as more particularly set out in the Order.
<b>Project Services</b>	the services to be carried out by the Consultant at or in relation to the Project as more particularly set out at Schedule 2.

<b>Services Agreement Contract</b>	a contract entered into or to be entered into between the Client and the Consultant by serving an Order to purchase the Project Services subject to the Service Terms and Conditions.
<b>Service Terms and Conditions</b>	the contract terms and conditions in relation to the Project Services, substantially in the form set out at Schedule 1, which are incorporated into any Order issued by the Client.
<b>SME</b>	small and medium-sized enterprise.

- 1.2 In this Technical Advisory Services Appointment unless the context otherwise requires:
- 1.2.1 clause headings are inserted for convenience only and shall not affect the construction of this Technical Advisory Services Appointment and all references to Clauses, Sub-clauses or Schedules are to Clauses and Sub-clauses of, and Schedules to, this Technical Advisory Services Appointment;
  - 1.2.2 words denoting the singular number shall include the plural and vice versa;
  - 1.2.3 references to persons include references to bodies corporate and unincorporate;
  - 1.2.4 references to statutes or statutory instruments include references to any modification, extension or re-enactment thereof from time to time.

## 2. APPOINTMENT OF THE CONSULTANT

- 2.1 The Consultant is appointed under this Technical Advisory Services Appointment from the Commencement Date for two (2) years or until this Technical Advisory Services Appointment is terminated, whichever is earlier. The Client (at its sole discretion) may elect to extend this Technical Advisory Services Appointment for a further period or periods of up to two (2) years (**Extension Period**). The provisions of this Technical Advisory Services Appointment will apply throughout any Extension Period. The provisions of this Technical Advisory Services Appointment shall also apply to any Services Agreement Contracts which have already been instructed by the Client prior to the expiry or termination of this Technical Advisory Services Appointment, which shall continue in full force until they are terminated or duly performed in accordance with the terms of the Services Agreement Contract. For the avoidance of doubt the Client shall be entitled to place future Orders relating to any Projects in respect of which a previous Order or Orders have already been placed at the point of expiry or termination of this Technical Advisory Services Appointment and the provisions of this Technical Advisory Services Appointment shall apply to any such Orders instructed by the Client.
- 2.2 Subject to clause 5.1, the maximum expenditure the Client may make under this Technical Advisory Services Appointment shall be limited to twenty six million, two hundred and fifty thousand pounds (£26,250,000) for the initial two (2) year term and a maximum of fifty two million, five hundred thousand pounds (£52,500,000) if the Client elects to extend the term of this Technical Advisory Services Appointment for two (2) years (or pro-rata thereof in respect of any shorter extension).
- 2.3 This Technical Advisory Services Appointment and any appointment of the Consultant does not give rise to any expectation or entitlement on the part of the Consultant that it will be appointed to undertake any Project Services, nor is there any commitment on the Client's behalf for any payments to be made to the Consultant if the Client elects not to appoint the Consultant to carry out Project Services, and the Consultant shall have no claim at law or otherwise against the Client if the Client elects in its absolute discretion not to engage the Consultant to carry out any Project Services or if the Client appoints any other person to undertake Project Services that the Consultant may be qualified to perform.

### 3. PROJECT ENQUIRIES

- 3.1 Where the Client wishes to instruct the Consultant to carry out Project Services relating to any Project, the Client may (but shall not be obliged to) issue an Enquiry to the Consultant.
- 3.2 The Consultant shall consider such Enquiry and shall respond to the Client with a fixed price for the Fee (as defined in the Service Terms and Conditions) for the Project Services to be delivered for the Project.
- 3.3 Subject to clause 4, the Consultant shall calculate the Fee using rates and prices not exceeding the applicable rates and prices in the Fee Schedule and Rate Card.
- 3.4 The Client shall not be responsible to pay any part of the Consultant's costs for preparing a response to an Enquiry for a Project and/or providing any other information required by the Client in the event that an Order is not placed with the Consultant (including without prejudice to the generality of the foregoing, if the Project does not proceed or if the Client decides to proceed with any other consultant).

### 4. INDEXATION

- 4.1 The Fee Schedule and Rate Card shall remain fixed for the initial term of two (2) years.
- 4.2 Subject to the Client exercising its option to extend this Technical Advisory Services Appointment beyond the initial term and subject to clause 4.6 below, the prices shall be adjusted for inflation during each Extension Period (years 3 and/or 4) and any subsequent year in respect of which Project Services continue, in accordance with the provisions of this clause.
- 4.3 Adjustments to the Fee Schedule and Rate Card shall be based on the Services Producer Price Index (SPPI) – Architectural and Engineering Services; Technical Testing and Analysis Services (ONS Code: M711), as published by the Office for National Statistics (ONS).
- 4.4 The adjustment shall be calculated as follows:
- Adjusted Price = Current Price × (1 + (Index\_Current - Index\_Base) / Index\_Base)
- 4.4.1 The Index\_Current shall be the latest available SPPI quarterly publication as released by the Office for National Statistics prior to the adjustment date.
- 4.4.2 The Index\_Base shall be the SPPI value published twelve (12) months (four (4) quarters) prior to Index\_Current.
- 4.4.3 The resulting Adjusted Price shall be rounded to two (2) decimal places for the purposes of contract invoicing and payment.
- 4.5 For the avoidance of doubt, any inflationary adjustment shall only reflect changes in the SPPI index over the twelve (12) months immediately preceding the start of the relevant Extension Period of this Technical Advisory Services Appointment or the 12 months immediately preceding each subsequent year after the expiry of the last Extension Period.
- 4.6 Inflationary adjustments to the Fee Schedule and Rate Card shall:
- 4.6.1 apply to new Orders that are instructed by the Client on or after the effective date of the relevant uplift (subject to the cap set out in clause (a) or 4.8.2 as applicable); or
- 4.6.2 apply to Orders relating to Stage 5 placed before an Extension Period, for which the Project Services are carried out during an Extension Period (subject to the cap set out in clause (a)); or
- 4.6.3 apply to continuing Orders relating to Stage 5 for which the Project Services are carried out beyond the last Extension Period subject to a cap of 2.5% annually.

Subject to clause 4.6.2 and 4.6.3, indexation shall not be applied to Orders that are already underway or have commenced prior to the date of the adjustment, regardless of their duration or completion status, and shall not be applied retrospectively for Project Services carried out prior to the date of the adjustment.

For example an Order placed for Stage 3 in year 3 which continues into year 4 will continue at the rate applicable to year 3 until completion. Only Orders for Stage 5 Services will be uplifted in each subsequent year in which those Project Services continue.

4.7 In the event that the SPPI index for **Architectural and Engineering Services; Technical Testing and Analysis Services (ONS Code: M711)** (ONS Code: M711) is no longer published, the Client shall nominate an alternative publicly available index that most closely reflects cost movements for technical advisory services. The Consultant shall not unreasonably withhold agreement to such substitution.

4.8 The inflationary adjustment to the Fee Schedule and Rate Card shall be subject to the following limits:

4.8.1 In respect of years 1 and 2 following the Client's request to extend this Technical Advisory Services Appointment pursuant to clause 2.1 ('**Years 3 and 4**' respectively):

(a) Cap: The cumulative inflationary adjustment applied over the two-year period (Years 3 and 4) shall not exceed five percent (5%) in total. There shall be no fixed annual cap within this period, provided that the combined increase across both years does not surpass this overall limit.

For example, if the applicable SPPI index results in a 3.5% increase in Year 3, the maximum allowable increase in Year 4 would be 1.5%, ensuring the total uplift over the two years does not exceed 5%.

(b) Floor: No adjustment shall be applied unless the twelve (12) month SPPI change exceeds one percent (1%).

4.8.2 In respect of subsequent years following Year 4:

(a) Cap: The inflationary adjustment shall not exceed 2.5% in respect of each applicable year

(b) Floor: No adjustment shall be applied unless the twelve (12) month SPPI change exceeds one percent (1%).

## 5. APPOINTMENT VALUE UPLIFT

5.1 The Client shall have the option to increase the total value of this Technical Advisory Services Appointment (as set out in clause 2.2) in accordance with the following clauses:

5.1.1 The uplift may be applied on one or more occasions during the term of this Technical Advisory Services Appointment, provided that the cumulative total of all uplifts does not exceed one hundred percent (100%) of the original value of this Technical Advisory Services Appointment.

5.1.2 The Client reserves the right to invoke this clause at any time during the term of this Technical Advisory Services Appointment.

5.1.3 Any uplift under this clause shall not result in a material change to the scope, nature, or overall character of this Technical Advisory Services Appointment.

5.1.4 The Client may apply an uplift under this clause in circumstances that include (but are not limited to):

- (a) significant underutilisation, incapacity, or withdrawal of other consultants appointed to provide services for any Project(s), where this places programme delivery at risk and necessitates capacity being absorbed by the Consultant;
  - (b) unexpected emergent programme demands, reallocation of pipeline activity, or strategic programme shifts;
  - (c) instances where the Consultant's proportional allocation is such that maintaining delivery capacity and ongoing utilisation over the term of this Technical Advisory Services Appointment is necessary; and/or
  - (d) urgency.
- 5.1.5 Any uplift shall be effected by way of a formal contract variation to this Technical Advisory Services Appointment in accordance with the Client's internal governance procedures.
- 5.1.6 For the avoidance of doubt, the Client does not guarantee or commit to the full utilisation of the uplift to the value of this Technical Advisory Services Appointment.
- 5.1.7 Any uplift to the value of this Technical Advisory Services Appointment under this clause shall not affect the pricing structure agreed within this Technical Advisory Services Appointment. The rates, fees, and commercial terms shall remain unchanged and shall continue to apply to any services delivered under the uplifted value.

## **6. EXECUTION OF ORDERS**

- 6.1 Where the Client requires the Consultant to carry out Project Services in relation to a Project pursuant to a Services Agreement Contract, the Client shall issue to the Consultant an Order in the form annexed at Schedule 3 with details relating to the relevant Project duly completed. An Order may be issued by email.
- 6.2 The Client and the Consultant agree that the effect of the issuing of an Order by the Client is to bring into effect a Services Agreement Contract (incorporating the details set out in the relevant Order) in the form of the Service Terms and Conditions.
- 6.3 The Client may request the Consultant to carry out Project Services prior to the issue of an Order but any such Project Services shall be deemed to have been carried out under the relevant Services Agreement Contract.
- 6.4 Any failure by the Client to issue or properly execute an Order shall not render it invalid and the Consultant and the Client agree that all Project Services purported to have been instructed by the Client under an Order shall remain subject to the terms of that Order, the relevant Services Agreement Contract, and this Technical Advisory Services Appointment (as applicable).
- 6.5 The Consultant acknowledges and accepts the requirements set out in Section 0 of Schedule 2 (Contract Management Procedures), and shall at all times in the execution of the Project Services and the Consultant's performance of their obligations under this Technical Advisory Services Appointment comply with the obligations and processes set out within the Contract Management Procedures.
- 6.6 If so requested by the Client in writing, the Consultant shall procure the execution as a deed and delivery to the Client by its Parent Company, within 10 working days of such written request from the Client, a parent company guarantee in a form as required by the Client, which may without limitation be with respect to an individual Order or with respect to the Consultant's performance under all Orders placed under this Technical Advisory Services Appointment. The Client may rely on this clause 6.6 in circumstances involving corporate or financial change, financial distress, or where risk is indicated by financial metrics or ratios. The Client shall determine the entity of the Parent Company which shall be required to provide the parent company guarantee. The Client may request a parent company guarantee under this clause in the following circumstances:

- 6.6.1 where financial ratios, metrics or indicators used to evaluate the Consultant indicate high or medium risk; or
- 6.6.2 a company restructure, change of ownership or change in control of the Consultant; or
- 6.6.3 a Financial Distress Event, as defined in Schedule 4, Financial Distress.

Should the parent company guarantee not be delivered to the Client in accordance with this clause 6.6 then the Client shall be entitled to withhold all future payments to the Consultant until such time as the relevant parent company guarantee has been delivered. The Client's right to withhold payment shall not apply once the Consultant satisfies its obligations under this clause 6.6.

## **7. PERFORMANCE INDICATORS AND MONITORING**

- 7.1 The Client shall monitor and assess the Consultant's performance by reference to any performance indicators stated or identified in Section 0 (Performance Management Process) of Schedule 2.
- 7.2 The Consultant acknowledges and accepts the requirements set out in Section 0 of Schedule 2, including (but not limited to) the methodology for any allocation of work to the Consultant.
- 7.3 The Consultant shall provide to the Client all information that the Client may reasonably require to monitor and assess the Consultant's performance against the targets for those performance indicators.
- 7.4 Where the Client considers that a target for any of those performance indicators may not be met, it may inform the Consultant and the Consultant shall submit its proposals for improving its performance against that target to the Client.

## **8. MODERN SLAVERY AND ETHICAL SUPPLY CHAINS**

### **8.1 General**

- 8.1.1 The Consultant:
  - (a) warrants and represents that it has not been convicted of any slavery or human trafficking offences anywhere around the world;
  - (b) warrants that to the best of its knowledge it is not currently under investigation, inquiry or enforcement proceedings in relation to any allegation of slavery or human trafficking offences anywhere around the world;
  - (c) shall make reasonable enquiries to ensure that its officers, employees, sub-consultants and subcontractors have not been convicted of slavery or human trafficking offences anywhere around the world;
  - (d) shall have and maintain throughout the term of this Technical Advisory Services Appointment its own policies and procedures to ensure its compliance with the Modern Slavery Act 2015 and include in its contracts with its sub-consultants and sub-contractors anti-slavery and human trafficking provisions;
  - (e) shall implement due diligence procedures to ensure that there is no slavery or human trafficking in any part of its supply chain delivering the Project Services;
  - (f) shall prepare and deliver to the Client if requested, a slavery and human trafficking report setting out the steps it has taken to ensure that slavery and human trafficking is not taking place in any of its supply chains or in any part of its business;

- (g) shall report the discovery or suspicion of any slavery, trafficking, forced labour, child labour, involuntary prison labour or labour rights abuses by it or its subcontractors to the Client and Modern Slavery Helpline and relevant national or local law enforcement agencies;
- (h) shall otherwise comply with the Modern Slavery Act 2015 and shall not engage in any activity, practice, or conduct that would constitute an offence under the Act;
- (i) shall ensure that all its staff working on Projects are trained annually about modern slavery, including the risks, signs and actions they are required to take;
- (j) shall comply with any request by the Client to complete the Modern Slavery Assessment Tool established by the Cabinet Office within sixty (60) days of such request; and
- (k) shall comply with any request by the Client to provide a supply chain map to tier 3 in the supply chain (tier 1 being the Consultant).

## 8.2 Awareness and Risk Responsibility

8.2.1 The Consultant acknowledges that the Project Services comprise the procurement, appointment, management, or oversight of suppliers and consultants operating in the construction sector, which is high risk in the context of modern slavery. Accordingly, the Consultant shall take reasonable and proportionate steps to support the Client in identifying and managing modern slavery risks throughout relevant procurement and project delivery activities.

## 8.3 Support for Due Diligence

8.3.1 Whilst the Client's framework team will be responsible for leading on the framework approach to modern slavery, where requested by the Client, the Consultant shall:

- (a) Participate in modern slavery risk assessments, support completion of the Modern Slavery Assessment Tool and relevant action plans for improvements;
- (b) Assist in mapping relevant supply chains, particularly where the Consultant recommends or engages subcontractors;
- (c) Provide information or advice to inform tender documentation, supplier evaluation, or contract management relating to modern slavery risk.

8.3.2 The Consultant will ensure that all its staff working on the Client's projects are trained annually about Modern Slavery, including the risks, signs and actions they are required to take.

## 8.4 Reporting and Escalation

8.4.1 If the Consultant becomes aware of any credible risk or suspected instance of modern slavery in the delivery of the Project Services or the supply chains of appointed Consultants for any Project, it shall:

- (a) Promptly notify the Client and the Modern Slavery Helpline in writing;
- (b) Cooperate fully with any investigation or remedial action planning led by the Consultant; and
- (c) Where appropriate, engage with sub-consultants, subcontractors or delivery partners to support any agreed response measures.

## 8.5 Subcontractor Requirements

- 8.5.1 The Consultant shall ensure that its subconsultants and supply partners:
- (a) Are contractually bound by equivalent modern slavery obligations; and
  - (b) Do not engage in practices prohibited under the Modern Slavery Act 2015.

## 8.6 Remedial Action

8.6.1 If any actual or suspected breach of this clause occurs, the Consultant shall if requested by the Client work with the Client to agree and implement a remedial action plan, following the principles set out in Annex D of PPN 02/23, unless directed otherwise.

8.6.2 Notwithstanding clause 8.6.1 if the Consultant is in default under this clause 8 the Client may by notice:

- (a) require the Consultant to remove from performance of the Project Services any sub-consultant, subcontractor, Consultant employees or other persons associated with it whose acts or omissions have caused the default; and/or
- (b) terminate the Project Services in respect of a Project or Projects; and/or
- (c) suspend or terminate the Consultant's appointment under clause 15.

## 9. ASSIGNMENT AND SUB-CONTRACTING

9.1 The Consultant shall not assign or transfer or sub-contract any right or obligation under this Technical Advisory Services Appointment to any person without the prior written consent of the Client.

9.2 The Consultant agrees to the Client assigning the whole of their respective rights, title in and benefit of this Technical Advisory Services Appointment by way of absolute legal assignment at any time without the Consultant's consent one time only.

9.3 The Consultant shall not enter into any contract with any subcontractor for any part of the Project Services relating to any Project before an Order is issued, except at its own risk.

9.4 The Consultant shall exercise reasonable due care and diligence in accordance with Good Industry Practice in the selection and ongoing monitoring (including financial health and capacity) of its supply chain, including (without limitation) sub-consultants. The Consultant shall provide details and supporting evidence of its compliance with this clause on request by the Client. The Consultant shall have regard to any guidance issued by the Client in connection with this sub-clause 9.4 and shall meet any expectations set out therein or provide justification to the Client that its approach meets the requirements of this sub-clause 9.4.

9.5 Without prejudice to the generality of sub-clause 9.4 above the Consultant shall ensure that it shall not appoint any sub-consultant in its supply chain for any Project who is listed on the Debarment List in accordance with the Procurement Act, and shall replace any such sub-consultant if the Consultant becomes aware that they are listed on the Debarment List unless the Client agrees in the circumstances that is not required.

## 10. CARBON REDUCTION PLAN

10.1 The Consultant shall comply with RM6165 Construction Professional Services framework requirements with respect to the Carbon Reduction Plan bi-annually.

## 10.2 TENDER RESPONSE COMMITMENTS

10.3 The Consultant shall deliver all commitments made in the Consultant's Tender Response including (without limitation) those in respect of the creation and delivery of apprenticeships,

traineeships, and T Level placements (Levels 2–4+), and associated training opportunities. These commitments shall be implemented, monitored, and reported as described in the Consultant's Tender Response. Failure to deliver these commitments may be treated as a material breach of this Technical Advisory Services Appointment.

## **11. SME/SUPPLY CHAIN VISIBILITY**

11.1 The Consultant shall implement such processes and measures as may be appropriate so as to ensure that, where the Consultant is proposing to sub-contract any part of the Project, SMEs (when compared with other potential sub-consultants or sub-contractors) are given fair, equal and proportionate access to the sub-contracting opportunity. At a minimum, the Consultant shall:

11.1.1 to the extent practicable, advertise its sub-contracting opportunities in a form which is accessible by all potential sub-consultants or sub-contractors including SMEs (for example, on the Government's Central Digital Platform); and

11.1.2 propose to potential sub-consultants or sub-contractors that are SMEs such commercial, financial and technical terms and conditions that are proportionate to the nature, size and capacity of the proposed sub-consultants or sub-contractor and, having regard to the services to be sub-contracted, no more onerous than the relevant terms and conditions proposed by the Consultant to other potential sub-consultants or sub-contractors.

11.2 Nothing in clause 11.1 shall require the Consultant to disrupt or not utilise contracted supply chain arrangements which are in place for the purposes of the Consultant's wider business and which are in effect prior to, or which come into effect after, the commencement of the Project, provided that the Consultant can demonstrate to the reasonable satisfaction of the Client that such supply chain arrangements are consistent with the SME objectives set out in clause 11.1.

11.3 The Consultant shall not Offshore without the prior written consent of the Client, and such consent shall be given or withheld at the sole discretion of the Client. If the Client does not permit the Consultant to Offshore, there shall be no increase to the Fee Schedule and Rate Card and the rates, fees, and commercial terms shall remain unchanged and shall continue to apply to any services delivered by the Consultant.

## **12. IR35 ASSESSMENT**

12.1 The Consultant shall carry out an IR35 Assessment for any person to be involved in providing the Project Services in respect of any Project and provide to the Client the results of such assessments within ten (10) working days of a request by email.

12.2 No person to whom the off-payroll working (IR35) rules are deemed to apply following an IR35 Assessment may be involved in the provision of the Project Services in relation to any Project.

12.3 Without prejudice to the generality of any other provision of this Technical Advisory Services Appointment, the Consultant shall indemnify the Client for all liabilities, costs, expenses, damages and losses suffered or incurred by the Client arising out of or in connection with the off-payroll working (IR35) rules applying to any person or persons involved in providing the Project Services.

## **13. FINANCIAL DISTRESS**

13.1 The Consultant shall comply with the requirements as set out in Schedule 4 (Financial Distress) in relation to the reporting, assessment and management of the financial health and risk of the Consultant, noting the Consultant's obligations and consequence of any change of its economic and financial standing and/or in the event of a "Financial Distress Event" (as defined in Schedule 4).

## **14. CONFLICTS OF INTEREST**

14.1 The Consultant shall maintain systems and processes to prevent conflicts. As a minimum:

14.1.1 The Consultant shall not act for, represent, or provide any services to any third party (including working for both sides on the same Project) that competes with or has interests adverse to the Client's without the prior written consent of the Client.

14.1.2 The Consultant is required to promptly disclose any potential or actual conflicts of interest to the Client as soon as they arise. The Consultant must provide full details of the nature of the conflict and any relevant circumstances.

14.1.3 Notwithstanding clause 14.1.2 the Consultant shall inform the Client whenever the Consultant is engaged to provide services to a contractor on a Project (for the avoidance of doubt this sub-clause includes Projects which the Client has placed with another consultant appointed under Recital B, and any Projects procured or to be procured from any Department for Education construction framework in place from time to time).

14.1.4 In the event of a conflict of interest, the Client reserves the right to determine the appropriate course of action, which may include terminating the Consultant's engagement generally or in respect of a Project or Projects requiring the Consultant to cease the conflicting activity.

14.1.5 The Consultant shall maintain the confidentiality of all proprietary information and trade secrets of the Client and shall not disclose such information to any third party without the Client's express written consent.

14.1.6 Where the Consultant works on a school or college refurbishment or construction project (including any Project) for any contractor who is working for the Client, the Consultant must maintain separate teams and systems to prevent access to data, records and information with access only to those individuals working for either the Client or the contractor (as relevant) being possible.

14.2 Any breach of clause 14.1 by the Consultant shall be considered a material breach of this Technical Advisory Services Appointment, entitling the Client to seek all available legal and equitable remedies, including but not limited to injunctive relief and damages.

## **15. SUSPENSION AND TERMINATION OF THE CONSULTANT'S APPOINTMENT BY THE CLIENT**

15.1 The Client may at any time terminate (or at the Client's sole discretion, suspend) the Consultant's engagement under this Technical Advisory Services Appointment or under any Services Agreement Contracts immediately following the rise of any of the following circumstances:

15.1.1 in any of the circumstances giving rise to termination or suspension pursuant to Schedule 4 (Financial Distress);

15.1.2 the Consultant is listed on the Debarment List;

15.1.3 any of the mandatory or discretionary grounds for exclusion under Schedule 6 and Schedule 7 of the Procurement Act applying in respect of the Consultant or "connected person" as defined in the Procurement Act, and the Client considers that the circumstances giving rise to the application of the exclusion ground are continuing or likely to occur again;

15.1.4 any material and adverse change in the Consultant's Tender Response;

15.1.5 failure to pay at least 95% of all supply chain invoices within sixty days in at least one of the previous two six-month reporting periods (after removing intercompany

payments, if relevant) or (where the Client has requested and the Consultant has provided an action plan to improve the payment from at least 75% to 95% of all supply chain invoices in 60 days) the Client is not satisfied that the action plan is in place or is not satisfied that it is adequate, or there has been a failure to implement such an action plan;

- 15.1.6 failure to pay all supply chain invoices within an average of fifty five days in at least one of the previous two six-month reporting periods (after removing intercompany payments, if relevant);
- 15.1.7 failure to demonstrate to the Client's reasonable satisfaction on request any of the following matters:
- (a) that the Consultant has systems in place to ensure that suppliers within the Consultant's supply chain are paid within the agreed contractual terms;
  - (b) the Consultant has procedures for resolving disputed invoices with suppliers in its supply chain promptly and effectively; or
  - (c) the Consultant has systems in place to include (as a minimum) thirty-day payment terms in supply chain contracts and require that such terms are passed down through the supply chain.
- 15.1.8 the discovery by the Client of what it considers to be a material change to or serious misrepresentation by the Consultant in any information provided in the Consultant's Tender Response.
- 15.2 The Client may at any time suspend the Consultant's engagement under this Technical Advisory Services Appointment or under any Services Agreement Contracts following the rise of any circumstances which give rise to a right to suspend under Section 0 (Performance Management Process) of Schedule 2.
- 15.3 The Client may at any time from the Commencement Date, by three (3) months' prior notice in writing to the Consultant, terminate the Consultant's engagement under this Technical Advisory Services Appointment.
- 15.4 The provisions of clause 11.1 to 11.4 (inclusive) of the Services Agreement Contract shall apply with respect to any suspended Orders and clause 11.6 of the Services Agreement Contract shall apply with respect to any terminated Orders.
- 15.5 Termination of this Technical Advisory Services Appointment or termination of any Services Agreement Contract for any of the reasons set out in clause 15.1 howsoever arising shall not entitle the Consultant to any claim for breach of contract, loss of profit, loss of expectation or otherwise.
- 15.6 The termination of this Technical Advisory Services Appointment shall not automatically terminate any Services Agreement Contracts entered into at or before the date of termination, which shall remain in full force and effect until terminated in accordance with the terms of the relevant Services Agreement Contract, and any terms of this Technical Advisory Services Appointment which have been incorporated into such Services Agreement Contract shall continue in full force and effect for the duration of the Services Agreement Contract.
- 15.7 For the avoidance of doubt the termination of the Consultant's employment under a Services Agreement Contract shall not automatically terminate the Consultant's employment under any other Services Agreement Contract unless the Client expressly provides otherwise.

## **16. TERMINATION BY THE CONSULTANT**

In the event of a remediable material breach by the Client of its obligations under this Technical Advisory Services Appointment which the Client shall fail to remedy after receiving a 28 day

notice in writing from the Consultant specifying the breach and requiring its remedy then the Consultant shall be entitled forthwith by contemporaneous notice in writing to the Client to terminate its engagement under this Technical Advisory Services Appointment.

**17. EXIT PROVISIONS**

17.1 The Client and the Consultant shall comply with their respective obligations as set out in Schedule 6 (Exit Provisions) with respect to the winding up of the Consultant's engagement under each Services Agreement Contract or this Technical Advisory Services Appointment (as applicable).

**18. GENERAL**

18.1 This Technical Advisory Services Appointment is intended to be supplemental and complementary to the Services Agreement Contract(s) but in the event of any conflict or discrepancy between the provisions of a Services Agreement Contract and the provisions of this Technical Advisory Services Appointment, the provisions of the Services Agreement Contract shall prevail in respect of the relevant Project.

18.2 Upon the written request of the Client and/or its professional advisors (**Auditors**), the Consultant will, upon reasonable notice, permit (and shall cause its sub-contractors to permit) such technical, legal, regulatory, financial and operational audits, inspections and other examinations of the Consultant's documents processes and procedures and the records the Consultant keeps in connection with the overall performance of the Project Services (and/or its sub-contractors, as the case may be), subject to payment of reasonable and properly incurred copying fees unless the audit identifies that the Consultant is in breach of its obligations under the Technical Advisory Services Appointment, in which case the Consultant shall reimburse the Client for its reasonable costs incurred in the course of the audit.

**19. COMMUNICATIONS, CONFIDENTIALITY AND TRANSPARENCY**

19.1 Except as otherwise provided for in this Technical Advisory Services Appointment, all notices or other communications under or in respect of this Technical Advisory Services Appointment to either party shall be deemed to be duly given or made when delivered (in the case of personal delivery or letter – a letter sent by prepaid first class post will be deemed to be delivered two working days after posting) to the following addresses:

Client	Consultant
Postal address: [REDACTED]	Postal address: [REDACTED]
Email address: [REDACTED]	Email address: [REDACTED]

(or at such other address as the party may hereafter specify for this purpose to the other).

19.2 A written notice can include a notice by email. A notice or other communication received on a non-working day or after business hours in the place of receipt, shall be deemed to be given or made on the next following working day in that place. If in relation to a dispute, any email notices should also be followed up in accordance with the provisions of Clause 19.1 above.

19.3 Save as may be necessary for the proper performance of the Project Services or as otherwise compelled by law, the Consultant shall not during the term or following the termination (for whatever cause) of this Technical Advisory Services Appointment disclose to any third party (save with the exception of legal and insurance advisors and auditors) or make use of any

information of any kind whatsoever relating to the Project Services, or the Client, or its business affairs. Upon termination of this Technical Advisory Services Appointment (for whatever cause) the Consultant shall with all reasonable speed and economy deliver to the Client all documentation belonging to or supplied by the Client.

19.4 The Client may be required to provide and publish information and publish notices under the Government's transparency agenda during the lifetime of this Technical Advisory Services Appointment (and any resulting Services Agreement Contracts awarded under it). The Consultant consents to and agrees to such publication and to fully cooperate with the Client where it is required to publish such information or notice in accordance with any applicable regulations and/or guidance and also agrees to provide all reasonable assistance that may be necessary to enable the Client to publish any such information or notice. The Consultant also agrees to coordinate and respond to the Client in relation to this clause 19.4 in a timely manner

## 20. RESOLUTION OF DISPUTES

In the event of any dispute or difference under this Technical Advisory Services Appointment arising between the parties a senior representative of the Consultant and the Client's Representative shall endeavour to meet in a good faith effort to resolve the dispute without recourse to legal proceedings save that this shall not prejudice either party's right to refer to the dispute at any time to legal proceedings.

## 21. LAW AND JURISDICTION

21.1 This Technical Advisory Services Appointment shall be governed by, and construed in accordance with, English law.

21.2 The parties to this Technical Advisory Services Appointment irrevocably agree that the courts of England and Wales shall have jurisdiction to hear and determine any suit, action or proceeding, and to settle any dispute which may arise out of or in connection with this Technical Advisory Services Appointment, and for such purpose the parties irrevocably submit to the jurisdiction of the courts of England and Wales.

## 22. RIGHTS OF THIRD PARTIES

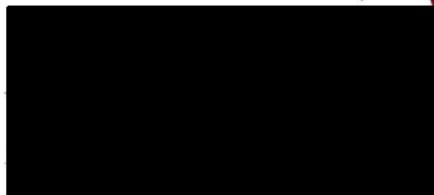
22.1 Unless the right of enforcement is expressly provided it is not intended that a third party should have the right to enforce a provision of this Technical Advisory Services Appointment pursuant to the Contracts (Right of Third Parties) Act 1999. This Clause shall not affect or prevent any assignees who take the benefit of this Technical Advisory Services Appointment pursuant to Clause 9.2 or successors in title to the Client from enforcing the provisions of this Technical Advisory Services Appointment.

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

The CORPORATE SEAL of the SECRETARY OF STATE )  
FOR EDUCATION herewith affixed and authenticated )

Authorised by the Secretary  
of State

Full name (Block Capitals)



SIGNED AS A DEED by [REDACTED] as attorney for  
GLEEDS COST MANAGEMENT LIMITED under a power of attorney  
dated 15 November 2024 in the presence of:

[REDACTED]

as attorney for Gleeds Cost Management Ltd

[REDACTED]

.....  
Signature of Witness

[REDACTED]

**SCHEDULE 1 OF TECHNICAL ADVISORY SERVICES APPOINTMENT**

**Service Terms and Conditions**

**JCT Consultancy Agreement (Public Sector) 2024 (CA 2024)  
incorporating Schedule of Amendments**

The Contract shall comprise the JCT Consultancy Agreement (Public Sector) 2024 (CA 2024), subject to the amendments in this Schedule of Amendments, and shall be construed accordingly.

**Recitals**

- First            the Client wishes to have the following construction project carried out: [●] at [●] (the "Project") as more particularly described in the Client's Brief;
- Second            for the purposes of the Project, the Client has requested the Consultant to act in the capacity specified in the Contract Particulars and, for the fee specified in Annex A (the "Fee") to provide the services set out in Annex B (the "Services"), which the Consultant has agreed to do on the terms of this Agreement;
- Third            Delete.

**Articles**

**Article 1: Consultant's obligations**

After "Conditions" insert "and this Contract".

**Article 2: Payment**

After "Conditions" insert "and this Contract".

**Article 3: CDM Regulations – Principal Designer**

The Principal Designer for the purposes of the CDM Regulations is [●] of [●] or such replacement as the Client at any time appoints to fulfil that role.

**Article 4: Building Regulations – Principal Designer**

The Principal Designer for the purposes of the Building Regulations is [●] of [●] or such replacement as the Client at any time appoints to fulfil that role.

**Article 6: Arbitration**

Not used – Arbitration does not apply.

**Article 7: Legal proceedings**

Delete and insert "Without prejudice to Article 5 and clause 12.2, the Parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales which shall have jurisdiction to hear and decide any suit, action or proceedings and/or settle any dispute or claim which may arise out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims)."

**Article 8: The Consultant's Deeds of Collateral Warranty**

Insert a new Article 8:

"8.1 The Consultant shall execute as a deed and deliver to the Client within 10 Business Days of a written request from the Client a deed or deeds of collateral warranty in the form set out in Annex C to this Contract with only such amendments as the Client may approve and/or reasonably require in favour of:

- 8.1.1 any freeholder or landlord of the site (where this is not the Client); and
- 8.1.2 [specify any other interested parties here].

- 8.2 Notwithstanding any other terms of this Contract, the Consultant and Client agree that should any deed or deeds of collateral warranty from the Consultant, to be provided pursuant to this Article 7, not be executed as a deed and delivered to the Client within 10 Business Days of a written request from the Client then the Client shall (subject to the payment provisions in clause 7) be entitled to withhold all future payments to the Consultant until such time as the relevant deed and/or deeds of collateral warranty have been executed and delivered to the Client in accordance with the provisions of this Article 8."

#### **Article 9: Sub-consultants, Sub-contracts and Deeds of Collateral Warranty**

Insert a new Article 9:

- "9.1 Each of the sub-consultants shall be appointed by deed prior to them carrying out any design or services in relation to the Project, the form and terms of such sub-contract to be subject to the Client's prior written approval. Within 5 Business Days of the appointment of a sub-consultant the Consultant shall supply a certified copy of the sub-contract to the Client in the form approved by the Client.
- 9.2 Upon the appointment of every sub-consultant, the Consultant shall immediately upon that appointment (in respect of Article 9.2.1) and/or within 10 Business Days of a written request from the Client (in respect of Articles 9.2.2 to 9.2.[3] inclusive) deliver to the Client a deed or deeds of collateral warranty from such sub-consultant in the form set out in Annex D to this Contract, executed as deeds by the Consultant and the sub-consultant as appropriate, with only such amendments as the Client may approve and/or reasonably require in favour of:
- 9.2.1 the Client;
  - 9.2.2 any freeholder or landlord of the site (where this is not the Client); and
  - 9.2.3 [specify any other interested parties here].
- 9.3 Should any deed or deeds of collateral warranty from the sub-consultant, to be provided pursuant to this Article 9, not be executed and delivered to the Client within 10 Business Days of a written request from the Client then the Client shall (subject to the payment provisions in clause 7) be entitled to withhold all future payments to the Consultant in respect of that particular sub-consultant's work until such time as the relevant deed and/or deeds of collateral warranty have been executed and delivered to the Client in accordance with the provisions of this Article 9.
- 9.4 If the employment of any sub-consultant is terminated before the completion of the services allocated to it, the Consultant shall as soon as is practicable but on 5 Business Days' notice from the Client appoint another sub-consultant to complete those services (save any sub-consultant to whom the Client shall make reasonable objection in writing). The foregoing provisions of this Article 9 shall apply to such replacement sub-consultant, mutatis mutandis."

#### **Article 10: Incorporation of Schedule of Amendments**

Insert a new Article 10:

"The Schedule of Amendments attached hereto is hereby incorporated into this Contract and the Agreement, Conditions and Schedules set out in the standard form shall take effect as amended by the Schedule of Amendments. If there is any discrepancy between the Agreement, Conditions and Schedules and the Schedule of Amendments, the wording contained in the Schedule of Amendments shall prevail."

## Contract Particulars

Amend the Contract Particulars as follows:

<b>Clause etc</b>	<b>Subject</b>	
Second Recital	The Consultant is appointed as	Technical advisor
Article 6	Arbitration	Do not apply – legal proceedings apply
1.1	BIM Protocol	The DfE's Information Management Requirements, which consist of the Project's Information Protocol, Exchange Information Requirements, Detailed Exchange Information Requirements, Project's Information Production Methods and Procedures, and Project's Information Standard  As set out in Schedule 2 of the Technical Advisory Services Appointment
1.1	Client's Brief <i>(State reference number and date or other identifier of the relevant document(s) in which this is set out.)</i>	[Note: Client to set out details of the Project (site, what is being built etc.) here or refer to another document containing such details]
1.1	Client's Representative <i>(as at the date of this Agreement)</i>	██████████ Department for Education
1.1	Consultant's Representative <i>(as at the date of this Agreement)</i>	[●] of [●]
1.1	Consultant Team <i>(other than the Consultant)</i>	[Name] [Function]  Lead Consultant [●] Lead Designer [●] Contract Administrator [●]
1.1	Cost Plan <i>(State reference number and date or other identifier of the document(s) in which this is set out.)</i>	Not applicable
1.1	Key Personnel <i>(Names and functions)</i>	are as follows: [Name] [Function]
1.1	Programme <i>(State reference number and date or other identifier of the current document(s) in which this is set out.)</i>	to be agreed between the Parties, acting reasonably



3.2.3	Contract administration – site visits  The requirements for visits	as are required in the Client's Brief or the Services or are otherwise considered necessary by the Parties (acting reasonably) for the proper delivery of the Services
3.3.1.4.2	Limits of Consultant's authority Maximum increase in overall Project cost is <i>(If no limit is specified, any increase requires Client approval.)</i>	any increase requires Client approval
3.3.1.4.2	Maximum increase per item is <i>(If no limit is specified, any increase requires Client approval.)</i>	any increase requires Client approval
8.1.1	Professional Indemnity insurance	With a limit of indemnity of £10,000,000 (ten million pounds) for any one claim or series of claims arising out of one event  but:  £10,000,000 (ten million pounds) in the aggregate for pollution and contamination  £10,000,000 (ten million pounds) in the aggregate for asbestos and fire safety
8.1.2	Public Liability insurance	With a limit of indemnity of £10,000,000 (ten million pounds) per occurrence
8.2.1	Professional Indemnity insurance – expiry of the required period of insurance is	12 years from the date of completion of the Services
8.2.2	Public Liability insurance – required period	Period of the Consultant's engagement
10.2	Novation  Clause 10.2 <i>(if neither entry is deleted, clause 10.2 will not apply)</i>	Does not apply
10.2	Where 10.2 applies, the form of Novation Agreement <i>(Identify the form or the document in which it is set out)</i>	Does not apply

11.2	Suspension: Remobilisation – period for recommencement instructions (if other than 2 months) is	12 months
12.2	Adjudication  Nominating body – where no Adjudicator is named or where the named Adjudicator is unwilling or unable to act (whenever that is established)  <i>(Delete all but one of the asterisked choices. If the body is to be other than one of those listed, insert the name here.)</i>  <i>(If a body has not been selected from those listed here or another body chosen and inserted, the nominating body shall be one of the bodies listed opposite selected by the Party requiring the reference to adjudication)</i>	The nominating body is: The Chairman of the Technology and Construction Solicitors' Association
12.4.1	Arbitration - appointor of Arbitrator (and of any replacement)	Not used – legal proceedings apply
Part 2	Third Party Rights and Collateral Warranties	see Articles 8 and 9

## CONDITIONS

### SECTION 1: DEFINITIONS AND INTEPRETATION

- 1.1 Delete the definitions "**Acceleration Quotation**", "**Arbitrator**", "**Beneficiary**", "**Funder**", "**Information Release Schedule**", "**Purchaser**", "**Tenant**", and "**Third Party Rights**". Amend the definitions in clause 1.1 as follows:

<b>Agreement</b>	at the end of the definition insert ", as amended by the Schedule of Amendments"
<b>Article</b>	at the end of the definition insert ", as amended by the Schedule of Amendments"
<b>Building Regulations</b>	delete the definition and substitute "the Building Regulations 2010 and any modification or replacement of the same";
<b>Conditions</b>	at the end of the definition insert ", as amended by the Schedule of Amendments".
<b>Contract</b>	after "Conditions" insert ", the Schedule of Amendments".
<b>Contract Particulars</b>	at the end of the definition insert ", as amended by the Schedule of Amendments".
<b>Design Information</b>	after "other material" insert "and/or information". After "Project Team" insert "or the Contractor".
<b>Interest Rate</b>	delete "5%" and insert "3%".
<b>Project Team</b>	delete "the Contractor (or prospective Contractor) where selected".
<b>Recitals</b>	at the end of the definition insert ", as amended by the Schedule of Amendments".
<b>Services</b>	at the end of the definition insert ", and all services, duties and obligations to be provided and performed by the Consultant as set out in the Contract".
<b>Statutory Requirements</b>	after "this Contract" in the third line, insert:  ", any code of practice or guideline for the time being in force under the Health and Safety etc. at Work Act 1974 or the Control of Pollution Act 1974 or the Environmental Protection Act 1990".
<b>Third Party Agreement</b>	after "Project Team" insert "or the Contractor". After "or the use of it" insert ", or any other third party agreement,".

- 1.1 Insert the following new definitions in clause 1.1:

<b>Barred Lists</b>	the barred lists provided for under the Safeguarding Vulnerable Groups Act 2006 as amended by the Protection of Freedoms Act 2012 (as may be amended or re-enacted from time to time).
<b>CBO</b>	a Criminal Behaviour Order as defined in the Anti-Social Behaviour, Crime and Policing Act 2014.

<b>Change of Control</b>	a change of control within the meaning of Section 450 of the Corporation Tax Act 2010.
<b>Client</b>	the "Client" as defined in the Technical Advisory Services Appointment, which expression shall include permitted assignees and successors in title.
<b>Client's Confidential Information</b>	all Personal Data and any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel, and contractors of the Client, including all Intellectual Property Rights, together with all information derived from any of the above, and any other information clearly designated as being confidential (whether or not it is marked "confidential") or which ought reasonably be considered to be confidential.
<b>Client's Person</b>	all persons employed, engaged or authorised by the Client, excluding the Consultant, Consultant's Persons.
<b>Commercially Sensitive Information</b>	the information agreed between the Parties (if any) comprising the information of a commercially sensitive nature relating to the Consultant, the charges for the Services, its Intellectual Property Rights or its business or which the Consultant has indicated to the Client that, if disclosed by the Client, would cause the Consultant significant commercial disadvantage or material financial loss, but excluding always the Fee.
<b>Confidential Information</b>	the Client's Confidential Information and/or the Consultant's Confidential Information.
<b>Construction Products Regulations</b>	UK Construction Products Regulation 2011 and the Construction Products Regulations 2013 (SI 2013/1387).
<b>Consultant</b>	the "Consultant" as defined in the Technical Advisory Services Appointment. For the avoidance of doubt, where used, the terms "Consultant", "Technical Advisor", "TA" and "Employer's Representative" shall each have the same meaning.
<b>Consultant's Confidential Information</b>	any information (excluding the Fee), however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel and contractors of the Consultant, including Intellectual Property Rights, together with all information derived from the above, and any other information clearly designated as being confidential (whether or not it is marked as "confidential") or which ought reasonably to be considered to be confidential, including the Commercially Sensitive Information;
<b>Consultant's Persons</b>	the Consultant's employees and agents, all other persons employed or engaged on or in connection with the Services or any part of them and any other person properly on the site in connection therewith, excluding the Client and Client's Persons.
<b>Convictions</b>	other than in relation to any minor road traffic offences, any previous or pending prosecutions, convictions, cautions and binding overs (including any spent convictions as contemplated by section 1(1) of the Rehabilitation of Offenders Act 1974 by virtue of the exemptions specified in Part II of Schedule 1 of the Rehabilitation of Offenders Act 1974

	(Exemptions) Order 1975 (SI 1975/1023) or any replacement or amendment to that Order).
<b>Crown Body</b>	any Contracting Body as defined in Regulation 5(2) of the Public Contracts (Services, Service and Supply) (Amendment) Regulations 2000 other than the Client.
<b>Data Protection Laws</b>	means, as applicable to either Party and/or to the rights, responsibilities and/or obligations of either Party in connection with this Contract: <ul style="list-style-type: none"> <li>(a) the UK GDPR;</li> <li>(b) the Data Protection Act 2018;</li> <li>(c) the Directive 2002/58/EC (ePrivacy Directive) and/or the Privacy and Electronic Communications (EC Directive) Regulations 2003;</li> <li>(d) any other applicable law relating to the processing, privacy and/or use of Personal Data, as applicable to either Party and/or to the rights, responsibilities and/or obligations of either Party in connection with this Contract;</li> <li>(e) any laws which implement any such laws; and</li> <li>(f) any laws that replace, extend, re-enact, consolidate or amend any of the foregoing.</li> </ul>
<b>Disclosure and Barring Scheme</b>	the disclosure and barring scheme operated by the Disclosure and Barring Service.
<b>Disclosure and Barring Service</b>	the non-departmental public body established pursuant to the Protection of Freedoms Act 2012.
<b>DOTAS</b>	the Disclosure of Tax Avoidance Schemes rules which require a promoter of tax schemes to tell HM Revenue & Customs of any specified notable 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.
<b>Enhanced with Lists Check</b>	the check carried out by the Disclosure and Barring Service that also includes a check of the Barred Lists.
<b>Environmental Information Regulations</b>	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.
<b>Federated Model</b>	a shared Model representing the completed Project consisting of connected but distinct individual Models and incorporating the Specified Models.
<b>FOIA</b>	the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with

any guidance and/or codes of practice issued by the Information Commissioner in relation to such legislation.

**General Anti-Abuse Rule**

- (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 and to avoid national insurance contributions;

**Group Company**

any subsidiary company or holding company of an assignor, or another subsidiary or holding company of such company, as 'subsidiary' and 'holding company' are defined in the Companies Act 2006 but on the basis that the holding of not less than one quarter of voting rights shall be deemed to satisfy the condition in section 1159(1)(a).

**Halifax Abuse Principle**

the principle explained in the CJEU Case C-255/02 Halifax and others.

**Insolvent**

means for the purposes of this Contract:

- (a) if a company:
  - (i) when it enters administration within the meaning of Schedule B1 to the Insolvency Act 1986;
  - (ii) on the appointment of an administrative receiver or a receiver or manager of its property under Chapter I of Part III of that Act, or the appointment of a receiver under Chapter II of that Part;
  - (iii) on the passing of a resolution for voluntary winding-up without a declaration of solvency under section 89 of that Act; or
  - (iv) on the making of a winding-up order under Part IV or V of that Act;
- (b) if a partnership:
  - (i) on the making of a winding-up order against it under any provision of the Insolvency Act 1986 as applied by an order under section 420 of that Act; or
  - (ii) when sequestration is awarded on the estate of the partnership under section 12 of the Bankruptcy (Scotland) Act 1985 or the partnership grants a trust deed for its creditors;
- (c) if an individual:
  - (i) on the making of a bankruptcy order against it under Part IX of the Insolvency Act 1986; or

- (ii) on the sequestration of its estate under the Bankruptcy (Scotland) Act 1985 or when it grants a trust deed for its creditors;
- (d) if:
  - (i) 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 any of its creditors (excluding a scheme of arrangement as a solvent company for the purposes of amalgamation or reconstruction);
  - (ii) (in the case of a partnership) each partner is the subject of an individual arrangement or any other event or proceedings referred to in this definition; or
  - (iii) it applies to court for, or obtains, a moratorium under Part A1 of the Insolvency Act 1986;

(and 'Insolvency' shall be construed accordingly)

**Intellectual Property Rights**

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

**Law**

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

**Material**

means:

- (a) all designs, drawings, calculations, charts, diagrams, sketches, models, plans, specifications, design details, photographs, brochures, reports, notes of meetings, CAD materials, data, databases, schedules, programmes, bills of quantities, budgets, surveys, levels, setting out dimensions and/or other documents or materials produced or prepared by or on behalf of the Consultant or the Client in relation to and/or

connection with the Project and/or the site (whether in existence or to be made) and all updates, amendments, additions and revisions to them and any works, designs or inventions contained incorporated or referred to in them for any purpose relating to the Project and/or the site; and

- (b) all information in any electronic medium in relation to the Project and/or the site and/or the completed Project comprised in the Specified Models.

**Model** a digital representation of part of the physical and/or functional characteristics of the Project.

**Moral Rights** moral rights under Chapter IV of Part 1 of the Copyright Designs and Patents Act 1988.

**Named Employee** has the meaning set out in clause 2.1B.

**Occasions of Tax Non-Compliance** (a) where any tax return of the Consultant submitted to a Relevant Tax Authority on or after 1 October 2012 is found on or after 1 April 2013 to be incorrect as a result of:

- i. a Relevant Tax Authority successfully challenging the Consultant 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;
- ii. the failure of an avoidance scheme which the Consultant was involved in, and which was, or should have been, notified to a Relevant Tax Authority under DOTAS or any equivalent or similar regime; and/or

- (b) where any tax return of the Consultant submitted to a Relevant Tax Authority on or after 1 October 2012 gives rise, on or after 1 April 2013, to a criminal conviction in any jurisdiction for tax related offences which is not spent at the date of this Contract or to a civil penalty for fraud or evasion.

**Personal Data** has the meaning given in applicable Data Protection Laws from time to time.

**Prohibited Act** (a) to directly or indirectly offer, promise or give any person working for or engaged by the Client 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 Contract;

- (c) committing any offence:
  - (i) under the Bribery Act 2010 (or any legislation repealed or revoked by such Act);
  - (ii) under legislation or common law concerning fraudulent acts; or
  - (iii) defrauding, attempting to defraud or conspiring to defraud the Client; or
- (d) any activity, practice or conduct which would constitute one of the offences listed above if such activity, practice or conduct had been carried out in the UK;

<b>Relevant Requirements</b>	all applicable laws 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.
<b>Relevant Tax Authority</b>	HM Revenue & Customs, or, if applicable, a tax authority in the jurisdiction in which the Consultant is established.
<b>Request for Information</b>	a request for information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the Environmental Information Regulations.
<b>Schedule of Amendments</b>	this Schedule of Amendments.
<b>Sensitive Works</b>	the carrying out of any part of the Services (including during the making good of any defects) in or on any part or parts of the site which may allow direct access to premises occupied or used, or likely to be occupied or used, during the course of the Services by pupils or students attending the educational facilities.
<b>Security Policy</b>	the Client's security policy attached as Annex F (Security Provisions) as may be updated from time to time.
<b>SME</b>	Small and medium-sized enterprises.
<b>Specified Models</b>	the Model or Models which the Consultant or any member of the Project Team or the Contractor is to produce and deliver in accordance with the BIM Protocol.
<b>Technical Advisory Services Appointment</b>	the agreement made between the Client and the Consultant for the provision of technical advisory services.
<b>UK Construction Products Regulation 2011</b>	the UK version of Regulation (EU) No 305/2011, as it forms part of English law under the European Union (Withdrawal) Act 2018.
<b>UK GDPR</b>	the Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (United Kingdom General

Data Protection Regulation), as it forms part of the law of England and Wales, Scotland and Northern Ireland by virtue of section 3 of the European Union (Withdrawal) Act 2018.

- 1.2.4 After "body corporate" insert "or any legal entity having legal capacity".
- 1.4 Insert a new final paragraph "All payments made by the Client to the Consultant pursuant to any such interim agreement, letter of intent and/or other arrangement shall be deemed to have been made as part of the Fee. For the avoidance of doubt, the Client shall have no further liabilities (including any liability to make any payments) under such interim agreement, letter of intent and/or other arrangement."
- 1.5 Delete and insert: "Unless the right of enforcement is expressly provided for it is not intended that a third party should have the right to enforce a provision of this Contract pursuant to the Contracts (Rights of Third Parties) Act 1999. This clause shall not affect or prevent any assignees who take the benefit of this Contract pursuant to clause 10 or successors in title to the Client from enforcing the provisions of this Contract."
- 1.7 Delete and insert: "This Contract 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."

- 1.8 Insert a new clause 1.8:

**"Freedom of Information**

- 1.8.1 The Consultant recognises that the Client is subject to legal duties which may require the release of information under the Freedom of Information Act 2000 (**the Act**) and that the Client shall be/is under an obligation to provide information on request. Such information may include matters relating to, arising under or out this Contract.
- 1.8.2 The Consultant recognises that each request for information must be considered individually and that any decision to disclose information shall be the decision of the Client.
- 1.8.3 The Client shall not be liable to the Consultant for any loss, damage, harm or other detriment, however caused arising from the disclosure of any information under the Act or other similar legislation or equivalent codes.
- 1.8.4 The Consultant shall provide such assistance to the Client as the Client requires to enable it to comply with its obligations under the Act or other similar legislation or equivalent codes.
- 1.8.5 The Consultant shall promptly pass any requests for information under or in relation to the Act or other similar legislation or equivalent codes which it receives to the Client. The Consultant shall not respond directly to any such requests for information unless instructed to do so by the Client."

- 1.9 Insert a new clause 1.9:

**"UK GDPR**

- 1.9.1 Each Party shall comply with all Data Protection Laws in connection with the exercise and performance of its respective rights and obligations under this Contract.
- 1.9.2 Each Party shall comply with the provisions of Annex E.
- 1.10 Insert a new clause 1.10:

**"Tax Compliance**

1.10.1 The Consultant represents and warrants that as at the date of this Contract, it has notified the Client in writing of any Occasions of Tax Non-Compliance or any litigation that it is involved in that is in connection with any Occasions of Tax Non-Compliance.

1.10.2 If, at any point prior to the end of the Rectification Period, an Occasion of Tax Non-Compliance occurs, the Consultant shall:

1.10.2.1 notify the Client in writing of such fact within 5 days of its occurrence; and

1.10.2.2 promptly provide to the Client:

1.10.2.2.1 details of the steps which the Consultant is taking to address the Occasions of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors that it considers relevant; and

1.10.2.2.2 such other information in relation to the Occasion of Tax Non-Compliance as the Client may reasonably require."

1.11 Insert a new clause 1.11:

**"Publicity and Branding**

1.11.1 The Consultant shall not:

- a. make any press announcements or publicise this contract in any way; or
- b. use the Client's name or brand in any promotion or marketing or announcement of the contract;

without the prior written approval of the Client.

1.11.2 The Client is entitled to publicise the contract in accordance with any legal obligation upon the Client, including any examination of the contract by the National Audit Office pursuant to the National Audit Act 1983 or otherwise."

1.12 Insert a new clause 1.12:

**"Change of Control**

1.12.1 The Consultant shall notify the Client immediately in writing and as soon as the Consultant 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. The Consultant shall ensure that any notification sets out full details of the Change of Control including the circumstances suggesting and/or explaining the Change of Control.

1.12.2 The Client may terminate the Consultant's obligation to perform the Services (which shall take effect as termination under clause 11.5.1) within six months from:

- a. being notified in writing that a Change of Control is anticipated or is in contemplation or has occurred; or
- b. where no notification has been made, the date that the Client becomes aware that a Change of Control is anticipated or is in contemplation or has occurred, but shall not be permitted to terminate where an approval was granted prior to the Change of Control."

1.13 Insert a new clause 1.13:

### **"Financial Standing**

The Client may terminate the Consultant's obligation to perform the Service (which shall take effect as termination under clause 11.5.1) where in the reasonable opinion of the Client there is a material detrimental change in the financial standing and/or the credit rating of the Consultant which:

- a. adversely impacts on the Consultant's ability to perform its obligations under this Contract; or
- b. could reasonably be expected to have an adverse impact on the Consultant's ability to perform its obligations under this Contract."

1.14 Insert a new clause 1.14:

### **"Records, audit access and open book data**

1.14.1 The Consultant shall keep and maintain for twelve years full and accurate records and accounts of the operation of this contract including the service provided under it, any subcontracts and the amounts paid by the Client.

1.14.2 The Consultant shall:

- a. keep the records and accounts referred to in clause 1.14.1 in accordance with law;
- b. afford any auditor access to the records and accounts referred to in clause 1.14.1 at the Consultant's premises and/or provides records and accounts (including copies of the Consultant's published accounts) or copies of the same, as may be required by any auditor from time to time during the Consultant performing the Services and the liability period under the contract in order that the auditor may carry out an inspection to assess compliance by the Consultant and/or its sub-consultants of any of the Consultant's obligations under this contract including in order to:
  - i. verify the accuracy of any amounts payable by the Client under this contract (and proposed or actual variations to them in accordance with this Contract);
  - ii. verify the costs of the Consultant (including the costs of all sub-consultants and any third party suppliers) in connection with performing the Services;
  - iii. identify or investigate an actual or suspected Prohibited Act, impropriety or accounting mistakes or any breach or threatened breach of security and in these circumstances the Client has no obligation to inform the Consultant of the purpose or objective of its investigations;
  - iv. obtain such information as is necessary to fulfil the Client'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 Client has used its resources;
- c. subject to the Consultant's rights in respect of confidential information, the Consultant provides the auditor on demand with all reasonable co-operation and assistance in respect of:
  - i. all reasonable information requested by the Client within the scope of the audit;

- ii. reasonable access to sites controlled by the Consultant and to any Consultant's equipment used to perform the Services; and
- iii. access to the Consultant's personnel.

1.14.3 The Parties bear their own respective costs and expenses incurred in respect of compliance with their obligations under this clause 1.14, unless the audit reveals a default by the Consultant in which case the Consultant reimburses the Client for the Client's reasonable costs incurred in relation to the audit.

1.14.4 This clause does not constitute a requirement or agreement for the purposes of section 6(3)(d) of the National Audit Act 1983 for the examination, certification or inspection of the accounts of the Consultant and the carrying out of an examination under Section 6(3)(d) of the National Audit Act 1983 in relation to the Consultant is not a function exercisable under this contract."

1.15 Insert a new clause 1.15:

**"Equality and diversity**

1.15.1 The Consultant shall perform its obligations under this contract in accordance with

- a. all applicable equality law (whether in relation to race, sex, gender reassignment, religion or belief, disability, sexual orientation, pregnancy, maternity, age or otherwise); and
- b. any other requirements and instructions which the Client reasonably imposes in connection with any equality obligations imposed on the Client at any time under applicable equality law;

1.15.2 The Consultant shall take all necessary steps, and inform the Client of the steps taken, to prevent unlawful discrimination designated as such by any court or tribunal, or the Equality and Human Rights Commission or (any successor organisation)."

1.16 Insert a new clause 1.16:

**"Conflicts of interest**

1.16.1 The Consultant shall take appropriate steps to ensure that neither the Consultant nor any of its personnel are placed in a position where (in the reasonable opinion of the Client) there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Consultant or its personnel and the duties owed to the Client under this contract.

1.16.2 The Consultant shall promptly notify and provide full particulars to the Client if such conflict referred to in the clause above arises or may reasonably be foreseen as arising.

1.16.3 The Client may terminate the Consultant's obligation to perform the Services immediately under clause 11.5.2 (as if Insolvency applied) and/or to take such other steps the Client deems necessary where, in the reasonable opinion of the Client, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Consultant and the duties owed to the Client under this contract."

1.17 Insert a new clause 1.17:

**"Security Requirements**

The Consultant shall comply with, and procure the compliance of the Consultant's Persons, with:

1.18.1 the Security Policy

1.18.2 Contract Schedule Annex F (Security Provisions)."

1.18 Insert new clause 1.18

**"Cyber Essentials**

The Client and the Consultant shall comply with the provisions Clause 1.2 Cyber Essentials of Annex F (Security Provisions) ."

**SECTION 2: CONSULTANT'S GENERAL OBLIGATIONS**

Renumber clause 2.1 as 2.1.1

2.1.1 After "the Client's Brief" insert "and the Contract". After "expected of a" insert "properly qualified". After "size, scope" insert ", nature, value, character, timescale". After "complies with" insert "the terms of this Contract and". After "Third Party Agreements." insert "To the extent permitted by the Statutory Requirements and unless otherwise provided for in this Contract, the Consultant shall have no greater duty, obligation or liability than to exercise reasonable skill and care as provided in this clause 2.1.1 in respect of any design prepared in the performance of the Services and under no circumstances shall the Consultant be subject to any duty, obligation or liability which requires that any such design shall be fit for its purpose."

At the end of 2.1.1 insert the following new paragraphs:

"2.1.2 The Consultant shall comply and procure compliance with the BIM Protocol in place for the time being, and in doing so shall have due regard to the relevant requirements and recommendations of the standards as set out within the BIM Protocol.

2.1.3 In performing its obligations under this Contract, the Consultant shall and shall ensure that each of its sub-consultants shall comply with the Modern Slavery Act 2015 and comply with its obligations relating to modern slavery contained in clause 8 of the Technical Advisory Services Appointment to ensure compliance.

2.1.4 The Consultant shall notify the Client as soon as it becomes aware of any actual or suspected slavery or human trafficking in a supply chain which has a connection with this Contract.

2.1.5 In the event that the Consultant fails to comply with clauses 2.1.3, 2.1.4 and 2.1.5 and/or does not provide details of proposed mitigating factors which in the reasonable opinion of the Client are acceptable, then the Client reserves the right to:

(a) require the Consultant to remove from the performance of the Services any Consultant's Persons whose acts or omissions have caused the default; and/or

(b) immediately terminate the employment of the Consultant under this Contract in accordance with clause 11.5.3."

2.1A Insert a new clause 2.1A:

**"Client's obligations**

The Client shall comply with its obligations as defined within the relevant documents included within the BIM Protocol."

2.1B Insert a new clause 2.1B:

**"Disclosure and Barring**

- 2.1B.1 The Consultant shall procure that in respect of all potential staff or persons (including sub-consultants of any tier) who will be carrying out any Sensitive Works (each a "**Named Employee**") before a Named Employee begins to attend the site to perform any Sensitive Works:
- 2.1B.1.1 each Named Employee is questioned as to whether he or she or they have any Convictions or CBOs;
  - 2.1B.1.2 the results of an Enhanced with Lists Check is obtained from the Disclosure and Barring Service in respect of each Named Employee;
  - 2.1B.1.3 to the extent permitted by law a copy of the results of such checks by the Consultant as are referred to in clause 2.1B.1.2 are notified to the Client.
- 2.1B.2 The Consultant shall procure that:
- 2.1B.2.1 no person who appears on a Barred List following the results of the Enhanced with Lists Check referred to in clause 2.1B.1.2 shall be employed or engaged in the performance of the Sensitive Works; and
  - 2.1B.2.2 it shall and shall procure that all sub-consultants shall comply with all reporting requirements of the Disclosure and Barring Service.
- 2.1B.3 The Consultant shall procure that no person who discloses any Convictions or CBOs, or who is found to have any Convictions following the results of the Enhanced with Lists Check referred to in clause 2.1B.1.2, is employed or engaged in carrying out any part of any Sensitive Works without the Client's prior written consent.
- 2.1B.4 Insofar as permitted by law, the Consultant shall procure that the Client is kept advised at all times of any member of staff or employee of any sub-consultant engaged in the provision of the Sensitive Works:
- 2.1B.4.1 who subsequent to his/her/their commencement of employment as a member of staff receives a Conviction or CBO which becomes known to the Consultant or a sub-consultant or whose previous Convictions or CBO become known to the Consultant or a sub-consultant (or any employee of the Consultant or sub-consultant involved in the provision of the Sensitive Works); or
  - 2.1B.4.2 in respect of whom information is referred to the Disclosure and Barring Service pursuant to the Disclosure and Barring Service (as appropriate); or
  - 2.1B.4.3 whom the Disclosure and Barring Service is "minded to bar" or who is placed on a Barred List pursuant to the Disclosure and Barring Scheme which becomes known to the Consultant or a sub-consultant.
- 2.1B.5 In the event that any member of staff of the Consultant or a sub-consultant is added to a Barred List, the Consultant shall procure that such member of staff is removed from the site and shall cease to be engaged in the Sensitive Works.
- 2.1B.6 Save to the extent prescribed otherwise pursuant to the Disclosure and Barring Service this clause 2.1B shall not apply to those individuals who shall be required by the Consultant to attend on the site to provide emergency reactive services. In the case of such individuals, the Consultant shall ensure that such individuals are accompanied at all times while on the site by a member of the Consultant's staff who has been properly employed or engaged in accordance with this clause 2.1B."
- 2.1C Insert a new clause 2.1C:

## **"Conduct of Staff and Security Arrangements**

2.1C.1 Whilst engaged at the site the Consultant shall and shall procure that its staff and the staff of any sub-consultant of any tier shall comply with any Client's policies relating to the conduct of staff and security arrangements.

2.1C.2 The Client (acting reasonably) may:

2.1C.2.1 instruct the Consultant that disciplinary action is taken against any employee of the Consultant or any sub-consultant of any tier involved in the provision of the Services (in accordance with the terms and conditions of employment of the employee concerned) where such employee misconducts itself or is incompetent or negligent in its duties (in which case the Client shall co-operate with any disciplinary proceedings and shall be advised in writing of the outcome); or

2.1C.2.2 where the Client has reasonable grounds for considering that the presence or conduct of an employee at any location relevant to the performance of the Services is undesirable, require the exclusion of the relevant employee from the relevant location(s)."

2.1D Insert a new clause 2.1D:

## **"Admission to the Site**

2.1D.1 Subject to the remainder of this clause 2.1D.1, the Consultant shall at least 20 Business Days before the date on which the Consultant first carries out any Sensitive Works provide the Client with a written list of the names and addresses of all employees or other persons who it expects may require admission to the site in connection with the carrying out of any Sensitive Works, specifying the capacities in which those employees or other persons are concerned with any Sensitive Works and giving such other particulars as the Client may require. The Consultant shall update this information as and when any such individuals are replaced or complemented by others, not less than 20 Business Days before their inclusion. The decision of the Client on whether any person is to be refused admission to the site shall be final and conclusive and the Client shall not be obliged to give reasons for its decision.

2.1D.2 Where the Consultant is unable (acting reasonably) to comply with clause 2.1D.1 by the time period specified in it then the Consultant shall comply with its obligations under that clause as soon as reasonably practicable and by no later than the end of the day on which the relevant individual first goes on the site. Until such time as the Consultant has complied with its obligations in respect of that individual, he or she or they shall at all times be accompanied on the site by a member of the Consultant or Consultant's Person's staff who has been properly notified to the Client in accordance with clause 2.1D.1.

2.1D.3 This clause 2.1D shall not apply to those individuals who shall be required by the Consultant or Consultant's Person to attend the site to provide emergency reactive services. In the case of such individuals, the Consultant shall, or shall procure that any Consultant's Person shall ensure that such individuals are accompanied at all times while on the site by a member of the Consultant or Consultant's Person's staff who has been properly notified to the Client in accordance with clause 2.1D.1."

2.1E Insert a new clause 2.1E:

## **"Refusal of Admission**

2.1E The Client reserves the right to refuse to admit to the site or to any existing buildings on the site any person employed or engaged by the Consultant or any sub-consultant of any tier, whose admission would, in the opinion of the Client, present a risk to themselves or any pupils or students attending the educational facilities, or a Client's Person or property, and shall not be obliged to give any reasons for such refusal."

2.1F Insert a new clause 2.1F:

**"Decision to Refuse Admission**

2.1F The decision of the Client as to whether any person is to be refused admission to the site pursuant to clause 2.1E shall be final and conclusive."

2.1G Insert a new clause 2.1G:

**"Removal from Site**

2.1G The Consultant shall comply with and/or procure compliance with any notice issued by the Client from time to time requiring the removal from the site of any person employed thereon who in the opinion of the Client acting reasonably is not acceptable on the grounds of risk to themselves or any pupils or students attending the educational facilities, or any Client's Person or property and that such persons shall not be employed again in connection with the Services without the written consent of the Client."

2.2 Delete ", subject only to clause 6.5"

2.3 In line one, after "Project Team" insert "and the Contractor". In line two, after "Project Team" insert "and Contractor".

2.3.1 After "Project Team" insert "or the Contractor".

2.3.2 After "Project Team" insert "and the Contractor".

2.4 Delete and insert: "Subject to clause 2.1.1, the Consultant warrants that it has not and shall not use and/or permit the use of and/or specify for use in or in connection with the Project any substances materials equipment products kit practices or techniques which by their nature or application do not conform with relevant British Standards or Codes of Practice or regulations or good building practice or any applicable European Union equivalent current at the time of permission or specification, nor any substances materials equipment products kit practices or techniques which are generally known within the Consultant's profession and/or the construction industry:

2.4.1 to be deleterious in the particular circumstances in which they are used or specified for use to the health or safety of any person;

2.4.2 to be deleterious in the particular circumstances in which they are used or specified for use to the health, safety, stability, performance, physical integrity and/or durability of the Project or any part thereof and/or to other structures, finishes, plant and/or machinery;

2.4.3 to reduce or possibly reduce the normal life expectancy of works of a type comparable to the Project;

2.4.4 to become deleterious without a level or cost of maintenance which is higher than that which would normally be expected in a works of a type comparable to the Project;

2.4.5 not to comply with or have due regard to the report entitled "Good Practice in the Selection of Construction Materials" (current edition) published by the British Council for Offices; and/or

2.4.6 to be supplied or placed on the market in breach of the Construction Products Regulations.

The Consultant shall immediately notify the Client and Lead Consultant if it becomes aware of any such use, permission or specification or failure to comply with this clause."

2.6 After "Project Team" insert "and the Contractor".

2.7 After "prior consent" insert "and the Consultant shall ensure that it complies with the provisions of Article 9 in relation to any sub-contracting".

Insert new subclauses 2.7A to 2.7C as follows:

"2.7A Each sub-contract shall include:

2.7A.1 period for payment of the amount due to the sub-consultant not greater than 5 days after the final date for payment in this Contract. The amount due shall, but shall not be limited to, payment for work which the sub-consultant has completed from the previous application date up to the current application date in this Contract;

2.7A.2 a provision requiring the sub-consultant to include in each subsubcontract the same requirement (including this requirement to flow down, except that the period for payment is to be not greater than 9 days after the final date for payment in this Contract;

2.7A.3 a provision requiring the sub-consultant to assess the amount due to a subsubconsultant without taking into account the amount paid by the Consultant, and.

2.7A.4 terms and conditions that are no less favourable than those of this Contract. The Client shall be entitled to reject sub-contract conditions proposed by the Consultant that are unduly disadvantageous to the sub-consultant.

2.7B.1 The Consultant shall take all reasonable steps to engage SMEs as sub-consultants and, if requested by the Client, provide details to the Client of the proportion of the Fee which is undertaken by SMEs.

2.7B.2 The Consultant shall report to the Client on a monthly basis the numbers of SMEs engaged as sub-consultants and the value of the Fee that has been undertaken by SMEs.

#### **2.7C Apprenticeships**

2.7C.1 The Consultant shall take all reasonable steps to employ apprentices, and report to the Client the numbers of apprentices employed and the wider skills training provided, during the carrying out of the Services.

2.7C.2 The Consultant shall make available to its employees and sub-consultants working on the Contract, information about the government's apprenticeship programme and wider skills opportunities.

2.7C.3 The Consultant shall provide any further skills training opportunities that are appropriate for its employees engaged in carrying out the Services."

2.9 After "subject to clause" insert " 2.1 and".

2.9.1 Delete this sub-clause.

2.9.2 Delete "sub-contractors" and insert "sub-consultants".

2.9.3 After "its control" insert "save where such event cause failure or delay arises by reason of any omission, negligence, breach or default by or on behalf of the Consultant or any sub-consultant".

2.12 Insert a new clause 2.12:

"The Consultant shall provide all relevant information to and cooperate and coordinate with all duty holders under the CDM Regulations and the Building Regulations to enable all such duty holders to comply with their duties and obligations under the CDM Regulations and the Building Regulations.

The Consultant warrants that it shall comply with the duties and obligations of a designer as set out in the CDM Regulations and the Building Regulations. As and when requested by the Client, the Consultant shall provide to the Client such evidence as the Client may require which demonstrates the Consultant's competency to act as designer under the CDM Regulations and the Building Regulations.

Without prejudice to the generality of the foregoing the Consultant warrants that it shall comply with all of the duties and obligations as set out in the CDM Regulations and the Building Regulations which apply to the Consultant in the performance of the Services."

### **SECTION 3: LEAD CONSULTANTS AND CONTRACT ADMINISTRATION**

- 3.2.2 After "beyond its control" insert "provided that the Consultant shall remain responsible for failure to issue the Design Information and other information at the times required where such failure arises by reason of any omission, negligence, breach or default by or on behalf of the Consultant or any sub-consultant".

### **SECTION 4: CLIENT'S GENERAL OBLIGATIONS**

- 4.1 Delete ", or likely to be useful,". After "Statutory Requirements" insert "provided that such information is not confidential or subject to obligations relating to confidentiality". Delete "promptly" and insert "as soon as reasonably practicable".
- 4.2 Delete.
- 4.3.1 In line one, after "Project Team" insert "or the Contractor". In line two, after "Project Team" insert "or the Contractor".
- 4.4 At the end of the clause insert "provided that the Consultant has clearly requested such decisions approvals and instructions in writing and included details of any date or deadline by which the Consultant requires such decisions approvals and/or instructions."
- 4.5.2 Delete "." and insert "; or".
- 4.5.3 Insert a new clause 4.5.3: "the Client, at its sole discretion, requires such Omission from the Services including without limitation when the Client requires such omitted Services to be performed by other consultants."
- 4.5 In the final paragraph after "4.5.2" add "or 4.5.3". After "unless it is agreed" insert "at the Client's sole discretion".

### **SECTION 5: REPRESENTATIVES AND KEY PERSONNEL**

No amendments.

### **SECTION 6: FURTHER SERVICES, CHANGES AND FEE ADJUSTMENTS**

- 6.1 After "promptly" insert ", and in any event no later than two (2) weeks of becoming aware of the requirement for an Optional Service"
- 6.2 After "promptly" insert ", and in any event no later than two (2) weeks of becoming aware of the requirement for an Additional Service"
- 6.3.4 Delete clause 6.3.4 and insert "any default on the part of the Client which materially alters, prolongs or disrupts the performance of the Services provided always that the Consultant shall use constantly its best endeavours to prevent or minimise any disruption or delay and shall do all that may be reasonably required to the satisfaction of the Client to proceed with the Services and to mitigate any loss or expense incurred by it."
- 6.3 At the end of 6.3, insert a new final paragraph: "Notwithstanding the foregoing or any other provision of this Contract, the Consultant shall not be entitled to any adjustment of the Fee or any other additional payment or reimbursement where (a) a Change arises by reason of any omission, negligence, breach or default by or on behalf of the Consultant or any sub-consultant and/or (b) the Consultant has not complied with clause 6.4."
- 6.4 Delete from the end of clause 6.4.3 to the end of the last paragraph of 6.4.
- 6.5 After "Project Team" insert "and the Contractor".
- 6.6 In the first paragraph after "within clause 6.3.4" insert "(and subject to the other provisions of clause 6.3)".
- 6.6.3 Delete.
- 6.6.5 Insert a new final paragraph " Adjustment of the Fee or any other additional payment or reimbursement to the Consultant under this clause 6.6 shall be deemed to be full payment for the Consultant in respect of the matters for which the adjustment, payment or reimbursement is paid and the Client shall have no further liability to the Consultant in respect of such matters arising under the Contract or generally at law."
- 6.7 Delete "a default by the Consultant" and insert " any omission, negligence, breach or default by or on behalf of the Consultant or any sub-consultant".
- 6A Insert a new clause 6A as follows:

**"6A Adjustment for events outside of the Consultant's control**

If at any time the Consultant is prevented or delayed in the performance of the Services because of an event entirely outside of their control, it shall promptly so notify the Client giving the specific reason for the delay or prevention, together with its best estimate of its effect on the programme. In such circumstances the Consultant shall use all reasonable endeavours to expedite the Services as soon as practicable. The Consultant shall not be treated as being in breach of this agreement to the extent that it is delayed in the performance of the Services for reasons covered in this clause 6A."

**SECTION 7: PAYMENT**

- 7.1 Delete "The" and insert "For the full and proper performance of the Services, the".
- 7.2 Renumber clause 7.2 as 7.2.1 and delete the second sentence and replace with "'The due date for payment is the specified date or (if later than the specified date) the date of the Client's approval in writing of the Consultant's invoice in accordance with this clause 7.2 or (if later than the specified date and if clause 7.2.3.3 applies) the date calculated by reference to the period for response stated in clause 7.2.3 or (if later than the specified date and the circumstances set out in clause 7.2.3.2 apply) the date which is 7 days from receipt of the submission of the Consultant's resubmitted invoice."

7.2.2 Insert a new clause 7.2.2: "The Consultant shall comply with the Client's Pre-Payment Assurance process (PPA). Under the PPA, the Consultant must first submit a draft invoice to the Client's Representative for review and approval stating the sum that the Consultant considers due to it at the due date, together with VAT, the basis on which that sum has been calculated and shall be accompanied by the invoice schedule, DfE PD or DfE PM approval email and programme (as referred to in Section 0 of Schedule 2 (Contract Management Procedures) of the Technical Advisory Services Appointment) and such documents, vouchers and receipts as are specified in paragraph 8 of Annex A or are otherwise reasonably required by the Client.

7.2.3 The Client shall respond to the Consultant's first PPA draft invoice submission within 10 days of receipt, and in respect of any subsequent draft invoice PPA submission within 7 days of receipt, confirming:

7.2.3.1 the draft invoice is accepted; or

7.2.3.2 the draft invoice is not accepted providing the reasons why the Client considers the proposal is not acceptable and the Consultant shall take due account of such comments and resubmit to the Client so that the procedures under clause 7.2.2 are repeated.

The Consultant will then combine the Client approval and Consultant invoice into one document and issue to the Client's finance team.

7.2.3.3 If the Client does not notify the Consultant of approval or rejection within the period stated in clause 7.2.3, the application shall be deemed approved on the expiry of that period."

7.2.4 Insert a new clause 7.2.4: "Where an invoice is uploaded to the Client's portal or issued to the Client's finance team without prior compliance with the PPA, the Client shall be entitled to reject such invoice. Any revised invoice subsequently submitted by the Consultant in accordance with the PPA shall bear the date of its re-issue, not the date of the original invoice. The applicable payment period shall commence from the date the revised invoice is received by the Client, and not from the date of the original or non-compliant invoice."

7.4 Delete the second sentence and replace with "The due date for payment is the specified date or (if later) the date of the Client's approval in writing of the Consultant's invoice in accordance with clause 7.2."

7.5 Delete

7.6 Delete "14" and insert "21".

7.8 At the end of the clause, insert "The Parties agree that this clause 7.8 is a substantial remedy for late payment of any sum payable under this Contract in accordance with section 8(2) Late Payment of Commercial Debts (Interest) Act 1998."

7.9.1 After "intention to suspend the performance of" insert "any or all of".

7.9.3 Delete the words "or on request" and, at the end of the clause, insert "The Consultant shall, on request, submit such further details as are reasonably requested by the Client."

7.10 Insert a new clause 7.10: "Any right of the Client to deduct or to set-off any amount (whether arising under any term of this Contract or under any rule of law or of equity) shall be exercisable against any monies due or to become due to the Consultant."

7.11 Insert a new clause 7.11: "In the event that the Consultant becomes Insolvent the Client retains the right to withhold, deduct or to set-off any amount (whether arising under any term of this Contract, or under any rule of law or of equity) including without limitation the cost to the Client of re-procuring the Development with a new consultant, against any monies due or to become due to the Consultant under this Contract or any other contract entered into between the Client and the Consultant. The Client shall mitigate all losses incurred as a consequence of the Consultant's Insolvency."

## SECTION 8: INSURANCE

- 8.1 In the first sentence after "Consultant shall" insert "effect and". At the end of the clause after "reasonable rates", insert a new final paragraph: "For the purposes of this clause 8.1, "commercially reasonable rates" shall mean such level of premium rates at which other consultants of a similar size and financial standing as the Consultant at each renewal date generally continue to take out such insurance. For the avoidance of doubt, any increased or additional premium required by insurers by reason of the Consultant's own claims record or other omission, negligence, breach, default, matters or things particular to the Consultant shall be deemed to be within commercially reasonable rates."
- 8.1.1 Delete and insert "professional indemnity insurance covering (inter alia) all its liability hereunder upon customary and usual terms and conditions prevailing for the time being in the insurance market, and with a limit of indemnity of not less than the amount set out in the Contract Particulars. The said terms and conditions shall not include any term or condition to the effect that the Consultant must discharge any liability before being entitled to recover from the insurers, or any other term or condition which might adversely affect the rights of any person to recover from the insurers pursuant to the Third Parties (Rights Against Insurers) Act 2010, or any amendment or re-enactment thereof."
- 8.2.1 Delete "from the date of this Contract until the expiry of the period stated in the Contract Particulars" and insert " at all relevant times during the Project and for a period of 12 (twelve) years from the date of completion of the Services".
- 8.3 Delete and insert
- "8.3 As and when reasonably required to do so by the Client, the Consultant shall:
- 8.3.1 produce for inspection documentary evidence that its professional indemnity insurance is being maintained in accordance with clause 8.1;
- 8.3.2 provide confirmation that any occurrence or claim, or of circumstances likely to give rise to a claim, have been properly notified to its insurer in accordance with the requirements of its policy; and
- 8.3.3 in the event that the Consultant becomes Insolvent, shall provide to the Client documentary evidence that its professional indemnity insurance is being maintained in accordance with clause 8.1 within 5 Business Days of a request from the Client."

## SECTION 9: USE OF CONSULTANT'S DESIGN INFORMATION, CONFIDENTIALITY ETC

- 9.1 Delete 9.1 in its entirety and insert the following new clauses:
- 9.1.1 "The Consultant, with full title guarantee, grants to the Client an irrevocable, perpetual, non-exclusive, non-terminable, royalty-free licence to use, reproduce and transmit any Material produced or prepared by the Consultant or on the Consultant's behalf for any and all purposes connected with:
- (a) the Project (and any replacement of the Project, if re-procured), the construction, use, alterations or demolition of the sites;
  - (b) the collection, analysis of and reporting on survey and scheme data for school condition and building performance, and any other statistical and research purposes for which it is required by the Client; and
  - (c) the Client's delivery of its school building programmes;

but the Intellectual Property Rights in the Material (produced or prepared by the Consultant or on the Consultant's behalf) shall remain vested in the Consultant. The Consultant shall not be liable for any use by the Client of such Material for any purposes other than those for which the same are or were prepared.

- 9.1.2 This licence carries the right to grant sub-licences and sub-sub-licences and is transferable without the Consultant's prior consent and shall subsist notwithstanding the termination (for any reason) of this Contract and/or the Consultant's engagement under this Contract.
- 9.1.3 Any and all patents, trademarks, service marks, copyright, Moral Rights, rights in a design, database rights, know-how and all other Intellectual Property Rights whether or not registered or capable of registration in the United Kingdom or any other part of the world in any electronic medium produced or prepared by the Consultant or on the Consultant's behalf pursuant to this Contract comprised in the Federated Model (to the extent that these comprise Specified Models produced or prepared by the Consultant or on the Consultant's behalf or to the extent that the Consultant owns any additional rights in any Federated Model) are the property of and shall (as between the Consultant and Client) vest in the Client and the Consultant accordingly hereby assigns to the Client (including by way of present assignment of future rights) all such rights throughout the world for the full term of such rights (including extensions and renewals) together with any accrued rights of action in respect of such rights. The Consultant shall provide to the Client all documentation, licences, information, materials and permissions necessary to allow the Client to maintain, modify and use the Federated Model (to the extent that these comprise Specified Models produced or prepared by the Consultant or on the Consultant's behalf and/or to the extent the Consultant owns any additional rights in any Federated Model).
- 9.1.4 The Consultant agrees on reasonable request at any time and following reasonable written prior notice to give to the Client or those authorised by it access to the Material produced or prepared by the Consultant or on the Consultant's behalf and the Federated Model, and to provide copies of such Material and the Federated Model (including copy negatives and electronic copies) thereof at the Consultant's expense.
- 9.1.5 The Consultant warrants to the Client that the Material produced or prepared by the Consultant or on the Consultant's behalf (save to the extent duly appointed sub-consultants have been used to prepare the same) are its own original work and that in any event their use or the use of any proprietary designs or products prepared by others in connection with the Project shall not infringe the rights of any third person. The Consultant further warrants that where duly appointed sub-consultants have been used their work shall be original and that the Consultant shall obtain the necessary consents in relation to clause 9.1.1. If the use of the Material produced or prepared by the Consultant or on the Consultant's behalf as specified in clause 9.1.1 is found to infringe the rights of any third person, the Consultant shall indemnify the Client against all resulting claims, proceedings, costs, damages and expenses.
- 9.1.6 The Consultant hereby waives and agrees not to assert (and to procure that any sub-consultants do likewise) any Moral Rights in the Material (produced or prepared by the Consultant or on the Consultant's behalf) and the Federated Model under the Copyright, Designs and Patents Act 1988 or any re-enactment or modifications of it.
- 9.1.7 The Client grants to the Consultant and agrees to grant to the Consultant a non-exclusive licence or sub-licence (as appropriate) (including the right to grant sub-licences and sub-sub-licences on identical terms to the Consultant's sub-consultants) to use, reproduce and transmit for the purposes of carrying out and completing the Project, performing their obligations under this Contract, and complying with the BIM Protocol:
- (a) the Material produced by the Client or on the Client's behalf or by any member of the Project Team or the Contractor or on their behalf;
  - (b) any Specified Models which any members of the Project Team or the Contractor produce and deliver as specified in the BIM Protocol and any Federated Models (and any part thereof) produced and delivered by any members of the Project Team or the

Contractor in relation to the Project;

- (c) any Federated Model (and any part thereof); and
- (d) any proprietary work and/or rights contained or subsisting in the same;

to the extent that the same or any rights subsisting therein are owned by members of the Project Team or the Client or the Contractor or any third party.

The licence and sub-licence and any sub-sub-licences (if any) granted in clause 9.1.7 shall not include the right to amend or modify a Model without the written consent of the Client or the member of the Project Team or the Contractor who produced and delivered the Model (or the relevant part thereof), save where such amendment or modification is provided for in the BIM Protocol.

The Client shall not be liable for any use of such Material as set out in clause 9.1.7, which shall be used by the Consultant and its sub-consultants at their own risk.

9.1.8 In the event of any conflict or inconsistency between the BIM Protocol and this clause 9.1, the provisions of this clause 9.1 shall prevail."

9.2 Delete 9.2 in its entirety and insert the following new clauses:

**"Confidentiality and Information Sharing**

9.2.1 Except to the extent set out in this clause or where disclosure is expressly permitted elsewhere in this Contract, each Party shall:

- 9.2.1.1 treat the other Party's Confidential Information as confidential and safeguard it accordingly;
- 9.2.1.2 not disclose the other Party's Confidential Information to any other person without prior written consent;
- 9.2.1.3 immediately notify the other Party if it suspects unauthorised access, copying, use or disclosure of the Confidential Information; and
- 9.2.1.4 notify the Serious Fraud Office where the recipient Party has reasonable grounds to believe that the other Party is involved in activity that may be a criminal offence under the Bribery Act 2010.

9.2.2 Clause 9.2.1 shall not apply to the extent that:

- 9.2.2.1 such disclosure is a requirement of the law of the contract placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA or the Environmental Information Regulations pursuant to clause 9.3 (Freedom of Information);
- 9.2.2.2 such information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
- 9.2.2.3 such information was obtained from a third party without obligation of confidentiality;
- 9.2.2.4 such information was already in the public domain at the time of disclosure otherwise than by a breach of this Contract; or
- 9.2.2.5 it is independently developed without access to the other Party's Confidential Information.

- 9.2.3 The Consultant may only disclose the Client's Confidential Information to Consultant's Persons who are directly involved in the carrying out of the Services and who need to know the information, and shall ensure that such Consultant's Persons are aware of and shall comply with these obligations as to confidentiality.
- 9.2.4 The Consultant shall not, and shall procure that the Consultant's Persons do not, use any of the Client's Confidential Information received otherwise than for the purposes of this Contract.
- 9.2.5 The Consultant may only disclose the Client's Confidential Information to Consultant's Persons who need to know the information, and shall ensure that such Consultant's Persons are aware of, acknowledge the importance of, and comply with these obligations as to confidentiality. In the event that any default, act or omission of any Consultant's Persons causes or contributes (or could cause or contribute) to the Consultant breaching its obligations as to confidentiality under or in connection with this Contract, the Consultant shall take such action as may be appropriate in the circumstances, including the use of disciplinary procedures in serious cases. To the fullest extent permitted by its own obligations of confidentiality to any Consultant's Persons, the Consultant shall provide such evidence to the Client as the Client may reasonably require (though not so as to risk compromising or prejudicing the case) to demonstrate that the Consultant is taking appropriate steps to comply with this clause 9.2, including copies of any written communications to and/or from Consultant's Persons, and any minutes of meetings and any other records which provide an audit trail of any discussions or exchanges with Consultant's Persons in connection with obligations as to confidentiality.
- 9.2.6 At the written request of the Client, the Consultant shall procure that those members of the Consultant's Persons identified in the Client's notice signs a confidentiality undertaking prior to commencing any work in accordance with this Contract.
- 9.2.7 Nothing in this Contract shall prevent the Client from disclosing the Consultant's Confidential Information:
- 9.2.7.1 to any Crown Body. All Crown Bodies receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Crown Bodies on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Crown Body;
  - 9.2.7.2 to a professional adviser, contractor, consultant, supplier or other person engaged by the Client or any Crown Body (including any benchmarking organisation) for any purpose connected with this Contract or any person conducting a review in respect of this Contract on behalf of a public body;
  - 9.2.7.3 for the purpose of the examination and certification of the Client's accounts;
  - 9.2.7.4 for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Client has used its resources;
  - 9.2.7.5 for the purpose of the exercise of its rights under this Contract; or
  - 9.2.7.6 to a proposed successor body of the Client in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under this Contract,
- and for the purposes of the foregoing, disclosure of the Consultant's Confidential Information shall be on a confidential basis and subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Client under this clause 9.2.
- 9.2.8 The Client shall use all reasonable endeavours to ensure that any government department, employee, third party or sub-consultant to whom the Consultant's Confidential Information is

disclosed pursuant to the above clause is made aware of the Client's obligations of confidentiality.

- 9.2.9 Nothing in this clause shall prevent either Party from using any techniques, ideas or know-how gained during the performance of the Contract in the course of its normal business to the extent that this use does not result in a disclosure of the other Party's Confidential Information or an infringement of Intellectual Property Rights.
- 9.2.10 The Client may disclose the Confidential Information of the Consultant:
- 9.2.10.1 to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;
  - 9.2.10.2 to the extent that the Client (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions.
- 9.2.11 The Consultant shall not by itself, its employees or agents, and shall procure that its sub-consultants shall not, communicate with representatives of the press, television, radio or other communications media on any matter concerning this Contract or the Services without the prior written approval of the Client.
- 9.2.12 No facilities to photograph or film in or upon any property used in relation to the Services shall be given or permitted by the Consultant unless the Client has given its prior written approval.
- 9.2.13 The Consultant shall not exhibit or attach to any part of the Sites any notice or advertisement without the prior written permission of the Client, save where otherwise required to comply with legislation."

9.3 Insert a new clause 9.3 as follows:

**"Freedom of information**

- 9.3.1 The Consultant acknowledges that unless the Client has notified the Consultant that the Client is exempt from the provisions of the FOIA, the Client is subject to the requirements of the Code of Practice on Access to Government Information, FOIA and the Environmental Information Regulations. The Consultant shall co-operate with and assist the Client so as to enable the Client to comply with its information disclosure obligations.
- 9.3.2 The Consultant shall:
- 9.3.2.1 transfer to the Client all Requests for Information that it receives as soon as practicable and in any event within 2 Business Days of receiving a Request for Information;
  - 9.3.2.2 provide the Client with a copy of all information in its possession, or power in the form that the Client shall require within 5 Business Days (or such other period as the Client may specify) of the Client's request;
  - 9.3.2.3 provide all necessary assistance as reasonably requested by the Client to enable the Client to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations; and
  - 9.3.2.4 procures that its sub-consultants do likewise.
- 9.3.3 The Client is responsible for determining in its absolute discretion whether any information is exempt from disclosure in accordance with the provisions of the Code of Practice on Access to Government Information, FOIA or the Environmental Information Regulations.

- 9.3.4 The Consultant shall not respond directly to a Request for Information unless authorised to do so by the Client.
- 9.3.5 The Consultant acknowledges that the Client may, acting in accordance with the Department of Constitutional Affairs' Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000, be obliged to disclose information without consulting or obtaining consent from the Consultant or despite the Consultant having expressed negative views when consulted.
- 9.3.6 The Consultant shall ensure that all information is retained for disclosure for twelve years and shall permit the Client to inspect such records as and when reasonably requested from time to time."

#### **SECTION 10: ASSIGNMENT, NOVATION, THIRD PARTY RIGHTS AND COLLATERAL WARRANTIES**

10.1 Delete and insert:

"10.1 Subject to clause 10.2, where it is stated to apply, the Consultant shall not assign transfer or charge any benefit arising under or out of this Contract without the prior written consent of the Client (at its absolute discretion).

Without prejudice to clause 10.2, where it is stated to apply, the Client may without the consent of the Consultant assign transfer and/or charge the benefit of all of the Consultant's obligations under this Contract and/or the entire benefit arising under or out of this Contract:

- (a) as security to any organisation providing finance in connection with the Project and/or site or any part thereof (and such rights may be re-assigned on redemption);
- (b) by absolute assignment to any Group Company; and
- (c) by absolute assignment on two other occasions only."

10.3 Delete clause 10.3 in its entirety.

#### **SECTION 11: SUSPENSION BY THE CLIENT AND TERMINATION**

11.1.4 Before the comma insert "provided that the suspension was not as a result of or in connection with any omission, negligence, breach or default by or on behalf of the Consultant or any sub-consultant".

11.2 Delete "2 months" and insert "12 months". At the end of the clause insert "provided that the suspension was not as a result of or in connection with any omission, negligence, breach or default by or on behalf of the Consultant or any sub-consultant".

11.4 After "do so, may" insert "if the Client still does not instruct the Consultant to recommence such Services".

11.5.2 Delete and insert "In the event of the Consultant's bankruptcy, Insolvency, winding up, liquidation, administration, administrative receivership, LPA receivership and/or any analogous arrangement or event in this or any other jurisdiction, the Client may give notice to the Consultant terminating the Consultant's engagement with immediate effect."

11.5.3 Delete and insert "If the Consultant commits a material breach of its obligations (including, without limitation, any omission, negligence, breach or default by or on behalf of the Consultant or any sub-consultant), the Client may give notice to the Consultant specifying the breach and requiring its remedy. If the Consultant fails to comply with the notice within 14 days, the Client

may give notice to the Consultant terminating the Consultant's engagement with immediate effect."

11.5.5 Delete.

11.5A Insert a new clause 11.5A as follows:

**"Prevention of Fraud and Bribery**

11.5A.1 The Consultant represents and warrants that neither it, nor to the best of its knowledge any of its employees, have at any time on or before the date of this Contract:

11.5A.1.1 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

11.5A.1.2 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.

11.5A.2 During the carrying out of the Services the Consultant shall not:

11.5A.2.1 commit a Prohibited Act; and/or

11.5A.2.2 do or suffer anything to be done which would cause the Client or any of the Client'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.

11.5A.3 During the carrying out of the Services the Consultant shall:

11.5A.3.1 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;

11.5A.3.2 keep appropriate records of its compliance with this Contract and make such records available to the Client on request; and

11.5A.3.3 provide and maintain and where appropriate enforce an anti-bribery policy (which shall be disclosed to the Client on request) to prevent it and any Consultant's Persons or any person acting on the Consultant's behalf from committing a Prohibited Act.

11.5A.4 The Consultant shall notify the Client immediately in writing if it becomes aware of any breach of clause 11.5A.1, or has reason to believe that it has or any of its employees or sub-consultants have:

11.5A.4.1 been subject to an investigation or prosecution which relates to an alleged Prohibited Act;

11.5A.4.2 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

11.5A.4.3 received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this Contract or otherwise suspects that any person or Party directly or indirectly connected with this Contract has committed or attempted to commit a Prohibited Act.

11.5A.5 If the Consultant shall make a notification to the Client pursuant to clause 11.5A.4, the Consultant shall respond promptly to the Client's enquiries, co-operate with any investigation, and allow the Client to audit any books, records and/or any other relevant documentation in accordance with this Contract.

11.5A.6 If the Consultant breaches clause 11.5A.3, the Client may by notice require the Consultant to remove from carrying out the Services any Consultant's Person whose acts or omissions have caused the Consultant's breach.

#### **Termination for corrupt gifts and fraud**

11.5A.7.1 If the Consultant or any sub-consultant (or anyone employed by or acting on behalf of any of them) or any of its or their agents or shareholders commits any Prohibited Act, the Client shall be entitled to act in accordance with the provisions of this clause 11.5A.7.

11.5A.7.2 If a Prohibited Act is committed by the Consultant or by an employee not acting independently of the Consultant, the Client may terminate the Consultant's employment under this Contract by giving notice to the Consultant.

11.5A.7.3 If the Prohibited Act is committed by an employee of the Consultant acting independently of the Consultant, the Client may give notice to the Consultant of termination and the Consultant's employment under this Contract will terminate unless, within 20 Business Days of receipt of such notice, the Consultant terminates the employee's employment and (if necessary) procures the carrying out of such part of the Services by another person.

11.5A.7.4 If the Prohibited Act is committed by a sub-consultant of the Consultant or by an employee of that sub-consultant not acting independently of that sub-consultant, the Client may give notice to the Consultant of termination and the Consultant's employment under this Contract will terminate, unless within 20 Business Days of receipt of such notice the Consultant terminates the relevant subcontract and procures the carrying out of such part of the Services by another person.

11.5A.7.5 If the Prohibited Act is committed by an employee of a sub-consultant of the Consultant acting independently of that sub-consultant, the Client may give notice to the Consultant of termination and the Consultant's employment under this Contract will terminate, unless within 20 Business Days of receipt of such notice the sub-consultant terminates the employee's employment and (if necessary) procures the carrying out of such part of the Services by another person.

11.5A.7.6 If the Prohibited Act is committed by any other persons not specified in clauses 11.5A.7.2 to 11.5A.7.5, the Client may give notice to the Consultant of termination and the Consultant's employment under this Contract will terminate, unless within 20 Business Days of receipt of such notice the Consultant procures the termination of such person's employment and of the appointment of their employer (where not employed by the Consultant or the sub-consultants) and (if necessary) procures the carrying out of such part of the Services by another person.

11.5A.7.7 Any notice of termination under this clause 11.5A.7 shall specify:

11.5A.7.7.1 the nature of the Prohibited Act;

11.5A.7.7.2 the identity of the party whom the Client believes has committed the Prohibited Act; and

11.5A.7.7.3 the date on which the Consultant's employment under this Contract will terminate, in accordance with the applicable provision of this clause.

11.5A.7.8 In this clause 11.5A.7 the expression "not acting independently of" (when used in relation to the Consultant or any sub-consultant) means and shall be construed as acting with the authority of or knowledge of any one or more of the directors of the Consultant or any of its sub-consultants."

11.5B Insert a new clause 11.5B as follows:

**"Termination – Consultant to vacate the Site**

11.5B **Insert** new clause 11.5B:

"11.5B Upon the termination of the Consultant's employment under this Contract (and any purported termination by notice given by the Client) the Consultant shall forthwith vacate the site."

**Termination at will**

11.5C **Insert** new clause 11.5C as follows:

"11.5C.1 The Client may terminate the Consultant's employment under this Contract at any time by complying with its obligations under clause 11.5C.2.

11.5C.2 If the Client wishes to terminate the Consultant's employment under this Contract under this clause 11.5C it must provide written notice (hereinafter called a "**Termination Notice**") to the Consultant stating:

11.5C.2.1 that the Client is terminating the Consultant's employment under this Contract under this clause 11.5C.1; and

11.5C.2.2 that the Consultant's employment under this Contract will terminate on the date specified in the Termination Notice which must be a minimum of 20 Business Days after the date of the Termination Notice.

11.5C.2 The Consultant's employment under this Contract will terminate on the date specified in the Termination Notice referred to in clause 11.5C.2."

11.6.1.2 After "Design Information" insert "and the Materials". Delete from ", provided that in the case of" to "under clause 11.6.2" inclusive.

11.6.2 Replace "insolvency" with "Insolvency". In the final paragraph after "Insolvency or material breach" insert "or under clauses 2.1.3, 2.1.4, 2.1.5, 11.5A, 11.5C, 11.5.2 or 11.5.3".

11.6.2.3 Replace "insolvency" with "Insolvency". After "Insolvency or material breach" insert "or under clauses 2.1.3, 2.1.4, 2.1.5, 11.5A, 11.5C, 11.5.2 or 11.5.3".

11.6.2.4 Delete.

11.6.3 Delete the full stop at the end of the clause and insert ", however, in the event of termination under clauses 2.1.3, 2.1.4, 2.1.5, 11.5A, 11.5.2 or 11.5.3 (in the case of 11.5.3 only, where the Consultant is the defaulting Party), instead of 2 months from the receipt of those documents, the relevant date for the statement to be issued shall be 3 months after the date of receipt of those documents."

**SECTION 12: SETTLEMENT OF DISPUTES**

12.2 At the end of the clause insert the following final paragraphs:

"The Adjudicator shall have power to determine more than one dispute under this Contract at the same time, and if requested to do so by either Party shall determine any matter raised by such Party in the nature of set-off, abatement or counterclaim at the same time as it determines any other matter referred to it.

At the same time as it gives any decision, the Adjudicator shall give reasons for the decision in writing."

Delete clauses 12.3 to 12.8.

**SCHEDULES**

**Schedule 1 Third Party Rights**

Delete.

**Schedule 2 Supplemental Provisions**

Paragraph 1 Delete.

**ANNEXURES**

- Annex A**      **Fee and Other Payments**
- Annex B**      **The Services**
- Annex C**      **Consultant Deeds of Collateral Warranty**
- Annex D**      **Sub-consultant Deeds of Collateral Warranty**
- Annex E**      **UK GDPR**
- Annex F**      **Security Provisions**

**Annex A**  
**Fee and Other Payments**

[as set out in the Order]

**Annex B**  
**The Services**

[as set out in the Order]

Annex C

Consultant Deeds of Collateral Warranty

20[●]

Collateral Warranty from Consultant to [Purchaser Tenant Funder]  
relating to  
[●]

[●]<sup>(1)</sup>  
[●]<sup>(2)</sup> and  
[●]<sup>(3)</sup>

DATE 20[●]

## PARTIES

- (1) [●] [(No.[●] / trading together in partnership under the style [●] / a limited liability partnership) [whose registered office is [●] / whose principal place of business is [●]] (**Consultant**).
- (2) [●] [(No.[●] / trading together in partnership under the style [●] / a limited liability partnership) [whose registered office is [●] / whose principal place of business is [●]] (**Beneficiary**).
- (3) [●] [(No.[●] / trading together in partnership under the style [●] / a limited liability partnership) [whose registered office is [●] / whose principal place of business is [●]] (**Client**).

## BACKGROUND

- (A) By the Appointment, the Client has engaged the Consultant to act in the capacity of [●] in relation to the [design, specification, construction and completion of the Development at the Site] on the terms and subject to the conditions set out in the Appointment.
- (B) The Beneficiary has entered into an agreement [to purchase / for lease to take a lease of / to provide finance for] [the whole of / part of] the [Development / Site].
- (C) [The Client [shall novate / has novated] all of its rights and obligations under the Appointment by a deed of novation [dated [●]] [to [●]].
- (D) The Consultant has agreed to enter into this Deed for the benefit of the Beneficiary and its successors in title and assigns.

## AGREED TERMS

In consideration of the payment of £1 by the Beneficiary to the Consultant (receipt of which is hereby acknowledged) and which the parties hereby agree to be full and valuable consideration it is hereby agreed that:

### 1. DEFINITIONS AND INTERPRETATION

- 1.1 In this Deed the words below have the meanings next to them unless the context requires otherwise:

<b>Appointment</b>	the JCT Consultancy Agreement 2024 (as amended) entered into between the Client and the Consultant, and formed by the issue of an Order made pursuant to the Technical Advisory Services Appointment dated [●] for the carrying out of services, duties and obligations in relation to the Development including any documents or arrangements which are supplemental or ancillary to it by way of variation or otherwise.
<b>Business Day</b>	a day which is not a Saturday or Sunday or a bank or national holiday in England.
<b>Construction Products Regulations</b>	UK Construction Products Regulation 2011 and the Construction Products Regulations 2013 (SI 2013/1387).
<b>Development</b>	the development of [●] by the Client at the Site.
<b>Group</b>	in relation to a company:  (a) that company and any Subsidiary of that company;

(b) the ultimate Holding Company of that company; and

(c) every other company which is a Subsidiary of the same ultimate Holding Company,

in each case from time to time.

**Group Company**

in relation to a Group any member of that Group.

**Holding Company**

has the meaning given to that term in section 1159 Companies Act 2006 and a company will be treated, for the purposes only of the membership requirement contained in sub-sections 1159(1)(b) and (c), as a member of another company even if its shares in that other company are registered in the name of (a) a person (or its nominee) whether by way of security or in connection with the taking of security or (b) its nominee.

**Material**

all designs, drawings, calculations, charts, diagrams, sketches, models, plans, specifications, design details, photographs, brochures, reports, notes of meetings, CAD materials, data, databases, schedules, programmes, bills of quantities, budgets, surveys, levels, setting out dimensions and/or all other documents or materials produced or prepared by or on behalf of the Consultant in relation to and/or connection with the Development and/or Site (including any and all updates, amendments, additions and revisions to them and any works, designs or inventions contained incorporated or referred to in them for any purpose relating to the Development and/or Site) created before, on or after the date of this Deed.

**Practical Completion**

the date of practical completion of the Development as certified or otherwise evidenced as required under the terms of the relevant building contract.

**Site**

the land at [●] upon which the Development is to be constructed.

**Subsidiary**

has the meaning given to that term in section 1159 Companies Act 2006 and a company will be treated, for the purposes only of the membership requirement contained in sub-sections 1159(1)(b) and (c), as a member of another company even if its shares in that other company are registered in the name of (a) a person (or its nominee) whether by way of security or in connection with the taking of security or (b) its nominee.

**Technical Advisory Services Appointment**

the agreement made between the Client and the Consultant for the provision of technical advisory services dated [●].

**UK Construction Products Regulation 2011**

the UK version of Regulation (EU) No 305/2011, as it forms part of English law under the European Union (Withdrawal) Act 2018.

1.2 In this Deed unless the context requires otherwise:

1.2.1 references to a Clause or Schedule are to a clause of, or schedule to this Deed, references to this Deed include its schedules, and references in a Schedule to a paragraph are to a paragraph of that Schedule;

1.2.2 references to this Deed or any other document are to this Deed or that document as amended or novated from time to time;

- 1.2.3 words denoting the singular include the plural and vice versa;
- 1.2.4 references to a person include any corporate or unincorporated body;
- 1.2.5 the table of contents and headings in this Deed do not affect its interpretation;
- 1.2.6 writing or written does not include e-mail or any other form of electronic communication, other than fax where explicitly stated;
- 1.2.7 the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms;
- 1.2.8 references to the parties include their respective successors in title, permitted assignees, estates and legal personal representatives; and
- 1.2.9 unless otherwise specified, a reference to legislation or a legislative provision is a reference to it as amended, consolidated, extended or re-enacted from time to time (whether before or after the date of this Deed) and to any subordinate legislation made under it from time to time.

## **2. EXERCISE OF SKILL AND CARE**

- 2.1 The Consultant warrants and undertakes to the Beneficiary that it has observed and performed and shall continue to observe and perform each and all of its services, duties and obligations contained in or implied by the Appointment. Save as expressly provided for in this Deed the duties and liabilities of the Consultant are to be treated as being no greater or of longer duration than they would have been if the Beneficiary had been a party to the Appointment instead of this Deed and the Consultant shall be entitled to rely on any limitations in the Appointment but neither this provision nor any other provision in this Deed shall entitle the Consultant to raise any defence based on set-off or counterclaim and/or prevent the Beneficiary from recovering loss and/or damage from the Consultant as a result of the Consultant's breach of any provisions of this Deed on the basis that the Client has not suffered any loss and/or damage and/or the same loss and/or damage and the Consultant hereby irrevocably agrees and undertakes not to raise any such arguments by way of defence and/or set-off and/or counterclaim to any claim made by the Beneficiary.
- 2.2 Without prejudice to the generality of Clause 2.1 the Consultant warrants and undertakes to the Beneficiary that it has exercised and shall continue to exercise in the performance of the services, duties and obligations contained in or implied by the Appointment the reasonable skill, care and diligence to be expected of a properly qualified and competent consultant experienced in performing similar services, duties and obligations in relation to developments of a similar nature, value, scope, character, complexity and timescale to the Development.
- 2.3 The Consultant further warrants and undertakes to the Beneficiary that, in observing and performing each and all of its services, duties and obligations contained in or implied by the Appointment, the Consultant shall comply with all applicable statutory and regulatory requirements.
- 2.4 The Consultant acknowledges that the Beneficiary has relied and shall rely on the warranties under this Clause 2 and the other terms of this Deed and may and/or shall suffer loss and/or damage in the event of a breach of these warranties and/or the other terms of this Deed.
- 2.5 The obligations of the Consultant under this Deed shall not be released or diminished by the appointment of any person by the Beneficiary to carry out any independent enquiry into any matter.

### **3. OBLIGATIONS PRIOR TO TERMINATION OF THE APPOINTMENT**

[NOTE - Clauses 3 and 4 (step in rights) are usually only used where the Beneficiary is a purchaser or funder. If the Beneficiary is not a purchaser or funder, or if they are not to be given step in rights, delete Clause 3, 4 and 13; delete the Client details in Clause 9; and delete the Client from being a signatory to this collateral warranty on the coversheet, parties and execution clauses, and instead insert a new definition of Client with their details in the table at Clause 1.1]

- 3.1 The Consultant warrants and undertakes to the Beneficiary that it shall not exercise or seek to exercise any right of termination of the Appointment and/or to discontinue the performance of any of its services, duties and/or obligations thereunder for any reason whatsoever (including any services, duties and/or obligations in relation to the Development by reason of breach on the part of the Client) without giving to the Beneficiary not less than 28 days' notice of its intention to do so and specifying the grounds for the proposed termination and/or discontinuance.
- 3.2 Any period stipulated in the Appointment for the exercise by the Consultant of a right of termination of the Appointment and/or to discontinue the performance of any of its services, duties and/or obligations in relation to the Development shall be extended as may be necessary to take account of the period of notice required under Clause 3.1.
- 3.3 Compliance by the Consultant with the provisions of Clause 3.1 shall not be treated as a waiver of any breach on the part of the Client giving rise to the right of termination of the Appointment and/or to discontinue the performance of any of the Consultant's services, duties and/or obligations in relation to the Development, nor otherwise prevent the Consultant from exercising its rights after the expiration of the notice unless the right of termination and/or right to discontinue shall have ceased under the provisions of Clause 4.

### **4. OBLIGATIONS OF THE CONSULTANT TO THE BENEFICIARY**

[NOTE - Clauses 3 and 4 are usually only used where the Beneficiary is a purchaser or funder – see note under Clause 3 above.]

- 4.1 The right of the Consultant to terminate the Appointment and/or to discontinue the performance of any of its services, duties and/or obligations shall cease within the period of 28 days referred to in Clause 3.1 if the Beneficiary shall give written notice to the Consultant:
- 4.1.1 requiring the Consultant to continue performing its services, duties and obligations under the Appointment in relation to the Development;
- 4.1.2 acknowledging that the Beneficiary is assuming all the services, duties and obligations of the Client under the Appointment;
- 4.1.3 undertaking unconditionally to the Consultant to discharge all payments which may subsequently become due to the Consultant under the terms of the Appointment;
- and shall pay to the Consultant any sums which have become due and payable to it under the Appointment but which were then unpaid.
- 4.2 Upon compliance by the Beneficiary with the requirements of Clause 4.1 the Appointment shall continue in full force and effect as if the right of termination and/or discontinuance on the part of the Consultant had not arisen and in all respects as if the Appointment had been made between the Consultant and the Beneficiary to the exclusion of the Client.
- 4.3 Notwithstanding that as between the Client and the Consultant the Consultant's rights of termination of the Appointment and/or discontinuance may not have arisen, the provisions of Clause 4.2 shall nevertheless apply if the Beneficiary gives notice to the Consultant and the Client to that effect and the Beneficiary complies with the requirements on its part under Clause 4.1.

- 4.4 The Consultant shall not be concerned or required to enquire whether, and shall be bound to assume that, as between the Client and the Beneficiary the circumstances have occurred permitting the Beneficiary to give notice under Clause 4.1.
- 4.5 The Consultant acting in accordance with the provisions of this Clause 4 shall not by so doing incur any liability to the Client.
- 4.6 Where the Consultant has given rights similar to those contained in Clauses 3 and 4 of this Deed to any other person or persons, then if both the Beneficiary and such other person or persons shall serve notice under Clause 4.1 or its equivalent, the notice served by the Beneficiary [shall prevail over any notice served by any other person or persons / shall not prevail over any notice served by any other person or persons / shall not prevail over any notice served by [●] but shall prevail over any notice served by any other person or persons.] The Consultant acting in accordance with the provisions of this Clause 4.6 shall not be and shall not be deemed to be in breach of the provisions of this Deed by doing so, nor shall the Consultant in doing so incur any liability to the Beneficiary.

## **5. INTELLECTUAL PROPERTY RIGHTS**

- 5.1 The Consultant with full title guarantee grants to the Beneficiary, with immediate effect, an irrevocable, perpetual, non-exclusive, non-terminable, royalty-free licence to use, reproduce and transmit any or all of the Materials produced or prepared by the Consultant or on the Consultant's behalf for any purpose whatsoever relating to the Development and/or the Site including (without limitation) the design, construction, completion, promotion, advertisement, funding, sale, letting, disposal, fitting out, maintenance, use, occupation, management, repair, reinstatement, re-construction, modification, alteration, refurbishment, re-development, decommissioning, demolition and/or extension of the Development and/or the Site. Such licence shall carry the right to grant sub-licences and shall be transferable to third parties without the Consultant's prior consent and shall subsist notwithstanding the termination (for any reason) of the Appointment.
- 5.2 The Consultant shall not be liable for the consequences of any use by the Beneficiary of the Materials for any purposes other than those for which the same are or were prepared.
- 5.3 The Consultant warrants to the Beneficiary that it is authorised to grant the licence set out in Clause 5.1 in respect of any Materials whose intellectual property rights are vested in any third person and that the use of the Materials for any purpose relating to the Development and/or Site shall not infringe the rights of any third person. If the use of the Materials is found to infringe the rights of any third person, the Consultant shall indemnify the Beneficiary against all resulting claims, proceedings, damages, costs and expenses.
- 5.4 To the extent that the Consultant is (or at the time of their creation may be) the author of the Materials, the Consultant hereby absolutely waives and agrees not to assert any moral rights which it might otherwise be deemed to possess pursuant to the Copyright, Designs and Patents Act 1988 or any equivalent legislation in respect of the Materials; and to the extent that the Consultant is not the author, the Consultant warrants that the author has not asserted and has waived and agreed to waive any such moral rights which the author might otherwise be deemed to possess.
- 5.5 The Consultant agrees:
- 5.5.1 on request at any time to give the Beneficiary or any persons authorised by the Beneficiary full and sufficient access to the Materials and, at the Beneficiary's expense, to provide full and proper copies of the Materials (including copy negatives and electronic copies); and
- 5.5.2 at the Consultant's expense, to provide the Beneficiary with a set of all Materials on Practical Completion.
- 5.6 All royalties or other sums payable in respect of the supply and use of any patented articles, processes or inventions required in connection with the Appointment shall be paid by the

Consultant and the Consultant shall indemnify the Beneficiary from and against all claims, proceedings, damages, costs and expenses suffered or incurred by the Beneficiary by reason of the Consultant infringing or being held to infringe any intellectual property rights in the course of or in connection with the Appointment.

- 5.7 The Consultant shall (subject to the Beneficiary paying the Consultant's reasonable costs so to do) if reasonably requested by the Beneficiary at any time execute such documents and perform such acts as may be required fully and effectively to assure to the Beneficiary the rights referred to in this Clause 5.

## 6. INSURANCE

- 6.1 The Consultant warrants to the Beneficiary that it maintains, has at all relevant times maintained, and shall continue to maintain throughout the duration of the Development and for a period of 12 years from the date of completion of the Services (irrespective of any termination of the Appointment or the Consultant's employment under the Appointment for any reason) professional indemnity insurance with reputable insurers lawfully carrying on such insurance business in the United Kingdom with a limit of indemnity of not less than £10,000,000 (ten million pounds) for any one claim but £10,000,000 (ten million pounds) in the aggregate for pollution, contamination, asbestos and fire safety claims to cover any claims made under this Deed against the Consultant in relation to the Development.

- 6.2 The Consultant shall maintain the professional indemnity insurance on terms and conditions that do not require the Consultant to discharge any liability before being entitled to recover from the insurers and would not adversely affect the rights of any person to recover from the insurers pursuant to the Third Parties (Rights Against Insurers) Act 2010.

- 6.3 As and when reasonably required by the Beneficiary the Consultant shall provide satisfactory documentary evidence of the terms of insurance referred to in Clause 6.1 and that the insurance referred to in Clause 6.1 is being properly maintained, and shall confirm that payment has been made in respect of the last preceding premium due under such insurance.

- 6.4 The Consultant warrants that it has at all relevant times observed and shall continue to observe all of the conditions of the insurance policy referred to in Clause 6.1 and all of the insurance provisions contained or referred to in the Appointment.

- 6.5 The preceding parts of this Clause 6 shall not apply at times when and to the extent that the insurance referred to in Clause 6.1 is not available in the United Kingdom insurance market at commercially reasonable rates, and the Consultant has notified the Beneficiary accordingly. Upon such notification the Consultant shall make itself available to the Beneficiary to discuss reasonable means of protecting the Beneficiary and the Consultant shall take any reasonable steps requested by the Beneficiary. For the purposes of this Clause 6.5, **commercially reasonable rates** shall mean such level of premium rates at which other consultants of a similar size and financial standing as the Consultant at each renewal date generally continue to take out such insurance. For the avoidance of doubt, any increased or additional premium required by insurers by reason of the Consultant's own claims record or other omissions, negligence, breaches, defaults, matters or things particular to the Consultant shall be deemed to be within commercially reasonable rates.

## 7. HEALTH AND SAFETY

The Consultant warrants that it has complied and shall comply with all of its obligations in relation to the Development as set out in the Construction (Design and Management) Regulations 2015.

## 8. EXCLUDED MATERIALS

- 8.1 Subject to Clause 2.1, the Consultant warrants that it has not and shall not use and/or permit the use of and/or specify for use in or in connection with the Development any substances materials equipment products kit practices or techniques which by their nature or application do not conform with relevant British Standards or Codes of Practice or regulations or good building

practice or any applicable European Union equivalent current at the time of permission or specification, nor any substances materials equipment products kit practices or techniques which are generally known within the Consultant's trade and/or the construction industry:

- 8.1.1 to be deleterious in the particular circumstances in which they are used or specified for use to the health or safety of any person;
- 8.1.2 to be deleterious in the particular circumstances in which they are used or specified for use to the health, safety, stability, performance, physical integrity and/or durability of the Development or any part thereof and/or to other structures, finishes, plant and/or machinery;
- 8.1.3 to reduce or possibly reduce the normal life expectancy of developments of a type comparable to the Development;
- 8.1.4 to become deleterious without a level or cost of maintenance which is higher than that which would normally be expected in a development of a type comparable to the Development;
- 8.1.5 not to comply with or have due regard to the report entitled "Good Practice in the Selection of Construction Materials" (current edition) published by the British Council for Offices; and/or
- 8.1.6 to be supplied or placed on the market in breach of the Construction Products Regulations.

## **9. COMMUNICATIONS**

9.1 Except as otherwise provided for in this Deed, all notices or other communications under or in respect of this Deed to either party shall be deemed to be duly given or made when:

- 9.1.1 delivered (in the case of personal delivery or letter); or
- 9.1.2 despatched (in the case of facsimile)

to that party at the address or facsimile number appearing below (or at such other address or facsimile number as that party may hereafter specify for this purpose to the other):

in the case of the Consultant:    [●] [NOTE - name / address / facsimile to be inserted]

in the case of the Beneficiary:   [●] [NOTE - name / address / facsimile to be inserted]

in the case of the Client:        [●] [NOTE - name / address / facsimile to be inserted]

9.2 A written notice includes a notice by facsimile. A notice or other communication which is not received on a Business Day or which is received after business hours in the place of receipt shall be deemed to be given or made on the next following Business Day in that place.

## **10. CONCURRENT LIABILITIES**

The rights and benefits conferred upon the Beneficiary by this Deed are in addition to any other rights and remedies it may have against the Consultant including, without prejudice to the generality of the foregoing, any remedies in negligence.

## **11. ASSIGNMENT**

11.1 The Beneficiary may without the consent of the Consultant assign transfer and/or charge the benefit of all or any of the Consultant's obligations under this Deed and/or any benefit arising under or out of this Deed:

- 11.1.1 by way of security or by way of re-assignment on redemption; and
  - 11.1.2 by absolute assignment to any Group Company of the Beneficiary; and
  - 11.1.3 by absolute assignment on two other occasions only.
- 11.2 In this Deed references to the Beneficiary include where the context admits its permitted assignees.
- 11.3 The Consultant shall not be entitled to contend that any person to whom this Deed is assigned in accordance with Clause 11.1 is precluded from recovering under this Deed any loss incurred by such assignee resulting from any breach of this Deed (whenever happening), by reason that such person is an assignee and not a named party under this Deed.
- 11.4 The Consultant shall not be entitled to assign, transfer and/or charge the benefit of any (if any) of the Beneficiary's obligations under this Deed and/or any benefit (if any) arising to the Consultant out of this Deed.

**12. LIMITATION PERIOD**

The liability of the Consultant under this Deed shall cease 12 years following the date of completion of the Services save in relation to any claims made by the Beneficiary against the Consultant and in respect of which proceedings have been commenced. For the avoidance of doubt, the parties agree that any provisions of the Limitation Act 1980 to the contrary will not apply to this Deed.

**13. CLIENT**

[NOTE - delete if Clauses 3 and 4 are deleted]

The Client agrees that it shall not take any steps which would prevent or hinder the Beneficiary from exercising its rights under this Deed and confirms that the rights of the Beneficiary in Clauses 3 and 4 override any obligations of the Consultant to the Client under the Appointment.

**14. GOVERNING LAW AND JURISDICTION**

- 14.1 This Deed 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) is governed by and construed in accordance with the law of England and Wales.
- 14.2 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to hear and decide any suit, action or proceedings and/or settle any dispute or claim arising out of or in connection with this Deed or its subject matter or formation (including non-contractual disputes or claims).

**15. RIGHTS OF THIRD PARTIES**

Unless the right of enforcement is expressly provided for, no third party (as defined in the Contracts (Rights of Third Parties) Act 1999) except for any permitted successor or assignee of any party to this Deed has any rights under that Act to enforce any term of this Deed.

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

Executed as a deed by **[insert name of company]**  
acting by [insert name of first director], a director  
and [insert name of second director or secretary] [a  
director/its secretary]

.....  
Director

.....  
[Director/Secretary]

Executed as a deed by **[insert name of company]**  
acting by [insert name of director], a director, in the  
presence of [insert name of witness]:

.....  
Director

*Signature (Witness)* .....

*Print Name* .....

*Address* .....

.....

*Occupation* .....

Annex D

Sub-consultant Deeds of Collateral Warranty

20[●]

Collateral Warranty from Sub-Consultant to [Purchaser Tenant Funder Client]  
relating to  
[●]

[●]<sup>(1)</sup>  
[●]<sup>(2)</sup> and  
[●]<sup>(3)</sup>

DATE

20[●]

**PARTIES**

- (1) [●] [(No.[●] / trading together in partnership under the style [●] / a limited liability partnership] [whose registered office is [●] / whose principal place of business is [●]] (**Sub-Consultant**).
- (2) [●] [(No.[●] / trading together in partnership under the style [●] / a limited liability partnership] [whose registered office is [●] / whose principal place of business is [●]] (**Beneficiary**).
- (3) [●] [(No.[●] / trading together in partnership under the style [●] / a limited liability partnership] [whose registered office is [●] / whose principal place of business is [●]] (**Consultant**).

**BACKGROUND**

- (A) By the Appointment, [●] [(No.[●] / trading together in partnership under the style [●] / a limited liability partnership] [whose registered office is [●] / whose principal place of business is [●]] (**Client**) has engaged the Consultant to act in the capacity of [●] in relation to the [design, specification, construction and completion of the Development at the Site] on the terms and subject to the conditions set out in the Appointment.
- (B) By the Contract, the Consultant has employed the Sub-Consultant to carry out various services, duties and obligations on the terms and subject to the conditions set out in the Contract.
- (C) The Beneficiary has entered into an agreement [to purchase / for lease to take a lease of / to provide finance for] [the whole of / part of] the [Development / Site].
- (D) The Sub-Consultant has agreed to enter into this Deed for the benefit of the Beneficiary and its successors in title and assigns.

**AGREED TERMS**

In consideration of the payment of £1 by the Beneficiary to the Sub-Consultant (receipt of which is hereby acknowledged) and which the parties hereby agree to be full and valuable consideration it is hereby agreed that:

**1. DEFINITIONS AND INTERPRETATION**

1.1 In this Deed the words below have the meanings next to them unless the context requires otherwise:

<b>Appointment</b>	the JCT Consultancy Agreement 2024 (as amended) entered into between the Client and the Consultant, and formed by the issue of an Order made pursuant to the Technical Advisory Services Appointment dated [●] for the carrying out of services, duties and obligations in relation to the Development including any documents or arrangements which are supplemental or ancillary to it by way of variation or otherwise.
<b>Business Day</b>	a day which is not a Saturday or Sunday or a bank or national holiday in England.
<b>Construction Products Regulations</b>	UK Construction Products Regulation 2011 and the Construction Products Regulations 2013 (SI 2013/1387).
<b>Contract</b>	the contract between the Consultant and the Sub-Consultant dated [●] for the carrying out of various services, duties and obligations in relation to the Development including any documents or

	arrangements which are supplemental or ancillary to it by way of variation or otherwise.
<b>Development</b>	the development of [●] by the Client at the Site.
<b>Group</b>	in relation to a company: <ul style="list-style-type: none"> <li>(a) that company and any Subsidiary of that company;</li> <li>(b) the ultimate Holding Company of that company; and</li> <li>(c) every other company which is a Subsidiary of the same ultimate Holding Company,</li> </ul> in each case from time to time.
<b>Group Company</b>	in relation to a Group any member of that Group.
<b>Holding Company</b>	has the meaning given to that term in section 1159 Companies Act 2006 and a company will be treated, for the purposes only of the membership requirement contained in sub-sections 1159(1)(b) and (c), as a member of another company even if its shares in that other company are registered in the name of (a) a person (or its nominee) whether by way of security or in connection with the taking of security or (b) its nominee.
<b>Material</b>	all designs, drawings, calculations, charts, diagrams, sketches, models, plans, specifications, design details, photographs, brochures, reports, notes of meetings, CAD materials, data, databases, schedules, programmes, bills of quantities, budgets, surveys, levels, setting out dimensions and/or all other documents or materials produced or prepared by or on behalf of the Sub-Consultant in relation to and/or connection with the Development and/or Site (including any and all updates, amendments, additions and revisions to them and any works, designs or inventions contained incorporated or referred to in them for any purpose relating to the Development and/or Site) created before, on or after the date of this Deed.
<b>Practical Completion</b>	the date of practical completion of the Development as certified or otherwise evidenced as required under the terms of the relevant building contract.
<b>Site</b>	the land at [●] upon which the Development is to be constructed.
<b>Subsidiary</b>	has the meaning given to that term in section 1159 Companies Act 2006 and a company will be treated, for the purposes only of the membership requirement contained in sub-sections 1159(1)(b) and (c), as a member of another company even if its shares in that other company are registered in the name of (a) a person (or its nominee) whether by way of security or in connection with the taking of security or (b) its nominee.
<b>Technical Advisory Services Appointment</b>	the agreement made between the Client and the Consultant for the provision of technical advisory services dated [●].
<b>UK Construction Products Regulation 2011</b>	the UK version of Regulation (EU) No 305/2011, as it forms part of English law under the European Union (Withdrawal) Act 2018.

- 1.2 In this Deed unless the context requires otherwise:
- 1.2.1 references to a Clause or Schedule are to a clause of, or schedule to this Deed, references to this Deed include its schedules, and references in a Schedule to a paragraph are to a paragraph of that Schedule;
  - 1.2.2 references to this Deed or any other document are to this Deed or that document as amended or novated from time to time;
  - 1.2.3 words denoting the singular include the plural and vice versa;
  - 1.2.4 references to a person include any corporate or unincorporated body;
  - 1.2.5 the table of contents and headings in this Deed do not affect its interpretation;
  - 1.2.6 writing or written does not include e-mail or any other form of electronic communication, other than fax where explicitly stated;
  - 1.2.7 the terms **including**, **include**, **in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms;
  - 1.2.8 references to the parties include their respective successors in title, permitted assignees, estates and legal personal representatives;
  - 1.2.9 unless otherwise specified, a reference to legislation or a legislative provision is a reference to it as amended, consolidated, extended or re-enacted from time to time (whether before or after the date of this Deed) and to any subordinate legislation made under it from time to time; and
  - 1.2.10 if the Sub-Consultant is a partnership each partner shall be jointly and severally liable under this Deed. Where the context so requires and where the Sub-Consultant is a partnership, the term **Sub-Consultant** shall be deemed to include any additional partner(s) who may be admitted into the partnership of the Sub-Consultant during the currency of this Deed. This Deed shall not automatically terminate upon the death, retirement or resignation of one or more members of such partnership.

## 2. EXERCISE OF SKILL AND CARE

- 2.1 The Sub-Consultant warrants and undertakes to the Beneficiary that it has observed and performed and shall continue to observe and perform each and all of its services, duties and obligations contained in or implied by the Contract. Save as expressly provided for in this Deed the duty and liability of the Sub-Consultant is to be treated as being no greater or of longer duration than it would have been if the Beneficiary had been a party to the Contract instead of this Deed but neither this provision nor any other provision in this Deed shall entitle the Sub-Consultant to raise any defence based on set-off or counterclaim and/or prevent the Beneficiary from recovering loss and/or damage from the Sub-Consultant as a result of the Sub-Consultant's breach of any provisions of this Deed on the basis that the Consultant and/or the Client have not suffered any loss and/or damage and/or the same loss and/or damage and the Sub-Consultant hereby irrevocably agrees and undertakes not to raise any such arguments by way of defence and/or set-off and/or counterclaim to any claim made by the Beneficiary.
- 2.2 Without prejudice to the generality of Clause 2.1 the Sub-Consultant warrants and undertakes to the Beneficiary that it has exercised and shall continue to exercise in the performance of the services, duties and obligations contained in or implied by the Contract the reasonable skill, care and diligence to be expected of a properly qualified and competent consultant experienced in performing similar services, duties and obligations in relation to developments of a similar nature, value, scope, character, complexity and timescale to the Development.

- 2.3 The Sub-Consultant further warrants and undertakes to the Beneficiary that, in observing and performing each and all of its services, duties and obligations contained in or implied by the Contract, the Sub-Consultant shall comply with all applicable statutory and regulatory requirements.
- 2.4 The Sub-Consultant acknowledges that the Beneficiary has relied and shall rely on the warranties under this Clause 2 and the other terms of this Deed and may and/or shall suffer loss and/or damage in the event of a breach of these warranties and/or the other terms of this Deed.
- 2.5 The obligations of the Sub-Consultant under this Deed shall not be released or diminished by the appointment of any person by the Beneficiary to carry out any independent enquiry into any matter.

### **3. OBLIGATIONS PRIOR TO TERMINATION OF THE CONTRACT**

[NOTE - Clauses 3 and 4 (step in rights) are usually only used where the Beneficiary is a purchaser or funder, or to the Client. If the Beneficiary is not a purchaser or funder, or if they are not to be given step in rights, delete Clause 3, 4 and 13; delete the Consultant details in Clause 9; and delete the Consultant from being a signatory to this collateral warranty on the coversheet, parties and execution clauses, and instead insert a new definition of Consultant with their details in Background A or the table at Clause 1.1]

- 3.1 The Sub-Consultant warrants and undertakes to the Beneficiary that it shall not exercise or seek to exercise any right of termination of the Contract and/or to discontinue the performance of any of its services, duties and/or obligations thereunder for any reason whatsoever (including any services, duties and/or obligations in relation to the Development by reason of breach on the part of the Consultant) without giving to the Beneficiary not less than 28 days' notice of its intention to do so and specifying the grounds for the proposed termination and/or discontinuance.
- 3.2 Any period stipulated in the Contract for the exercise by the Sub-Consultant of a right of termination of the Contract and/or to discontinue the performance of any of its services, duties and/or obligations in relation to the Development shall be extended as may be necessary to take account of the period of notice required under Clause 3.1.
- 3.3 Compliance by the Sub-Consultant with the provisions of Clause 3.1 shall not be treated as a waiver of any breach on the part of the Consultant giving rise to the right of termination of the Contract and/or to discontinue the performance of any of the Sub-Consultant's services, duties and/or obligations in relation to the Development, nor otherwise prevent the Sub-Consultant from exercising its rights after the expiration of the notice unless the right of termination and/or right to discontinue shall have ceased under the provisions of Clause 4.

### **4. OBLIGATIONS OF THE SUB-CONSULTANT TO THE BENEFICIARY**

[NOTE - Clauses 3 and 4 are usually only used where the Beneficiary is a purchaser or funder, or to the Client – see note under Clause 3 above.]

- 4.1 The right of the Sub-Consultant to terminate the Contract and/or to discontinue the performance of any of its services, duties and/or obligations shall cease within the period of 28 days referred to in Clause 3.1 if the Beneficiary shall give written notice to the Sub-Consultant:
- 4.1.1 requiring the Sub-Consultant to continue performing its services, duties and obligations under the Contract in relation to the Development;
- 4.1.2 acknowledging that the Beneficiary is assuming all the services, duties and obligations of the Consultant under the Contract;
- 4.1.3 undertaking unconditionally to the Sub-Consultant to discharge all payments which may subsequently become due to the Sub-Consultant under the terms of the Contract;

and shall pay to the Sub-Consultant any sums which have become due and payable to it under the Contract but which were then unpaid.

- 4.2 Upon compliance by the Beneficiary with the requirements of Clause 4.1 the Contract shall continue in full force and effect as if the right of termination and/or discontinuance on the part of the Sub-Consultant had not arisen and in all respects as if the Contract had been made between the Sub-Consultant and the Beneficiary to the exclusion of the Consultant.
- 4.3 Notwithstanding that as between the Consultant and the Sub-Consultant the Sub-Consultant's rights of termination of the Contract and/or discontinuance may not have arisen, the provisions of Clause 4.2 shall nevertheless apply if the Beneficiary gives notice to the Sub-Consultant and the Consultant to that effect and the Beneficiary complies with the requirements on its part under Clause 4.1.
- 4.4 The Sub-Consultant shall not be concerned or required to enquire whether, and shall be bound to assume that, as between the Consultant and the Beneficiary the circumstances have occurred permitting the Beneficiary to give notice under Clause 4.1.
- 4.5 The Sub-Consultant acting in accordance with the provisions of this Clause 4 shall not by so doing incur any liability to the Consultant.
- 4.6 Where the Sub-Consultant has given rights similar to those contained in Clauses 3 and 4 of this Deed to any other person or persons, then if both the Beneficiary and such other person or persons shall serve notice under Clause 4.1 or its equivalent, the notice served by the Beneficiary [shall prevail over any notice served by any other person or persons / shall not prevail over any notice served by any other person or persons / shall not prevail over any notice served by [●] but shall prevail over any notice served by any other person or persons]. The Sub-Consultant acting in accordance with the provisions of this Clause 4.6 shall not be and shall not be deemed to be in breach of the provisions of this Deed by doing so, nor shall the Sub-Consultant in doing so incur any liability to the Beneficiary.

## **5. INTELLECTUAL PROPERTY RIGHTS**

- 5.1 The Sub-Consultant with full title guarantee grants to the Beneficiary, with immediate effect, an irrevocable, perpetual, non-exclusive, non-terminable, royalty-free licence to use, reproduce and transmit any or all of the Materials produced or prepared by the Sub-Consultant or on the Sub-Consultant's behalf for any purpose whatsoever relating to the Development and/or the Site including (without limitation) the design, construction, completion, promotion, advertisement, funding, sale, letting, disposal, fitting out, maintenance, use, occupation, management, repair, reinstatement, re-construction, modification, alteration, refurbishment, re-development, decommissioning, demolition and/or extension of the Development and/or the Site. Such licence shall carry the right to grant sub-licences and shall be transferable to third parties without the Sub-Consultant's prior consent and shall subsist notwithstanding the termination (for any reason) of the Contract.
- 5.2 The Sub-Consultant shall not be liable for the consequences of any use by the Beneficiary of the Materials for any purposes other than those for which the same are or were prepared.
- 5.3 The Sub-Consultant warrants to the Beneficiary that it is authorised to grant the licence set out in Clause 5.1 in respect of any Materials whose intellectual property rights are vested in any third person and that the use of the Materials for any purpose relating to the Development and/or Site shall not infringe the rights of any third person. If the use of the Materials is found to infringe the rights of any third person, the Consultant shall indemnify the Beneficiary against all resulting claims, proceedings, damages, costs and expenses.
- 5.4 To the extent that the Sub-Consultant is (or at the time of their creation may be) the author of the Materials, the Sub-Consultant hereby absolutely waives and agrees not to assert any moral rights which it might otherwise be deemed to possess pursuant to the Copyright, Designs and Patents Act 1988 or any equivalent legislation in respect of the Materials; and to the extent that the Sub-Consultant is not the author, the Sub-Consultant warrants that the author has not asserted and

has waived and agreed to waive any such moral rights which the author might otherwise be deemed to possess.

5.5 The Sub-Consultant agrees:

5.5.1 on request at any time to give the Beneficiary or any persons authorised by the Beneficiary full and sufficient access to the Materials and, at the Beneficiary's expense, to provide full and proper copies of the Materials (including copy negatives and electronic copies); and

5.5.2 at the Sub-Consultant's expense, to provide the Beneficiary with a set of all Materials on Practical Completion.

5.6 All royalties or other sums payable in respect of the supply and use of any patented articles, processes or inventions required in connection with the Contract shall be paid by the Sub-Consultant and the Sub-Consultant shall indemnify the Beneficiary from and against all claims, proceedings, damages, costs and expenses suffered or incurred by the Beneficiary by reason of the Sub-Consultant infringing or being held to infringe any intellectual property rights in the course of or in connection with the Contract.

5.7 The Sub-Consultant shall (subject to the Beneficiary paying the Sub-Consultant's reasonable costs so to do) if reasonably requested by the Beneficiary at any time execute such documents and perform such acts as may be required fully and effectively to assure to the Beneficiary the rights referred to in this Clause 5.

## 6. INSURANCE

6.1 The Sub-Consultant warrants to the Beneficiary that it maintains, has at all relevant times maintained, and shall continue to maintain throughout the duration of the Development and for a period of 12 years from the date of completion of the Services (irrespective of any termination of the Contract or the Sub-Consultant's employment under the Contract for any reason) professional indemnity insurance with reputable insurers lawfully carrying on such insurance business in the United Kingdom with a limit of indemnity of not less than £[●] ([●] pounds) for any one claim but £[●] ([●] pounds) in the aggregate for pollution, contamination, asbestos and fire safety claims to cover any claims made under this Deed against the Sub-Consultant in relation to the Development.

6.2 The Sub-Consultant shall maintain the professional indemnity insurance on terms and conditions that do not require the Sub-Consultant to discharge any liability before being entitled to recover from the insurers and would not adversely affect the rights of any person to recover from the insurers pursuant to the Third Parties (Rights Against Insurers) Act 2010.

6.3 As and when reasonably required by the Beneficiary the Sub-Consultant shall provide satisfactory documentary evidence of the terms of insurance referred to in Clause 6.1 and that the insurance referred to in Clause 6.1 is being properly maintained, and shall confirm that payment has been made in respect of the last preceding premium due under such insurance.

6.4 The Sub-Consultant warrants that it has at all relevant times observed and shall continue to observe all of the conditions of the insurance policy referred to in Clause 6.1 and all of the insurance provisions contained or referred to in the Contract.

6.5 The preceding parts of this Clause 6 shall not apply at times when and to the extent that the insurance referred to in Clause 6.1 is not available in the United Kingdom insurance market at commercially reasonable rates, and the Sub-Consultant has notified the Beneficiary accordingly. Upon such notification the Sub-Consultant shall make itself available to the Beneficiary to discuss reasonable means of protecting the Beneficiary and the Sub-Consultant shall take any reasonable steps requested by the Beneficiary. For the purposes of this Clause 6.5, **commercially reasonable rates** shall mean such level of premium rates at which other consultants and/or sub-consultants of a similar size and financial standing as the Sub-Consultant at each renewal date generally continue to take out such insurance. For the avoidance of doubt,

any increased or additional premium required by insurers by reason of the Sub-Consultant's own claims record or other omissions, negligence, breaches, defaults, matters or things particular to the Sub-Consultant shall be deemed to be within commercially reasonable rates.

## 7. HEALTH AND SAFETY

The Sub-Consultant warrants that it has complied and shall comply with all of its obligations in relation to the Development as set out in the Construction (Design and Management) Regulations 2015.

## 8. EXCLUDED MATERIALS

8.1 Subject to Clause 2.1, the Sub-Consultant warrants that it has not and shall not use and/or permit the use of and/or specify for use in or in connection with the Development any substances materials equipment products kit practices or techniques which by their nature or application do not conform with relevant British Standards or Codes of Practice or regulations or good building practice or any applicable European Union equivalent current at the time of permission or specification, nor any substances materials equipment products kit practices or techniques which are generally known within the Sub-Consultant's trade and/or the construction industry:

- 8.1.1 to be deleterious in the particular circumstances in which they are used or specified for use to the health or safety of any person;
- 8.1.2 to be deleterious in the particular circumstances in which they are used or specified for use to the health, safety, stability, performance, physical integrity and/or durability of the Development or any part thereof and/or to other structures, finishes, plant and/or machinery;
- 8.1.3 to reduce or possibly reduce the normal life expectancy of developments of a type comparable to the Development;
- 8.1.4 to become deleterious without a level or cost of maintenance which is higher than that which would normally be expected in a development of a type comparable to the Development;
- 8.1.5 not to comply with or have due regard to the report entitled "Good Practice in the Selection of Construction Materials" (current edition) published by the British Council for Offices; and/or
- 8.1.6 to be supplied or placed on the market in breach of the Construction Products Regulations.

## 9. COMMUNICATIONS

9.1 Except as otherwise provided for in this Deed, all notices or other communications under or in respect of this Deed to either party shall be deemed to be duly given or made when:

- 9.1.1 delivered (in the case of personal delivery or letter); or
- 9.1.2 despatched (in the case of facsimile)

to that party at the address or facsimile number appearing below (or at such other address or facsimile number as that party may hereafter specify for this purpose to the other):

in the case of the Sub-Consultant: [●] [NOTE - name / address / facsimile to be inserted]

in the case of the Beneficiary: [●] [NOTE - name / address / facsimile to be inserted]

in the case of the Consultant: [●] [NOTE - name / address / facsimile to be inserted]

9.2 A written notice includes a notice by facsimile. A notice or other communication which is not received on a Business Day or which is received after business hours in the place of receipt shall be deemed to be given or made on the next following Business Day in that place.

## **10. CONCURRENT LIABILITIES**

The rights and benefits conferred upon the Beneficiary by this Deed are in addition to any other rights and remedies it may have against the Sub-Consultant including, without prejudice to the generality of the foregoing, any remedies in negligence.

## **11. ASSIGNMENT**

11.1 The Beneficiary may without the consent of the Sub-Consultant assign transfer and/or charge the benefit of all or any of the Sub-Consultant's obligations under this Deed and/or any benefit arising under or out of this Deed:

11.1.1 by way of security or by way of re-assignment on redemption; and

11.1.2 by absolute assignment to any Group Company of the Beneficiary; and

11.1.3 by absolute assignment on two other occasions only.

11.2 In this Deed references to the Beneficiary include where the context admits its permitted assignees.

11.3 The Sub-Consultant shall not be entitled to contend that any person to whom this Deed is assigned in accordance with Clause 11.1 is precluded from recovering under this Deed any loss incurred by such assignee resulting from any breach of this Deed (whenever happening), by reason that such person is an assignee and not a named party under this Deed.

11.4 The Sub-Consultant shall not be entitled to assign, transfer and/or charge the benefit of any (if any) of the Beneficiary's obligations under this Deed and/or any benefit (if any) arising to the Sub-Consultant out of this Deed.

## **12. LIMITATION PERIOD**

The liability of the Sub-Consultant under this Deed shall cease 12 years following the date of completion of the Services save in relation to any claims made by the Beneficiary against the Sub-Consultant and in respect of which proceedings have been commenced. For the avoidance of doubt, the parties agree that any provisions of the Limitation Act 1980 to the contrary will not apply to this Deed.

## **13. CONSULTANT**

[NOTE - delete if Clauses 3 and 4 are deleted]

The Consultant agrees that it shall not take any steps which would prevent or hinder the Beneficiary from exercising its rights under this Deed and confirms that the rights of the Beneficiary in Clauses 3 and 4 override any obligations of the Sub-Consultant to the Consultant under the Contract.

## **14. GOVERNING LAW AND JURISDICTION**

14.1 This Deed 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) is governed by and construed in accordance with the law of England and Wales.

14.2 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to hear and decide any suit, action or proceedings and/or settle any dispute or claim

arising out of or in connection with this Deed or its subject matter or formation (including non-contractual disputes or claims).

**15. RIGHTS OF THIRD PARTIES**

Unless the right of enforcement is expressly provided for, no third party (as defined in the Contracts (Rights of Third Parties) Act 1999) except for any permitted successor or assignee of any party to this Deed has any rights under that Act to enforce any term of this Deed.

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

Executed as a deed by **[insert name of company]**  
acting by **[insert name of first director]**, a director  
and **[insert name of second director or secretary]** [a  
director/its secretary]

.....  
Director

.....  
[Director/Secretary]

**OR**

Executed as a deed by **[insert name of company]**  
acting by **[insert name of director]**, a director, in the  
presence of **[insert name of witness]**:

.....  
Director

*Signature (Witness)* .....

*Print Name* .....

*Address* .....

.....  
*Occupation* .....

## Annex E

### UK GDPR<sup>1</sup>

Each Party agrees that, in performing its obligations and exercising its rights under this Contract, it may receive and process limited Personal Data, relating to a small number of individuals of the other Party, including names, email addresses, job title and other business contact details. Each Party will process such Personal Data in accordance with Data Protection Legislation and in relation to this Contract. Where the Consultant, in performing its obligations hereunder, processes any more substantive amounts of Personal Data on behalf of the Client beyond that described in the foregoing sentences, then the Parties will complete the remainder of this Annex which shall have effect and the Parties agree that the Controller to Processor provisions of this Annex shall apply.

*[THE FOLLOWING IS TO BE COMPLETED AND APPLY ONLY IF THE CLIENT INSTRUCTS THE CONSULTANT TO PROCESS PERSONAL DATA]*

In this Annex unless the context otherwise requires, defined terms shall, save where they are defined below, have the meanings ascribed to them in this Contract:

Controller, Processor, Data Subject, Personal Data, Personal Data Breach, Data Protection Officer	take the meaning given in the UK GDPR.
Data Loss Event	any event that results, or may result, in unauthorised access to Personal Data held by the Processor under this Contract, and/or actual or potential loss and/or destruction of Personal Data in breach of this Contract, including any Personal Data Breach.
Data Protection Impact Assessment	an assessment by the Controller carried out in accordance with Section 3 of the UK GDPR and sections 64 and 65 of the DPA 2018.
Data Protection Legislation	(i) all applicable UK Law relating to the processing of personal data and privacy, including but not limited to the UK GDPR, and the Data Protection Act 2018 to the extent that it relates to processing of personal data and privacy; and (ii) (to the extent that it may be applicable) the EU GDPR. The UK GDPR and EU GDPR are defined in section 3 of the Data Protection Act 2018.

<sup>1</sup> Consultant to confirm if the Contract will involve any processing of Personal Data by the Consultant on behalf of the Client. **It is assumed that there will not be any processing of Personal Data and the Schedule does not therefore need to be completed.**

*If personal data will be processed then a Data Protection Impact Assessment will need to be carried out.*

*An example of processing personal data: specific needs are identified for a SEN school build, which can identify a pupil or pupils.*

Data Subject Request	a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to Data Protection Legislation to access their Personal Data.
DPA 2018	Data Protection Act 2018
Joint Controllers	takes the meaning given in Article 26 of the UK GDPR
Law	means any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, regulation, order, regulatory policy, mandatory guidance or code of practice, judgement of a relevant court of law, or directives or requirements with which the Processor is bound to comply.
Processor Personnel	means all directors, officers, employees, agents, consultants and contractors of the processor and/or of any sub-processor engaged in the performance of its obligations under this Contract.
Protective Measures	appropriate technical and organisational measures designed to ensure compliance with obligations of the Parties arising under Data Protection Legislation and this Contract, 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 measures adopted by it including those outlined in Annex A (Security).
Sub-processor	any third Party appointed to process Personal Data on behalf of that Processor related to this Contract
UK GDPR	the UK General Data Protection Regulation

## 1. DATA PROTECTION

- 1.1. The Parties acknowledge that for the purposes of Data Protection Legislation, the Client is the Controller and the Consultant is the Processor unless otherwise specified in the Schedule to this Annex. The only processing that the Processor is authorised to do is listed in the Schedule to this Annex by the Controller and may not be determined by the Processor. The term "processing" and any associated terms are to be read in accordance with Article 4 of the UK GDPR.
- 1.2. The Processor shall notify the Controller immediately if it considers that any of the Controller's instructions infringe Data Protection Legislation.
- 1.3. The Processor shall provide all reasonable assistance to the Controller in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Controller, include:
  - a) a systematic description of the envisaged processing operations and the purpose of the processing;
  - b) an assessment of the necessity and proportionality of the processing operations in relation to the services and Works;
  - c) an assessment of the risks to the rights and freedoms of Data Subjects; and
  - d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 1.4. The Processor shall, in relation to any Personal Data processed in connection with its obligations under this Contract:
  - a) process that Personal Data only in accordance with the Schedule to this Annex, unless the Processor is required to do otherwise by Law. If it is so required the Processor shall promptly notify the Controller before processing the Personal Data unless prohibited by Law;
  - b) ensure that it has in place Protective Measures, which are appropriate to protect against a Data Loss Event, which the Controller may reasonably reject. In the event of the Controller reasonably rejecting Protective Measures put in place by the Processor, the Processor must propose alternative Protective Measures to the satisfaction of the Controller. Failure to reject shall not amount to approval by the Controller of the adequacy of the Protective Measures. Protective Measures must take account of the:
    - i. nature of the data to be protected;
    - ii. harm that might result from a Data Loss Event;
    - iii. state of technological development; and
    - iv. cost of implementing any measures;
  - c) ensure that:
    - i. the Processor Personnel do not process Personal Data except in accordance with this Contract (and in particular the Schedule to this Annex);
    - ii. it takes all reasonable steps to ensure the reliability and integrity of any Processor Personnel who have access to the Personal Data and ensure that they:

- A. are aware of and comply with the Processor's duties under this paragraph;
  - B. are subject to appropriate confidentiality undertakings with the Processor 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 Controller or as otherwise permitted by this Contract; and
  - D. have undergone adequate training in the use, care, protection and handling of Personal Data; and
- d) not transfer Personal Data outside of the UK unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:
- i. the destination country has been recognised as adequate by the UK government in accordance with Article 45 UK GDPR or section 74 of the DPA 2018;
  - ii. the Controller or the Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with UK GDPR Article 46 or section 75 DPA 2018) as determined by the Controller;
  - iii. the Data Subject has enforceable rights and effective legal remedies;
  - iv. the Processor complies with its obligations under Data Protection Legislation by providing an appropriate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Controller in meeting its obligations); and
  - v. the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the processing of the Personal Data;
- e) at the written direction of the Controller, delete or return Personal Data (and any copies of it) to the controller on termination of the agreement unless the processor is required by Law to retain the personal data.

1.5. Subject to paragraph 1.6, the Processor shall notify the Controller 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 Data Protection Legislation;
- d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this 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.

1.6. The Processor's obligation to notify under paragraph 1.5 shall include the provision of further information to the Controller, as details become available.

1.7. Taking into account the nature of the processing, the Processor shall provide the Controller with full assistance in relation to either Party's obligations under Data Protection Legislation and any

complaint, communication or request made under paragraph 1.5 (and insofar as possible within the timescales reasonably required by the Controller) including but not limited to promptly providing:

- a) the Controller with full details and copies of the complaint, communication or request;
- b) such assistance as is reasonably requested by the Controller to enable the Controller to comply with a Data Subject Request within the relevant timescales set out in Data Protection Legislation;
- c) the Controller, at its request, with any Personal Data it holds in relation to a Data Subject;
- d) assistance as requested by the Controller following any Data Loss Event;
- e) assistance as requested by the Controller with respect to any request from the Information Commissioner's Office, or any consultation by the Controller with the Information Commissioner's Office.

1.8. The Processor shall maintain complete and accurate records and information to demonstrate its compliance with this paragraph. This requirement does not apply where the Processor employs fewer than 250 staff, unless:

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

1.9. The Processor shall allow for audits of its Data Processing activity by the Controller or the Controller's designated auditor.

1.10. Each Party shall designate its own data protection officer if required by Data Protection Legislation.

1.11. Before allowing any Sub-processor to process any Personal Data related to this Contract, the Processor must:

- a) notify the Controller in writing of the intended Sub-processor and processing;
- b) obtain the written consent of the Controller;
- c) enter into a written agreement with the Sub-processor which give effect to the terms set out in this paragraph 1.11 such that they apply to the Sub-processor; and
- d) provide the Controller with such information regarding the Sub-processor as the Controller may reasonably require.

1.12. The Processor shall remain fully liable for all acts or omissions of any of its Sub-processors.

1.13. The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Controller may upon giving the Processor not less than 30 working days' notice to the Processor amend this agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.

#### **Schedule: Schedule of Processing, Personal Data and Data Subjects**

The Parties do not anticipate that this Contract will involve any processing of Personal Data by the Consultant on behalf of the Client, and the Consultant is not authorised by the Client to process Personal Data under the terms of this Contract. The remainder of this Schedule will only be completed and have effect if the Client instructs the Consultant to process Personal Data under the terms of this Contract.

This Schedule shall be completed by the Controller, who may take account of the view of the Processor, however the final decision as to the content of this Schedule shall be with the Controller at its absolute discretion.

1. The contact details of the Controller's Data Protection Officer are: [Insert Contact details]
2. The contact details of the Processor's Data Protection Officer are: [Insert Contact details]
3. The Processor shall comply with any further written instructions with respect to processing by the Controller.
4. Any such further instructions shall be incorporated into this Schedule.

Description	Details
Identity of the Controller and Processor	<p>The Parties acknowledge that for the purposes of Data Protection Legislation, the Client is the Controller and the Consultant is the Processor in accordance with Paragraph 1.1.</p> <p>[Guidance: You may need to vary this section where (in the rare case) the Client and Consultant have a different relationship. For example, where the Parties are Joint Controllers. You should take advice before doing so.]</p>
Subject matter of the processing	<p>[This should be a high level, short description of what the processing is about i.e. its subject matter of the contract.</p> <p>Example: The processing is needed in order to ensure that the Processor can effectively deliver the contract to provide [insert description of relevant service]. ]</p>
Duration of the processing	<p>[Clearly set out the duration of the processing including dates]</p>
Nature and purposes of the processing	<p>[Please be as specific as possible, but make sure that you cover all intended purposes.</p> <p>The nature of the processing means any operation such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means) etc.</p> <p>The purpose might include: employment processing, statutory obligation, recruitment assessment etc]</p>
Type of Personal Data being Processed	<p>[Examples here include: name, address, date of birth, NI number, telephone number, pay, images, biometric data etc]</p>

Categories of Data Subject	[Examples include: Staff (including volunteers, agents, and temporary workers), customers/ clients, suppliers, patients, students / pupils, members of the public, users of a particular website etc]
International transfers and legal gateway	[Explain where geographically personal data may be stored or accessed from. Explain the legal gateway you are relying on to export the data e.g. adequacy decision, EU SCCs, UK IDTA. Annex any SCCs or IDTA to this contract]
Plan for return and destruction of the data once the processing is complete	[Describe how long the data will be retained for, how it be returned or destroyed]

### Annex A: Security

The technical security requirements set out below provide an indication of the types of security measures that might be considered, in order to protect Personal Data. More, or less, measures may be appropriate depending on the subject matter of the contract, but the overall approach must be proportionate. The technical requirements must also be compliant with legislative and regulatory obligations for content and data, such as UK GDPR.

The example technical security requirements set out here are intended to supplement, not replace, security schedules that will detail the total contractual security obligations and requirements that the Processor (i.e. a supplier) will be held to account to deliver under contract. Processors are also required to ensure sufficient 'flow-down' of legislative and regulatory obligations to any third party Sub-processors.

#### Examples

External Certifications: employers should ensure that contractors hold at least Cyber Essentials Plus certification and ISO 27001:2013 certification if proportionate to the service being procured.

Risk assessment: e.g. The Consultant should perform a technical information risk assessment on the service supplied and be able to demonstrate what controls are in place to address those risks.

Security classification of information: e.g. If the provision of the services and Works requires the Consultant to process Client data which is classified as OFFICIAL, OFFICIAL-SENSITIVE or Personal Data, the Consultant shall implement such additional measures as agreed with the Client from time to time in order to ensure that such information is safeguarded in accordance with the applicable legislative and regulatory obligations.

End User Devices e.g.

- The Consultant shall ensure that any Client data which resides on a mobile, removable or physically uncontrolled device is stored encrypted using a product or system component which has been formally assured through a recognised certification process agreed with the Client except where the Client has given its prior written consent to an alternative arrangement.
- The Consultant shall ensure that any device which is used to process Client data meets all of the security requirements set out in the NCSC End User Devices Platform Security Guidance.

Testing e.g. The Consultant shall at their own cost and expense, procure a CHECK or CREST Certified Supplier to perform an ITHC or Penetration Test prior to any live Client data being transferred into their

systems. The ITHC scope must be agreed with the Client to ensure it covers all the relevant parts of the system that processes, stores or hosts Client data.

Networking e.g. The Consultant shall ensure that any Client data which it causes to be transmitted over any public network (including the internet, mobile networks or un-protected enterprise network) or to a mobile device shall be encrypted when transmitted.

Personnel Security e.g. all Consultant Personnel shall be subject to a pre-employment check before they may participate in the provision and or management of the services and Works. Such pre-employment checks must include all pre-employment checks which are required by the HMG Baseline Personnel Security Standard or equivalent including: verification of the individual's identity; verification of the individual's nationality and immigration status; and, verification of the individual's employment history; verification of the individual's criminal record. The Consultant may be required to implement additional security vetting for some roles.

Identity, Authentication and Access Control e.g. The Consultant must operate an appropriate access control regime to ensure that users and administrators of the service are uniquely identified. The Consultant must retain records of access to the physical sites and to the service.

Data Destruction/Deletion e.g. The Consultant must be able to demonstrate they can supply a copy of all data on request or at termination of the service, and must be able to securely erase or destroy all data and media that the Client data has been stored and processed on.

Audit and Protective Monitoring e.g. The Consultant shall collect audit records which relate to security events in delivery of the service or that would support the analysis of potential and actual compromises. In order to facilitate effective monitoring and forensic readiness such Consultant audit records should (as a minimum) include regular reports and alerts setting out details of access by users of the service, to enable the identification of (without limitation) changing access trends, any unusual patterns of usage and/or accounts accessing higher than average amounts of Client data. The retention periods for audit records and event logs must be agreed with the Client and documented.

Location of Client data e.g. The Consultant shall not, and shall procure that none of its Sub-contractors, process Client data outside the EEA without the prior written consent of the Client and the Consultant shall not change where it or any of its Sub-contractors process Client data without the Client's prior written consent which may be subject to conditions.

Vulnerabilities and Corrective Action e.g. Consultants shall procure and implement security patches to vulnerabilities in accordance with the timescales specified in the NCSC Cloud Security Principle 5.

Consultants must ensure that all COTS Software and Third Party COTS Software be kept up to date such that all Consultant COTS Software and Third Party COTS Software are always in mainstream support.

Secure Architecture e.g. contractors should design the service in accordance with:

- NCSC Security Design Principles for Digital services and Works
- NCSC Bulk Data Principles
- NSCS Cloud Security Principles

**Annex F**  
**Security Provisions**

**1. Definitions**

1.1. In this Schedule, the following words shall have the following meanings and they shall supplement the other definitions in the Contract:

<p>"BPSS" "Baseline Personnel Security Standard"</p>	<p>the Government's HMG Baseline Personal Security Standard. Further information can be found at: <a href="https://www.gov.uk/government/publications/government-baseline-personnel-security-standard">https://www.gov.uk/government/publications/government-baseline-personnel-security-standard</a></p>
<p>"CCSC" "Certified Cyber Security Consultancy"</p>	<p>is the National Cyber Security Centre's (NCSC) approach to assessing the services provided by consultancies and confirming that they meet NCSC's standards. See website: <a href="https://www.ncsc.gov.uk/scheme/certified-cyber-consultancy">https://www.ncsc.gov.uk/scheme/certified-cyber-consultancy</a></p>
<p>"Buyer"</p>	<p>the Client</p>
<p>"CCP" "Certified Professional"</p>	<p>is a NCSC scheme in consultation with government, industry, and academia to address the growing need for specialists in the cyber security profession. See website: <a href="https://www.ncsc.gov.uk/information/about-certified-professional-scheme">https://www.ncsc.gov.uk/information/about-certified-professional-scheme</a></p>
<p>"Cyber Essentials" "Cyber Essentials Plus"</p>	<p>Cyber Essentials is the government backed industry supported scheme to help organisations protect themselves against common cyber-attacks. Cyber Essentials and Cyber Essentials Plus are levels within the scheme. There are a number of certification bodies that can be approached for further advice on the scheme, the link below points to these providers: <a href="https://www.cyberessentials.ncsc.gov.uk/getting-certified/#what-is-an-accreditation-body">https://www.cyberessentials.ncsc.gov.uk/getting-certified/#what-is-an-accreditation-body</a></p>

<p>"Data"          "Data Controller"          "Data Protection Officer"          "Data Processor"          "Personal Data"          "Personal Data requiring Sensitive Processing"          "Data Subject", "Process" and "Processing"</p>	<p>shall have the meanings given to those terms by the Data Protection Legislation</p>
<p>"Buyer's Data"          "Buyer's Information"</p>	<p>is any data or information owned or retained to meet departmental business objectives and tasks, including:          (a) any data, text, drawings, diagrams, images, or sounds (together with any repository or database made up of any of these components) which are embodied in any electronic, magnetic, optical, or tangible media, and which are:              (i) supplied to the Supplier by or on behalf of the Buyer; or              (ii) which the Supplier is required to generate, process, store or transmit pursuant to this Contract; or          (b) any Personal Data for which the Buyer is the Data Controller;</p>
<p>"Departmental Security Requirements"</p>	<p>the Buyer's security policy or any standards, procedures, process, or specification for security that the Supplier is required to deliver.</p>
<p>"Digital Marketplace / G-Cloud"</p>	<p>the Digital Marketplace is the online framework for identifying and procuring cloud technology and people for digital projects.</p>
<p>"End User Devices"</p>	<p>the personal computer or consumer devices that store or process information.</p>
<p>"Good Industry Standard"          "Industry Good Standard"</p>	<p>the implementation of products and solutions, and the exercise of that degree of skill, care, prudence, efficiency, foresight, and timeliness as would be expected from a leading company within the relevant industry or business sector.</p>
<p>"GSC"          "GSCP"</p>	<p>the Government Security Classification Policy which establishes the rules for classifying HMG information. The policy is available at:  <a href="https://www.gov.uk/government/publications/government-security-classifications">https://www.gov.uk/government/publications/government-security-classifications</a></p>

"HMG"	Her Majesty's Government
"ICT"	Information and Communications Technology (ICT) and is used as an extended synonym for information technology (IT), used to describe the bringing together of enabling technologies used to deliver the end-to-end solution
"ISO/IEC 27001" "ISO 27001"	is the International Standard for Information Security Management Systems Requirements
"ISO/IEC 27002" "ISO 27002"	is the International Standard describing the Code of Practice for Information Security Controls.
"ISO 22301"	is the International Standard describing for Business Continuity
"IT Security Health Check (ITSHC)" "IT Health Check (ITHC)" "Penetration Testing"	an assessment to identify risks and vulnerabilities in systems, applications and networks which may compromise the confidentiality, integrity or availability of information held on that ICT system.
"Need-to-Know"	the Need-to-Know principle employed within HMG to limit the distribution of classified information to those people with a clear 'need to know' in order to carry out their duties.
"NCSC"	the National Cyber Security Centre (NCSC) is the UK government's National Technical Authority for Information Assurance. The NCSC website is <a href="https://www.ncsc.gov.uk">https://www.ncsc.gov.uk</a>
"OFFICIAL"	the term 'OFFICIAL' is used to describe the baseline level of 'security classification' described within the Government Security Classification Policy (GSCP).
"OFFICIAL-SENSITIVE"	the term 'OFFICIAL-SENSITIVE' is used to identify a limited subset of OFFICIAL information that could have more damaging consequences (for individuals, an organisation or government generally) if it were lost, stolen, or published in the media, as described in the GSCP.
"RBAC" "Role Based Access Control"	Role Based Access Control, a method of restricting a person's or process' access to information depending on the role or functions assigned to them.
"Storage Area Network" "SAN"	an information storage system typically presenting block-based storage (i.e., disks or virtual disks) over a network interface rather than using physically connected storage.

"Secure Sanitisation"	<p>the process of treating data held on storage media to reduce the likelihood of retrieval and reconstruction to an acceptable level.</p> <p>NCSC Guidance can be found at:  <a href="https://www.ncsc.gov.uk/guidance/secure-sanitisation-storage-media">https://www.ncsc.gov.uk/guidance/secure-sanitisation-storage-media</a></p> <p>The disposal of physical documents and hardcopy materials advice can be found at:  <a href="https://www.cpni.gov.uk/secure-destruction-0">https://www.cpni.gov.uk/secure-destruction-0</a></p>
"Security and Information Risk Advisor" "CCP SIRA" "SIRA"	<p>the Security and Information Risk Advisor (SIRA) is a role defined under the NCSC Certified Professional (CCP) Scheme. See also:  <a href="https://www.ncsc.gov.uk/articles/about-certified-professional-scheme">https://www.ncsc.gov.uk/articles/about-certified-professional-scheme</a></p>
"Senior Information Risk Owner" "SIRO"	<p>the Senior Information Risk Owner (SIRO) responsible on behalf of the DfE Accounting Officer for overseeing the management of information risk across the organisation. This includes its executive agencies, arm's length bodies (ALBs), non-departmental public bodies (NDPBs) and devolved information held by third parties.</p>
"SPF" "HMG Security Policy Framework"	<p>the definitive HMG Security Policy which describes the expectations of the Cabinet Secretary and Government's Official Committee on Security on how HMG organisations and third parties handling HMG information and other assets will apply protective security to ensure HMG can function effectively, efficiently, and securely.  <a href="https://www.gov.uk/government/publications/security-policy-framework">https://www.gov.uk/government/publications/security-policy-framework</a></p>
"Supplier"	the Consultant
"Supplier Staff"	all directors, officers, employees, agents, consultants, and contractors of the Supplier and/or of any sub-consultant engaged in the performance of the Supplier's obligations under the Contract.

### Operative Provisions

- 1.1. The Supplier shall be aware of and comply with the relevant HMG security policy framework, NCSC guidelines and where applicable these Departmental Security Requirements which include but are not constrained to the following paragraphs.
- 1.2. Where the Supplier will provide products or Services or otherwise handle information at OFFICIAL for the Buyer, the requirements of Procurement Policy Note: Updates to the Cyber Essentials Scheme (PDF) - Action Note 09/23 dated September 2023, or any

subsequent updated document, are mandated, namely that contractors supplying products or services to HMG shall have achieved and will retain Cyber Essentials certification at the appropriate level for the duration of the contract. The certification scope shall be relevant to the Services supplied to, or on behalf of, the Buyer.

- 1.3. Where paragraph 1.2 above has not been met, the Supplier shall have achieved, and be able to maintain, independent certification to ISO/IEC 27001 (Information Security Management Systems Requirements). The ISO/IEC 27001 certification must have a scope relevant to the Services supplied to, or on behalf of, the Buyer. The scope of certification and the statement of applicability must be acceptable, following review, to the Buyer, including the application of controls from ISO/IEC 27002 (Code of Practice for Information Security Controls).
- 1.4. The Supplier shall follow the UK Government Security Classification Policy (GSCP) in respect of any Buyer's Data being handled in the course of providing the Services and will handle all data in accordance with its security classification. (In the event where the Supplier has an existing Protective Marking Scheme then the Supplier may continue to use this but must map the HMG security classifications against it to ensure the correct controls are applied to the Buyer's Data).
- 1.5. Buyer's Data being handled while providing an ICT solution or service must be separated from all other data on the Supplier's or sub-consultant's own IT equipment to protect the Buyer's Data and enable the data to be identified and securely deleted when required in line with paragraph 1.14. For information stored digitally, this must be at a minimum logically separated. Physical information (e.g., paper) must be physically separated.
- 1.6. The Supplier shall have in place and maintain physical security to premises and sensitive areas used in relation to the delivery of the products or Services, and that store or process Buyer's Data, in line with ISO/IEC 27002 including, but not limited to, entry control mechanisms (e.g., door access), CCTV, alarm systems, etc.
  - 1.6.1. Where remote working is allowed, the Supplier shall have an appropriate remote working policy in place for any Supplier staff that will have access to the Buyer's data and/or systems.
- 1.7. The Supplier shall have in place, implement, and maintain an appropriate user access control policy for all ICT systems to ensure only authorised personnel have access to Buyer's Data. This policy should include appropriate segregation of duties and if applicable role-based access controls (RBAC). User credentials that give access to Buyer's Data or systems shall be considered to be sensitive data and must be protected accordingly.
- 1.8. The Supplier shall have in place and shall maintain procedural, personnel, physical and technical safeguards to protect Buyer's Data, including but not limited to:
  - 1.8.1. physical security controls;
  - 1.8.2. Good Industry Standard policies and processes;
  - 1.8.3. malware protection;
  - 1.8.4. boundary access controls including firewalls, application gateways, etc;
  - 1.8.5. maintenance and use of fully supported software packages in accordance with vendor recommendations;

- 1.8.6. use of secure device configuration and builds;
- 1.8.7. software updates and patching regimes including malware signatures, for operating systems, network devices, applications and services;
- 1.8.8. user identity and access controls, including the use of multi-factor authentication for sensitive data and privileged account accesses;
- 1.8.9. any services provided to the Buyer must capture audit logs for security events in an electronic format at the application, service and system level to meet the Buyer's logging and auditing requirements, plus logs shall be:
  - 1.8.9.1. retained and protected from tampering for a minimum period of six months;
  - 1.8.9.2. made available to the Buyer on request.
- 1.9. The Supplier shall ensure that any Buyer's Data (including email) transmitted over any public network (including the Internet, mobile networks, or unprotected enterprise network) or to a mobile device shall be encrypted when transmitted.
- 1.10. The Supplier shall ensure that any Buyer's Data which resides on a mobile, removable, or physically uncontrolled device is stored encrypted using a product or system component which has been formally assured through a recognised certification process agreed with the Buyer except where the Buyer has given its prior written consent to an alternative arrangement.
- 1.11. The Supplier shall ensure that any device which is used to process Buyer's Data meets all of the security requirements set out in the NCSC End User Devices Platform Security Guidance, a copy of which can be found at: <https://www.ncsc.gov.uk/guidance/end-user-device-security> and <https://www.ncsc.gov.uk/collection/end-user-device-security/eud-overview/eud-security-principles>.
- 1.12. Whilst in the Supplier's care all removable media and hardcopy paper documents containing Buyer's Data must be handled securely and secured under lock and key when not in use and shall be securely destroyed when no longer required, using either a cross-cut shredder or a professional secure disposal organisation.

The term 'lock and key' is defined as: "securing information in a lockable desk drawer, cupboard or filing cabinet which is under the user's sole control and to which they hold the keys".
- 1.13. When necessary to hand carry removable media and/or hardcopy paper documents containing Buyer's Data, the media or documents being carried shall be kept under cover and transported in such a way as to ensure that no unauthorised person has either visual or physical access to the material being carried. This paragraph shall apply equally regardless of whether the material is being carried inside or outside of company premises.

The term 'under cover' means that the information is carried within an opaque folder or envelope within official premises and buildings and within a closed briefcase or other similar bag or container when outside official premises or buildings.
- 1.14. In the event of termination of Contract due to expiry, as a result of an Insolvency Event or for breach by the Supplier, all information assets provided, created or resulting from

provision of the Services shall not be considered as the Supplier's assets and must be returned to the Buyer and written assurance obtained from an appropriate officer of the Supplier that these assets regardless of location and format have been fully sanitised throughout the Supplier's organisation in line with paragraph 1.15.

- 1.15. In the event of termination, equipment failure or obsolescence, all Buyer's Data and Buyer's Information, in either hardcopy or electronic format, that is physically held or logically stored by the Supplier must be accounted for and either physically returned or securely sanitised or destroyed in accordance with the current HMG policy using an NCSC-approved product or method.

Where sanitisation or destruction is not possible for legal, regulatory or technical reasons, such as data stored in a cloud system, Storage Area Network (SAN) or on shared backup tapes, then the Supplier shall protect (and ensure that any sub-consultant protects) the Buyer's Information and Buyer's Data until such time, which may be long after termination or expiry of the Contract, when it can be securely cleansed or destroyed.

Evidence of secure destruction will be required in all cases.

- 1.16. Access by Supplier Staff to Buyer's Data, including user credentials, shall be confined to those individuals who have a "need-to-know" in order to carry out their role; and have undergone mandatory pre-employment screening, to a minimum of HMG Baseline Personnel Security Standard (BPSS); or hold an appropriate National Security Vetting clearance as required by the Buyer. All Supplier Staff must complete this process before access to Buyer's Data is permitted. Any Supplier Staff who will be in contact with children or vulnerable adults must, in addition to any security clearance, have successfully undergone an Enhanced DBS (Disclosure and Barring Service) check prior to any contact.
- 1.17. All Supplier Staff who handle Buyer's Data shall have annual awareness training in protecting information.
- 1.18. Notwithstanding any other provisions as to business continuity and disaster recovery in the Contract, the Supplier shall, as a minimum, have in place robust business continuity arrangements and processes including IT disaster recovery plans and procedures that conform to ISO 22301 to ensure that the delivery of the Contract is not adversely affected in the event of an incident. An incident shall be defined as any situation that might, or could lead to, a disruption, loss, emergency, or crisis to the Services delivered. If an ISO 22301 certificate is not available, the supplier will provide evidence of the effectiveness of their ISO 22301 conformant business continuity arrangements and processes including IT disaster recovery plans and procedures. This must include evidence that the Supplier has tested or exercised these plans within the last 12 months and produced a written report of the outcome, including required actions.
- 1.19. Any suspected or actual breach of the confidentiality, integrity, or availability of Buyer's Data, including user credentials, used or handled while providing the Services shall be recorded as a Security Incident. This includes any non-compliance with the Departmental Security Requirements and these provisions, or other security standards pertaining to the solution.

Security Incidents shall be reported to the Buyer immediately, wherever practical, even if unconfirmed or when full details are not known, but always within 24 hours of discovery and followed up in writing. If Security Incident reporting has been delayed by more than 24 hours, the Supplier should provide an explanation about the delay. Regular updates on the Security Incident shall be provided to the Buyer in writing until the incident is resolved.

Security Incidents shall be reported through the Buyer's nominated system or service owner.

Security Incidents shall be investigated by the Supplier with outcomes being notified to the Buyer.

- 1.20. The Supplier shall ensure that any Supplier ICT systems and hosting environments that are used to handle, store or process Buyer's Data, including Supplier ICT connected to Supplier ICT systems used to handle, store or process Buyer's Data, shall be subject to independent IT Health Checks (ITHC) using an NCSC CHECK Scheme ITHC provider before go-live and periodically (at least annually) thereafter. On request by the Buyer, the findings of the ITHC relevant to the Services being provided are to be shared with the Buyer in full without modification or redaction and all necessary remedial work carried out. In the event of significant security issues being identified, a follow up remediation test may be required, to be determined by the Buyer upon review of the ITHC findings.
- 1.21. The Supplier or sub-consultants providing the Services will provide the Buyer with full details of any actual or future intent to develop, manage, support, process, or store Buyer's Data outside of the UK mainland. The Supplier or subconsultant shall not go ahead with any such proposal without the prior written agreement from the Buyer.
- 1.22. The Buyer reserves the right to audit the Supplier or subconsultants providing the Services annually, within a mutually agreed timeframe but always within seven days of notice of a request to audit being given. The audit shall cover the overall scope of the Services being supplied and the Supplier's, and any subconsultants', compliance with the paragraphs contained in this Annex.
- 1.23. The Supplier and subconsultants shall undergo appropriate security assurance activities and shall provide appropriate evidence including the production of the necessary security documentation as determined by the Buyer through the life of the contract. This will include obtaining any necessary professional security resources required to support the Supplier's and subconsultant's security assurance activities such as: a Security and Information Risk Advisor (SIRA) certified to NCSC Certified Cyber Security Consultancy (CCSC) or NCSC Certified Cyber Professional (CCP) schemes.
- 1.24. Where the Supplier is delivering an ICT solution to the Buyer they shall design and deliver solutions and services that are compliant with the HMG Security Policy Framework in conjunction with current NCSC Information Assurance Guidance and Buyer's Policy. The Supplier will provide the Buyer with evidence of compliance for the solutions and services to be delivered. The Buyer's expectation is that the Supplier shall provide written evidence of:
  - 1.24.1. implementation of the foundational set of cyber defence safeguards from the Center for Internet Security Critical Security Controls (CIS CSC v8).
  - 1.24.2. any existing security assurance for the Services to be delivered, such as: ISO/IEC 27001 / 27002 or an equivalent industry level certification issued by an organisation accredited by the United Kingdom Accreditation Service.
  - 1.24.3. any existing HMG security accreditations or assurance that are still valid including: details of the awarding body; the scope of the accreditation; any caveats or restrictions to the accreditation; the date awarded, plus a copy of the residual risk statement.

1.24.4. documented progress in achieving any security assurance or accreditation activities including whether documentation has been produced and submitted. The Supplier shall provide details of who the awarding body or organisation will be, and date expected.

1.24.5. compliance with the principles of Secure by Design as described at Secure by Design Principles - UK Government Security.

Additional information and evidence to that listed above may be required to ensure compliance with DfE security requirements as part of the DfE security assurance process. Where a request for evidence or information is made by the Buyer, the Supplier will acknowledge the request within 5 working days and either provide the information within that timeframe, or, if that is not possible, provide a date when the information will be provided to the Buyer. In any case, the Supplier must respond to information requests from the Buyer needed to support the security assurance process promptly and without undue delay.

1.25. The Supplier shall contractually enforce all these Departmental Security Requirements onto any third-party suppliers, subconsultants or partners who will have access to the Buyer's Data in the course of providing the Services, before access to the data is provided or permitted.

1.26. The Supplier shall comply with the NCSC's social media guidance: how to use social media safely for any web and social media-based communications. In addition, any Communications Plan deliverable must include a risk assessment relating to the use of web and social media channels for the programme, including controls and mitigations to be applied and how the NCSC social media guidance will be complied with. The Supplier shall implement the necessary controls and mitigations within the plan and regularly review and update the risk assessment throughout the contract period. The Buyer shall have the right to review the risks within the plan and approve the controls and mitigations to be implemented, including requiring the Supplier to implement any additional reasonable controls to ensure risks are managed within the Buyer's risk appetite.

1.27. Any Supplier ICT system used to handle, store, or process the Buyer's Data, including any Supplier ICT systems connected to systems that handle, store, or process the Buyer's Data, must have in place protective monitoring at a level that is commensurate with the security risks posed to those systems and the data held. The Supplier shall provide evidence to the Buyer upon request of the protective monitoring arrangements in place needed to assess compliance with this requirement.

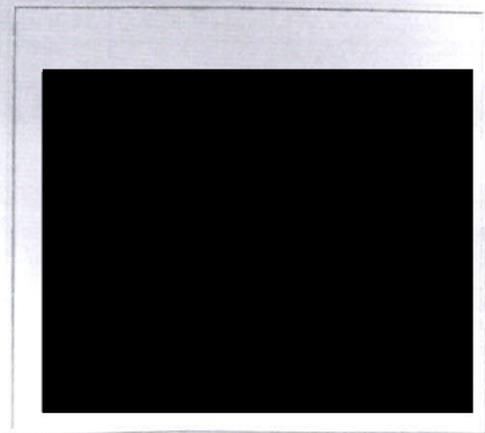
1.28. Where the Supplier is using Artificial Intelligence (AI) and/or Machine Learning (ML) in the delivery of their service to the Buyer, this shall comply with the NCSC's principles for the security of machine learning.

**SCHEDULE 2 OF TECHNICAL ADVISORY SERVICES APPOINTMENT**

**Project Services**

The USB stick attached to this page is Schedule 2 comprising the Project Services.

By signing below each party agrees and acknowledges that the attached USB stick is an accurate electronic representation of the paper files comprising the Project Services.



## SCHEDULE 3 OF TECHNICAL ADVISORY SERVICES APPOINTMENT

### Order

(A) [Sent to the email address and for the attention of: [INSERT NAME(S)]]

To: [●] (No. [●]) whose registered office is [●] (which expression shall include its permitted assigns or successors in title) (the "Consultant")

From: THE SECRETARY OF STATE FOR EDUCATION of Sanctuary Buildings, Great Smith Street, London, SW1P 3BT (the "Client") (which expression shall include its permitted assigns or successors in title)

(B) Dated [●]

(C) We hereby give notice pursuant to the Technical Advisory Services Appointment dated [●] between [Consultant] and the Secretary of State for Education, that the Consultant and the Client will be bound by the Service Terms and Conditions in the form set out in Schedule 1 of the Technical Advisory Services Appointment and that the details above and below will be deemed to be incorporated into the Service Terms and Conditions and a new Services Agreement Contract is formed.<sup>2]</sup>

First Recital	the Client wishes to have the following construction project carried out: [●] at [●] (the "Project") as more particularly described in the Client's Brief;
Article 3: CDM Regulations – Principal Designer	The Principal Designer for the purposes of the CDM Regulations is [●] of [●] or such replacement as the Client at any time appoints to fulfil that role.
Article 4: Building Regulations – Principal Designer	The Principal Designer for the purposes of the Building Regulations is [●] of [●] or such replacement as the Client at any time appoints to fulfil that role.
Article 8: The Consultant's Deeds of Collateral Warranty	<p>8.1 The Consultant shall execute as a deed and deliver to the Client within 10 Business Days of a written request from the Client a deed or deeds of collateral warranty in the form set out in Annex C to this Contract with only such amendments as the Client may approve and/or reasonably require in favour of:</p> <p>8.1.1 any freeholder or landlord of the site (where this is not the Client); and</p> <p>8.1.2 [specify any other interested parties here].</p>
Article 9: Sub-consultants, Sub-contracts and Deeds of Collateral Warranty	<p>9.2 Upon the appointment of every sub-consultant, the Consultant shall immediately upon that appointment (in respect of Article 9.2.1) and/or within 10 Business Days of a written request from the Client (in respect of Articles 9.2.2 to 9.2.[3] inclusive) deliver to the Client a deed or deeds of collateral warranty from such sub-consultant in the form set out in Annex D to this Contract, executed as deeds by the Consultant and the sub-consultant as appropriate, with only such amendments as the Client may approve and/or reasonably require in favour of:</p>

<sup>2</sup> DfE to include the text in square brackets (A) to (C) only where this form is issued as an Order (i.e. an instruction to carry out Services) and not where this form is issued as an annex to an Enquiry.

	9.2.3 the Client; 9.2.4 any freeholder or landlord of the site (where this is not the Client); and 9.2.3 [specify any other interested parties here].
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<b>Clause etc</b>	<b>Subject</b>	
Second Recital	The Consultant is appointed as	Technical advisor
Article 6	Arbitration	Do not apply – legal proceedings apply
1.1	BIM Protocol	The DfE's Information Management Requirements, which consist of the Project's Information Protocol, Exchange Information Requirements, Detailed Exchange Information Requirements, Project's Information Production Methods and Procedures, and Project's Information Standard  As set out in Schedule 2 of the Technical Advisory Services Appointment
1.1	Client's Brief <i>(State reference number and date or other identifier of the relevant document(s) in which this is set out.)</i>	[Note: Client to set out details of the Project (site, what is being built etc.) here or refer to another document containing such details]
1.1	Client's Representative <i>(as at the date of this Agreement)</i>	██████████ of Department for Education
1.1	Consultant's Representative <i>(as at the date of this Agreement)</i>	[●] of [●]
1.1	Consultant Team <i>(other than the Consultant)</i>	[Name] [Function]  Lead Consultant [●] Lead Designer [●] Contract Administrator [●]
1.1	Cost Plan <i>(State reference number and date or other identifier of the document(s) in which this is set out.)</i>	Not applicable
1.1	Key Personnel <i>(Names and functions)</i>	are as follows: [Name] [Function]
1.1	Programme <i>(State reference number and date or other identifier of the current</i>	to be agreed between the Parties, acting reasonably



	<i>(If no limit is specified, liability is unlimited.)</i>	£10,000,000 (ten million pounds) in the aggregate for asbestos and fire safety with respect to the Project
3.2.3	Contract administration – site visits  The requirements for visits	as are required in the Client's Brief or the Services or are otherwise considered necessary by the Parties (acting reasonably) for the proper delivery of the Services
3.3.1.4.2	Limits of Consultant's authority Maximum increase in overall Project cost is <i>(If no limit is specified, any increase requires Client approval.)</i>	any increase requires Client approval
3.3.1.4.2	Maximum increase per item is <i>(If no limit is specified, any increase requires Client approval.)</i>	any increase requires Client approval
8.1.1	Professional Indemnity insurance	With a limit of indemnity of £10,000,000 (ten million pounds) for any one claim or series of claims arising out of one event  but:  £10,000,000 (ten million pounds) in the aggregate for pollution and contamination  £10,000,000 (ten million pounds) in the aggregate for asbestos and fire safety
8.1.2	Public Liability insurance	With a limit of indemnity of £10,000,000 (ten million pounds) per occurrence
8.2.1	Professional Indemnity insurance – expiry of the required period of insurance is	12 years
8.2.2	Public Liability insurance – required period	Period of the Consultant's engagement
10.2	Novation  Clause 10.2 <i>(if neither entry is deleted, clause 10.2 will not apply)</i>	Does not apply
10.2	Where 10.2 applies, the form of Novation Agreement	Does not apply

	<i>(Identify the form or the document in which it is set out)</i>	
11.2	Suspension: Remobilisation – period for recommencement instructions (if other than 2 months) is	12 months
12.2	Adjudication  Nominating body – where no Adjudicator is named or where the named Adjudicator is unwilling or unable to act (whenever that is established)  <i>(Delete all but one of the asterisked choices. If the body is to be other than one of those listed, insert the name here.)</i>  <i>(If a body has not been selected from those listed here or another body chosen and inserted, the nominating body shall be one of the bodies listed opposite selected by the Party requiring the reference to adjudication)</i>	The nominating body is: The Chairman of the Technology and Construction Solicitors' Association
12.4.1	Arbitration - appointor of Arbitrator (and of any replacement)	Not used – legal proceedings apply
Part 2	Third Party Rights and Collateral Warranties	see Articles 8 and 9

Fee (Annex A of Service Terms and Conditions)	As attached below
Fee Payment Schedule (Annex A of Service Terms and Conditions)	As attached below
Services (Annex B of Service Terms and Conditions)	[Stages/Sections [0 – 6]] As set out in Schedule 2 of the Technical Advisory Services Appointment  [Note: if there any additional services that the Consultant needs to perform, which are not set out in

	Schedule 2 of the Technical Advisory Services Appointment, Client to set out here]
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- (D) [Notwithstanding that this Order may be signed underhand, the parties hereby agree that the limitation period under this Order and the Services Agreement Contract shall be twelve (12) years from the date on which the cause of action accrued. For the avoidance of doubt, section 5 of the Limitation Act 1980 does not apply to this Order and the Services Agreement Contract it forms.
- (E) Upon the expiration of twelve (12) years from the date of completion of the performance of the Services, the liability of the Consultant under this Order shall cease and determine, save in relation to any claims made by the Client against the Consultant and in respect of which proceedings have been commenced.
- (F) The Consultant shall be deemed to accept this Order on the earlier of:
  - the date on which the Consultant communicates its acceptance to the Client; or
  - the date on which the Consultant begins performance of the Services pursuant to this Order.
- (G) For and on behalf of the Client:

.....

- (H) For and on behalf of the Consultant:

.....<sup>3]</sup>

<sup>3</sup> DfE to include the text in square brackets (D) to (H) only where this form is issued as an Order (i.e. an instruction to carry out Services) and not where this form is issued as an annex to an Enquiry.

**Annex A**  
**Fee and Other Payments**

**1 The Fee**

1.1 The Fee is:

the fixed sum of £[●]

**2 Payment of Fee etc.**

The Fee shall be payable in accordance with section 7 in the following amounts or percentages:

*[monthly invoice schedule]*

*[Percentage of Fee or amount]*

Instalments of not less than one month beginning one month after the Consultant begins performing the Services and in amounts commensurate with such part of the Services as have been carried out as at the point of such instalment.

**3 Incentive Payments**

There are no Incentive Payments

**4 Optional Services**

The following comprise the Optional Services which, where required, shall be for the following amounts or calculated and charged on the following basis:

*[Optional Service]*

*[amount][calculated on the basis of the Fee Schedule and Rate Card appended to the Technical Advisory Services Appointment]*

*[OR]*

*[There are no Optional Services]*

**5 Applicable rates**

The rate for any necessary extension of the Services work (and for the purposes of any apportionment under clause 11.6.2.1) are as set out in the Fee Schedule and Rate Card appended to the Technical Advisory Services Appointment

**6 Additional Services**

The Fee Schedule and Rate Card shall apply for the purposes of any Additional Services instructed or other Changes within clause 6.3

**7 Reimbursable Expenses**

There are no Reimbursable Expenses and the Consultant is not entitled to claim any expenses. The delivery of all Services is included within the agreed Fee.

### **8 Supporting documents and accounting records**

Each invoice that includes any of the following types of charge or expenditure should be accompanied by the following documents:

<i>[Charge/Expenditure]</i>	<i>[Documentation]</i>
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and shall follow the Client's Pre-Payment Assurance process as referenced in clause 7.5.

### **9 Consultant's designs – additional usage**

Not used – see amended clause 9.

### **10 VAT**

All amounts and rates shown above are exclusive of VAT.

**SCHEDULE 4 OF TECHNICAL ADVISORY SERVICES APPOINTMENT**

**Financial Distress**

## FINANCIAL DISTRESS AND CORPORATE RESOLUTION PLANNING SCHEDULE

### Introduction

Please note the Client's practice is aligned with the Assessing and Monitoring of the Economic and Financial Standing of Bidders and Suppliers Guidance, including any amendments or replacement thereof (**Guidance**). Methodology and ratios may be subject to change within the lifetime of the Technical Advisory Services Appointment to align with changes to applicable PPNs and/or the Guidance, the Client's policy or any technical guidance (or otherwise) that may be issued from time to time in relation to relevant legislation. The Guidance can be found here [EFS\\_Guidance\\_Note.pdf](#) ([publishing.service.gov.uk](http://publishing.service.gov.uk))

The Client uses the Financial Viability Risk Assessment Tool for the purpose of supplier financial reporting, collecting of financial information required and in support of financial assessment. Re-assessment will occur annually or more frequently in the circumstances set out in this Schedule. Re-assessment may also occur prior to entering into any Order. The Client reserves the right at any time to require additional/supporting information in support of financial assessment and review.

Credit Scores and Credit Ratings are recognised as indicators of financial health and risk and are used in support of the monitoring and assessment of supplier financial health and risk, and any change/deterioration may result in the suspension of the placing of Order(s) pending further investigation in accordance with this Schedule.

### Monitoring

The Client has established assessment, monitoring and reporting arrangements in place for the monitoring of supplier financial health and risk and in identifying risk and mitigations.

This monitoring and assessment also applies to the Consultant and/or FDE Group (as applicable) as set out in this Schedule.

In respect of its supply chain, the Consultant shall:

- a) exercise reasonable due care and diligence in accordance with Good Industry Practice in the selection and ongoing monitoring (including financial health and capacity) of its supply chain;
- b) provide details and supporting evidence of its compliance with this clause on request by the Client; and,
- c) without prejudice to the generality of the sub-clause above the Consultant shall ensure that it shall not appoint any consultant or sub-consultant in its supply chain who is listed on the Debarment List in accordance with the Procurement Act, and shall replace any such consultant or sub-consultant if the Consultant becomes aware that they are listed on the Debarment List unless the Client agrees in the circumstances that is not required.

Following assessment on appointment, Consultant financial reporting is at least annual, and monitoring, to include that of Credit Scores, is ongoing.

## **Definitions**

In this Schedule, the following definitions shall apply (in addition to those contained within the Technical Advisory Services Appointment):

<b>"Accounting Reference Date"</b>	means in each year the date to which the Consultant prepares its annual audited financial statements;
<b>"Annual Revenue"</b>	means the audited consolidated aggregate revenue reported by the Consultant or, as appropriate, the Consultant's Group in its most recent published accounts, subject to the following methodology:  (a) figures for accounting periods of other than twelve (12) months should be scaled pro rata to produce a proforma figure for a twelve (12) month period; and  (b) where the Consultant reports in a foreign currency, revenue should be converted to British Pound Sterling at the closing exchange rate on the Accounting Reference Date;
<b>"Board"</b>	means the Consultant's board of directors;
<b>"Board Confirmation"</b>	means written confirmation from the Board in accordance with Paragraph 7 and Annex 2 of Part A of this Schedule;
<b>"Cabinet Office Markets, Sourcing and Suppliers Team"</b>	means the UK Government's team responsible for managing the relationship between government and its Strategic Suppliers, or any replacement or successor body carrying out the same function;
<b>"Consultant('s) Group"</b>	means the Consultant (its Company), its Immediate and Ultimate Parent Company, any and all subsidiaries of the Parent as those expressions are defined in Section 1162 of the Companies Act 2006;
<b>"Control"</b>	the possession by a person, directly or indirectly, of the power to direct or cause the direction of the management and policies of the other person (whether through the ownership of voting shares, by contract or otherwise);
<b>"Corporate Change Event"</b>	means:  any change of Control of the Consultant or a Parent of the

Consultant;

any change of Control of any member of the FDE Group which, in the reasonable opinion of the Relevant Buyer, could have a material adverse effect on the Technical Advisory Services Appointment or service delivery;

any change to the business of the Consultant or any member of the Group which, in the reasonable opinion of the Relevant Buyer, could have a material adverse effect on the Technical Advisory Services Appointment, Order(s) and/or service delivery;

payment of dividends by the Consultant or the ultimate Parent of the Consultant's Group exceeding twenty five percent (25%) of the Net Asset Value of the Consultant or the ultimate Parent of the Consultant's Group respectively in any twelve (12) month period;

an order is made or an effective resolution is passed for the winding up of any member of the Consultant's Group;

any member of the Consultant's Group stopping payment of its debts generally or becoming unable to pay its debts within the meaning of section 123(1) of the Insolvency Act 1986 or any member of the Consultant's Group ceasing to carry on all or substantially all its business, or any compromise, composition, arrangement or agreement being made with creditors of any member of the Consultant's Group;

the appointment of a receiver, administrative receiver or administrator in respect of, or over all, or a material part of the undertaking or assets of any member of the Consultant's Group; and/or

any process or events with an effect analogous to those Corporate Change Events as described in the above paragraphs occurring to a member of the Consultant's Group in a jurisdiction outside England and Wales;

**"Corporate Resolution Planning (CRP)"**

means the Corporate Resolution information that the Consultant is required to provide to the Client as set out in Part B of this Schedule;

**"Corporate Resolvability Assessment (Structural Review)"**

means part of the CRP Information relating to the Consultant's Group to be provided by the Consultant in accordance with Paragraph 2 and Annex 2 of Part B this Schedule;

<b>"Credit Rating"</b>	a credit rating level relating to long term credit ratings issued by credit rating agencies (e.g. Standard and Poors or Moody's);
<b>"Credit Score"</b>	A credit score issued by a credit scoring agency such as Dun and Bradstreet or Company Watch;
<b>"Critical Contract"</b>	Any Order which the Client considers is a "Gold" Contract using the Government Commercial Function contract tiering tool and guidance, or any replacement thereof;
<b>"CRP Information"</b>	means the Corporate Resolution Planning information, comprising the:  Exposure Information (Contracts List);  Corporate Resolvability Assessment (Structural Review); and  Financial Information and Commentary
<b>"Effective Date"</b>	means the date of this Technical Advisory Services Appointment;
<b>"Exposure Information (Contracts List)"</b>	means part of the CRP Information relating to the Consultant's Group to be provided by the Consultant in accordance with Paragraph 2 and Annex 1 of Part B of this Schedule;
<b>"FDE Group"</b>	means the Consultant, and its Parent, any other Guarantor and any Key Consultant or Key Sub-consultant, any associated person of the Consultant, and, where the Consultant is a consortium, any member of the consortium;
<b>"Financial Distress Event"</b>	means any of the events listed at Paragraph 2 of Part A of this Schedule;
<b>"Financial Distress Remediation Plan"</b>	means a plan setting out how the Consultant shall ensure the continued performance and service delivery activity in accordance with this Technical Advisory Services Appointment or Orders placed in the event that a Financial Distress Event occurs. This plan should include what the Client would need to put in place to ensure performance and delivery of the Technical Advisory Services Appointment and services contracted in accordance with this Technical Advisory Services Appointment up to and including any Insolvency Event in respect of the relevant Consultant Group

	entity, and where applicable make reference to Corporate Resolution Planning (CRP) and information;
<b>"Financial Indicators"</b>	in respect of the FDE Group, means each of the financial indicators set out at Paragraph 5 of Part A of this Schedule;
<b>"Financial Information and Commentary"</b>	means part of the CRP Information relating to the Consultant Group to be provided by the Consultant in accordance with Annex 3 of Part B of this Schedule;
<b>"Financial Metrics" and "Financial Metric Thresholds"</b>	means the metrics and thresholds for them set out at Paragraph 5 of this Schedule;
<b>"Financial Viability Risk Assessment Tool" or "FVRAT"</b>	means the tool submitted by the Consultant at the selection [appointment] stage when bidding to be appointed to this Technical Advisory Services Appointment and as revised thereafter;
<b>"Guarantor"</b>	[●]
<b>"Key Consultant or Key Sub-consultant"</b>	any Key Consultant or Key Sub-consultant listed in the Consultant's response to any invitation to bid and any supply chain member that the Consultant proposes who will deliver the whole or critical (in the opinion of the Client) part or is delivering at least 20% of any agreement or service either by value or key contractual activity;
<b>"Parent"</b>	the Consultant's "parent undertaking", as such expression is defined in section 1162 of the Companies Act 2006;
<b>"Public Sector Dependent Supplier"</b>	means a Supplier (referred to in this Technical Advisory Services Appointment as the "Consultant") which is a member of a group with a total annual revenue in excess of £50 million of which more than 50% is derived from the UK public sector or hold critical Government contracts (which are those which are categorised using the Cabinet Office Contract Tiering Tool as "Gold" contracts);
<b>"Registrar of Companies"</b>	Also known as Companies House;
<b>"Relevant Buyer" or "Relevant Buyers"</b>	means the Client and the Cabinet Office Markets, Sourcing and Suppliers Team or, where the Consultant is a Strategic Supplier, the Cabinet Office Markets, Sourcing and Suppliers Team;
<b>"Strategic Suppliers"</b>	means those suppliers to government listed at <a href="https://www.gov.uk/government/publications/strategic-suppliers">https://www.gov.uk/government/publications/strategic-suppliers</a> ;

**"Supplier"**

means the Consultant;

**"UK Public Sector Business"**

means any goods, service or works provision to UK public sector bodies, including Crown Bodies and their arm's length bodies and agencies, non-departmental public bodies, NHS bodies, local authorities, health bodies, police, fire and rescue, education bodies and devolved administrations.

## Part A – Financial Distress Assessment, Monitoring and Reporting

1. Warranties and Duty to Notify
  - 1.1 The Consultant warrants and represents to the Client for the benefit of the Client that:
    - 1.1.1 as at the Effective Date the financial position or, as appropriate, the financial performance of the FDE Group (as applicable) satisfies the Financial Metric Thresholds;
    - 1.1.2 reasonable due care and diligence will be exercised, in the selection of all relevant Consultant personnel and other persons (including Key Consultants and Key Sub-consultants).
  - 1.2 The Consultant shall promptly notify (or shall procure that its auditors promptly notify) the Client in writing if there is any deterioration in Credit Score and/or downgrade in the Credit Rating issued by any scoring or rating agency for any entity in the Consultant's Group or FDE Group (as applicable) (and in any event within 5 Business Days of the occurrence of the downgrade).
  - 1.3 The Consultant shall:
    - 1.3.1 regularly monitor the Credit Scores and Credit Ratings (where applicable) of each entity in the Consultant's Group or FDE Group (as applicable);
    - 1.3.2 using the Financial Viability Risk Assessment Tool, monitor and report on the Financial Indicators for each entity in the Consultant's Group or FDE Group (as applicable) against the Financial Metric Thresholds at least at the frequency set out for each at Paragraph 5 of this Part A (where specified) and in any event,
      - (a) on a regular basis and no less than once a year within 30 days after the Accounting Reference Date;
      - (b) following a Corporate Change Event or Financial Distress Event;
      - (c) as part of the Order process or where the Client deems it appropriate to do so;
    - 1.3.3 provide further and/or supporting information within 10 Business Days of any request from the Client, this may include (without limitation) the current cash position, a cash flow statement with supporting pipeline information; a forecast or management accounts; financial information/evidence as appropriate;
    - 1.3.4 promptly notify (or shall procure that its auditors promptly notify) the Client of any intent to restate the figures as at the last published accounts as soon as the requirement becomes known;
    - 1.3.5 promptly notify (or shall procure that its auditors promptly notify) the Client in writing following the occurrence of a Financial Distress Event or any fact, circumstance or matter which could cause a Financial Distress Event (and in any event, ensure that

such notification is made within 10 Business Days of the date on which the Consultant first becomes aware of the Financial Distress Event or the fact, circumstance or matter which could cause a Financial Distress Event); and

- 1.3.6 promptly notify the Client, in writing, of any Corporate Change Event that may impact on the Consultant's ability to perform and/or deliver any services procured in accordance with this Technical Advisory Services Appointment or any Orders placed or to be placed, and/or its economic and financial standing.
- 1.4 Not used
- 1.5 Each report (Financial Viability Risk Assessment) submitted by the Consultant pursuant to Paragraph 1.3.2 shall:
  - 1.5.1 be a single report with separate sections for each of the Consultant's Group or FDE Group entities (as applicable);
  - 1.5.2 contain a sufficient level of information to enable the Client to verify the calculations that have been made in respect of the Financial Indicators;
  - 1.5.3 include key financial and other supporting information (including any accounts data that has been relied on) as separate annexes; and,
  - 1.5.4 be based on the audited accounts for the date or period on which the Financial Indicator is based or, where the Financial Indicator is not linked to an accounting period or an accounting reference date, on unaudited management accounts prepared in accordance with their normal timetable.
- 2. Financial Distress Events
  - 2.1 The following shall be Financial Distress Events:
    - 2.1.1 the Credit Rating of a FDE Group deteriorating below the Credit Rating of that entity as at the date the Consultant submitted a formal response in the selection [appointment] process such that the Client (acting reasonably) considers should be treated as a Financial Distress Event;
    - 2.1.2 the Credit Score level of an FDE Group entity deteriorating below the Credit Score of that entity as at the date the Consultant submitted a formal response to any selection [appointment] process such that the Client (acting reasonably) considers should be treated as a Financial Distress Event (which may include an FDE Group entity being assessed by a credit scoring agency as being of high or higher than average risk);
    - 2.1.3 any of the Financial Indicators and Financial Metrics set out at Paragraph 5 of this Part A for any of the Consultant's Group entities failing to meet the required Financial Indicator or Metric Threshold and/or deteriorating below those of that entity as at the date the Consultant submitted a formal response in a selection [appointment] process such that the Client (acting reasonably) considers should be

treated as an indicator of financial distress and a Financial Distress Event. Note these thresholds may change from time to time in accordance with the over-arching guidance and changes in policy;

- 2.1.4 a Consultant Group entity issuing a profits warning to a stock exchange or making any other public announcement, in each case about a material deterioration in its financial position or prospects;
- 2.1.5 there being a public investigation into improper financial accounting and reporting, suspected fraud or any other impropriety of a Consultant Group entity;
- 2.1.6 a Consultant Group entity committing a material breach of covenant to its lenders;
- 2.1.7 a Key Consultant or Key Sub-consultant appointed in respect of this Technical Advisory Services Appointment or any Order placed notifying the Client that the Consultant has not satisfied any material sums properly due under a specified invoice and this is not subject to a genuine dispute;
- 2.1.8 any Consultant Group entity extends the filing period for filing its accounts with the Registrar of Companies so that the filing period ends more than 9 months after its accounting reference date without an explanation to the Client which the Client (acting reasonably) considers to be adequate;
- 2.1.9 any Consultant Group entity is late to file its annual accounts without a public notification or an explanation to the Client which the Client, acting reasonably, considers to be adequate;
- 2.1.10 the directors and/or external auditors of any Consultant Group entity conclude that a material uncertainty exists in relation to that Consultant Group entity's going concern in the annual report including in a reasonable but plausible downside scenario. This includes, but is not limited to, commentary about liquidity and trading prospects in the reports from directors or external auditors;
- 2.1.11 the Client becomes aware that Insolvency (as defined in the Service Terms and Conditions) proceedings have been initiated in respect of any Consultant Group entity, including any application to the Court for Administration, Liquidation and/or winding up petition;
- 2.1.12 an Insolvency Event occurs in relation to a Consultant Group entity; or
- 2.1.13 any of the following:
  - (a) any Consultant Group entity makes a public announcement which contains adverse commentary with regards to that Consultant Group entity's liquidity and trading and trading prospects, such as but not limited to, a profit warning or ability to trade as a going concern;
  - (b) commencement of any litigation against a Consultant Group entity with respect to financial indebtedness greater than £5m or obligations under a

service contract with a total contract value greater than £5m;

- (c) non-payment by a Consultant Group entity of any financial indebtedness;
- (d) the Consultant stops payment of its debts or ceases or threatens to cease to carry on its business or substantially the whole of its business or is unable to pay its debts as they fall due or is deemed unable to pay its debts including for the avoidance of doubt a failure to pay any member of the Project Team (as defined in the Service Terms and Conditions) or any Key Consultant or Key Sub-consultant or any Consultant or sub-consultant of the Consultant (of any tier) sums due and payable under such appointment or subcontracts in accordance with their terms;
- (e) any financial indebtedness of a Consultant Group entity becoming due as a result of an event of default;
- (f) the cancellation or suspension of any financial indebtedness in respect of a Consultant Group entity; or
- (g) the external auditor of a Consultant Group entity expressing a qualified opinion on, or including an emphasis of matter in, its opinion on the statutory accounts of that Consultant Group entity;

in each case which the Client reasonably believes (or would be likely reasonably to believe) could directly impact on the continued performance and delivery in accordance with this Technical Advisory Services Appointment and/or any Orders placed by the Client (an **Insolvency Event**);

- 2.1.14 the Client otherwise has concerns about the Consultant's financial health, risk and/or capacity to deliver and the Consultant is unable to satisfy the Client as to its ability to deliver current or future services;
- 2.1.15 the circumstances set out in Paragraph 5.1.2 of Part A of this Schedule apply, or
- 2.1.16 the Consultant's turnover fails to meet the minimum turnover requirement as set out at selection [appointment] or turnover Ratio Threshold set out in Paragraph 5 of this Part A below.

### 3. Consequences of Financial Distress Events

- 3.1 Where the Client is of the opinion that a Financial Distress Event exists in advance of the Consultant engaging with the Client on this the Client reserves the right to suspend the placing of any further Order(s) until such time as a Financial Distress Remediation Plan is agreed;
- 3.2 Immediately upon notification by the Consultant of a Financial Distress Event (or if the Client becomes aware of a Financial Distress Event without notification and brings the event to the attention of the Consultant), the Consultant shall have the obligations and the Client shall have the rights and remedies as set out in this Paragraph 3.

3.3 In the event of a late or non-payment of a Key Consultant or Key Sub-consultant pursuant to Paragraph 2.1.7, the Client shall not exercise any of its rights or remedies under Paragraph 3.4 without first giving the Consultant 10 Business Days to:

3.3.1 rectify such late or non-payment; or

3.3.2 demonstrate to the Client's reasonable satisfaction that there is a valid reason for late or non-payment.

3.4 The Consultant shall (and shall procure that any Parent and/or Guarantor):

3.4.1 at the request of the Client, meet the Client as soon as reasonably practicable (and in any event within 3 Business Days of the initial notification (or awareness) of the Financial Distress Event or such other period as the Client may permit and notify to the Consultant in writing) to review the effect of the Financial Distress Event on the continued performance and delivery in accordance with this Technical Advisory Services Appointment and/or any Orders placed; and

3.4.2 where the Client reasonably believes (taking into account the discussions and any representations made under Paragraph 3.4.1 that the Financial Distress Event could impact on the continued performance and delivery in accordance with this Technical Advisory Services Appointment and/or any Orders placed:

(a) submit to the Client for its approval, a draft Financial Distress Remediation Plan as soon as reasonably practicable (and in any event, within 10 Business Days of the initial notification (or awareness) of the Financial Distress Event or such other period as the Client may permit and notify to the Consultant in writing); and

(b) to the extent that it is legally permitted to do so and subject to Paragraph 33.8, provide such information relating to the FDE Group (and/or (if relevant to the Financial Distress Event or Client's concerns) any relevant Key Consultant or Key Sub-consultant) as the Client may reasonably require in order to understand the risk to the Project Services, which may include the current cash position, forecasts in relation to cash flow, orders and profits, detail of public sector contracts held and/or that of Key Consultants and/or Key Sub-consultants, supply chain information, and details of financial measures being considered to mitigate the impact of the Financial Distress Event; and,

(c) to the extent that it is legally permitted to do so and subject to Paragraph 3.8, provide such information relating to the FDE Group (and/or (if relevant to the Financial Distress Event or Client's concerns) any relevant Key Consultant and/or Key Sub-consultant) as the Client may reasonably require in order to mitigate the risk to the Project Services;

(d) provide, if not already provided to the Client, copy insurance certificates, appointments, collateral warranties and Parent Company Guarantees in respect of Consultants and sub-consultants under all Order(s) placed by

the Client.

- 3.5 The Client shall not withhold its approval of a draft Financial Distress Remediation Plan unreasonably. If the Client does not approve the draft Financial Distress Remediation Plan, it shall inform the Consultant of its reasons and the Consultant shall take those reasons into account in the preparation of a further draft Financial Distress Remediation Plan, which shall be resubmitted to the Client within 5 Business Days of the rejection of the first draft. This process shall be repeated until the Financial Distress Remediation Plan is either:
- 3.5.1 approved by the Client;
  - 3.5.2 referred, by notice sent by either party to the other party explaining why it thinks the Financial Distress Remediation Plan has not been approved, to commercial negotiation led by senior representatives who have Client to agree the Financial Distress Remediation Plan to be held within 28 days of the date of the notice; or
  - 3.5.3 finally rejected by the Client.
- 3.6 Following approval of the Financial Distress Remediation Plan by the Client, the Consultant shall:
- 3.6.1 on a regular basis (which shall not be less than fortnightly):
    - (a) review and make any updates to the Financial Distress Remediation Plan as the Consultant may deem reasonably necessary and/or as may be reasonably requested by the Client, so that the plan remains adequate, up to date and ensures the continued performance and delivery of the Consultant's obligations in accordance with this Technical Advisory Services Appointment and/or any Orders placed by the Client; and
    - (b) provide a written report to the Client setting out its progress against the Financial Distress Remediation Plan, the reasons for any changes made to the Financial Distress Remediation Plan by the Consultant and/or the reasons why the Consultant may have decided not to make any changes;
  - 3.6.2 where updates are made to the Financial Distress Remediation Plan in accordance with Paragraph 3.6.1, submit an updated Financial Distress Remediation Plan to the Client for its approval, and the provisions of Paragraphs 3.5 and 3.6.1 shall apply to the review and approval process for the updated Financial Distress Remediation Plan; and
  - 3.6.3 comply with the Financial Distress Remediation Plan (including any updated Financial Distress Remediation Plan) and ensure that it achieves the financial and performance requirements set out in the Financial Distress Remediation Plan.
- 3.7 Where the Consultant reasonably believes that the relevant Financial Distress Event under Paragraph 2 (or the circumstance or matter which has caused or otherwise led to it) has been remedied and no longer exists, it shall notify the Client and the Parties may agree that the Consultant shall be relieved of its obligations under Paragraph 3.6.

3.8 The Consultant shall use reasonable endeavours to put in place the necessary measures to ensure that the information specified at Paragraph 3.4.2(b) is available when required and on request from the Client and within reasonable timescales. Such measures may include:

- 3.8.1 obtaining in advance written Client from Key Consultants and Key Sub-consultants, the Guarantor and/or the Parent authorising the disclosure of the information to the Client and/or entering into confidentiality agreements which permit disclosure;
- 3.8.2 agreeing in advance with the Client, the Guarantor and/or the Parent a form of confidentiality agreement to be entered by the relevant parties to enable the disclosure of the information to the Client;
- 3.8.3 putting in place any other reasonable arrangements to enable the information to be lawfully disclosed to the Client (which may include making price sensitive information available to Client nominated personnel through confidential arrangements, subject to their consent); and
- 3.8.4 disclosing the information to the fullest extent that it is lawfully entitled to do so, including through the use of redaction, anonymisation and any other techniques to permit disclosure of the information without breaching a duty of confidentiality.

Paragraphs 3.8.2 to 3.8.4 shall not apply to the information required under Paragraph 3.4.2(d) of this part of this Schedule, or any information in respect of this Technical Advisory Services Appointment and/or any Order(s) placed.

3.9 Failure to provide financial information and/or a Financial Distress Remediation Plan when requested to do so may result in suspension from being considered for any further Order(s) being placed.

3.10 The Client reserves the right to suspend the placing of any further Order(s) whilst remediation planning is underway and/or whilst a Financial Distress Remediation Plan is in place, and/or for a reasonable period thereafter once the Consultant has achieved the financial and performance requirements set out in the Financial Distress Remediation Plan.

#### 4. Business Continuity and Corporate Resolution Planning

**Where a Consultant is or may be regarded as a Public Sector Dependent Supplier and/or holds Critical Contracts it may be required to engage in Corporate Resolution Planning in accordance with Part B of this Schedule.**

#### 5. Financial Metrics and Indicators of Financial Health

5.1.1 Subject to the calculation methodology set out at Annex 1 of this part of Schedule, the Financial Indicators, Financial Metrics and the corresponding calculations and thresholds used to determine whether a Financial Distress Event may have occurred shall be as follows:

Metric	Calculation	Metric Threshold:	Monitoring and Reporting Frequency
1. Turnover Ratio	Annual revenue / estimated annual Order value	<p>&gt;2x</p> <p>1.5x – 2x would require management of Consultant capacity and mitigations (may result in the phasing or pausing of placing Orders)</p> <p>&lt;1.5x is deemed an unacceptable level of risk, if an acceptable mitigation cannot be provided and agreed the placing of further Orders will be suspended</p>	Tested and reported on an ongoing basis to include the value of Orders placed and/or to be placed.
2. Operating Margin	[Operating Margin = Operating Profit / Revenue]	<p>&gt;10%</p> <p>5% – 10 % requires mitigation and may be subject to remediation planning requirements</p> <p>&lt;5% is deemed an unacceptable level of risk, if an acceptable mitigation cannot be provided and agreed the placing of further Orders will be suspended</p>	Tested and reported yearly in arrears within 30 days of each accounting reference date based upon figures for the 12 months ending on the relevant accounting reference date*.

Metric	Calculation	Metric Threshold:	Monitoring and Reporting Frequency
<b>3. Net Debt to EBITDA Ratio</b>	Net Debt to EBITDA ratio = Net Debt / EBITDA	<p>&lt;2.5x</p> <p>2.5x -3.5x requires mitigation and may be subject to remediation planning requirements</p> <p>&gt;3.5x is deemed an unacceptable level of risk if an acceptable mitigation cannot be provided and agreed the placing of further Orders will be suspended</p>	Tested and reported yearly in arrears within 30 days of each accounting reference date based upon figures for the 12 months ending on the relevant accounting reference date*.
<b>4. Net Debt + Net Pension Deficit to EBITDA ratio</b>	Net Debt + Net Pension Deficit to EBITDA Ratio = (Net Debt + Net Pension Deficit) / EBITDA	<p>&lt;4x</p> <p>4x – 5x requires mitigation and may be subject to remediation planning requirements</p> <p>&gt;5x is deemed an unacceptable level of risk if an acceptable mitigation cannot be provided and agreed the placing of further Orders will be suspended</p>	Tested and reported yearly in arrears within 30 days of each accounting reference date based upon figures for the 12 months ending on the relevant accounting reference date*.

<b>Metric</b>	<b>Calculation</b>	<b>Metric Threshold:</b>	<b>Monitoring and Reporting Frequency</b>
<b>5. Net Interest Paid Cover</b>	Net Interest Paid Cover = Earnings Before Interest and Tax / Net Interest Paid	<p>&gt;4.5x</p> <p>3x – 4.5x requires mitigation and may be subject to remediation planning requirements</p> <p>&lt;3x is deemed an unacceptable level of risk, if an acceptable mitigation cannot be provided and agreed the placing of further Orders will be suspended</p>	Tested and reported yearly in arrears within 30 days of each accounting reference date based upon figures for the 12 months ending on the relevant accounting reference date*.
<b>6. Acid Ratio</b>	Acid Ratio = (Current Assets – Inventories) / Current Liabilities]	<p>&gt;1x</p> <p>0.8x – 1x requires mitigation and may be subject to remediation planning requirements</p> <p>&lt;0.8x is deemed an unacceptable level of risk, if an acceptable mitigation cannot be provided and agreed the placing of further Orders will be suspended</p>	Tested and reported yearly in arrears within 30 days of each accounting reference date based upon figures for the 12 months ending on the relevant accounting reference date*.
<b>7. Net Asset value</b>	Net Asset Value = Net Assets	<p>&gt; £0</p> <p>&lt; £0 is deemed an unacceptable level of risk, if an acceptable mitigation cannot be provided and agreed the placing of further Orders will be suspended</p>	Tested and reported yearly in arrears within 30 days of each accounting reference date based upon figures for the 12 months ending on the relevant accounting reference date*.

<b>Metric</b>	<b>Calculation</b>	<b>Metric Threshold:</b>	<b>Monitoring and Reporting Frequency</b>
<b>8.Group Exposure Ratio</b> (where applicable)	Group Exposure / Gross Assets	<p>&lt;25%</p> <p>25% - 50% requires mitigation and may be subject to remediation planning requirements</p> <p>&gt;50% is deemed an unacceptable level of risk, if an acceptable mitigation cannot be provided and agreed the placing of further Orders will be suspended</p>	Tested and reported yearly in arrears within 30 days of each accounting reference date based upon figures for the 12 months ending on the relevant accounting reference date.

\* Half year end reporting is required if a Consultant is deemed a critical or strategic supplier delivering to the Client (usually those delivering a substantial number and/or value of Orders at any given time).

Annex 1 of this part of this Schedule sets out the calculation methodology to be used in the calculation of each Metric.

5.1.2 The Consultant's Financial Viability Risk Assessment (FVRA) forms the basis of ongoing assessment. Where mitigations have been accepted any deterioration in RAG rating of these metrics or should the Consultant be no longer able to satisfy any mitigations agreed, across any of these areas, this is treated as if a Financial Distress Event had occurred.

5.1.3 In addition to the Financial Metrics set out in 5.1.1 above the Client will take a view on cash and cash flow risk primarily on:

- (a) cash and cash equivalents reported, together with;
- (b) any recognised and/or known indicators of cash flow risk, for example reports of late payments to the supply chain or winding up petitions filed with the Courts;
- (c) Operating profit;
- (d) Tangible Net Worth

5.2 Monitoring of indicators of financial health and risk

5.2.1 The Client monitors recognised indicators of financial health and risk, as an

example, those provided by Dun & Bradstreet and Company Watch;

5.2.2 Any deterioration in these indicators that falls below those reported as part of any selection [appointment] process would trigger a re-assessment of the Consultant's financial health and risk;

5.2.3 Any indicator that falls within the ranges below (or any replacement thereof notified by the Client) will be treated as a Financial Distress Event;

(a) Dun & Bradstreet Failure Score of <51 being regarded as higher than average risk;

(b) Company Watch H-Score <36, being just above the warning zone (high risk) RAG rated as Amber.

These ranges are aligned with the risk rating as assessed by Dun & Bradstreet and Company Watch respectively and may be subject to change.

## 6. Termination and Suspension Rights

6.1 The Client shall be entitled to terminate this Technical Advisory Services Appointment if:

6.1.1 the Consultant fails to notify the Client of a Financial Distress Event in accordance with Paragraph 1.3;

6.1.2 the Consultant fails to comply with any part of Paragraph 1.3;

6.1.3 the Client finally rejects a Financial Distress Remediation Plan (or any updated Financial Distress Remediation Plan) in accordance with Paragraph 3.5; and/or

6.1.4 the Consultant fails to comply with the terms of the Financial Distress Remediation Plan (or any updated Financial Distress Remediation Plan) in accordance with Paragraph 3.6.3.

6.2 The Client shall be entitled to suspend this Technical Advisory Services Appointment for the same grounds as set out above at Paragraphs 6.1.1 to 6.1.4 for such duration until the Client is satisfied that the applicable ground(s) no longer apply. The right to suspend is in addition to and not a substitution to the right to terminate at Paragraph 6.1 of this Schedule.

## 7. Board Confirmation

7.1 Subject to Paragraph 7.4 of this Schedule, the Consultant shall, within 30 days after each Accounting Reference Date or within 12 months of the previous Board Confirmation (whichever is the earlier), and following any Corporate Change Event, provide a Board Confirmation to the Client in the form set out at Annex 2 of this part of this Schedule.

7.2 The Consultant shall ensure that in its preparation of the Board Confirmation it exercises due care and diligence and has made reasonable enquiry of all relevant Consultant personnel and

other persons as is reasonably necessary to understand and confirm the position.

- 7.3 In respect of the first Board Confirmation to be provided under this Technical Advisory Services Appointment and any Orders placed, the Consultant shall provide the Board Confirmation within 12 months of the Effective Date if earlier than the timescale for submission set out in Paragraph 7.1 of this Schedule.
- 7.4 Where the Consultant is unable to provide a Board Confirmation in accordance with Paragraphs 7.1 to 7.3 of this Schedule due to the occurrence of a Financial Distress Event or knowledge of subsisting matters which could reasonably be expected to cause a Financial Distress Event, it will be sufficient for the Consultant to submit in place of the Board Confirmation, a statement from the Board to the Client (and where the Consultant is a Strategic Supplier, the Consultant shall send a copy of the statement to the Cabinet Office Markets, Sourcing and Suppliers Team) setting out full details of any Financial Distress Events that have occurred and/or the matters which could reasonably be expected to cause a Financial Distress Event.

## Annex 1: Calculation Methodology for Financial Metrics and Thresholds

The Consultant shall ensure that it uses the following general and specific methodologies for calculating the Financial Indicators against the Financial Metric Thresholds:

### General methodology

**Terminology:** The terms referred to in this Annex 1 are those used by UK companies in their financial statements. Where the entity is not a UK company, the corresponding items should be used even if the terminology is slightly different (for example a charity would refer to a surplus or deficit rather than a profit or loss).

**Groups:** Where the entity is the holding company of a group and prepares consolidated financial statements, the consolidated figures should be used.

**Foreign currency conversion:** Figures denominated in foreign currencies should be converted at the exchange rate in force at the relevant date for which the Metric is being calculated.

**Treatment of non-underlying items:** Financial Indicators should be based on the figures in the financial statements before adjusting for non-underlying items.

### Specific Methodology

Metric	Specific Methodology
<p><b>2. Operating Margin</b></p>	<p>The elements used to calculate the Operating Margin should be shown on the face of the Income Statement in a standard set of financial statements.</p> <p>Figures for Operating Profit and Revenue should exclude the entity's share of the results of any joint ventures or Associates.</p> <p>Where an entity has an operating loss (i.e. where the operating profit is negative), Operating Profit should be taken to be zero.</p>
<p><b>3. Net Debt to EBITDA Ratio</b></p>	<p>"Net Debt" = Bank overdrafts + Loans and borrowings + Finance leases + Deferred consideration payable – Cash and cash equivalents</p> <p>"EBITDA" = Operating profit + Depreciation charge + Amortisation charge</p> <p>The majority of the elements used to calculate the Net Debt to EBITDA Ratio should be shown on the face of the Balance Sheet, Income statement and Statement of Cash Flows in a standard set of financial statements but will otherwise be found in the notes to the financial statements.</p> <p><b>Net Debt:</b> The elements of Net Debt may be described slightly differently and should be found either on the face of the Balance Sheet or in the relevant note to the financial statements. All interest bearing liabilities (other than retirement benefit obligations) should be included as borrowings as should, where</p>

Metric	Specific Methodology
	<p>disclosed, any liabilities (less any assets) in respect of any hedges designated as linked to borrowings (but not non-designated hedges). Borrowings should also include balances owed to other group members.</p> <p>Deferred consideration payable should be included in Net Debt despite typically being non-interest bearing.</p> <p>Cash and cash equivalents should include short-term financial investments shown in current assets.</p> <p>Where Net debt is negative (i.e. an entity has net cash), the relevant Financial Metric Threshold should be treated as having been met.</p> <p><b>EBITDA:</b> Operating profit should be shown on the face of the Income Statement and, for the purposes of calculating this Financial Indicator, should include the entity's share of the results of any joint ventures or Associates. The depreciation and amortisation charges for the period may be found on the face of the Statement of Cash Flows or in a Note to the Accounts. Where EBITDA is negative, the relevant Financial Metric Threshold should be treated as not having been met (unless Net Debt is also negative, in which case the relevant Financial Metric Threshold should be treated as having been met).</p>
<p><b>4. Net Debt + Net Pension Deficit to EBITDA ratio</b></p>	<p><b>"Net Debt"</b> = Bank overdrafts + Loans and borrowings + Finance leases + Deferred consideration payable – Cash and cash equivalents</p> <p><b>"Net Pension Deficit"</b> = Retirement Benefit Obligations – Retirement Benefit Assets</p> <p><b>"EBITDA"</b> = Operating profit + Depreciation charge + Amortisation charge</p> <p>The majority of the elements used to calculate the Net Debt + Net Pension Deficit to EBITDA Ratio should be shown on the face of the Balance sheet, Income statement and Statement of Cash Flows in a standard set of financial statements but will otherwise be found in the notes to the financial statements.</p> <p><b>Net Debt:</b> The elements of Net Debt may be described slightly differently and should be found either on the face of the Balance Sheet or in the relevant note to the financial statements. All interest bearing liabilities (other than retirement benefit obligations) should be included as borrowings as should, where disclosed, any liabilities (less any assets) in respect of any hedges designated as linked to borrowings (but <b>not</b> non-designated hedges). Borrowings should also include balances owed to other group members.</p>

Metric	Specific Methodology
	<p>Deferred consideration payable should be included in Net Debt despite typically being non-interest bearing.</p> <p>Cash and cash equivalents should include short-term financial investments shown in current assets.</p> <p><b>Net Pension Deficit:</b> Retirement Benefit Obligations and Retirement Benefit Assets may be shown on the face of the Balance Sheet or in the notes to the financial statements. They may also be described as pension benefits / obligations, post-employment obligations or other similar terms.</p> <p>Where 'Net Debt + Net Pension Deficit' is negative, the relevant Financial Metric Threshold should be treated as having been met.</p> <p><b>EBITDA:</b> Operating profit should be shown on the face of the Income Statement and, for the purposes of calculating this Financial Indicator, should include the entity's share of the results of any joint ventures or Associates.</p> <p>The depreciation and amortisation charges for the period may be found on the face of the Statement of Cash Flows or in a Note to the Accounts.</p> <p>Where EBITDA is negative, the relevant Financial Metric Threshold should be treated as not having been met (unless 'Net Debt + Net Pension Deficit' is also negative, in which case the relevant Financial Metric Threshold should be regarded as having been met).</p>
<b>5.Net Interest Paid Cover</b>	<p><b>"Earnings Before Interest and Tax"</b> = Operating profit</p> <p><b>"Net Interest Paid"</b> = Interest paid – Interest received</p> <p>Operating profit should be shown on the face of the Income Statement in a standard set of financial statements and, for the purposes of calculating this Financial Indicator, should include the entity's share of the results of any joint ventures or Associates.</p> <p>Interest received and interest paid should be shown on the face of the Cash Flow statement.</p> <p>Where Net interest paid is negative (i.e. the entity has net interest received), the relevant Financial Metric Threshold should be treated as having been met.</p>
<b>6.Acid Ratio</b>	<p>All elements that are used to calculate the Acid Ratio are available on the face of the Balance Sheet in a standard set of financial statements.</p>

Metric	Specific Methodology
7. Net Asset value	<p>Net Assets are shown (but sometimes not labelled) on the face of the Balance Sheet of a standard set of financial statements. Net Assets are sometimes called net worth or 'Shareholders' Funds'. They represent the net assets available to the shareholders. Where an entity has a majority interest in another entity in which there are also minority or non-controlling interests (i.e. where it has a subsidiary partially owned by outside investors), Net Assets should be taken inclusive of minority or non-controlling interests (as if the entity owned 100% of such entity).</p>
8. Group Exposure Ratio (where applicable)	<p><b>"Group Exposure"</b> = Balances owed by Group Undertakings + Contingent liabilities assumed in support of Group Undertakings</p> <p><b>"Gross Assets"</b> = Fixed Assets + Current Assets</p> <p><b>Group Exposure:</b> Balances owed by (i.e. receivable from) Group Undertakings are shown within Fixed assets or Current assets either on the face of the Balance Sheet or in the relevant notes to the financial statements. In many cases there may be no such balances, in particular where an entity is not a member of a group or is itself the ultimate holding company of the group.</p> <p>Contingent liabilities assumed in support of Group Undertakings are shown in the Contingent Liabilities note in a standard set of financial statements. They include guarantees and security given in support of the borrowings of other group companies, often as part of group borrowing arrangements. Where the contingent liabilities are capped, the capped figure should be taken as their value. Where no cap or maximum is specified, the relevant Financial Metric Threshold should automatically be regarded as not having been met.</p> <p>In many cases an entity may not have assumed any contingent liabilities in support of Group Undertakings, in particular where an entity is not a member of a group or is itself the ultimate holding company of the group.</p> <p><b>Gross Assets:</b> Both Fixed assets and Current assets are shown on the face of the Balance Sheet</p>

## Annex 2: Board Confirmation

**Consultant Name:**

**Agreement Reference Number:**

The Board of Directors acknowledge the requirements set out at Paragraph 7 of the Financial Distress Schedule and confirm that the Consultant has exercised due care and diligence and made reasonable enquiry of all relevant Consultant personnel and other persons (including Key Consultants and Key Sub-consultants) as is reasonably necessary to enable the Board to prepare this statement.

The Board of Directors confirms that [organisation] is/is not<sup>1</sup> a Public Sector Dependent Supplier.

The Board of Directors confirms, to the best of its knowledge and belief, that as at the date of this Board Confirmation:

- a) it is not aware of and has no knowledge that a Financial Distress Event has occurred since the previous Board Confirmation and the Effective Date, or is subsisting; or
- b) it is not aware of and has no knowledge of any matters which have occurred or are subsisting that could reasonably be expected to cause a Financial Distress Event;
- c) there has been no material change that renders, or may render it, unable to perform its obligations under the Technical Advisory Services Appointment and/or any Order(s) placed. It confirms that it:
- d) remains validly incorporated, organised and subsisting in accordance with the Laws of its place of incorporation;
- e) is capable, has capacity and authority to enter into and to perform its undertakings in accordance with the Technical Advisory Services Appointment and its obligations under any Orders placed;
- f) retains all necessary consents and regulatory approvals to enter into Orders that may be placed;
- g) has notified the Client in writing of any actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its knowledge, any threatened against it or any of its affiliates that might affect its ability to perform its obligations under this Technical Advisory Services Appointment and/or any Order(s) placed;
- h) execution, delivery and performance of its obligations under this Technical Advisory Services Appointment and/or any Orders placed, will not constitute a breach of any Law or obligation applicable to it and will not cause or result in a default under any agreement by which it is bound;
- i) obligations under this Technical Advisory Services Appointment and/or any Order(s), constitute

<sup>1</sup> Delete as necessary

its legal, valid and binding obligations, enforceable in accordance with their respective terms subject to applicable bankruptcy, reorganisation, insolvency, moratorium or similar Laws affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or law);

- j) no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Consultant or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Consultant's assets or revenue; and
- k) it knows of no reason that mandatory or discretionary grounds under Schedules 6 and 7 of the Procurement Act 2023 for exclusion or debarment may apply in respect of any entity in the Consultant's Group OR FDE Group (as applicable).

On behalf of the Board of Directors:

Chair .....

Signed .....

Date .....

Director .....

Signed .....

Date .....

## Part B – Corporate Resolution Planning

This Part of Schedule applies to any Consultant who, at the relevant time, either is a Public Sector Dependent Supplier or holds any Critical Contracts with the Client.

### CORPORATE RESOLUTION PLANNING

#### 1. Consultant Status

1.1 Not Used.

1.2 The Consultant shall notify the Cabinet Office Markets, Sourcing and Suppliers Team, in writing within five (5) Business Days of the Effective Date and throughout the term within one hundred and twenty (120) days after each Accounting Reference Date as to whether or not it is a Public Sector Dependent Supplier. The contact email address for the Cabinet Office Markets, Sourcing and Suppliers Team is [REDACTED]

#### 2. Provision of Corporate Resolution Planning (CRP) Information

2.1 Subject to Paragraph 4 of this part of this Schedule:

- (a) the Consultant shall provide the Relevant Buyer or Relevant Buyers with the CRP Information within sixty days of any request by the Relevant Buyer, or, in the event of occurrence of a Financial Distress Event (in the opinion of the Relevant Buyer) or Insolvency Event, within ten (10) Business Days of the Relevant Buyer's or Relevant Buyers' request.

2.2 The Consultant shall ensure that the CRP Information provided pursuant to this Schedule:

- (a) is full, comprehensive, accurate and up to date;
- (b) is split into three parts:
  - i. Exposure Information (Contracts List)
  - ii. Corporate Resolvability Assessment (Structural Review);
  - iii. Financial Information and Commentary

and is structured and presented in accordance with the requirements and explanatory notes set out in the latest published version of the Resolution Planning Guidance Note published by the Cabinet Office Government Commercial Function and available at <https://www.gov.uk/government/publications/the-sourcing-and-consultancy-playbooks> and contains the level of detail required (adapted as necessary to the Consultant's circumstances);

- (a) incorporates any additional commentary, supporting documents and evidence which would reasonably be required by the Relevant Buyer or Relevant Buyers to understand and consider the information for approval;
- (b) provides a clear description and explanation of the Consultant's Group members that have agreements for goods, services or works provision in

respect of UK Public Sector Business and the nature of those agreements;  
and,

- (c) complies with the requirements set out at Annex 1 Part B (Exposure Information (Contracts List)), Annex 2 (Corporate Resolvability Assessment (Structural Review)) and Annex 3 (Financial Information and Commentary) respectively.

2.3 Following receipt by the Relevant Buyer or Relevant Buyers of the CRP Information pursuant to this Schedule, the Buyer shall procure that the Relevant Buyer or Relevant Buyers discuss in good faith the contents of the CRP Information with the Consultant and no later than 10 Business Days after the date on which the CRP Information was delivered by the Consultant and either provide an Assurance to the Consultant that Relevant Buyer or Relevant Buyers approve the CRP Information or that Relevant Buyer or Relevant Buyers reject the CRP Information.

2.4 If the Relevant Buyer or Relevant Buyers reject the CRP Information:

- (a) the Relevant Buyer shall (and shall procure that the Cabinet Office Markets, Sourcing and Suppliers Team shall) inform the Consultant in writing of its reasons for its rejection; and
- (b) the Consultant shall revise the CRP Information, taking reasonable account of the Relevant Buyer's or Relevant Buyers' comments, and shall re-submit the CRP Information to the Relevant Buyer or Relevant Buyers for approval within ten (10) Business Days of the date of the Relevant Buyer's or Relevant Buyers' rejection. The provisions of this Paragraph 2 shall apply again to any resubmitted CRP Information provided that either party may refer any disputed matters for resolution by the dispute resolution procedure at any time.

2.5 Save for CRP Information as relevant to the Relevant Buyer, where the Consultant or a member of the Consultant's Group has already provided CRP Information to a Crown Body or the Cabinet Office Markets, Sourcing and Suppliers Team (or, in the case of a Strategic Supplier, solely to the Cabinet Office Markets, Sourcing and Suppliers Team) and has received an Assurance of its CRP Information from that Crown Body and the Cabinet Office Markets, Sourcing and Suppliers Team (or, in the case of a Strategic Supplier, solely from the Cabinet Office Markets, Sourcing and Suppliers Team), then provided that the Assurance remains valid on the date by which the CRP Information would otherwise be required, the Consultant shall not be required to provide the CRP Information under this Schedule if it provides a copy of the Valid Assurance to the Relevant Buyer or Relevant Buyers on or before the date on which the CRP Information would otherwise have been required.

2.6 The Assurance process is set out in the Government Commercial Function Resolution Planning Guidance that can be found here [https://assets.publishing.service.gov.uk/media/60a388c7e90e07356f0fdd30/Resolution\\_planning\\_guidance\\_note\\_May\\_2021.pdf](https://assets.publishing.service.gov.uk/media/60a388c7e90e07356f0fdd30/Resolution_planning_guidance_note_May_2021.pdf).

2.7 An Assurance shall be deemed Valid for the purposes of Paragraph 1.5 of this Schedule if:

- (a) the Assurance is within the validity period stated in the Assurance (or, if no validity period is stated, no more than twelve (12) months has elapsed

since it was issued and no more than eighteen (18) months has elapsed since the Accounting Reference Date on which the CRP Information was based); and

- (b) no Corporate Change Events or Financial Distress Events (or events which would be deemed to be Corporate Change Events or Financial Distress Events if this Technical Advisory Services Appointment had then been in force) have occurred since the date of issue of the Assurance.

2.8 Not used.

2.9 Subject to Paragraph 4, where the Consultant demonstrates to the reasonable satisfaction of the Relevant Buyer or Relevant Buyers that a particular item of CRP Information is highly confidential, the Consultant may, having orally disclosed and discussed that information with the Relevant Buyer or Relevant Buyers, redact or omit that information from the CRP Information provided that if a Financial Distress Event occurs, this exemption shall no longer apply and the Consultant shall promptly provide the relevant information to the Relevant Buyer or Relevant Buyers to the extent required under this Paragraph 2.

### **3. Termination Rights**

3.1 The Relevant Buyer shall be entitled to suspend or terminate this Technical Advisory Services Appointment if the Consultant is required to provide CRP Information under Paragraph 2 of this Schedule and either:

- (a) the Consultant fails to provide the CRP Information within 1 month of the Relevant Buyer's or Relevant Buyers' request; or
- (b) the Consultant fails to obtain an Assurance from the Relevant Buyer or Relevant Buyers within one (1) month of the date that it was first required to provide the CRP Information under this Technical Advisory Services Appointment.

### **4. Confidentiality and usage of CRP Information**

4.1 The Relevant Buyer agrees to keep the CRP Information confidential and use it only to understand the implications of an Insolvency Event of the Consultant and/or Consultant Group members on its UK Public Sector Business and to enable contingency planning to maintain service continuity for end users in such eventuality.

4.2 Where the Relevant Buyer is the Cabinet Office Markets, Sourcing and Suppliers Team, at the Consultant's request, the Relevant Buyer shall use reasonable endeavours to procure that the Cabinet Office enters into a confidentiality and usage contract with the Consultant containing terms no less stringent than those placed on the Relevant Buyer under Paragraph 4.1 of this Schedule. The Relevant Buyer agrees to keep the CRP Information confidential and use it only to understand the implications of an Insolvency Event of the Consultant and/or Consultant Group members on its UK Public Sector Business and to enable contingency planning to maintain service continuity for end users in such eventuality.

4.3 The Consultant shall use reasonable endeavours to obtain consent from any third party which has restricted the disclosure of the CRP Information to enable disclosure of that information to the Relevant Buyer or Relevant Buyers pursuant to Paragraph 2 of this Schedule subject,

where necessary, to the Relevant Buyer or Relevant Buyers entering into an appropriate confidentiality agreement in the form required by the third party.

4.4 Where the Consultant is unable to procure consent pursuant to Paragraph 4.3, the Consultant shall use all reasonable endeavours to disclose the CRP Information to the fullest extent possible by limiting the amount of information it withholds including by:

- (a) redacting only those parts of the information which are subject to such obligations of confidentiality;
- (b) providing the information in a form that does not breach its obligations of confidentiality including (where possible) by:
  - i. summarising the information;
  - ii. grouping the information;
  - iii. anonymising the information; and
  - iv. presenting the information in general terms.

4.5 The Consultant shall provide the Relevant Buyer or Relevant Buyers with contact details of any third party which has not provided consent to disclose CRP Information where that third party is also a public sector body and where the Consultant is legally permitted to do so.

## **ANNEX 1: EXPOSURE: CRITICAL CONTRACTS LIST**

The Consultant shall (to the extent requested by the Client):

1. provide details of all agreements held by members of the Consultant's Group where those agreements are for goods, services or works provision and:
  - (a) are with any UK public sector bodies including: Crown Bodies and their arms-length bodies and agencies, non-departmental public bodies, NHS bodies, Local Authorities, health bodies, police fire and rescue, education bodies and the devolved administrations; or
  - (b) are with any private sector entities where the end recipient of the service, goods or works provision is any of the bodies set out in Paragraph are with any UK public sector bodies including: Crown Bodies and their arms-length bodies and agencies, non-departmental public bodies, NHS bodies, Local Authorities, health bodies, police fire and rescue, education bodies and the devolved administrations; of this Annex 1 and where the member of the Consultant's Group is acting as a Key Sub-consultant under this Technical Advisory Services Appointment or Order(s) awarded with the end recipient;
2. provide the Relevant Buyer with a copy of the latest version of each underlying contract worth more than £5m per contract year and their related key subcontracts, which shall be included as embedded documents within the CRP Information or via a directly accessible link.

## **ANNEX 2: CORPORATE RESOLVABILITY ASSESSMENT (STRUCTURAL REVIEW)**

The Consultant shall:

1. provide sufficient information to allow the Relevant Buyer to understand the implications on the Consultant's Group's UK Public Sector Business agreements listed pursuant to Annex 1 if the Consultant or another member of the Consultant's Group is subject to a Financial Distress Event or Insolvency Event.
2. ensure that the information is presented so as to provide a simple, effective and easily understood overview of the Consultant's Group; and
3. provide full details of the importance of each member of the Consultant's Group to the Consultant's Group's UK Public Sector Business agreements listed pursuant to Annex 1 and the dependencies between each.

## **ANNEX 3: FINANCIAL INFORMATION AND COMMENTARY**

The Consultant shall:

1. provide sufficient financial information for the Consultant's Group level, contracting

operating entities level, and shared services entities' level to allow the Relevant Buyer to understand the current financial interconnectedness of the Consultant's Group and the current performance of the Consultant as a standalone entity; and

2. ensure that the information is presented in a simple, effective and easily understood manner.
3. For the avoidance of doubt the financial information to be provided pursuant to Paragraph 1 of this Annex 3 should be based on the most recent audited accounts for the relevant entities (or interim accounts where available) updated for any material changes since the Accounting Reference Date provided that such accounts are available in a reasonable timeframe to allow the Consultant to comply with its obligations under this Schedule. If such accounts are not available in that timeframe, to the extent permitted by Law financial information should be based on unpublished unaudited accounts or management accounts (disclosure of which to the Relevant Buyer remains protected by confidentiality).

**SCHEDULE 5 OF TECHNICAL ADVISORY SERVICES APPOINTMENT**

**Fee Schedule and Rate Card**







**SCHEDULE 6 OF TECHNICAL ADVISORY SERVICES APPOINTMENT**

**Exit Provisions**



Department  
for Education

# Exit plan

**[Consultant]**

## Document history

This table lists the key changes in each update.

Revision code	Status code	Date	Amendment
P01	S2	2025-06-26	TAS2025 issue
P02	S2	2025-09-10	Format tidy up. Delete point 3, page 8 on <i>deletion of files</i> .

The DfE and its agents and advisers accept no liability whatsoever for any expense, liability, loss, claim or proceedings arising from reliance placed upon this resource.

## Defined Terms

All defined terms / capitalised words are as detailed in the Section 0 - Contract Management Plan glossary.

## **1 Exit Plan Overview**

1.1 The Technical Advisor Services (TAS) 2025 Exit Plan is a list of processes to manage the exit of a Technical Advisor from performing activities relating to specific deliverables on a Project. It is important to address how the project remains sustainable if a Technical Advisor leaves the Project.

1.2 There are currently four exit routes for a Technical Advisor from their Technical Advisor Services Appointment (TASA) or JCT CA Appointment (JCT CA):

1.2.1. Conclusion of Project Services.

1.2.2. Suspension and Termination of the TASA or individual f JCT CA appointments, by the DfE as detailed in TASA.

1.2.3. Termination in accordance with the Performance Management Process.

1.2.4. Expiry of TAS 2025.

1.3 All termination notices are drafted and executed by external legal advisors.

## **2 Exit Plan – Conclusion of Project Services**

2.1 The Technical Advisor appointment shall end when:

2.1.1 The Project Services are complete in accordance with the project programme.

2.1.2. The project close out report is approved by the DfE Project Director (PD).

2.1.3 The Contractor has completed all works under their contract and the School is in full occupation.

2.2 The project programme is agreed with the DfE PD at the start of each project in accordance with the requirements of the project and the procurement route followed.

2.3 The Technical Advisor completes a project close out report which confirms the project final account has been settled, all documentation is stored on the DfE platform and the budget reconciliation is complete.

## **3 Exit Plan – Suspension and Termination of the Technical Advisor appointment by the DfE**

3.1 The Technical Advisory Services Appointment includes provision for Technical Advisor termination and details the circumstances.

#### **4 Exit Plan – Termination in accordance with the Performance Management Process.**

4.1 The Technical Advisor may be terminated due to sustained poor performance in accordance with the Performance Management process. This is an extreme action and the following process must be followed to minimise potential disputes:

4.1.1 All performance issues are formally **documented** using DfE digital platforms on both an ad hoc basis and through a performance management process which measures monthly against defined performance standards and expectations and quarterly using existing data and contract obligations.

4.1.2 All detailed **evidence** of the poor performance, including records of missed deadlines, substandard work, or failure to meet agreed-upon metrics is collated and formally issued to the Technical Advisor. Records of all communication with the Technical Advisor regarding performance issues are kept by the ETAPMF team.

4.1.3 The Technical Advisor is offered the opportunity to **cure** within a rectification period.

4.1.4 There is a **follow-up** with the Technical Advisor and the DfE project team to monitor the situation closely to see if the issues are resolved within the rectification period. The focus for the DfE project team is on providing the necessary support and resources to help them improve.

4.1.5 If the performance issues are not resolved, the Technical Advisor is issued a **final termination notice**, clearly stating the effective date of termination.

4.1.6 The Technical Advisor is to ensure that all project data is saved on the DfE platform.

4.1.7 For unsuccessful Technical Advisors, section 6 will apply.

4.1.8 The termination is **executed** formally.

#### **5 Exit Plan – expiry of Technical Advisory Services Appointment**

5.1 All TAS21 projects will transition to TAS25, unless it is in Stage 5 & 6 / RIBA Plan of Work Stage 5 & 6.

5.2 A transition strategy schedules the exit from the TAS21 **Technical Advisory Services Appointment** and the commencement of the TAS2025 Technical Advisor appointment.

5.2.1 Technical Advisors will be terminated at the end of a Stage on all applicable projects to minimise delivery disruption.

5.2.2 If the incumbent Technical Advisor is successful on TAS2025, they will be appointed to their projects at the next Stage.

5.2.3 If the incumbent Technical Advisor is unsuccessful on TAS2025, a successful technical advisor will be appointed to take the project forward from the services exit point.

5.3 For unsuccessful Technical Advisors, section 6 will apply.

5.4 The termination is **executed** formally.

## **6 Next steps following termination**

6.1 Should the DfE terminate the Technical Advisor, the following process will apply:

6.1.1 All payments for services rendered under either the JCT CA or the TASA up to the termination date shall be settled in accordance with the Appointment provisions.

6.1.2 The Technical Advisor shall provide a structured and comprehensive plan to ensure a smooth transition to the new provider to maintain business continuity. A phased approach is expected. This will include a schedule of outstanding deliverables specific to the Project Stage.

6.1.3 The Technical Advisor shall participate in a post exit evaluation to gather feedback and identify lessons learned.

## **7 Succession Planning**

7.1 The Technical Advisor will provide a clear plan of service delivery continuity for Exit routes 1.2.2, 1.2.3 and 1.2.4 for a period up to 4 weeks in parallel with the new Technical Advisor appointment.

7.2 The DfE project team will facilitate an onboarding and handover session(s) with the incumbent Technical Advisor and the incoming Technical Advisor under TAS25.

7.3 The DfE project team will ensure that the incoming technical advisor has access to the project specific DfE platform.

7.4 Once handover is complete the DfE project team will remove the incumbent Technical Advisor's access to the project specific DfE platform.

7.5 A Lessons Learnt session with the Technical Advisor and the DfE project team will identify any issues impacting on the delivery of a quality service and continuous improvement.

7.6 **Monitoring and Feedback** may be required on the Technical Advisors other projects within the region for a period of 2m to inform any adjustments to work allocation.

## **Annex XX – Sample Exit Plan**

Jaggaer Reference number (if applicable): [insert reference number]

Project ID number: [insert the Project ID]

Project Names: [insert the Project name]

### **Introduction**

A 2-way exit strategy involves planning for both voluntary and involuntary exits from either the TASA or JCT CA appointment(s) as applicable to ensure that public money is protected and value for money is achieved. To meet this requirement, this Annex describes the duties and responsibilities of [insert name of the Technical Advisor] and the DfE, leading up to and covering the expiry or termination for whatever reason and the transfer of the activities to another Technical Advisor.

This document defines the Exit Plan and how it should be revised to ensure that it remains workable at any time. It is important that the Exit Plan is kept up to date during the period of either the TASA or JCT CA appointment(s) and that it reflects the impact of all relevant changes to the service or outcomes required. There will not be any additional charge for any work undertaken in making changes to the Exit Plan. Where there are principles to be adopted in implementing the plan, the parties will endeavour to agree the relevant details within such principles.

### **Objectives**

The objective of the Exit Plan is to ensure:

- an orderly and smooth transition of the services from [insert name of the organisation] to a successor organisation or the DfE at the termination of the either the TASA or JCT CA appointment(s).
- the continuation of either project or commission Services,
- that there is no undue favour to [insert name of the organisation] in the provision of any future services.
- that the responsibilities of both parties are clearly defined in the event of expiry or termination.

### **General**

Where the DfE intends to continue service provision in broadly the same way after expiry or termination, either by performing them itself or by means of a successor, the Technical Advisor must endeavour to manage a smooth and orderly transition of the project or commission Services and must co-operate with the DfE or the successor, in order to achieve such transition.

The Technical Advisor must comply with any reasonable request of the DfE for information relating to the project or commission Services, including the use of other

parties. The Technical Advisor will be allowed a reasonable period of time in which to respond to the DfE.

The Technical Advisor must co-operate with all reasonable requests made by either the DfE or a successor relating to the transition arrangements for the project or commission Services and provide an implementation plan for the transition of such services to either the DfE or a successor organisation.

### **Assistance**

The Technical Advisor will remain responsible for delivering the project or commission Services and achieving the aims and objectives set out in Annex XX (scope) until the date of expiry or termination of the TASA or JCT CA appointment(s) letter.

You must use all reasonable endeavours to ensure that a transition of responsibility for the delivery of the project or commission Services to the successor organisation or the DfE, minimises any detrimental effect on the delivery of the activities and the DfE will use all reasonable endeavours to co-operate in such transfer.

### **Transfer of the DfE's Data**

In addition to complying with the provisions of the TASA or JCT CA appointment(s), the Technical Advisor must, upon reasonable written request by the DfE or in any event, within one month of notice of termination, deliver the DfE's data including an inventory of the DfE's data and any other data available for transfer.

### **Documentation and Access**

The Technical Advisor must provide the DfE on request with information and documentation reasonably necessary to assist with the transfer of the project or commission Services to the DfE or to a successor organisation, including any documentation required to support the provision of the activities.

The DfE may make the documentation available to Technical Advisors who wish to provide the project or commission Services. The Technical Advisor shall respond expediently and in full to any reasonable questions by the DfE or the Technical Advisors and shall co-operate with any reasonable due diligence activities carried out by Technical Advisors.

**SCHEDULE 7 OF TECHNICAL ADVISORY SERVICES APPOINTMENT**

**Consultant's Tender Response**



















































































