



Ministry  
of Justice

**OFFICIAL SENSITIVE**  
**CONTINGENCY RESPONSE PROGRAMME**  
**FAC-1 CONTRACT**  
**PERFORMANCE SECURITY SCHEDULE – PART 3: VESTING AGREEMENT**

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**PART 3**

**VESTING AGREEMENT**



## VESTING AGREEMENT IN RESPECT OF MATERIALS

THIS VESTING AGREEMENT IS MADE ON THE OF 20[25]

### BETWEEN:

- (1) THE SECRETARY OF STATE FOR JUSTICE of the MINISTRY FOR JUSTICE of 102 Petty France, London, SW1H 9AH (the "Client", with such term including its successors in title and permitted assigns); and
- (2) [INSERT NAME OF CONTRACTOR] (company number [INSERT NUMBER]), whose registered office is at [INSERT ADDRESS] (the "Contractor"),

each a "Party" and together the "Parties."

### WHEREAS:

- (A) The Parties have entered into an ACA Framework Alliance Contract (FAC-1) (as amended) between Client and the Contractor (defined as an "Alliance Member" therein) and other parties (each also defined as "Alliance Members" therein) dated [INSERT DATE] 20[25] (the "FAC-1 Contract"). Under the FAC-1 Contract the Client may instruct the Alliance Member to carry out Early Works under an "Order" and/or may issue a Notice to Proceed in relation to a Works Package.

#### (B) [OPTION 1 – MAIN WORKS]

Pursuant to and in accordance with the FAC-1 Contract, the Parties have entered into a Notice to Proceed dated [INSERT DATE] (the "Works Terms"), relating to the design and construction [INSERT DESCRIPTION OF THE WORKS] (the "Works") at [INSERT NAME OF THE SITE] (the "Site") and which sets out, amongst other things, the terms and conditions of the FAC-1 Contract which govern the undertaking of the Works by the Contractor and the scope, price and programme as agreed between the Client and the Contractor in respect of the same).]

#### [OPTION 2 – EARLY WORKS]

Pursuant to and in accordance with the FAC-1 Contract, the Parties have entered into an Order dated [INSERT DATE] (the "Works Terms"), relating to [INSERT DESCRIPTION OF THE WORKS] (the "Works") at [INSERT NAME OF THE SITE] (the "Site") and which sets out, amongst other things, the terms and conditions of the FAC-1 Contract which govern the undertaking of the Works by the Contractor and the scope, price and programme as agreed between the Client and the Contractor in respect of the same).]

- (C) Pursuant to and in accordance with the provisions of the FAC-1 Contract and the Works Terms, in consideration of the Client's agreement to include in the next application for payment in connection with the Works the sum of [INSERT SUM IN WORDS] (£[INSERT SUM AS A NUMBER]) (the "Payment") in respect of the plant, goods and/or materials identified in Annex 1 to this Vesting Agreement (referred to herein as the "Relevant Materials") prior to delivery to the Site, the Contractor has agreed to enter into this Vesting Agreement in favour of the Client.

- (D) This Vesting Agreement is supplemental to the FAC-1 Contract.

### THIS DEED HEREBY WITNESSES as follows:

1. The Contractor warrants to the Client that:

1.1 [legal title to and property in the Relevant Materials is vested absolutely in the



Contractor][not used]<sup>1</sup>;

1.2 [the Relevant Materials are free from all third party liens, charges and other encumbrances][not used]<sup>2</sup>;

1.3 the Relevant Materials are stored at the premises identified in Annex 1 to this Vesting Agreement, which may include the Site, (the “**Approved Premises**”) and have been set apart from all other plant and/or materials at such location and are clearly and visibly marked, individually or in sets (either by letters or figures or by reference to a pre-determined code) so as to identify the Client and their destination, citing both the Works and the Site;

1.4 pursuant to paragraph 1.3, the Relevant Materials shall not be moved from the Approved Premises, except for the purpose of manufacturer or assembly for the Works, or delivered to the Site, unless specifically instructed and required by the Client;

1.5 [the Relevant Materials are complete in every respect and detail and are ready for delivery to the Site and incorporation in the Works without the need for any further work or process or the addition or admixture of any further components or substances][not used]<sup>3</sup>; and

1.6 [the Relevant Materials are complete in every respect and detail and are ready for delivery in accordance with the requirements of the Works Terms][not used]<sup>4</sup>.

2. The Contractor warrants and undertakes to the Client that legal title to and property in the Relevant Materials will automatically transfer to the Client free from all liens, charges and encumbrances on the date that the Payment has been made to the Contractor.

3. The Contractor warrants and undertakes to the Client that pending delivery of the Relevant Materials to the Site and incorporation in the Works, the Relevant Materials:

3.1 shall be kept and maintained in good, safe and secure conditions at the Approved Premises; and

3.2 will continue to be kept apart from all other plant and/or materials at such location and will be clearly and visibly marked as the property of the Client destined for the Works.

4. Save in the event of an emergency threatening the loss or destruction of or damage to the Relevant Materials, pending delivery of the Relevant Materials to the Site and incorporation in the Works the Contractor shall not move or remove or cause or permit the Relevant Materials to be moved or removed from the Approved Premises without the Client's prior written consent.

5. The Client (and/or a person acting on its behalf) shall be entitled to inspect the Relevant Materials at the Approved Premises at any time upon reasonable prior notice to the Contractor.

6. The Contractor shall:

6.1 be responsible for any loss and/or destruction of and/or damage to the Relevant Materials whilst in the Contractor's custody or in transit by or on behalf of the Contractor;

6.2 pending delivery of the Relevant Materials to the Site and incorporation in the Works, the Contractor shall insure the Relevant Materials for their full reinstatement value under a

<sup>1</sup> **DRAFTING NOTE** – To be updated on a case-by-case basis (i.e. if the Contractor does not have title in the Relevant Materials due to them not being in its possession).

<sup>2</sup> **DRAFTING NOTE** – As footnote (1).

<sup>3</sup> **DRAFTING NOTE** – As footnote (1).

<sup>4</sup> **DRAFTING NOTE** – As footnote (2).



policy of insurance protecting the interests of both the Client and the Contractor against the risk of loss, destruction and damage howsoever arising; and

- 6.3 as and when reasonably requested to do so by the Client, provide the Client with documentary evidence that the insurance required pursuant to this paragraph 6 is in full force and is being maintained.
7. Nothing contained in this Vesting Agreement, the FAC-1 Contract and/or the Works Terms or any payment that may be made to the Contractor in respect of the Relevant Materials shall be taken as any approval or acceptance by the Client or any of the Client's agents that the Relevant Materials are necessarily in accordance with the FAC-1 Contract and/or the Works Terms.
8. The Contractor shall indemnify the Client against any demands, claims, proceedings, losses, liabilities, damages, costs and/or expenses of whatsoever nature suffered or incurred by the Client (subject to the Client using reasonable endeavours to mitigate the same) arising out of any breach of any of the terms contained in this Vesting Agreement.
9. In the event of the termination of the obligation of the Contractor to undertake and complete the Works under the FAC-1 Contract and/or the Works Terms for a reason that is attributable to a breach by the Contractor or the Contractor being subject to an "Insolvency Event" (as defined in the FAC-1 Contract):
- 9.1 the Contractor shall, at its cost, deliver the Relevant Materials to (or adjacent to) the Site or to an alternative location for the purposes of storage, as instructed by the Client; and
- 9.2 if the Contractor fails to promptly perform such delivery, the Contractor authorises the Client to enter the site referred to in Annex 1 and, at the Contractor's cost, collect and take the Relevant Materials to (or adjacent to) the Site or to any location for the purposes of storage at the Client's sole discretion,
- provided always that if the obligation of the Contractor to undertake and complete the Works is terminated by the Client under the FAC-1 Contract and/or the Works Terms for any other reason, the Client shall be entitled to collect such Relevant Materials at its own cost (or request that the Contractor delivers the same to the Site or such other premises as specified by the Client, subject to the Client reimbursing the Contractor its reasonable costs for doing so).
10. This Vesting Agreement does not create any right enforceable by any person not a Party to it (whether pursuant to the Contracts (Rights of Third Parties) Act 1999 or otherwise), save that the Client may assign the benefit of this Vesting Agreement to any person to whom it assigns the benefit of the FAC-1 Contract and/or the Works Terms, provided that such assignment takes place at the same time (and to the same person) as the assignment of the benefit of the FAC-1 Contract and/or the Works Terms or at the same time (and to the same person) as a novation of the FAC-1 Contract and/or the Works Terms, with any reference to the "Client" in this Vesting Agreement included the Client's permitted assignees.
11. In the event of any dispute and/or difference under or in respect of this Vesting Agreement, such dispute and/or difference shall be settled in the same way as a dispute and/or difference in connection with the Works under the Works Terms and shall be subject to the same governing law and jurisdiction as the FAC-1 Contract and the Works Terms.
12. It is agreed that whatever the manner in which the Parties have executed this Vesting Agreement, the period of limitations (in respect of which the Contractor and the Client hereby waive all and any rights whether already existing, arising now and/or in the future to raise as a defence to any claim brought under this Vesting Agreement, the Limitation Act 1980 and any statute, regulation or similar amending, consolidating and/or replacing that Act) applicable to any claim or claims arising out of or in connection with this Vesting Agreement shall expire on the "End of Liability Date" as such term is defined in the FAC-1 Contract.



13. This Vesting Agreement is without prejudice to the terms of the FAC-1 Contract and the Works Terms, which shall continue to be binding and of full force and effect and shall not be amended, waived or affected by this Vesting Agreement.

**SIGNED** by the **CLIENT** acting by an authorised signatory:

Authorised signatory \_\_\_\_\_

(signature)

Authorised signatory \_\_\_\_\_

(name)

**SIGNED** by the **CONTRACTOR** acting by an authorised signatory:

Authorised signatory \_\_\_\_\_

(signature)

Authorised signatory \_\_\_\_\_

(name)

## ANNEX 1

## MATERIALS

The following items of plant and materials are held by the Contractor at the location(s) referred to below:

TYPE / DESCRIPTION	AUTHORISED PREMISES	QUANTITY	VALUE (£)
		TOTAL:	