

**OFFICIAL**



Ministry  
of Justice

**ENGROSSMENT VERSION (01.03.21)**

PROJECT PARTNERING AGREEMENT

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**Establishment: HMP Liverpool**  
**Project: Full Wing Refurb (H Wing)**  
**BPRN: 567/17/4254**  
**CUA: CWAS-089-2020**  
**Jaggaer Project Code: Prj\_5912**

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# **PROJECT PARTNERING AGREEMENT**

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**PPC2000 (Amended 2013)**

**ACA Standard Form of Contract for Project Partnering**

**Project Partnering Agreement (as amended)**

**A PARTNERING CONTRACT** is made as a deed the **2nd** day of **March 2021**

**IN RELATION TO** Full Wing Refurb (H Wing) ("the Project") at HMP Liverpool (the "Site")

**BETWEEN** the parties who have executed this Project Partnering Agreement which in the case of the Constructor is pursuant to a CCS Framework Alliance Contract 1 (FAC-1) and for the Consultants is pursuant to the Strategic Alliance Framework (SAA).

**WHO AGREE** working in mutual cooperation to fulfil their agreed roles and responsibilities and apply their agreed expertise in relation to the Project, in accordance with and subject to the Partnering Terms attached to this Project Partnering Agreement and the other Partnering Documents described in or created pursuant to the Partnering Terms, and that subject to amendment in accordance with the Partnering Terms:

***Reference in Partnering Terms***

Clause 1.1                      The Project and the Site are further described in the Project Brief and the Project Proposals (refer to **Annexure C** to this Project Partnering Agreement).

Clause 1.3                      The roles, expertise and responsibilities of the Client and the Constructor are further described in the Project Brief and the Project Proposals and the Constructor shall be paid in accordance with the Partnering Terms and the Price Framework.

Clauses 1.3 and 1.5            The Partnering Team shall include the following Consultants whose roles, expertise and responsibilities are further described in the Project Brief and Consultant Services Schedules and who shall be paid in accordance with the Partnering Terms and the Consultant Payment Terms:

- Client Representative
- Cost Consultant
- Principal Designer



*Reference in Partnering  
Terms*

- Technical Assessor

The Partnering Team is listed in **Annexure A, Appendix A** to this Project Partnering Agreement.

Clauses 1.3, 1.6 and 10.2

The Partnering Team shall include the following Specialists whose roles, expertise and responsibilities are or shall be further described in the Project Brief, the Project Proposals and the Joining Agreements and who shall be paid in accordance with the Specialist Payment Terms:

Not applicable.

Clause 2

The Partnering Documents shall comprise the following as each signed and dated for the purpose of identification by the Partnering Team members:

- this Project Partnering Agreement and the Partnering Terms;
- the Partnering Timetable as set out at **Annexure A, Appendix G**
- Consultant Services Schedules and Consultant Payment Terms as set out at **Annexure A, Appendix D**
- the Project Brief incorporating any Constructor's Services Schedule as set out at **Annexure B**
- the Project Proposals comprising **Annexure C**
- the Price Framework comprising **Annexure D**
- the KPIs and Targets comprising **Annexure A, Appendix K**
- the Risk Register comprising **Annexure B**

and any additional and amended Partnering Documents developed in accordance with the Partnering Terms.

Clause 3.3

The Core Group shall comprise

For the Client: [REDACTED]

For the Constructor: [REDACTED]

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Terms*

For the Client Representative: [REDACTED]

For the Cost Consultant: [REDACTED]

For the Principal Designer: [REDACTED]

For the Technical Assessor: [REDACTED]

The membership of the Core Group is provided in **Annexure A, Appendix B** to this Project Partnering Agreement

Clause 3.9

The Interested Parties and their involvement in the Project are specified pursuant to the Project Brief.

Interested Parties additional to the Partnering Team are as listed in **Annexure A, Appendix E** to this Project Partnering Agreement.

In accordance with clause 3.9, the Partnering Team shall work together and individually in accordance with the Partnering Documents to establish the maximum practical involvement of the Interested Parties as listed below.

As set out in the Project Execution Plan (set out in the Project Brief) the Client Representative shall manage a Third Party Communication Plan which shall set out responsibilities for communicating with and sending information to the relevant Interested Parties.

Clause 4.1

Additional objectives for the Partnering Team members shall comprise:

Not applicable

Clause 5.2

The authority of the Client Representative shall be subject to the following restrictions:

The Client Representative shall not, without the Client's prior written consent amend or vary any of the Partnering Documents or give instructions (save in respect of an emergency in which case the Client Representative shall immediately notify the Client) which could:

- make any changes to the Project Brief;
- agree to any change to the Completion Date;

**Reference in Partnering  
Terms**

- increase or decrease the overall cost or quality of the Project or cause delay in completion of the Project; or
- detrimentally affect the interests of any Partnering Team Member.

Clause 5.6 The Partnering Adviser shall be:

Not appointed

Clause 8 The Lead Designer shall be:

the Constructor

Clause 8 The Design Team shall comprise:

The Constructor and the Constructor's design Specialists

Clauses 8.3 and 8.6 The design development process described in clause 8 of the Partnering Terms shall be amended as follows:

- At sub-clause 8.3(i), delete the margin heading "Outline designs and alternative solutions" and substitute "Option Appraisal"
- At sub-clause 8.3(i), delete "outline designs for the Project including such alternative solutions for the integrated design, supply and construction of the Project" and substitute "an option appraisal for the Project according with the requirements set out in the Project Brief (an "Option Appraisal")"
- At Sub-clause 8.3(iii) delete the margin heading "Development of designs" and substitute "Feasibility Study"
- At sub-clause 8.3(iii) delete "outline designs" in line 1 and 4 and substitute "Option Appraisal"
- At sub-clause 8.3(iii) delete "these" and substitute "a feasibility study for the Project according with the requirements set out in the Project Brief ("Feasibility Study")"

Clause 8.4 The following Site surveys and investigations shall be commissioned or undertaken by the following Partnering Team members:

**Reference in Partnering Terms**

As detailed in the Project Brief

Clauses 1.6 and 10.11 The Client shall appoint the following Specialists direct:  
  
As noted in **Annexure A, Appendix N** to this Project Partnering Agreement.

Clause 13.2 The shared savings arrangements, shared added value and pain/gain Incentives between Partnering Team members are:  
  
Not applicable

Clause 13.3 The Incentives that link payment to achievement of the Date for Completion or any KPI Targets are:  
  
Not applicable

Clauses 19.3 and 19.4 The amounts of third party liability insurance and professional indemnity insurance / product liability insurance of each Partnering Team member shall be:

Third party liability	Professional indemnity / product liability	Partnering Team member
[REDACTED]	[REDACTED]	Constructor
[REDACTED]	[REDACTED]	Client Representative
[REDACTED]	[REDACTED]	Cost Consultant
[REDACTED]	[REDACTED]	Principal Designer

for each and every claim with the number of claims unlimited

for each and every claim with the number of claim unlimited (but in the case of professional indemnity insurance to be provided by the Constructor, such insurance shall be subject to separate aggregate limits in respect of (i) pollution/contamination, (ii) asbestos and (iii)



*Reference in Partnering  
Terms*

cladding/fire safety) and maintained for a period of twelve (12) years from the date of the Client Representative's notice that the Constructor has fulfilled its obligations pursuant to clause 21.5 of the Partnering Terms

- Clause 20.9 The rate of interest on late payment shall be:  
  
four per cent (4%) above the base rate of the Bank of England current on the date the payment becomes overdue and the Partnering Team members agree that this is a substantial remedy for the purposes of the Late Payment Act
- Clause 20.13 The Client is not a "contractor" for the purposes of the Finance Act.
- Clause 21.4 The Defects Liability Period shall be:  
  
Twelve (12) months from Project Completion
- Clause 21.4 The time limits for rectification of defects shall be:
- For items which represent a breach of security or health and safety risk or where the continuing safe and comfortable occupancy of any part of the establishment affected by the works is seriously prejudiced: respond and rectify or make safe within two (2) hours and rectify as soon as possible and in any event no later than forty-eight (48) hours of notification by the Client Representative
  - For items which result in discomfort or could, if ignored, represent a breach of security or a health & safety risk: rectify as soon as possible and in any event no later than five (5) Working Days from notification by the Client Representative
  - For any other item, which cannot in the reasonable opinion of the Client Representative be left until the end of Defects Liability Period: rectify as soon as possible and in any event no later than twenty-eight (28) Working Days from notification by the Client Representative.



**Reference in Partnering  
Terms**

Clause 22.1

The duty of care and warranties of the Partnering Team members described in clause 22 of the Partnering Terms shall be amended as follows:

The Constructor accepts full responsibility to the Client for the design, supply, construction and completion of the Project in accordance with the Partnering Documents including the selection and standards of all materials, goods, equipment and workmanship forming part of the Project and including any design and other work undertaken in relation to the Project before or after the date of the Commencement Agreement by any other Partnering Team member, but without prejudice to the duty of care of each Partnering Team member (other than the Client) to the Constructor in respect of its contribution to the design, supply, construction and completion of the Project.

Clause 22.2

The following collateral warranties shall be provided:

- In favour of a Beneficiary from the Constructor within ten (10) Working Days of the Client Representative's request in the form set out in the Project Brief.
- In favour of the Client and/or any Beneficiary from any Specialist with material design responsibility within ten (10) Working Days of the Client Representative's request or ten (10) Working Days of that Specialist's appointment in connection with the Project (whichever is sooner) in the form set out in the Project Brief.
- In favour of the Client and/or any Beneficiary from any sub-contractor or sub-consultant of a Specialist with material design responsibility within ten (10) Working Days of the Client Representative's request or ten (10) Working Days of that sub-contractor or sub-consultant's appointment in connection with the Project (whichever is sooner) in the form set out in the Project Brief.

Clause 25.2

The following rights of assignment shall apply:

The Client may novate, assign or transfer the Partnering Contract or any part, share or interest in the Partnering Contract without the consent of any other members of the Partnering Team. No other member of the Partnering Team may assign, novate or transfer the Partnering Contract or any part, share or interest in the Partnering Contract without the Client's prior written consent.



**Reference in Partnering  
Terms**

Clauses 25.4, 27.6 and 27.7 The applicable law and the courts with jurisdiction shall be those of:  
  
English law and the Court of England and Wales

Clause 25.6 The Data Protection Schedule will be annexed to the:

**Commencement Agreement**

Clause 26.8 Clause 26.8 of the Partnering Terms applies.

Clause 27.2 Problem Solving Hierarchy – **Refer to Annexure A Appendix O**

Clause 27.4 and Appendix 5  
Part 1 The Conciliator shall be:

Not Applicable

Clause 27.6 and Appendix 5  
Part 3 Any dispute or difference may be referred to an arbitrator in accordance with the procedure set out in Part 3 of **Appendix 5**, who in the absence of agreement shall be appointed by:

Not applicable.

Clause 27.8 The limitation period shall be:  
  
Twelve (12) years from the date of the Client Representative's notice that the Constructor has fulfilled its obligations pursuant to clause 21.5 of the Partnering Terms.

Clause 28 The following Special Terms shall apply:

**Special Term 28.1 Definitions**

**Anti-Virus Software** - all software and programs of any type as developed, distributed and continuously maintained and/or updated by a reputable and industry-accepted cybersecurity and anti-virus software developer whose principal purpose is to:

- (i) detect and prevent the infection of an ICT System by Malicious Code; and/or
- (ii) detect and remove Malicious Code from an ICT System and (as the context permits) inoculate that ICT System against such Malicious



*Reference in Partnering  
Terms*

Code in the future;

**Beneficiary** - any party nominated by the Client from time to time in writing as having an interest in the Project;

**BPSS** - the "Baseline Personnel Security Standard" as more particularly described in the Cabinet Office publication "HMG Personnel Security Controls (Version 2.0 – April 2014)" as may be amended, updated and/or replaced from time to time;

**Client Data** -

- (i) any Materials that:
  - (a) are Client Materials; and/or
  - (b) which a Partnering Team member is required to generate, process, store or transmit pursuant to this Partnering Contract; and/or
- (ii) any Personal Data for which the Client is the Data Controller;

**Client ICT System** - any ICT System used by the Client in connection with this Partnering Contract which is owned by and/or licensed to the Client by a third party and which interfaces with any Non-Client ICT System and/or which is provided for use by the Client in connection with this Partnering Contract (but excluding any Non-Client ICT System);

**Client's Policies** - the policies identified as such in the Project Partnering Agreement (as may be updated and/or replaced by the Client by written notice to the Partnering Team members from time to time);

**Constructor Framework Agreement** - the Framework Alliance Contract (FAC-1) dated 31 October 2019 entered into between Crown Commercial Services and the Constructor and which is known as "Lot 5" of Crown Commercial Services' "Construction Works and Associated Framework" (RM6088) for the purposes of OJEU Contract Notice 2019/S 025-054274;

**Constructor's Personnel** - all employees, agents, consultant and Specialists of the Constructor;

**Consultant Framework Agreement** – the Strategic Alliance Agreement



**Reference in Partnering  
Terms**

(SAA) dated 30 April 2012 entered into between the Ministry of Justice and the Consultants;

**Controller** – has the meaning given to such term in the GDPR;

**Crown** - the Government of the United Kingdom (including the Northern Ireland Executive Committee and the Northern Ireland Departments, the Scottish Executive and the National Assembly for Wales) including but not limited to government ministers, government departments, government in particular bodies and government agencies;

**Data Loss Event** - any event that results, or may result, in unauthorised access to Personal Data held by the Processor under this Partnering Contract and/or actual or potential loss and/or destruction of such Personal Data, including any Personal Data Breach;

**Data Protection Impact Assessment** - an assessment by the Controller of the impact of the envisaged Processing on the protection of Personal Data;

**Data Protection Laws** -

- (i) the GDPR;
- (ii) the LED;
- (iii) the Data Protection Act 2018 (to the extent it relates to Processing of Personal Data and privacy); and
- (iv) all applicable laws about the Processing of Personal Data and privacy;

**Data Protection Officer** - has the meaning given to such term in the GDPR;

**Data Protection Schedule** - the schedule identified as such in the Project Partnering Agreement (or the Commencement Agreement, as the context requires);

**Data Subject** - has the meaning given to such term in the GDPR;

**Data Subject Access Request** - a request made by, or on behalf of, a Data Subject under the Data Protection Laws to access its Personal Data;



*Reference in Partnering  
Terms*

**DBS Check** - a "standard", "enhanced" or "enhanced with lists" check (or any other equivalent check required by the Client at its sole discretion) undertaken by the Disclosure and Barring Service (or such successor or replacement or alternative organisation as may be established from time to time);

**Disclosure and Barring Service** - a non-departmental public body sponsored by the Home Office and established under the provisions of the Protection of Freedoms Act 2012 that is responsible for decision-making and the maintenance of barring lists in relation to the children's and vulnerable adults sectors;

**Fraud** - any offence under the law creating offences in respect of fraudulent acts or at common law in respect of fraudulent acts in relation to the Crown or defrauding or attempting to defraud or conspiring to defraud the Crown by their personnel in connection with the receipt of monies from the Client;

**GDPR** - Regulation (EU) 2016/679 of the European Parliament and of the European Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation);

**Information and Security Requirements** - the information and security requirements of the Client as identified as such in the Project Partnering Agreement (as may be updated and/or replaced by the Client by written notice to the Partnering Team members from time to time);

**Insolvency Event** – a situation where any of the following events occurs in relation to a Partnering Team member:

- (i) an order is made for its winding up or a petition or notice is presented or a meeting is convened for the purpose of considering a resolution for its winding up or any such resolution is passed;
- (ii) a receiver (including any administrative receiver) or similar person is appointed in respect of, or an encumbrancer takes possession of, the whole or any part of any of its property, assets or undertaking or any step is taken by any person to enforce any rights under or pursuant to any security interest or encumbrance of any kind over any of its undertaking, property or assets;



**Reference in Partnering  
Terms**

- (iii) an administrator is appointed (whether by the court or otherwise) or any step is taken (whether in or out of court) for the appointment of an administrator or any notice is given of an intention to appoint an administrator;
- (iv) any distress, execution, sequestration or other similar process is levied or applied for in respect of the whole or any part of any of its property, assets or undertaking which is not remedied within fourteen (14) days of the same;
- (v) any composition in satisfaction of its debts or scheme of arrangement of its affairs or compromise or arrangement between it and its creditors generally (or any class of its creditors) and/or its members is proposed, applied for, sanctioned or approved;
- (vi) it is unable to pay its debts for the purposes of the Insolvency Act 1986, or becomes insolvent under any applicable legislation;
- (vii) a monitor is appointed or any document is filed at court to obtain or apply for a moratorium or an order is made for a moratorium to come into force in respect of the Partnering Team member; or
- (viii) any event analogous to any of the above occurs,

in each case, in any jurisdiction where that Partnering Team member carries on business or has assets and the term "Insolvent" shall be construed accordingly;

**Intellectual Property Rights -**

- (i) 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 including BIM, know-how, trade secrets and other rights in Confidential Information;
- (ii) 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; and
- (iii) all other rights having equivalent or similar effect in any country or



*Reference in Partnering  
Terms*

jurisdiction.

**Know-How** - all ideas, concepts, schemes, information, knowledge, techniques, methodology, and anything else in the nature of know how relating to the Services but excluding know how already in the possession of the Client or any other Partnering Team member before the date of the Project Partnering Agreement;

**Malicious Code** – any software program or code that is intended to destroy, interfere with, corrupt and/or detrimentally affect program files, data or other information, executable code or application software macros, whether or not its operation is immediate or delayed, and whether introduced wilfully, negligently or without knowledge of its existence;

**Non-Client ICT System** – any ICT System which is owned by a Partnering Team member and/or licensed to that a Partnering Team member by a third party and which is operated by the a Partnering Team member and/or any of its Non-Client Personnel in connection with this Partnering Contract (and excluding any Affected ICT System);

**Non-Client Personnel** – the Constructor's and any Partnering Team members' employees, consultants and/or Specialists and all other individuals for whom they are responsible at any tier (other than the Client's Personnel);

**Personal Data** – has the meaning given to such term in the GDPR;

**Personal Data Breach** – has the meaning given such term in the GDPR;

**Personnel** - all employees, agents, Consultants and Specialists of any Partnering Team member;

**Personnel Vetting Procedure** – the Client's procedures for the vetting of the Non-Client Personnel as advised to the Partnering Team members by the Client in writing from time to time;

**Process** – has the meaning given such term under the Data Protection Laws (and "**Processed**" and "**Processing**" shall be construed accordingly);

**Processor** – has the meaning given to such term in the GDPR;

**Processor Personnel** – all directors, officers, employees, agents,



*Reference in Partnering  
Terms*

consultants and contractors of the Processor and/or of any Sub-Processor engaged in performing the Processor's obligations under this Partnering Contract;

**Process** – has the meaning given to "processing" under the Data Protection Laws (and "Processed" and "Processing" shall be construed accordingly);

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

**Relevant Conviction** – save in relation to minor road traffic offences, any previous pending prosecutions, convictions, cautions and binding-over orders (including any spent convictions as contemplated by section 1(1) of The Rehabilitation of Offenders Act 1974 by virtue of the exemptions specified in Part II of Schedule 1 of the Rehabilitation of Offenders Act 1974 (Exemptions) Order 1975 (SI 1975/1023) or any replacement or amendment to that Order);

**Security Requirements** – the security requirements of the Client as identified as such in the Project Partnering Agreement (as may be updated and/or replaced by the Client by written notice to the Partnering Team members from time to time);

**Sub-Processor** – any third party appointed to Process any Personal Data on behalf of a Processor in connection with this Partnering Contract;

**Vetting and Barring Scheme** – the scheme set up under the provisions of the Safeguarding Vulnerable Groups Act 2006.

**Special Term 28.2 Partnering Documents**

Insert new clause 2.2A as follows:

"Subject to the provisions of clause 2.5 and clause 2.6, the Constructor warrants to the Client that, in complying with its duties and obligations under or in connection with this Partnering Contract, it shall do so in all respects in a manner that is entirely consistent with its duties and obligations to the



**Reference in Partnering  
Terms**

Client under the Constructor Framework Agreement and each Consultant warrant to the Client that, in complying with its duties and obligations under or in connection with this Partnering Contract, it shall do so in all respects in a manner that is entirely consistent with its duties and obligations to the Client under the Consultant Framework Agreement."

Amend clause 2.5 as follows:

In line 4, following the word "responsibilities" insert the following:

",including any error, omission or discrepancy as between the Partnering Documents and the terms and conditions of the Constructor Framework Agreement and/or the Consultant Framework Agreement in the context of the Constructor's and/or Consultant's obligations (as the case may be) under and in connection with this Partnering Contract".

At the end of clause 2.5 insert the following:

"Any proposal pursuant to this clause 2.5 shall be subject to prior approval by the Client after Core Group Consultation, pursuant to which the Client shall (in its sole discretion) elect to adopt any proposal to resolve any such error, omission or discrepancy put forward by the Partnering Team members, instruct a proposal of its own or notify the Partnering Team members which document(s) forming part of the Partnering Documents take precedence over the other in relation to the identified issue and, in each case, the Partnering Team members shall be obliged to comply with the decision or acceptance by the Client without cost to the Client and without any entitlement to any extension of the Date for Completion (or any analogous period of time within which a Partnering Team member is required to complete a specific requirement under or in connection with this Partnering Contract)."

Amend clause 2.6 as follows:

Delete "In the event that a discrepancy cannot be resolved in accordance with clause 2.5, and except where a different priority is agreed by all Partnering Team members," and substitute as follows:

"Except where a different priority is determined by the Client in its sole discretion pursuant to clause 2.5 (and with whose decision the Partnering Team members shall comply without cost to the Client and without any entitlement to any extension of the Date for Completion or any analogous





**Reference in Partnering  
Terms**

period of time within which a Partnering Team member is required to complete a specific requirement under or in connection with this Partnering Contract),"

Insert a new (i) in the list as follows: "(in the context of the duties and obligations of the Constructor under or in connection with the Constructor Framework Agreement) the terms and conditions of the Constructor Framework Agreement and/or (in the context of the duties and obligations of the Consultants under or in connection with the Consultant Framework Agreement) the terms and conditions of the Consultant Framework Agreement;". Subsequently amend the existing numbering from (i)-(xiv) to (ii)-(xv).

Insert new clause 2.7 as follows:

"Nothing under or in connection with these Partnering Terms shall constitute a supply of goods or services by the Client for the purposes of section 233B of the Insolvency Act 1986."

Insert new clause 2.8 as follows:

"Any Partnering Team member shall, within ten (10) Working Days (or such other period as is reasonable) of any request by any other Partnering Team member, provide to the requesting party any information (or a copy of the same) relating to the Project which is in its possession or in respect of which it is the party most appropriate to obtain such information and shall ensure that such information is accurate, unless otherwise stated in writing at the time of its provision."

Insert new clause 2.9 as follows:

"Each of the Partnering Team members acknowledges and agrees that:

(i) notwithstanding their appointment under this Partnering Contract, no Partnering Team member has or shall have the exclusive right to undertake any works and/or services to be performed and undertaken on behalf of the Client in relation to the Project and the Client may, at its sole discretion and without incurring any liability to any party to this Partnering Contract, issue instructions to other Partnering Team members, constructors, consultants and/or third parties to carry out works and/or services and tasks in relation to the Project which are the same as or similar to the services under this



*Reference in Partnering  
Terms*

Partnering Contract;

(ii) the decision to instruct and/or maintain the engagement of any Partnering Team member under this Partnering Contract to carry out and complete any works and/or services in relation to the Project (if at all) is at the sole discretion of the Client;

(iii) the Client makes no guarantee to any Partnering Team member that it shall proceed with the design and construction of the Project and no Partnering Team member shall have an entitlement to perform any works and/or services in connection with the same; and

(iv) the Partnering Team members, whether jointly or individually, shall have no entitlement to make any claim against the Client (whether in contract, tort or any other basis of law) in respect of costs, damages, expense and/or loss (whether direct, indirect, consequential, linked to lost profit or otherwise) or on any other basis, arising out of it not being awarded any minimum number of services and/or works in relation to the Project, whether in number or in value."

Insert new clause 3.2A as follows:

"Each Partnering Team member shall ensure that:

(i) each and every document (in whatever form, including hard and/or soft (electronic) copy) and/or communication prepared and/or issued by or on behalf of that Partnering Team member pursuant to this Partnering Contract is clearly marked "OFFICIAL" or with such other security-related designation that the Client notifies the Partnering Team members of in writing from time to time; and

(ii) it will (and ensure that any third parties engaged by it in connection with the Project) comply with any communications protocol and/or document security protocol of the Client that the Client may issue to the Partnering Team members (and thereafter update and/or replace at its sole discretion) from time to time, at its own cost and without any adjustment to any Date for Completion."

Insert new clause 3.7A as follows:

"Each Partnering Team member acknowledges and agrees that its liability under this Partnering Contract shall not be released, diminished or in any other way affected by:



*Reference in Partnering  
Terms*

- (a) any direction, admission, approach, consent, approval, confirmation, comment, sanction, acknowledgement or advice made or given by or on behalf of the Client or the Client Representative;
- (b) any act, omission or delay by or on behalf of the Client in inspecting approving or informing itself about anything relating to the Project;
- (c) any enquiry or inspection into any relevant matter which may be made or carried out by or on behalf of the Client or the Client Representative;
- (d) the inclusion of the value of any work, materials or goods in any payment;
- (e) the issue of any written confirmation that Project Completion has been achieved or that any defects in the Project have been rectified; or
- (f) the engagement by a Partnering Team member of a Specialist (whose acts and omissions that Partnering Team member shall be responsible and liable for as if such acts or omissions were its own), and the rights and/or remedies of a Partnering Team member may only be waived by formal written waiver which is signed by a duly authorised representative of the Client waiving its rights and which makes express and unequivocal reference to the waiver being made pursuant to this clause 3.7A."

**Special Term 28.3 Health and Safety**

Insert new sub-clause after clause 7.2 as follows:

"7.2.1 The Constructor shall promptly notify the Client of any health and safety hazards which may arise in connection with the performance of the Project. The Client shall promptly notify the Constructor of any health and safety hazards which may exist or arise at the Site and which may affect the Constructor in the performance of the Project."

Insert new sub-clauses to Clause 15.3 as follows and replace the full stop at the end of sub-clause 15.3(vi) with ";":

"15.3(vii) the Constructor shall comply with any health and safety measures implemented by the Client in respect of employees and other individuals working on the Site;



*Reference in Partnering  
Terms*

- 15.3(viii) the Constructor shall notify the Client immediately in the event of any incident occurring in the performance of the Project on Site where that incident causes any personal injury or damage to property which could give rise to personal injury;
- 15.3 (ix) the Constructor shall ensure that any Health and Safety policy statement (as required by the Health and Safety at Work etc. Act 1974) is made available to the Client on request."

**Special Term 28.4 Security and Vetting**

Insert new clause 7.8 with a marginal note of "Security and Vetting" as follows:

- (i) The provisions of clause 7.8(i) to clause 7.8(xvii) (inclusive) are subject always to the requirements of the Client notified to a Partnering Team member pursuant to clause 7.8(xviii).
- (ii) Where Non-Client Personnel who are required to have a pass for admission to the Site are identified by the relevant Partnering Team member to the Client (provided always that the relevant Partnering Team member first notifies the Client in writing of such Non-Client Personnel within a reasonable period ahead of their scheduled attendance(s) at the Site), the Client, subject to its satisfactory completion of its own approval procedures in respect of such admission by Non-Client Personnel, shall arrange for passes to be issued. Non-Client Personnel who cannot produce a proper pass when required to do so by any of the Client's Personnel, or who contravene any conditions on the basis of which a pass was issued, may be refused admission to the Site or required to leave the Site if already there.
- (iii) The Constructor and/or any other Partnering Team member as the case may be shall promptly return any pass issued to any Non-Client Personnel pursuant to clause 7.8(i) if at any time the Client so requires or if the person to whom the pass was issued ceases to be involved in the performance of the relevant part of the Project. The Constructor and any other Partnering Team member as the case may be shall promptly return such passes on completion or earlier termination of their appointment under this Partnering Contract.
- (iv) Non-Client Personnel attending the Site may be subject to a search at



*Reference in Partnering  
Terms*

- any time. Strip searches are only conducted on the specific authority of the Client under the same rules and conditions applying to the Client's Personnel. The Partnering Team members are deemed to be familiar with the Prison Rules 1999 Part III and the Prison (Amendment) Rules 2005 and the Young Offender Institute Rules 2000 Part III and the Young Offender Institute (Amendment) Rules 2008 in this regard.
- (v) The Client, whose decision is final and conclusive, reserves the right to refuse to admit to, or to withdraw permission to remain on, the Site or any premises occupied by or on behalf of the Client any Non-Client Personnel whose admission or continued presence is, in the opinion of the Client, undesirable.
  - (vi) If and when directed by the Client, each Partnering Team member shall provide a list of the names and addresses, national insurance numbers, periods of employment, immigration status and tax exemption certificates of all persons who it is expected may require admission in connection with the Partnering Contract to the Site or any premises occupied by or on behalf of the Client, specifying the capacities in which they are concerned with the Project and giving such other particulars as the Client may reasonably desire.
  - (vii) Each Partnering Team member shall ensure that its Non-Client Personnel undertaking works and/or services within the boundaries of a Government establishment shall comply with rules, regulations and requirements (including those relating to security arrangements) as may be in force from time to time for the conduct of Non-Client Personnel when at that establishment and when outside that establishment.
  - (viii) If any Partnering Team member fails to comply with clause 7.8(ii) and/or clause 7.8(v) the Client, (whose decision shall be final and conclusive in the matter) may decide that such failure is prejudicial to the interests of the Crown and if that Partnering Team member does not comply with the Client's reasonable requests within two (2) months of the date of a written notice from the Client so to do, then the Client may terminate the appointment of all or any part of a Partnering Team member's involvement in the Project as if a breach had occurred under clause 26.4 or clause 26.3 (as the context permits) of this Partnering Contract, provided that such termination



*Reference in Partnering  
Terms*

does not prejudice or affect any right of action or remedy which has accrued or thereafter accrues to the Client.

- (ix) Each Partnering Team member shall bear the costs of complying with the requirements notices, instructions or decisions received from the Client in relation to their obligations in respect of information relating to Non-Client Personnel pursuant to this clause 7.8.
- (x) No Partnering Team member shall employ any person where the Partnering Team member knows, or by reason of the circumstances which might reasonably be expected to know, is involved in any unlawful procurement of social security benefits or tax exemptions in connection with his employment by the Partnering Team member. No Partnering Team member shall make, facilitate or participate in the procurement of any unlawful payments to any person employed by them, whether in the nature of social security fraud, evasion of tax or otherwise.
- (xi) All Partnering Team members shall comply with the Client's procedures for the vetting of Non-Client Personnel in respect of all persons to be employed or engaged to carry out and complete the Project. The Constructor and other Partnering Team members shall confirm that all persons employed or engaged by them or that will be employed or engaged by them in relation to the Partnering Contract are vetted and recruited on a basis that is equivalent to and no less strict than the Personnel Vetting Procedures.
- (xii) Each Partnering Team member shall procure that, in respect of all potential individuals and parties to be engaged by that Partnering Team member in connection with this Partnering Contract, before attending the Site to perform any obligations of that Partnering Team member under and in connection with this Partnering Contract:-
  - (a) is questioned as to whether they have any Relevant Convictions;
  - (b) a DBS Check is obtained for each person (of a type to be agreed with the Client); and
  - (c) save to the extent prohibited by applicable law, a copy of the results of such DBS Check are notified to the Client,



*Reference in Partnering  
Terms*

and each Partnering Team member shall ensure that no person who discloses any Relevant Convictions, or who is found to have any Relevant Convictions following the results of a DBS Check undertaken pursuant to this clause 7.8(xii) or otherwise is engaged in connection with this Partnering Contract without the prior written approval of the Client. Save to the extent prohibited by applicable law, each Partnering Team member shall procure that the Client is informed if any individual or party provides any works and/or services in connection with this Partnering Contract, subsequent to the date of the Project Partnering Agreement, receives a Relevant Conviction or whose previous Relevant Conviction(s) become known to that Partnering Team member.

- (xiii) Individuals, including those held in lawful custody or on probation shall be regarded as vulnerable persons under the Safeguarding Vulnerable Groups Act 2006. Where the Client deems it necessary, a Partnering Team member shall provide a list of Non-Client Personnel who are to carry out and complete the Project that are vetted by the Disclosure and Barring Service. The Client may in its sole discretion refuse access to the Site by any Non-Client Personnel who do not successfully complete the vetting procedures under the Vetting and Barring Scheme.
- (xiv) Whilst on the Site, a Partnering Team member must ensure that its Non-Client Personnel comply with all security measures implemented by the Client in respect of staff and other persons attending the Site. The Client shall provide copies of its written security procedure to the Partnering Team members on request. The Partnering Team members and all their Non-Client Personnel shall be prohibited from taking any photographs on the Site unless the Client has given prior written consent and a representative of the Client is present so as to have full control over the subject matter of each photograph to be taken.
- (xv) The Partnering Team members shall co-operate with any investigation relating to security which is carried out by the Client or by any person who is responsible to the Client for security matters, and when required by the Client:
  - (a) take all reasonable measures to make any Non-Client Personnel identified by the Client available to be interviewed by



*Reference in Partnering  
Terms*

the Client, or by a person who is responsible to the Client for security matters, for the purposes of the investigation (and all Non-Client Personnel have the right to be accompanied by and to be advised or represented to the other person whose attendance at the interview is acceptable to the Client); and

- (b) subject to any legal restriction on their disclosure, provide all documents, records or other material of any kind which may reasonably be required by the Client or by a person who is responsible to the Client for security matters, for the purposes of the investigation, so long as the provision of that material does not prevent the Constructor from carrying out and completing the Project (and the Client has the right to retain any such material for use in connection with the investigation and, so far as possible, provide the Constructor with a copy of any material retained).
- (xvi) Each Partnering Team member shall:
  - (a) comply with the Official Secrets Acts and section 2 of the Finance Act 1989 in the performance of its obligations and duties under or in connection with this Partnering Contract;
  - (b) take all reasonable steps to ensure that each of its Non-Client Personnel:
    - (1) are aware that the Official Secrets Acts apply to it and will continue to apply to it after the expiry or earlier termination of this Partnering Contract; and
    - (2) comply with the Official Secrets Acts in the performance of its obligations and duties under or in connection with this Partnering Contract; and
  - (c) if requested by the Client in writing from time to time, ensure that any of its Non-Client Personnel sign a statement acknowledging that, both during the term of this Partnering Contract and after its expiry or termination, it is bound by the Official Secrets Acts.
- (xvii) Each Partnering Team member acknowledges that at all times during





*Reference in Partnering  
Terms*

its engagement under this Partnering Contract:

- (a) it shall comply in all respects with the Security Requirements;
  - (b) (without prejudice to the generality of clause 7.9 and clause 25.7) it shall comply with the Information and Security Requirements;
  - (c) the Client may, without prior notice, search any persons or vehicles engaged or used by a Partnering Team member or its Non-Client Personnel at any of the Site from time to time and at its sole discretion;
  - (d) at the written request of the Client, a Partnering Team member shall, at its own cost, provide a list of the names, addresses, national insurance numbers and immigration status of all individuals who may require admission to the Site, specifying the capacities in which such individuals are engaged by that Partnering Team member in connection with the Project and provide such further information and details as may be reasonably requested by the Client; and
  - (e) each Partnering Team member shall ensure that it and all its Non-Client Personnel who have access to a Site, a Client System or Client Data have been cleared and authorised to access the same pursuant to and in accordance with the BPSS.
- (xviii) Without prejudice to the generality of clause 7.8(i) to clause 7.8(xvii) (inclusive), each Partnering Team member acknowledges and agrees that it shall comply with and shall ensure that its Non-Client Personnel comply with any security, safeguarding and/or vetting requirements and/or instructions:
- (a) as specified in the Client's Policies;
  - (b) that the Client notifies them of in writing from time to time in connection with their attendance at the Site; and/or
  - (c) as may be specified and/or referred to elsewhere in the Partnering Documents (provided always where any such requirements in the Partnering Documents are less onerous than those specified in clause 7.8(i) to clause 7.8(xvi) and/or



**Reference in Partnering  
Terms**

those specified in the Client's Policies, a Partnering Team member shall notify the Client of this and the Client (at its sole discretion) shall advise the Constructor in writing, as soon as reasonably practicable upon receiving the notice, which requirements shall take precedence and that Partnering Team member shall comply with the same without any entitlement to any additional payment and (in the context of the Constructor only) an adjustment to the Completion Date and/or the Agreed Maximum Price.

- (xix) Without prejudice to the generality of clause 7.8(i) to clause 7.8(xviii) (inclusive), the Client shall provide to a Partnering Team member, upon receipt of a written request from that Partnering Team member for the same, a written copy of its security policies and procedures current as at the time of the request."

**Special Term 28.5 Malicious Code**

Insert new clause 7.9 as follows:

- (i) Each Partnering Team member shall, at all times during its engagement under this Partnering Contract, ensure that:
- (a) Anti-Virus Software is installed on its Non-Client ICT System;
  - (b) such Anti-Virus Software is used on a continuous basis to:
    - (1) identify, detect and/or remove Malicious Code from its Non-Client ICT System(s);
    - (2) prevent the transmission of Malicious Code from its Non-Client ICT System onto any Client ICT System or other Non-Client ICT System(s); and
    - (3) protect (and inoculate) its Non-Client ICT System(s) and protect any Client ICT System and other Non-Client ICT System(s) against Malicious Code;
  - (c) such Anti-Virus Software is maintained and updated on a continuous basis with all (without limitation) anti-virus definitions and signatures that are developed and distributed by the



*Reference in Partnering  
Terms*

developer of such Anti-Virus Software from time to time;

- (d) where such Anti-Virus Software is maintained and updated by its developer on a subscription basis, its subscription is maintained on a continuous basis and is not permitted to lapse; and
  - (e) where a piece of Anti-Virus Software ceases to be maintained on a continuous basis by its developer or is discontinued, it is replaced by at least an equivalent piece of Anti-Virus Software.
- (ii) Without prejudice to the generality of clause 7.9(i), where (as an **"Identifying Party"**):
- (a) a Partnering Team member becomes aware of the presence of or exposure to Malicious Code on its Non-Client ICT System(s), any Client ICT System and/or any other Non-Client ICT System(s); or
  - (b) the Client becomes aware of presence of or exposure to Malicious Code on its Client ICT System and/or any Non-Client ICT System(s),

each an **"Affected ICT System"**, the Identifying Party shall immediately notify (as the context permits) the Client and any Partnering Team member who, in the reasonable opinion of the Identifying Party have been exposed to Malicious Code (each an **"Affected Party"**), following which:

- (1) the Identifying Party and each Affected Party shall cooperate to actively minimise the effect and (as the context permits) remove from and/or protect the Affected ICT System(s) from such Malicious Code as soon as reasonably practicable upon becoming aware of its presence on the Affected ICT System(s) or their exposure to the Malicious Code; and
- (2) where such Malicious Code causes (or could cause) a loss of operational efficiency and/or loss or corruption of the Client Data, the Identifying Party and each Affected Party shall assist each other in order to:



**Reference in Partnering  
Terms**

- (A) mitigate the immediate and long-term impact of the Malicious Code on the Affected ICT System(s);
  - (B) minimise any actual or potential losses of operational efficiency or corruption of Client Data on such Affected ICT System(s) (including by, as the context permits, restoring any affected Client Data from the most recent back-ups of the Client Data); and
  - (C) protect (and inoculate) the Affected ICT System(s) against the Malicious Code in order to restore and maintain the full security of the Affected ICT Systems and protect the Client Data from Malicious Code.
- (iii) Where an Affected ICT System is affected by Malicious Code that has originated from a Non-Client ICT System (including from Client Data that was under the control of that Partnering Team member at the relevant time), the Partnering Team member from whose Non-Client ICT System(s) the Malicious Code originated shall comply with the requirements of clause 7.9(ii) at its own cost and reimburse each Affected Party in full in respect of any costs, losses and expenses arising out of or in connection with presence and impact on and/or removal of such Malicious Code on its Affected ICT System."

**Special Term 28.6 Confidentiality**

Delete clause 25.5 and insert as follows:

25.5 In this clause:

- Commercially Sensitive Information means the information listed in the Commencement Agreement (Commercially Sensitive Information).
- Confidential Information means the Client's Confidential Information and/or the Partnering Team members' Confidential Information as the context permits.
- Partnering Team member's Confidential Information means any information, however it is conveyed, that relates to the



*Reference in Partnering  
Terms*

business, affairs, developments, trade secrets, Know-how, personnel and suppliers of the Constructor and the other Partnering Team members (other than the Client), 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.

- **Client's Confidential Information** means all Personal Data and any information, however it is conveyed, that relates to the business affairs, developments, trade secrets, know-how, personnel and suppliers 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 to be considered to be confidential.

25.5.1 Except where disclosure is expressly permitted elsewhere in the Partnering Contract, each Partnering Team member:

- shall treat all Confidential Information as confidential and safeguard it accordingly and
- shall not disclose Confidential Information to any other person without the owner's prior written consent.

25.5.2 The Partnering Team members' obligations in relation to Confidential Information do not apply to the extent that:

- the disclosure is a requirement of law placed upon the party making the disclosure, including any requirements for disclosure under the FOIA, Code of Practice on Access to Government Information or the Environmental Information Regulations;
- the information was in the possession of the party making the disclosure without obligation of confidentiality prior to its



*Reference in Partnering  
Terms*

disclosure by the information owner;

- the information was obtained from a third party without obligation of confidentiality;
- the information was already in the public domain at the time of disclosure otherwise than by a breach of the Partnering Contract;
- it is independently developed without access to other Partnering Team members or Client's Confidential Information; or
- the disclosure is to professional advisers for the purposes of obtaining advice in relation to this Partnering Contract.

25.5.3 The other Partnering Team members shall only disclose the Client's Confidential Information relevant to the carrying out and completion of the Project to the Personnel who are directly involved in carrying out and completing the Project, and shall ensure that the Personnel are aware of and comply with their obligations in respect of Confidential Information.

25.5.3 The other Partnering Team members shall not, and shall procure that the Personnel do not, use of any of the Client's Confidential Information received otherwise than for the purposes of the Partnering Contract.

25.5.4 At the written request of the Client, any other Partnering Team member shall procure that the Personnel identified in the Client's notice sign a confidentiality undertaking on similar terms to the Partnering Contract prior to commencing any work in accordance with the Partnering Contract.

25.5.5 Nothing in the Partnering Contract shall prevent the Client from disclosing the other Partnering Team members' Confidential Information:

- to any Crown body or any other contracting authority on the understanding that they are entitled to further disclose the Confidential Information to other Crown bodies or other



*Reference in Partnering  
Terms*

contracting authorities 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 or any contracting authority;

- to any contractor, consultant or other person engaged by the Client or any person conducting an Office of Government Commerce gateway review;
- for the purpose of the examination and certification of the Client's accounts, or
- 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.

25.5.6 The Client shall use its reasonable endeavours to ensure that any government department, contracting authority, employee, third party or Specialist to whom any other Partnering Team member's Confidential Information is disclosed is made aware of the Client's obligations of confidentiality.

25.5.7 Nothing prevents any other Partnering Team member from using any techniques, ideas or know-how gained during the performance of the Partnering Contract in the course of its normal business to the extent that this use does not result in a disclosure of any other Partnering Team member's or Client's Confidential Information or an infringement of Intellectual Property Rights.

25.5.8 The Partnering Team members acknowledge and hereby give consent for the Client to publish the Partnering Contract in its entirety, including from time to time agreed changes to the Partnering Contract, to the general public. Prior to the publication the Client may, at its sole discretion, in whole or in part, redact information for one or more of the following grounds:

- (i) national security;
- (ii) personal data;
- (iii) information protected by intellectual property law;
- (iv) information which is not in the public interest to disclose



*Reference in Partnering  
Terms*

(under a Freedom of Information Act analysis);

- (v) third party confidential information;
- (vi) IT security; or
- (vii) Prevention of fraud.

**Special Term 28.7 Data Protection Laws**

Insert a new clause 25.6 with a marginal note of "Data Protection Laws" as follows:

- (i) Each Partnering Team member acknowledges that:
  - (a) for the purposes of the Data Protection Laws and this Partnering Contract, the Client is the Controller and each Partnering Team member is individually a Processor, unless otherwise specified in the Data Protection Schedule; and
  - (b) the only Processing that a Processor is authorised to do is listed in the Data Protection Schedule by the Controller and may not be determined by that Processor.
- (ii) A Processor shall notify the Controller immediately if it considers that any of the Controller's instructions infringe the Data Protection Laws.
- (iii) A Processor shall provide all reasonable assistance to the Controller in the preparation of any Data Protection Impact Assessment prior to commencing any Processing and such assistance may, at the discretion of the Controller, include:
  - (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 Project;
  - (c) an assessment of the risks to the rights and freedoms of Data Subjects; and/or
  - (d) the measures envisaged to address the risks, including





*Reference in Partnering  
Terms*

safeguards, security measures and mechanisms to ensure the protection of Personal Data.

- (iv) A Processor shall, in relation to any Personal Data that is Processed in connection with its obligations under this Partnering Contract:
- (a) Process that Personal Data only in accordance with the Data Protection Schedule, unless the Processor is required to do otherwise by applicable law (provided that if it is so required, the Processor shall promptly notify the Controller before Processing the Personal Data unless prohibited by applicable law);
  - (b) ensure that it has in place Protective Measures appropriate to protect against a Data Loss Event, which the Controller may reasonably reject (but failure to reject shall not amount to approval by the Controller of the adequacy of the Protective Measures), having taken account of the
    - (1) nature of the data to be protected;
    - (2) harm that might result from a Data Loss Event;
    - (3) state of technological development; and
    - (4) cost of implementing any measures and
  - (c) ensure that
    - (1) its Processor Personnel do not Process any Personal Data except in accordance with this Partnering Contract (and in particular the Data Protection Schedule); and
    - (2) 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 its duties as a Processor under this clause 25.6,
      - (B) are subject to appropriate confidentiality undertakings with the Processor or any Sub-



*Reference in Partnering  
Terms*

- 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 Partnering Contract; and
  - (D) have undergone adequate training in the use, care, protection and handling of Personal Data;
- (3) it does 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:
- (A) the Controller or the Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with Article 46 of the GDPR or Article 37 of the LED) as determined by the Controller;
  - (B) the Data Subject has enforceable rights and effective legal remedies;
  - (C) the Processor complies with its obligations under the Data Protection Law by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses all reasonable endeavours to assist the Controller in meeting its obligations); and
  - (D) the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the Processing of the Personal Data; and
- (4) at the written direction of the Controller, delete or return Personal Data (and any copies of it) to the Controller on termination of this Partnering Contract unless the Processor is required by applicable law to retain the



*Reference in Partnering  
Terms*

Personal Data.

- (v) Subject to clause 25.6(vi), a Processor shall notify the Controller immediately if it:
  - (a) receives a Data Subject Access Request (or purported Data Subject Access Request);
  - (b) receives a request to rectify, block or erase any Personal Data;
  - (c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Laws;
  - (d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data that is Processed under this Partnering 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 applicable law; and/or
  - (f) becomes aware of a Data Loss Event.
- (vi) A Processor's notification obligation under clause 25.6(vi) includes the provision of further information to the Controller in phases, as details become available.
- (vii) Taking into account the nature of the Processing, a Processor shall provide the Controller with full assistance in relation to either Party's obligations under Data Protection Laws and any complaint, communication or request made under clause 25.6(v) (and insofar as possible within the timescales reasonably required by the Controller) including by 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 Access Request within the relevant timescales set out in the Data



*Reference in Partnering  
Terms*

- Protection Laws;
- (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; and
  - (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.
- (viii) Unless a Processor employs fewer than two-hundred and fifty (250) staff, a Processor shall maintain complete and accurate records and information to demonstrate its compliance with this clause 25.6 unless the Controller determines that:
- (a) the Processing is not occasional;
  - (b) the Processing includes special categories of data under Article 9(1) of the GDPR or Personal Data concerning criminal convictions and offences under Article 10 of the GDPR; and/or
  - (c) the Processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- (ix) A Processor shall allow for audits of its Data Processing activity by the Controller or the Controller's designated auditor.
- (x) Each Partnering Team member shall designate its own Data Protection Officer if required by the Data Protection Law.
- (xi) Before allowing any Sub-Processor to Process any Personal Data related to this Partnering Contract, a 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



**Reference in Partnering  
Terms**

give effect to the terms set out in this clause 25.6 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.
- (xii) A Processor shall remain fully liable for all acts or omissions of any of its Sub-Processors.
- (xiii) The Controller may, at any time on not less than thirty (30) Working Days' notice, revise this clause 25.6 by replacing it with any applicable "Controller" to "Processor" standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Partnering Contract).
- (xiv) The Partnering Team members agree to take account of any guidance issued by the Information Commissioner's Office and the Controller may, on not less than thirty (30) Working Days' notice to the other Partnering Team members, amend this agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.
- (xv) Each Processor shall be liable for and hereby indemnifies the Client from and against all claims, proceedings, damages, liabilities, losses, costs and expenses suffered or incurred by the Client where and to the extent that the same arises in connection with any breach of this clause 25.6 by that Processor and/or its personnel (of any type) and/or its Specialists.

**Special Term 28.8 Information Security**

Insert a new clause 25.7 with a marginal note of "Information Security" as follows:

- (i) The provisions of clause 25.7(ii) to clause 25.7(x) (inclusive) are subject always to the requirements of the Client notified to a Partnering Team member pursuant to clause 25.7(xi).
- (ii) Each Partnering Team member shall:-
  - (a) identify, keep and disclose to the Client upon request a record of those members of the Non-Client Personnel and any



*Reference in Partnering  
Terms*

- Specialists with access to or who are involved in handling Client Data (users);
- (b) provide to the Client details of its policy for reporting, managing and recovering from information risk incidents, including losses of protected Personal Data and ICT security incidents and its procedures for reducing risk and raising awareness; and
  - (c) immediately report information security incidents to the Client. Significant actual or potential losses of Personal Data may be shared with the Information Commissioner and the Cabinet Office by the Client.
- (iii) The Partnering Team members shall protect Client Data whose release or loss could cause harm or distress to individuals. The Partnering Team members shall handle all such Client Data as if it were confidential while it is processed or stored by the Partnering Team members or Specialists, applying the measures set out in clauses 25.7(i) to 25.7(ix) (inclusive).
- (iv) When Client Data is held on paper it shall be kept secure at all times, locked away when not in use or the premises on which it is held shall be secured. If Client Data held on paper is transferred it shall be by an approved secure form of transfer with confirmation of receipt. When Client Data is held and accessed on ICT systems on secure premises, all Partnering Team members shall (so far as is relevant to their role) apply the minimum protections for information set out in the Project Brief, or equivalent measures, as well as any additional protections as needed as a result of the Client's risk assessment. Where in exceptional circumstances equivalent measures are adopted, the relevant Partnering Team member shall obtain the Client's prior approval in writing.
- (v) Wherever possible, Client Data should be held and accessed on paper or ICT systems on secure premises protected as above. The Partnering Team members shall not use removable media (including laptops, removable discs, CD-ROMs, USB memory sticks, PDAs and media card formats) for storage or access to such Client Data where possible. Where the Client agrees that this is not possible, the Partnering Team members shall work to the following hierarchy, recording the reasons for a particular approach not being adopted in a



*Reference in Partnering  
Terms*

particular case or a particular business area:-

- (a) **best option:** hold and access data on ICT systems on secure premises;
  - (b) **second best option:** secure remote access, so that Client Data can be viewed or amended without being permanently stored on the remote computer, which is possible for Client Data over the internet using products meeting the FIPS 140-2 standard or equivalent, unless otherwise agreed with the Client;
  - (c) **third best option:** secured transfer of Client Data to a remote computer on a secure site on which it will be permanently stored, provided that both the Client Data at rest and the link should be protected at least to the FIPS 140-2 standard or equivalent and protectively marked Client Data shall not be stored on privately owned computers unless they are protected in this way; and
  - (d) in all cases the remote computer should be password protected, configured so that its functionality is minimised to its intended business use only, and have up to date software patches and anti-virus software.
- (vi) Where the Client agrees in writing that it is not possible to avoid the use of removable media in reference to the storage of Client Data, the Partnering Team members shall implement all of the following conditions:
- (a) the Client Data transferred to the removal media should be the minimum necessary to achieve the business purposes, both in terms of the numbers of people covered by the Client Data and the Client Data held. Where possible only anonymised Client Data should be held;
  - (b) the removal media should be encrypted to a standard of at least FIPS 140-2 or equivalent in addition to being protected by an authentication mechanism, such as a password;
  - (c) user rights to transfer Client Data to removable media shall be carefully considered and strictly limited to ensure that this is only provided where absolutely necessary for business



*Reference in Partnering  
Terms*

- purposes and subject to monitoring by the relevant Partnering Team member and the Client; and
- (d) the individual responsible for the removable media should handle it themselves, or if they entrust it to others as if it were the equivalent of a large amount of their own cash.
- (vii) Where the Client agrees in writing that the second condition of encryption as referred to in clause 25.7(v) cannot be applied due to business continuity and disaster recovery considerations, such unprotected Client Data shall only be recorded, moved, stored and monitored with strong controls.
- (viii) All material that has been used for confidential Client Data should be subject to controlled disposal. The Partnering Team members shall:-
- (a) destroy paper records containing protected Personal Data by incineration, pulping or shredding so that reconstruction is unlikely; and
- (b) dispose of electronic media that has been used for protected Personal Data through secure destruction, overwriting, erasure or degaussing for re-use.
- (ix) The Partnering Team members shall have appropriate mechanisms in place in order to comply with the Client's requirements as set out in this clause 25.7 including adequate training in handling Client Data and Confidential Information for their personnel.
- (x) The Partnering Team members shall:-
- (a) put in place arrangements to log the activity of Client Data users in respect of electronically held protected personal information and for managers to check the arrangements are being properly conducted, with a particular focus on those working remotely and those with higher levels of functionality (and summary records of managers' activity shall be shared with the Client and be available for inspection by the Information Commissioner's office on request); and
- (b) minimise the number of users with access to the Client Data.





**Reference in Partnering  
Terms**

- (xi) Without prejudice to the generality of clause 25.7(ii) to clause 25.7(x) (inclusive), each Partnering Team member acknowledges and agrees that it shall comply with and shall ensure that its Non-Client Parties comply with any information and/or data security requirements and/or instructions:-
  - (a) as specified in the Client's Policies;
  - (b) that the Client notifies them of in writing from time to time in connection with their attendance at the Site; and/or
  - (c) as may be specified and/or referred to elsewhere in the Partnering Documents (provided always where any such requirements in the Partnering Documents are less onerous than those specified in clause 25.7(ii) to clause 25.7(x) (inclusive) and/or those specified in the Client's Policies, the Constructor shall notify the Client of this and the Client (at its sole discretion) shall advise the Constructor in writing, as soon as reasonably practicable upon receiving the notice, which requirements shall take precedence and the Constructor shall comply with the same without any entitlement to an adjustment to the Completion Date and/or the Agreed Maximum Price.

**Special Term 28.9 Fraud and Prevention of Corruption**

Insert a new clause 25.8 with a marginal note of "Fraud and prevention of corruption" as follows:

- 25.7.1 The Partnering Team members shall take all reasonable steps to prevent Fraud.
- 25.7.2 Each Partnering Team member shall notify the Client immediately if it has any reason to suspect that any Fraud has occurred or is occurring or is likely to occur.

**Special Term 28.10 Conflicts of Interest and Reputational Risk**

Insert a new clause 25.9 with a marginal note of "Conflicts of Interest and Reputational Risk" as follows:

- (i) Each Partnering Team member shall take all appropriate steps to ensure that neither it nor any personnel and/or party employed and/or



*Reference in Partnering  
Terms*

engaged by the Partnering Team member (in whatever capacity) is placed in a position where, in the reasonable opinion of the Client:

- (a) there is or may be an actual conflict or potential conflict, between the pecuniary or personal interests of the Partnering Team member or any personnel and/or party employed and/or engaged by it and the duties owed to the Client under the provisions of this Partnering Contract (a "**Conflict of Interest**"); or
  - (b) the behaviour of the Partnering Team member or any personnel and/or party employed and/or engaged by it is not in the Client's best interest or might adversely affect the Client's reputation (a "**Reputational Risk**").
- (ii) Each Partnering Team member:-
- (a) warrants that, as at the date of this Partnering Contract, it is not aware of any actual or potential Conflict of Interest and/or Reputational Risk; and
  - (b) shall notify and disclose to the Client full particulars of any behaviour which might give rise to an actual or potential Conflict of Interest and/or Reputational Risk immediately upon becoming aware of the same.
- (iii) The Client may terminate a Partnering Team member's appointment under this Partnering Contract with immediate effect on written notice to the Partnering Team member pursuant to clause 26.3 or clause 26.4 (as the context permits) and/or take such other steps it deems necessary where, in the reasonable opinion of the Client, there is or may be an actual or potential Conflict of Interest and/or Reputational Risk that is not capable of being remedied by the Partnering Team member.

**Special Term 28.11 CDM Regulations and SWMP Regulations**

Delete the definition of "CDM Regulations" and substitute as follows:

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



*Reference in Partnering  
Terms*

Delete the definition of "Construction Phase Plan" and substitute as follows:

**"Construction Phase Plan** – the construction phase plan in accordance with regulation 12 of the CDM Regulations;"

Delete the definition of "Consultant" and substitute as follows:

**"Consultant** – any party, including the Client Representative and the Principal Designer, providing to the Client design or other services in relation to the Project;"

Delete the definition of "Pre-Construction Information" and substitute as follows:

**"Pre-Construction Information** – the information to be provided in accordance with regulation 4 of the CDM Regulations;"

Delete clause 7.1 and substitute as follows:

"For the purposes of the CDM Regulations:

- (i) the term "principal designer" shall mean the Principal Designer and the term "principal contractor" shall mean the Constructor;
- (ii) all Partnering Team members shall fulfil their respective responsibilities under the CDM Regulations, including without limitation the preparation, collation and circulation of the Pre-Construction Information by the Client or the Principal Designer, as appropriate, and the preparation of the Construction Phase Plan by the Constructor in compliance with the CDM Regulations as pre-conditions to the implementation of the Project on Site; and
- (iii) where the Constructor is not the Principal Designer, but is the "principal contractor" and the Principal Designer's appointment concludes before Project Completion, the Constructor shall review, update and revise the health and safety file in accordance with regulations 12 (8) to (10) of the CDM Regulations."

Insert new clause 7.1A as follows:

"Each member of the Partnering Team warrants that it has the skills, knowledge, experience and organisational ability to fulfil the role or roles



*Reference in Partnering  
Terms*

they are appointed to fulfil under this Partnering Contract with regard to and in compliance with the CDM Regulations."

Delete clause 8.9 and substitute as follows:

"At each stage of design development the Lead Designer, with input as agreed from other Design Team members, shall provide to the Principal Designer copies of all designs submitted pursuant to this clause 8, together with related information in accordance with regulation 9(4) of the CDM Regulations and the Principal Designer shall provide within five (5) Working Days from the date of provision of such copies (or within any other period stated in the Partnering Timetable) advice to the Client and Design Team members as to the health and safety implications of such designs and related information."

Delete clause 14.1(ii) and substitute as follows:

"(ii) completion and distribution of the Pre-Construction Information and the Construction Phase Plan in accordance with clause 7 and confirmation that the Client is satisfied that the requirements of regulation 13(4)(c) of the CDM Regulations have been met;"

Insert new clause 15.2A as follows:

"The Contractor shall:

- (i) comply with all health and safety law in connection with the Project (including the Health and Safety at Works etc. Act 1974 and the CDM Regulations) and with all health and safety measures implemented by the Client in respect of employees and other individuals working at the Site; and
- (ii) ensure that any health and safety policy statement (as required by the Health and Safety at Work etc. Act 1974) and any documents that the Constructor is required to maintain pursuant to the CDM Regulations are made available to the Client on request."

**Special Term 28.12      Employment and skills**

In **Appendix 1**, the following definitions shall be inserted:

**Employment and Skills Strategy** – the Client's Employment and Skills



*Reference in Partnering  
Terms*

Strategy forming part of the Project Brief;

**ESP** - the Project-specific Employment and Skills Plan produced by the Constructor and forming part of the Project Proposals to be complied with and implemented by the Constructor in order to execute the Employment and Skills Strategy;

**Method Statement** - the Project-specific method statement produced by the Constructor and forming part of the Project Proposals which sets out in detail how the Constructor shall implement the ESP"

**Clause 28.12.1** Clause 14.1 shall be amended by the insertion of the following sub-clause at the end of the clause:

"(xiii) development and finalisation by the Constructor of the ESP and the Method Statement."

**Clause 28.12.2** Pursuant to **clause 7.6** the Constructor shall comply with and implement the ESP and Method Statement in accordance with the Employment and Skills Strategy.

**Clause 28.12.3** The Constructor shall nominate an individual to liaise with the Client Representative and provide the Client Representative with information as required to demonstrate the Constructor's compliance with the ESP and Method Statement.

**Clause 28.12.4** The Client Representative shall provide to the Constructor information it has available to enable the Constructor to comply with and implement the ESP and Method Statement, including the details listed in the Employment and Skills Strategy.

**Clause 28.12.5** The Constructor shall provide to the Client Representative on a monthly basis, in accordance with the Partnering Timetable and the Project Timetable, a report outlining the achievements during the previous month against the ESP and Method Statement and the employment and skills KPI and Targets contained in **Annexure A, Appendix K** to this Project Partnering Agreement, and provide details of the various



*Reference in Partnering  
Terms*

employment and skills activities delivered in the month. The Client Representative shall be responsible for monitoring the Constructor's compliance with and implementation of the ESP and Method Statement, and such monitoring shall form part of the Client's assessment of the employment and skills KPI and Targets.

**Clause 28.12.6** Insert in clause 23.6 (Post-Project Completion review), after the words, "KPI and Targets," the following words: "(including the employment and skills KPI and Targets), and its compliance with and implementation of the ESP and the Method Statement".

**Clause 28.12.7** Any and all costs relating to compliance with and implementation of the ESP and Method Statement by the Constructor are included in the Price Framework.

**Clause 28.12.8** Insert new clause 17.9 as follows:  
  
"Where any Change agreed or established in accordance with this clause 17 has the effect of substantially increasing or decreasing the Agreed Maximum Price, the Constructor may propose a corresponding and proportionate amendment to the employment and skills output figures contained in the ESP, the Method Statement and any relevant KPIs and Targets. The Client and the Client Representative shall consider any such proposal made by the Constructor and shall seek to agree any amendments with the Constructor."

**Special Term 28.13 Termination**

**Clause 26.1** Delete existing wording and marginal note 'Termination for unforeseeable reasons' and insert new wording and a marginal note as follows:

**Termination at any time**

26.1 Notwithstanding any other provision of the Partnering Contract, the Client may terminate the appointments of the other Partnering



*Reference in Partnering  
Terms*

Team members under the Partnering Contract at any time. In such circumstances the Client shall give the Partnering Team members not less than twenty (20) Working Days prior notice, within which period the Partnering Team members shall cease all activities under the Partnering Contract in an orderly manner.

Upon expiry of that period the Client Representative shall issue a payment notice to the Constructor pursuant to clause 20.3 and the Client shall issue a notice to each Consultant pursuant to clause 20.4 each in respect of the total amount properly due up to the date of termination (including the value of all materials, goods and equipment in respect of which the Constructor has made commitment in accordance with the Project Timetable prior to the date of termination and has transferred unencumbered ownership to the Client and the Constructor's reasonable costs under clause 26.9) and the Client shall pay such amount in accordance with clause 20.

**Clause 26.2** Delete and substitute as follows:

"26.2 If any Partnering Team member suffers an Insolvency Event, the appointment of that Partnering Team member under the Partnering Contract shall automatically terminate with immediate effect provided that if the Client is Insolvent, the Constructor may not serve notice to terminate these Partnering Terms unless and to the extent that:

- (i) in a case where the Client has entered administration, an administrative receiver of the Client has been appointed (otherwise than in succession to another administrative receiver), gone into liquidation and/or a provisional liquidator of the Client is appointed (otherwise than in succession to another provisional liquidator), the office-holder consents to the termination;
- (ii) in any other case, the Client consents to the termination;
- (iii) the court is satisfied that the continuation of the Partnering Terms would cause the Constructor hardship and grants permission for the termination; or
- (iv) the termination is otherwise permitted pursuant to s.233B of



**Reference in Partnering  
Terms**

the Insolvency Act 1986 (as amended by the Corporate Insolvency and Governance Act 2020)."

**Clause 26.6** In line 2, after the words "..., by reason of" insert "the exercise by the Client of emergency powers or by reason of".

**Clause 26.9** In line 2, insert "26.1", prior to "26.2".

**Clause 26.16** Delete and substitute as follows:

"The termination of the appointment of any Partnering Team member shall not affect and shall be without prejudice to the mutual rights and obligations that Partnering Team member and all other Partnering Team members accrued at the date of such termination and the on-going rights and obligations of that Partnering Team member under:

- (i) clause 3.2 (Methods of Communication);
- (ii) clause 9 (Intellectual Property);
- (iii) clause 19.1 to clause 19.8 (inclusive) (Insurance and Security);
- (iv) clause 20 (Payment);
- (v) clause 25.5 (Confidentiality);
- (vi) clause 25.6 (Data Protection Laws);
- (vii) clause 25.7 (Information Security)
- (viii) clause 25.8 (Fraud and Prevention of Corruption);
- (ix) clause 25.9 (Conflicts of interest and reputational risk);
- (x) clause 26 (Termination);
- (xi) clause 25.4 (Laws and regulations);
- (xii) clause 27 (Problem Solving and Dispute Avoidance or Resolution);  
and





*Reference in Partnering  
Terms*

- (xiii) any other provision of this Agreement which is expressed to survive or is implied as surviving termination or which is required to give effect to such termination or the effect of such termination."

**Special Term 28.14 Possession**

Insert new clause 29 as follows:

"All parts of the Site will be in the exclusive possession of the Constructor until the period immediately prior to the Completion Date when the Client may need access to agreed areas of the Site in order to commence installation of agreed fixtures and fittings. The arrangements for this period of non-exclusive possession will be set out in the Commencement Agreement."

**Special Term 28.15 Asbestos**

Insert new clause 30 as follows:

"Notwithstanding Clauses 15.3(v), 18.1(iii), 18.1(iv) and 19.1 the risk of loss or damage to the Project and the Site occasioned by asbestos shall remain with the Client provided always that, in the event that the Constructor discovers any asbestos the Constructor shall take all steps that would be expected of a constructor exercising the standard of skill and care referred to at clause 22.1 and, if the asbestos is to be removed, shall appoint and adequately supervise to the standard of skill and care referred to at clause 22.1 any Specialist involved in the removal of the same."

**Special Term 28.16 Partnering Team members' employees**

**Clause 7.7** Insert new clause 7.7 as follows:

"The Client shall be entitled to require any of the Partnering Team members' employees to be replaced if in the reasonable opinion of the Client that person's performance is unsatisfactory and/or that person has breached the Security Requirements of the Client set out in the Project Brief or these Partnering Terms. Such person shall be replaced with a person of at least the same experience and expertise at the expense of the relevant Partnering Team member and subject to the Client's approval (such approval not to be unreasonably withheld or delayed)."



*Reference in Partnering  
Terms*

**Special Term 28.17      Payment**

Amend clause 20.2 line 7 by deleting "at the intervals stated in the Price Framework, the Consultant Payment Terms and any Pre-Construction Agreement or (if no intervals are stated) at the end of each calendar month" and substituting "and the Client Representative on the final Working Day of each month".

Amend clause 20.3 line 9 by deleting "twenty" and substituting "fifteen (15)".

Amend clause 20.13 by deleting and substituting as follows:

- (1) Each Partnering Team member shall allow the Client Representative (or the Cost Consultant on behalf of the Client Representative) to visit its offices and to inspect its financial records in relation to the Project at any time subject to reasonable prior notice;
- (2) The Constructor shall use reasonable endeavours to ensure that a clause is inserted into the Specialist Contracts of the key Specialists (in this case any Specialist supplying any goods or services or undertaking any works in excess of 5% of the value of the Agreed Maximum Price) specifically stating that the Client Representatives (or the Cost Consultant on behalf of the Client Representative) shall be entitled to visit the Specialist's offices and to inspect its financial records in relation to the Project at any time subject to reasonable prior notice."

Insert new clause 20.19 as follows:

"The Constructor or the Consultant (as applicable) shall within four (4) days of the date of issue of the relevant payment notice pursuant to clause 20.3, clause 20.4 or clause 20.16(iii) deliver the required VAT invoice to the Client and to the extent that the Constructor or the Consultant does not comply with this requirement, the Consultant or the Constructor (as applicable) hereby waives its right to interest pursuant to the Late Payment Act for the period up to and including the final date for payment."

**Special Term 28.18      Intellectual Property Rights**

Delete clause 9.2 and replace with the following:

"The Intellectual Property Rights in all designs and other documents



**Reference in Partnering  
Terms**

prepared by or on behalf of each Partnering Team member in relation to the Project and the work executed from them shall be the property of and vested in the Client who reserves the right to replace such designs and/or documents or to execute or to have executed works (including the Project and all and any future projects) in accordance with such designs and/or documents as may be required by the Client of the Client.

The Client hereby grants to the Constructor and other Partnering Team members an irrevocable non-exclusive, royalty free licence (carrying the right to grant sub-licences) to use for the duration of this Project only and only for purposes directly relating to completion of the Project any Intellectual Property Rights relating to the works which are or become vested in or are licensed to the Client."

**Special Term 28.19      Incentives**

Insert new clause 13.7 as follows:

"13.7      The Partnering Team members shall operate the Shared Savings Scheme set out in Appendix L."

**Special Term 28.20      Liquidated damages**

Insert new clauses 21.7 and 21.8:

"21.7      If the Constructor fails to complete the Project by the Date for Completion the Client shall be entitled either to:

- (i)      require the Constructor to pay to the Client liquidated and ascertained damages at the applicable rate specified in the Commencement Agreement (which the Client and the Constructor agree shall be no more than [REDACTED] per week or part thereof) for the period between the relevant Date for Completion and its associated Completion Date and the Client may recover the same as a debt; or
- (ii)      deduct from monies otherwise due to the Constructor liquidated and ascertained damages at the applicable rate specified in the Commencement Agreement (which the Client and the Constructor agree shall be no more than [REDACTED] per week or part thereof) for the period between the relevant Date for Completion and its associated



*Reference in Partnering  
Terms*

Completion Date.

- 21.8 If the Client fixes a later Completion Date the Client shall pay or repay to the Constructor any amounts recovered allowed or paid under Clause 21.7 for the period up to such later Completion Date **provided that** the fixing of such later Completion Date shall not invalidate the Client Representative's notice as to deduction of liquidated and ascertained damages and the payment or repayment or the amounts under this clause shall be limited to the net difference between the amounts deducted and the amounts properly due after the fixing by the Client Representative of the later completion date. Interest shall not be payable by the Client on any amounts payable or repayable under this clause."

**Special term 28.21      Contributory negligence**

Amend clause 15.3(vi) by deleting the following words:

"and provided also that the Constructor's liability to indemnify the Client under this clause 15.3(vi) shall reduce proportionately to the extent that the negligence, omission or default of the Client or any Consultant or any Specialist appointed by the Client pursuant to clause 10.11 has contributed to the relevant injury death, loss or damage."

**Special Term 28.22      Duty of Care**

Delete clause 22.1 and substitute as follows:

"Each Partnering Team member:

- (i) undertakes and warrants to the Client that, in the performance and discharge of its obligations under or in connection with this Partnering Contract, it has carried out and shall continue to carry out such obligations using all of the reasonable skill, care, diligence and prudence to be expected of an appropriately qualified, skilled, competent and experienced professional of the same discipline as that Partnering Team member that is experienced in the carrying out of such activities for projects of a similar size, scope, value, character and complexity to the Project (provided always that where a Partnering Team member's obligations include a requirement to prepare, review scrutinise, validate, authorise, comment upon, approve and/or otherwise contribute towards the design of the Project,



*Reference in Partnering  
Terms*

the reference in this clause 22.1(i) to "experienced professional of the same discipline as that Partnering Team member" shall, in the context of such design-related activities only, be construed as meaning a professional architect); and

- (ii) owes a duty of care to the other Partnering Team members in respect of the performance and discharge of its obligations under or in connection with this Partnering Contract equal to the duty that it owes to the Client under clause 22.1(i)."

**Special Term 28.23 Security Requirements**

Insert a new definition of "Security Management Plan - the Constructor's security plan prepared pursuant to paragraph 1.5.3 of **Appendix P of Annexure A** (Security Provisions) an outline of which is set out in **Annex 1 of Appendix P** (Security Management Plan); "

Insert a new definition of "Security Policy - the Client's security policy attached as **Annex 1 to Appendix P of Annexure A** (Security Provisions) as may be updated from time to time;"

"The Constructor shall comply with, and procure the compliance of the Non-Client Personnel with:

- (i) the Security Policy and the Security Management Plan and the Constructor shall ensure that the Security Management Plan produced by the Constructor fully complies with the Security Plan; and
- (ii) **Appendix P of Annexure A** (Security Provisions)."

**Special Term 28.24 Cyber Essentials**

"The Client and the Constructor shall comply with the provisions of **Appendix Q of Annexure A** (Cyber Essentials)."

**Special Term 28.25 Supply Chain**

Insert new clauses 10.15 to 10.18 as follows:

"10.15 The Constructor shall ensure that the Specialist Contracts



*Reference in Partnering  
Terms*

contain:

- 10.15.1 a period for payment of the amount due to the Specialist not greater than 5 days after the final date for payment in this Partnering Contract. The amount due shall, but shall not be limited to, payment for work which the Specialist has completed from the previous application date up to the current application date in this Partnering Contract;
  - 10.15.2 a provision requiring the Specialist to include in each Specialist Contract 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 Partnering Contract;
  - 10.15.3 a provision requiring the Specialist to assess the amount due to a sub-contractor without taking into account the amount paid by the Constructor; and
  - 10.15.4 terms and conditions that are no less favourable than those of this Partnering Contract. The Client shall be entitled to reject Specialist conditions proposed by the Constructor that are unduly disadvantageous to the Specialist.
- 10.16 The Constructor shall take all reasonable steps to engage SMEs as Specialists and to seek to ensure that no less than the percentage of the Specialists stated in the Project Brief (the "SME Percentage") are SMEs or that a similar proportion of the Agreed Maximum Price is undertaken by SMEs.
- 10.17 The Constructor shall ensure that all Specialist Contracts contain back to back provisions with the Partnering Contract, including without limitation as to the absence of retention or discount arrangements, and shall cooperate in all measures taken by the Client or Client Representative to monitor compliance with this clause.
- 10.18 The Constructor acknowledges and agrees that, whilst it may implement systems and logistics and engage Specialists, sub-contractors and suppliers in order to perform its obligations in



*Reference in Partnering  
Terms*

relation to the Project, it is a fundamental requirement of its appointment under this Partnering Contract by the Client that such systems, logistics, Specialists, sub-contractors and suppliers must be made available for the benefit of the Project and any future projects of the Client. Where making such systems, logistics, Specialists, sub-contractors and suppliers available would, in the aggregate, be of benefit to the Project as a whole but would cause the Constructor to suffer cost and/or expense, then the Client shall issue to the Constructor an instruction setting out which course of action to adopt and the Constructor shall not be required to suffer such cost and/or expense where it is unavoidable."

**Special Term 28.26 Apprenticeships**

- 28.26.1 The Constructor 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 Project.
- 28.26.2 The Constructor shall take all reasonable steps to ensure that no less than the percentage of its employees stated in the Client's Requirements (the "Apprenticeship Percentage") are on formal apprenticeship programmes or that a similar proportion of hours worked in carrying out the Project, (which may include support staff and sub-contractors) are provided by employees on formal apprenticeship programmes.
- 28.26.3 The Constructor shall make available to its employees and Specialists working on the Partnering Contract, information about the Government's Apprenticeship programme and wider skills opportunities.
- 28.26.4 The Constructor shall provide any further skills training opportunities that are appropriate for its employees engaged in carrying out the Project.
- 28.26.5 The Constructor shall provide a written report detailing the following measures in its regular contract management monthly reporting cycle and be prepared to discuss apprenticeships at its regular meetings with the Client Representative:



**Reference in Partnering  
Terms**

- the number of people during the reporting period employed on the Partnering Contract, including support staff and Specialists;
- the number of apprentices and number of new starts on apprenticeships directly initiated through this contract;
- the percentage of all employees taking part in an apprenticeship programme;
- if applicable, an explanation from the Constructor as to why it is not managing to meet the specified percentage target;
- actions being taken to improve the take up of apprenticeships;
- other training/skills development being undertaken by employees in relation to this Contract, including:
  - (a) work experience placements for 14 to 16 year olds;
  - (b) work experience /work trial placements for other ages;
  - (c) student sandwich/gap year placements;
  - (d) graduate placements;
  - (e) vocational training;
  - (f) basic skills training; and
  - (g) on site training provision/ facilities.

**Special Term 28.27 Extensions of Time**





*Reference in Partnering  
Terms*

Amend clause 18.3 by adding the following words in line 6 after "Date for Completion":

"(in each case only to the extent that such events are not in any way contributed towards, consequent upon and/or necessitated by any negligence, error, omission, default, breach of contract or breach of statutory duty of the Constructor, its servants or agents or any Specialist or supplier or their respective servants or agents):"

Amend clause 18.4 by adding the following words at the end of the clause:

In limb (i) delete "as soon as it becomes aware" and substitute "within [REDACTED] Working Days of the date on which the Constructor becomes aware (or ought reasonably to have been aware)".

Delete clause 18.4(v) and substitute:

exceptionally severe weather conditions (of the kind that on average occur no more frequently than [REDACTED], such weather conditions to be judged by reference to records from the Meteorological Office in respect of the weather station situated at the town closest to the Site);"

At the end of clause 18.4 add the following:

"Where the Constructor fails to notify the Client of any of the events described in clause 18.3 within the time period specified at clause 18.4(i), it shall have no entitlement to any extension to the Date for Completion time, any adjustment to the Agreed Maximum Price and/or any other payment whatsoever under this Partnering Contract."

**Special Term 28.28 Nuisance**

The Constructor shall at all times take reasonable steps to prevent any nuisance (including, but without limitation, any noisy working operations noxious fumes or the deposit on public highways of any material or debris) or other interference with the rights of any adjoining landowner, tenant or occupier or any statutory undertaker arising out of the carrying out of the Project and shall defend or, at the Client's option, assist the Client in defending any action or proceeding which may be instituted in relation thereto.

The Constructor shall be responsible for and shall be liable to the Client in respect of any and all expenses, liabilities, losses, claims and proceedings resulting from any failure or default by the Constructor in performing his obligations under this Special Term 28.28 save only where such nuisance



*Reference in Partnering  
Terms*

or interference is the consequence of a Change or other instruction of the Client (which is not itself the result of any negligence default or breach of contract by or on behalf of the Constructor) and which could not have been avoided by the Constructor using reasonable and practical means.

**Special Term 28.29 Defects**

Amend clause 21.4 by inserting "in accordance with the Project Execution Plan" in line 2 after "attend the Site" and in line 7 after "rectified by the Constructor".

Project Bank Account

The provisions set out in Appendix 9 are not incorporated into the Partnering Contract.



**ANNEXURES TO THE PROJECT PARTNERING AGREEMENT**

Annexure	Contents																																
A	<p>Appendices to the Project Partnering Agreement</p> <table border="0"> <tr><td>A</td><td>Partnering Team</td></tr> <tr><td>B</td><td>Core Group</td></tr> <tr><td>C</td><td>Insurance Requirements</td></tr> <tr><td>D</td><td>Consultant Services Schedules</td></tr> <tr><td>E</td><td>Interested Parties</td></tr> <tr><td>F</td><td>Delegated Authority of the Client Representative</td></tr> <tr><td>G</td><td>Partnering Timetable</td></tr> <tr><td>H</td><td>Project Execution Plan</td></tr> <tr><td>J</td><td>Form of Collateral Warranty</td></tr> <tr><td>K</td><td>Key Performance Indicators</td></tr> <tr><td>L</td><td>Value Engineering and Shared Savings</td></tr> <tr><td>M</td><td>Specialists who are Partnering Team members</td></tr> <tr><td>N</td><td>Specialists appointed by the Client</td></tr> <tr><td>O</td><td>Problem Solving Hierarchy</td></tr> <tr><td>P</td><td>Security Provisions</td></tr> <tr><td>Q</td><td>Cyber Essentials Scheme</td></tr> </table>	A	Partnering Team	B	Core Group	C	Insurance Requirements	D	Consultant Services Schedules	E	Interested Parties	F	Delegated Authority of the Client Representative	G	Partnering Timetable	H	Project Execution Plan	J	Form of Collateral Warranty	K	Key Performance Indicators	L	Value Engineering and Shared Savings	M	Specialists who are Partnering Team members	N	Specialists appointed by the Client	O	Problem Solving Hierarchy	P	Security Provisions	Q	Cyber Essentials Scheme
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F	Delegated Authority of the Client Representative																																
G	Partnering Timetable																																
H	Project Execution Plan																																
J	Form of Collateral Warranty																																
K	Key Performance Indicators																																
L	Value Engineering and Shared Savings																																
M	Specialists who are Partnering Team members																																
N	Specialists appointed by the Client																																
O	Problem Solving Hierarchy																																
P	Security Provisions																																
Q	Cyber Essentials Scheme																																
B	<p><b>The Project Brief</b></p> <p>The 4.20 Meeting The Pre Construction Health and Safety Plan The Risk Register</p>																																
C	<p><b>The Project Proposals</b></p>																																
D	<p><b>The Constructor Services and Constructor Fees</b></p> <table border="0"> <tr> <td>A.</td> <td>A summary of the services to be undertaken by the Constructor from the date of this Project Partnering Agreement to the date of the Commencement Agreement (“Constructor's Services”)</td> </tr> <tr> <td>B.</td> <td>A summary of the fees due to the Constructor for the Constructor's Services</td> </tr> </table>	A.	A summary of the services to be undertaken by the Constructor from the date of this Project Partnering Agreement to the date of the Commencement Agreement (“Constructor's Services”)	B.	A summary of the fees due to the Constructor for the Constructor's Services																												
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B.	A summary of the fees due to the Constructor for the Constructor's Services																																



**THE SECRETARY OF STATE FOR JUSTICE**

of  
Ministry of Justice  
4<sup>th</sup> Floor,  
102 Petty France  
London SW1H 9AJ

(the “**Client**”)

EXECUTED AS A DEED by the **Client** by affixing  
hereto its common seal in the presence of

[REDACTED] \_\_\_\_\_

[REDACTED] \_\_\_\_\_

or Acting by

Authorised signatory [REDACTED] \_\_\_\_\_

Authorised signatory [REDACTED] \_\_\_\_\_

**WT Partnership**

Whose registered office is situated at

**AMP House  
Dingwall Road  
Croydon  
CR0 2LX**

(the “**Cost Consultant**”)

EXECUTED AS A DEED by **WT Partnership** (the “**Cost Consultant**”)

By affixing hereto its common seal  
in the presence of

[REDACTED] \_\_\_\_\_

[REDACTED] \_\_\_\_\_

**or Acting by**

Director [REDACTED] \_\_\_\_\_

Director/Secretary [REDACTED] \_\_\_\_\_



Jacobs UK Ltd  
Whose registered office is situated at

**1180 Eskdale Road  
Winnersh  
West Berkshire  
RG41 5TU**

(the “**Client Representative**”)

EXECUTED AS A DEED by **Jacobs UK Ltd** (the “**Client Representative**”)

By affixing hereto its common seal  
in the presence of

[REDACTED] \_\_\_\_\_

[REDACTED] \_\_\_\_\_

**or Acting by**

Director [REDACTED] \_\_\_\_\_

Director/Secretary [REDACTED] \_\_\_\_\_

**WT Partnership**

Whose registered office is situated at

**AMP House  
Dingwall Road  
Croydon  
CR0 2LX**

(the “Principal Designer”)

EXECUTED AS A DEED by WT Partnership (the “Principal Designer”)

By affixing hereto its common seal  
in the presence of

[REDACTED] \_\_\_\_\_

[REDACTED] \_\_\_\_\_

**or Acting by**

Director [REDACTED] \_\_\_\_\_

Director/Secretary [REDACTED] \_\_\_\_\_

Whose registered office is situated at

(the “**Constructor and Lead Designer**”)

EXECUTED AS A DEED by (the “**Constructor and Lead Designer**”)

By affixing hereto its common seal  
in the presence of

[REDACTED] \_\_\_\_\_

[REDACTED] \_\_\_\_\_

**or Acting by**

Director [REDACTED] \_\_\_\_\_

Director/Secretary [REDACTED] \_\_\_\_\_

Please note – if the Constructor or the Client requires the Constructor’s design Specialists to be Partnering Team members then further signature pages must be added to the Agreement





Annexure B

Form of Risk Register

(see clauses 12.9 and 18.1 of Partnering Terms)

Risk	Likelihood of Risk	Impact of Risk on Term Programme	Partnering Team member(s) responsible for Risk Management	Risk Management Action	Action Period/Deadline

**Guidance note:** The Risk Register should state clearly the nature of each risk, its likelihood and impact on the Project (including any anticipated financial impact and proposed risk allowance), the Partnering Team member(s) responsible for Risk Management actions, the agreed Risk Management actions (including actions to reduce the likelihood of each risk and to reduce its financial and other impact) and the agreed periods/deadlines for completing such actions.

Risk Management actions and periods/deadlines should be integrated with the Partnering Timetable and, to the extent that further Risk Management actions are agreed to be undertaken after signature of the Commencement Agreement should be integrated with the Project Timetable.

Risk Management actions should meet the requirements of clause 12.9 of the Partnering Terms.



**Annexure A Appendix P**  
**Security Provisions**

1. **SECURITY PROVISIONS**

1.1 **Definitions**

For the purposes of this appendix the following terms shall have the meanings given below:

**Affiliates** - in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control with, that body corporate from time to time;

**Breach of Security** - in accordance with the Security Requirements and the Security Policy, the occurrence of:

- (a) any unauthorised access to or use of the Project, the Client Premises, the Sites, the Constructor System and/or any ICT, information or data (including the Confidential Information and the Client Data) used by the Client and/or the Constructor in connection with this Contract; and/or
- (b) the loss and/or unauthorised disclosure of any information or data (including the Confidential Information and the Client Data), including any copies of such information or data, used by the Client and/or the Constructor in connection with this Contract.

**Clearance** - means national security clearance and employment checks undertaken by and/or obtained from the Defence Vetting Agency;

**Commercially Sensitive Information** - the information agreed between the parties (if any) comprising the information of a commercially sensitive nature relating to the Constructor, its IPR or its business or which the Constructor has indicated to the Client that, if disclosed by the Client, would cause the Constructor significant commercial disadvantage or material financial loss;

**Confidential Information** - the Client's Confidential Information and/or the Constructor's Confidential Information;

**Contracting Body** - any Contracting Body as defined in Regulation 5(2) of the Public Contracts (Works, Service and Supply) (Amendment) Regulations 2000 other than the Client;

**Constructor's Confidential Information** - any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel and Constructors of the Constructor, including IPRs, 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;



**Constructor Equipment** - the hardware, computer and telecoms devices and equipment supplied by the Constructor or its sub-contractors (but not hired, leased or loaned from the Client) for the carrying out of the Project;

**Constructor Software** - software which is proprietary to the Constructor, including software which is or will be used by the Constructor for the purposes of carrying out of the Project;

**Constructor System** - the information and communications technology system used by the Constructor in carrying out of the Project including the Software, the Constructor Equipment and related cabling (but excluding the Client System);

**Control** - means that a person possesses, directly or indirectly, 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) and "Controls" and "Controlled" shall be interpreted accordingly;

**Crown Body** - any department, office or agency of the Crown;

**Default** - any breach of the obligations of the relevant party (including but not limited to fundamental breach or breach of a fundamental term) or any other default, act, omission, negligence or statement of the relevant party, its employees, servants, agents or sub-contractors in connection with or in relation to the subject matter of this Contract and in respect of which such party is liable to the other;

**Dispute Resolution Procedure** - the dispute resolution procedure set out in this Contract (if any) or as agreed between the parties;

**Client Confidential Information** - all Personal Data and any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel, and Constructors of the Client, including all IPRs, 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;

**Client Premises** means premises owned, controlled or occupied by the Client or its Affiliates which are made available for use by the Constructor or its sub-contractors for carrying out of the Project (or any of them) on the terms set out in this Contract or any separate agreement or licence;

**Client System** - the Client's computing environment (consisting of hardware, software and/or telecommunications networks or equipment) used by the Client or the Constructor in connection with this Contract which is owned by or licensed to the Client by a third party and which interfaces with the Constructor System or which is necessary for the Client to benefit from the Project;

**Environmental Information Regulations** - the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issues by the Information Commissioner or relevant Government Department in relation to such regulations;



**FOIA** - 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 or relevant Government Department in relation to such legislation;

**Good Industry Practice** - 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;

**ICT** - information and communications technology;

**ICT Environment** - the Client System and the Constructor System;

**Impact Assessment** - an assessment of a Change Request;

**Information** - has the meaning given under section 84 of the Freedom of Information Act 2000;

**Information Assets Register** - the register of information assets to be created and maintained by the Constructor throughout the carrying out of the Project as described in the Contract (if any) or as otherwise agreed between the parties;

**Intellectual Property Rights or IPRs**

- (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.

**ISMS** - the Information Security Management System as defined by ISO/IEC 27001. The scope of the ISMS will be as agreed by the parties and will directly reflect the scope of the Project;

**Know-How** - all ideas, concepts, schemes, information, knowledge, techniques, methodology, and anything else in the nature of know how relating to the Project but excluding know how already in the Constructor's or the Client's possession before this contract;

**List x** - means, in relation to a sub-contractor, one who has been placed on List x in accordance with Ministry of Defence guidelines and procedures, due to that sub-contractor undertaking work on its premises marked as CONFIDENTIAL or above;

**Malicious Software** - any software program or code intended to destroy, interfere with, corrupt, or cause undesired effects on program files, data or other information, executable code or



application software macros, whether or not its operation is immediate or delayed, and whether the malicious software is introduced wilfully, negligently or without knowledge of its existence;

**Process** - has the meaning given to it under the Data Protection Legislation but, for the purposes of this contract, it shall include both manual and automatic processing;

**Protectively Marked** - shall have the meaning as set out in the Security Policy Framework.

**Regulatory Bodies** - those government departments and regulatory, statutory and other entities, committees and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in this Contract or any other affairs of the Client and "Regulatory Body" shall be construed accordingly;

**Request for Information** - a request for information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the Environmental Information Regulations;

**Security Management Plan** - the Constructor's security plan prepared pursuant to paragraph 1.5.3 of this appendix (Security Management Plan) an outline of which is set out in **Annex 1** of this appendix (Security Management Plan);

**Security Policy Framework** - means the Cabinet Office Security Policy Framework (available from the Cabinet Office Security Policy Division);

**Security Requirements** - means the requirements in the Contract relating to security of the carrying out of the Project (if any) or such other requirements as the Client may notify to the Constructor from time to time;

**Security Tests** - shall have the meaning set out in **Annex 2** (Security Management Plan);

**Sites** - any premises at which the Project are carried out or from which the Constructor manages, organises or otherwise directs the provision or the use of the Project or where any part of the Constructor System is situated or where any physical interface with the Client System takes place;

**Software** - Specially Written Software, Constructor Software and Third Party Software;

**Specially Written Software** - any software created by the Constructor (or by a third party on behalf of the Constructor) specifically for the purposes of this contract;

**Staff Vetting Procedures** - the Client's procedures and departmental policies for the vetting of personnel whose role will involve the handling of information of a sensitive or confidential nature or the handling of information which is subject to any relevant security measures, including, but not limited to, the provisions of the Official Secrets Act 1911 to 1989;

**Statement of Applicability** - shall have the meaning set out in ISO/IEC 27001 and as agreed by the parties during the procurement phase;



**Standards** - the British or international standards, Client's internal policies and procedures, Government codes of practice and guidance together with any other specified policies or procedures referred to in this Contract (if any) or as otherwise agreed by the parties;

**Third Party Software** - software which is proprietary to any third party other than an Affiliate of the Constructor which is or will be used by the Constructor for the purposes of carrying out of the Project.

## 1.2 Introduction

1.2.1 This appendix covers:

- 1.2.1.1 principles of protective security to be applied in carrying out of the Project;
- 1.2.1.2 wider aspects of security relating to carrying out of the Project;
- 1.2.1.3 the development, implementation, operation, maintenance and continual improvement of an ISMS;
- 1.2.1.4 the creation and maintenance of the Security Management Plan;
- 1.2.1.5 audit and testing of ISMS compliance with the Security Requirements;
- 1.2.1.6 conformance to ISO/IEC 27001 (Information Security Requirements Specification) and ISO/IEC27002 (Information Security Code of Practice; and
- 1.2.1.7 obligations in the event of actual, potential or attempted breaches of security.

## 1.3 Principles of Security

1.3.1 The Constructor acknowledges that the Client places great emphasis on the confidentiality, integrity and availability of information and consequently on the security provided by the ISMS.

1.3.2 The Constructor shall be responsible for the effective performance of the ISMS and shall at all times provide a level of security which:

- 1.3.2.1 is in accordance with Good Industry Practice, the law of the Contract and this contract;
- 1.3.2.2 complies with the Security Policy;
- 1.3.2.3 complies with at least the minimum set of security measures and standards as determined by the Security Policy Framework (Tiers 1-4) available from the Cabinet Office Security Policy Division (COSPD);
- 1.3.2.4 meets any specific security threats to the ISMS; and
- 1.3.2.5 complies with ISO/IEC27001 and ISO/IEC27002 in accordance with paragraph 1.2 of this appendix;



- 1.3.2.6 complies with the Security Requirements; and
- 1.3.2.7 complies with the Client's ICT standards.
- 1.3.3 The references to standards, guidance and policies set out in paragraph 1.3.2 shall be deemed to be references to such items as developed and updated and to any successor to or replacement for such standards, guidance and policies, from time to time.
- 1.3.4 In the event of any inconsistency in the provisions of the above standards, guidance and policies, the Constructor gives an early warning to the Client Representative of such inconsistency immediately upon becoming aware of the same, and the Client Representative shall, as soon as practicable, advise the Constructor which provision the Constructor shall be required to comply with.
- 1.4 **ISMS and Security Management Plan**
  - 1.4.1 Introduction
    - 1.4.1.1 The Constructor shall develop, implement, operate, maintain and continuously improve and maintain an ISMS which will, without prejudice to any other provision of this Appendix be approved, by the Client Representative, tested in accordance with the provisions relating to testing as set out in the Contract (if any) or as otherwise agreed between the parties, periodically updated and audited in accordance with ISO/IEC 27001.
    - 1.4.1.2 The Constructor shall develop and maintain a Security Management Plan in accordance with this appendix to apply during the carrying out of the Project.
    - 1.4.1.3 The Constructor shall comply with its obligations set out in the Security Management Plan.
    - 1.4.1.4 Both the ISMS and the Security Management Plan shall, unless otherwise specified by the Client, aim to protect all aspects of the Project and all processes associated with carrying out the Project, including the Partnering Contract, the Constructor System and any ICT, information and data (including the Client Confidential Information and the Client Data) to the extent used by the Client or the Constructor in connection with this contract.
  - 1.4.2 Development of the Security Management Plan
    - 1.4.2.1 Within 20 Working Days after the Contract Date and in accordance with paragraph 1.4.4 (Amendment and Revision), the Constructor will prepare and deliver to the Client Representative for approval a fully complete and up to date Security Management Plan which will be based on the draft Security Management Plan set out in **Annex 2** of this Appendix.
    - 1.4.2.2 If the Security Management Plan, or any subsequent revision to it in accordance with paragraph 1.4.4 (Amendment and Revision), is approved by the Client Representative it will be adopted immediately and will replace the previous version of the Security



Management Plan at **Annex 2** of this Appendix. If the Security Management Plan is not approved by the Client Representative the Constructor shall amend it within 10 Working Days or such other period as the parties may agree in writing of a notice of non-approval from the Client Representative and re-submit to the Client Representative for approval. The parties will use all reasonable endeavours to ensure that the approval process takes as little time as possible and in any event no longer than 15 Working Days (or such other period as the parties may agree in writing) from the date of its first submission to the Client Representative. If the Client Representative does not approve the Security Management Plan following its resubmission, the matter will be resolved in accordance with the Dispute Resolution Procedure. No approval to be given by the Client Representative pursuant to this paragraph 1.4.2 of this appendix may be unreasonably withheld or delayed. However any failure to approve the Security Management Plan on the grounds that it does not comply with the requirements set out in this appendix shall be deemed to be reasonable.

#### 1.4.3 Content of the Security Management Plan

- 1.4.3.1 The Security Management Plan will set out the security measures to be implemented and maintained by the Constructor in relation to all aspects of the Project and all processes associated with carrying out the Project and shall at all times comply with and specify security measures and procedures which are sufficient to ensure that the Project comply with the provisions of this appendix.
- 1.4.3.2 The Security Management Plan (including the draft version) should also set out the plans for transiting all security arrangements and responsibilities from those in place at the Contract Date to those incorporated in the Constructor's ISMS at the date notified by the Client Representative to the Constructor for the Constructor to meet the full obligations of the Security Requirements.
- 1.4.3.3 The Security Management Plan will be structured in accordance with ISO/IEC27001 and ISO/IEC27002, cross-referencing if necessary to other schedules of this Contract which cover specific areas included within that standard.
- 1.4.3.4 The Security Management Plan shall be written in plain English in language which is readily comprehensible to the staff of the Constructor and the Client engaged in the Project and shall only reference documents which are in the possession of the Client or whose location is otherwise specified in this appendix.

#### 1.4.4 Amendment and Revision of the ISMS and Security Management Plan

- 1.4.4.1 The ISMS and Security Management Plan will be fully reviewed and updated by the Constructor annually or from time to time to reflect:
  - (a) emerging changes in Good Industry Practice;
  - (b) any change or proposed change to the Constructor System, the Project and/or associated processes;
  - (c) any new perceived or changed security threats; and





(d) any reasonable request by the Client Representative.

1.4.4.2 The Constructor will provide the Client Representative with the results of such reviews as soon as reasonably practicable after their completion and amend the ISMS and Security Management Plan at no additional cost to the Client. The results of the review should include, without limitation:

(a) suggested improvements to the effectiveness of the ISMS;

(b) updates to the risk assessments;

(c) proposed modifications to the procedures and controls that effect information security to respond to events that may impact on the ISMS; and

(d) suggested improvements in measuring the effectiveness of controls.

1.4.4.3 On receipt of the results of such reviews, the Client Representative will approve any amendments or revisions to the ISMS or Security Management Plan in accordance with the process set out in this appendix.

1.4.4.4 Any change or amendment which the Constructor proposes to make to the ISMS or Security Management Plan (as a result of a Client Representative's request or change to the Project or otherwise) shall be subject to the early warning procedure and shall not be implemented until approved in writing by the Client Representative.

#### 1.4.5 **Testing**

1.4.5.1 The Constructor shall conduct tests of the ISMS ("Security Tests") on an annual basis or as otherwise agreed by the parties. The date, timing, content and conduct of such Security Tests shall be agreed in advance with the Client Representative.

1.4.5.2 The Client Representative shall be entitled to witness the conduct of the Security Tests. The Constructor shall provide the Client Representative with the results of such tests (in a form approved by the Client in advance) as soon as practicable after completion of each Security Test.

1.4.5.3 Without prejudice to any other right of audit or access granted to the Client pursuant to this contract, the Client Representative and/or its authorised representatives shall be entitled, at any time and without giving notice to the Constructor, to carry out such tests (including penetration tests) as it may deem necessary in relation to the ISMS and the Constructor's compliance with the ISMS and the Security Management Plan. The Client Representative may notify the Constructor of the results of such tests after completion of each such test. Security Tests shall be designed and implemented so as to minimise the impact on the carrying out the Project. If such tests adversely affect the Constructor's ability to carry out the Project in accordance with the Client's Requirements, the Constructor shall be granted relief against any resultant under-performance for the period of the tests.



1.4.5.4 Where any Security Test carried out pursuant to paragraphs 1.4.5.1 or 1.4.5.3 above reveals any actual or potential Breach of Security, the Constructor shall promptly notify the Client Representative of any changes to the ISMS and to the Security Management Plan (and the implementation thereof) which the Constructor proposes to make in order to correct such failure or weakness. Subject to the Client Representative's approval in accordance with this appendix, the Constructor shall implement such changes to the ISMS and the Security Management Plan in accordance with the timetable agreed with the Client Representative or, otherwise, as soon as reasonably possible. For the avoidance of doubt, where the change to the ISMS or Security Management Plan to address a non-compliance with the Security Policy or Security Requirements the change to the ISMS or Security Management Plan shall be at no cost to the Client.

## 1.5 Compliance with ISO/IEC 27001

1.5.1 Unless otherwise agreed by the parties, the Constructor shall obtain independent certification of the ISMS to ISO/IEC 27001 within 12 months of the Contract Date and shall maintain such certification for the duration of the contract.

1.5.2 In the event that paragraph 1.5.1 above applies, if certain parts of the ISMS do not conform to Good Industry Practice, or controls as described in ISO/IEC 27002 are not consistent with the Security Policy, and, as a result, the Constructor reasonably believes that it is not compliant with ISO/IEC 27001, the Constructor shall promptly notify the Client Representative of this and the Client in its absolute discretion may waive the requirement for certification in respect of the relevant parts.

1.5.3 The Client Representative shall be entitled to carry out such regular security audits as may be required and in accordance with Good Industry Practice, in order to ensure that the ISMS maintains compliance with the principles and practices of ISO 27001.

1.5.4 If, on the basis of evidence provided by such audits, it is the Client Representative's reasonable opinion that compliance with the principles and practices of ISO/IEC 27001 is not being achieved by the Constructor, then the Client Representative shall notify the Constructor of the same and give the Constructor a reasonable time (having regard to the extent and criticality of any non-compliance and any other relevant circumstances) to become compliant with the principles and practices of ISO/IEC 27001. If the Constructor does not become compliant within the required time then the Client Representative has the right to obtain an independent audit against these standards in whole or in part.

1.5.5 If, as a result of any such independent audit as described in paragraph 1.5.4 the Constructor is found to be non-compliant with the principles and practices of ISO/IEC 27001 then the Constructor shall, at its own expense, undertake those actions required in order to achieve the necessary compliance and shall reimburse in full the costs incurred by the Client in obtaining such audit.

## 1.6 Breach of Security

1.6.1 Either party shall give an early warning to the other in accordance with the agreed security incident management process as defined by the ISMS upon becoming aware of any Breach of Security or any potential or attempted Breach of Security.



- 1.6.2 Without prejudice to the security incident management process, upon becoming aware of any of the circumstances referred to in paragraph 1.6.1, the Constructor shall:
- 1.6.2.1 immediately take all reasonable steps necessary to:
- (a) remedy such breach or protect the integrity of the ISMS against any such potential or attempted breach or threat; and
  - (b) prevent an equivalent breach in the future.
- such steps shall include any action or changes reasonably required by the Client Representative; and
- 1.6.2.2 as soon as reasonably practicable provide to the Client Representative full details (using such reporting mechanism as defined by the ISMS) of the Breach of Security or the potential or attempted Breach of Security.

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**ENGROSSMENT VERSION (01.03.21)**

PROJECT PARTNERING AGREEMENT

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**Annex 1 – Security Policy**

[Guidance Note: Append Security Policy]

**OFFICIAL**



Ministry  
of Justice

**ENGROSSMENT VERSION (01.03.21)**

PROJECT PARTNERING AGREEMENT

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**Annex 2 – Security Management Plan**

[Guidance Note: Append Security Management Plan]



**Annexure A Appendix Q  
Cyber Essentials Scheme**

**1. DEFINITIONS**

1.1 In this appendix, the following words shall have the following meanings:

<b>"Cyber Essentials Scheme"</b>	the Cyber Essentials Scheme developed by the Government which provides a clear statement of the basic controls all organisations should implement to mitigate the risk from common internet based threats (as may be amended from time to time). Details of the Cyber Essentials Scheme can be found here: <a href="https://www.gov.uk/government/publications/cyber-essentials-scheme-overview">https://www.gov.uk/government/publications/cyber-essentials-scheme-overview</a> ;
<b>"Cyber Essentials Basic Certificate"</b>	the certificate awarded on the basis of self-assessment, verified by an independent certification body, under the Cyber Essentials Scheme and is the basic level of assurance;
<b>"Cyber Essentials Certificate"</b>	Cyber Essentials Basic Certificate, the Cyber Essentials Plus Certificate or the Cyber Essential Scheme certificate equivalent to be provided by the Constructor as set out in the Constructor Framework Agreement;
<b>"Cyber Essential Scheme Data"</b>	sensitive and personal information and other relevant information as referred to in the Cyber Essentials Scheme; and
<b>"Cyber Essentials Plus Certificate"</b>	the certification awarded on the basis of external testing by an independent certification body of the Constructor's cyber security approach under the Cyber Essentials Scheme and is a more advanced level of assurance.

**2. CYBER ESSENTIALS OBLIGATIONS**

2.1 Where the Client's Requirements require that the Constructor provide a Cyber Essentials Certificate prior to the execution of the Project the Constructor shall provide a valid Cyber Essentials Certificate, then on or prior to the commencement of the Project the Constructor delivers to the Client evidence of the same. Where the Constructor fails to comply with this paragraph it shall be prohibited from commencing the carrying out of the Project under any



contract until such time as the Constructor has evidenced to the Client its compliance with this paragraph 2.1.

- 2.2 Where the Constructor continues to Process Cyber Essentials Scheme Data during the carrying out of the Project the Constructor shall deliver to the Client evidence of renewal of the Cyber Essentials Certificate on each anniversary of the first applicable certificate obtained by the Constructor under paragraph 2.1.
- 2.3 Where the Constructor is due to Process Cyber Essentials Scheme Data after the commencement of the Project but before completion of the Project the Constructor shall deliver to the Client evidence of:
- 2.3.1 a valid and current Cyber Essentials Certificate before the Constructor Processes any such Cyber Essentials Scheme Data; and
- 2.3.2 renewal of the valid Cyber Essentials Certificate on each anniversary of the first Cyber Essentials Scheme certificate obtained by the Constructor under paragraph 2.1.
- 2.4 In the event that the Constructor fails to comply with paragraphs 2.2 or 2.3 (as applicable), the Client reserves the right to terminate the Partnering Contract for material default.
- 2.5 The Constructor shall ensure that all agreements with Specialists and/or Consultants who Process Cyber Essentials Data contain provisions no less onerous on the Specialists and/or Consultants than those imposed on the Constructor under these Partnering Terms in respect of the Cyber Essentials Scheme under paragraph 2.1 of this appendix.
- 2.6 This appendix shall survive termination or expiry of the Partnering Contract.