

CCS Construction Professional Services Framework Alliance Contract [Version 2]

Please Note: This document is to be read alongside The Framework Alliance Contract 1 (FAC-1).

Any clauses or references included within this document need to also be read in Framework Alliance Contract 1.

CCS Framework Alliance Contract Structure

The structure of the CCS template for FAC-1 is as follows:

- The *Framework Alliance Agreement*, where relevant details are inserted. This is the document signed by the *Client* and by all the *Supplier Alliance Members* selected in each *Lot*.
- Schedule 1 – *Objectives, Success Measures, Targets and Incentives*
- Schedule 2 – *Timetable*
- Schedule 3 – *Risk Register*
- Schedule 4 – *Direct Award Procedure and Competitive Award Procedure*
- Schedule 5 – *Template Project Documents*
- Schedule 6 – *Legal Requirements and Special Terms*
- Schedule 7 – *Management*
- Schedule 8 – *Financial Distress*
- Schedule 9 – *Marketing*
- Schedule 10 – *Form of Award Confirmation Notice and form of Additional Client Notice Contract Terms*
- Schedule 11 – *Pricing Fluctuations*
- Schedule 12 - *Supply Chain Visibility*
- Schedule 13 - *Security*
- Schedule 14 - *Deed of Guarantee*
- **Schedule 15 – Key Subcontractors**
- Appendix 1 – *Definitions*
- Appendix 2 – *Form of Joining Agreement*
- Appendix 3 – *Form of Order*
- Appendix 4 – *Conciliation, Adjudication and Arbitration*
- *A Framework Brief* - signed by all Alliance Members for identification
- *Framework Prices* - which agreed confidentially by each *Supplier Alliance Member* with the *Client* and *Alliance Manager* and signed by those Alliance Members for identification
- *Framework Proposals* - which are agreed confidentially by each *Supplier Alliance Member* with the *Client* and *Alliance Manager* and signed by those Alliance Members for identification.

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A FRAMEWORK ALLIANCE CONTRACT is created the _____ day of _____ 20 _____

IN RELATION TO a pan-Government collaborative agreement to be utilised by the organisations and types of organisation referred to in OJEU notice [] including without limitation Central Government Departments and all other UK Public Sector Bodies, including Local Authorities, Health, Police, Fire and Rescue, Education and Devolved Administrations as the recommended vehicle for all *Projects* required by UK Central Government Departments (the *Framework Programme*) as described in the *Framework Documents*

BETWEEN Crown Commercial Service (the *Client* and *Alliance Manager*) and

- Each of the *Supplier Alliance Members* who have submitted an *Offer Document* and to whom the *Client* has issued an *Award Confirmation Notice*, and
- Each of the *Additional Clients* who submit a *Registration Document* to the *Client* and to whom the *Client* has issued an *Additional Client Notice*, in each case upon and subject to the *Client* notifying all other *Alliance Members*.

WHO AGREE to work in an *Alliance*, to fulfil their agreed roles and responsibilities and to apply their agreed expertise in relation to the *Framework Programme*, in accordance with and subject to the *Framework Documents*, and who agree that subject to amendment in accordance with the *Contract Terms*:

Reference in Contract Terms

Clause 1.1 The roles, expertise and responsibilities of the *Alliance Members* are described in the *Framework Documents* and, in addition to the *Client* and the *Alliance Manager*, the *Alliance Members* are each of the *Supplier Alliance Members* who have submitted an *Offer Document* and to whom the *Client* has issued an *Award Confirmation Notice*, and each of the *Additional Clients* who submit a *Registration Document* to the *Client* and to whom the *Client* has issued an *Additional Client Notice*, in each case upon and subject to the *Client* notifying all other *Alliance Members*.

Each *Alliance Member* represents that it has the expertise, capacity and experience to fulfil its role and responsibilities as described in the *Framework Document*.

Clauses

1.3, 1.4 and 1.5 The *Framework Documents*, subject to addition and amendment in accordance with any *Joining Agreements* and the *Contract Terms*, are:

- this *Framework Alliance Agreement* incorporating:
 - the *Objectives*, *Success Measures*, *Targets* and *Incentives* (Schedule 1);

- the *Timetable* (Schedule 2);
- the *Risk Register* (Schedule 3);
- the *Direct Award Procedure* and *Competitive Award Procedure* (Schedule 4);
- the *Template Project Documents* (Schedule 5);
- the *Legal Requirements* and *Special Terms* (Schedule 6);
- *Management* (Schedule 7);
- *Financial Distress* (Schedule 8);
- *Marketing* (Schedule 9);
- *Form of Award Confirmation Notice* and *form of Additional Client Notice* (Schedule 10);
- *Pricing Fluctuations* (Schedule 11).
- *Supply Chain Visibility* (Schedule 12);
- *Security* (Schedule 13);
- *Deed of Guarantee* (Schedule 14).

- the *Contract Terms* and *Appendices* set out in the published standard form FAC-1;
- the *Framework Brief* issued by the *Client*;
- the *Framework Prices* and *Framework Proposals* of each *Supplier Alliance Member*
- the *Offer Document* submitted to the *Client* by each *Supplier Alliance Member* in response to the *Invitation to Tender*, including the tender submitted by the relevant *Supplier Alliance Member* and its *Framework Prices* and *Framework Proposals*, which are the means by which each *Supplier Alliance Member* agrees to be bound by the *Framework Alliance Contract*;
- each *Award Confirmation Notice* issued to a *Supplier Alliance Member* by the *Client* which is the means by which each *Supplier Alliance Member* becomes an *Alliance Member* upon and subject to the *Client* notifying all other *Alliance Members*;
- each *Registration Document* submitted to the *Client* by an *Additional Client* which is the means by which each *Additional Client* agrees to be bound by the *Framework Alliance Contract*;
- each *Additional Client Notice* issued to an *Additional Client* by the *Client* which is the means by which each *Additional Client* becomes an *Alliance Member* upon and subject to the *Client* notifying all other *Alliance Members*.

Clause 1.6

The *Core Group* comprises the *Alliance Manager* and representatives of the *Client* and each *Supplier Alliance Member*, and its members are:

[] on behalf of the *Client* or [] as alternate

[] on behalf of the *Alliance Manager* or []
as alternate

the signatories to each *Supplier Alliance Member's Offer Document*.

The *Core Group* shall meet on an annual basis unless otherwise instructed by the *Alliance Manager*.

Any *Core Group* meeting required further to an *Early Warning* requested by an *Alliance Member* in accordance with clauses 1.8.1 or 15.1 or relating to any procedure under clause 14 shall only require the attendance of the *Alliance Manager*, the *Client* and the relevant other *Alliance Member* unless otherwise stated by the *Alliance Manager*.

Clause 1.9.3 The communication systems are:

Clause 1.9.3.1 Except as otherwise expressly provided within the *Framework Alliance Contract*, any notices issued under the *Framework Alliance Contract* must be in writing. For the purpose of this Clause 1.9.3, an e-mail is accepted as being "in writing".

Clause 1.9.3.2 Subject to Clause 1.9.3.3 the following table sets out the method by which notices may be served under the *Framework Alliance Contract* and the respective deemed time and proof of service:

Manner of delivery	Deemed time of delivery	Proof of Service
Email	9.00am on the first <i>Working Day</i> after sending	Dispatched as a pdf attachment to an email to the correct e-mail address without any error message
Personal delivery	On delivery, provided delivery is between 9.00am and 5.00pm on a <i>Working Day</i> . Otherwise, delivery will occur at 9.00am on the next <i>Working Day</i>	Properly addressed and delivered as evidenced by signature of a delivery receipt
Royal Mail Signed For™ 1st Class or other prepaid, next <i>Working</i>	At the time recorded by the delivery service, provided that delivery is between 9.00am	Properly addressed prepaid and delivered as evidenced by signature of a

Day service providing proof of delivery	and 5.00pm on a <i>Working Day</i> . Otherwise, delivery will occur at 9.00am on the same <i>Working Day</i> (if delivery before 9.00am) or on the next <i>Working Day</i> (if after 5.00pm)	delivery receipt
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- Clause 1.9.3.3 The following notices may only be served as an attachment to an email if the original notice is then sent to the recipient by personal delivery or Royal Mail Signed For™ 1st Class or other prepaid in the manner set out in the table in clause 1.9.3.2 within twenty-four (24) hours of transmission of the email:
- Clause 1.9.3.3.1 Any notice under clause 14 Clause 1.9.3.3.2 any notice under clause 15.
- Clause 1.9.3.4 Failure to send any original notice in accordance with clause 1.9.3.3 shall invalidate the service of the related e-mail transmission. The deemed time of delivery of such notice shall be the deemed time of delivery of the original notice sent by personal delivery or Royal Mail Signed For™ 1st Class delivery (as set out in the table in clause 1.9.3.2) or, if earlier, the time of response or acknowledgement by the receiving *Alliance Member* to the email attaching the notice.
- Clause 1.9.3.5 This clause 1.9.3 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any method of dispute resolution (other than the service of a notice under clause 15.1)
- Clause 1.9.3.6 For the purposes of this clause 1.9.3, the address of each *Alliance Member* shall be as stated in its *Offer Document* or *Registration Document* and the address of the *Client* and *Alliance Manager* are as follows:
- Crown Commercial Service 9th Floor, The Capital, Old Hall Street, Liverpool L3 9PP and e-mail address [].
- Clause 1.9.3.7 Each *Alliance Member* will immediately notify the other *Alliance Members* of any change of address or email address from that set out in the *Framework Documents*.
- Clause 1.10 The *Alliance Members* shall engage with the following *Stakeholders* in accordance with clause 1.10 and the *Framework Documents*:
- The Government Construction Board and the Infrastructure and Projects Authority
 - As otherwise agreed by the *Core Group*.
- Clause 1.11 The following *Additional Clients* may join the *Alliance*:

or value guarantee granted by the *Client* and/or any *Additional Client* in relation to any *Project* or *Projects* forming part of the *Framework Programme* and the *Client* and all *Additional Clients* are at all times entitled to enter into other contracts and agreements with other *Supplier Alliance Members* and with third parties for the provision of any or all projects which are the same as or similar to *Projects* forming part of the *Framework Programme*.

Clause 6 The *Alliance Members* shall implement the following *Supply Chain Collaboration* and/or other *Alliance Activities* in accordance with clause 6 within the timescales stated in the *Timetable* or as otherwise agreed:

The *Alliance Activities* comprise the different ways to seek *Improved Value* in accordance with the *Objectives* and *Success Measures*, in accordance with requirements in the *Framework Brief* and in accordance with proposals developed by *Supplier Alliance Members* for approval by the *Alliance Manager*:

- individually by each *Supplier Alliance Member* in its *Framework Proposals* and on its own *Projects*,
- collectively by groups of *Supplier Alliance Members* selected by one or more *Additional Clients* on a programme of *Projects*
- collectively by all *Supplier Alliance Members* across all *Projects* comprising the *Framework Programme* and each *Lot*.

Clause 6.1.1 Each *Supplier Alliance Member* shall adopt a policy of continuous improvement aimed at achieving *Improved Value* for the *Client* and *Additional Clients* pursuant to which it will regularly review with the *Alliance Manager* and with other *Supplier Alliance Members* the manner in which it is planning for and performing *Project Contracts* with a view to reducing the *Client's* costs, the costs of *Additional Clients* (including the *Framework Prices* and the *Agreed Prices* for each *Project*) and improving the quality and efficiency of the *Projects* and the delivery of other successful outcomes for *Additional Clients*. Each *Alliance Member* will provide to each other any information which may be relevant to assisting the *Objectives* of *Improved Value* and in particular reducing costs.

Clause 6.1.2 Without limiting its obligations under clause 6.1.1, each *Supplier Alliance Member* shall produce at the start of each *Contract Year* a plan for achieving *Improved Value* under all *Project Contracts* (without adversely affecting the performance of the *Framework Alliance Contract* or any *Project Contract*) during that *Contract Year* ("**Continuous Improvement Plan**") for the approval of the *Alliance Manager*. The *Continuous Improvement Plan* shall include, as a minimum, proposals to achieve *Improved Value* in line with the *Objectives* and *Success Measures*, proposals as set out in each *Supplier Alliance Member's Framework Proposals* and additional proposals in respect of the following:

Clause 6.1.2.1 identifying the emergence of new and evolving technologies which could improve the *Projects* and resultant outcomes;

Clause 6.1.2.2 identifying changes in behaviour of *Additional Clients* that could result

in an *Improved Value*;

- Clause 6.1.2.3 improving the way in which the *Alliance* is sold via the *Framework Alliance Contract* that may result in *Improved Value*;
- Clause 6.1.2.4. identifying and implementing efficiencies in the *Supplier Alliance Member's* internal processes and administration that may lead to *Improved Value*;
- Clause 6.1.2.5 identifying and implementing efficiencies in the way the *Client* and/or *Additional Clients* interact with the *Supplier Alliance Member* that may lead to *Improved Value*;
- Clause 6.1.2.6 identifying and implementing efficiencies in the *Supplier Alliance Member's Supply Chain* that may lead to *Improved Value*;
- Clause 6.1.2.7 baselining the quality of the *Supplier Alliance Member's* work and its cost structure and demonstrating the efficacy of its *Continuous Improvement Plan* on each element during the *Framework Period*;
- Clause 6.1.2.8 measuring and reducing the *Sustainability* impacts of the operations of the *Supplier Alliance Member* and its *Supply Chain* pertaining to the *Projects*, and identifying opportunities to assist *Additional Clients* in meeting their *Sustainability Objectives*;
- Clause 6.1.2.9 improving the *Operation* of completed *Projects* including improvements in the efficiency and safety of the *Operation* of completed *Projects*; and
- Clause 6.1.2.10 identifying ways in which all the above may be achieved more efficiently by the *Supplier Alliance Member* working jointly with other *Supplier Alliance Members* and their respective *Supply Chains*.
- Clause 6.1.3 The initial *Continuous Improvement Plan* for the first *Contract Year* shall be submitted by each *Supplier Alliance Member* to the *Alliance Manager* for approval within three (3) *Months* following the *Framework Commencement Date* and the *Alliance Manager* shall notify each *Supplier Alliance Member* of its approval or rejection of its proposed *Continuous Improvement Plan* or any updates to it within twenty (20) *Working Days* of receipt. Within ten (10) *Working Days* from receipt of the *Client's* notice of rejection and of the deficiencies of the proposed *Continuous Improvement Plan*, the relevant *Supplier Alliance Member* shall submit to the *Client* a revised *Continuous Improvement Plan* reflecting the changes required. Once approved by the *Alliance Manager*, the proposals shall constitute the *Continuous Improvement Plan* for the purposes of the *Framework Alliance Contract*.
- Clause 6.1.4 The *Core Group* shall meet to consider and agree how to integrate all *Continuous Improvement Plans* as appropriate, for example through joint *Supply Chain Collaboration* in accordance with clause 6.3 using the processes set out in

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/252026/bis-13-1168-supply-chain-

[analysis-into-the-construction-industry-report-for-the-construction-industrial-strategy.pdf](#)

- Clause 6.1.5 Once the first *Continuous Improvement Plan* has been approved in accordance with clause 6.1.3:
- Clause 6.1.5.1 each *Supplier Alliance Member* shall use all reasonable endeavours to implement any agreed deliverables in accordance with its *Continuous Improvement Plan*; and treat the Disclosing Party's *Confidential Information* as confidential and keep it in secure custody (which is appropriate depending upon the form in which such materials are stored and the nature of the *Confidential Information* contained in those materials); and
- Clause 6.1.5.2 the *Alliance Manager* shall meet with each *Supplier Alliance Member* as soon as reasonably possible following the start of each quarter (or as otherwise agreed between the *Alliance Manager* and that *Supplier Alliance Member*) to review the *Supplier Alliance Member's* progress against agreed joint *Alliance Activities* forming part of its *Continuous Improvement Plan*.
- Clause 6.1.6 Each *Supplier Alliance Member* shall update its *Continuous Improvement Plan* as and when required but at least once every *Contract Year* (after the first *Contract Year*) in accordance with the procedure and timescales set out in this clause 6.1.
- Clause 6.1.7 Each *Supplier Alliance Member* selected by any one or more *Additional Clients* shall adopt the same principles and procedures as those set out in this clause 6.1 in pursuing *Improved Value* for that *Additional Client* or those *Additional Clients*, both individually and with other *Supplier Alliance Members* through *Supply Chain Collaboration* under clause 6.3 and other *Alliance Activities* that relate to the programme of work comprising the *Projects* awarded by that *Additional Client* or those *Additional Clients*.
- Clause 6.1.8 All costs relating to the compilation or updating of each *Continuous Improvement Plan* shall have no effect on and are included in the *Framework Prices*.
- Clause 6.1.9 Should a *Supplier Alliance Member's* costs in performing *Projects* for *Additional Clients* be reduced as a result of any *Improved Value* leading to changes implemented by the *Client* and/or *Additional Clients*, all of the cost savings shall be passed on to *Additional Clients* by way of reductions in the *Agreed Prices* for each *Project* subject only to agreed *Incentives* under Part 3 of Schedule 1 and under each *Project Contract*.
- Clause 6.1.10 The *Alliance Manager* shall update the *Timetable* to record the timescales, deadlines, gateways and milestones for all *Alliance Activities* and all other actions set out in each *Continuous Improvement Plan*, including the nature, sequence and duration of the agreed actions of each *Alliance Member* and any consents or approvals (whether required from *Alliance Members* or third parties) that are pre-conditions to subsequent actions.

- Clause 8 It is recognised that there are no *Alliance Manager Payment Terms* and that if any *Additional Client* issues an *Order* then only that *Additional Client* (and not the *Client*) will be responsible for administering and making all and any payments due under this clause 8 and pursuant to that *Order*.
- The following clause 8.12 governs payment of **Management Charges** to the *Client* by *Supplier Alliance Members*:
- Clause 8.11 The rate of interest for late payment is eight percent (8%) above the base rate for the Bank of England current on the due date for the relevant payment and the *Alliance Members* agree that this shall be a substantial remedy for the purposes of the Late Payment of Commercial Debts (Interest) Act 1998.
- Clause 8.12.1 In consideration of the establishment and award of the *Framework Alliance Contract* and the management and administration by the *Client* of the same, each *Supplier Alliance Member* shall pay to the *Client* the *Management Charge* in accordance with this clause 8.12 and shall submit information relating to the total value of funds received by the *Supplier Alliance Member* from each *Additional Client* and from funding or grants agencies in respect of the works and/or the services provided by the *Supplier Alliance Member* to the *Client* and each *Additional Client* under the *Framework Alliance Contract*, including the total value of works and/or services provided by any *Supply Chain* members.
- Clause 8.12.2 NOT USED
- Clause 8.12.3 NOT USED
- Clause 8.12.4 The *Management Charge* shall be paid by the *Supplier Alliance Member* irrespective of any periods of suspension and/or partial termination. Clause 8.12.5 The *Management Charge* percentage is described in the Definitions.
- Clause 8.12.6 The *Client* shall be entitled to submit invoices to each *Supplier Alliance Member* in respect of the *Management Charge* due each *Month* based on the *Management Information* provided pursuant to Schedule 7 (Management), and adjusted:
- Clause 8.12.6.1 in accordance with Schedule 7 (Management) to take into account of any *Admin Fee(s)* that may have accrued in respect of the late provision of *Management Information*; and
- Clause 8.12.6.2 in accordance with Schedule 7 (Management) to take into account of any underpayment or overpayment as a result of the application of the *Default Management Charge*.
- Clause 8.12.6.7 Unless otherwise agreed in writing, each *Supplier Alliance Member* agrees to pay the *Client's Management Charge* invoice by BACS within 30 days from the date of the invoice. The *Management Charge* shall

be paid in full and shall be exclusive of VAT. In addition to the *Management Charge*, the *Supplier Alliance Member* shall pay the VAT on the *Management Charge* at the rate and in the manner prescribed by Law from time to time.

Clause 8.12.6.8 In the event that payment is not received in full by the *Client* by the due date, the *Supplier Alliance Member* shall pay the *Client* interest on the unpaid amount or on the balance if some monies are paid on account in accordance with clause 8.11.

Clause 8.12.6.9 Each *Supplier Alliance Member* agrees that it shall at any time, on reasonable request from the *Client*, make available to the *Client* all copies of its accounts and revenue records relating to all *Additional Clients* for inspection and verification of the *Management Charge* paid on an open book basis. The *Client* agrees to hold all such information in strict confidence and only use it for verifying that the correct *Management Charge* has been paid.

Clause 8.12.6.10 Where the *Client* has reasonable grounds to believe that the correct *Management Charge* has not been paid, it shall submit its evidence to the *Supplier Alliance Member*, and the *Supplier Alliance Member* agrees to pay to the *Client* within 5 *Working Days* all such *Management Charge* plus VAT and properly owing with interest in accordance with clause 8.11.

Clause 8.12.6.11 Without prejudice to any other rights and remedies that the *Client* may possess, if payment is not received in full by the *Client* within a period of 40 days after the due date then the *Client* will be entitled to give written notice to a *Supplier Alliance Member* of the suspension of its appointment under the *Framework Alliance Contract* and further to notify all *Additional Clients* of the suspension.

Clauses

10.1 and 10.2 The following amendments supplement the duties of care under clauses 10.1 and/or 10.2:

In the event that the *Client* or any *Additional Client*:

- terminates any *Supplier Alliance Member's* appointment under the *Framework Alliance Contract* or any *Project Contract*; or
- issues a notice under any *Project Contract* to shorten the term and/or reduce the scope of works and services to be carried out by the *Supplier Alliance Member's* in relation to the *Framework Programme* or any *Project*; or
- does not award any *Project Contracts* or awards fewer *Project Contracts* (whether in terms of value and/or number) than stated in the *Framework Brief* or any *Project Brief* and/or does not award more *Project Contracts* (whether in terms of value and/or number) than stated in the *Framework Brief* or any *Project Brief*
- the relevant *Supplier Alliance Member* shall not have a claim against the *Client* or any *Additional Client* (whether under contract, statute, in tort or otherwise) for any mobilisation costs

if not already recovered and/or demobilisation costs and/or in respect of any actual or expected loss of profit, loss of revenue, loss of goodwill or loss of opportunity and/or any consequential or indirect loss other than payments for works already completed in accordance with the *Framework Alliance Contract* or any *Project Contract*.

- Clause 10.1.1 No *Alliance Member* excludes or limits its liability for:
- Clause 10.1.1.1 death or personal injury caused by its negligence, or that of its employees, agents or *Supply Chain* members (as applicable);
- Clause 10.1.1.2 bribery or *Fraud* by it or its employees;
- Clause 10.1.1.3 VAT;
- Clause 10.1.1.4 breach of *Intellectual Property Rights*;
- Clause 10.1.1.5 NOT USED;
- Clause 10.1.1.6 breach of its obligations in relation to *Confidential Information*;
- Clause 10.1.1.7 any liability to the extent it cannot be excluded or limited by *Law*.
- Clause 10.1.2 No *Supplier Alliance Member* excludes or limits its liability in respect of the indemnity in clause 11.2.
- Clause 10.1.3 Subject to clauses 10.1.1 and 10.1.2, each *Alliance Member's* total aggregate liability in respect of all *Losses* incurred under or in connection with any breach of the *Framework Alliance Contract* shall in no event exceed:
- Clause 10.1.3.1 in relation to the period from the *Framework Commencement Date* to the end of the first *Contract Year*, the sum of one hundred thousand pounds (£100,000);
- Clause 10.1.3.2 in relation to each subsequent *Contract Year* following the end of the first *Contract Year*, that commences during the remainder of the *Framework Period*, the sum of one hundred thousand pounds
- Clause 10.1.3.3 in relation to each *Contract Year* that commences after the end of the *Framework Period*, of one hundred thousand pounds (£100,000);
- Clause 10.1.4 Subject to clause 10.1.1, no *Alliance Member* shall be liable to the other *Alliance Members* for any:
- Clause 10.1.4.1 indirect, special or consequential Loss;
- Clause 10.1.4.2 loss of profits, turnover, savings, business opportunities or damage to goodwill (in each case whether direct or indirect).
- Clause 10.1.5 Notwithstanding clauses 10.1.3 and 10.1.4, each *Supplier Alliance Member* acknowledges that the *Client* may, amongst other things, recover from the *Supplier Alliance Member* the following *Losses*

incurred by the *Client* to the extent that they are attributable to any breach of the *Framework Alliance Contract* by that *Supplier Alliance Member*:

- Clause 10.1.5.1 any *Management Charge* or *Default Management Charge* which are due and payable to the *Client*;
- Clause 10.1.5.2 any additional operational and/or administrative costs and expenses incurred by the *Client*, including costs relating to time spent by or on behalf of the *Client*;
- Clause 10.1.5.3 any wasted expenditure or charges;
- Clause 10.1.5.4 the additional cost incurred over the remainder of the *Framework Period*, which shall include any incremental costs above those which would have been payable under the *Framework Alliance Contract*;
- Clause 10.1.5.5 any compensation or interest paid to a third party by the *Client*; Clause 10.1.5.6 any fine, penalty or costs incurred by the *Client* pursuant to *Law*.
- Clause 10.1.6 Each *Alliance Member* shall use all reasonable endeavours to mitigate any loss or damage suffered arising out of or in connection with the *Framework Alliance Contract*.
- Clause 10.1.7 Any *Default Management Charge* shall not be taken into consideration when calculating a *Supplier Alliance Member's* liability under clauses 10.1.3 and 10.1.4.
- Clause 10.1.8 For the avoidance of doubt, the *Alliance Members* acknowledge and agree that this clause 10.1 shall not limit any *Supplier Alliance Member's* liability to an *Additional Client* under any *Project Contract* and each *Supplier Alliance Member's* liability under a *Project Contract* shall be as provided for in that *Project Contract*.
- Clause 10.6 The agreed duties of care under clauses 10.1 and 10.2 shall be extended by *Alliance Members* to other parties as may be agreed by *Core Group* members at any time.
- Clause 12 The following *Supplier Alliance Members* shall take out the following types and amounts of insurance cover in accordance with clause 12 in respect of matters governed by the *Framework Alliance Contract*, and the following provisions supplement clause 12:
[]
- Clause 12.1.1 The following *Insurances* shall be maintained in accordance with *Good Industry Practice* and (so far as is reasonably practicable) on terms no less favourable than those generally available to a prudent contractor in respect of risks insured in the international insurance market from time to time. The *Insurances* shall be taken out and maintained with insurers who are of good financial standing and of good repute in the international insurance market.
- Clause 12.1.2 Each *Supplier Alliance Member* shall ensure that its public liability

policy shall contain an indemnity to principals clause under which the *Client* and the *Additional Clients* shall be indemnified in respect of claims made against the *Client* in respect of death or bodily injury or third party property damage arising out of or in connection with any matter governed by the *Framework Alliance Contract* and for which the *Supplier Alliance Member* is legally liable.

Clause 12.1.3

Aggregate limit of indemnity

Where the minimum limit of indemnity required in relation to any of the *Insurances* is specified as being "in the aggregate":

- if a claim or claims which do not relate to the *Framework Alliance Contract* are notified to the insurers which, given the nature of the allegations and/or the quantum claimed by the third party(ies), is likely to result in a claim or claims being paid by the insurers which could reduce the level of cover available below that minimum, the relevant *Supplier Alliance Member* shall immediately submit to the *Client*:
 - details of the policy concerned; and
 - its proposed solution for maintaining the minimum limit of indemnity specified; and
- if and to the extent that the level of insurance cover available falls below that minimum because a claim or claims which do not relate to the *Framework Alliance Contract* are paid by insurers, the relevant *Supplier Alliance Member* shall:
 - ensure that the insurance cover is reinstated to maintain at all times the minimum limit of indemnity specified for claims relating to the Framework Alliance Contract; or
 - if the Supplier Alliance Member is or has reason to believe that it will be unable to ensure that insurance cover is reinstated to maintain at all times the minimum limit of indemnity specified, immediately submit to the *Client* full details of the policy concerned and its proposed solution for maintaining the minimum limit of indemnity specified.

Clause 12.1.4

Cancellation

Each *Supplier Alliance Member* shall notify the *Client* in writing at least five (5) *Working Days* prior to the cancellation, suspension, termination or nonrenewal of any of the *Insurances*.

Clause 12.1.5

Insurance Claims

Clause 12.1.5.1

Each *Supplier Alliance Member* shall promptly notify to insurers any matter arising from, or in relation to any matter governed by the *Framework Alliance Contract* for which it may be entitled to claim under any of the *Insurances*. In the event that the *Client* receives a claim relating to or arising out of any matter governed by the *Framework*

Alliance Contract, each *Supplier Alliance Member* shall cooperate with the *Client* and assist it in dealing with such claims including without limitation providing information and documentation in a timely manner.

Clause 12.1.5.2 Except where the *Client* is the claimant party, the *Supplier Alliance Member* shall give the *Client* notice within twenty (20) *Working Days* after any insurance claim in excess of £100,000 relating to or arising out of any matter governed by the *Framework Alliance Contract* on any of the *Insurances* or which, but for the application of the applicable policy excess, would be made on any of the *Insurances* and (if required by the *Client*) full details of the incident giving rise to the claim.

Clause 12.1.5.3 Where any *Insurance* requires payment of a premium, the *Supplier Alliance Member* shall be liable for and shall promptly pay such premium.

Clause 12.1.5.4 Where any *Insurance* is subject to an excess or deductible below which the indemnity from insurers is excluded, the relevant *Supplier Alliance Member* shall be liable for such excess or deductible. No *Supplier Alliance Members* shall be entitled to recover from the *Client* any sum paid by way of excess or deductible under the *Insurances* whether under the terms of the *Framework Alliance Contract* or otherwise.

Clause 12.1.6 **Third party public liability insurance:**

➤ Insured

The *Supplier Alliance Member*

➤ Interest

To indemnify the insured in respect of all sums which the insured shall become legally liable to pay as damages, including claimant's costs and expenses, in respect of accidental:

- death or bodily injury to or sickness, illness or disease contracted by any person;
- loss of or damage to property; happening during the period of insurance and arising out of or in connection with any matter governed by the *Framework Alliance Contract*.

➤ Limit of indemnity

Not less than £2,000,000 in respect of any one occurrence, the number of occurrences being unlimited, but £2,000,000 any one occurrence and in the aggregate per annum in respect of products and pollution liability.

➤ Territorial limited

United Kingdom

➤ Cover features and extensions

Indemnity to principals clause.

➤ Principal exclusions

- War and related perils.
- Nuclear and radioactive risks.
- Liability for death, illness, disease or bodily injury sustained by employees of the Insured during the course of their employment.
- Liability arising out of the use of mechanically propelled vehicles whilst required to be compulsorily insured by applicable Law in respect of such vehicles.
- Liability in respect of predetermined penalties or liquidated damages imposed under any contract entered into by the Insured.
- Liability arising out of technical or professional advice other than in respect of death or bodily injury to persons or damage to third party property.
- Liability arising from the ownership, possession or use of any aircraft or marine vessel.
- Liability arising from seepage and pollution unless caused by a sudden, unintended and unexpected occurrence.

➤ Maximum deductible threshold

To be agreed with each *Supplier Alliance Member* and not to exceed £100,000, for each and every third-party property damage claim (personal injury claims to be paid in full).

Clause 12.1.7

Professional indemnity insurance:

➤ Insured

The *Supplier Alliance Member*

➤ Interest

To indemnify the insured for all sums which the insured shall become legally liable to pay (including claimants' costs and expenses) as a result of claims first made against the insured during the period of insurance by reason of any negligent act, error and/or omission arising from or in connection with the performance of its obligations under the *Framework Alliance Contract*.

➤ Limited of indemnity

Not less than £1,000,000 in respect of each claim, without limit to the number of claims except for claims arising out of pollution or contamination, where the minimum amount of cover applies in the aggregate in any one period of insurance and except for

claims arising out of asbestos where a lower level may apply in the aggregate.

Insurance level for the Project Contract. The limit must be set in line with the potential losses that could occur (not the value of the Project Contract or the level of cover held by potential Supplier Alliance Member). The Client must consider the potential severity/frequency of losses which the Supplier Alliance Member could become liable to pay as a result of claims for any negligent act, error or omission. You must consider the extent to which the Supplier Alliance Member may attend project locations or sites and any physical activity undertaken. If you are in doubt as to the level to apply or how this should be set out seek advice.

➤ Territorial limits

United Kingdom

➤ Period of insurance

From the date of the *Framework Alliance Contract* and renewable on an annual basis unless agreed otherwise by the *Client* in writing (a) throughout the *Framework Period* or until earlier termination of the *Framework Alliance Contract* and (b) for a period of 6 years thereafter.

➤ Cover features and extensions

Retroactive cover to apply to any claims made policy wording in respect of the *Framework Alliance Contract* or retroactive date to be no later than the *Framework Commencement Date*.

➤ Principal exclusions

- War and related perils
- Nuclear and radioactive risks

➤ Maximum deductible threshold

To be agreed with each *Supplier Alliance Member* and not to exceed £100,000 for each and every claim.

Clause 12.1.8

United Kingdom Compulsory Insurances.

Each *Supplier Alliance Member* shall meet its insurance obligations under applicable Law in full, including, UK employers' liability insurance and motor third party liability insurance.

Clause 13.2

The following rights of assignment and/or sub-contracting apply under

clause 13.2:

- Clause 13.2.1 No *Supplier Alliance Member* shall assign, novate, or otherwise dispose of or create any trust in relation to any or all of its rights, obligations or liabilities under the *Framework Alliance Contract* or any part of it without prior *Client* approval.
- Clause 13.2.2 The *Client* may assign, novate or otherwise dispose of any or all of its rights, liabilities and obligations under the *Framework Alliance Contract* or any part thereof to:
- Clause 13.2.2.1 any *Additional Client*; or
- Clause 13.2.2.2 any *Central Government Body* or other body established by the *Crown* or under statute in order substantially to perform any of the functions that had previously been performed by the *Client*; or
- Clause 13.2.2.3 any private sector body which substantially performs the functions of the *Client* and the *Supplier Alliance Members* shall, at the *Client's* request, enter into a novation agreement in such form as the *Client* shall reasonably specify in order to enable the *Client* to exercise its rights pursuant to this clause 13.2.1.
- Clause 13.2.2 A change in the legal status of the *Client* such that it ceases to be an *Additional Client* shall not, subject to clause 13.2.3, affect the validity of the *Framework Alliance Contract* and the *Framework Alliance Contract* shall be binding on any successor body to the *Client*.
- Clause 13.2.3 If the *Client* assigns, novates or otherwise disposes of any of its rights, obligations or liabilities under the *Framework Alliance Contract* to a body which is not an *Additional Client* or if a body which is not an *Additional Client* succeeds the *Client* (both called a “**Transferee**” in the rest of this clause 13.2.3) the right of termination of the *Client* in clause 14.3 (*Insolvency Event*) shall be available to each *Supplier Alliance Member* in the event of the insolvency of the Transferee.
- Clause 13.2.4 No *Supplier Alliance Member* shall, without the prior consent of the *Client*, sub-contract any of its rights or obligations under the *Framework Alliance Contract* or replace any Key Sub-Contractor previously notified to or approved by the *Client*. A *Supplier Alliance Member* shall forthwith notify the *Client* of any new or replacement sub-contractor engaged or to be engaged to carry out services under the *Framework* or a *Project Contract*
- Clause 13.3 The following amendments supplement the confidentiality provisions in clause 13.3:
- Clause 13.3.3 For the purposes of this clause 13.3, the term “**Disclosing Party**” shall mean a Party which discloses or makes available directly or indirectly its *Confidential Information* and “**Recipient**” shall mean the *Alliance Member* which receives or obtains directly or indirectly *Confidential Information*.

Clause 13.3.4

Except to the extent set out in this clause 13.3 or where disclosure is expressly permitted elsewhere in the *Framework Alliance Contract*, the Recipient shall:

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

Clause 13.3.5

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

- (a) the Recipient is required to disclose the Confidential Information by *Law*, provided that *Legal Requirement 1.2* (Freedom of Information) shall apply to disclosures required under the *FOIA* or the *EIRs*;
- (b) the need for such disclosure arises out of or in connection with:
 - (i) any legal challenge or potential legal challenge against the *Client* arising out of or in connection with the *Framework Alliance Contract*;
 - (ii) the examination and certification of the *Client's* accounts (provided that the disclosure is made on a confidential basis) or for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the *Client* is making use of its resources; or
 - (iii) the conduct of a *Central Government Body* review in respect of the *Framework Alliance Contract*;
- (c) the Recipient has reasonable grounds to believe that the Disclosing Party is involved in activity that may constitute a criminal offence under the Bribery Act 2010 and the disclosure is being made to the Serious Fraud Office;

- (d) such information was in the possession of the Disclosing Party without obligation of confidentiality prior to its disclosure by the information owner;
- (e) such information was obtained from a third party without obligation of confidentiality;
- (f) such information was already in the public domain at the time of disclosure otherwise than by a breach of the Framework Alliance Contract or breach of a duty of confidentiality; and
- (g) the information is independently developed without access to the Disclosing Party's *Confidential Information*.

Clause 13.3.6 If the Recipient is required by *Law* to make a disclosure of *Confidential Information*, the Recipient shall as soon as reasonably practicable and to the extent permitted by *Law* notify the Disclosing Party of the full circumstances of the required disclosure including the relevant *Law* and/or regulatory body requiring such disclosure and the *Confidential Information* to which such disclosure would apply.

Clause 13.3.7 Subject to clauses 13.3.4 and 13.3.5, a *Supplier Alliance Member* may only disclose the *Confidential Information* of the *Client* or an *Additional Client* on a confidential basis to:

- (a) Personnel who are directly involved in the provision of the *Projects* and need to know the *Confidential Information* to enable the performance of the *Supplier Alliance Member's* obligations under the *Framework Alliance Contract*; and
- (b) its professional advisers for the purposes of obtaining advice in relation to the *Framework Alliance Contract*.

Clause 13.3.8 Where a *Supplier Alliance Member* discloses the *Confidential Information* of the *Client* pursuant to clause 13.3.7, it shall remain responsible at all times for compliance with the confidentiality obligations set out in the *Framework Alliance Contract* by the persons to whom disclosure has been made.

Clause 13.3.9 The *Client* may disclose the *Confidential Information* of a *Supplier Alliance Member*.

- (a) to any *Central Government Body* or any current or prospective *Additional Client* on the basis that the information may only be further disclosed to *Central Government Bodies* or current or prospective *Additional Clients*;
- (b) to the British Parliament and any committees of the British Parliament or if required by any British Parliamentary reporting requirement;
- (c) to the extent that the *Client* (acting reasonably) deems disclosure necessary or appropriate in the course of carrying

out its public functions;

- (d) on a confidential basis to a professional adviser, consultant, supplier or other person engaged by any of the entities described in clause 13.3.9 (a) (including any benchmarking organisation) for any purpose relating to or connected with the Framework Alliance Contract;
- (e) on a confidential basis for the purpose of the exercise of its rights under the Framework Alliance Contract; or
- (f) to a proposed Transferee, assignee or novatee of or successor in title to the Client,
- (g) and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the *Client* under this clause 13.3.9.

Clause 13.3.10 For the avoidance of doubt, the *Confidential Information* that the *Client* may disclose under clause 13.3.9 shall include *information* relating to *Project Contracts*, including pricing information (which includes information on prices tendered in a *Competitive Award Procedure*, even where such a *Competitive Award Procedure* does not result in the award of a *Project Contract*) and the terms of any *Project Contract* may be shared with any *Central Government Body* or any current or prospective *Additional Client* from time to time.

Clause 13.3.11 *Nothing* in this clause 13.3 shall prevent a Recipient from using any techniques or ideas which the Recipient has gained during the performance of the *Framework Alliance Contract* in the course of its normal business to the extent that this use does not result in a disclosure of the Disclosing Party's *Confidential Information* or an infringement of *Intellectual Property Rights*.

Clause 13.3.12 In the event that a *Supplier Alliance Member* fails to comply with this clause 13.3, the *Client* reserves the right to terminate the appointment of that *Supplier Alliance Member* by issuing a *Termination Notice*.

Clause 14.1 The *Framework Alliance Contract* commences on []
(which is the *Framework Commencement Date*) and shall continue for []

subject to the remainder of clause 14 and subject to extension or earlier termination by agreement of all *Alliance Members* or as stated in specific *Contract Terms* and *Special Terms* or as follows:

Clause 14.8 **Failure to Achieve Targets.**

Without prejudice to any other rights or remedies arising under this *Framework Alliance Contract*, including under clauses 14.2 and 14.4, if a *Supplier Alliance Member* fails to achieve a *Target* on two or more

occasions within any twelve (12) *Month* rolling period, the *Supplier Alliance Member* acknowledges and agrees that the *Client* shall have the right to exercise (in its absolute and sole discretion) all or any of the following remedial actions:

- Clause 14.8.1 The *Client* may require the *Supplier Alliance Member*, and the *Supplier Alliance Member* agrees to prepare and provide to the *Client*, an *Improvement Plan* within ten (10) Working Days of a written request by the *Client* for such *Improvement Plan*. Such *Improvement Plan* shall be subject to approval and the *Supplier Alliance Member* will be required to implement any approved *Improvement Plan*, as soon as reasonably practicable
- Clause 14.8.2 The *Client* may require the *Supplier Alliance Member* to attend, and the *Supplier Alliance Member* agrees to attend, within a reasonable time one or more meetings at the request of the *Client* in order to resolve the issues raised by the *Client* in its notice to the *Supplier Alliance Member* requesting such meetings
- Clause 14.8.3 The *Client* may serve an *Improvement Notice* on the *Supplier Alliance Member* and the *Supplier Alliance Member* shall implement such requirements for improvement as set out in the *Improvement Notice*
- Clause 14.8.4 In the event that the *Client* has invoked one or more of the remedies set out above and the *Supplier Alliance Member* either:
- Clause 14.8.4.1 fails to implement such requirements for improvement as set out in the *Improvement Notice*; and/or
- Clause 14.8.4.2 fails to implement an *Improvement Plan* approved by the *Client* then (without prejudice to any other rights and remedies of termination provided for in the *Framework Alliance Contract*), the *Client* shall be entitled to terminate the appointment of the *Supplier Alliance Member* under the *Framework Alliance Contract* by issuing a *Termination Notice* to that *Supplier Alliance Member*.
- Clause 14.9 **Termination on Change of Control**
- Clause 14.9.1 Each *Supplier Alliance Member* shall notify the *Client* immediately in writing and as soon as the *Supplier Alliance Member* is aware (or ought reasonably to be aware) that it is anticipating, undergoing, undergoes or has undergone a *Change of Control* and provided such notification does not contravene any *Law*.
- Clause 14.9.2 Each *Supplier Alliance Member* shall ensure that any notification made pursuant to clause 14.9.1 shall set out full details of the *Change of Control* including the circumstances suggesting and/or explaining the *Change of Control*.
- Clause 14.9.3 The *Client* may terminate the appointment of a *Supplier Alliance Member* under the *Framework Alliance Contract* by issuing a *Termination Notice* to the *Supplier Alliance Member* within six (6) *Months* from:

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

Clause 14.10 **Termination for breach of Regulations**

The *Client* may terminate the appointment of a *Supplier Alliance Member* under the *Framework Alliance Contract* by issuing a *Termination Notice* to the *Supplier Alliance Member* on the occurrence of any of the statutory provisos contained in *Regulation 73 (1) (a) to (c)*.

Clause 14.11 **Termination in Relation to Financial Standing**

The *Client* may terminate the appointment of a *Supplier Alliance Member* by issuing a *Termination Notice* to that *Supplier Alliance Member* where in the reasonable opinion of the *Client* there is a material detrimental change in the financial standing and/or the credit rating of the *Supplier Alliance Member* which:

Clause 14.11.1 adversely impacts on the *Supplier Alliance Member's* ability to perform its obligations under the *Framework Alliance Contract* or any *Project Contract*; or

Clause 14.11.2 could reasonably be expected to have an adverse impact on the *Supplier Alliance Member's* ability to perform its obligations under the *Framework Alliance Contract* or any *Project Contract*.

Clause 14.12 **Termination Without Cause**

The *Client* may terminate the appointment of all *Supplier Alliance Members* under the *Framework Alliance Contract* with effect from at any time following nine (9) *Months* after the *Framework Commencement Date* by giving at least three (3) *Months'* written notice to all *Supplier Alliance Members*.

Clause 14.13 **Partial Termination**

Clause 14.13.1 Where the *Client* has the right to terminate the appointment of a *Supplier Alliance Member* under the *Framework Alliance Contract*, the *Client* is entitled to terminate that *Supplier Alliance Member's* appointment under all or part of the *Framework Alliance Contract* pursuant to this clause 14.13 provided always that, if the *Client* elects to terminate that appointment in part, the parts of not terminated or suspended can, in the *Client's* reasonable opinion, operate effectively to deliver the intended purpose of the surviving parts of the relevant *Supplier Alliance Member's* appointment under the *Framework Alliance Contract*.

- Clause 14.13.2 The *Client* and the relevant *Supplier Alliance Member* shall endeavour to agree the effect of any *Variation* necessitated by a partial termination under clause 14.13.1 in accordance with Special Term 8 (Variation Procedure), including the effect that the partial termination may have on the relevant *Supplier Alliance Member's Framework Prices* provided that:
- Clause 14.13.2.1 the *Supplier Alliance Member* shall not be entitled to an increase in the *Framework Prices* in respect of the part or parts of its appointment that have not been terminated if the partial termination arises due to the exercise of any of the *Client's* termination rights under this clause 14 and
- Clause 14.13.2.2 the *Supplier Alliance Member* shall not be entitled to reject the *Variation*.
- Clause 14.14 Suspension of Supplier Alliance Member's appointment
- Clause 14.14.1 If the *Client* is entitled to terminate the appointment of a *Supplier Alliance Member* under the *Framework Alliance Contract*, the *Client* may instead elect in its sole discretion to suspend the *Supplier Alliance Member's* entitlement to be invited to compete for and to be awarded *Project Contracts* under the *Framework Alliance Contract* by giving notice in writing to the *Supplier Alliance Member*, and the *Supplier Alliance Member* agrees that it shall not be entitled to enter into any new *Project Contract* during the period specified in the *Client's* notice.
- Clause 14.14.2 Any suspension under clause 14.14.1 shall be without prejudice to any right of termination which has already accrued, or subsequently accrues, to the *Client*.
- Clause 14.14.3 The *Alliance Members* acknowledge that suspension shall not affect the *Supplier Alliance Member's* obligation to perform any existing *Project Contracts* concluded prior to the suspension notice.
- Clause 14.14.4 If the *Client* provides notice to the *Supplier Alliance Member* in accordance with this clause 14.14, the *Supplier Alliance Member's* appointment under the *Framework Alliance Contract* shall be suspended for the period set out in the notice or such other period notified to the *Supplier Alliance Member* by the *Client* in writing from time to time.
- Clause 14.14.5 For the avoidance of doubt, no period of suspension under this clause 14.14 shall result in an extension of the *Framework Period*.
- Clause 14.15 **Consequences of expiry or termination**
- Clause 14.15.1 Notwithstanding the service of a notice to terminate the appointment of a *Supplier Alliance Member* under the *Framework Alliance Contract*, the *Supplier Alliance Member* shall continue to fulfil its obligations under the *Framework Alliance Contract* until the date of expiry or termination of the appointment of a *Supplier Alliance Member* under the *Framework Alliance Contract* or such other date as required under this clause 14.15.

- Clause 14.15.2 Termination of the appointment of a *Supplier Alliance Member* or termination or expiry of the *Framework Alliance Contract* shall not cause any *Project Contracts* to terminate automatically. For the avoidance of doubt, all *Project Contracts* shall remain in force unless and until they are terminated or expire in accordance with the provisions of the *Project Contracts*, and each *Supplier Alliance Member* shall continue to pay any *Management Charge* due to the *Client* in relation to such *Project Contracts*, notwithstanding the termination or expiry of its appointment under the *Framework Alliance Contract*.
- Clause 14.15.3 If the *Client* terminates the appointment of a *Supplier Alliance Member* under clauses 14.3 or 14.4 of the *Framework Alliance Contract* and then makes other arrangements for the performance of a *Project* for an *Additional Client*, the *Supplier Alliance Member* shall indemnify the *Client* in full upon demand for the cost of procuring and implementing any other arrangements.
- Clause 14.15.4 Within ten (10) *Working Days* from the date of termination of its appointment or from expiry of the *Framework Alliance Contract*, each *Supplier Alliance Member* shall return to the *Client* any and all of the *Client's Confidential Information* in the *Supplier Alliance Member's* possession, power or control, either in its then current format or in a format nominated by the *Client*, and any other information and all copies thereof owned by the *Client*, save that it may keep one copy of any such data or information to the extent reasonably necessary to comply with its obligations under the *Framework Alliance Contract* or under any *Law*, for a period of up to twelve (12) Months (or such other period as approved by the *Client* and is reasonably necessary for such compliance).
- Clause 14.15.5 Termination of the appointment of a *Supplier Alliance Member* under the *Framework Alliance Contract* or termination or expiry of the *Framework Alliance Contract* shall be without prejudice to any rights, remedies or obligations of any *Alliance Member* accrued under the *Framework Alliance Contract* prior to termination or expiry.
- Clause 14.15.6 Termination of the appointment of a *Supplier Alliance Member* under the *Framework Alliance Contract* or termination or expiry of the *Framework Alliance Contract* shall be without prejudice to the survival of any provision of the *Framework Alliance Contract* which expressly (or by implication) is to be performed or observed notwithstanding termination or expiry of the *Framework Alliance Contract*.
- Clause 15.2 Any dispute may be referred to conciliation conducted in accordance with clause 15.2 and Part 1 of Appendix 4 by a *Conciliator* who shall be appointed in accordance with the Association of Consultant Architects Conciliation Procedure.
- Clause 15.3 Any dispute may be referred to adjudication conducted in accordance with clause 15.3 and Part 2 of Appendix 4 by an *Adjudicator* who shall be appointed in accordance with the TecSA (Technology and Construction Solicitors Association) rules.

Clause 15.4 The arbitration provisions in clause 15.4 and Part 3 of Appendix 4 are not applicable.

Clauses 13.4 and 15.5 The applicable laws under clauses 13.4 and 15.3 and the courts with non-exclusive jurisdiction are those of England and Wales.

SCHEDULE 1
PART 1 OBJECTIVES
(see clause 2.1 of the FAC-1 Contract Terms)

1. The *Client's Objectives* are to create and implement an effective framework that is in compliance with the recommendations of the UK Government 2012 Effectiveness of Frameworks report, the 2016 Local Government Association and the National Association of Construction Frameworks "Effective Construction Frameworks" report and The Construction Playbook issued on 8 December 2020, and that:
 - 1.1. Has a demonstrable business need
 - 1.2. Has effective governance processes, active *Stakeholder* engagement and *Client* leadership
 - 1.3. Actively supports *Additional Clients* throughout the Project lifecycle, ensuring that *Additional Clients*, *Supplier Alliance Members* and their *Supply Chain* members receive a legacy of improvement
 - 1.4. Is driven by aggregated demand to create volume and generate efficiencies, and provides sufficient work opportunities to cover *Supplier Alliance Members'* investment
 - 1.5. Maintains competitive tension in terms of value, quality and performance during its life
 - 1.6. Is designed and managed to deliver the required outcomes and continuously improve upon them
 - 1.7. Can demonstrate greater value for money for the taxpayer
 - 1.8. Pays fairly for the work done and the risks taken
 - 1.9. Contributes to the development of an effective and efficient construction market
 - 1.10. Harnesses the power of public sector procurement to provide jobs and skills, local employment and enables SMEs to prosper
 - 1.11. Ensures *Supply Chain* members are engaged from the earliest stages of a *Project*
 - 1.12. Ensures transparency and collaborative values flow down the *Supply Chain* to produce *Supply Chain* members that *Additional Clients* can have confidence in.

2. In order to achieve the *Client's Objectives*, the *Objectives* of all *Alliance Members* are:
 - 2.1. To operate the Framework Alliance Contract in a way that is accessible to a wide range of *Additional Clients* covering a broad Framework Programme
 - 2.2. To deliver the Framework Programme in order to achieve Improved Value for the Client and *Additional Clients*
 - 2.3. To undertake Supply Chain Collaboration and other Supply Chain development, including sub-contracting opportunities for SMEs
 - 2.4. To generate employment and training opportunities
 - 2.5. To maximise the safe and efficient occupation and Operation of completed Projects
 - 2.6. To maximise Sustainability and social value and to minimise negative environmental impacts.
 - 2.7. To undertake Alliance Activities that include:
 - 2.8. sharing and monitoring best practice intelligence
 - 2.9. sharing and monitoring learning between Projects and programmes of *Projects*
 - 2.10. establishing, agreeing and monitoring consistent and more efficient working practices

- 2.11. agreeing and monitoring techniques for better team integration
- 2.12. agreeing and monitoring improved procurement and delivery systems on Projects and programmes of Projects
- 2.13. sharing and monitoring other improvement initiatives created among *Alliance Members* and with *Supply Chain* members.

PART 2
SUCCESS MEASURES AND TARGETS
 (see clauses 2.3,5.7 and 14.2 of the FAC-1 Contract Terms)

1. The *Success Measures* and *Targets* are:
 - 1.1. Performance reviews demonstrate improved levels of performance on *Projects* (when measured against the previous performance reviews) for each *Supplier Alliance Member* throughout the duration of the *Framework Alliance Contract*
 - 1.2. of the *Improved Value* commitments expressed in each *Supplier Alliance Member's Framework Proposals*
 - 1.3. of and participation by *Alliance Members* at all meetings provided for in the *Framework Alliance Contract*
 - 1.4. *Project* including:
 - 1.4.1. Compliance with each invitation to respond to a *Direct Award Procedure* and to participate in a *Competitive Award Procedure*
 - 1.4.2. Compliance with each *Project Contract*
 - 1.5. Establishment of compliance with *Project Success Measures* where required by the *Client* or an *Additional Client*, including:
 - 1.5.1. Defects at completion
 - 1.5.2. Safety
 - 1.5.3. Cost Predictability
 - 1.5.4. Time predictability
 - 1.5.5. *Additional Client* satisfaction
 - 1.6. with each *Additional Client's* consultants, *Stakeholders* and *Users*.
2. The following *Success Measures* assess how each *Supplier Alliance Member's* overall performance under the *Framework Alliance Contract* shall be monitored and managed. The *Client* reserves the right to adjust, introduce new, or remove *Success Measures* throughout the *Framework Period*, however any significant changes to *Success Measures* shall be agreed between the *Client* and all *Supplier Alliance Members* in accordance with *Special Term 8* (Variation Procedures).
3. Each *Supplier Alliance Member* shall comply with all its obligations related to *Success Measures* set out in the *Framework Alliance Contract* including Schedule 7 (Management) and shall use all reasonable endeavours to meet the *Targets* identified in the table below.
4. The *Success Measures* from which performance by each *Supplier Alliance Member* will be reported against are set out below:

Success Measure	Target	Measured by
1. Management		

1.1 MI returns: All <i>MI Reports</i> to be returned to the <i>Client</i> by the fifth day of each month	100%	Confirmation of receipt and time of receipt by the <i>Client</i> (as evidenced within the <i>Client's</i> data warehouse (<i>MISO</i> system))
1.2 All undisputed invoices to be paid within 30 calendar days of issue by the <i>Client</i> or <i>Additional Client</i> and or by the <i>Supplier Alliance Member</i> and by any member of the <i>Supplier Alliance Member's Supply Chain</i>	100%	Confirmation of receipt and time of receipt by the <i>Client</i> (as evidenced within the <i>Client's</i> CODA system)
1.3 <i>Supplier Alliance Member Self-Audit Certificate</i> to be issued to the <i>Client</i> in accordance with the Framework Alliance Contract	100%	Confirmation of receipt and time of receipt by the <i>Client</i>
1.4 Actions identified in an <i>Audit Report</i> to be delivered by the dates set out in the <i>Audit Report</i>	100%	Confirmation by the <i>Client</i> of completion of the actions by the dates identified in the <i>Audit Report</i>
1.2. <i>Project Returns</i> : All finalised <i>Project Success Measures</i> data to be returned to the <i>Client</i> within 10 <i>Working Days</i> of being finalised	100%	Confirmation of receipt by the <i>Client</i>
1.5 <i>Supplier Alliance Member</i> to provide biannual report on Social Value Delivery (in accordance with the theme set out in Section 27 of the <i>Framework Brief</i>) for Awarded Project Contracts	100%	Confirmation of receipt by the <i>Client</i>

5. **Project Success Measures**

5.1. *Supplier Alliance Members* shall also comply with the *Success Measures* for each *Project* or programme of *Projects* as set out in the *Template Project Documents* and in any *Direct Award Procedure* or *Competitive Award Procedure*.

6. **Minimum Standards of Reliability**

6.1. No *Project Contract* with an anticipated contract value in excess of £20 million

- (excluding VAT) shall be awarded to a *Supplier Alliance Member* if it does not show that it meets the *Minimum Standards of Reliability* at the time of the proposed award of that *Project Contract*.
- 6.2. The *Client* shall assess the *Supplier Alliance Member's* compliance with the *Minimum Standards of Reliability*:
 - 6.2.1. upon the request of any *Additional Client*; or
 - 6.2.2. otherwise, whenever it considers (in its absolute discretion) that it is appropriate to do so.
 - 6.3. In the event that the *Supplier Alliance Member* does not demonstrate that it meets the *Minimum Standards of Reliability* in an assessment carried out pursuant to this paragraph B, the *Client* shall so notify the *Supplier Alliance Member* and any *Additional Client* and the *Client* reserves the right to terminate the appointment of the *Supplier Alliance Member* under the *Framework Alliance Contract* by issue of a *Termination Notice*.

PART 3 INCENTIVES

(see clause 2.4 of the FAC-1 Contract Terms)

1. The *Client* and *Additional Clients* shall be entitled to award future *Project Contracts* based on each *Appointed Company* achieving the *Success Measures* and *Targets* set out in Schedule 1 Part 2.
2. Any *Incentives* under *Project Contracts* are entirely at the discretion of each *Additional Client*.

**SCHEDULE 2
TIMETABLE**

(see clause 6.1 of the FAC-1 Contract Terms)

1. The *Timetable* states agreed deadlines, gateways and milestones in respect of the *Framework Programme* and achievement of the *Objectives*, and the timescales for *Alliance Activities*, including the nature, sequence and duration of the agreed actions of each *Alliance Member* and any consents or approvals (whether required from *Alliance Members* or third parties) that are pre-conditions to subsequent actions.

Description of action/consent/approval	<i>Alliance Member(s)</i> responsible for action/consent/approval	Period/deadline for action/consent/approval	Additional comments

SCHEDULE 3

RISK REGISTER (see clauses 9.3 and 9.4 of the FAC-1 Contract Terms)

1. The Risk Register states the nature of each risk, its likelihood and impact on the *Framework Programme* and/or achievement of the *Objectives* and/or any *Alliance Activities* (including any anticipated financial impact), the *Alliance Member(s)* responsible for each *Risk Management* action, 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 those actions.

Risk	Likelihood of risk	Impact of risk on <i>Framework Programme</i> and/or <i>Objectives</i> and/or <i>Alliance Activities</i>	<i>Alliance Member(s)</i> responsible for <i>Risk Management</i> action	<i>Risk Management</i> action	<i>Risk Management</i> action period/deadline

SCHEDULE 4
DIRECT AWARD PROCEDURE and COMPETITIVE AWARD
PROCEDURE
(See clauses 5.1 and 5.2 of the FAC-1 Contract terms)

GENERAL

PROJECT

CONTRACTS

PROCEDURES

1. Selection of the Procedure

- 1.1. There are two options for awarding *Project Contracts* under the *Framework Alliance Contract*, these being:
- 1.1.1.A *Direct Award Procedure* as set out in Schedule 4 Part 1; or
 - 1.1.2.A *Competitive Award Procedure* as set out in Schedule 4 Part 2.

Each *Additional Client* may choose the *Direct Award Procedure* to award any *Project Contract* where:

- 1.1.3.all the terms governing the provision of works, supplies and services to be delivered are laid down in the *Framework Brief*, the *Framework Prices* and the other documents comprising the *Framework Alliance Contract*; or
 - 1.1.4.the *Competitive Award Procedure* does not produce more than one response from the *Supplier Alliance Members* invited to take part; or
 - 1.1.5.the *Competitive Award Procedure* does not produce any suitable responses from the *Supplier Alliance Members* invited to take part; or
 - 1.1.6.Other criteria that the *Client* or *Additional Client* sets out that necessitates a *Direct Award Procedure* that is in accordance with the *Client's* or *Additional Client's* governance and in line with the Public Contract Regulations 2015 – Regulation 33(8).
- 1.2. The *Client* or each *Additional Client* may choose the *Competitive Award Procedure* (issuing a 'Call for Competition') to award any *Project Contract* using the procedure and criteria set out in Schedule 4 Part 2.
- 1.3. When choosing either the *Competitive Award Procedure* or *Direct Award Procedure* the *Client* or *Additional Client* may award a *Project Contract* to any *Supplier Alliance Member* in the *Lot* based on criteria or weightings set out by the *Client* or the *Additional Client* in the *Framework Brief* or criteria or weightings relevant to the *Project* set out by the *Client* or *Additional Client*, subject to ensuring that any action taken is transparent, non-discriminatory and fair.
- 1.4. The *Client* or *Additional Client* using the *Competitive Award Procedure* may utilise a phased award process to reduce the number of *Supplier Alliance Members* that are selected to take part in the procedure after the first award phase and at any subsequent award phase.

- 1.5. Supplier Alliance Members under Lot 3 International shall meet UK Statutory and Regulatory Compliance and/ or Host Nation Compliance where this is greater than the UK requirement
2. **Prices**
 - 2.1. In respect of Schedule 4 Parts 1 and 2 the *Supplier Alliance Member* agrees to submit *Project* quotations to the *Client* or any *Additional Client* with prices for works and/or services which do not exceed the *Agreed Prices* submitted by the *Supplier Alliance Member* as set out in the *Framework Prices*.
3. **Responding to Projects**
 - 3.1. The Client or any Additional Client have the absolute discretion, when establishing their procurement strategy for a Project Contract, to determine the most appropriate method for incorporating the Prices and rates in accordance with the options available under the different forms of Project Contract conditions available. The chosen methodology will be stated in the Project Brief for individual Project Contracts.
 - 3.2. Where a *Supplier Alliance Member* receives an *Invitation* to submit a tender for a specific *Project Contract*, it agrees to return its expression of interest to the *Client* or *Additional Client* within 5 *Working Days*.
 - 3.3. If a *Supplier Alliance Member* fails to respond or declines the *Invitation* for any *Project Contract*, then that *Supplier Alliance Member* must provide the *Client* or the *Additional Client* with a reason for doing so.
 - 3.4. If a *Supplier Alliance Member* fails to respond or declines an *Invitation* on three or more consecutive occasions and fails to provide reasonable grounds for doing so then the *Client* reserves the right to suspend that *Supplier Alliance Member* for a period of time as stated by the Client at the time of the suspension from the *Framework Alliance Contracts* for both this Lot and also from the *Framework Alliance Contracts* for any other Lots to which the *Supplier Alliance Member* has been appointed in accordance with the Construction Works and Associated Services Framework.
4. **Responding to Requests for Information**
 - 4.1. Each *Supplier Alliance Member* agrees to respond within 5 *Working Days* to written requests from the *Client* for copies of all documents referred to in Schedule 5 including all quotations for works and/or services under the *Framework Alliance Contract* submitted to any *Additional Client*, together with suitable identifying documentation for validation against the prices in the *Framework Prices*.

PART 1
DIRECT AWARD PROCEDURE
(See clause 5.1 of the FAC-1 Contract Terms)

The following *Direct Award Procedure* shall govern the award of *Project Contracts*:

1. **Direct Award Procedure**
 - 1.1. Any *Client* or *Additional Client* awarding a *Project Contract* under the *Framework Alliance Contract* without holding a *Competitive Award Procedure* shall:
 - 1.1.1. Develop a clear *Project Brief*;
 - 1.1.2. Apply the direct award criteria below to the description of the works or services as applicable as set out in the *Framework Brief* and relevant *Project Brief*, for all *Supplier Alliance Members* capable of meeting the *Project Brief* in order to establish which of the *Supplier Alliance Members* provides the most economically advantageous solution;
 - 1.2. On the basis set out above, award the *Project Contract* to the successful *Supplier Alliance Member*
 - 1.3. The following criteria and weightings shall be applied to the *Supplier Alliance Members* through the *Direct Award Procedure*.
- 1.4. In some instances, due to a project's sensitive nature or an urgent operational requirement the Ministry of Defence may undertake a single source (non-competitive) procurement. In some (but not all) cases where a single source procurement is undertaken, the procurement may fall under the Defence Reform Act 2014 (DRA). It is also possible that in some instances the use of Two Stage tendering may also fall under the DRA. The act provides a legal framework known as the Single Source Contract Regulations 2014 (SSCR), which the Ministry of defence must adhere to. The DRA and SSCR define whether a procurement with a value of £5m+ or a sub-contact with a value of £25m+ will fall under the act and be classed as a Qualifying Defence Contract (QDC). The legislation covers the mandatory application of open book accounting and the mandated pricing process of QDCs, which includes the use of set profit percentages. Where a contract is deemed to be a QDC, the requirements of the Defence Reform Act will be applicable, further information on QDC and the relevant regulations can be found here - <https://www.gov.uk/government/organisations/single-source-regulations-office> and on the MOD acquisition webpage <https://www.gov.uk/guidance/acquisition-operating-framework>. please note the DRA and SSCR are only applicable to Ministry of Defence non-competitive procurements.

2. Direct Award Criteria

Criteria Number	Criteria - ranked in order of importance	Percentage Weightings (or rank order of importance where applicable)
1	Quality (including service delivery, technical merit, coverage, account management, fitness for purpose)	75%

2	Price (life cycle costs, cost effectiveness & price)	25%
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3. Project Registration

- 3.1. The *Client* or *Additional Client* shall summarise the relevant details of the *Project Contract* and complete an *Additional Client User Agreement* and forward it to the *Client*.
- 3.2. A *Project* is created upon submission of an *Additional Client User Agreement* and the creation of a *Project* number.
- 3.3. Once a *Project* number has been created the *Client* or *Additional Client* and the *Supplier Alliance Member* shall include the *Project* number relating to the *Project* on all correspondence with each other and/or the *Client*.

4. Expression of Interest

- 4.1. The *Client* or the *Additional Client* shall request the proposed *Supplier Alliance Member* to express its interest in delivering the *Project Contract* within 5 *Working Days* (unless otherwise requested by the *Additional Client*) from receipt of the request.

5. Project Brief

- 5.1. The *Client* or *Additional Client* shall then issue to the proposed *Supplier Alliance Member* an invitation to submit an offer in writing and shall set out details of the *Project Contract*, the *Project Contract Conditions* to be used, the relevant pricing model or price framework, and the timetable for the return of the invitation to the *Client* or *Additional Client* and other matters relating to the *Project Contract*.

6. Project Proposal

- 6.1. The proposed *Supplier Alliance Member* shall submit a Project Proposal in writing based on the *Client's* or *Additional Client's* form of offer (the '**Form of Offer**'), and will be fully responsible for all costs and expenses including fees and disbursements in the preparation, submission of the Project Proposal and no reimbursement or payment will be made by the *Client* or the *Additional Client* to the proposed *Supplier Alliance Member* for such costs, expenses, fees and disbursements.
- 6.2. All information supplied by the *Client* or *Additional Client* in connection with the *Project Contract* itself shall be treated as confidential and the proposed *Supplier Alliance Member* shall not, without the prior written consent of the *Client* or *Additional Client*, at any time make use of such information for its own purposes or disclose such information to any person or organisation other than the *Client* or *Additional Client* (except as may be required by *Law* or where such information is disclosed with the prior written agreement of the *Client* or *Additional Client* for the purposes of obtaining sureties, guarantees or commitments from proposed *Supply Chain* members or *Supplier Alliance Members* and other information required to be submitted with the Project Proposal).

7. Validation and acceptance of the Project Proposal

- 7.1. Only an offer submitted with a completed and signed *Project Form of Offer* or equivalent together with all the required supporting documentation will be considered by the *Client* or *Additional Client*.

- 7.2. If stated by the *Client* or *Additional Client* within the invitation documents that the proposed *Supplier Alliance Member* is to be invited to give a presentation or attend an interview to the *Client's* or *Additional Client's* organisation as part of the full validation process, the proposed *Supplier Alliance Member* will be provided with the necessary information by the *Client* or *Additional Client* in relation to such presentation or interview in the Project Brief.
- 7.3. As part of the final validation process, the *Client* or *Additional Client* will agree and/or confirm with the proposed *Supplier Alliance Member* all relevant items detailed in Project Brief and any other relevant information which may include key personnel of the proposed *Supplier Alliance Member* who will be responsible for carrying out the *Project Contract*.
8. **Acceptance or rejection of a Project Proposal by the Client or Additional Client**
- 8.1. The *Client* or *Additional Client* shall not be bound to accept any Project Proposal and reserves to itself the right at its absolute discretion to accept or not accept any Project Proposal submitted.
- 8.2. The *Client* or *Additional Client* may in its absolute discretion refrain from considering and thereby reject any Project Proposal if either:
- 8.2.1. the Project Proposal contains any significant omissions, or
- 8.2.2. the Project Proposal in any respect does not comply with the requirements of the invitation
- 8.3. Any Project Proposal or other documents submitted by any proposed *Supplier Alliance Member* shall not be considered by the *Client* or *Additional Client* for acceptance and shall accordingly be rejected if the proposed *Supplier Alliance Member*:
- 8.3.1. communicates to any person other than the *Client* or *Additional Client* any information except as stated in these conditions or fixes or adjusts the amount, prices, charges and rates with any other person.
- 8.3.2. offers or agrees to pay or give, or does pay or give, any sum of money, inducement or valuable consideration directly or indirectly to any person for doing or having done or causing or
- 8.3.3. having caused to be done in relation to any other company or any other proposed offers or other documents any act or omission.
- 8.4. Any non-acceptance or rejection by the *Client* or *Additional Client* shall be without prejudice to any other civil remedies available to the *Client* or *Additional Client* in respect thereof or to any criminal liability that the conduct or action by a proposed *Supplier Alliance Member* may attract.
9. **Award of Project Contract**
- 9.1. If the *Client* or *Additional Client* decides to appoint the proposed *Supplier Alliance Member*, the *Client* or *Additional Client* shall issue a *Project Contract* setting out the information agreed and any other relevant information which may include any key personnel of the proposed *Supplier Alliance Member* who will be

responsible for carrying out the *Project Contract*.

- 9.2. Upon the issue of the *Project Contract*, the proposed *Supplier Alliance Member* shall execute and return the relevant *Project Contract* to the *Client* or *Additional Client* within 21 *Working Days* of receipt of same or such longer period as the *Client* or *Additional Client* may specify in writing.
- 9.3. Should the proposed *Supplier Alliance Member* fail to comply with its obligations in clause 9.2 above, the proposed *Supplier Alliance Member* shall be deemed to have declined the offer to enter into the *Project Contract* and the *Client* or *Additional Client* may terminate the process.
- 9.4. Both the *Additional Client* and the *Supplier Alliance Member* shall notify the *Client* when the *Project Contract* has been signed.
- 9.5. The proposed *Supplier Alliance Member* shall, when appointed in accordance with this procedure, carry out the relevant *Project Contract* in accordance with the terms of the *Project Contract* and maintain the standards set out therein.
- 9.6. The terms of the *Framework Alliance Contract* will supplement and complement the terms of any *Project Contract*, however, in the event of any conflict or discrepancy between the terms of a *Project Contract* and the terms of the *Framework Alliance Contract* the conflicting or discrepant terms of the relevant *Project Contract* will prevail over the conflicting or discrepant terms of the *Framework Alliance Contract*.

PART 2
COMPETITIVE AWARD PROCEDURE
(See clause 5.2 of the FAC-1 Contract Terms)

The following *Competitive Award Procedure* shall govern the award of *Project Contracts*:

1. The Client or Additional Client's obligations under Call for Competition

1.1. Any *Client* or *Additional Client* awarding a *Project Contract* under the *Framework Alliance Contract* through a *Competitive Award Procedure* shall:

1.1.1. develop a *Project Brief* setting out its requirements for the *Project Contract* and identify the *Supplier Alliance Members* capable of undertaking the *Project*;

1.1.2. determine which form of *Project Contract Conditions* shall be used, and amend or refine the selected *Project Contract Conditions* to reflect its *Project Brief* only to the extent permitted by and in accordance with the requirements of the *Regulations* and related guidance;

1.1.3. invite tenders by conducting a *Competitive Award Procedure* for its *Project Brief* in accordance with the *Regulations* and related guidance and in particular:

(a) the *Client* or *Additional Client* shall:

i) invite the *Supplier Alliance Members* identified to submit a tender in writing for each proposed *Project Contract* to be awarded by giving written notice to the relevant *Supplier Alliance Member Representative* of each *Supplier Alliance Member*;

ii) set a time limit for the receipt by it of the tenders which takes into account factors such as the complexity of the subject matter of the proposed *Project Contract* and the time needed to submit tenders; and

iii) keep each tender confidential until the time limit set out for the return of tenders has expired.

iv) apply the *Competitive Award Procedure* criteria to the *Supplier Alliance Members'* compliant tenders submitted through the *Competitive Award Procedure* as the basis of its decision to award a *Project Contract* for its *Project Brief*;

1.1.4. on the basis set out above, award its *Project Contract* to the successful *Supplier Alliance Member*. The *Project Contract* shall:

(a) state the *Project Brief*;

(b) state the tender submitted by the successful *Supplier Alliance Member*;

(c) state the *Agreed Prices* payable for the *Project* in accordance with the tender submitted by the successful *Supplier Alliance Member*; and

(d) incorporate the *Project Contract Conditions* (as may be amended or refined by the *Client* or *Additional Client* applicable to the *Project*).

1.1.5. provide unsuccessful *Supplier Alliance Members* with written

feedback in relation to the reasons why their tenders were unsuccessful.

2. The Supplier Alliance Member's Obligations

- 2.1. Each *Supplier Alliance Member* shall in writing, by the time and date specified by the *Additional Client* in The Project Brief, provide the *Additional Client* with either:
 - 2.1.1.a a statement to the effect that it does not wish to tender in relation to the relevant *Project*; or
 - 2.1.2. the full details of its tender made in respect of the relevant *Project Brief*. In the event that the *Supplier Alliance Member* submits such a tender, it should include, as a minimum:
 - (a) a response via an online electronic portal or an email response subject line to comprise unique reference number and Supplier Alliance Member name, so as to clearly identify the Supplier Alliance Member;
 - (b) a brief summary, in the email (followed by a confirmation letter), stating that the *Supplier Alliance Member* is bidding for the *Project*;
 - (c) its *Project Proposals*; and
 - (d) CVs of key *Personnel* – as a minimum any core discipline leads, with others, as considered appropriate along with required staff levels.
- 2.2. Each *Supplier Alliance Member* shall ensure that any prices submitted in relation to a *Competitive Award Procedure* held shall be based on the *Framework Prices* and take into account any discount to which the *Client* or *Additional Client* may be entitled as set out in the *Framework Prices*.
- 2.3. Each *Supplier Alliance Member* agrees that:
 - 2.3.1. all tenders submitted by the *Supplier Alliance Member* in relation to a *Competitive Award Procedure* shall remain open for acceptance by the relevant *Client* or *Additional Client* for ninety (90) *Working Days* (or such other period specified in the invitation to tender issued by the relevant *Client* or *Additional Client* in accordance with the *Competitive Award Procedure*); and
 - 2.3.2. all tenders submitted by the *Supplier Alliance Member* are made and will be made in good faith and that the *Supplier Alliance Member* has not fixed or adjusted and will not fix or adjust the price of the tender by or in accordance with any agreement or arrangement with any other person. Each *Supplier Alliance Member* certifies that it has not and undertakes that it will not:
 - (a) communicate to any person other than the person inviting these tenders the amount or approximate amount of the tender, except where the disclosure, in confidence, of the approximate amount of the tender was necessary to obtain quotations required for the preparation of the tender; and
 - (b) enter into any arrangement or agreement with any other person that he or the other person(s) shall refrain from submitting a tender or as to the amount of any tenders to be submitted.
- 2.4. The following criteria shall be applied to the *Project* set out in the *Supplier Alliance Member's* compliant tenders submitted through the

Competitive Award Procedure:

3. **Competitive Award Procedure Criteria**

Criteria Number	Criteria	Percentage Weightings (or rank order of importance where applicable) - to be set by the <i>Client</i> or <i>Additional Client</i> conducting the Competitive Award Procedure
A	Quality	75% (variation up to + / - 25%)
B	Price	25% (variation up to + / - 25%)

4. **Project Registration**

- 4.1. The *Additional Client* shall summarise the relevant details of the *Project* and complete an *Additional Client User Agreement* and forward it to the *Client*.
- 4.2. A *Project* is created upon submission of an *Additional Client User Agreement* and the creation of a *Project* number.
- 4.3. Once a *Project* number has been created the *Additional Client* and the *Supplier Alliance Members* shall include the *Project* number relating to the *Project Contract* on all correspondence with each other and/or the *Client*.

5. **Expression of Interest**

- 5.1. The *Client* or the *Additional Client* shall request all *Supplier Alliance Members* eligible to participate in a *Competitive Award Procedure* to express their interest in doing so by completing and returning the *Additional Client User Agreement* within 5 *Working Days* (unless otherwise requested by the *Client* or *Additional Client*) from receipt of the request.

6. **Project Brief**

- 6.1. Subject to schedule 4 item 1.4, phased award process, the *Client* or *Additional Client* shall then issue to all *Supplier Alliance Members* who confirm their interest in a *Competitive Award Procedure* comprising an invitation to submit a *Project Proposal* in writing setting out details of the relevant *Project Contract*, the *Project Contract Conditions* to be used, the relevant pricing model or price framework, the criteria for the evaluation of the tenders, the timetable for the return of Tenders to the *Client* or *Additional Client* and other matters relating to the *Project Contract*.
- 6.2. The list of evaluation criteria may include but are not limited to
 - 6.2.1. Security requirements;
 - 6.2.2. Social value;
 - 6.2.3. Behaviours

7. **Project Proposal**

- 7.1. All *Supplier Alliance Members* invited to submit a tender for a *Project* (a '**Tender**') shall submit a Project Proposal in writing based on the *Client* or *Additional Client's* required form of offer or equivalent (a '**Form of Offer**') and will be fully responsible for all costs and expenses including fees and disbursements in the preparation, submission and any other subsequent elements of the Tender process and no reimbursement or payment will be made by the *Client* or *Additional Client* to *Supplier Alliance Members* for such costs, expenses, fees and disbursements.
- 7.2. All information supplied by the *Client* or *Additional Client* in connection with the *Competitive Award Procedure* and the *Competitive Award Procedure* itself shall be treated as confidential and participating *Supplier Alliance Members* shall not, without the prior written consent of the *Client* or the *Additional Client* at any time make use of such information for their own purposes or disclose such information to any person or organization other than the *Client* or *Additional Client* (except as may be required by law or where such information is disclosed with the prior written agreement of the *Client* or *Additional Client* for the purposes of obtaining sureties, guarantees or commitments from proposed Supply Chain members or *Supplier Alliance Members* and other information required to be submitted with the Tender).
8. **Evaluation of the Tenders**
 - 8.1. Only Tenders submitted with a completed and signed *Client* or *Additional Client* Form of Offer or equivalent together with all the required supporting documentation will be considered.
 - 8.2. The *Additional Client* will evaluate the Tenders based upon the criteria or any supplementary criteria applicable to the *Competitive Award Procedure* as set out in the *Competitive Award Procedure* documents.
 - 8.3. If stated by the *Client* or *Additional Client* in the *Competitive Award Procedure* documents that *Supplier Alliance Members* are to be invited to attend an interview or give a presentation to the *Client's* or *Additional Client's* organisation as part of the full evaluation process, *Supplier Alliance Members* will be provided with the necessary information by the *Client* or *Additional Client* in relation to such presentation and interview.
9. **Acceptance or rejection of Tenders by the Client or Additional Client**
 - 9.1. The *Client* or *Additional Client* reserves the right to accept any Tender which has been submitted pursuant to a *Competitive Award Procedure*.
 - 9.2. The *Client* or *Additional Client* shall not be bound to accept any Tender and reserves to itself the right at its absolute discretion to accept or not accept any Tender submitted.
 - 9.3. The *Client* or *Additional Client* may in its absolute discretion refrain from considering and thereby reject Tenders if either:
 - 9.3.1. the Tenders contain any significant omissions, or
 - 9.3.2. the Tender in any respect does not comply with the requirements of the *Competitive Award Procedure*
 - 9.4. Any Tenders or other documents submitted by any *Supplier Alliance Member* shall not be considered by the *Client* or *Additional Client* for acceptance and shall accordingly be rejected if the *Supplier Alliance Member*
 - 9.4.1. communicates to any person other than the *Client* or *Additional Client* any information except as stated in these conditions or

fixes or adjusts the amount, prices, charges and rates with any other person or by reference to any other Tenders; or

9.4.2. offers or agrees to pay or give, or does pay or give, any sum of money, inducement or valuable consideration directly or indirectly to any person for doing or having done or causing or having caused to be done in relation to any other company or any other proposed Tenders or other documents any act or omission; or

9.4.3. enters into any agreement or arrangement with any other person that such other person shall refrain from submitting Tenders or to limit or restrict the amounts, prices, charges and rates to be shown by any other company in its Tenders and other documents; or

9.4.4. has directly or indirectly canvassed any representative, official or officer of the *Client's* or *Additional Client's* organisation concerning the acceptance of any Tenders or has directly or indirectly obtained or attempted to obtain information from any such representative, official or officer of the *Client* or *Additional Client* concerning any other Tenders submitted by any other company.

9.5. Any non-acceptance or rejection by the *Client* or *Additional Client* shall be without prejudice to any other civil remedies available to the *Client* or *Additional Client* in respect thereof or to any criminal liability that the conduct or action by a *Supplier Alliance Member* may attract.

10. Award of the Project Contract

10.1. If the *Client* or *Additional Client* decides to select and appoint one of the *Supplier Alliance Members* who submitted a Tender, the *Client* or *Additional Client* shall immediately

10.1.1. issue the relevant *Project Contract* setting out the information agreed and any other relevant information which may include any key personnel of the proposed *Supplier Alliance Member* who will be responsible for carrying out the *Project*, and

10.1.2. notify in writing all the other *Supplier Alliance Members* who submitted a Tender of their failure to be selected.

10.2. Upon the issue of the *Project Contract*, the successful *Supplier Alliance Member* shall execute and return the relevant *Project Contract* to the *Client* or *Additional Client* within 21 *Working Days* of receipt of same or such longer period as the *Client* or *Additional Client* may specify in writing.

10.3. Should any successful *Supplier Alliance Member* fail to comply with its obligations in Clause 10.2 above, the *Supplier Alliance Member* shall be deemed to have declined the offer to enter into the *Project Contract* and the *Client* or *Additional Client* may recommence the selection process in accordance with Clauses 9.1 and 9.2 above.

10.4. Both the *Additional Client* and the *Supplier Alliance Member* shall notify the *Client* when the *Project Contract* has been signed.

10.5. The successful *Supplier Alliance Member* shall, when appointed in accordance with this procedure, carry out the relevant *Project Contract* or *Project Contracts* in accordance with the terms of the relevant *Project Contract* and maintain the standards set out therein.

10.6. The terms of the *Framework Alliance Contract* will supplement and complement the terms of any *Project Contract*. However, in the event of any conflict or discrepancy between the terms of a *Project Contract*

and the terms of the *Framework Alliance Contract* the conflicting or discrepant terms of the relevant *Project Contract* will prevail over the conflicting or discrepant terms of the *Framework Alliance Contract*.

SCHEDULE 5
PART 1. TEMPLATE PROJECT DOCUMENTS
(see clause 5.3 of the FAC-1 Contract Terms)

1. Each *Direct Award Procedure* and each *Competitive Award Procedure* and all *Project Contracts* shall use the following *Template Project Documents*:
 - 1.1. The *Project Contract Conditions* to be used for each *Project* comprising the applicable standard forms of contract and any amendments
 - 1.2. The structure and standard components of the *Project Brief* that forms part of each *Project Contract* describing the scope and nature of a *Project*, setting out the technical, management and commercial requirements and expected outcomes in respect of the *Project*, and including all required standards and warranties
 - 1.3. All standard requirements in each *Project Brief* in respect of insurances and securities and all standard processes and procedures in each *Project Brief* for the management of communication, performance, quality, design, supply chain engagement, cost, payment, time, change, risk, health and safety and all other *Project* management processes and procedures, in each case including the required approach to *BIM*
 - 1.4. All standard requirements in each *Project Brief* in respect of *Sustainability*, *Operation* of the completed *Project* and engagement with *Stakeholders* and with *Users* of the *Project*
 - 1.5. The required structure and content of the *Agreed Prices* and other *Project Proposals* forming part of each *Project Contract*.
2. **Standards**
 - 2.1. Each *Supplier Alliance Member* shall comply with the *Standards* at all times during the performance by the *Supplier Alliance Member* of the *Framework Alliance Contract* and any *Project Contract*.
 - 2.2. Throughout the *Framework Period*, *Alliance Members* shall notify each other of any new or emergent standards which could affect the performance by the *Supplier Alliance Members* of the *Framework Alliance Contract* and any *Project Contract*. The adoption of any such new or emergent standard, or changes to existing *Standards*, shall be agreed in accordance with Special Term 8 (Variations).
 - 2.3. Where a new or emergent *Standard* is to be developed or introduced by the *Client*, each *Supplier Alliance Member* shall be responsible for ensuring that the potential impact on the performance by the *Supplier Alliance Members* of the *Framework Alliance Contract* and any *Project Contract* is explained to the *Client* and all *Additional Clients* (within a

reasonable timeframe), prior to the implementation of the new or emergent *Standard*.

- 2.4. Where *Standards* conflict with each other or with *Good Industry Practice* adopted after the *Framework Commencement Date*, then the later *Standard* or best practice shall be adopted by the *Supplier Alliance Members*. Any such alteration to any *Standard(s)* shall require *Client* approval and shall be implemented within an agreed timescale.
- 2.5. Where a *Standard*, or a related policy or document, is referred to in the *Framework Brief* by reference to a hyperlink, then if the hyperlink is changed or no longer provides access to the relevant *Standard*, policy or document, the *Alliance Member* who becomes aware of this shall notify the *Alliance Manager* and the *Alliance Members* shall agree the impact of such change.

3. Procurement

- 3.1. By way of reference, the *Supplier Alliance Members* shall facilitate the utilisation of different procurement types as part of their overall project approach, aligned to the principles of the following approaches, as required, including those noted below:
 - 3.1.1. Design and Build: Single stage
 - 3.1.2. Design and Build: Two stage
 - 3.1.3. Traditional
 - 3.1.4. Two Stage Open Book Costing
 - 3.1.5. Cost Led Procurement
 - 3.1.6. Integrated Project Insurance
- 3.2. The *Supplier Alliance Members* shall support the *Client* and *Additional Clients* in identifying and facilitating *Projects* that are suitable to be trialled using newer construction procurement models such as:
 - 3.2.1. Two Stage Open Book
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/325014/Two_Stage_Open_Book_Guidance.pdf
 - 3.2.2. Cost Led Procurement
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/325012/Cost_Led_Procurement_Guidance.pdf
 - 3.2.3. Integrated Project Insurance.
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/326716/20140702_IPI_Guidance_3_July_2014.pdf

- 3.3. In addition, the *Client* and *Additional Clients* may seek to utilise other procurement models that may include the procurement of both construction and maintenance as noted in Procuring for Value.

<https://www.constructionleadershipcouncil.co.uk/news/procuring-for-value/>

- 3.4. Furthermore, a range of matters such as the use of a Project Bank Account, and the manner in which any retentions may be treated (e.g. retentions will be/will not be used or retentions may be placed in a trust fund) will be set out in each *Direct Award Procedure* and *Competitive Award Procedure*.
- 3.5. The *Client* or *Additional Clients* using the *Direct Award Procedure* and *Competitive Award Procedure* set out in Schedule 4 may utilise a phased award process that will enable *Supplier Alliance Members* to de-select themselves and will enable the *Client* or *Additional Clients* to reduce the number of *Supplier Alliance Members* that are selected to take part in the procedure after the first phase and at any subsequent phase.

4. **Project Contracts**

- 4.1. The *Project Contract Conditions* used by the *Client* or an *Additional Client* for a *Project Contract* awarded to a *Supplier Alliance Member* will be one or more of the following standard forms of construction contract, or an *Additional Client's* modified version of such standard forms:

- 4.1.1. NEC3 Professional Service Contract
- 4.1.2. NEC4 Professional Service Contract
- 4.1.3. NEC3 Professional Service Short Contract
- 4.1.4. NEC4 Professional Service Short Contract
- 4.1.5. JCT Consultancy Agreement (Public Sector) 2016
- 4.1.6. PPC 2000 (amended 2013) Standard Form of Contract for Project Partnering

- 4.2. An additional FAC-1 Framework Alliance Contract may be used in conjunction with any of the above forms if and where any one or more *Additional Clients* propose to increase the potential for consistency, efficiency, *Improved Value* and lessons learned by integrating or connecting:

- 4.2.1. A programme of work comprising more than one *Project*,

- to be awarded to one or more *Supplier Alliance Members*; or
- 4.2.2. The capital and operational phases of any one or more *Projects*, to be awarded to one or more *Supplier Alliance Members*, for example as a whole life approach to procurement; or
- 4.2.3. The *BIM* contributions of one or more *Supplier Alliance Members* and other team members in relation to any one or more *Projects*, to be awarded to one or more *Supplier Alliance Members*; or
- 4.2.4. The contributions of the *Supply Chain* members used by different *Supplier Alliance Members* on any *Projects* or programmes of *Projects*, to be awarded to one or more *Supplier Alliance Members*

4.3. NOT USED

4.4. NOT USED

- 4.5. *Additional Clients* may use *BIM* under any of the stated *Project Contract Conditions*, with or without adoption of the CIC BIM Protocol Second Edition 2018
- 4.6. *Additional Clients* may provide for creation of Project Bank Accounts under any of the stated *Project Contract Conditions* as described in https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/62117/Project-Bank-Accounts-briefing.pdf
- 4.7. *Additional Clients* may use amendments to standard form *Project Contract Conditions* as set out in the schedule headed 'Standard Boilerplate Amendments' that forms part of the *Template Project Documents*.
- 4.8. In selecting a standard form *Project Contract* any *Additional Client* shall be entitled to incorporate appropriate amendments and additions that reflect its requirements in relation to each *Project*, including but not limited to:
 - 4.8.1. Pricing options, for example those available under NEC3/NEC4 Options A, C, E and G (for NEC3 only)
 - 4.8.2. NOT USED
 - 4.8.3. NOT USED
 - 4.8.4. Options to amend the duty of care, for example under PPC 2000 (amended 2013) clause 22
 - 4.8.5. Options to extend the duty of care by creation of third-party rights, under the CTPRA and under collateral warranties
 - 4.8.6. NOT USED
 - 4.8.7. NOT USED
 - 4.8.8. Dispute resolution options, such as the NEC3/NEC4

Dispute Avoidance Board and PPC2000 (amended 2013) Conciliation.

- 4.9. Any Additional Clients have the absolute discretion, when establishing their procurement strategy for a Project Contract, to determine the most appropriate method for incorporating the Prices and rates into their contract. As an example, when utilising a target contract arrangement such as an NEC4 PSC Option C contract, an Additional Client may choose to use either actual (Defined) cost or (by incorporation of an appropriate clause amendment) the tendered and pre-agreed design hourly rates.

PART 2. BOILERPLATE CLAUSES

1. The use of Standard Boilerplate Amendments will be decided by the *Additional Client* and included in a *Project Brief*.
2. If selected by an *Additional Client*, Standard Boiler Plate Amendments are used to amend the standard forms of contract as listed in Schedule 5 Part 1 (Section 4).
3. They can be inserted into the standard forms of contract by an *Additional Client* as a means of adding conditions or amending wording.

SCHEDULE 6
LEGAL REQUIREMENTS and SPECIAL TERMS
(see clauses 13.4 and 13.5 of the
FAC-1 Contract Terms)

Supplementary definitions

In addition to the definitions set out in FAC-1 Appendix 1, the following words and expressions shall have the following meanings, whether used in the singular or the plural and whatever their gender:

"Additional Client Notice" means each *Additional Client Notice* issued by the *Client* to an Additional Client which is the means by which each *Additional Client* becomes an *Alliance Member* upon and subject to the *Client* notifying all other *Alliance Members*

"Admin Fees" means the costs incurred by the *Client* in dealing with MI Failures calculated in accordance with the tariff of administration charges published by the *Client* at the following link: <http://CCS.cabinetoffice.gov.uk/i-am-supplier/managementinformation/admin-fees>;

"Affiliates" means 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* of that body corporate from time to time;

"Audit" means an audit carried out pursuant to Schedule 7 (Records, Audit Access and Open Book Data);

"Audit Report" means a report summarising the testing completed and the actions arising following an *Audit*;

"Auditor" means the *Client* and/or any *Additional Client* and/or the National Audit Office and/or any auditor appointed by the Audit Commission, and /or the representatives of any of them;

"Auditor General" means currently the body that scrutinises central government expenditure;

"Award Confirmation Notice" means each *Award Confirmation Notice* issued by the *Client* to a *Supplier Alliance Member* which is the means by which each *Supplier Alliance Member* becomes an *Alliance Member* upon and subject to the *Client* notifying all other *Alliance Members*

"Branding" means the *Client's* guidance in relation to the use of branding available at

"Guidance"	http://gcloud.civilservice.gov.uk/files/2012/10/supplier-guidesApril-2012.pdf
"Central Government Body"	<p>means a body listed in one of the following sub-categories of the Central Government classification of the Public Sector Classification Guide, as published and amended from time to time by the Office for National Statistics:</p> <ul style="list-style-type: none"> ➤ Government Department; ➤ Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal); ➤ Non-Ministerial Department; or ➤ Executive Agency;
"Change in Law"	means any change in <i>Law</i> which impacts on the performance of the <i>Framework Alliance Contract</i> or any <i>Project Contract</i> and which comes into force after the <i>Framework Commencement Date</i> ;
"Change of Control"	means a change of control within the meaning of Section 450 of the Corporation Tax Act 2010;
"Client Personal Data"	means any <i>Personal Data</i> supplied for the purposes of or in connection with the <i>Framework Alliance Contract</i> by the <i>Client</i> to a <i>Supplier Alliance Member</i> ;
"Commercially Sensitive Information"	<p>means a <i>Supplier Alliance Member's Confidential Information</i> comprised of commercially sensitive information:</p> <ul style="list-style-type: none"> (a) relating to the <i>Supplier Alliance Member</i>, its <i>Intellectual Property Rights</i> or its business or information which the <i>Supplier Alliance Member</i> has indicated to the <i>Client</i> that, if disclosed by the <i>Client</i>, would cause the <i>Supplier Alliance Member</i> significant commercial disadvantage or material financial loss; and (b) that constitutes a trade secret;
"Comparable Supply"	means the supply of works and services to another customer of the <i>Supplier Alliance Member</i> that are similar to the <i>Projects</i> ;
"Complaint"	means any formal written complaint raised by the <i>Client</i> or an <i>Additional Client</i> in relation to the performance of the <i>Framework Alliance Contract</i> or any <i>Project Contract</i> in accordance with Special Term 19 (Complaints Handling);
"Comptroller"	means currently is an officer of the <u>House of Commons</u> who is the head of the <u>National Audit Office</u> ;

"Confidential Information"	means all <i>Personal Data</i> and any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, personnel of an <i>Alliance Member</i> including all its <i>Intellectual Property Rights</i> , 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;
"Continuous Improvement Plan"	means a plan for achieving <i>Improved Value</i> produced by each <i>Supplier Alliance Member</i> pursuant to clause 6;
"Contract Year"	means a consecutive period of twelve (12) <i>Months</i> commencing on the <i>Framework Commencement Date</i> or each anniversary thereof;
"Control"	means control in either of the senses defined in sections 450 and 1124 of the Corporation Tax Act 2010 and "Controlled" shall be construed accordingly;
"Crown"	means the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Executive and the National Assembly for Wales), including, but not limited to, government ministers and government departments and particular bodies, persons, commissions or agencies from time to time carrying out functions on its behalf;
"Crown Body"	means any department, office or executive agency of the Crown;
"CRTPA"	means the Contracts (Rights of Third Parties) Act 1999;
"Cyber Essentials Scheme"	means the Cyber Essentials Scheme developed by the <i>Government</i> which provides a clear statement of the basic controls all organisations should implement to mitigate the risk from common internet based threats. Details of the <i>Cyber Essentials Scheme</i> can be found here: https://www.gov.uk/government/publications/cyberessentials-scheme-overview ;
"Cyber Essentials Scheme Basic Certificate"	means the certificate awarded on the basis of self- assessment, verified by an independent certification body, under the <i>Cyber Essentials Scheme</i> and is the basic level of assurance;
"Cyber Essentials Scheme Data"	means sensitive and personal information and other relevant information as referred to in the <i>Cyber Essentials Scheme</i> ;

"Cyber Essentials Scheme Plus Certificate"	means the certification awarded on the basis of external testing by an independent certification body of a <i>Supplier Alliance Member's</i> cyber security approach under the <i>Cyber Essentials Scheme</i> and is a more advanced level of assurance;
"Default Management Charge"	has the meaning given to it in Schedule 7 (Management);
"Disclosing Party"	means an <i>Alliance Member</i> which discloses or makes available directly or indirectly its <i>Confidential Information</i> ;
"DOTAS"	means the Disclosure of Tax Avoidance Schemes rules which require a promoter of tax schemes to tell HMRC of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 7 of the Finance Act 2004 and as extended to national insurance contributions by the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012, SI 2012/1868) made under section 132A of the Social Security Administration Act 1992;
"Due Diligence Information"	means any information supplied to a <i>Supplier Alliance Member</i> by or on behalf of the <i>Client</i> prior to the <i>Framework Commencement Date</i> ;
"Environmental Information Regulations or EIRs"	means the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant <i>Government</i> department in relation to such regulations;
"European Economic Area"	means provides for the free movement of the goods and/or services within the internal market of the European Union;
"Financial Distress Event"	means the occurrence or one or more of the events listed in Schedule 8 (Financial Distress);
"FOIA"	means the Freedom of Information Act 2000 as amended from time to time and any subordinate legislation made under that Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant <i>Government</i> department in relation to such legislation;
"Framework Commencement"	means the date stated by reference to clause 14.1 in the <i>Framework Alliance Agreement</i> ;

Date"

"Framework Guarantee"

NOT APPLICABLE;

"Framework Guarantor"

means the provider of a *Framework Guarantee*;

"Framework Period"

means the period from the *Framework Commencement Date* until the expiry or earlier termination of the *Framework Alliance Contract*;

"Fraud"

means any offence under any Laws creating offences in respect of fraudulent acts (including the Misrepresentation Act 1967) or at common law in respect of fraudulent acts including acts of forgery;

"GDPR"

means the General Data Protection Regulation (Regulation (EU) 2016/679) and related definitions are set out in clause 4 of the *Legal Requirements*;

"General Anti-Abuse Rule"

means (a) the legislation in Part 5 of the Finance Act 2013; and (b) any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements to avoid national insurance contributions;

"General Change in Law"

means a *Change in Law* where the change is of a general legislative nature (including taxation or duties of any sort affecting a *Supplier Alliance Member*) or which affects or relates to a *Comparable Supply*;

"Good Industry Practice"

means standards, practices, methods and procedures conforming to the *Law* and the exercise of the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged within the relevant industry or business sector;

"Government"

means the government of the United Kingdom (including the Northern Ireland Assembly and Executive Committee, the Scottish Executive and the National Assembly for Wales), including government ministers and government departments and other bodies, persons, commissions or agencies from time to time carrying out functions on its behalf;

"Halifax Abuse"

means the principle explained in the CJEU Case C-255/02

"Principle"	Halifax and others;
"Holding Company"	has the meaning given to it in section 1159 of the Companies Act 2006;
"Improvement Plan"	means the plan required by the <i>Client</i> from a <i>Supplier Alliance Member</i> which shall detail how that <i>Supplier Alliance Member</i> shall improve its performance under the <i>Framework Alliance Contract</i> and its <i>Project Contracts</i> ;
"Improvement Notice"	means the notice issued by the <i>Client</i> to a <i>Supplier Alliance Member</i> pursuant to clause 14 which will detail how the <i>Supplier Alliance Member</i> shall improve its performance under the <i>Framework Alliance Contract</i> and <i>Project Contracts</i> ;
"Information"	has the meaning given under section 84 of the Freedom of Information Act 2000 as amended from time to time;
"Insurances"	means the insurances required pursuant to clause 12;
"Invitation to Tender"	means the invitation to tender issued by the <i>Client</i> in respect of the <i>Framework Programme</i> ;
"Key Sub-Contract"	means each Sub-Contract with a Key Sub-Contractor;
"Key Sub-Contractor"	means any Sub-Contractor which is listed in Schedule 15 (Key Sub-Contractors), that in the opinion of the <i>Client</i> , performs (or would perform if appointed) a critical role in the provision of all or any part of the services;
"Law"	means any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of Section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which a <i>Supplier Alliance Member</i> is bound to comply;
"Losses"	means all losses, liabilities, damages, costs, expenses (including legal fees), disbursements, costs of investigation, litigation, settlement, judgment, interest and penalties whether arising in contract, tort (including negligence), breach of statutory duty, misrepresentation or otherwise and "Loss" shall be interpreted accordingly;

"Lot"	means a lot forming part of the <i>Framework Programme</i> ;
"Management Charge"	means the sum payable by each <i>Supplier Alliance Member</i> to the <i>Client</i> being an amount equal to 1 per cent (1%) of all <i>Agreed Prices</i> invoiced to the <i>Additional Clients</i> by each <i>Supplier Alliance Member</i> (net of VAT) in each <i>Month</i> throughout the <i>Framework Period</i> and thereafter until the expiry or earlier termination of all <i>Project Contracts</i> entered pursuant to the <i>Framework Alliance Contract</i> ;
"Management Information" or "MI"	means the management information specified in Schedule 7 (Management);
"MI Default"	has the meaning given to it in Schedule 7 (Management);
"MI Failure"	means when an <i>MI</i> report: <ul style="list-style-type: none"> (c) contains any material errors or material omissions or a missing mandatory field; or (d) is submitted using an incorrect <i>MI Reporting Template</i>; or (e) is not submitted by the reporting date (including where a <i>Nil Return</i> should have been filed);
"Minimum Standards of Reliability"	means the minimum standards of reliability as set out in the OJEU Notice;
"MI Report"	means a report containing <i>Management Information</i> submitted to the <i>Client</i> in accordance with Schedule 7 (Management);
"MI Reporting Template"	means the form of report set out in the Annex to Schedule 7 (Management) setting out the information that each <i>Supplier Alliance Member</i> is required to supply to the <i>Client</i> ;
"MISO"	means 'Management Information System Online'. An online portal located at https://miso.buyingsolutions.gov.uk provided by the <i>Client</i> for collection and receipt of <i>Management Information</i> ;
"Month"	means a calendar month and " Monthly " shall be interpreted accordingly;
"Nil Return"	has the meaning given to it in Schedule 7 (Management);

"Occasion of Tax Non –Compliance"

means where:

any tax return of a *Supplier Alliance Member* submitted to a *Relevant Tax Client* on or after 1 October 2012 which is found on or after 1 April 2013 to be incorrect as a result of:

- (a) *Relevant Tax Client* successfully challenging a *Supplier Alliance Member* under the *General Anti-Abuse Rule* or the *Halifax Abuse Principle* or under any tax rules or legislation in any jurisdiction that have an effect equivalent or similar to the *General Anti-Abuse Rule* or the *Halifax Abuse Principle*;
- (b) the failure of an avoidance scheme which a *Supplier Alliance Member* was involved in, and which was, or should have been, notified to a *Relevant Tax Client* under the *DOTAS* or any equivalent or similar regime in any jurisdiction; and/or
- (c) any tax return of a *Supplier Alliance Member* submitted to a *Relevant Tax Authority* on or after 1 October 2012 which gives rise, on or after 1 April 2013, to a criminal conviction in any jurisdiction for tax related offences which is not spent at the *Framework Commencement Date* or to a civil penalty for *Fraud* or evasion;

"Offer Document"

means each *Supplier Alliance Member's* unequivocal offer to comply with the requirements of the *Invitation to Tender* including the tender submitted by the relevant *Supplier Alliance Member* and its *Framework Prices* and *Framework Proposals*, which are the means by which each *Supplier Alliance Member* agrees to be bound by the *Framework Alliance Contract*;

"Open Book Data"

means complete and accurate financial and non-financial information which is sufficient to enable the *Client* to verify the *Agreed Prices* already paid or payable and the *Agreed Prices* forecast to be paid during the *Framework Period* and term of any *Project Contract*;

"Personal Data"

has the meaning given to it in the *GDPR* as amended from time to time;

"Personnel"

means all persons employed or engaged by a *Supplier Alliance Member* together with that *Supplier Alliance Member's* servants, agents and *Supply Chain* members (and all persons employed by any *Supply Chain* member together with the *Supply Chain* member's servants, agents and *Supply Chain* members) used in the performance of its obligations under the *Framework Alliance Contract* or any *Project Contract*;

"Prohibited Act"

means any of the following:

- (a) to directly or indirectly offer, promise or give any person

working for or engaged by an *Additional Client* and/or the *Client* a financial or other advantage to:

- i) induce that person to perform improperly a relevant function or activity; or
 - ii) reward that person for improper performance of a relevant function or activity;
- (b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with the *Framework Alliance Contract*; or
- (c) committing any offence:
- i) under the Bribery Act 2010 (or any legislation repealed or revoked by such Act); or
 - ii) under legislation creating offences concerning Fraud; or
 - iii) at common law concerning Fraud; or
 - iv) committing (or attempting or conspiring to commit) *Fraud*;

"Registration Document"

Each *Registration Document* submitted to the *Client* by an *Additional Client* which is the means by which each *Additional Client* agrees to be bound by the *Framework Alliance Contract*;

"Regulations"

means the Public Contracts Regulations 2015 and/or the Public Contracts (Scotland) Regulations 2012 (as the context requires) as amended from time to time;

"Relevant Person"

means any employee, agent, servant, or representative of the *Client*, or of any *Additional Client* or other public body;

"Relevant Requirements"

means all applicable *Law* relating to bribery, corruption and fraud, including the Bribery Act 2010 and any guidance issued by the Secretary of State for Justice pursuant to section 9 of the Bribery Act 2010;

"Relevant Tax Client"

means HMRC, or, if applicable, the Tax Authority in the jurisdiction in which each *Supplier Alliance Member* is established;

"Reporting Date"

means the 5th day of each *Month* following the *Month* to which the relevant *Management Information* relates, or such other date as may be agreed between the *Alliance Members*;

"Requests for Information"	means a request for information relating to the <i>Framework Alliance Contract</i> or a <i>Project</i> or an apparent request for such information under the Code of Practice on Access to Government Information, FOIA or the EIRs;
"Restricted Countries"	shall have the meaning given to it in <i>Legal Requirement 1.3</i> (Protection of Personal Data);
"Self-Audit Certificate"	means the certificate in the form annexed to Schedule 7 (Management) to be provided to the <i>Client</i> in accordance with Schedule 7 (Records, Audit Access and <i>Open Book Data</i>);
"Specific Change in Law"	means a <i>Change in Law</i> that relates specifically to the business of the <i>Client</i> and which would not affect <i>Comparable Supply</i> ;
"Standards"	means: <ul style="list-style-type: none"> (a) any standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardisation or other reputable or equivalent bodies (and their successor bodies) that a skilled and experienced operator in the same type of industry or business sector as the Supplier Alliance Member would reasonably and ordinarily be expected to comply with; (b) any standards detailed in the Framework Brief ; (c) any Standards detailed by an Additional Client under a Project Contract following a Competitive Award Procedure; (d) any relevant <i>Government</i> codes of practice and guidance applicable from time to time.
"Supplier Alliance Member"	means each signatory to the <i>Framework Alliance Contract</i> other than the <i>Client</i> , the <i>Alliance Manager</i> and the <i>Additional Clients</i> ;
"Supplier Alliance Member Representative"	means the representative named by each <i>Supplier Alliance Member</i> ;
"Termination Notice"	means a written notice of termination given by one <i>Alliance Member</i> to another or to all others, notifying the <i>Alliance Member(s)</i> receiving the notice of the intention of the <i>Alliance Member</i> giving the notice to terminate in accordance with clause 14 on a specified date and setting out the grounds for termination;
"Transparency"	means the principles set out at:

Principles”	https://www.gov.uk/government/publications/transparency-of-suppliers-and-government-to-the-public (and as may be amended from time to time) detailing the requirement for the proactive release of information under the <i>Government’s</i> transparency commitment to publish contract information;
“Transparency Reports”	means the information relating to the <i>Projects</i> and performance of the <i>Framework Alliance Contract</i> which a <i>Supplier Alliance Member</i> is required to provide to the <i>Client</i> in accordance with the reporting requirements in Schedule 7 (Management);
“Valid Cyber Essentials Certificate”	a current certificate held by the <i>Supplier Alliance Member</i> , or held within the <i>Supplier Alliance Member’s</i> parent company organisation, that has been issued by an approved accreditation body. Please see link for more information https://www.cyberessentials.ncsc.gov.uk/getting-certified/
“Valid Cyber Essentials Plus Certificate”	A current certificate held by the Supplier, or held within the Supplier’s parent company organisation, that has been issued by an approved accreditation body. Please see link for more information https://www.cyberessentials.ncsc.gov.uk/getting-certified/
" VAT"	means value added tax in accordance with the provisions of the Value Added Tax Act 1994;
“Waiver and Cumulative Remedies”	has the meaning given to it in <i>Special Term 13</i> (Waiver and Cumulative Remedies).

SCHEDULE 6

PART 1

LEGAL REQUIREMENTS

(clause 13.4 of the FAC-1 Contract Terms)

The following *Legal Requirements* supplement or amend the following *Contract Terms*: (the following paragraphs setting out *Legal Requirements* are supplemental to the *Contract Terms*)

1.1 Transparency

- 1.1.1 The *Alliance Members* acknowledge and agree that, except for any information which is exempt from disclosure in accordance with the provisions of the *FOIA*, the content of the *Framework Alliance Contract* and any *Transparency Reports* under it is not *Confidential Information* and shall be made available in accordance with the procurement policy note 13/15 [https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/45855_4/Procurement Policy Note 13 15.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/45855_4/Procurement_Policy_Note_13_15.pdf) and the *Transparency Principles* referred to therein. The *Client* shall determine whether any of the content of the *Framework Alliance Contract* is exempt from disclosure in accordance with the provisions of the *FOIA*. The *Client* may consult with each *Supplier Alliance Member* to inform its decision regarding any redactions but shall have the final decision in its absolute discretion.
- 1.1.2 Notwithstanding any other provision of the *Framework Alliance Contract*, each *Supplier Alliance Member* hereby gives its consent for the *Client* to publish the *Framework Alliance Contract* in its entirety (but with any information which is exempt from disclosure in accordance with the provisions of the *FOIA* redacted), including any changes to the *Framework Alliance Contract* agreed from time to time.
- 1.1.3 Each *Supplier Alliance Member* acknowledges and agrees that publication of the *Framework Alliance Contract* will include the publication of the name and contact details of the *Supplier Alliance Member Representative* (including its successors). Such details will not be redacted.
- 1.1.4 By executing the *Framework Alliance Contract*, each *Supplier Alliance Member* confirms that it has obtained the *Supplier Alliance Member Representative's* consent and shall, prior to the appointment of any successor *Supplier Alliance Member Representative* obtain the successor's consent, permitting the publication of their name and contact details under this *Legal Requirement 1* or otherwise, the *Supplier Alliance Member* shall take all necessary steps to ensure that publication will not cause the *Client*, any *Additional Client* or the *Supplier Alliance Member* to breach the *GDPR*.
- 1.1.5 Each *Supplier Alliance Member* shall assist and cooperate with the *Client* to enable the *Client* to publish the *Framework*

Alliance Contract.

1.2 Freedom of Information

1.2.1 Each *Supplier Alliance Member* acknowledges that the *Client* is subject to the requirements of the *FOIA* and the *EIRs*. Each *Supplier Alliance Member* shall:

1.2.1.1 provide all necessary assistance and cooperation as reasonably requested by the *Client* to enable the *Client* to comply with its Information disclosure obligations under the *FOIA* and *EIRs*;

1.2.1.2 transfer to the *Client* all *Requests for Information* relating to the *Framework Alliance Contract* that it receives as soon as practicable and in any event within two (2) *Working Days* of receipt;

1.2.1.3 provide the *Client* with a copy of all Information belonging to the *Client* requested in the *Request for Information* which is in the *Supplier Alliance Member's* possession or control in the form that the *Client* requires within five (5) *Working Days* (or such other period as the *Client* may reasonably specify) of the *Client's* request for such *Information*; and

1.2.1.4 not respond directly to a *Request for Information* unless authorised in writing to do so by the *Client*.

1.2.2 Each *Supplier Alliance Member* acknowledges that the *Client* may be required under the *FOIA* and *EIRs* to disclose *Information* (including *Commercially Sensitive Information*) without consulting or obtaining consent from the *Supplier Alliance Member*. The *Client* shall take reasonable steps to notify the *Supplier Alliance*

Member of a *Request for Information* (in accordance with the Secretary of State's Section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the *FOIA*) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in the *Framework Alliance Contract*) for the purpose of the *Framework Alliance Contract*, the *Client* shall be responsible for determining in its absolute discretion whether any *Commercially Sensitive Information* and/or any other information is exempt from disclosure in accordance with the *FOIA* and/or the *EIRs*.

2. Equality and diversity

2.1.1 Each *Supplier Alliance Member* shall:

2.1.1.1 perform its obligations under the *Framework Alliance Contract* (including those in relation to the provision of *Project Contracts*) in accordance with:

- i) all applicable equality *Law* (whether in relation to race, sex, gender reassignment, religion or belief, disability, sexual orientation, pregnancy, maternity, age or otherwise); and

ii) any other requirements and instructions which the Client reasonably imposes in connection with any equality obligations imposed on the Client at any time under applicable equality Law;

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

3. Official Secrets Act and Finance Act

3.1.1 Each *Supplier Alliance Member* shall comply with the provisions of:

3.1.1.1 the Official Secrets Acts 1911 to 1989; and

3.1.1.2 section 182 of the Finance Act 1989.

4. GDPR

The following definitions shall apply to this *Legal Requirement 4*:

“Party” a Party to the *Framework Alliance Contract*,

“Agreement” the *Framework Alliance Contract*,

“Law” means any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of Section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the Processor is bound to comply;

“Processor Personnel” means all directors, officers, employees, agents, consultants and contractors of the Processor and/or of any Sub-Processor engaged in the performance of its obligations under this Agreement

GDPR clause definitions:

“Data Protection Legislation” (i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time (ii) the DPA 2018 subject to Royal Assent to the extent that it relates to processing of personal data and privacy; (iii) all applicable Law about the processing of personal data and privacy;

“Data Protection Impact Assessment” an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data.

“Controller” take the meaning given in the GDPR.

“Processor” take the meaning given in the GDPR.

“Data Subject” take the meaning given in the GDPR.

“Personal Data”	take the meaning given in the GDPR.
“Personal Data Breach”	take the meaning given in the GDPR.
“Data Protection Officer”	take the meaning given in the GDPR.
“Data Loss Event”	any event that results, or may result, in unauthorised access to Personal Data held by the Processor under this Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach.
“Data Subject Request”	<i>a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data.</i>
“DPA 2018”	Data Protection Act 2018
“GDPR”	the General Data Protection Regulation (Regulation (EU) 2016/679)
“Joint Controllers”	where two or more Controllers jointly determine the purposes and means of processing
“LED”	Law Enforcement Directive (Directive (EU) 2016/680)
“Protective Measures”	appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it including those outlined in Schedule X (Security).
“Sub-processor”	any third party appointed to process Personal Data on behalf of that Processor related to this Agreement

4. 1. Data protection

4.1.1. The Alliance Members acknowledge that for the purposes of the Data Protection Legislation, the *Client* is the Controller and the Contractor is the Processor unless otherwise specified in Schedule X. The only processing that the Processor is authorised to do is listed in Schedule X by the Controller and may not be determined by the Processor.

- 4.1.2. The Processor shall notify the Controller immediately if it considers that any of the Controller's instructions infringe the Data Protection Legislation.
- 4.1.3. The Processor shall provide all reasonable assistance to the Controller in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Controller, include:
- (a) a systematic description of the envisaged processing operations and the purpose of the processing;
 - (b) an assessment of the necessity and proportionality of the processing operations in relation to the *works*;
 - (c) an assessment of the risks to the rights and freedoms of Data Subjects; and
 - (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 4.1.4. The Processor shall, in relation to any Personal Data processed in connection with its obligations under this Agreement:
- (a) process that Personal Data only in accordance with , unless the Processor is required to do otherwise by Law. If it is so required the Processor shall promptly notify the Controller before processing the Personal Data unless prohibited by Law;
 - (b) ensure that it has in place Protective Measures, are 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:
 - (i) nature of the data to be protected;
 - (ii) harm that might result from a Data Loss Event;
 - (iii) state of technological development; and
 - (iv) cost of implementing any measures;
 - (c) ensure that:
 - (i) the Processor Personnel do not process Personal Data except in accordance with this Agreement (and in particular Annex A);
 - (ii) it takes all reasonable steps to ensure the reliability and integrity of any Processor Personnel who have access to the Personal Data and ensure that they:

- (1) are aware of and comply with the Processor's duties under this clause;
 - (2) are subject to appropriate confidentiality undertakings with the Processor or any Sub-processor;
 - (3) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Controller or as otherwise permitted by this Agreement; and
 - (4) have undergone adequate training in the use, care, protection and handling of Personal Data; and
- (d) not transfer Personal Data outside of the EU unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:
- (i) the Controller or the Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Controller;
 - (ii) the Data Subject has enforceable rights and effective legal remedies;
 - (iii) the Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Controller in meeting its obligations); and
 - (iv) the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the processing of the Personal Data;
- (e) at the written direction of the Controller, delete or return Personal Data (and any copies of it) to the Controller on termination of the Agreement unless the Processor is required by Law to retain the Personal Data.

4.1.5. Subject to clause 4. 1.6, the Processor shall notify the Controller immediately if it:

- (a) receives a Data Subject Request (or purported Data Subject Request);
- (b) receives a request to rectify, block or erase any Personal Data;

- (c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
 - (d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement;
 - (e) receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
 - (f) becomes aware of a Data Loss Event.
- 4.1.6. The Processor's obligation to notify under clause 4.1.5 shall include the provision of further information to the Controller in phases, as details become available.
- 4.1.7. Taking into account the nature of the processing, the Processor shall provide the Controller with full assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 4.1.5 (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 Request within the relevant timescales set out in the Data Protection Legislation;
 - (c) the Controller, at its request, with any Personal Data it holds in relation to a Data Subject;
 - (d) assistance as requested by the Controller following any Data Loss Event;
 - (e) assistance as requested by the Controller with respect to any request from the Information Commissioner's Office, or any consultation by the Controller with the Information Commissioner's Office.
- 4.1.8. The Processor shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Processor employs fewer than 250 staff, unless:
- (a) the Controller determines that the processing is not occasional;
 - (b) the Controller determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; or

- (c) the Controller determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 4.1.9. The Processor shall allow for audits of its Data Processing activity by the Controller or the Controller's designated auditor.
- 4.1.10. Each Party shall designate its own data protection officer if required by the Data Protection Legislation .
- 4.1.11. Before allowing any Sub-processor to process any Personal Data related to this Agreement, the Processor must:
 - (a) notify the Controller in writing of the intended Sub-processor and processing;
 - (b) obtain the written consent of the Controller;
 - (c) enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause 4 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.
- 4.1.12. The Processor shall remain fully liable for all acts or omissions of any of its Sub- processors.
- 4.1.13. The Controller may, at any time on not less than 30 Working Days' notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Agreement).
- 4.1.14. The Alliance Members agree to take account of any guidance issued by the Information Commissioner's Office. The Controller may on not less than 30 Working Days' notice to the Processor amend this agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.
- 4.1.15. Where the Alliance Members include two or more Joint Controllers as identified in Schedule 7 in accordance with GDPR Article 26, those Parties shall enter into a Joint Controller Agreement in replacement of Clauses 4.1.1-1.14 for the Personal Data under Joint Control.

**Annex A – Part 2:
Schedule of Processing, Personal Data and Data Subjects**

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

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

Description	Details
Identity of the Controller and Processor	<p>The Alliance Members acknowledge that for the purposes of the Data Protection Legislation, the Customer (<i>Additional Client</i>) is the Controller and the Contractor (<i>Supplier Alliance Member</i>) is the Processor in accordance with Clause 4.1.1.</p> <p>[Guidance: You may need to vary this section where (in the rare case) the Customer and Contractor have a different relationship. For example where the Parties are Joint Controller of some Personal Data:</p> <p>“Notwithstanding Clause 4.1.1 the Alliance Members acknowledge that they are also Joint Controllers for the purposes of the Data Protection Legislation in respect of:</p> <p style="padding-left: 40px;">[Insert the scope of Personal Data which the purposes and means of the processing is determined by the both Alliance Members: “Customer and Supplier”]</p> <p>In respect of Personal Data under Joint Control, Clause 4.1.1-1.15 will not apply and the Alliance Members agree to put in place a Joint Controller Agreement as outlined in Project Brief instead.”</p>
Subject matter of the processing	<p>[This should be a high level, short description of what the processing is about i.e. its subject matter of the contract.</p> <p>Example: The processing is needed in order to ensure that the Processor can effectively deliver the contract to provide a service to members of the public.]</p>

Duration of the processing	[Clearly set out the duration of the processing including dates]
Nature and purposes of the processing	<p>[Please be as specific as possible, but make sure that you cover all intended purposes.</p> <p>The nature of the processing means any operation such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means) etc.</p> <p>The purpose might include: employment processing, statutory obligation, recruitment assessment etc]</p>
Type of Personal Data being Processed	[Examples here include: name, address, date of birth, NI number, telephone number, pay, images, biometric data etc]
Categories of Data Subject	[Examples include: Staff (including volunteers, agents, and temporary workers), customers/ clients, suppliers, patients, students / pupils, members of the public, users of a particular website etc]
<p>Plan for return and destruction of the data once the processing is complete</p> <p>UNLESS requirement under union or member state law to preserve that type of data</p>	[Describe how long the data will be retained for, how it be returned or destroyed]

SCHEDULE 6
PART 2 SPECIAL TERMS
(see clause 13.5 of the FAC-1 Contract Terms)

The following *Special Terms* supplement or amend the following *Contract Terms*:
(the following paragraphs setting out *Special Terms* are supplemental to the *Contract Terms*)

1. Interpretation

- 1.1. Where the *Framework Prices* or *Framework Proposals* of any *Supplier Alliance Member* contain provisions which are more favourable to the *Client* in relation to the rest of the *Framework Alliance Contract*, such provisions of the *Framework Prices* and *Framework Proposals* shall prevail. The *Client* shall in its absolute and sole discretion determine whether any provision in the *Framework Prices* and *Framework Proposals* is more favourable to it in relation to the *Framework Alliance Contract*.

2. Due Diligence

- 2.1. Each *Supplier Alliance Member* acknowledges that:
- 2.1.1. the *Client* has delivered or made available to it all of the information and documents that the *Supplier Alliance Member* considers necessary or relevant for the performance or its obligations under the *Framework Alliance Contract*
 - 2.1.2. it has made its own enquiries to satisfy itself as to the accuracy of the *Due Diligence Information*;
 - 2.1.3. it has raised all relevant due diligence questions with the *Client* before the *Framework Commencement Date*, has undertaken all necessary due diligence and has entered into the *Framework Alliance Contract* in reliance on its own due diligence alone;
 - 2.1.4. it shall not be excused from the performance of any of its obligations under the *Framework Alliance Contract* on the grounds of, nor shall it be entitled to recover any additional costs or charges, arising as a result of any:
 - 2.1.4.1. misrepresentation of the requirements of the *Supplier Alliance Member* in the *Framework Documents* or elsewhere;
 - 2.1.4.2. failure by the *Supplier Alliance Member* to satisfy itself as to the accuracy and/or adequacy of the *Due Diligence Information*;
 - 2.1.4.3. failure by the *Supplier Alliance Member* to undertake its own due diligence.

3. Additional Client approaches

- 3.1. In the event that any *Additional Client* makes an approach to any *Supplier Alliance Member* with a request for the award of

Projects that fall within the scope of the Framework Alliance Contract, that Supplier Alliance Member shall promptly and in any event within five (5) Working Days from the request by the Additional Client, and before any project award is made, inform such Additional Client of the existence of the Framework Alliance Contract and the Additional Client's ability to award Project Contracts pursuant to the Framework Alliance Contract.

4. Assistance in related procurements

- 4.1. Where a *Supplier Alliance Member* is bidding to provide a *Project* for an *Additional Client* in circumstances where another *Supplier Alliance Member* is already providing (or due to provide) any related *Project* to that *Additional Client*, the bidding *Supplier Alliance Member* shall promptly provide the relevant *Additional Client* and the other *Supplier Alliance Member* with all reasonable information and assistance as may be required from time to time to enable them as appropriate, to:
 - 4.1.1. carry out appropriate due diligence with respect to the *Project*;
 - 4.1.2. effect a smooth transfer and/or inter-operation (as the case may be) between the *Projects*;
 - 4.1.3. carry out a fair *Competitive Award Procedure* for the new *Project*; and
 - 4.1.4. make a proper assessment as to the risks related to the new *Project*.
- 4.2. When performing its obligations under *Special Term 4.1* each *Supplier Alliance Member* shall act consistently, applying principles of equal treatment and non-discrimination, with regard to requests for assistance from and dealings with each other *Supplier Alliance Member*.

5. Representations and warranties

- 5.1. Each *Alliance Member* represents and warrants that:
 - 5.1.1. it has full capacity and authority to enter into and to perform its obligations under the *Framework Alliance Contract*;
 - 5.1.2. the *Framework Alliance Contract* is executed by its duly authorised representative;
 - 5.1.3. there are no actions, suits or proceedings or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its knowledge, threatened against it (or, in the case of the *Supplier Alliance Member*, any of its *Affiliates*) that might affect its ability to perform its obligations under the *Framework Alliance Contract*; and
 - 5.1.4. its obligations under the *Framework Alliance Contract* constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms subject to applicable (as the case may be for each *Alliance Member*) bankruptcy,

reorganisation, insolvency, moratorium or similar *Laws* affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or law).

- 5.2. Each *Supplier Alliance Member* represents and warrants that:
- 5.2.1. it is validly incorporated, organised and subsisting in accordance with the *Laws* of its place of incorporation;
 - 5.2.2. it has obtained and will maintain all licences, authorisations, permits, necessary consents (including, where its procedures so require, the consent of its parent company) and regulatory approvals to enter into and perform its obligations under the *Framework Alliance Contract*;
 - 5.2.3. it has not committed or agreed to commit a *Prohibited Act* and has no knowledge that an agreement has been reached involving the committal by it or any of its *Affiliates* of a *Prohibited Act*, save where details of any such arrangement have been disclosed in writing to the *Client* before the *Framework Commencement Date*;
 - 5.2.4. its execution, delivery and performance of its obligations under the *Framework Alliance Contract* does not and will not constitute a breach of any *Law* or obligation applicable to it and does not and will not cause or result in a breach of any agreement by which it is bound;
 - 5.2.5. as at the *Framework Commencement Date*, all written statements and representations in any written submissions made by the *Supplier Alliance Member* as part of the procurement process, its *Framework Prices* and *Framework Proposals*, and any other documents submitted remain true and accurate except to the extent that such statements and representations have been superseded or varied by the *Framework Alliance Contract*;
 - 5.2.6. if the *Management Charges* payable under the *Framework Alliance Contract* exceed or are likely to exceed five (5) million pounds, as at the *Framework Commencement Date*, it has notified the *Client* in writing of any *Occasions of Tax Non-Compliance* or any litigation that it is involved in connection with any *Occasions of Tax Non-Compliance*;
 - 5.2.7. it has and shall continue to have all necessary *Intellectual Property Rights* including in and to any materials made available by the *Supplier Alliance Member* (and/or any *Supply Chain* member) to the *Client* or any *Additional Client* which are necessary for the performance of the *Supplier Alliance Member's* obligations under the *Framework Alliance Contract*;
 - 5.2.8. it shall take all steps, in accordance with *Good Industry Practice*, to prevent the introduction, creation or propagation of any disruptive elements (including any

- virus, worms and/or trojans, spyware or other malware) into systems, data, software or the *Client's Confidential Information* (held in electronic form) owned by or under the control of, or used by, the Client and/or *Additional Clients*.
- 5.2.9. it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under the *Framework Alliance Contract*;
- 5.2.10. it is not affected by an *Insolvency Event* and no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, have been or are threatened) for the winding up of the *Supplier Alliance Member* or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the *Supplier Alliance Member's* assets or revenue;
- 5.2.11. for the duration of the *Framework Alliance Contract* and any *Project Contracts* and for a period of twelve (12) *Months* after the termination of its appointment under or from the expiry of the *Framework Alliance Contract* or, if later, any *Project Contracts*, the *Supplier Alliance Member* shall not employ or offer employment to any staff of the *Client* or the staff of any *Additional Client* who has been associated with the procurement and/or provision of *Projects* without approval or the prior written consent of the *Client* or the relevant *Additional Client* which shall not be unreasonably withheld; and
- 5.2.12. in performing its obligations under the *Framework Alliance Contract* and any *Project Contract*, the *Supplier Alliance Member* shall not (to the extent possible in the circumstances) discriminate between *Additional Clients* on the basis of their respective sizes.
- 5.3. Each of the representations and warranties set out in *Special Terms* 5.1 and 5.2 shall be construed as a separate representation and warranty and shall not be limited or restricted by reference to, or inference from, the terms of any other representation, warranty or any undertaking in the *Framework Alliance Contract*.
- 5.4. If at any time an *Alliance Member* becomes aware that a representation or warranty given by it under *Special Terms* 5.1 and 5.2 has been breached, is untrue or is misleading, it shall immediately notify the *Alliance Manager* of the relevant occurrence in sufficient detail to enable the *Alliance Manager* to make an accurate assessment of the situation.
- 5.5. For the avoidance of doubt, the fact that any provision within the *Framework Alliance Contract* is expressed as a warranty shall not preclude any right of termination the *Client* may have in respect of the breach of that provision by a *Supplier Alliance Member* which constitutes a breach of the *Framework Alliance Contract*.
- 5.6. Each time that a *Project Contract* is entered into, the

warranties and representations in *Special Terms* 5.1 and 5.2 shall be deemed to be repeated by the relevant *Supplier Alliance Member* with reference to the circumstances existing at the time.

6. Cyber Essentials scheme condition

- 6.1. Where the *Client* has notified a *Supplier Alliance Member* that the award of the *Framework Alliance Contract* is conditional upon receipt of a Valid *Cyber Essentials Scheme Plus Certificate* or *Cyber Essential Scheme* certificate equivalent, then on or prior to the execution of the *Framework Alliance Contract*, as a condition for the award of the *Framework Alliance Contract*, the *Supplier Alliance Member* must have delivered to the *Client* evidence of the same.
- 6.2. Where a *Supplier Alliance Member* continues to *Process Cyber Essentials Scheme Data* during the *Framework Period* or the contract period of any *Project Contract* the *Supplier Alliance Member* shall deliver to the *Client* evidence of renewal of a Valid *Cyber Essentials Scheme Plus Certificate* or *Cyber Essentials Scheme* certificate equivalent on each anniversary of the first applicable certificate obtained by the *Supplier Alliance Member* under *Special Term* 6.1.
- 6.3. Where a *Supplier Alliance Member* is due to *Process Cyber Essentials Scheme Data* after the *Framework Commencement Date* but before the end of the *Framework Period* or contract period of the last *Project Contract*, the *Supplier Alliance Member* shall deliver to the *Client* evidence of:
 - 6.3.1. a Valid *Cyber Essentials Scheme Plus Certificate* or *Cyber Essentials Scheme* certificate equivalent (before the *Supplier Alliance Member* processes any such *Cyber Essentials Scheme Data*); and
 - 6.3.2. renewal of a Valid *Cyber Essentials Scheme Plus Certificate* or *Cyber Essentials Scheme* certificate equivalent on each anniversary of the first *Cyber Essentials Scheme* certificate obtained by the *Supplier Alliance Member* under *Special Term* 6.3.1
- 6.4. In the event that a *Supplier Alliance Member* fails to comply with *Special Terms* 6.2 or 6.3 (as applicable), the *Client* reserves the right to terminate the appointment of that *Supplier Alliance Member* under the *Framework Alliance Contract* for breach in accordance with clause 14.4 of the *FAC-1 Contract Terms*.

7. Variations

7.1. Variation Procedure

- 7.1.1. Subject to the provisions of this *Special Term* 7 and, in respect of any change to the *Framework Prices*, subject to the provisions of the *Framework Brief*, the *Client* may, at its own instance or where in its sole and absolute discretion it decides to having been requested to do so by a *Supplier Alliance Member*, request a

variation to the *Framework Alliance Contract* provided always that such variation does not amount to a material change of the *Framework Alliance Contract* within the meaning of the *Regulations* and the *Law*. Such a change once implemented is called a "**Variation**".

- 7.1.2. The *Client* may request a Variation by giving sufficient information for the *Supplier Alliance Members* to assess the extent of the proposed Variation and any additional cost that may be incurred.
- 7.1.3. The *Supplier Alliance Members* shall respond to the *Client's* request pursuant to *Special Term 7.1.2* within time limits which shall be reasonable and ultimately at the discretion of the *Client* having regard to the nature of the proposed Variation.
- 7.1.4. In the event that:
 - (a) the *Supplier Alliance Members* are unable to agree to or provide the Variation; and/or
 - (b) the *Alliance Members* are unable to agree a change to the *Framework Prices* that may be included in a request for a Variation or response to it as a consequence thereof,

then the *Client* may:

- (i) agree to continue to perform its obligations under the *Framework Alliance Contract* without the *Variation*; or
- (ii) terminate the *Framework Alliance Contract* with immediate effect on the basis that this event constitutes agreement to early termination in accordance with clause 14.1 of the *FAC-1 Contract Terms*.

7.2. **Legislative Change**

- 7.2.1. No *Supplier Alliance Member* shall be relieved of its obligations under the *Framework Alliance Contract* or be entitled to an increase in the *Framework Prices* as the result of:
 - (a) a General Change in Law; or
 - (b) a Specific Change in Law where the effect of that Specific Change in Law on the *Framework Alliance Contract* is reasonably foreseeable at the *Framework Commencement Date*.
- 7.2.2. If a Specific Change in Law occurs or will occur during the *Framework Period* (other than as referred to in *Special Term 7.2.1(b)*), each *Supplier Alliance Member* shall:
 - (a) notify the *Client* as soon as reasonably practicable of the likely effects of that change including whether any Variation is required to the *Framework Prices* or the *Framework Alliance Contract*; and
 - (b) provide the *Client* with evidence:
 - (i) that the *Supplier Alliance Member* has

- minimised any increase in costs or maximised any reduction in costs, including in respect of the costs of its *Supply Chain Members*;
- (ii) as to how the *Specific Change in Law* has affected the *Framework Prices*; and
- (iii) demonstrating that any expenditure that has been avoided, for example which would have been required under the provisions of FAC-1 clauses 2.2 (*Improved Value*) and 6.1 (*Alliance Activities*) have been taken into account in amending the *Framework Prices*.

7.2.3. Any change in the *Framework Prices* or relief from the *Supplier Alliance Member's* obligations resulting from a *Specific Change in Law* (other than as referred to in *Special Term 7.2.1(b)*) shall be implemented in accordance with *Special Term 7.1 (Variations)*.

8. Tax compliance

8.1. This *Special Term 8* shall apply if the *Agreed Prices* payable to a *Supplier Alliance Member* under the *Framework Alliance Contract* are or are likely to exceed five (5) million pounds during the *Framework Period*.

8.2. If, at any point during the *Framework Period*, an *Occasion of Tax Non- Compliance* occurs, the relevant *Supplier Alliance Member* shall:

8.2.1. notify the *Client* in writing of such fact within five (5) Working Days of its occurrence; and

8.2.2. promptly provide to the *Client*:

(a) details of the steps that the *Supplier Alliance Member* is taking to address the *Occasion of Tax Non-Compliance*, together with any mitigating factors that it considers relevant; and

(b) such other information in relation to the *Occasion of Tax Non- Compliance* as the *Client* may reasonably require.

8.3. In the event that a *Supplier Alliance Member* fails to comply with this *Special Term 8* and/or does not provide details of proposed mitigating factors which in the reasonable opinion of the *Client* are acceptable, then the *Client* reserves the right to terminate the appointment of the *Supplier Alliance Member* under the *Framework Alliance Contract* for breach under clause 14.4 of the FAC-1 *Contract Terms*.

9. Financial distress

9.1. The *Alliance Members* shall comply with the provisions of Schedule 8 (*Financial Distress*) in relation to the assessment of the financial standing of any *Supplier Alliance Member* and the consequences of a change to that financial standing.

10. Publicity and branding

- 10.1. Subject to *Special Term 11* (Marketing), each *Supplier Alliance Member* shall not:
 - 10.1.1. make any press announcements or publicise the *Framework Alliance Contract* in any way; or
 - 10.1.2. use the *Client's* name or brand in any promotion or marketing or announcement of *Project Contracts*, without approval (the decision of the *Client* to approve or not shall not be unreasonably withheld or delayed).
- 10.2. Each *Alliance Member* acknowledges to the others that nothing in the *Framework Alliance Contract* either expressly or by implication constitutes an approval and/or endorsement of any work of the other *Alliance Members* and each *Alliance Member* agrees not to conduct itself in such a way as to imply or express any such approval and/or endorsement.
- 10.3. The *Client* shall be entitled to publicise the *Framework Alliance Contract* in accordance with any legal obligation upon the *Client*, including any examination of the *Framework Alliance Contract* by the National Audit Office pursuant to the National Audit Act 1983 or otherwise.

11. Marketing

- 11.1. Each *Supplier Alliance Member* shall undertake marketing of the *Framework Alliance Contract* on behalf of the *Client* to *Additional Clients* in accordance with the provisions of Schedule 9 (Marketing).
- 11.2. Each *Supplier Alliance Member* shall obtain the *Client's* approval prior to publishing any content in relation to the *Framework Alliance Contract* using any media, including on any electronic medium, and each *Supplier Alliance Member* will ensure that such content is regularly maintained and updated. In the event that a *Supplier Alliance Member* fails to maintain or update the content, the *Client* may give the *Supplier Alliance Member* notice to rectify the failure and if the failure is not rectified to the reasonable satisfaction of the *Client* within one (1) *Month* of receipt of such notice, the *Client* shall have the right to remove such content itself or require that the *Supplier Alliance Member* immediately arranges the removal of such content.

12. Waiver and cumulative remedies

- 12.1. The rights and remedies under the *Framework Alliance Contract* may be waived only by notice in accordance with FAC-1 clause 1.9.3 (Communications) and in a manner that expressly states that a waiver is intended. A failure or delay by an *Alliance Member* in ascertaining or exercising a right or remedy provided under the *Framework Alliance Contract* or by *Law* shall not constitute a waiver of that right or remedy, nor shall it prevent or restrict the further exercise thereof.
- 12.2. Unless otherwise provided in the *Framework Alliance Contract*, rights and remedies under the *Framework Alliance Contract* are cumulative and do not exclude any rights or remedies provided

by *Law*, in equity or otherwise.

13. Prevention of fraud and bribery

- 13.1. Each *Supplier Alliance Member* represents and warrants that neither it, nor to the best of its knowledge any of its *Personnel*, have at any time prior to the *Framework Commencement Date*:
 - 13.1.1. committed a *Prohibited Act* or been formally notified that it is subject to an investigation or prosecution which relates to an alleged *Prohibited Act*; and/or
 - 13.1.2. been listed by any *Government* department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in *Government* procurement programmes or contracts on the grounds of a *Prohibited Act*.
- 13.2. Each *Supplier Alliance Member* shall not during the *Framework Period*:
 - 13.2.1. commit a *Prohibited Act*; and/or
 - 13.2.2. do or suffer anything to be done which would cause the *Client* or any *Additional Client* or any of their employees, consultants, contractors, Supply Chain members or agents to contravene any of the *Relevant Requirements* or otherwise incur any liability in relation to the *Relevant Requirements*.
- 13.3. Each *Supplier Alliance Member* shall during the *Framework Period*:
 - 13.3.1. establish, maintain and enforce policies and procedures which are adequate to ensure compliance with the *Relevant Requirements* and prevent the occurrence of a *Prohibited Act*;
 - 13.3.2. require that its *Supply Chain* members establish, maintain and enforce the policies and procedures referred to in this *Special Term 13*
 - 13.3.3. keep appropriate records of its compliance with its obligations under this *Special Term 13* and make such records available to the *Client* on request;
 - 13.3.4. if so required by the *Client*, within twenty (20) *Working Days* from the *Framework Commencement Date*, and annually thereafter, certify in writing to the *Client*, the compliance with this *Special Term 13* of all persons associated with the *Supplier Alliance Member* or its *Supply Chain* members. The *Supplier Alliance Member* shall provide such supporting evidence of compliance as the *Client* may reasonably request; and
 - 13.3.5. have, maintain and where appropriate enforce an anti-bribery policy (which shall be disclosed to the *Client* on request) to prevent it and any of its *Personnel* or any person acting on the *Supplier Alliance Member's* behalf from committing a *Prohibited Act*.
- 13.4. Each *Supplier Alliance Member* shall immediately notify the *Client* in writing if it becomes aware of any breach of this *Special*

Term 13 or has reason to believe that it has or any of its *Personnel* has:

- 13.4.1. been subject to an investigation or prosecution which relates to an alleged *Prohibited Act*;
 - 13.4.2. been listed by any *Government* department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a *Prohibited Act*; and/or
 - 13.4.3. received a request or demand for any undue financial or other advantage of any kind in connection with the performance of the *Framework Alliance Contract* or otherwise suspects that any person or *Alliance Member* directly or indirectly connected with the *Framework Alliance Contract* has committed or attempted to commit a *Prohibited Act*.
- 13.5. If a *Supplier Alliance Member* makes a notification to the *Client* pursuant to Special Term 13.4 the *Supplier Alliance Member* shall respond promptly to the *Client's* enquiries, cooperate with any investigation, and allow the *Client* to audit any books, records and/or any other relevant documentation in accordance with Schedule 7 (Records, Audit Access and Open Book Data).
- 13.6. If the *Supplier Alliance Member* breaches this *Special Term 13*, the *Client* may by notice:
- 13.6.1. require the *Supplier Alliance Member* to remove from the performance of the *Framework Alliance Contract* and any *Projects* any of its *Personnel* whose acts or omissions have caused the *Supplier Alliance Member's* breach; or
 - 13.6.2. immediately terminate the appointment of that *Supplier Alliance Member* under the *Framework Alliance Contract* for breach, in accordance with clause 14.4 of the *FAC-1 Contract Terms*.
- 13.7. Any notice served by the *Client* under *Special Term 13.6* shall specify the nature of the *Prohibited Act*, the identity of the *Alliance Member* who the *Client* believes has committed the *Prohibited Act* and the action that the *Client* has elected to take (including, where relevant, the date on which the *Framework Alliance Contract* shall terminate).

14. Conflicts of interest

- 14.1. Each *Supplier Alliance Member* shall take appropriate steps to ensure that neither the *Supplier Alliance Member* nor any of its *Personnel* are placed in a position where (in the reasonable opinion of the *Client*) there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the *Supplier Alliance Member* or its *Personnel* and the duties owed to the *Client* and *Additional Clients* under the provisions of the *Framework Alliance Contract* or any *Project Contract*.
- 14.2. The *Supplier Alliance Member* shall promptly notify and provide full particulars to the *Client* or the relevant *Additional Client* if such conflict referred to in *Special Term 14.1* arises or

- may reasonably be foreseen as arising.
- 14.3. The *Client* reserves the right to terminate the appointment of a *Supplier Alliance Member* under the *Framework Alliance Contract* immediately by giving notice the *Supplier Alliance Member* for breach in accordance with clause 14.4 of the FAC-1 *Contract Terms* and/or to take such other steps it deems necessary where, in the reasonable opinion of the *Client*, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the *Supplier Alliance Member* and the duties owed to the *Client* or to any *Additional Client* under the provisions of the *Framework Alliance Contract* or any *Project Contract*. The action of the *Client* pursuant to this *Special Term* 14.3 shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the *Client*.

15. Severance

- 15.1. If any provision of the *Framework Alliance Contract* (or part of any provision) is held to be void or otherwise unenforceable by any court of competent jurisdiction, such provision (or part) shall to the extent necessary to ensure that the remaining provisions of the *Framework Alliance Contract* are not void or unenforceable be deemed to be deleted and the validity and/or enforceability of the remaining provisions of the *Framework Alliance Contract* shall not be affected.
- 15.2. In the event that any deemed deletion under *Special Term* 15.1 is so fundamental as to prevent the accomplishment of the purpose of the *Framework Alliance Contract* or materially alters the balance of risks and rewards in the *Framework Alliance Contract*, any *Alliance Member* may give notice to the other *Alliance Members* requiring the *Core Group* to commence good faith negotiations to amend the *Framework Alliance Contract* so that, as amended, it is valid and enforceable, preserves the balance of risks and rewards in the *Framework Alliance Contract* and, to the extent that is reasonably practicable, achieves the *Alliance Members'* original commercial intention.
- 15.3. If the *Alliance Members'* are unable to resolve any dispute arising under this *Special Term* 15 within twenty (20) *Working Days* from the date of the notice given pursuant to *Special Term* 15.2 the *Framework Alliance Contract* shall automatically terminate with immediate effect on the basis of early termination pursuant to clause 14.1 of the FAC-1 *Contract Terms*. The costs of termination incurred by the *Alliance Members* shall lie where they fall if the *Framework Alliance Contract* is terminated pursuant to this *Special Term* 15.3.

16. Further assurances

- 16.1. Each *Alliance Member* undertakes at the request of the others, and at the cost of the requesting *Alliance Member*, to do all acts and execute all documents which may be necessary to give effect to the meaning of the *Framework Alliance Contract*.

17. Entire agreement

- 17.1. The *Framework Alliance Contract* constitutes the entire agreement between the *Alliance Members* in respect of the subject matter and supersedes and extinguishes all prior negotiations, course of dealings or agreements made between the *Alliance Members* in relation to its subject matter, whether written or oral.
- 17.2. No *Alliance Member* has been given, nor entered into the *Framework Alliance Contract* in reliance on, any warranty, statement, promise or representation other than those expressly set out in the *Framework Alliance Contract*.
- 17.3. Nothing in this *Special Term 17* shall exclude any liability in respect of misrepresentations made fraudulently.

18. Complaints handling

- 18.1. Each *Supplier Alliance Member* shall notify the *Alliance Manager* of any *Complaint* made by any *Additional Client*, which are not resolved by operation of the *Supplier Alliance Member's* usual complaints handling procedure within five (5) *Working Days* of becoming aware of that *Complaint* and such notice shall contain full details of the *Supplier Alliance Member's* plans to resolve such *Complaint*.
- 18.2. Without prejudice to any rights and remedies that a complainant may have at *Law* (including under the *Framework Alliance Contract* and/or a *Project Contract*), and without prejudice to any obligation of the *Supplier Alliance Member* to take remedial action under the provisions of the *Framework Alliance Contract* and/or a *Project Contract*, each *Supplier Alliance Member* shall use its best endeavours to resolve each *Complaint* within ten (10) *Working Days* and in so doing, shall deal with the *Complaint* fully, expeditiously and fairly.
- 18.3. Within two (2) *Working Days* of a request by the *Client*, the *Supplier Alliance Member* shall provide full details of a *Complaint* to the *Client*, including details of steps taken to achieve its resolution.

19. Small and Medium Sized Enterprises (SMEs)

19.1 The *Supplier Alliance Member* is required to take all reasonable steps to engage SMEs as Subcontractors and to seek to ensure that no less than the SME percentage of Subcontractors stated in the Contract are SMEs or that a similar proportion of the work is undertaken by SMEs.

19.2 The *Supplier Alliance Member* is required to report to the *Client* in its regular contract management monthly reporting cycle the numbers of SMEs engaged as Subcontractors and the value of the work that has been undertaken by SMEs.

19.3 Where available, the *Supplier Alliance Member* is required to tender

its Subcontracts using the same online electronic portal as was provided by the *Client* for the purposes of tendering this contract.

19.4 The *Supplier Alliance Member* is to ensure that the terms and conditions used to engage Subcontractors are no less favourable than those of this contract.

20. Employment Policies and Practices.

20.1 The *Supplier Alliance Member* is required to take all reasonable steps to employ apprentices, and reports to the *Client* the numbers of apprentices employed and the wider skills training provided, during the delivery of the service.

20.2 The *Supplier Alliance Member* is required to take all reasonable steps to ensure that no less than a percentage of its people (agreed between the Parties) are on formal apprenticeship programmes or that a similar proportion of hours worked (which may include support staff and Subcontractors) are provided by people on formal apprenticeship programmes.

20.3 The *Supplier Alliance Member* shall make available to its people and Subcontractors working on the contract, information about the Government's Apprenticeship programme and wider skills opportunities.

20.4 The *Supplier Alliance Member* shall provide any further skills training opportunities that are appropriate for its people engaged in the services provided by the *Supplier Alliance Member*.

20.5 The *Supplier Alliance Member* shall provide a report detailing the following measures in its regular contract management monthly reporting cycle and shall be prepared to discuss apprenticeships at its regular meetings with the *Client*

- the number of people during the reporting period employed on the contract, including support staff and Subcontractors,
- the number of apprentices and number of new starts on apprenticeships directly initiated through this contract,
- the percentage of all people taking part in an apprenticeship programme,
- if applicable, an explanation from the *Supplier Alliance Member* as to why it is not managing to meet the specified percentage target,
- actions being taken to improve the take up of apprenticeships and
- other training/skills development being undertaken by people 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.

21. Appointment of Key Sub-Contractors

21.1.1 The *Client* has consented to the engagement of the Key Sub-Contractors listed in Schedule {15} (Key Sub-Contractors).

21.1.2 Where during the *Framework Period* the *Supplier Alliance Member* wishes to enter into a new Key Sub-Contract or replace a Key Sub-Contractor, it must obtain the prior written consent of the *Client* and the *Additional Client* with whom it has entered into a *Project Contract* and shall at the time of requesting such consent, provide the *Client* with the information detailed in Clause [21.1.3]. The decision of the *Client* to consent or not will not be unreasonably withheld or delayed. The *Client* and/or the *Additional Client* may reasonably withhold their consent to the appointment of a Key Sub-Contractor if either of them considers that:

- (a) the appointment of a proposed Key Sub-Contractor may prejudice the provision of the services by the *Supplier Alliance Member* or may be contrary to its interests;
- (b) the proposed Key Sub-Contractor is unreliable and/or has not provided reliable goods and or reasonable services to its other customers; and/or
- (c) the proposed Key Sub-Contractor employs unfit persons.

21.1.3 The *Supplier Alliance Member* shall provide the *Client* and the *Additional Client* with whom the *Supplier Alliance Member* has entered into a *Project Contract* with the following information in respect of the proposed Key Sub-Contractor:

- (a) the proposed Key Sub-Contractor's name, registered office and company registration number;
- (b) the scope/description of any services to be provided by the proposed Key Sub-Contractor;
- (c) where the proposed Key Sub-Contractor is an Affiliate of the *Supplier Alliance Member*, evidence that demonstrates to the reasonable satisfaction of the *Client* that the proposed Key Sub-Contract has been agreed on "arm's-length" terms;
- (d) Key Sub-Contract price expressed as a percentage of the total projected *Framework Prices* over the *Framework Period*; and
- (e) Credit Rating Threshold (as defined in Schedule 8 (Financial Distress)) of the Key Sub-Contractor.

21.1.4 If requested by the *Client* and/or the *Additional Client* with whom the *Supplier Alliance Member* has entered into a *Project Contract* within ten (10) Working Days of receipt of the information

provided by the *Supplier Alliance Member* pursuant to Clause [21.1.3], the *Supplier Alliance Member* shall also provide:

- (a) a copy of the proposed Key Sub-Contract; and
- (b) any further information reasonably requested by the *Client* and/or the *Additional Client* with whom the *Supplier Alliance Member* has entered into a *Project Contract*.

21.1.5 The *Supplier Alliance Member* shall ensure that each new or replacement Key Sub-Contract shall include:

- (a) provisions which will enable the *Supplier Alliance Member* to discharge its obligations under this *Framework Alliance Agreement*;
- (b) a right under CRTPA for the *Client* to enforce any provisions under the Key Sub-Contract which confer a benefit upon the *Client*;
- (c) obligations no less onerous on the Key Sub-Contractor than those imposed on the *Supplier Alliance Member* under this *Framework Alliance Agreement* in respect of:
 - (i) the data protection requirements set out in Schedule 6 (paragraph 4 GDPR);
 - (ii) the FOIA requirements set out in Schedule 6 (paragraph 1.2 Freedom of Information);
 - (iii) the obligation not to embarrass the *Client* or otherwise bring the *Client* into disrepute set out in Schedule 6 (paragraph 10 Publicity and Branding);
 - (iv) the keeping of records in respect of the services being provided under the Key Sub-Contract, including audit access and the maintenance of open book data as set out in Schedule 7 (paragraph 12 Records, audit access and open book data);
- (d) provisions enabling the *Supplier Alliance Member* to terminate the Key Sub-Contract on notice on terms no more onerous on the *Supplier Alliance Member* than those imposed on the *Client* under this *Framework Alliance Agreement*;
- (e) a provision restricting the ability of the Key Sub-Contractor to sub-contract all or any part of the provision of the services provided to the *Supplier Alliance Member* under the Key Sub-Contract without first seeking the written consent of the *Client*.

22. Guarantee

22.1.1. Where the *Client* has notified a *Supplier Alliance Member* that the award of the *Framework Alliance Contract* is conditional upon receipt of a valid *Framework Guarantee*, then on or prior to the execution of the *Framework Alliance Contract*, as a condition for the award of the *Framework Alliance Contract*, the *Supplier Alliance Member* must have delivered to the *Client*:

22.1.2. An executed *Framework Guarantee* from a *Framework Guarantor* in the form set out in Schedule 11; and

22.1.3. A certified copy extract of the board minutes and/or resolution of the *Framework*

SCHEDULE 7 MANAGEMENT
(see clauses 3.1 and 3.2 of the FAC-1 Contract
Terms)

1. Introduction

- 1.1. The successful delivery of the *Framework Alliance Contract* will rely on the ability of the *Supplier Alliance Members*, the *Client* and the *Additional Clients* to develop a strategic relationship immediately following the conclusion of the *Framework Alliance Contract* and maintaining this relationship throughout the *Framework Period*.
- 1.2. To achieve this strategic relationship, there will be a requirement to adopt proactive framework management activities which will be informed by quality *Management Information*, and the sharing of information between the *Supplier Alliance Members*, the *Client* and the *Additional Clients*.
- 1.3. This Schedule 7 outlines the general structures and management activities that the *Alliance Members* shall follow during the *Framework Period*.

2. Management structure

- 2.1. Each *Supplier Alliance Member* shall provide a suitably qualified nominated contact (the “**Framework Manager**”) who will take overall responsibility for performance of the *Supplier Alliance Member’s* obligations under the *Framework Alliance Contract*, as well as a suitably qualified deputy to act in their absence.
- 2.2. Each *Supplier Alliance Member* shall put in place a structure to manage its obligations under the *Framework Alliance Contract* in accordance with the *Framework Documents*.

3. Review meetings

- 3.1. Regular performance review meetings will take place at the *Client’s* premises throughout the *Framework Period* and thereafter until the *Framework Expiry Date* (“**Review Meetings**”).
- 3.2. The exact timings and frequencies of such Review Meetings will be determined by the *Client* following the conclusion of the *Framework Alliance Contract*. It is anticipated that the frequency of the Review Meetings will be once every month or less. The *Alliance Members* shall be flexible about the timings of these meetings.
- 3.3. The purpose of the Review Meetings will be to review each *Supplier Alliance Member’s* performance under the *Framework Alliance Contract* and, where applicable, each *Supplier Alliance Member’s* adherence to a *Supplier Alliance Member Action Plan*. The agenda for each Review Meeting shall be set by the *Client* and communicated to the *Supplier Alliance Member* in advance of that meeting.
- 3.4. The Review Meetings shall be attended, as a minimum, by the *Client representative(s)* and the relevant *Supplier Alliance Member’s* Framework Manager.

4. Success Measures

- 4.1. The *Success Measures* applicable to the *Framework Alliance Contract* are set out in Part 1 of Schedule 2 to the *Framework Alliance Agreement (Objectives, Success Measures, Targets and*

Incentives).

- 4.2. Each *Supplier Alliance Member* shall establish processes to monitor its performance against the agreed *Success Measures*. Each *Supplier Alliance Member* shall at all times ensure compliance with the standards set by the *Success Measures*.
- 4.3. The *Client* shall review progress against the *Success Measures*, to evaluate the effectiveness and efficiency of which each *Supplier Alliance Member* performs its obligations to fulfil the *Framework Alliance Contract*.
- 4.4. Each *Supplier Alliance Member's* achievement of *Success Measures* shall be reviewed during the Review Meetings, in accordance with paragraph 4.2 above, and the review and ongoing monitoring of *Success Measures* will form a key part of the framework management process as outlined in this Schedule 7.
- 4.5. The *Client* reserves the right to adjust, introduce new, or remove *Success Measures* throughout the *Framework Period*, however any significant changes to *Success Measures* shall be agreed between the *Client* and all *Supplier Alliance Members*.
- 4.6. The *Client* reserves the right to use and publish the performance of the *Supplier Alliance Member* against the *Success Measures* without restriction.

5. Escalation procedure

- 5.1. In the event that the *Client* and a *Supplier Alliance Member* are unable to agree the performance score for any *Success Measure* during a Review Meeting, the disputed score shall be recorded and the matter shall be referred to the *Alliance Manager* and the *Supplier Alliance Member's* Framework Manager in order to determine the best course of action to resolve the matter (which may involve organising an ad-hoc meeting to discuss the performance issue specifically).
- 5.2. In cases where the *Alliance Manager* and the *Supplier Alliance Member's* Framework Manager fail to reach a solution within a reasonable period of time, the matter shall be dealt with in accordance with the procedure set out in FAC-1 Clause 15 (Problem-Solving, Dispute Resolution and Laws).

6. Management information

- 6.1. General requirements
 - 6.1.1. Each *Supplier Alliance Member* shall operate and maintain appropriate systems, processes and records to ensure that it can, at all times, deliver timely and *accurate Management Information* to the *Client* in accordance with the provisions of this Section 6.
 - 6.1.2. Each *Supplier Alliance Member* shall also supply such *Management Information* as may be required by each *Additional Client* in accordance with the terms of a *Project Contract*.
- 6.2. Management information and format
 - 6.2.1. Each *Supplier Alliance Member* agrees to provide timely, full, accurate and complete *MI Reports* to the *Client* which incorporates the data, in the correct format, required by the *MI Reporting Template*. The initial *MI Reporting Template* is set out in the Annex to this Schedule 7.

- 6.2.2. The *Client* may from time to time make changes to the *MI Reporting Template* including to the data required or format of the report and issue a replacement version of the *MI Reporting Template* to the *Supplier Alliance Members*. The *Client* shall give notice in writing of any such change to the *MI Reporting Template* and shall specify the date from which the replacement *MI Reporting Template* must be used for future *MI Reports* which date shall be at least thirty (30) calendar days following the date of the notice.
- 6.2.3. If the *MI Reporting Template* is amended by the *Client* at any time, then each *Supplier Alliance Member* agrees to provide all future *MI Reports* in accordance with the most recent *MI Reporting Template* issued by the *Client*.
- 6.2.4. The *Client* may provide the *Supplier Alliance Members* with supplemental guidance for completing the *MI Reporting Template* or submitting *MI Reports* from time to time which may for example indicate which fields are mandatory and which are optional. Each *Supplier Alliance Member* agrees to complete the *Monthly MI Report* in accordance with any such guidance.
- 6.2.5. The *Supplier Alliance Members* may not make any amendment to the current *MI Reporting Template* without the prior approval of the *Client*.
- 6.2.6. The *Client* shall have the right from time to time (on reasonable written notice) to amend the nature of the *Management Information* which the *Supplier Alliance Members* are required to supply to the *Client*.

7. Frequency and coverage

- 7.1. All *MI Reports* must be completed by each *Supplier Alliance Member* using the *MI Reporting Template* and returned to the *Client* on or prior to the Reporting Date every *Month* during the *Framework Period* and thereafter, until all transactions relating to *Project Contracts* have permanently ceased.
- 7.2. The *MI Report* should be used (among other things) to report *Project Contracts* awarded and transactions occurring during the *Month* to which the *MI Report* relates, regardless of when the work was actually completed. For example, if an invoice is raised for October but the work was actually completed in September, the *Supplier Alliance Member* must report the invoice in October's *MI Report* and not September's. Each *Project Contract* awarded to a *Supplier Alliance Member* must be reported only once when the *Project Contract* is received.
- 7.3. Each *Supplier Alliance Member* shall return the *MI Report* for each *Month* even where there are no transactions to report in the relevant *Month* (a "**Nil Return**").
- 7.4. Each *Supplier Alliance Member* shall inform the *Client* of any errors or corrections to the *Management Information*:
 - (a) in the next *MI Report* due immediately following discovery of the error by the *Supplier Alliance Member*, or
 - (b) as a result of the *Client* querying any data contained in an *MI Report*.

8. Submission of the monthly MI report

- 8.1. *MI Reports* shall be completed electronically and reported to the CCS data submission service available at: <https://www.reportmi.crowncommercial.gov.uk>. *MI Reports* must be completed in pounds sterling unless CCS has given prior written consent to the use of another currency.
- 8.2. CCS may reasonably require that the *MI Report* be submitted using an alternative means to that specified in paragraph 8.1 above, such as email. Where requested by CCS, the *Supplier Alliance Member* shall provide *Management Information* to a *Client* as specified by CCS. The *Supplier* shall:
 - 8.2.1 promptly after the Framework Start Date provide an email and/or postal address to which CCS will send invoices for the *Management Charge* and monthly statements relating to the invoicing of the *Management Charge*;
 - 8.2.2 promptly after the Framework Start Date provide at least one contact name and contact details for the purposes of queries relating to either *Management Information* or invoicing.

9. Defective management information

- 9.1. Each *Supplier Alliance Member* acknowledges that it is essential that the *Client* receives timely and accurate *Management Information* pursuant to the *Framework Alliance Contract* because *Management Information* is used by the *Client* to inform strategic decision making and allows it to calculate the *Management Charge*.
- 9.2. Following an *MI Failure* the *Client* may issue reminders to a *Supplier Alliance Member* or require the *Supplier Alliance Member* to rectify defects in the *MI Report* provided to the *Client*. Each *Supplier Alliance Member* shall rectify any deficient or incomplete *MI Report* as soon as possible and not more than five (5) *Working Days* following receipt of any such reminder.

10. Meetings

- 10.1. Each *Supplier Alliance Member* agrees to attend meetings with the *Alliance Manager* to discuss the circumstances of any *MI Failure(s)* at the request of the *Client*. If the *Client* requests such a meeting the *Supplier Alliance Member* shall propose measures to ensure that the *MI Failures* are rectified and do not occur in the future. The *Alliance Manager* shall document these measures and continue to monitor the *Supplier Alliance Member's* performance.

11. Admin Fees

- 11.1. If, in any rolling three (3) *Month* period, two (2) or more *MI Failures* occur, each *Supplier Alliance Member* acknowledges and agrees that the *Client* shall have the right to invoice the *Supplier Alliance Member Admin Fees* and (subject to paragraph 11.2) in respect of any *MI Failures* as they arise in subsequent *Months*.

- 11.2. If, following activation of the *Client's* right to charge *Admin Fee(s)* in respect of *MI Failures* pursuant to paragraph 11.1, a *Supplier Alliance Member* submits the *Monthly MI Report* for two (2) consecutive *Months* and no *MI Failure* occurs then the right to charge the *Admin Fee(s)* shall lapse. For the avoidance of doubt, the *Client* shall not be prevented from exercising such right again during the *Framework Period* if the conditions in paragraph 11.1 are met.
- 11.3. Each *Supplier Alliance Member* acknowledges and agrees that the *Admin Fees* are a fair reflection of the additional costs incurred by the *Client* as a result of the *Supplier Alliance Member* failing to supply *Management Information* as required by the *Framework Alliance Contract*.
- 11.4. The *Client* shall notify a *Supplier Alliance Member* if any *Admin Fees* arise pursuant to paragraph 11.1 and shall be entitled to invoice the *Supplier Alliance Member* for such *Admin Fees* which shall be payable pursuant to FAC-1 clause 8 as a supplement to the *Management Charge*. Any exercise by the *Client* of its rights under this paragraph 11 shall be without prejudice to any other rights that may arise pursuant to the terms of the *Framework Alliance Contract*.

12. Records, audit access and open book data

- 12.1. Each *Supplier Alliance Member* shall keep and maintain, until the later of:
 - 12.1.1. seven (7) years after the date of termination or expiry of the *Framework Alliance Contract*; or
 - 12.1.2. seven (7) years after the date of termination or expiry of the last *Project Contract* to expire or terminate; or
 - 12.1.3. such other date as may be agreed between the *Alliance Manager* and the relevant *Supplier Alliance Member* full and accurate records and accounts of the operation of the *Framework Alliance Contract*, including the *Project Contracts* entered into with *Additional Clients*, the *Projects* performed pursuant to the *Project Contracts*, and the amounts paid by each *Additional Client* under the *Project Contracts* and those supporting tests and evidence that underpin the provision of the annual *Self-Audit Certificate* and supporting *Audit Report*.
- 12.2. Each *Supplier Alliance Member* shall keep the records and accounts referred to in paragraph 12.1 in accordance with *Good Industry Practice* and *Law*.
- 12.3. Each *Supplier Alliance Member* shall provide the *Client* with a completed and signed annual *Self-Audit Certificate* in respect of each *Contract Year*. Each *Self-Audit Certificate* shall be completed and signed by an authorised senior member of the *Supplier Alliance Member's* management team or by the *Supplier Alliance Member's* external auditor and the signatory must be professionally qualified in a relevant audit or financial discipline.
- 12.4. Each *Self-Audit Certificate* should be based on tests completed against a representative sample of 10% of *Projects* carried out during the period of being audited and should provide assurance that:
 - 12.4.1. *Projects* are clearly identified as such in the order processing and invoicing systems and, where required,

- Projects* are correctly reported in the *MI Reports*;
- 12.4.2. all related invoices are completely and accurately included in the *MI Reports*;
 - 12.4.3. all *Agreed Prices* comply with any requirements under the *Framework Alliance Contract* on maximum mark-ups, discounts, charge rates, fixed quotes (as applicable); and
 - 12.4.4. an additional sample of two (2) *Projects* identified from the *Supplier Alliance Member's* systems as project contracts not awarded under the *Framework Alliance Contract* have been correctly identified as such and that an appropriate and legitimately tendered procurement route has been used to award those *Projects*, and those projects should not otherwise have been routed via centralised mandated procurement processes executed by the *Client*.
- 12.5. Each *Self-Audit Certificate* should be supported by an *Audit Report* that provides details of the methodology applied to complete the review, the sampling techniques applied, details of any issues identified and remedial action taken.
- 12.6. Each *Supplier Alliance Member* shall afford any *Auditor* access to all necessary records and accounts at the *Supplier Alliance Member's* premises and/or provide such records and accounts or copies of the same, as may be required and agreed with any of the *Auditors* from time to time, in order that the *Auditor* may carry out an inspection to assess compliance by the *Supplier Alliance Member* and/or its *Supply Chain* members of any of the *Supplier Alliance Member's* obligations under the *Framework Alliance Contract*, including in order to:
- 12.6.1. verify the accuracy of the *Agreed Prices* and any other amounts payable by an *Additional Client* under a *Project Contract* (including proposed or actual variations to them in accordance with the *Framework Alliance Contract*);
 - 12.6.2. verify the costs of the *Supplier Alliance Member* (including the costs of all its *Supply Chain* members) in connection with the performance of *Projects*;
 - 12.6.3. verify the *Open Book Data*;
 - 12.6.4. verify the *Supplier Alliance Member's* and each *Supply Chain member's* compliance with the applicable *Law*;
 - 12.6.5. identify or investigate actual or suspected *Prohibited Acts*, impropriety or accounting mistakes or any breach or threatened breach of security and in these circumstances the *Client* shall have no obligation to inform the *Supplier Alliance Member* of the purpose or objective of its investigations;
 - 12.6.6. identify or investigate any circumstances which may impact upon the financial stability of the *Supplier Alliance Member*, any *Framework Guarantor* and/or any *Supply Chain* member or their ability to perform the *Project Contracts*;
 - 12.6.7. obtain such information as is necessary to fulfil the *Client's* obligations to supply information for parliamentary, ministerial, judicial or administrative purposes including the supply of information to the *Comptroller* and *Auditor*

General;

- 12.6.8. review any books of account and the internal contract management accounts kept by the *Supplier Alliance Member* in connection with the *Framework Alliance Contract*;
- 12.6.9. carry out the *Client's* internal and statutory audits and to prepare, examine and/or certify the *Client's* annual and interim reports and accounts;

- 12.6.10. enable the National Audit Office to carry out an examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the *Client* has used its resources;
 - 12.6.11. verify the accuracy and completeness of any *Management Information* delivered or required by the *Framework Alliance Contract*;
 - 12.6.12. review any *MI Reports* and/or other records relating to the *Supplier Alliance Member's* performance of the *Projects* and to verify that these reflect the *Supplier Alliance Member's* own internal reports and records;
 - 12.6.13. review the integrity, confidentiality and security of the *Client Personal Data*; and/or
 - 12.6.14. receive from the *Supplier Alliance Member* on request summaries of all central government public sector expenditure placed with the *Supplier Alliance Member* including through routes outside the *Framework Alliance Contract* in order to verify that the *Supplier Alliance Member's* practice is consistent with the *Government's* transparency agenda which requires all public sector bodies to publish details of expenditure on common goods and services.
- 12.7. The *Client* shall use reasonable endeavours to ensure that the conduct of each *Audit* does not unreasonably disrupt the *Supplier Alliance Member* or delay the performance of *Project Contracts* save insofar as the *Supplier Alliance Member* accepts and acknowledges that control over the conduct of *Audits* carried out by the *Auditors* is outside of the control of the *Client*.
- 12.8. Subject to the *Client's* obligations of confidentiality, the *Supplier Alliance Member* shall on demand provide the *Auditors* with all reasonable cooperation and assistance in relation to each *Audit*, including by providing:
- 12.8.1 all information within the scope of the *Audit* requested by the *Auditor*;
 - 12.8.2 reasonable access to any sites controlled by the *Supplier Alliance Member* and to equipment used in the provision of the *Projects*; and
 - 12.8.3 access to the *Supplier Alliance Member Personnel*.
- 12.9. If an *Audit* reveals that the *Supplier Alliance Member* has underpaid an amount equal to or greater than one per cent (1%) of the *Management Charge* due in respect of any one *Contract Year* or year of any *Project Contracts* then, without prejudice to the *Client's* other rights under the *Framework Alliance Contract*, the *Supplier Alliance Member* shall reimburse the *Client* its reasonable costs incurred in relation to the *Audit*.
- 12.10. If an *Audit* reveals that:
- 12.10.1. that the *Supplier Alliance Member* has underpaid an amount equal to or greater than five per cent (5%) of the *Management Charge* due during any *Contract Year* of the *Framework Alliance Contract* and any *Project Contract*; and/or

- 12.10.2. a breach has been committed by the *Supplier Alliance Member*, then the *Client* shall be entitled to terminate the appointment of the relevant *Supplier Alliance Member* for breach in accordance with clause 14.4 of the FAC-1 *Contract Terms*.
- 12.11. The *Alliance Members* agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this paragraph 12, save as specified in paragraph 12.9.

13. Default management charge

- 13.1. If:
- 13.1.1. Two (2) *MI Failures* occur in any rolling six (6) *Month* period;
 - 13.1.2. Two (2) consecutive *MI Failures* occur; then an "***MI Default***" shall be deemed to have occurred.
- 13.2. If an *MI Default* occurs the *Client* shall (without prejudice to any other rights or remedies available to it under the *Framework Alliance Contract*) be entitled to determine the level of *Management Charge* in accordance with paragraph 8.3, which the *Supplier Alliance Member* shall be required to pay to the *Client* ("***Default Management Charge***") and/or to terminate the appointment of that *Supplier Alliance Member* under the *Framework Alliance Contract* for breach in accordance with clause 14.4 of the FAC-1 *Contract Terms*.
- 13.3. The *Default Management Charge* shall be calculated as the higher of:
- 13.3.1. the average *Management Charge* paid or payable by the relevant *Supplier Alliance Member* to the *Client* based on any *Management Information* submitted in the six (6) *Month* period preceding the date on which the *MI Default* occurred or, if the *MI Default* occurred within less than six (6) *Months* from the commencement date of the first *Project Contract*, in the whole period preceding the date on which the *MI Default* occurred; or
 - 13.3.2. the sum of five hundred pounds (£500).
- 13.4. If an *MI Default* occurs, the *Client* shall be entitled to invoice the relevant *Supplier Alliance Member* the *Default Management Charge* (less any *Management Charge* which the *Supplier Alliance Member* has already paid to the *Client* for any *Months* in which the *Default Management Charge* is payable) calculated in accordance with paragraph 8.3 above:
- 13.4.1. in arrears for those *Months* in which an *MI Failure* occurred; and
 - 13.4.2. on an ongoing *Monthly* basis, until all and any *MI Failures* have been rectified to the reasonable satisfaction of the *Client*.
- 13.5. For the avoidance of doubt the *Alliance Members* agree that:
- 13.5.1. the *Default Management Charge* shall be payable pursuant to FAC-1 Clause 8 as though it was the *Management Charge* due in accordance with the *Framework Alliance Contract*; and
 - 13.5.2. any rights or remedies available to *Client* under the

Framework Alliance Contract in respect of the payment of the *Management Charge* shall be available to the *Client* also in respect of the payment of the *Default Management Charge*.

- 13.6. If a *Supplier Alliance Member* provides sufficient *Management Information* to rectify any *MI Failures* to the satisfaction of the *Client* and the *Management Information* demonstrates that:
- 13.6.1. the *Supplier Alliance Member* has overpaid the *Management Charges* as a result of the application of the *Default Management Charge* then the *Supplier Alliance Member* shall be entitled to a refund of the overpayment, net of any *Admin Fees* where applicable; or
 - 13.6.2. the *Supplier Alliance Member* has underpaid the *Management Charges* during the period when a *Default Management Charge* was applied, then the *Client* shall be entitled to immediate payment of the balance as a debt together with interest pursuant to FAC-1 clause 8.11.

14. Transparency reports

- 14.1. Within three (3) *Months* from the *Framework Commencement Date* each *Supplier Alliance Member* shall submit to the *Alliance Manager* for approval (such approval not to be unreasonably withheld or delayed) draft *Transparency Reports* consistent with the content requirements and format set out in Annex 1 to this Paragraph 14.
- 14.2. If the *Alliance Manager* rejects any proposed *Transparency Report* submitted by a *Supplier Alliance Member*, the *Supplier Alliance Member* shall submit a revised version of the relevant report for further approval by the *Alliance Manager* within five (5) *Working Days* of receipt of any notice of rejection, taking account of any recommendations for revision and improvement to the report provided by the *Alliance Manager*. This process shall be repeated until the *Alliance Manager* agrees each *Transparency Report*.
- 14.3. Each *Supplier Alliance Member* shall provide accurate and up-to-date versions of each *Transparency Report* to the *Alliance Manager* at the frequency referred to in Annex 1 of this Schedule 7.
- 14.4. Any dispute in connection with the preparation and/or approval of *Transparency Reports* shall be resolved in accordance with clause 15 of the FAC-1 *Contract Terms*.
- 14.5. The requirements in this paragraph 14 are in addition to any other reporting requirements set out in the *Framework Alliance Contract*.

15. Management Information

- 15.1. Each *Supplier Alliance Member* grants the *Client* a non-exclusive, transferable, perpetual, irrevocable, royalty-free licence to:
 - (a) use and to share with any *Additional Client* and *Relevant Person*; and/or

- (b) publish (subject to any information that is exempt from disclosure in accordance with the provisions of *FOIA* being redacted),

any *Management Information* supplied to the *Client* for the *Client's* normal operational activities including but not limited to administering the *Framework Alliance Contract* and/or all *Project Contracts*, *monitoring* public sector expenditure, identifying savings or potential savings and planning future procurement activity.

15.2. The *Client* shall in its absolute and sole discretion determine whether any *Management Information* is exempt from disclosure in accordance with the provisions of the *FOIA*.

15.3. The *Client* may consult with each *Supplier Alliance Member* to help with its decision regarding any exemptions under paragraph 15.2 but, for the purpose of the *Framework Alliance Contract*, the *Client* shall have the final decision in its absolute and sole discretion.

Annex 1: List of Transparency Reports

Title of Report	Content	Format	Frequency
[Headline performance]	[]	[]	[]
[Charges]	[]	[]	[]
[Supply Chain members]	[]	[]	[]
[Technical]	[]	[]	[]
[Performance management arrangements]	[]	[]	[]

Annual Self Audit Certificate

[To be signed by Head of Internal Audit, Finance Director or company's external auditor]

[Guidance Note: Please seek guidance from the CCS audit team in relation to this point]

Dear Sirs

In accordance with the *Framework Alliance Contract* entered into on [insert **Framework Commencement Date** dd/mm/yyyy] between [insert name of *Supplier Alliance Member*] and the *Client* and other *Alliance Members*, we confirm the following:

1. In our opinion based on the testing undertaken [name of *Supplier Alliance Member*] has in place suitable systems for identifying and recording the transactions taking place under the provisions of the above *Framework Alliance Contract*.
2. We have tested the systems for identifying and reporting on framework activity and found them to be operating satisfactorily.
3. We have tested a sample of [] [insert number of sample transactions tested] *Project Contracts* and related invoices during our audit for the financial year ended [insert financial year] and confirm that they are correct and in accordance with the terms and conditions of the *Framework Alliance Contract*.
4. We have tested from the order processing and invoicing systems a sample of [] [Insert number of sample transactions tested] public sector *Project Contracts* placed outside the *Framework*

Alliance Contract during our audit for the financial year ended [insert financial year] and confirm they have been identified correctly as *Project Contracts* placed outside the *Framework Alliance Contract*, an appropriate and legitimately tendered procurement route has been used to place those *Project Contracts* , and those *Project Contracts* should not otherwise have been routed via centralised and mandated procurement processes executed by the *Client*.

5. We have also attached an *Audit Report* which provides details of the methodology applied to complete the review, the sampling techniques applied, details of any issues identified and remedial action taken.

[Guidance Note: see Clause 18 (Records, Audit Access and Open Book Data) for details of what is required]

Name:.....

Signed:.....

Head of Internal Audit/ Finance Director/ External Audit firm

(delete as applicable)

Date:.....

Professional Qualification held by Signatory:.....

Note to *Supplier Alliance Members*: where CCS identifies independently that data accuracy supporting this certificate is flawed we will consider action on a case by case basis, and in some cases where the issues identified are clearly systemic we will consider whether this behaviour goes beyond poor commercial practice and will seek further guidance from the GLD.

SCHEDULE 8
FINANCIAL DISTRESS
(see Special Term 10)

1. Definitions

1.1. In this Schedule 8 the following definitions shall apply:

- | | |
|---|--|
| "Credit Rating Threshold" | means the minimum credit rating level for the <i>Supplier Alliance Member</i> as set out in Annex 1 and |
| "Financial Distress Service Continuity Plan" | means a plan setting out how the <i>Supplier Alliance Member</i> will ensure the continued performance in accordance with the <i>Framework Alliance Contract</i> in the event that a <i>Financial Distress Event</i> occurs; |
| "Rating Agency" | means the rating agency means Dun & Bradstreet. |

2. Credit rating and duty to notify

- 2.1. The Supplier Alliance Member warrants and represents to the *Client* for the benefit of the *Client* that as at the *Framework Commencement Date* the long-term credit ratings issued for the *Supplier Alliance Member* by the Rating Agency.
- 2.2. The *Supplier Alliance Member* shall promptly notify (or shall procure that its auditors promptly notify) the *Client* in writing if there is any significant downgrade in the credit rating issued by any Rating Agency for either the *Supplier Alliance Member* (and in any event within five (5) *Working Days* from the occurrence of the downgrade).
- 2.3. If there is any downgrade credit rating issued by any Rating Agency for the Supplier Alliance Member, the *Supplier Alliance Member* shall ensure that the *Supplier Alliance Member's* auditors thereafter provide the *Client* within 10 *Working Days* from the end of each *Contract Year* and within 10 *Working Days* from the date of a written request by the *Client* (such requests not to exceed 4 in any *Contract Year*) with written calculations of the quick ratio for the *Supplier Alliance Member* as at the end of each *Contract Year* or such other date as may be requested by the *Client*.

For these purposes the "quick ratio" on any date means:

where:

- A. is the value at the relevant date of all cash in hand and at the bank of the *Supplier Alliance Member*;
- B. is the value of all marketable securities held by the *Supplier Alliance Member* determined using closing prices on the *Working Day* preceding the relevant date
- C. is the value at the relevant date of all account receivables of the *Supplier Alliance Member*; and

D. is the value at the relevant date of the current liabilities of the *Supplier Alliance Member*

2.4. Each *Supplier Alliance Member* shall:

2.4.1. regularly monitor the credit ratings of the *Supplier Alliance Member* with the Rating Agencies; and

2.4.2. promptly notify (or shall procure that its auditors promptly notify) the *Client* in writing following the occurrence of a *Financial Distress Event* or any fact, circumstance or matter which could cause a *Financial Distress Event* and in any event, shall ensure that such notification is made within 10 *Working Days* of the date on which the *Supplier Alliance Member* first becomes aware of the *Financial Distress Event* or the fact, circumstance or matter which could cause a *Financial Distress Event*.

2.5. For the purposes of determining whether a *Financial Distress Event* has occurred pursuant to the provisions of paragraph, the credit rating of the *Supplier Alliance Member* shall be deemed to have dropped below the applicable Credit Rating Threshold if any of the Rating Agencies have rated the *Supplier Alliance Member* at or below the applicable Credit Rating Threshold.

3. Consequences of a financial distress event

3.1. In the event of:

3.1.1. the credit rating of the *Supplier Alliance Member* dropping below the applicable Credit Rating Threshold;

3.1.2. the *Supplier Alliance Member* issuing a profits warning to a stock exchange or making any other public announcement about a material deterioration in its financial position or prospects;

3.1.3. there being a public investigation into improper financial accounting and reporting, suspected fraud or any other impropriety of the *Supplier Alliance Member*;

3.1.4. the *Supplier Alliance Member* committing a material breach of covenant to its lenders;

3.1.5. a *Supply Chain* member notifying the *Client* that the *Supplier Alliance Member* has not satisfied any sums properly due for a material specified invoice or sequences of invoices that are not subject to a genuine dispute;

3.1.6. Any of the following:

(a) commencement of any litigation against the *Supplier Alliance Member* with respect to financial indebtedness or obligations under a *Project Contract*;

(b) non-payment by the *Supplier Alliance Member* of any financial indebtedness; any financial indebtedness of the *Supplier Alliance Member* becoming due as a result of an event of default; or

(c) the cancellation or suspension of any financial indebtedness in respect of the *Supplier Alliance Member*

in each case which the *Client* reasonably believes (or would be likely reasonably to believe) could directly impact on the continued performance of the *Supplier Alliance Member* in accordance with the *Framework Alliance Contract* and any *Project Contracts* then, immediately upon notification of the *Financial Distress Event* (or if the *Client* becomes aware of the *Financial Distress Event* without notification and brings the event to the attention of the *Supplier Alliance Member*), the *Supplier Alliance Member* shall have the obligations and the *Client* shall have the rights and remedies as set out in paragraphs

- 3.2. The *Supplier Alliance Member* shall:
 - 3.2.1. at the request of the *Client* meet the *Client* as soon as reasonably practicable (and in any event within three (3) *Working Days* of the initial notification (or awareness) of the *Financial Distress Event* or such other period as the *Client* may permit and notify to the *Supplier Alliance Member* in writing) to review the effect of the *Financial Distress Event* on its continued performance in accordance with the *Framework Alliance Contract* and *Project Contracts*; and
 - 3.2.2. where the *Client* reasonably believes (taking into account any discussions and representations under paragraph 3.2.1) that the *Financial Distress Event* could impact on the *Supplier Alliance Member's* continued performance in accordance with the *Framework Alliance Contract* and *Project Contracts*:
 - (a) submit to the *Client* for its approval, a draft Financial Distress Service Continuity Plan as soon as reasonably practicable (and in any event, within ten (10) *Working Days* from the initial notification (or awareness) of the *Financial Distress Event* or such other period as the *Client* may permit and notify to the *Supplier Alliance Member* in writing); and
 - (b) provide such financial information relating to the *Supplier Alliance Member* as the *Client* may reasonably require.
- 3.3. The *Client* shall not withhold its approval of a draft Financial Distress Service Continuity Plan unreasonably. If the *Client* does not approve the draft Financial Distress Service Continuity Plan, it shall inform the *Supplier Alliance Member* of its reasons and the *Supplier Alliance Member* shall take those reasons into account in the preparation of a further draft Financial Distress Service Continuity Plan, which shall be resubmitted to the *Client* within five (5) *Working Days* of the rejection of the first or subsequent (as the case may be) drafts. This process shall be repeated until the Financial Distress Service Continuity Plan is approved by the *Client* or referred to the dispute resolution procedure pursuant to FAC-1 clause 15.
- 3.4. If the *Client* considers that the draft Financial Distress Service Continuity Plan is insufficiently detailed to be properly evaluated, will take too long to complete or will not remedy the relevant Financial Distress Event, then it may either agree a further time period for the development and agreement of the Financial Distress Service

Continuity Plan or escalate any issues with the draft Financial Distress Service Continuity Plan using the dispute resolution procedure pursuant to FAC-1 clause 15.

3.5. Following approval of the Financial Distress Service Continuity Plan by the *Client*, the *Supplier Alliance Member* shall:

3.5.1. on a regular basis (which shall not be less than monthly), review the Financial Distress Service Continuity Plan and assess whether it remains adequate and up to date to ensure the continued performance in accordance with the *Framework Alliance Contract* and the *Project Contracts*;

3.5.2. where the Financial Distress Service Continuity Plan is not adequate or up to date in, submit an updated Financial Distress Service Continuity Plan to the *Client* for its approval, and the provisions of shall apply to the review and approval process for the updated Financial Distress Service Continuity Plan; and

3.5.3. comply with the Financial Distress Service Continuity Plan (including any updated Financial Distress Service Continuity Plan).

3.6. Where the *Supplier Alliance Member* reasonably believes that the relevant *Financial Distress Event* (or the circumstance or matter which has caused or otherwise led to it) no longer exists, it shall notify the *Client* and subject to the agreement of the *Client*, the *Supplier Alliance Member* should be relieved of its obligations under paragraph 3.

4. Termination rights

4.1. The *Client* shall be entitled to terminate the appointment of a *Supplier Alliance Member* for breach under FAC-1 clause 14.4 if:

4.1.1. the *Supplier Alliance Member* fails to notify the *Client* of a *Financial Distress Event* in accordance with paragraph 2.2;

4.1.2. the Alliance Members fail to agree a Financial Distress Service Continuity Plan (or any updated Financial Distress Service Continuity Plan) in accordance with paragraph 3; and/or

4.1.3. the *Supplier Alliance Member* fails to comply with the terms of the Financial Distress Service Continuity Plan (or any updated Financial Distress Service Continuity Plan) in accordance with paragraph 3.

5. Primacy of credit ratings

4.1. Without prejudice to the *Supplier Alliance Member's* obligations and the *Client's* rights and remedies under paragraph 2, if, following the occurrence of a *Financial Distress Event* pursuant to paragraph 2 to the Rating Agencies review and report subsequently that the credit ratings do not drop below the relevant Credit Rating Threshold, then:

5.1.1. the *Supplier Alliance Member* shall be relieved

automatically of its obligations under paragraph 3;
and
5.1.2. the *Client* shall not be entitled to require the *Supplier Alliance Member*
to provide financial information in accordance with paragraph 2.3.

ANNEX 1: CREDIT RATINGS & CREDIT RATING

THRESHOLDS PART 1: CURRENT RATING

Entity	Credit rating (long term)
Supplier	[D&B Threshold]
[Framework Allian ce Contract Guarantor/ [and Project Contract Guarantor]	

PART 2: LOT SPECIFIC CREDIT RATING THRESHOLD

LOT 1 : Built Environment and General Infrastructure

Entity	Credit Rating Threshold: (40)
Supplier	
[Framework Alliance Contract Guarantor/ [and Project Contract Guarantor]	

Lot 2: Urban Regeneration

Entity	Credit Rating Threshold: (40)
Supplier	
[Framework Alliance Contract Guarantor/ [and Project Contract Guarantor]	

Lot 3: International

Entity	Credit Rating Threshold: (60)
Supplier	

[Framework Alliance Contract Guarantor/ [and Project Contract Guarantor]	
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Lot 4: High Rise

Entity	Credit Rating Threshold: (60)
Supplier	
[Framework Alliance Contract Guarantor/ [and Project Contract Guarantor]	

Lot 5: Defence

Entity	Credit Rating Threshold: (60)
Supplier	
[Framework Alliance Contract Guarantor/ [and Project Contract Guarantor]	

Lot 6: Environmental & Sustainability Technical Services

Entity	Credit Rating Threshold: (40)
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Supplier	
[Framework Alliance Contract Guarantor/ [and Project Contract Guarantor]	

SCHEDULE 9 MARKETING
(see Special Term 12)

1. Introduction

- 1.1. This Schedule 9 describes the activities that each *Supplier Alliance Member* will carry out as part of its ongoing commitment to the marketing of the *Framework Alliance Contract to Additional Clients*.

2. Marketing

- 1.1. Marketing contact details:

Tel.	Email.
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3. Client publications

- 3.1. The *Client* will periodically update and revise marketing materials. Each *Supplier Alliance Member* shall supply current information for inclusion in such marketing materials when required by the *Client*.
- 3.2. Such information shall be provided in the form of a completed template, supplied by the *Client* together with the instruction for completion and the date for its return.
- 3.3. Failure to comply with the provisions of paragraphs 3.1 and 3.2 may result in a *Supplier Alliance Member's* exclusion from the use of such marketing materials.

4. Supplier Alliance Member publications

- 4.1. Any marketing materials in relation to the *Framework Alliance Contract* that a *Supplier Alliance Member* produces must comply in all respects with the *Branding Guidance*. Each *Supplier Alliance Member* will periodically update and revise such marketing materials.
- 4.2. Each *Supplier Alliance Member* shall be responsible for keeping under review the content of any information which appears on the *Supplier Alliance Member's* website and which relates to the *Framework Alliance Contract* and ensuring that such information is kept up to date at all times.

SCHEDULE 11

PRICING FLUCTUATIONS

1. DEFINITIONS

The following terms used in this Schedule shall have the following meanings:

"**Indexation**" means the adjustment of an amount or sum in accordance with paragraph 6;

"**Indexation Adjustment Date**" has the meaning given to it in paragraph 6.2;

2. GENERAL PROVISIONS

2.1 The *Framework Prices* set out in the *Framework Proposals* are the maximum that the *Supplier Alliance Member* may charge pursuant to any *Project Contract*.

2.2 The *Supplier Alliance Member* acknowledges and agrees that any prices submitted in relation to a *Project Brief* shall be equal to or lower than the *Framework Prices*.

2.3 The *Supplier Alliance Member* acknowledges and agrees that the *Framework Prices* cannot be increased during the *Framework Period* other than in the situations described in paragraph 3.1.

3. ADJUSTMENT OF THE FRAMEWORK PRICES

3.1 The *Framework Prices* shall only be varied:

3.1.1 due to a Specific Change in Law in relation to which the *Alliance Members* agree that a change is required to all or part of the *Framework Prices* in accordance with Clause 8.2 (Legislative Change);

3.1.2 where all or part of the *Framework Prices* are reviewed and reduced in accordance with the *Continuous Improvement Plan*;

3.1.3 where all or part of the *Framework Prices* are reviewed and reduced in accordance with *Supplier Alliance Member* periodic assessment of *Framework Prices*; or

3.1.4 where *Framework Prices* or any component amounts or sums thereof are identified in paragraph 6 below as being subject to increase by way of Indexation.

3.2 the *Framework Prices* will remain fixed for the first two (2) Contract Years.

3.3 Percentage Fees, percentage additions (e.g. in respect of Profit) and percentage adjustments (e.g. in respect of regional adjustments) shall remain fixed for the duration of the *Framework Period* and not subject to increase by way of indexation under any circumstances.

4. SUPPLIER ALLIANCE MEMBER PERIODIC ASSESSMENT OF FRAMEWORK PRICES

Every six (6) Months during the *Framework Period*, the *Supplier Alliance Member* shall assess the level of the *Framework Prices* to consider whether it is able to reduce them. Such assessments by the *Supplier Alliance Member* shall be carried out on 1 June and 1 January in each Contract Year (or in the event that such dates do not, in any contract year, fall on a working day, on the next working day following such dates). To the extent that the *Supplier Alliance Member* is able to decrease all or part of the *Framework Prices* it shall promptly notify the *Client* in writing and such reduction shall be implemented in accordance with paragraph 7.1.2 below.

5. (not used)

6. INDEXATION

- 6.1 The following maximum *Framework Prices* are subject to increase by way of Indexation:
- 6.1.1 Time charge rates (hourly and daily rates) in respect of personnel, (all Lots);
- 6.1.2 for the avoidance of doubt, any *Framework Prices* not specifically listed in this paragraph 6.1. shall remain fixed for the duration of the *Framework Period* and shall not be subject to increase, by way of indexation or otherwise, under any circumstances.
- 6.2 Where the *Framework Prices* are identified in paragraph 6.1 as being subject to increase by way of Indexation, the following provisions shall apply:
- 6.2.1 all *Framework Prices* will remain fixed for the first two (2) Contract Years.
- 6.2.2 the first Indexation Adjustment Date shall be two Contract Years after the *Framework Commencement Date*.
- 6.2.3 subsequent Indexation Adjustment Date(s) shall be at the expiry of each subsequent Contract Year.
- 6.2.4 the Indexation adjustment shall be determined by multiplying the relevant *Framework Price* by the percentage increase or decrease in the Consumer Price Index published for the twelve (12) Months ended on the 31st of January immediately preceding the relevant Indexation Adjustment Date,

<https://www.ons.gov.uk/economy/inflationandpriceindices/timeseries/d7g7/mm23>).

- 6.2.5 where the published CPI Index figure at the relevant Indexation Adjustment Date is stated to be a provisional figure or is subsequently amended, that figure shall apply as ultimately confirmed or amended unless the *Client* and the *Supplier Alliance Member* shall agree otherwise.
- 6.2.6 if the CPI Index is no longer published, the *Client* and the *Supplier Alliance Member* shall agree a fair and reasonable adjustment to that index (taking account of relevant contemporary data) or, if appropriate, shall agree a revised formula that in either event will have substantially the same effect as that specified.
- 6.2.7 For the avoidance of doubt, except as set out in this Paragraph 6, neither the *Framework Prices* nor any other costs, expenses, fees or charges shall be adjusted to take account of any inflation, change to exchange rate, change to interest rate or any other factor or element which might otherwise increase the cost to the *Supplier Alliance Member* or *Supply Chain members* of the performance of their obligations and any *Project Contract*.

7. IMPLEMENTATION OF ADJUSTED FRAMEWORK PRICES

Variations in accordance with the provisions of this Schedule 11 to all or part of the *Framework Prices* (as the case may be) shall be made by the *Client* to take effect:

7.1.1 in accordance with Clause 8.2 (Legislative Change) where an adjustment to the *Framework Prices* is made in the *Framework Brief*,

7.1.2 on 1 July for assessments made on 1 June and on 1 February for assessments made on 1 January where an adjustment to the *Framework Prices* is made;

7.1.3 on the review adjustment date where an adjustment to the *Framework Prices* is made;

or

7.1.4 on the Indexation Adjustment Date where an adjustment to the *Framework Prices* and the *Alliance Members* shall amend the *Framework Prices* to reflect such variations.

8. CHARGES UNDER PROJECT CONTRACT AGREEMENTS

For the avoidance of doubt any change to the *Framework Prices* implemented pursuant to the *Framework Alliance Contract* are made independently of, and, subject always to the *Framework Alliance Contract* and shall not affect the *Framework Prices* payable by an *Additional Client* under a *Project Contract* in force at the time a change to the *Framework Prices* is implemented.

Any variation to the *Framework Prices* payable under a *Project Contract* must be agreed between the *Supplier Alliance Member* and the *Additional Client* and implemented in accordance with the provisions applicable to the *Project Contract*.

9. E-COMMERCE TRANSACTIONS WITH CENTRAL GOVERNMENT BODIES

The *Supplier Alliance Member* acknowledges and agrees that the Government wide strategy of 'Digital by Default' (<https://www.gov.uk/government/publications/government-digital-strategy>) endorses a commitment to implement e-commerce systems, including, for example, purchase-to-pay (P2P) automated systems, as the preferred transacting model for all Government's purchasing transactions.

The intent is to migrate, wherever practically possible, all Government's purchasing to an e-commerce environment.

The *Supplier Alliance Member* acknowledges and agrees that when contracting with Central Government Bodies, the latter may use a specific e-commerce application and the *Supplier Alliance Member* shall be required to comply with the relevant requirements set out by the relevant Central Government Body in their Statement of Requirements during the Competitive Award Procedure and/or terms of the relevant *Project Contract*.

Schedule 12 (Supply Chain Visibility)

1. Definitions

1.1 In this Schedule, the following words shall have the following meanings and they shall supplement Joint Schedule 1 (Definitions):

"Contracts Finder"	the Government's publishing portal for public sector procurement opportunities;
"SME"	an enterprise falling within the category of micro, small and medium sized enterprises defined by the Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium sized enterprises;
"Supply Chain Information Report Template"	the document at Annex 1 of this Schedule 12; and
"VCSE"	a non-governmental organisation that is value-driven and which principally reinvests its surpluses to further social, environmental or cultural objectives.

2. Visibility of Sub-Contract Opportunities in the Supply Chain

2.1 The *Supplier Alliance Member* shall:

2.1.1 subject to Paragraph 2.3, advertise on Contracts Finder all Sub-Contract opportunities arising from or in connection with the provision of the Deliverables above a minimum threshold of £25,000 that arise during the Contract Period;

2.1.2 within 90 days of awarding a Sub-Contract to a Subcontractor, update the notice on Contract Finder with details of the successful Subcontractor;

2.1.3 monitor the number, type and value of the Sub-Contract opportunities placed on Contracts Finder advertised and awarded in its supply chain during the Contract Period;

2.1.4 provide reports on the information at Paragraph 2.1.3 to the Relevant Authority in the format and frequency as reasonably specified by the Relevant Authority; and

2.1.5 promote Contracts Finder to its suppliers and encourage those organisations to register on Contracts Finder.

2.2 Each advert referred to at Paragraph 2.1.1 of this Schedule 12 shall provide a full and detailed description of the Sub-Contract opportunity with each of the mandatory fields being completed on Contracts Finder by the *Supplier Alliance Member*.

2.3 The obligation on the *Supplier Alliance Member* set out at Paragraph 2.1 shall only apply in respect of Sub-Contract opportunities arising after the Effective Date.

2.4 Notwithstanding Paragraph 2.1, the Client may by giving its prior Approval, agree that a Sub-Contract opportunity is not required to be advertised by the *Supplier Alliance Member* on Contracts Finder.

3. **Visibility of Supply Chain Spend**

3.1 In addition to any other management information requirements set out in the Contract, the *Supplier Alliance Member* agrees and acknowledges that it shall, at no charge, provide timely, full, accurate and complete SME management information reports (the “SME Management Information Reports”) to the Client which incorporates the data described in the Supply Chain Information Report Template which is:

(a) the total contract revenue received directly on the Contract;

(b) the total value of sub-contracted revenues under the Contract (including revenues for non-SMEs/non-VCSEs); and

(c) the total value of sub-contracted revenues to SMEs and VCSEs.

3.2 The SME Management Information Reports shall be provided by the *Supplier Alliance Member* in the correct format as required by the Supply Chain Information Report Template and any guidance issued by the Client from time to time. The *Supplier Alliance Member* agrees that it shall use the Supply Chain Information Report Template to provide the information detailed at Paragraph 3.1(a) –(c) and acknowledges that the template may be changed from time to time (including the data required and/or format) by the Client issuing a replacement version. The Client agrees to give at least thirty (30) days’ notice in writing of any such change and shall specify the date from which it must be used.

3.3 The *Supplier Alliance Member* further agrees and acknowledges that it may not make any amendment to the Supply Chain Information Report Template without the prior Approval of the Client.

Annex 1 Supply Chain Information Report template



SCHEDULE 13 (SECURITY)

Works and Associated Services – Security Requirements

[1.1](#) This Schedule describes the requirements that the Supplier Alliance Member shall fulfil in their entirety as part of the delivery of the works and services.

[1.2](#) The Supplier Alliance Member shall ensure that the capacity, availability and security of the works and services is assured throughout the duration of the Framework period and any Project Contract.

[1.3](#) The Supplier Alliance Member shall comply with the following requirements to ensure that the processes and procedures set out below meet the system requirements throughout the Framework period and while any Project Contracts remain in force as follows:

[1.3.1](#) Service and Security Principle Requirements (paragraph 1.4);

[1.3.2](#) Security Documentation Requirements (paragraph 1.5);

[1.3.3](#) Service and Security Management Governance Requirements (paragraph 1.7 to 1.12).

[1.4](#) Service and Security Principle Requirements

[1.4.1](#) The Service and Security Principle Requirements Matrix at 1.4.4 below defines the main service and security characteristics required in the delivery of the works and services under the Framework.

[1.4.2](#) The Alliance Member shall provide the Client with the assurance that the system and security risks are being managed appropriately, and shall provide evidence, upon request, of compliance with the Service and Security Principles requirements.

[1.4.3](#) Additional Service and Security requirements may be added to the matrix, as required by the Client, in line with government security policy.

[1.4.4](#) Service and Security Principle Requirements Matrix

Serial	Service and Security Principle	Service and Security Requirements
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1.	Security-minded approach	<p>Where digital engineering (including, for example, Building Information Modelling (BIM), computer-based technologies including off-site, factory-based fabrication and on-site automation, and sophisticated cyber-physical systems) is being used to deliver a part or the whole of the work or will be used to deliver future services, the Supplier Alliance Member shall follow the Clients requirements in relation to the security-minded approach to be adopted.</p> <p>The Supplier Alliance Member shall ensure that where the Client requests the Supplier Alliance Member to produce or assist in the development</p>
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		<p>of its security-minded approach, this is undertaken by a suitably qualified and experienced person(s) for example a registered member(s) of one of the following accreditation bodies:</p> <ul style="list-style-type: none"> • Register of Security Engineers (RSES) which encompasses Generalist Security Advisors (GSA) and Specialist Security Advisors (SSA). (www.rses.org.uk). • Register of Chartered Security Professionals (www.charteredsecurityprofessional.org). • Association of Security Consultants (ASC) (www.securityconsultants.org.uk). • <p>Whether or not the person is a member of one of the above accreditation bodies, they shall be able to demonstrate that they have sufficient knowledge and experience in the relevant field to undertake the work required.</p>
2.	Asset Protection and Resilience	<p>Prior to April 2014 a security process called accreditation was mandated by the HMG Security Policy Framework (SPF) for all Government departments processing classified information. The process of accreditation provided for the assessment of a system against its security requirement using HMG IA Standards 1&2 and the Risk Management Accreditation Document set (RMADS). Approval was required from an accreditor as a pre-requisite for operation. This process was removed as a mandatory requirement for systems operating at Official Level from the April 2014 version of the SPF.</p> <p>However, there is still a requirement to demonstrate the sustainability of systems to process HMG owned data. This is done to provide confidence that the technology and information is secure enough to meet user's business needs.</p> <p>To provide this assurance the Supplier Alliance Member shall provide evidence to the Client, as requested. Additional Client approval is required for any proposed hosting off-shore. Some functions may be off-shored, as long as independently assured evidence can be provided that no access to user information can be obtained from off-shore locations.</p>

3.	Service Transition and Continuity	The Supplier Alliance Member shall provide to the Client, on request, a technology roadmap of their current system(s), including any systems on which they will share information with other
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		members of the supply chain, and how it/they will be supported throughout the Framework period and while any Project Contracts remain in force, whichever is the later.
4.	IT Service and System Management Process	The Supplier Alliance Member shall have documented best practice procedures and processes, as noted in paragraph 1.8 System Access Management below
5.	Security Accreditation Documentation	<ul style="list-style-type: none"> • Cyber Essentials certification is a mandatory requirement of this Framework. • Should the Client or an Additional Client require a change in the Government Security Classification, the Supplier Alliance Member shall provide a plan which documents any changes required, any associated risks, and their mitigation. The Supplier Alliance Member shall provide any further documentation required by the Client and/or an Additional Client for the change in Impact Level.
6.	Sub-Contractors Security	<p>The Supplier Alliance Member shall ensure that its Sub-Contractors satisfactorily support all of the security principles that the works and services must deliver. The Supplier Alliance Member shall specify:</p> <ul style="list-style-type: none"> • The specific data that will be shared with Sub-Contractors and/or third parties • Who (names), roles (e.g. system administrator) and level of security vetting in place for Sub-Contractors and/or third parties • Documented minimum relevant security requirements, including to deliver against any security-minded approach in place • Risk to the Supplier Alliance Member and/or works or services from Sub-Contractors is regularly assessed, with appropriate controls in place • On termination, all Sub-Contractor access rights to systems or information are removed <p>• The Supplier Alliance Member is also referred to paragraph 1.12 Information Exchange Policies below</p>
7.	Operational Security	<p>The Supplier Alliance Member shall have processes and procedures in place to ensure the operational security of the work and services including, but not limited to:</p> <ul style="list-style-type: none"> • Configuration and change management • Vulnerability management • Protective monitoring • Incident management

8.	Capacity	The Supplier Alliance Member shall provide evidence and results of capacity testing and
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		processes, including plans for expansion as Project Contracts are awarded, handling peaks and troughs and concurrent user capacity.
9	Personal Data Security	<p>The Supplier Alliance Member shall provide evidence of robust handling processes throughout the lifecycle of all information held on the system, which conforms to the definition of personal data defined within the General Data Protection Regulation 2018.</p> <p>The robust handling procedures will need to include the provision of a Privacy Impact Assessment that will specify the procedural measures implemented to ensure:</p> <ul style="list-style-type: none"> • There are clearly defined roles associated with any access to customer data. • Where a role is identified as having access to customer data there shall be defined responsibilities, which detail any actions which can be performed in support of maintaining works and services delivery. • There is a defined process which authorises Supplier Alliance Member staff to be able to access customer data for the purposes of delivering the works and services. • Any individual being given access to customer data is aware of the HMG requirements for data protection. • The Supplier Alliance Member nominates an individual, as noted in paragraph 1.7.1, within its organisation who is independent from the delivery team for the works and services and who is responsible for ensuring the enforcement of the measures defined above.

1.5 Security Documentation Requirements

- The Supplier Alliance Member shall produce and maintain the following Data Security documentation in support of the Additional Clients security risk management of the works and services.
- Data Security Context – This shall enable the Supplier Alliance Member to complete and maintain a record throughout the lifetime of the Framework, to document the technical Implementation context against which the Supplier Alliance Member shall state compliance with the Additional Clients data security principles. The document shall provide a breakdown of the service implementation which includes:

- a description of each different type of user;
- a description of the Information Exchange with each external entity from both a service implementation and a management perspective; and
- a breakdown of the key technical aspects of the works and services implementation to a level that shall enable the Additional Client to assure comprehensive and consistent application coverage of the principles across the solution.
- Data Security Compliance Statement – This shall enable the Supplier Alliance Member to complete and maintain a record throughout the Framework Period to describe the security aspects of their service delivery and to provide evidence in support of assurance of their security controls.
- Data Security Risk Register – This shall enable the Supplier Alliance Member to complete and maintain a register throughout the Framework Period. For each risk the Supplier Alliance Member shall provide the following information:
 - an assessment of the severity of the risk;
 - a description of the remediation action; and
 - a target date for remediation.
- Information Sharing Agreements – This shall enable the Supplier Alliance Member, where applicable, to share sensitive information with appropriate third parties with whom no formal contract exists.

1.6 Security Audit

- 1.6.1 The Client reserves the right to audit any evidence produced in support of claimed compliance with any service and security requirement.

1.7 Service and Security Management

- 1.7.1** The Supplier Alliance Member shall provide a suitably qualified nominated individual (the “**Supplier Security Assurance Manager**”), who is independent from the delivery team for the work and services. The Supplier Security Assurance Manager shall have overall responsibility for assuring the security of the works and services delivered under this Framework.

- 1.7.2** The Supplier Alliance Member shall also provide a suitably qualified deputy to act in the absence of the Supplier Security Assurance Manager.

1.8 System Access Management

- 1.8.1** The Supplier Alliance Member shall provide on-going account management for their systems which shall include:
- (a)** Implementation procedures in line with the individual Additional Clients access security control based on the individuals demonstrated need to view, add, change or delete data.

- [\(b\)](#) User account profiles which include limiting normal users' execution permissions and enforcing the principle of 'least privilege'.
- [\(c\)](#) Procedures to ensure timely action relating to requesting, establishing, issuing, suspending and closing of user accounts.
- [\(d\)](#) A control process to review and confirm access rights periodically.
- [\(e\)](#) IT security administration to ensure that security activity is logged and any indication of imminent security violation is reported immediately to all who may be concerned, internally and externally, and is acted upon in a timely manner.
- [\(f\)](#) Control over the IT process of ensuring systems security that satisfies the business requirement to safeguard information, including when in transit, against unauthorised use, disclosure or modification, damage or loss and that is enabled by logical access controls which ensure that access to systems, data and programmes is restricted to authorised users and takes into consideration:

 - [\(i\)](#) Confidentiality and privacy requirements
 - [\(ii\)](#) Authorisation, authentication and access control
 - [\(iii\)](#) User identification and authorisation profiles
 - [\(iv\)](#) 'Need-to-have' and 'need-to-know' controls
 - [\(v\)](#) Cryptographic key management
 - [\(vi\)](#) Incident handling, reporting and follow-up
 - [\(vii\)](#) Virus prevention and detection
 - [\(viii\)](#) Firewalls
 - [\(ix\)](#) Centralised security administration
 - [\(x\)](#) User training
 - [\(xi\)](#) Tools for monitoring compliance, intrusion testing and reporting

[1.9](#) Requirements for security breach notification

- 1.9.1 The Additional Client shall specify its requirements in the event of a security breach at the Project Contract stage.

[1.10](#) Encryption

- 1.10.1 The Additional Client shall specify its encryption requirements at the Project Contract stage.

[1.11](#) Software Support

- [1.11.1](#) If the support for any software used by the Supplier Alliance Member in delivering the works and services is due to expire, the Supplier Alliance

Member shall ensure that it will move to a supported version of such software or to its replacement at least 6 months prior to the expiry of such support, unless otherwise specified by the Additional Client.

[1.11.2](#) The Supplier Alliance Member shall continue to support current software versions whilst updating to future software versions, through to the end of the Framework Period or the expiry of the Project Contracts established, whichever is later.

[1.12](#) Information Exchange Policies

- Agreements on security conditions of the information exchange policies shall take into account the following:
 - Management responsibilities for controlling and notifying transmission, despatch and receipt;
 - Procedures for notifying sender, transmission, despatch and receipt;
 - Minimum technical standards for transmission;
 - Responsibilities and liabilities in the event of loss of data;
 - Use of an agreed labelling system for sensitive or critical information, ensuring that the meaning of the labels is immediately understood and that the information is appropriately protected;
 - Information and software ownership and responsibilities for data protection, software copyright compliance and similar considerations;
 - Technical standards for recording and reading information and software;
 - Any special controls that may be required to protect sensitive items.

Security - Guidance for UK Suppliers/Contractors on the Protection of UK Assets marked as OFFICIAL-SENSITIVE

OFFICIAL-SENSITIVE

There is **no** requirement to explicitly mark routine OFFICIAL information. Baseline security measures should be enforced through local business processes.

A limited subset of OFFICIAL information could have more damaging consequences (for individuals, an organisation or government generally) if it were lost, stolen or published in the media. This subset of information should still be managed within the "OFFICIAL" classification tier, but may attract additional measures (generally procedural or personnel) to reinforce the "need to know". In such cases where there is a clear and justifiable requirement to reinforce the "need to know", assets should be conspicuously marked: 'OFFICIAL–SENSITIVE'.

Security Grading

The *Supplier Alliance Member* will mark all OFFICIAL-SENSITIVE documents which it originates or copies during the Contract clearly with the OFFICIAL-SENSITIVE classification.

Aspect	Classification
Customer data	Official
Documentation that details contractual matters relevant to the service	Official Sensitive
General system description documentation with no specific details of the aspects listed below.	Not protectively marked
All other Documentation	Official Sensitive
Details of Software used in the development or operational environment	Official Sensitive
Firewalls, Switches, Routers	Official Sensitive
System Administration services	Official Sensitive
Hosting Platforms	Official Sensitive
Auditing	Official Sensitive

It is possible that other sensitive matters will be identified during the development and support of this service. When such matters are identified, the supplier will be instructed on the protective marking assigned to that particular subject and any restrictions relevant to its dissemination and use.

Official Secrets Acts

- Ø The *Supplier Alliance Member*'s attention is drawn to the provisions of the Official Secrets Acts 1911 to 1989 in general, and to the provisions of Section 2 of the Official Secrets Act 1911 (as amended by the Act of 1989) in particular. The *Supplier Alliance Member* will take all reasonable steps to make sure that all individuals employed on any work in connection with the Contract (including Sub-Contractors) have notice that these statutory provisions, or any others provided by the Authority, apply to them and will continue so to apply after the completion or earlier termination of the Contract.

Protection of OFFICIAL-SENSITIVE Information

- Ø The *Supplier Alliance Member* will protect OFFICIAL-SENSITIVE information provided to it or generated by it in accordance with the requirements detailed in this Security Condition and any other conditions that may be specified by the Authority. The *Supplier Alliance Member* will take all reasonable steps to prevent the loss or compromise of the information or from deliberate or opportunist attack.
- Ø OFFICIAL-SENSITIVE information will be protected in a manner to avoid unauthorised access. The *Supplier Alliance Member* will take all reasonable steps to prevent the loss or compromise of the information or from deliberate or opportunist attack.
- Ø All OFFICIAL-SENSITIVE material including documents, media and other material will be physically secured to prevent unauthorised access. When not in use OFFICIAL-SENSITIVE documents/material will be stored under lock and key. As a minimum, when not in use, OFFICIAL SENSITIVE material will be stored in a lockable room, cabinets, drawers or safe and the keys/combinations are themselves to be subject to a level of physical security and control.
- Ø Disclosure of OFFICIAL-SENSITIVE information will be strictly in accordance with the "need to know" principle. Except with the written consent of the Authority, the *Supplier Alliance Member* will not disclose any of the classified aspects of the Contract detailed in the Security Aspects Letter other than to a person directly employed by the *Supplier Alliance Member* or Sub-Contractor, or Service Provider.

Any samples, patterns, specifications, plans, drawings or any other documents issued by or on behalf of the Authority for the purposes of the Contract remain the property of the Authority and will be returned on completion of the Contract or, if directed by the Authority, destroyed in accordance with paragraph 26.

Access

Access to OFFICIAL-SENSITIVE information will be confined to those individuals who have a "need-to-know" and whose access is essential for the purpose of his or her duties.

10. *Alliance Member* will ensure that all individuals having access to OFFICIAL-SENSITIVE information have undergone basic recruitment checks. Suppliers will apply the requirements of HMG Baseline Personnel Security Standard (BPSS) for all individuals having access to OFFICIAL-SENSITIVE information. Further details and the full requirements of the BPSS can be found at the GOV.UK website at: <https://www.gov.uk/government/publications/security-policy-framework>.

Hard Copy Distribution of Information

OFFICIAL-SENSITIVE documents will be distributed, both within and outside company premises in such a way as to make sure that no unauthorised person has access. It may be sent by ordinary post or Commercial Couriers in a single envelope. The words OFFICIAL-SENSITIVE will **not** appear on the envelope. The envelope should bear a stamp or details that clearly indicate the full address of the office from which it was sent.

Advice on the distribution of OFFICIAL-SENSITIVE documents abroad or any other general advice including the distribution of OFFICIAL-SENSITIVE hardware will be sought from the Authority.

Electronic Communication, Telephony and Facsimile Services

OFFICIAL-SENSITIVE information will be emailed unencrypted over the internet **only** where there is a strong business need to do so and only with the **prior** approval of the Authority. It will only be sent when it is known that the recipient has been made aware of and can comply with the requirements of these Security Conditions and subject to any explicit limitations that the authority will require.

Such limitations, including any regarding publication, further circulation or other handling instructions will be clearly identified in the email sent with the material.

OFFICIAL-SENSITIVE information may be discussed on fixed and mobile types of telephone within the UK, but not with (or within earshot of) unauthorised persons.

OFFICIAL-SENSITIVE information may be faxed to UK recipients.

Use of Information Systems

The detailed functions that must be provided by an IT system to satisfy the minimum requirements described below cannot be described here; it is for the implementers to identify possible means of attack and ensure proportionate security mitigations are applied to prevent a successful attack. However the Accreditation process and annual Check Assurance (outlined above) will be used to test the adequacy of any security controls in place.

There may also be a requirement for the service to be accessed via the Public Services Network (PSN). The PSN is the UK government's high-performance network, which helps public sector organisations work together, reduce duplication and share resources. It unified the provision of network infrastructure across the United Kingdom public sector into an interconnected "network of networks" to increase efficiency and reduce overall public expenditure. Advice regarding this requirement (and how to gain PSN certification) should be sought from the Authority.

As a general rule, any communication path between an unauthorised user and the data can be used to carry out an attack on the system or be used to compromise or ex-filtrate data.

The following describes the minimum security requirements for processing and accessing OFFICIAL-SENSITIVE information on IT systems.

- 2 Access. Physical access to all hardware elements of the IT system is to be strictly controlled. The principle of "least privilege" will be applied to System Administrators. Users of the IT System (Administrators should not conduct "standard" User functions using their privileged accounts.
- 3 Identification and Authentication (ID&A). All systems will have the following functionality:
 - Up-to-date lists of authorised users.
 - Positive identification of all users at the start of each processing session.

c.Passwords. Passwords are part of most ID&A, Security Measures. Passwords will be "strong" using an appropriate method to achieve this, for example including numeric and "special" characters (if permitted by the system) as well as alphabetic characters.

d.Internal Access Control. All systems will have internal Access Controls to prevent unauthorised users from accessing or modifying the data.

e.Data Transmission. Unless the Authority authorises otherwise, OFFICIAL-SENSITIVE information will be transmitted or accessed electronically (e.g. point to point computer links) via a public network like the Internet, using commercial encryption devices accepted by the Authority. Advice on encryption requirements for the transmission of OFFICIAL-SENSITIVE information will be sought from the Authority.

f. Security Accounting and Audit. Security relevant events fall into two categories, namely legitimate events and violations.

- The following events will always be recorded:
 - All log on attempts whether successful or failed.
 - Log off (including time out where applicable).
 - The creation, deletion or alteration of access rights and privileges.
 - The creation, deletion or alteration of passwords.
- For each of the events listed above, the following information is to be recorded:
 - Type of event,
 - User ID,
 - Date & Time
 - Device ID

The accounting records will have a facility to provide the System Manager with a hard copy of all or selected activity. There will also be a facility for the records to be printed in an easily readable form. All security records are to be inaccessible to users without a need to know.

If the operating system is unable to provide this then the equipment will be protected by physical means when not in use i.e. locked away or the hard drive removed and locked away.

g. Integrity & Availability. The following supporting measures will be implemented:

- Provide general protection against normally foreseeable accidents/mishaps and known recurrent problems (e.g. viruses and power supply variations)
- Defined Business Continuity/Contingency Plan
- Data backup with local storage
- Anti-Virus Software (Implementation, with updates, of an acceptable industry standard Anti-virus software).
- Operating systems, applications and firmware should be supported
- Patching of Operating Systems and Applications used will be in line with the manufacturers recommended schedule. If patches cannot be applied an understanding of the resulting risk will be documented.

h. Logon Banners Wherever possible, a "Logon Banner" will be provided to summarise the requirements for access to a system which may be needed to institute legal action in case of any breach occurring.

- A suggested format for the text depending on national legal requirements could be:
 - (a) "Unauthorised access to this computer system may constitute a criminal offence"
- Unattended Terminals. Users are to be automatically logged off the system if their terminals have been inactive for some predetermined period of time, or systems must

activate a password protected screen saver after 15 minutes of inactivity, to prevent an attacker making use of an unattended terminal.

- Internet Connections. Computer systems will not be connected direct to the Internet or “untrusted” systems unless protected by a firewall (a software based personal firewall is the minimum) which is acceptable to the Authority’s Principal Security Advisor.
- Disposal. Before IT storage media (e.g. disks) are disposed of, an erasure product will be used to overwrite the data. This is a more thorough process than deletion of files, which does not remove the data.

Laptops

Laptops holding any supplied or Alliance Member generated OFFICIAL-SENSITIVE information are to be encrypted using a Foundation Grade product or equivalent, for example FIPS 140-2 approved full disk encryption. <https://www.cesg.gov.uk/articles/foundation-grade-explained>

Unencrypted laptops not on a secure site (Secure sites are defined as either Government premises or a secured office on the Supplier premises) are to be recalled and only used or stored in an appropriately secure location until further notice or until approved full encryption is installed. Where the encryption policy cannot be met, a Risk Balance Case that fully explains why the policy cannot be complied with and the mitigation plan, which should explain any limitations on the use of the system, is to be submitted to the Authority for consideration. Unencrypted laptops and drives containing personal data are not to be taken outside of secure sites. For the avoidance of doubt the term “drives” includes all removable, recordable media (e.g. memory sticks, compact flash, recordable optical media (e.g. CDs and DVDs), floppy discs and external hard drives.

Any token, touch memory device or password(s) associated with the encryption package is to be kept separate from the machine whenever the machine is not in use, left unattended or in transit.

Portable Communication and Information systems (CIS) devices are not to be left unattended in any public location. They are not to be left unattended in any motor vehicles either in view or in the boot or luggage compartment at any time. When the vehicle is being driven the CIS is to be secured out of sight in the glove compartment, boot or luggage compartment as appropriate to deter opportunist theft.

Loss and Incident Reporting

The Alliance Member will immediately report any loss or otherwise compromise of OFFICIAL-SENSITIVE information to the Authority. Any security incident involving OFFICIAL-SENSITIVE information will be immediately reported to the Authority.

Sub-Contracts

The Supplier Alliance Member may sub-contract any elements of this Contract to Sub-Contractors within the United Kingdom notifying the Authority. When sub-contracting to a Sub-Contractor located in the UK the Supplier will ensure that these Security Conditions will be incorporated within the sub-contract document. The **prior** approval of the Authority will be obtained should the Supplier wish to sub- contract any OFFICIAL-SENSITIVE elements of the Contract to a Sub-Contractor located **in another country**. Alliance Members will be asked to complete the CCS Off-Shore Approval Request Form.

If the Sub-Contract is approved, the Authority will provide the Alliance Member with the security conditions that will be incorporated within the sub-contract document.

Publicity Material

Alliance Members wishing to release any publicity material or display hardware that arises from this contract will seek the prior approval of the Authority. Publicity material includes open publication in the Supplier Alliance Member's publicity literature or website or through the media; displays at exhibitions in any country; lectures or symposia; scientific or technical papers, or any other occasion where members of the general public may have access to the information even if organised or sponsored by the Authority or any other government department.

Destruction

As soon as no longer required, OFFICIAL-SENSITIVE information/material will be destroyed in such a way as to make reconstitution unlikely, for example, by burning, shredding or tearing into small pieces. Advice will be sought from the Authority when information/material cannot be destroyed or, unless already authorised by the Authority, when its retention is considered by the Alliance Member to be necessary or desirable. Unwanted OFFICIAL-SENSITIVE information/material which cannot be destroyed in such a way will be returned to the Authority.

Interpretation/Guidance

Advice regarding the interpretation of the above requirements should be sought from the Authority.

Where considered necessary by the Authority, the Alliance Member will provide evidence of compliance with this Security Condition and/or permit the inspection of the Suppliers processes and facilities by representatives of the Authority to ensure compliance with these requirements.

SCHEDULE 14
FORM OF GUARANTEE
(See Special Term 22)

[Guidance Note: this is a draft form of guarantee which can be used to procure either a Framework Guarantee or a Project Contract Guarantee, and so it will need to be amended to reflect the Beneficiary's requirements.]

[INSERT THE NAME OF THE GUARANTOR]

- AND -

[INSERT THE NAME OF THE BENEFICIARY]

DEED OF GUARANTEE

DEED OF GUARANTEE

THIS DEED OF GUARANTEE is made the day of 20[]

BETWEEN:

(1) [Insert the name of the Guarantor] [a company incorporated in England and Wales] with number [insert company no.] whose registered office is at [insert details of the Guarantor's registered office here] [OR] [a company incorporated under the laws of [insert country], registered in [insert country] with number [insert number] at [insert place of registration], whose principal office is at [insert office details] ("**Guarantor**") in favour of

(2) [The Authority] [Insert name of Contracting Authority who is Party to the Guaranteed Agreement] whose principal office is at [] ("**Beneficiary**")

[Guidance note: Where this deed of guarantee is used to procure a Framework Guarantee in favour of the Authority, this paragraph numbered (2) above will set out the details of the Authority. Where it is used to procure a Call Off Guarantee in favour of a Contracting Authority this paragraph numbered (2) above will set out the details of the relevant Contracting Authority]

WHEREAS:

- (A) The Guarantor has agreed, in consideration of the Beneficiary entering into the Guaranteed Agreement with the Supplier, to guarantee all of the Supplier's obligations under the Guaranteed Agreement.
- (B) It is the intention of the Parties that this document be executed and take effect as a deed.

Now in consideration of the Beneficiary entering into the Guaranteed Agreement, the Guarantor hereby agrees with the Beneficiary as follows:

1. DEFINITIONS AND INTERPRETATION

In this Deed of Guarantee:

1.1 unless defined elsewhere in this Deed of Guarantee or the context requires otherwise, defined terms shall have the same meaning as they have for the purposes of the Guaranteed Agreement;

1.2 the words and phrases below shall have the following meanings:

[Guidance Note: Insert and/or settle Definitions, including from the following list, as appropriate to either Framework Guarantee or Call Off Guarantee]

Authority means the *Client* or an *Additional Client* as defined in the *Framework Alliance Contract*;

Beneficiary means [the Authority] [insert name of the *Additional Client* with whom the Supplier enters into a *Project Contract*] and "Beneficiaries" shall be construed accordingly;

Project Contract means a *Project Contract* as defined in the *Framework Contract*;

Framework Alliance Contract means the FAC-1 *Framework Alliance Contract* dated on or about the date hereof made between the *Client* and the *Supplier Alliance Member* and other parties;

Guaranteed Agreement means [the *Framework Alliance Contract*] [the *Project Contract* made between the Beneficiary and the *Supplier Alliance Member* on [insert date];

Guaranteed Obligations means all obligations and liabilities of the *Supplier Alliance Member* to the Beneficiary under the Guaranteed Agreement together with all obligations owed by the *Supplier Alliance Member* to the Beneficiary that are supplemental to, incurred under, ancillary to or calculated by reference to the Guaranteed Agreement;

Project has the meaning given to it in the *Framework Alliance Contract*.

- 1.3 references to this Deed of Guarantee and any provisions of this Deed of Guarantee or to any other document or agreement (including to the Guaranteed Agreement) are to be construed as references to this Deed of Guarantee, those provisions or that document or agreement in force for the time being and as amended, varied, restated, supplemented, substituted or novated from time to time;
- 1.4 unless the context otherwise requires, words importing the singular are to include the plural and vice versa;
- 1.5 references to a person are to be construed to include that person's assignees or transferees or successors in title, whether direct or indirect;
- 1.6 the words "other" and "otherwise" are not to be construed as confining the meaning of any following words to the class of thing previously stated where a wider construction is possible;
- 1.7 unless the context otherwise requires, reference to a gender includes the other gender and the neuter;
- 1.8 unless the context otherwise requires, references to an Act of Parliament, statutory provision or statutory instrument include a reference to that Act of Parliament, statutory

- provision or statutory instrument as amended, extended or re-enacted from time to time and to any regulations made under it;
- 1.9 unless the context otherwise requires, any phrase introduced by the words “including”, “includes”, “in particular”, “for example” or similar, shall be construed as illustrative and without limitation to the generality of the related general words;
- 1.10 references to Clauses and Schedules are, unless otherwise provided, references to Clauses of and Schedules to this Deed of Guarantee; and
- 1.11 references to liability are to include any liability whether actual, contingent, present or future.

2. GUARANTEE AND INDEMNITY

- 2.1 The Guarantor irrevocably and unconditionally guarantees and undertakes to the Beneficiary to procure that the *Supplier Alliance Member* duly and punctually performs all of the Guaranteed Obligations now or hereafter due, owing or incurred by the *Supplier Alliance Member* to the Beneficiary.
- 2.2 The Guarantor irrevocably and unconditionally undertakes upon demand to pay to the Beneficiary all monies and liabilities which are now or at any time hereafter shall have become payable by the *Supplier Alliance Member* to the Beneficiary under or in connection with the Guaranteed Agreement or in respect of the Guaranteed Obligations as if it were a primary obligor.
- 2.3 If at any time the *Supplier Alliance Member* shall fail to perform any of the Guaranteed Obligations, the Guarantor, as primary obligor, irrevocably and unconditionally undertakes to the Beneficiary that, upon first demand by the Beneficiary it shall, at the cost and expense of the Guarantor:
- 2.3.1 fully, punctually and specifically perform such Guaranteed Obligations as if it were itself a direct and primary obligor to the Beneficiary in respect of the Guaranteed Obligations and liable as if the Guaranteed Agreement had been entered into directly by the Guarantor and the Beneficiary; and
- 2.3.2 as a separate and independent obligation and liability, indemnify and keep the Beneficiary indemnified against all losses, damages, costs and expenses (including VAT thereon, and including, without limitation, all court costs and all legal fees on a solicitor and own client basis, together with any disbursements,) of whatever nature which may result or which such Beneficiary may suffer, incur or sustain arising in any way whatsoever out of a failure by the Supplier to perform the Guaranteed Obligations save that, subject to the other provisions of this Deed of Guarantee, this shall not be construed as imposing greater obligations or liabilities on the Guarantor than are purported to be imposed on the Supplier under the Guaranteed Agreement.
- 2.4 As a separate and independent obligation and liability from its obligations and liabilities under Clauses 2.1 to 2.3 above, the Guarantor as a primary obligor irrevocably and unconditionally undertakes to indemnify and keep the Beneficiary indemnified on demand against all losses, damages, costs and expenses (including VAT thereon, and including, without limitation, all legal costs and expenses), of whatever nature, whether arising under statute, contract or at common law, which such Beneficiary may suffer or incur if any obligation guaranteed by the Guarantor is or becomes unenforceable, invalid or illegal as if the obligation guaranteed had not become unenforceable, invalid or illegal provided that the Guarantor's liability shall be no greater than the Supplier's liability would have been if the obligation guaranteed had not become unenforceable, invalid or illegal.

3. OBLIGATION TO ENTER INTO A NEW CONTRACT

- 3.1 If the Guaranteed Agreement is terminated for any reason, whether by the Beneficiary or the Supplier, or if the Guaranteed Agreement is disclaimed by a liquidator of the Supplier or the obligations of the *Supplier Alliance Member* are declared to be void or voidable for any reason, then the Guarantor will, at the request of the Beneficiary enter into a contract with the Beneficiary in terms mutatis mutandis the same as the Guaranteed Agreement and the obligations of the Guarantor under such substitute agreement shall be the same as if the Guarantor had been original obligor under the Guaranteed Agreement or under an agreement entered into on the same terms and at the same time as the Guaranteed Agreement with the Beneficiary.

4. DEMANDS AND NOTICES

- 4.1 Any demand or notice served by the Beneficiary on the Guarantor under this Deed of Guarantee shall be in writing, addressed to:
[Address of the Guarantor in England and Wales]

[Facsimile Number]
For the Attention of [insert details]

or such other address in England and Wales or facsimile number as the Guarantor has from time to time notified to the Beneficiary in writing in accordance with the terms of this Deed of Guarantee as being an address or facsimile number for the receipt of such demands or notices.

- 4.2 Any notice or demand served on the Guarantor or the Beneficiary under this Deed of Guarantee shall be deemed to have been served:
if delivered by hand, at the time of delivery; or
if posted, at 10.00 a.m. on the second Working Day after it was put into the post; or
if sent by facsimile, at the time of despatch, if despatched before 5.00 p.m. on any Working Day, and in any other case at 10.00 a.m. on the next Working Day.
- 4.3 In proving service of a notice or demand on the Guarantor or the Beneficiary it shall be sufficient to prove that delivery was made, or that the envelope containing the notice or demand was properly addressed and posted as a prepaid first class recorded delivery letter, or that the facsimile message was properly addressed and despatched, as the case may be.
- 4.4 Any notice purported to be served on the Beneficiary under this Deed of Guarantee shall only be valid when received in writing by the Beneficiary.

5. BENEFICIARY'S PROTECTIONS

- 5.1 The Guarantor shall not be discharged or released from this Deed of Guarantee by any arrangement made between the Supplier and the Beneficiary (whether or not such arrangement is made with or without the assent of the Guarantor) or by any amendment to or termination of the Guaranteed Agreement or by any forbearance or indulgence whether as to payment, time, performance or otherwise granted by the Beneficiary in relation thereto (whether or not such amendment, termination, forbearance or indulgence is made with or without the assent of the Guarantor) or by the Beneficiary doing (or omitting to do) any other matter or thing which but for this provision might exonerate the Guarantor.
- 5.2 This Deed of Guarantee shall be a continuing security for the Guaranteed Obligations and accordingly:
5.3.1 it shall not be discharged, reduced or otherwise affected by any partial performance (except to the extent of such partial performance) by the Supplier of the Guaranteed Obligations or by any omission or delay on the part of the Beneficiary in exercising its

rights under this Deed of Guarantee;

5.3.2 it shall not be affected by any dissolution, amalgamation, reconstruction, reorganisation, change in status, function, control or ownership, insolvency, liquidation, administration, appointment of a receiver, voluntary arrangement, any legal limitation or other incapacity, of the Supplier, the Beneficiary, the Guarantor or any other person;

5.3.3 if, for any reason, any of the Guaranteed Obligations shall prove to have been or shall become void or unenforceable against the Supplier for any reason whatsoever, the Guarantor shall nevertheless be liable in respect of that purported obligation or liability as if the same were fully valid and enforceable and the Guarantor were principal debtor in respect thereof; and

5.3.4 the rights of the Beneficiary against the Guarantor under this Deed of Guarantee are in addition to, shall not be affected by and shall not prejudice, any other

- security, guarantee, indemnity or other rights or remedies available to the Beneficiary.
- 5.4 The Beneficiary shall be entitled to exercise its rights and to make demands on the Guarantor under this Deed of Guarantee as often as it wishes and the making of a demand (whether effective, partial or defective) in respect of the breach or non-performance by the Supplier of any Guaranteed Obligation shall not preclude the Beneficiary from making a further demand in respect of the same or some other default in respect of the same Guaranteed Obligation.
- 5.5 The Beneficiary shall not be obliged before taking steps to enforce this Deed of Guarantee against the Guarantor to obtain judgment against the Supplier or the Guarantor or any third party in any court, or to make or file any claim in a bankruptcy or liquidation of the Supplier or any third party, or to take any action whatsoever against the Supplier or the Guarantor or any third party or to resort to any other security or guarantee or other means of payment. No action (or inaction) by the Beneficiary in respect of any such security, guarantee or other means of payment shall prejudice or affect the liability of the Guarantor hereunder.
- 5.6 The Beneficiary's rights under this Deed of Guarantee are cumulative and not exclusive of any rights provided by law and may be exercised from time to time and as often as the Beneficiary deems expedient.
- 5.7 Any waiver by the Beneficiary of any terms of this Deed of Guarantee, or of any Guaranteed Obligations shall only be effective if given in writing and then only for the purpose and upon the terms and conditions, if any, on which it is given.
- 5.8 Any release, discharge or settlement between the Guarantor and the Beneficiary shall be conditional upon no security, disposition or payment to the Beneficiary by the Guarantor or any other person being void, set aside or ordered to be refunded pursuant to any enactment or law relating to liquidation, administration or insolvency or for any other reason whatsoever and if such condition shall not be fulfilled the Beneficiary shall be entitled to enforce this Deed of Guarantee subsequently as if such release, discharge or settlement had not occurred and any such payment had not been made. The Beneficiary shall be entitled to retain this security after as well as before the payment, discharge or satisfaction of all monies, obligations and liabilities that are or may become due owing or incurred to the Beneficiary from the Guarantor for such period as the Beneficiary may determine.

6. GUARANTOR INTENT

- 6.1 Without prejudice to the generality of Clause 5 (Beneficiary's protections), the Guarantor expressly confirms that it intends that this Deed of Guarantee shall extend from time to time to any (however fundamental) variation, increase, extension or addition of or to the Guaranteed Agreement and any associated fees, costs and/or expenses.

7. RIGHTS OF SUBROGATION

- 7.1 The Guarantor shall, at any time when there is any default in the performance of any of the Guaranteed Obligations by the Supplier and/or any default by the Guarantor in the performance of any of its obligations under this Deed of Guarantee, exercise any rights it may have:
 - 7.1.1 of subrogation and indemnity;
 - 7.1.2 to take the benefit of, share in or enforce any security or other guarantee or indemnity for the *Supplier Alliance Member's* obligations; and
 - 7.1.3 to prove in the liquidation or insolvency of the Supplier only in accordance with the Beneficiary's written instructions and shall hold any amount recovered as a

result of the exercise of such rights on trust for the Beneficiary and pay the same to the Beneficiary on first demand.

- 7.2 The Guarantor hereby acknowledges that it has not taken any security from the *Supplier Alliance Member* and agrees not to do so until Beneficiary receives all moneys payable hereunder and will hold any security taken in breach of this Clause on trust for the Beneficiary.

8. DEFERRAL OF RIGHTS

- 8.1 Until all amounts which may be or become payable by the *Supplier Alliance Member* under or in connection with the Guaranteed Agreement have been irrevocably paid in full, the Guarantor agrees that, without the prior written consent of the Beneficiary, it will not:
 - 8.1.1 exercise any rights it may have to be indemnified by the *Supplier Alliance Member*;
 - 8.1.2 claim any contribution from any other guarantor of the *Supplier Alliance Member's* obligations under the Guaranteed Agreement;
 - 8.1.3 take the benefit (in whole or in part and whether by way of subrogation or otherwise) of any rights of the Beneficiary under the Guaranteed Agreement or of any other guarantee or security taken pursuant to, or in connection with, the Guaranteed Agreement;
 - 8.1.4 demand or accept repayment in whole or in part of any indebtedness now or hereafter due from the *Supplier Alliance Member*; or
 - 8.1.5 claim any setoff or counterclaim against the *Supplier Alliance Member*;
- 8.2 If the Guarantor receives any payment or other benefit or exercises any set off or counterclaim or otherwise acts in breach of this Clause 8, anything so received and any benefit derived directly or indirectly by the Guarantor therefrom shall be held on trust for the Beneficiary and applied in or towards discharge of its obligations to the Beneficiary under this Deed of Guarantee.

9. REPRESENTATIONS AND WARRANTIES

- 9.1 The Guarantor hereby represents and warrants to the Beneficiary that:
 - 9.1.1 the Guarantor is duly incorporated and is a validly existing company under the laws of its place of incorporation, has the capacity to sue or be sued in its own name and has power to carry on its business as now being conducted and to own its property and other assets;
 - 9.1.2 the Guarantor has full power and authority to execute, deliver and perform its obligations under this Deed of Guarantee and no limitation on the powers of the Guarantor will be exceeded as a result of the Guarantor entering into this Deed of Guarantee;
 - 9.1.3 the execution and delivery by the Guarantor of this Deed of Guarantee and the performance by the Guarantor of its obligations under this Deed of Guarantee including, without limitation entry into and performance of a contract pursuant to Clause 3) have been duly authorised by all necessary corporate action and do

not contravene or conflict with:

a) the Guarantor's memorandum and articles of association or other equivalent constitutional documents;

b) any existing law, statute, rule or regulation or any judgment, decree or permit to which the Guarantor is subject; or

c) the terms of any agreement or other document to which the Guarantor is a Party or which is binding upon it or any of its assets;

d) all governmental and other authorisations, approvals, licences and consents, required or desirable, to enable it lawfully to enter into, exercise its rights and comply with its obligations under this Deed of Guarantee, and to make this Deed of Guarantee admissible in evidence in its jurisdiction of incorporation, have been obtained or effected and are in full force and effect; and

e) this Deed of Guarantee is the legal valid and binding obligation of the Guarantor and is enforceable against the Guarantor in accordance with its terms.

10. PAYMENTS AND SET-OFF

- 10.1 All sums payable by the Guarantor under this Deed of Guarantee shall be paid without any set-off, lien or counterclaim, deduction or withholding, howsoever arising, except for those required by law, and if any deduction or withholding must be made by law, the Guarantor will pay that additional amount which is necessary to ensure that the Beneficiary receives a net amount equal to the full amount which it would have received if the payment had been made without the deduction or withholding.
- 10.2 The Guarantor shall pay interest on any amount due under this Deed of Guarantee at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment.
- 10.3 The Guarantor will reimburse the Beneficiary for all legal and other costs (including VAT) incurred by the Beneficiary in connection with the enforcement of this Deed of Guarantee.

11. GUARANTOR'S ACKNOWLEDGEMENT

- 11.1 The Guarantor warrants, acknowledges and confirms to the Beneficiary that it has not entered into this Deed of Guarantee in reliance upon, nor has it been induced to enter into this Deed of Guarantee by any representation, warranty or undertaking made by or on behalf of the Beneficiary (whether express or implied and whether pursuant to statute or otherwise) which is not set out in this Deed of Guarantee.

12. ASSIGNMENT

- 12.1 The Beneficiary shall be entitled to assign or transfer the benefit of this Deed of Guarantee at any time to any person without the consent of the Guarantor being required and any such assignment or transfer shall not release the Guarantor from its liability under this Guarantee.
- 12.2 The Guarantor may not assign or transfer any of its rights and/or obligations under this Deed of Guarantee.

13. SEVERANCE

- 13.1 If any provision of this Deed of Guarantee is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if this Deed of

Guarantee had been executed with the invalid, illegal or unenforceable provision eliminated.

14. THIRD PARTY RIGHTS

- 14.1 A person who is not a Party to this Deed of Guarantee shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Deed of Guarantee. This Clause does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

15. GOVERNING LAW

- 15.1 This Deed of Guarantee and any non-contractual obligations arising out of or in connection with it shall be governed by and construed in all respects in accordance with English law.
- 15.2 The Guarantor irrevocably agrees for the benefit of the Beneficiary that the courts of England shall have jurisdiction to hear and determine any suit, action or proceedings and to settle any dispute which may arise out of or in connection with this Deed of Guarantee and for such purposes hereby irrevocably submits to the jurisdiction of such courts.
- 15.3 Nothing contained in this Clause shall limit the rights of the Beneficiary to take proceedings against the Guarantor in any other court of competent jurisdiction, nor shall the taking of any such proceedings in one or more jurisdictions preclude the taking of proceedings in any other jurisdiction, whether concurrently or not (unless precluded by applicable law).
- 15.4 The Guarantor irrevocably waives any objection which it may have now or in the future to the courts of England being nominated for the purpose of this Clause on the ground of venue or otherwise and agrees not to claim that any such court is not a convenient or appropriate forum.
- 15.5 [The Guarantor hereby irrevocably designates, appoints and empowers [the Supplier] [a suitable alternative to be agreed if the Supplier's registered office is not in England or Wales] either at its registered office or on facsimile number [insert fax no.] from time to time to act as its authorised agent to receive notices, demands, service of process and any other legal summons in England and Wales for the purposes of any legal action or proceeding brought or to be brought by the Beneficiary in respect of this Deed of Guarantee. The Guarantor hereby irrevocably consents to the service of notices and demands, service of process or any other legal summons served in such way.]

[Guidance Note: Include the above provision when dealing with the appointment of English process agent by a non-English incorporated Guarantor]

IN WITNESS whereof the Guarantor has caused this instrument to be executed and delivered as a Deed the day and year first before written.

EXECUTED as a DEED by

[Insert name of the Guarantor] acting by [Insert/print names]

Director

Director/Secretary

FRAMEWORK SCHEDULE 15: KEY SUB-CONTRACTORS

1. In accordance with Special Clause 21 (Appointment of Key Sub-Contractors) Key Sub-Contractors listed below.

[Guidance Note: the list of Key Sub-Contractors as approved by CCS should be inserted here]