



DATED 2020

**THE SECRETARY OF STATE FOR JUSTICE
(OF THE MINISTRY OF JUSTICE)**

and

PERFECT CIRCLE JV LTD

**NEC3 PROFESSIONAL SERVICES CONTRACT
(APRIL 2013 EDITION): OPTION G**

FOR THE PROVISION OF

**SURVEYS IN CONNECTION WITH THE NEW PRISONS
FORMING PART OF THE NEW PRISONS PROJECTS**

[REDACTED]



THIS FORM OF AGREEMENT is made the _____ day of _____ 2020

BETWEEN:

- (1) **THE SECRETARY OF STATE FOR JUSTICE** of Ministry of Justice, 102 Petty France, Westminster, London SW1H 9AJ (the "**Employer**", with such term including its successors in title and assigns); and
 - (2) **PERFECT CIRCLE JV LTD** (company number 10219126) whose registered office is situated at Halford House, Charles Street, Leicester, United Kingdom, LE1 1HA (the "**Consultant**"),
- each a "**Party**" and together the "**Parties**".

RECITALS:

- (A) The *Employer* is in the process of developing, establishing and implementing its delivery and design strategy in connection with potentially entering into one or more Project Contracts in relation to the potential (and, as the context permits, actual) design and construction of multiple custodial (and other) facilities across its estate as part of the design, procurement and delivery of its "New Prison Capacity Programme", which includes four new build prisons, house blocks and other expansion activities as more particularly described in the Scope (the "**Project**")
- (B) The *Consultant* is a party to the Framework Agreement, as defined herein.
- (C) For the purposes of the Framework Agreement, the *Employer* is a "Client" (as defined in the Framework Agreement) and, in its capacity as a "Client" may, from time to time and at its sole discretion, enter into one or more "Delivery Contracts" (as such term is defined in the Framework Agreement) with the *Consultant* (or any of the other consultants) for the provision of construction services in connection with the *Employer's* actual or potential construction projects.
- (D) The *Employer* wishes to appoint the *Consultant* to provide the *services*, as instructed under one (1) or more Task Orders, in connection with the Project on the basis as set out in this contract.
- (E) The *Employer* and the *Consultant* acknowledge and agree that this contract is a "Delivery Agreement" for the purposes of the Framework Agreement.

IT IS AGREED:

1. The *Employer* will pay the *Consultant* the amount due under, and carry out its duties in connection with the *services* performed by the *Consultant* under, each Task Order in accordance with this contract.
2. The *Consultant* will Provide the Services and carry out its other obligations in connection with the *services* and the Project, as more particularly described herein, in accordance with this contract.
3. This contract is comprised of the following documents:
 - 3.1 this Form of Agreement;
 - 3.2 the NEC3 Professional Services Contract (April 2013 edition) main pricing option referred to as "Option G" (term contract) (the "**NEC3 PSC**");
 - 3.3 the *conditions of contract* of the NEC3 PSC;
 - 3.4 the NEC3 PSC dispute resolution "Option W2" (used in the United Kingdom when the Housing Grants, Construction and Regeneration Act 1996 applies);



-
- 3.5 the secondary options of the NEC3 PSC as referred to in Contract Data: Part One (including Option Z: Additional conditions of contract);
- 3.6 Schedule 1: Contract Data;
- 3.7 Schedule 2: Additional Conditions of Contract;
- 3.8 Schedule 3: Scope;
- 3.9 Schedule 4: Consultant Collateral Warranty;
- 3.10 Schedule 4A: Delivery Consultant Collateral Warranty
- 3.11 Schedule 5: Subconsultant Collateral Warranty;
- 3.12 Schedule 6: Template Task Order;
- 3.13 Schedule 7: Data Protection Schedule; and
- 3.14 any and all other documents referred to in the Contract Data, a Task Order and/or the other documents comprising this contract which are annexed to this contract and/or have been signed for identification purposes by or on behalf of the Parties.
4. If there is any conflict, ambiguity, discrepancy or inconsistency in or between the documents which are part of this contract, the priority of the documents is in accordance with the following sequence:
- 4.1 the Form of Agreement;
- 4.2 the *conditions of contract* (as modified by the *additional conditions of contract*);
- 4.3 Contract Data: Part One (including any annexures to or documents referred to in the same);
- 4.4 Contract Data: Part Two (including any annexures to or documents referred to in the same);
- 4.5 the Scope (except for any Scope contained in a Task Order) and each of the documents therein provided by the *Employer* as at the Contract Date and such further information as may be issued to the *Consultant* by the *Employer* pursuant to and in accordance with this contract from time to time;
- 4.6 the relevant Task Order and any documents included or referred to therein as provided by or on behalf of the Employer (but excluded any Scope not included and/or referred to in that Task Order); and
- 4.7 the other documents forming part of this contract.
- If there is any conflict, ambiguity, discrepancy or inconsistency in or between:
- (a) the *conditions of contract* and the *additional conditions of contract*, the *additional conditions of contract* take priority over the *conditions of contract*;
- (b) the content of Contract Data: Part One (including any annexures to or documents referred to in the same) and the content of Contract Data: Part Two, Contract Data: Part One takes priority over the Contract Data: Part Two.



-
5. The Parties acknowledge and agree that this contract may be executed by electronic signature, which shall be considered as an original signature for all intents and purposes and shall have the same force and effect as an original signature (with "electronic signature" in this context including, without limitation, electronically scanned and transmitted versions of an original signature or any other form of signature in electronic form provided by one Party to the other Party).
 6. This contract shall be governed by and construed in accordance with the law of England and Wales and the Parties hereby irrevocably submit to the non-exclusive jurisdiction of the English courts, provided that other jurisdictions may apply solely for the purpose of giving effect to this paragraph 6 and for the enforcement of any judgment, order or award given under English jurisdiction.

**IN WITNESS WHEREOF THIS FORM OF AGREEMENT WAS EXECUTED AS A DEED BY THE PARTIES
ON THE DATE FIRST WRITTEN ABOVE**

[REDACTED]



SCHEDULE 1

CONTRACT DATA

PART ONE – DATA PROVIDED BY THE *EMPLOYER*

Statements given in all contracts

- 1 General
 - The **conditions of contract** are the core clauses and the clauses for main Option G, dispute resolution Option W2, and secondary Option X1, Option X8, Option X10, Option X18, Option Y(UK)2, Option Y(UK)3 and Option Z of the NEC3 Professional Services Contract (April 2013 edition).
 - The **Employer** is:

Name: The Secretary of State for Justice

Address: Ministry of Justice, 102 Petty France, Westminster, London SW1H 9AJ
 - The **BIM Coordinator** is Mace Limited (as identified as a Project Consultant below).
 - The **services** are as set out and more particularly described in the Scope.
 - The **Scope** is set out at Schedule 3.
 - A **Contractor** is any party identified as such by the *Employer* to the *Consultant* in writing from time to time in connection with the Project (collectively being the "Contractors").
 - The **Project Consultants** are
 - WT Partnership Limited (company number 1130989) whose registered office is situated at AMP House, Dingwall Road, Croydon, CR0 2LX,
 - Mace Limited (company number 02410626), whose registered office is at 155 Moorgate, London, EC2M 6XB and
 - any other party identified as such by the *Employer* to the *Consultant* in writing from time to time in connection with any element of the Project during the Contract Period.
 - As at the Contract Date, there are no **Third Party Agreements**.
 - The **Data Protection Schedule** is set out at Schedule 7.
 - The **period for reply**
 - for the *Employer* is two (2) weeks and
 - for the *Consultant* is one (1) week.
 - The **period for retention** is the period commencing on the Contract Date until the End of Liability Date.
 - The **language of this contract** is English.
 - The **law of the contract** is the law of England and Wales.
 - The **Adjudicator** is as nominated by the *Adjudicator nominating body* from time to time.
 - The **Adjudicator nominating body** is the Technology and Construction Solicitors Association (TeCSA).
 - The **tribunal** is litigation in the courts of England and Wales.



2 The Parties' main responsibilities

- The main responsibilities of the Parties are as set out in the contract.

3 Time

- The **Contract Period Expiration Date** is the date falling four (4) years after the Contract Date.
- The *Consultant* submits **revised programmes** at intervals no longer than four (4) weeks.

4 Quality

- The **quality policy statement and quality plan** is not required.
- The **defects date** is fifty-two (52) weeks from
 - the later of the following dates to occur
 - the last date on which the *Consultant* performed any *services* under a Task Order and
 - the last occasion on which Task Completion occurs in respect of a Task Order issued under this contract or
 - (if occurring earlier) the date on which the engagement of the *Consultant* under this contract is terminated.

5 Payment

- The **assessment interval** is monthly.
- For the purposes of Option Y2.2, the **final date for payment** is thirty (30) days after the later of the date on which
 - payment is stated as becoming due under this contract or
 - the *Employer* receives a Valid Invoice for the sum(s) due.
- The template form of **Valid Invoice** is set out in the Scope.
- The **currency of this contract** is pounds sterling (£).
- The **interest rate** is four (4) per cent per annum above the base rate of the Bank of England.

8 Indemnity, insurance and liability

- The **amounts of insurance** and the periods for which the *Consultant* maintains insurance are:

Event / type of coverage	Cover	Period
Failure of the <i>Consultant</i> to exercise the standard of skill and care specified by this contract	Professional indemnity insurance cover of not less than [REDACTED] in respect of any one claim without limit to the number of claims in any annual policy period and in the aggregate annually in respect of fire safety, cladding, pollution and contamination related claims.	From the Contract Date until the End of Liability Date.
Death of or bodily injury to a person (not an employee of the <i>Consultant</i>) or loss of or damage to property resulting from an action or failure to take action by the	Public and products liability insurance cover of not less than [REDACTED] in respect of any one occurrence without limit to the number	From the Contract Date until the <i>defects date</i> .



Consultant and/or caused by an activity in connection with the contract	of occurrences in any annual policy period, but [REDACTED] any one occurrence and in the aggregate per annum in respect of liability arising out of products and pollution or contamination liability (to the extent insured by the relevant policy).	
Death of or bodily injury to employees of the Consultant arising out of and in the course of their employment in connection with this contract	Employer's liability insurance cover with a limit of indemnity of not less than [REDACTED] in respect of any one occurrence without limit to the number of occurrences in any annual policy period.	From the Contract Date until the <i>defects date</i> .

- The *Employer* elects to "self-insure" the existing buildings and property at each Project Site as part of the Project and in doing so accepts all of the *Employer's* associated risks arising out of or in relation to such "self-insurance". In accordance with the *Employer's* decision to "self-insure", the *Employer* does not require any additional premium / cost from the *Consultant* other than as set out above and/or referred to in the Insurance Table.
- The *Consultant's* limit on liability to the *Employer* for any matters arising under or in connection with the contract, other than excluded matters under this contract or by applicable law, is limited to [REDACTED] provided always that the *Employer* may (in its absolute discretion) agree and specify in an individual Task Order a different limit on the *Consultant's* liability to the *Employer* in respect of that individual Task Order only (provided always that such limit does not exceed the amount and per occurrence coverage expressed in this bulleted item).

9 Task Orders

- The **Template Task Order** is set out at Part 1 of Schedule 6.
- The **Task Schedule** is set out at Part 2 of Schedule 6.

Optional statements

- If no programme is identified in Contract Data: Part Two, the *Consultant* is to submit a first (1st) programme for acceptance within two (2) weeks of the date of the first (1st) Task Order issued under this contract.
- The *Consultant* prepares **forecasts of the total Time Charge and/or lump sum prices** in respect of each Task at intervals no longer than every four (4) weeks from the date of the first (1st) Task Order issued under this contract.

Option X1 – Price adjustment for inflation

- The index is the BCIS Labour Cost Index published by the Building Cost Information Service of the Royal Institution of Chartered Surveyors.

Option X8 – Collateral warranty

- The form of **Consultant Collateral Warranty** is set out at Schedule 4.
- The form of **Delivery Consultant Collateral Warranty** is set out at Schedule 4A.



-
- agreements**
- The form of **Subconsultant Collateral Warranty** is set out at Schedule 5.
- Option X10 – Employer's Agent**
- The Employer's Agent is Mace Limited (company number 02410626), whose registered office is at 155 Moorgate, London, EC2M 6XB **[REDACTED]**.
 - The authority of the Employer's Agent under this contract is to manage the contract on behalf of the *Employer* (including, but not limited to, issuing instructions, assessing compensation events, assessing payments to and from the *Consultant* and issuing Task Orders on behalf of the *Employer*).
- Option X18 – Limitation of liability**
- The *Consultant's* liability to the *Employer* for indirect or consequential loss is limited to **[REDACTED]**.
 - The *Consultant's* liability to the *Employer* for Defects that are not found until the *defects date* is limited to **[REDACTED]**.
 - The **End of Liability Date** is the is date falling twelve (12) years after
 - the later of the following dates to occur
 - the last date on which the *Consultant* performed any *services* under a Task Order and
 - the last occasion on which Task Completion occurs in respect of a Task Order issued under this contract or
 - (if occurring earlier) the date on which the engagement of the *Consultant* under this contract is terminated.
- Option Z – Additional conditions of contract**
- The ***additional conditions of contract*** are contained in Schedule 2.



PART TWO – DATA PROVIDED BY THE *CONSULTANT*

Statements
given in all
contracts

- The *Consultant* is:
Name: Perfect Circle JV Ltd
Address: Halford House, Charles Street, Leicester, United Kingdom, LE1 1HA
- The *key persons* are those people identified below (and such other *key persons* as may be identified in a Task Order):

Name	Job	Responsibilities	Qualifications	Experience
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

- The *staff rates* are:

Name / designation	(£) Hourly Rate	(£) Hourly Rate in client office
Associate / Principal Consultant	[REDACTED]	[REDACTED]
Consultant	[REDACTED]	[REDACTED]
Equity Partner/Managing Director	[REDACTED]	[REDACTED]
Graduate	[REDACTED]	[REDACTED]
Junior Technician	[REDACTED]	[REDACTED]
Salaried Partner / Director	[REDACTED]	[REDACTED]
Senior Consultant	[REDACTED]	[REDACTED]
Senior Technician	[REDACTED]	[REDACTED]
Technician	[REDACTED]	[REDACTED]

Optional
statements

- The *Consultant* does not state (nor is entitled to the payment of) any expenses in connection with the *services*.



SCHEDULE 2

ADDITIONAL CONDITIONS OF CONTRACT (Z CLAUSES)

The *conditions of contract* of the NEC3 Professional Services Contract (April 2013 edition): Option G are amended and supplemented by the following conditions, incorporated into the contract as the *additional conditions of contract* in accordance with Option Z:

1. AMENDMENTS TO CLAUSE 1 – GENERAL

- 1.1 At the end of clause 10.1, delete the full stop and insert the following:
", but without prejudice to the respective rights and obligations of the Parties".
- 1.2 Replace the wording of clause 11.1 with the following:
"In this contract, capitalised and/or italicised terms shall have the meanings given to them in the Form of Agreement, clause 11.2, clause 11.2A, the Contract Data and/or in a Task Order (as the context requires) unless otherwise expressly specified elsewhere in this contract"
- 1.3 Replace the definition of "**Completion**" at clause 11.2(2) with "Not used".
- 1.4 Replace the definition of "**Completion Date**" at clause 11.2(3) with "Not used".
- 1.5 Replace the definition of "**Contract Date**" at clause 11.2(4) with the following:
"The **Contract Date** is the date of the Form of Agreement".
- 1.6 Replace the definition of "**Defect**" at clause 11.2(5) with the following:
"A **Defect** is a failure by the *Consultant* to Provide the Services and/or any part of the *services* in accordance with
 - the requirements of this contract,
 - the requirements of the Scope and/or a Task Order,
 - applicable law and/or
 - any applicable planning agreement, permission, licence, condition, deed or document in connection with any part(s) of the Project which the *Employer* has notified to the *Consultant* or of which the *Consultant* ought reasonably to have been aware given the size, scope, value, character and complexity of the overall Project."
- 1.7 In the definition of "**Key Date**" at clause 11.2(6), replace both instances of "the Contract Data" with "a Task Order".
- 1.8 In the definition of "**To Provide the Services**" at clause 11.2(9):
 - after "contract" and before "and all incidental work" insert "(including each Task Order) and applicable law".
- 1.9 In the definition of "**Scope**" at clause 11.2(11):
 - insert "in a Task Order or" before "in an instruction" in the fourth bulleted item;
 - replace the "." at the end of the final bulleted item with ", "; and



- insert the following wording as a new hanging paragraph at the bottom of the clause: "in each case subject to amendment in accordance with this contract."

1.10 Insert a new clause 11.2(14) with the wording "Not used."

1.11 Insert a new clause 11.2(15) with the wording "Not used."

1.12 Insert a new clause 11.2(16) with the wording "Not used."

1.13 Replace the definition of "**The Price for Services Provided to Date**" at clause 11.2(17) with the following:

"The **Price for Services Provided to Date** is, for each Task, the total of

- the Time Charge for each Task Milestone which has been completed where that Task is stated in its Task Order as being subject to time charge and
- the lump sum price for each Task Milestone which has been completed where it is stated in its Task Order as being subject to a lump sum price (unless otherwise agreed in advance and in writing by the *Employer*)."

1.14 Insert a new clause 11.2(18) with the wording "Not used."

1.15 Insert a new clause 11.2(19) with the wording "Not used."

1.16 Replace the definition of "**Prices**" at clause 11.2(20) with the following:

"The **Prices** are

- the Time Charge for Tasks that are identified in a Task Order as being subject to time charge as specified in that Task Order and
- the lump sum price for a Task where that Task is stated in its Task Order as being subject to a lump sum price as specified in that Task Order.

1.17 In the definition of "**Subconsultant**" at clause 11.2(12):

- insert "or the Delivery Consultant" after "the *Consultant*"; and
- insert "(and all references to "Subconsultant" in this contract shall be construed accordingly)."

1.18 In the definition of "**Task**" at clause 11.2(21):

- insert "pursuant to and" after "carry out"; and
- insert "specified in, the relevant Task Order" after "period of time".

1.19 In the definition of "**Task Completion**" at clause 11.2(22), replace everything after "corrected Defects" to the end of the clause with "in the relevant *services* to which that Task Order relates".

1.20 In the definition of "**Task Completion Date**" at clause 11.2(23), insert "of an individual Task" after "for completion".



- 1.21 In the definition of "**Task Order**" at clause 11.2(24), insert "which is substantially in the form of the Template Task Order" after "carry out a Task".
- 1.22 Insert a new clause 11.2A with the marginal heading "**Additional identified and defined terms**": with the following sub-clauses:
- (1) An **access date** or **Access Date** is the date identified as such in a Task Order.
- (2) The term **additional conditions of contract** means the additional conditions of contract set out in this Schedule 2 of the contract.
- (3) The term **applicable law** means
- any Act of Parliament or subordinate legislation,
 - any statute, statutory instrument, regulation, rule or order made under any statute or directive having the force of law,
 - any exercise of the Royal Prerogative,
 - any enforceable community right within the meaning of Section 2 of the European Communities Act 1972,
 - any rule of equity or common law or the ruling, judgment or order of any Court,
 - any planning or building consents, preconditions and/or permissions or regulation and any other official request or requirement made by any Statutory Authority or other body of competent jurisdiction in respect of which the *Consultant* and/or a Subconsultant has a legal obligation to comply,
 - any regulation or bye-law of any Statutory Authority which has any jurisdiction with regard to the *services* or with whose systems the *services* are, or are to be, connected, including any statutory provisions and any decision of a relevant authority under such provisions which control the right to develop a Project Site in connection with which the *services* are to be provided (including, without limitation, any planning permission),
 - all orders, rules, regulations, ordinances, notices, guidance notes, schemes, warrants, bye-laws, directives, franchises, licences, permits, circulars and codes of practice issued or raised under or in connection with any of the foregoing and
 - any amendment, update, consolidation, replacement or re-enactment of any of the foregoing from time to time.
- (4) **Beneficiary** means
- in respect of a Consultant Collateral Warranty, any party with an interest in any part(s) of the Project nominated by the *Employer* in writing from time to time (including any Contractor) and
 - in respect of a Delivery Consultant Collateral Warranty and/or a Subconsultant Collateral Warranty, the *Employer* and any party nominated by the *Employer* in writing from time to time as having an interest in any part(s) of the Project (including any Contractor).
- (5) **BIM** means "building information modelling".



- (6) **BIM Coordinator** is the party identified as such in Contract Data: Part One and whose responsibility is to ensure implementation of the Digital Construction Requirements and co-ordinate the use of the Building Information Model and input of data into the Building Information Model (or as may be replaced by the *Employer* on written notice to the *Consultant* from time to time).
- (7) The **BIM Schedule** is the document identified as such in the Scope.
- (8) **Building Information Model** means the three dimensional electronic building information model in respect of all or any part(s) of the Project.
- (9) **Building Contract** means each building contract entered into or to be entered into by the *Employer* and a Contractor in connection with a Construction Package forming part of the Project, whether pursuant to and in accordance with the terms of any Project Delivery Contract or otherwise.
- (10) A **Business Day** is a day other than a Saturday or Sunday, Christmas Day, Good Friday or any other day which, under the Banking and Financial Dealings Act 1971, is a bank holiday in England and Wales.
- (11) The **CDM Regulations** are the Construction (Design and Management) Regulations 2015.
- (12) A **Central Government Body** is 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 UK Office for National Statistics
- Government department,
 - non-departmental public body or Welsh Government sponsored body (advisory, executive, or tribunal),
 - non-ministerial department or
 - executive agency.
- (13) **Code of Practice** is the Department for Constitutional Affairs' "Code of practice on the discharge of functions of public authorities under Part 1 of the Freedom of Information Act 2000".
- (14) **Communications Software** means the cloud-based software application known as "CEMAR", as developed and maintained by Client Managers Toolkit Limited (company number 05430351, whose registered office is at Welland House Meteor Court, Barnett Way, Barnwood, Gloucester, England, GL4 3GG).
- (15) **Confidential Information** is the Employer Confidential Information and/or the Consultant Confidential Information (as the context requires).
- (16) **Construction Package** means a package of construction works (and ancillary services, as necessary) to be undertaken (and, as the context permits, designed) by a Contractor under a Building Contract in connection with the Project.



- (17) **Consultant Collateral Warranty** means a collateral warranty in the form set out at the location identified as such in Contract Data: Part One.
- (18) **Consultant Background Materials** means all Materials owned by the *Consultant* before the Contract Date and/or created by the *Consultant* independently of this contract and/or the Project, in each case which are or will be used by the *Consultant* on or after the Contract Date in connection with this contract and/or the Project.
- (19) **Consultant Confidential Information** means any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, Know-How, personnel and suppliers of the *Consultant* (other than the *Employer*), including Intellectual Property Rights, together with all information derived from the same, and any other information clearly marked as "confidential" or which ought reasonably to be considered to be confidential.
- (20) **Consultant Personnel** means all employees, agents and Subconsultants of the *Consultant* of any type engaged by the *Consultant* in connection with the services.
- (21) **Consultant Materials** means all Consultant Background Materials and/or Foreground Materials (as the context requires).
- (22) The **Contract Period** is the period commencing on the Contract Date and expiring on the Contract Period Expiration Date, unless this contract is terminated earlier pursuant to and in accordance with its terms.
- (23) The **Contract Period Expiration Date** is the date identified as such in Contract Data: Part One.
- (24) **Contractor** means each entity identified as such in (or as notified by the *Employer* to the *Consultant* in accordance with) Contract Data: Part One.
- (25) **Controller** has the meaning given to the term "**controller**" in the GDPR.
- (26) **Crown** means the government of the United Kingdom (including the Northern Ireland Executive Committee and the Northern Ireland Departments, the Scottish Executive and the National Assembly for Wales and including government ministers, government departments, government bodies and government agencies).
- (27) **Data Loss Event** any event that results, or may result, in unauthorised access to Personal Data held by the Processor under this contract, and/or actual or potential loss and/or destruction of Personal Data in breach of this contract, including any Personal Data Breach.
- (28) **Data Protection Impact Assessment** means an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data.
- (29) **Data Protection Laws** means
- the GDPR and the LED,



- the Data Protection Act 2018 to the extent that it relates to processing of personal data and privacy and
 - all applicable laws about the processing of personal data and privacy.
- (30) **Data Protection Officer** has the meaning given to the term "**data protection officer**" in the GDPR.
- (31) **Data Protection Schedule** is the schedule identified as such in Contract Data: Part One.
- (32) **Data Subject** has the meaning given to the term "**data subject**" in the GDPR.
- (33) **Data Subject Access Request** means a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Laws to access their Personal Data.
- (34) A **DBS Check** means a "standard", "enhanced" or "enhanced with lists" check (or any other equivalent check required by the *Employer* at its sole discretion) undertaken by the Disclosure and Barring Service (or such successor or replacement organisation) from time to time.
- (35) **Delivery Consultant** means Pick Everard, a partnership whose head office is situated at Halford House, Charles Street, Leicester, LE1 1HA.
- (36) **Delivery Consultant Collateral Warranty** means a collateral warranty in the form set out at the location identified as such in Contract Data: Part One.
- (37) **Digital Construction Requirements** means the documents comprising the "BIM2AIM Employer's Information Requirements Suite" that set out the requirements for the use and development of the Building Information Model and input of data into the Building Information Model, as set out in the BIM Schedule (or such other document as the *Employer* may provide to the *Consultant* from time to time).
- (38) The **Disclosure and Barring Service** is a non-departmental public body sponsored by the Home Office established under the provisions of the Protection of Freedoms Act 2012 and which is responsible for the decision-making and maintenance of barring lists covering the children's and vulnerable adults sectors.
- (39) **DOTAS** means the "Disclosure of tax avoidance schemes rules" which require a promoter of tax schemes to notify Her Majesty's Revenue and Customs of notifiable arrangements or proposals and provide prescribed information on them 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 and as extended to NICs by the National Insurance (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.
- (40) **Employer Data** means
- the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which are



- supplied to the *Consultant* by or on behalf of the *Employer* or
 - which the *Consultant* is required to generate, process, store or transmit pursuant to this contract or
 - any Personal Data for which the *Employer* is the Controller.
- (41) **Employer Materials** means all Materials prepared by and/or on behalf of the *Employer* and provided to the *Consultant* in connection with the Project (but excluding any Consultant Materials).
- (42) **Employer Confidential Information** means
- the terms of and schedules to this contract and anything referred to herein,
 - all information disclosed by the *Employer* to the *Consultant* under or in connection with this contract,
 - any information concerning the business and/or financial affairs of the *Employer* which the *Consultant* learns as a result of its relationship with the *Employer* pursuant to this contract and
 - all Personal Data which the *Consultant* obtains and/or becomes aware of as a consequence of it being appointed under this contract,
- in each case of any type and in any medium (including in writing, given verbally and/or by any other means) whether directly or indirectly and whether disclosed before or after the Contract Date.
- (43) **Employer's Statement** has the meaning given to that term in clause 51.7 of this contract.
- (44) The **End of Liability Date** is the date identified as such in Contract Data: Part One.
- (45) **Environmental Information Regulations** means the Environmental Information Regulations 2004, together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations.
- (46) **Equality Act** means the Equality Act 2010.
- (47) **FOIA** means the Freedom of Information Act 2000 and any subordinate legislation (as defined in section 84 of the Freedom of Information Act 2000) made under or pursuant to the Freedom of Information Act 2000 from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner or any relevant government department in relation to such Act (including the Code of Practice).
- (48) A **Force Majeure Event** is any of the following events (and any circumstance arising as a direct consequence of any of the following events, other than any circumstances which are excluded in the description of such event) which is not or does not result in the occurrence of an *Employer's* risk
- war, hostilities (whether war is declared or not), invasion, act of foreign enemies,
 - rebellion, revolution, insurrection, military or usurped power, or civil war,
 - acts of terrorism and action of the United Kingdom government in response to the



threat of an act of terrorism,

- riot, civil commotion, disorder, sabotage, or acts of vandalism and neither involving solely nor originating with the personnel or other employees of the *Consultant* or Subconsultants or lower tier subcontractors or the employees or subcontractors of any group company associated with the *Consultant*,
- munitions of war or explosive materials, ionizing radiation or contamination by radioactivity, except where attributable to the *Consultant's* use of such munitions or explosives,
- pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds,
- any epidemic, pandemic or pestilence (as classified or advised by the World Health Organization or the United Kingdom government),
- strike, lockout or trade dispute occurring nationwide and neither involving solely nor originating with the personnel or other employees of the *Consultant* or Subconsultants or lower tier subsubcontractors or the employees or subcontractors of any group company associated with the *Consultant* and
- flooding or landslip caused by weather conditions which renders a material part of a Project Site as unsuitable for the *Consultant* to Provide the Services in a safe manner or renders impassable access to the Project Site and no suitable alternative access is available.

- (49) **Foreground Materials** means all Materials created by or on behalf of the *Consultant* specifically in connection with the Project and/or this contract, but excluding the Consultant Background Materials
- (50) **Form of Agreement** is the document identified as such and to which these *additional conditions of contract* are annexed.
- (51) **Fraud** means any offence under the law creating offences in respect of fraudulent acts or at common law in respect of fraudulent acts in relation to the Crown or defrauding or attempting to defraud or conspiring to defraud the Crown.
- (52) **Framework Agreement** means a framework agreement between (1) Scape and (2) the *Consultant* dated 5 October 2016 entitled "National Built Environment Consultancy Services" (as later amended on 03.11.17, 09.04.18, 25.07.18, 08.10.18, 01.08.19, 18.10.19, 01.04.20 and 08.09.20).
- (53) **General Anti-Abuse Rules** means the legislation in Part 5 of the Finance Act 2013 and any future applicable law in relation to the counteraction of tax advantages arising from abusive arrangements to avoid NICs.
- (54) **GDPR** means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation).
- (55) **Halifax Abuse Principle** means the principle explained in the CJEU Case C-255/02 Halifax and others.



- (56) **Intellectual Property Rights** means any and all
- copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, trade marks, rights in internet domain names and website addresses and other rights in trade names, designs including BIM, Know-How, trade secrets and other rights in Confidential Information,
 - applications for registration, and the right to apply for registration, for any of the rights referred to in the above bulleted item that are capable of being registered in any country or jurisdiction and
 - all other rights having equivalent or similar effect in any country or jurisdiction.
- (57) **ITEPA** means the Income Tax (Earnings and Pensions) Act 2003.
- (58) A **key person** or **Key Person** is a person identified as such in Contract Data: Part Two and/or in a Task Order.
- (59) **Know-How** means all ideas, concepts, schemes, information, knowledge, techniques, methodology, and anything else in the nature of know how relating to the *services* but excluding know how already in the possession of the *Employer* or *Consultant* before the Contract Date.
- (60) The **LED** means the Law Enforcement Directive (Directive (EU) 2016/680).
- (61) **Management Fee** is the charge to cover the cost of the *Consultant* procuring and managing a second tier supply chain member (as defined in Part B of Schedule 10 of the Framework Agreement) and as stated in each Task Order.
- (62) **Materials** means all existing and future designs, technical information, drawings, models, plans, specifications, schedules, design details and digital models and databases (including in relation to BIM), costings, budgets, calculations, bill of quantities, estimates and valuations, any photographs, brochures, reports, notes of meetings, computer aided design (CAD) materials and any other materials, including any data underlying such generated data in any medium (be it physical, hard copy or electronic, including digital), provided by or prepared on behalf of the *Consultant* or, as the context herein requires, any other person, in connection with this contract and/or any part(s) of the Project and all amendments and additions to them and any works, designs or inventions of the *Consultant* (or any other person as the case may be) incorporated or referred to in them.
- (63) **Named Employee** has the meaning given to such term in clause 101.1.
- (64) **NEC3 PSC** means the standard form of NEC3 Professional Services Contract (April 2013 edition).
- (65) **NICs** means national insurance contributions.
- (66) **Occasion of Tax Non-Compliance** means any tax return of the *Consultant* submitted to a Relevant Tax Authority on or after 1 October 2012 which, on or after 1 April 2013
- is found to be incorrect as a result of



- a Relevant Tax Authority successfully challenging the *Consultant* under the General Anti-Abuse Rules or the Halifax Abuse Principle or under any rules or applicable law having equivalent or similar legal effect and/or
 - the failure of an avoidance scheme which the *Consultant* was involved in, and which was, or should have been, notified to the Relevant Tax Authority under the DOTAS or any equivalent or similar regime and/or
 - 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 Contract Date or to a civil penalty for fraud or evasion.
- (67) **Personal Data** has the meaning given to the term "**personal data**" in the GDPR.
- (68) **Personal Data Breach** has the meaning given to "**personal data breach**" under the GDPR.
- (69) The **Personnel Vetting Procedure** is the *Employer's* procedure for the vetting of the Consultant Personnel as advised to the *Consultant* by the *Employer* in writing from time to time.
- (70) **Principal Contractor** has the meaning given to the term "**principal contractor**" in the CDM Regulations.
- (71) **Principal Designer** has the meaning given to the term "**principal designer**" in the CDM Regulations.
- (72) **Process** has the meaning given to "**processing**" under the Data Protection Laws (and "**Processed**" and "**Processing**" shall be construed accordingly).
- (73) **Processor** has the meaning given to the term "**processor**" in the GDPR.
- (74) **Processor Personnel** means all directors, officers, employees, agents, consultants and contractors of the Processor and/or of any Sub-Processor engaged in the performance of its obligations under this contract.
- (75) A material is **Prohibited** if, in the context of its use or specification in any part(s) of the Project (whether alone, in combination with other materials, or in a particular situation)
- it poses a hazard to the health and safety of any person who may come into contact with it (at any stage of the Project),
 - it would or is likely to have the effect of reducing the normal life expectancy of any other material or structure in which the material is incorporated or to which it is affixed,
 - it poses a threat to the structural stability, performance or the physical integrity of any part, structure, element or component that is (or may be) the subject of construction works as part of the Project and/or
 - it has been prohibited for use in the publication "Good Practice in the Selection of Construction Materials" (published by the British Council for Offices) current at the time of use or specification,



in each case, whether in relation to a specific Construction Package or otherwise.

- (76) **Prohibited Act** means
- to directly or indirectly offer, promise or give any person working for or engaged by the *Employer* a financial or other advantage to induce that person to perform improperly a relevant function or activity and/or reward that person for improper performance of a relevant function or activity, whether in connection with this contract and/or the Project or otherwise,
 - an offence under the Bribery Act 2010, under any applicable law or common law concerning fraudulent acts and/or in connection with the defrauding, attempting to defraud or conspiring to defraud the *Employer* and/or
 - any activity, practice or conduct which would constitute one of the offences stated at the second bulleted item of this definition if it had been carried out in the United Kingdom.
- (77) **Project** has the meaning given to such term in the "Recitals" section of the Form of Agreement.
- (78) **Project Appointment** means any appointment entered into by the *Employer* with a *Project Consultant* in connection with any part(s) of the Project as notified by the *Employer* to the *Consultant* from time to time.
- (79) **Project Consultant (or Project Consultant)** means any consultant identified as such in Contract Data: Part One or as is otherwise notified by the *Employer* to the *Consultant* from time to time in writing.
- (80) **Project Contracts** means (as applicable) any Project Delivery Contract, each Building Contract and any other agreements entered into by the *Employer* and a Contractor in relation to a Construction Package as may be notified by the *Employer* to the *Consultant* from time to time (including any pre-construction services agreements and enabling works contracts).
- (81) **Project Delivery Contract** means one or more contracts (that are not in themselves Building Contracts) entered or to be entered into between (1) the *Employer* and (2) multiple parties, including one or more Contractors, in connection with the delivery of the Project, as notified by the *Employer* to the *Consultant* in writing from time to time.
- (82) **Project Focused** is the principle applied in the consideration of any decision, outcome, solution or resolution in relation to the overall Project, which facilitates or encourages objectively-assessable quality and performance outcomes and (as the Project is publicly funded) with the intent to achieve value for money.
- (83) **Project Site** means a site identified by the *Employer* to the *Consultant* in writing from time to time, including as part of a Task Order, as falling within the remit of the Project (if not already identified in the Scope as at the Contract Date), including any site that is or may be the subject of any Project Delivery Contract and/or a Building Contract.
- (84) **Protective Measures** means all 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 such measures adopted by it.

- (85) **Relevant Conviction** means, save in relation to minor road traffic offences, any previous pending prosecutions, convictions, cautions and binding-over orders (including any spent convictions as contemplated by section 1(1) of The Rehabilitation of Offenders Act 1974 by virtue of the exemptions specified in Part II of Schedule 1 of the Rehabilitation of Offenders Act 1974 (Exemptions) Order 1975 (SI 1975/1023) or any replacement or amendment to that Order).
- (86) **Relevant Policies** means the policies of Scape (as specified in the Framework Agreement or as provided to the *Consultant* by Scape under the Framework Agreement from time to time) and the *Employer's* ethics, anti-bribery and anti-corruption policies, as included in the Scope or as otherwise provided by the *Employer* to the *Consultant* from time to time.
- (87) **Relevant Requirements** means all applicable laws, statutes, regulations and codes relating to fraud, anti-bribery and anti-corruption, including (but not limited to) the Bribery Act 2010 and section 117 of the Local Government Act 1972.
- (88) **Relevant Tax Authority** means Her Majesty's Revenue and Customs or, if applicable, a tax authority in the jurisdiction in which the *Consultant* is established.
- (89) **Relevant Terms** has the meaning given to such term in clause 103.2.
- (90) **Request for Information** means a request for information relating to this contract or apparent request for such information under the FOIA or the Environmental Information Regulations.
- (91) The **services** are the services and/or works identified as such in Contract Data: Part One and/or a Task Order as part of a Task.
- (92) **Security Aspects Letter** means the document so entitled forming part of the Scope as may be modified from time to time upon reasonable notice from the *Employer* to the *Consultant*.
- (93) **Security Measures** means any and all active and passive, peremptory, contingent and other physical and procedural security and safeguarding measures, deterrents, countermeasures and precautions, designed, taken, implemented and/or intended (including software and coding solutions, as well as physical and strategic solutions) to
- maintain the safety of persons and public and personal property,
 - prevent the risk of any person being exposed to actual or potential death, personal injury or any other type of harm,
 - prevent the risk of actual or potential damage or harm to public and personal property howsoever caused (including by fire),
 - maintain political, national and/or international security,
 - prevent the access to a location (or part thereof), persons, information and/or any electronic or information technology system by unauthorised persons or parties and/or



- (as the context permits) facilitate the detention or imprisonment (or continued detention or imprisonment) of persons, in accordance with applicable law, such as intruder detector systems, lighting systems, surveillance systems, natural surveillance models, physical barriers, information technology systems, communications systems, access control systems, screening arches and areas, entry systems, fire security and safety systems, reinforced glass and strategic and/or any internal or external layouts.
- (94) **Scape** means Scape Procure Limited (company number 09955814), whose registered office is at Level 2, City Gate West, Tollhouse Hill, Nottingham, England, NG1 5AT.
- (95) **SSCBA** means the Social Security Contributions and Benefits Act 1992.
- (96) A **Statutory Authority** is any governmental or local authority, statutory undertaker or other body of competent jurisdiction
- which has any jurisdiction with regard to any part(s) of the Project and/or the services, including any jurisdiction to control development on a Project Site or any part of it,
 - which has any jurisdiction with regard to the performance of the *Consultant's* obligations under this contract in any jurisdiction (including in relation to national and international waters) where the *Consultant's* obligations under this contract are carried out,
 - with whose requirements the *Employer* and/or the *Consultant* is required or accustomed to comply and/or
 - with whose systems any part(s) of the Project will be connected.
- (97) **Subconsultant Collateral Warranty** means a collateral warranty in the form set out at the location identified as such in Contract Data: Part One.
- (98) **Sub-Processor** means any third party appointed to Process any Personal Data on behalf of that Processor related to this contract.
- (99) A **Task Milestone** is each milestone relevant to a Task as identified in a Task Order.
- (100) A **Task Milestone Payment Cap** means the sum identified as such in a Task Order in respect of a specific Task Milestone (as may otherwise be adjusted pursuant to clause 50.7).
- (101) A **Task Start Date** is the date identified as such in a Task Order.
- (102) The **Template Task Order** is the template order form in respect of Tasks to be instructed by the Employer under this contract in the form identified as such in Contract Data: Part One.
- (103) **Termination Statement** has the meaning given to that term in clause 92.3 of this contract.
- (104) The **Third Party Agreements** are the agreements identified as such in Contract Data: Part One (and/or as are notified by the *Employer* to the *Consultant* as an instruction from



time to time).

- (105) **Third Party Harassment** has the meaning given to such term in clause 117.2.
- (106) **Valid Invoice** means a VAT-compliant invoice in the form referred to in Contract Data: Part One, provided that the *Employer* may (acting reasonably and with reasonable notice) vary the form of invoice from time to time by written notice to the *Consultant*, with any such amendments applying as from the next assessment date after the *Employer's* notification.
- (107) **VAT** means value added tax as referred to in the Value Added Tax Act 1994 or any tax of a similar nature that may be substituted for or levied in addition to it.
- (108) **Vetting and Barring Scheme** means the scheme set up under the provisions of the Safeguarding Vulnerable Groups Act 2006.

- 1.23 Insert "and shall be construed in accordance with" after "governed by" in clause 12.2 and insert the following at the end of clause 12.2:

"Without prejudice to the foregoing, the Parties submit to the non-exclusive jurisdiction of the courts of England and Wales provided that the *Employer* has the right in its absolute discretion to enforce a judgment and/or take proceedings in any other jurisdiction in which the *Consultant* is incorporated or in which any assets of the *Consultant* are or may be situated."

- 1.24 Replace the wording of clause 12.4 in its entirety with the following:

"The Parties acknowledge and agree that

- this contract supersedes any previous agreement, arrangement or understanding between the Parties in relation to the matters dealt with in this contract, and this contract represents the entire understanding and agreement between the Parties in relation to such matters and
- the Parties acknowledge and agree that each of them has not relied upon any prior representation by the other in entering into this contract."

- 1.25 Insert a new clause 12.5 with the following wording:

"In this contract

- the phrase "**fault**" includes negligence, default or breach of contract and/or breach of statutory duty,
- no communication from the *Employer* given in accordance with the provisions of this contract, including any instructions, notices or approvals removes, amends or varies any of the *Consultant's* obligations, responsibilities or liabilities under this contract, including (without limitation) its responsibility to Provide the Services and its liability for Defects,
- where general words are followed or preceded by specific examples, the nature of such specific examples shall not restrict or qualify the natural meaning of the general words,
- any obligation of the *Consultant* to do any act, matter or thing includes, unless expressly stated otherwise, an obligation to procure that it is done,
- no rule of construction applies to the interpretation of this contract to the advantage or disadvantage of one Party on the basis that such Party prepared this contract or any relevant part of it,
- this contract may be executed in any number of counterparts and by the Parties to it on



separate counterparts, each of which when so executed and delivered is an original, and all counterparts together constitute one and the same instrument,

- the *Consultant* is an independent contractor to the *Employer* and this contract does not create any partnership, joint venture or other joint relationship between the *Consultant* on the one hand and the *Employer* on the other hand and none of the Consultant Personnel are considered for any purpose to be a servant, employee or agent of the *Employer*,
- clause means each separate numbered clause of the *conditions of contract* (as amended by the *additional conditions of contract*),
- "day" means any continuous period of twenty-four (24) hours,
- "week" means any continuous period of seven (7) days,
- "month" means calendar month,
- where a period of time is stated in days and includes a day which is not a Business Day or is within the period from the end of the last Business Day prior to Christmas Day until the beginning of the first Business Day after New Year's Day, that day shall be excluded,
- any reference to the *Employer* having the right to terminate this contract or the *Consultant's* obligation to Provide the Services (or any wording with equivalent effect or intent) shall be read as allowing the *Employer* to (at its sole discretion) terminate this contract in its entirety or to terminate any individual Task Order(s) and the operative provisions of this contract shall be construed accordingly and
- the *Consultant* shall have no entitlement to rely upon and/or enforce any provision which purports to allow the *Consultant* to make a claim for an adjustment to the Prices, compensation, damage, loss, extension of time or Task Completion Dates, or to seek any reduction or waiver of its own liability, where the entitlement arises from the actions, default, omissions and/or performance of the *Consultant* (at any time), whether under another contract entered into by the *Consultant* in connection with the Project or otherwise."

1.26 Insert a new clause 12.6 with the following wording:

"If:

- any provision or clause of this contract is held to be invalid, illegal or unenforceable by any court, such provision shall be severed and the remainder of the provisions of this contract shall continue in full force and effect as if the contract had been executed without the provision or clause in question and
- a court holds a provision or condition of this contract to be invalid, illegal and/or unenforceable and the provision is so fundamental that its removal would prevent the accomplishment of the purpose of the contract, to the extent necessary the Parties shall immediately commence negotiations in good faith to ensure that the purpose of the contract is achieved in the absence of the provision or clause in question."

1.27 Replace clause 13.1 with the following wording:

"Unless otherwise notified by the *Employer* from time to time and in writing (but subject always to clause 13.9), all notices, requests, submissions, decisions, consents, approvals, comments, valuations, agreements, opinions, instructions and other communications between the Parties under or in connection with this contract must be in writing in the *language of this contract*, and issued by a sender to a recipient by

- hand delivery,
- first class inland (or recorded delivery) post,



- electronic mail and/or
- any electronic means other than electronic mail as may be approved or specified in advance and in writing by the *Employer* from time to time (including pursuant to any communication protocol issued by or on behalf of the *Employer*).

The *Consultant* ensures that

- each and every document (in whatever form, including hard and/or soft (electronic) copy) and/or communication prepared and/or issued by or on behalf of it pursuant to this contract is clearly marked with any document security-related designation specified in the Scope and any communications protocol and/or document security protocol that the *Employer* notifies the *Consultant* of in writing from time to time and
- it will (and ensure that any third parties engaged by it in connection with the Project will) comply with any communications protocol and/or document security protocol of the *Employer* that the *Employer* may issue to the *Consultant* and/or any document security-related requirements specified in the Scope (and that the *Employer* may update and/or replace at its sole discretion) from time to time, at its own cost and without any adjustment to any Completion Date.

Any communication required under this contract from the *Consultant* to Others in connection with the Project is copied simultaneously to the *Employer*."

1.28 Insert "and/or relevant Task Order" after "in the Scope" in the final sentence of clause 13.6.

1.29 Insert a new clause 13.9 with the following wording:

"The use of the electronic mail or any other electronic means of communication is not an effective method of communication for

- any notification by the *Consultant* of its intention to suspend performance of its obligations under this contract,
- any notification by a Party in relation to the actual or potential termination of this contract or the employment of the *Consultant* under this contract,
- any invoking by a Party of the procedures applicable under this contract (or under applicable law) in relation to the resolution of disputes or differences and/or any notification of an actual or potential dispute or
- any agreement between the Parties amending the provisions of this contract,

provided that a duplicate copy of any such communication may also be sent to the receiving party (or parties) by electronic mail (or other electronic means) for information only."

1.30 Insert a new clause 13.10 with the following wording:

"Any and all additions, amendments and variations to this contract and/or any Task Order shall be binding only if in writing and signed by the duly authorised representatives of each person constituting the *Employer* and the *Consultant*."

1.31 Insert the following after "his work" in the second line of clause 14.1:

"or any review or approval of or comment on such work".

1.32 At the end of the fifth bulleted item in clause 15.1, replace "or" with ",",

At the end of the sixth bullet in clause 15.1, replace the full stop with "or adversely affect the *Employer* (including by increasing the monies payable by the *Employer* to Others engaged by the



Employer in connection with any part(s) of the Project),".

1.33 After the sixth bulleted item of clause 15.1, insert the following new bulleted items:

- "constitute a Defect,
- constitute a compensation event which has not been previously notified,
- result in a breach of this contract, or
- cause a breach of any applicable law or statutory requirements."

1.34 At the end of the final paragraph of clause 15.1 insert the following wording as a new sentence:

"In the notification the *Consultant* or the *Employer* states whether the early warning must be dealt with immediately or can wait until the next scheduled risk reduction meeting."

1.35 At the end of clause 15.4, insert the following as a new sentence:

"The issuing of a revised Risk Register is not in itself to be treated as an instruction changing the Scope and/or a Task Order. If the *Consultant* believes that the issue of any Risk Register or any other instruction from the *Employer* (not expressed to be a change to the Scope) should be treated as an instruction changing the Scope and/or a Task Order (or otherwise give rise to a compensation event), the *Consultant* (save in circumstances of emergency), before acting on the revised Risk Register or instruction, notifies the *Employer* of the *Consultant's* belief that the Risk Register or instruction gives rise to a change in the Scope and/or a Task Order or other compensation event and allow the *Employer* time to consider the impact of the revised Risk Register or instruction in relation to the *Consultant's* notice."

1.36 Replace the wording of clause 18 in its entirety with the following wording:

"18 **Force Majeure Events**

If a Force Majeure Event occurs, the *Employer* gives an instruction to the *Consultant* stating how it is to deal with the Force Majeure Event."

1.37 Insert a new clause 19 with the marginal heading "**Basis of engagement and non-exclusivity**" as follows:

"19 **Basis of engagement and non-exclusivity**

19.1 The *Consultant* acknowledges and agrees that

- it is appointed by the *Employer* under this contract solely to provide the *services* and perform its duties and obligations under this contract,
- it does not have the exclusive right to undertake any services and/or works on behalf of the *Employer* in connection with the Project (whether forming part of the Scope or otherwise) and the *Employer* may, at its sole discretion, instruct any other party to carry out services and/or works which are the same as or are similar to those to be undertaken by the *Consultant* under this contract,
- the *Employer* makes no guarantee to the *Consultant* in relation to any minimum value or volume of services and/or works that the *Consultant* will be required to undertake under this contract, pursuant to one (1) or more Task Orders or otherwise and
- the *Consultant* shall have no entitlement to make any claim against the *Employer* whatsoever (whether in contract, tort or any other basis of law) in respect of, without limitation, any costs, damages, expenses and/or losses arising out of or



in connection with it not undertaking any minimum value or volume of services and/or works under or in relation to this contract or the Project generally (including in respect of any loss or deferment of anticipated or actual profit, loss of expectation, loss of revenue, loss of turnover, loss of use, loss of opportunity, loss of production, costs of finance, business interruption and/or redeployment of workforce or any similar damage or for any consequential or indirect losses of any other kind),

- provided that nothing in this clause 19.1 shall affect the entitlement of the *Consultant* to be paid for *services* properly performed under this contract.

19.2 Notwithstanding any other provision of this contract

- the *Employer* may, by way of a written instruction to the *Consultant*, remove or omit all or part of the *services* (including under any individual Task Order) at any time and for any reason,
- where the *Employer* gives an instruction to the *Consultant* to remove or omit any *services* (including from any individual Task Order), the Prices for any Task Orders that are subject to a lump sum price are adjusted accordingly and the *Employer* shall pay for the *Consultant's* unavoidable demobilisation costs, including for removal of plant and equipment,
- the *Employer* shall have no liability whatsoever (other than the above paragraph) to the *Consultant* in respect of any such removal or omission (whether in contract, tort (including negligence) or otherwise), including in respect of any loss or deferment of anticipated or actual profit, loss of expectation, loss of revenue, loss of turnover, loss of use, loss of opportunity, loss of production, costs of finance, business interruption and/or redeployment of workforce or any similar damage or for any consequential or indirect losses of any other kind and
- the *Consultant* shall not be entitled to any adjustment to any Task Completion Date arising out of or in connection with any instruction(s) issued by the *Employer* pursuant to this clause 19,

provided that nothing in this clause 19.2 shall affect the entitlement of the *Consultant* to be paid for any *services* properly performed under this contract prior to the date of such reduction or omission."



2. AMENDMENTS TO CLAUSE 2 – THE PARTIES' MAIN RESPONSIBILITIES

2.1 In clause 20.2:

- insert "Task" before "Completion"; and
- insert "in respect of the relevant Task" after "is given only."

2.2 In clause 21.1, insert ", each Task Order, this contract and applicable law" after "the Scope".

2.3 Replace the wording of clause 21.2 with the following:

"The *Consultant*, in Providing the Services, exercises (and warrants that it has exercised) all of the reasonable skill, care and diligence to be expected of an appropriately qualified, skilled, competent and experienced professional consultant (or, where the *services* involve the review, preparation, validation and/or revision of any designs in connection with the Project, architect) that is experienced in providing services similar in nature, extent and complexity to the *services* in relation to projects of a similar size, scope, value, character and complexity as the Project."

2.4 Insert a new clause 21.3 with the following wording:

"The *Consultant* acknowledges and agrees that

- to the extent identified in the Scope and/or any Task Order, the *services* may involve the provision of physical works (referred to solely as "**works**" for the purposes of this clause 21.3),
- without prejudice to the generality of clause 21.2 and clause 21.5, when undertaking any such works, the *Consultant* shall appoint a Subconsultant to perform such works and ensure that its appointed Subconsultant shall
 - undertake and complete the works
 - in a good and workmanlike manner,
 - in accordance with all applicable laws relevant to the undertaking of such works,
 - in accordance with any specific requirements in connection with such works as specified in the Scope and/or the Task Order,
 - (subject always to the duty of care referred to at clause 21.2) using materials and goods which are new, of satisfactory quality and reasonably suitable for their purpose,
 - (subject always to the duty of care referred to at clause 21.2) using workmanship which is of a satisfactory quality and reasonably suitable for purpose,
 - in accordance with its duties and obligations under the CDM Regulations, including where the Task Order specifies that the *Consultant* shall be the Principal Designer and/or the Principal Contractor in respect of such works only for the purposes of this contract,
 - provide all staff, labour and transport and supply all items (including tools, plant and equipment) necessary for the carrying out and completing the works,
 - at all times prevent any nuisance or other interference with the rights of any



adjoining landowner or occupier arising out of the carrying out of such works and shall at all times ensure there is no trespass on or over adjoining or neighbouring property arising out of or in the course of the carrying out of the same and

- during the carrying out (and following completion) of such works and/or upon termination of the *Consultant's* engagement under this contract or the relevant Task Order (as applicable), the *Consultant* must clean up the site of the works and lawfully remove all debris and waste material arising out of the carrying out of the works (including obtaining, at its own costs, any necessary permissions and licences in order to remove any such debris and waste)."

2.5 Replace the wording of clause 21.4 with the following:

"The *Consultant* prepares forecasts of the total Time Charge and/or lump sum prices in respect of each Task (taking into account any adjustments made to such lump sum prices in accordance with this contract) for each Task. Forecasts are prepared at the intervals stated in the relevant Task Order from the Task Start Date until Task Completion of that Task. An explanation of the changes made since the previous forecast is submitted with each forecast."

2.6 Insert a new clause 21.5 with the following wording:

"The *Consultant* warrants and undertakes to the *Employer* that it has performed and that it shall continue to Provide the Services

- in accordance with all applicable laws,
- so that the *services* and (insofar as reasonably dependent upon the *services* and to the extent that the *Consultant* can control the same) each part of the Project will comply with all planning agreements, permissions, conditions, deeds and documents relating to the *services* and/or the relevant part(s) of the Project which the *Employer* has notified in writing to the *Consultant* or of which the *Consultant* ought reasonably to have been aware and
- at all times and in such manner so as not to cause the *Employer* to breach any of its obligations under any Third Party Agreement and/or any Project Contracts entered into as at the Contract Date, the content of which the *Consultant* is deemed to have full knowledge of (and in respect of which the *Consultant* shall indemnify the *Employer* for any costs, expenses and/or liabilities of any type incurred by the *Employer* due to any non-compliance by the *Consultant* of this requirement).

Where the *Employer* issues an instruction to the *Consultant* after the Contract Date notifying the *Consultant* of any "Third Party Agreement" and/or "Project Contract" additional to those entered into as at the Contract Date (or of any variations to any such agreements entered into as at the Contract Date), such instruction shall be deemed to constitute a change to the Scope for the purposes of clause 60.1(1)."

2.7 Insert a new clause 21.6 with the following wording:

"Using the standard of care referred to at clause 21.2, the *Consultant* does not use, specify for use, approve for use and/or accept in connection with the provision of the *services* under this contract any materials which at the time the *services* are being carried out are generally accepted or reasonably suspected of

- being Prohibited in themselves,
- becoming Prohibited when used in a particular situation or in combination with other materials,
- becoming Prohibited with the passage of time,



- becoming Prohibited without a level of maintenance which is higher than that which would normally be expected of a structure of the type under construction and/or
- being damaged by or causing damage to the structure in which they are incorporated or to which they are affixed."

2.8 Insert a new clause 21.7 with the following wording:

"Without prejudice to the generality of clause 21.1 to clause 21.6 (inclusive), the *Consultant*

- shall perform the *services* having regard to the health and safety of persons involved in the Project and shall comply with
 - any codes of practice, guidance notes and recommendations published by the Health and Safety Executive,
 - any safety policies produced by the *Employer* and any Contractors and
 - the "Joint Code of Practice on the Protection from Fire of Construction Sites and Buildings Undergoing Renovation" (as amended from time to time) as published by the Construction Confederation and the Fire Protection Association,
- promptly notifies the *Employer* of any health and safety hazards which may arise in connection with the performance of its duties and obligations under this contract (and the *Employer* promptly notifies the *Consultant* of any health and safety hazards which may exist or arise in connection with the Project from time to time and which may affect the *Consultant* in the performance of its duties and obligations under this contract),
- notifies the *Employer* immediately in the event of any incident occurring in connection with the performance of its duties and obligations under this contract at any Project Site from time to time (as notified by the *Employer* to the *Consultant*) where that incident causes any personal injury or damage to property which could give rise to personal injury,
- ensures that its health and safety policy statement (as required by the Health and Safety at Work etc. Act 1974) is made available to the *Employer* on request to the extent required in connection with the *services* being provided by the *Consultant*,
- warrants to the *Employer* that it has complied and will comply with the requirements of the CDM Regulations insofar as they relate to the *services* to be performed by the *Consultant* under this contract, including
 - where specified as such in a Task Order that includes "works" for the purposes of clause 21.3, undertaking (and discharging all duties and obligations under the CDM Regulations in connection with) the role of Principal Designer and/or Principal Contractor in connection with the relevant works and
 - in respect of each actual and potential Construction Package, the *Consultant* liaising with and cooperating with the Principal Designer and the Principal Contractor appointed by the *Employer* in connection with that Construction Package (and as notified by the *Employer* to the *Consultant* in writing) as and when required by the relevant Principal Designer and the Principal Contractor in the performance by it of all functions and duties allocated to it by the CDM Regulations."

2.9 In clause 22.1, insert "and/or a Task Order" after "the Contract Data".

2.10 Insert new clauses 22.3 to 22.8 (inclusive) with the following wording:

"22.3 If the *Consultant* wishes to replace any *key person* or appoint a new *key person*, it

- gives at least thirty (30) days' written notice to the *Employer* of its proposal,



- seeks the *Employer's* consent to and consults with the *Employer* concerning the proposed *key person* and
- if requested provides the *Employer* with the curriculum vitae of the proposed *key person*,

and the provisions of clause 22.4 to clause 22.8 shall apply to any such proposed new or replacement *key persons*.

- 22.4 The *Employer* may interview any proposed new or replacement *key persons*.
- 22.5 The *Employer* notifies the *Consultant* in writing of any objections to the proposed new or replacement *key persons* within two (2) weeks of receipt of the *Consultant's* notice given under clause 22.3. If the *Employer* notifies the *Consultant* of objections, the *Consultant* does not engage the proposed *key person* and may propose another *key person*.
- 22.6 The *Consultant* uses all reasonable endeavours to ensure that a process of skill and knowledge transfer occurs prior to replacement of any *key persons* to ensure continuity in Providing the Services. The *Consultant* shall use all reasonable endeavours to ensure that, where feasible and within the reasonable control of the *Consultant*, there is a handover period of not less than four (4) weeks from the outgoing *key person* to the incoming one.
- 22.7 The *Consultant*, at all relevant times, engages an adequate number of competent, suitably qualified and experienced Consultant Personnel to Provide the Services.
- 22.8 The *Employer* (acting reasonably) may require any member of the Consultant Personnel be replaced if in the reasonable opinion of the *Employer* their performance is unsatisfactory and/or they have breached any security-related requirements referred to in this contract and/or as specified by the *Employer* from time to time, in which case the *Consultant* shall ensure that the relevant member of the Consultant Personnel be replaced by an alternative person with at least the same experience and expertise as the outbound member of the Consultant Personnel at no additional cost to the *Employer* (subject always to the *Employer's* prior written approval)."

- 2.11 Replace the wording of clause 23.3 in its entirety with the following wording:

"If the *services* do not meet a Condition stated for a Key Date in connection with a Task Order by the date stated in this contract and, as a result, the *Employer* incurs additional cost, loss and/or expense of any type

- in carrying (or engaging a third party to carry) out work and/or services and/or
- by paying (or allowing) any sum(s) to any third party,

in connection with the Project, then such additional cost, loss and/or expense that the *Employer* has incurred or will incur shall be recoverable without deduction from the *Consultant* by the *Employer*, either by way of set-off against and/or as a deduction from any sums that are or may become due and payable to the *Consultant* under this contract or otherwise as a debt payable within fourteen (14) days of a written demand from the *Employer* to the *Consultant* for the same."

- 2.12 In the first line of clause 24.1, replace "work" with "all or part of the *services*".

- 2.13 Replace the full stop at the end of clause 24.1 with the following wording:

"and the *Consultant* is and remains responsible for the acts and omissions of its Subconsultants (including the Delivery Consultant)."

- 2.14 In the third line of clause 24.2, after the words "Provide the Services" insert the following wording:



"and/or the *Employer* has reasonable grounds for concern in relation to the Subconsultant's experience, performance on other projects, financial stability, insurance cover or status".

2.15 Replace the wording of clause 24.3 in its entirety with the following:

"The *Consultant* submits the proposed conditions of contract for each subcontract to the *Employer* for acceptance (including any subcontract to be entered into between the Delivery Consultant and any Subconsultant). The *Consultant* does not appoint (or procures, as the context requires, that the Delivery Consultant does not appoint) a Subconsultant on the proposed subcontract conditions submitted until the *Employer* has accepted them. A reason for not accepting them is that

- the *Consultant* has not complied with the requirements of clause 24.2,
- the appointment of the proposed Subconsultant and/or the proposed conditions of contract will not allow the *Consultant* to Provide the Services,
- the terms of the proposed conditions of contract do not, in the *Employer's* reasonable opinion, adequately reflect the terms of this contract or are inconsistent with the terms of this contract,
- the proposed conditions of contract do not include provisions,
 - requiring the Subconsultant to provide rights for the *Employer* to use any Materials prepared by the Subconsultant in accordance with clause 70,
 - requiring the Subconsultant to provide a Delivery Consultant Warranty or a Subconsultant Collateral Warranty (as the context requires) and/or
 - imposing equivalent obligations of confidentiality on the proposed Subconsultant to those required by this contract and/or
- the conditions do not include a statement that the parties to the subcontract shall act in a spirit of mutual trust and cooperation.

The *Consultant* provides to the *Employer* a certified copy of any subcontract within ten (10) Business Days of it entering into such subcontract."

2.16 Insert a new clause 24.4 with the following wording:

"The *Consultant* does not subcontract the whole of any Task to any Subconsultant other than the Delivery Consultant (and procures that the Delivery Consultant does not subcontract the whole of any Task subcontracted to it under any subcontract between the *Consultant* and the Delivery Consultant) without the prior written approval of the *Employer*."

2.17 Replace the wording of clause 25.1 with the following:

"The *Consultant* obtains approval from Others directly where

- specified in the Scope and/or any Task Order and/or
- necessary to Provide the Services."

2.18 In clause 25.2, insert "and/or a Task Order" after "Contract Data".



3. AMENDMENTS TO CLAUSE 3 – TIME

3.1 In clause 30.1:

- insert "on a Task" after "does not start work";
- replace "*starting date*" with "its Task Start Date";
- replace "does the work" with "Provides the Services regularly and diligently"; and
- insert "Task" before each instance of "Completion".

3.2 Replace the wording of clause 30.2 with the following:

"The *Employer* decides the date of Task Completion and the date on which each Condition is met. The *Employer* certifies the date of Task Completion for a Task and the date on which each Condition is met within one (1) week of the date of Task Completion or within one (1) week of the date on which each Condition is met (as the context requires)."

3.3 In clause 30.3, replace "does the work" with "Provides the Services".

3.4 Insert a new clause 30.4 with the following wording:

"This contract is effective from the Contract Date and continues in full force and effect until the end of the Contract Period. Notwithstanding the foregoing, this contract remains effective after the end of the Contract Period until all *services* under any Task Order issued before the end of the Contract Period have been performed by the *Consultant* or terminated in accordance with this contract."

3.5 Insert a new clause 30.5 with the following wording:

"The expiration of the Contract Period and/or any termination of this contract (or any individual Task Order) shall not, except as otherwise specified in this contract affect

- any rights or liabilities accrued by a Party as at the date of such expiration or termination,
- any payments that are due from one Party to another as at the date of such expiration or termination and/or
- the coming into force or continuation of any provision of this contract which is expressly intended to come into force or continue in force on or after such expiration or termination."

3.6 In clause 31.2:

- replace the wording of the first bulleted item with "the Task Start Dates, access dates, Key Dates, Task Completion Dates and Task Milestone(s) for each Task,"; and
- replace "planned Completion" with "planned Task Completion for each Task" in the second bulleted item.

3.7 In the final bulleted item of clause 31.3, replace "the Scope" with "this contract and/or any Task Order".

3.8 Insert a new clause 31.4 with the wording "Not used."



3.9 In clause 32.2:

- insert a new bulleted item after the second bulleted item with the wording "following the occurrence of a compensation event,"; and
- in the final bulleted item, replace the wording "*starting date*" until the end of the item with "Task Start Date for the first Task Order until Task Completion of the final Task".

3.10 In clause 34.1, insert "Task" before each instance of "Completion".

3.11 In clause 34.2:

- insert "when requested to do so pursuant to clause 34.1" after "submits a quotation"; and
- insert a new sentence at the end of the clause with the following wording:
"Where the *Employer* accepts a quotation in respect of an acceleration, it changes the Prices, the Task Completion Date and the Key Dates accordingly and accepts the revised programme."



4. AMENDMENTS TO CLAUSE 4 – QUALITY

- 4.1 In clause 41.1, insert "each Task" before each instance of "Completion".
- 4.2 In clause 41.2:
- insert a new bulleted item after the word "minimises" with the following wording:
"where the Defect is identified before Task Completion or the satisfaction of any Condition(s) for any Key Date(s) that apply to that Task, the adverse effect on the relevant Key Date(s) and the Task Completion Date and";
 - insert a second bulleted item that begins "in all circumstances," and is immediately followed by the existing wording "the adverse effect of the *Employer* and Others";
 - retain the sentence commencing "If the *Consultant* does not correct a Defect" as a new hanging paragraph; and
 - insert "or the *Employer* deducts this amount from any sum due to the *Consultant* and/or recovers this amount by way of set-off or as a debt" after "pays this amount".
- 4.3 Insert a new clause 41.3 with the following:
"Nothing in this clause 41 affects any other right or remedy under the contract or at law, including (without limitation) the *Employer's* right to claim damages for a Defect as a breach of contract."
- 4.4 Insert a new clause 42 with the marginal heading "Accepting Defects" as follows:
- "42 **Accepting Defects**
- 42.1 The *Consultant* and the *Employer* may propose to the other that the Scope or a Task Order should be changed so that a Defect does not have to be corrected.
- 42.2 If the *Consultant* and the *Employer* are prepared to consider a change proposed pursuant to clause 42.1, the *Consultant* submits a quotation for reduced Prices or an earlier Task Completion Date or both to the *Employer* for acceptance. If the quotation is accepted, the *Employer* changes the Scope, the Prices and the Task Completion Date accordingly and accepts the revised programme."



5. AMENDMENTS TO CLAUSE 5 – PAYMENT

5.1 In clause 50.1:

- replace the wording "an invoice" with a "Valid Invoice ";
- replace the reference to "*starting date*" in the first paragraph of the clause with "Task Start Date of the first Task Order";
- at the end of the first bulleted item in the clause, replace "and" with ",";
- replace the wording of the second bulleted item with:
"at the last occasions on which Task Completion occurs in respect of a Task Order issued under this contract ";
- insert a third bulleted item with the following wording:
"any other time prior to the last occasion on which Task Completion occurs in respect of a Task Order issued under this contract, when the *Employer* requires an assessment to be made in accordance with clause 51.7 or clause 92.3 of this contract."; and
- insert a new paragraph at the end of clause 50.1 with the following wording:
"The *Consultant* acknowledges and agrees that
 - it is a condition precedent to the commencement of the processes set out in clause 50 to clause 52 (inclusive) and Option Y(UK)2 in respect of an invoice submitted by or on behalf of the *Consultant* that the invoice
 - is a Valid Invoice (provided always that the *Employer* must act reasonably and proportionately in making a determination as to whether an invoice is a Valid Invoice based upon the nature and type of the purported non-compliant part(s) of the invoice) and
 - clearly identifies which Task Milestones the sums in the invoice relate to,
 - where an invoice submitted by the *Consultant* to the *Employer* at an assessment date is not a Valid Invoice, the *Employer* shall notify the *Consultant* of this in writing and the *Consultant* shall be entitled to apply for payment for the items otherwise referred to in the non-compliant invoice as part of the invoice that it issues to the *Employer* at the next assessment date and no earlier and
 - this core clause 5 and Option Y(UK)2 are construed accordingly."

5.2 In clause 50.3:

- in the first bulleted item, insert "(including any sums that may be payable to the *Consultant* under the second sub-bulleted item of the third bulleted item of clause 56.8)";
- replace ", " at the end of the first bulleted item with "and";
- delete the second bulleted item beginning with "the amount of *expenses*" in its entirety; and
- insert a new paragraph at the end of the clause with the following wording:
"If a programme is identified in the Contract Data and is then not provided by the *Consultant* within the period stated in the Contract Data, one quarter (1/4) of the Price for Services Provided to Date is retained in assessments of the amount due until the



Consultant has submitted a first programme to the *Employer* for acceptance showing the information which this contract requires."

5.3 Insert a new clause 50.4 with the wording "Not used."

5.4 Insert a new clause 50.5 with the wording "Not used."

5.5 Replace the wording of clause 50.6 with the following:

"Payments under this contract are made in the *currency of this contract* only."

5.6 Insert a new clause 50.7 with the following wording:

"Notwithstanding any other provision of this contract, the *Consultant* acknowledges and agrees that

- the maximum amount that the *Consultant* is entitled to claim (and, subject to the application of this clause 50, clause 51 and Option Y(UK)2, receive) payment for in relation to any Task Milestone in respect of which the relevant Task Order states that the *Consultant* is to be paid on a Time Charge basis does not exceed the relevant Task Milestone Payment Cap (if any) for that Task Milestone as identified as such in the Task Order and
- a Task Milestone Payment Cap for a Task Milestone will only be increased if authorised in advance and in writing by the *Employer* at its sole discretion."

5.7 Insert a new clause 50.8 as follows:

"If there is subsequently any adjustment to the consideration due to the *Consultant* under the contract or the extent to which the *Consultant* Providing the Services is a supply on which VAT is chargeable under the applicable law, then

- if the adjustment is upward or the extent to which the supply is a supply on which the VAT that is chargeable increases, then
 - the *Consultant* shall issue a new Valid Invoice or an additional or revised Valid Invoice (as the case may be) to the *Employer*, and
 - the *Employer* will pay to the *Consultant* an amount which is equal to any VAT or additional VAT (as the case may be) arising on and from the date of the adjustment in respect of the supply for which the *Consultant* is liable to account, and
- if the adjustment is downward or the extent to which the supply is a supply on which the VAT that is chargeable decreases, then
 - the *Consultant* shall issue a valid VAT credit note or a revised Valid Invoice to the *Employer*, and
 - the *Consultant* will pay to the *Employer* an amount which is equal to any reduction in the VAT arising in respect of the supply for which the *Consultant* is liable to account, or
- the Parties may agree in writing to withhold from any further sums payable to the *Consultant* an amount which is equal to any reduction in the VAT arising in respect of the supply for which the *Consultant* is liable to account."

5.8 Insert a new clause 50.9 with the following wording:

"If the *Employer* gives the *Consultant* a pay less notice under Option Y2.3 of this contract, the



Consultant issues a revised Valid Invoice showing the revised amount and tax due. The issue of a Valid Invoice is a condition precedent to payment by the *Employer* of the amount stated in any Termination Statement."

5.9 Insert a new clause 50.10 with the following wording:

"In addition to any other legal rights and remedies of the *Employer*, whenever any sum of money is recoverable from or payable by the *Consultant* under this contract that sum may be deducted from any sum then due, or which at any time thereafter becomes due to the *Consultant* under this contract provided that the *Employer* notifies the *Consultant* in writing not later than three (3) days before the final date for payment of the amount to be paid and the basis on which it is calculated.

5.10 In clause 51.1:

- replace the first sentence of the clause with the following:

"Subject to any pay less notice under Option Y2.3 of this contract and (insofar as permitted by applicable law) the submission of a Valid Invoice which satisfies the conditions set out in clause 50 of this contract, each payment is made by the final date for payment detailed in Option Y2.2(2)";
- replace "within three weeks" until the end of the clause with "by the "final date for payment" as referred to in Option Y2.2(2)"; and
- insert the following as a new paragraph at the end of the clause:

"The Parties agree that

 - If the *Employer* pays the *Consultant* any sums under or in connection with this contract prior to the submission of a Valid Invoice, such payment shall be deemed to have been paid to the *Consultant* on account and shall be deductible from the next payment to be made to the *Consultant* under this contract and
 - the *Consultant* issues a Valid Invoice even if the amount which the *Consultant* assesses to be due is zero, or a negative amount insofar as, on balance, sums are only due from the *Consultant* to the *Employer*."

5.11 In clause 51.5 delete the words "compounded annually" and replace with the words "simple interest".

5.12 Insert a new clause 51.6 with the following wording:

"The *Employer* may in any pay less notice take into account

- any correction or modification that should properly be made to any previous payment and
- in addition to the *Employer's* common law right of set-off, the amount of any bona fide claim and/or counterclaim for damages, losses, demands, expenses (including reasonable legal and other professional expenses), costs, liabilities and/or fines which the *Employer* may have against the *Consultant* under or arising out of this contract or any other contract to which the *Employer* and the *Consultant* are a party. The foregoing entitlement is in addition to and not in substitution for any other rights of counterclaim, set-off or abatement."

5.13 Insert a new clause 51.7 with the following wording:

"The *Employer* may at any time if it considers any sums to be due to the *Employer* (including as a result of correction or modification to a previous payment pursuant to clause 51.6 of this contract) issue a notice to the *Consultant* stating the amount which the *Employer* determines to be due and



the basis on which that amount has been calculated (an "**Employer's Statement**"). The amount which the *Employer* determines to be due under an Employer's Statement is subject to any pay less notice from the *Consultant* pursuant to Option Y2.3 of this contract."

5.14 Insert a new clause 51.8 with the following wording:

"Payment of the amount due under an Employer's Statement in each currency shall be made into the bank account nominated by the *Employer* in this contract."

5.15 Insert a new clause 51.9 with the following wording:

"The "**due date**" in respect of any payment referred to in clause 51.7 is as detailed in Option Y2.2(1)."

5.16 Insert a new clause 51.10 with the following wording:

"The *Consultant*

- allows the *Employer* (or any representative of the *Employer*) to visit its offices and to inspect its financial records in relation to the *services* at any time subject to reasonable prior notice and
- ensures that a clause is inserted into each subcontract with a Subconsultant that reserves the right of the *Employer* (or any representative of the *Employer*) to visit that Subconsultant's offices and to inspect its financial records in relation to the *services* at any time subject to reasonable prior notice."

5.17 Insert a new clause 53 with the wording "Not used."

5.18 Insert a new clause 54 with the wording "Not used."

5.19 Replace clause 55 in its entirety with the following wording:

"55 **Assessing Tasks**

55.1 Unless otherwise agreed between the Parties in writing in respect of a specific Task Order, a Task Order includes

- a detailed description of the work in the Task,
- confirmation as to whether the Task requires the *Consultant* to undertake any physical works as part of the *services* comprising that Task (and any specific requirements of the *Employer* in connection with such physical works in addition to those expressly stated at clause 21.3),
- the basis upon which the Task is priced, whether by reference to Time Charges, lump sum prices or a combination of both,
- the Task Milestones and (as applicable) such lump sum prices forming part of the overall price for the Task Order attributable to it,
- the Task Milestone Payment Cap for any Task Milestone that is to be priced (and to be payable) on a Time Charge basis,
- the Task Start Date, Task Completion Date and the Task Milestone(s) for the Task,
- the amount of delay damages for late completion of the Task,
- (if required by the *Employer*) details of the maximum amount to be paid to the



Consultant under the Task Order (unless later revised by the *Employer*),

- the tendered total of the Prices for the Task (where the Task Order is subject to a lump sum pricing model) and
- the Management Fee applicable to that Task Order (to be completed by the *Consultant* as part of the process referred to at clause 56).

55.2 The *Consultant* does not commence (nor have any entitlement under this contract to any payment in connection with) any services included in a Task until both the *Employer* and the *Consultant* have countersigned a Task Order.

55.3 No Task Order is issued after the expiration of the Contract Period."

5.20 Insert a new clause 56 with the marginal heading "**Agreeing Task Orders**" with the following wording:

"56 **Agreeing Task Orders**

56.1 Each Task Order must be agreed between the Parties prior to its implementation.

56.2 If the *Employer* intends to instruct the *Consultant* to undertake a Task pursuant to and in accordance with a new Task Order, it will first issue a draft version of the relevant Task Order to the *Consultant* in writing (a "**draft Task Order**" for the purposes of this clause 56).

56.3 As soon as reasonably practicable (but, in any event, no later than seven (7) days after receiving a draft Task Order issued by the *Employer* pursuant to clause 56.2 or within such longer period as may be specified in the draft Task Order), the *Consultant* shall issue a written response to the *Employer* in respect of such draft Task Order.

56.4 A response to a draft Task Order issued by the *Consultant* to the *Employer* pursuant to clause 56.3

- states the *Consultant* accepts the draft Task Order as originally prepared,
- responds to any queries raised by the *Employer* in connection with such Task Order and populates any sections of the draft Task Order that are identified as having to be populated by the *Consultant* (and includes any proposals of the *Consultant* in response to such queries as appropriate),
- proposes any modifications to the draft Task Order as the *Consultant* (acting reasonably) considers necessary in order to clarify the content of the Task Order and/or to reflect the scope and nature of the Task and the *Consultant*'s pricing proposal for delivering the Task and/or
- advises on the *Consultant*'s proposed subcontracting and other third party arrangements in respect of the Task Order (if any) and the *Consultant*'s anticipated timescales for procuring any such subcontractors and/or anything else from any third parties necessary in order to allow the *Consultant* to undertake the Task, proposing any modifications to the Task Completion Date and/or any Task Milestones as the *Consultant* may consider appropriate in connection with the same.

56.5 If the *Consultant* does not respond to a draft Task Order as required by clause 56.3, the *Employer* may withdraw the Task Order with no cost or liability to the *Consultant*.

56.6 Following the receipt by the *Employer* of the *Consultant*'s response to a draft Task Order in accordance with clause 56.4 and clause 56.5, the Parties shall, as soon as reasonably practicable after such receipt by the *Employer* (or within such other period that the *Employer* notifies the *Consultant* of in writing, acting reasonably), work together to develop and finalise the Task Order (which may involve the revision of the original draft Task Order to take into account comments made by the *Consultant* in its response to the same),



following which the Employer shall issue a final version of the Task Order to the Consultant for acceptance that reflects the outcome of such discussions (a "**final Task Order**" for the purposes of this clause 56).

- 56.7 If a final Task Order is
- agreed between the Parties pursuant to clause 56.6, the *Employer* will issue such final Task Order to the *Consultant* in writing for its final acceptance and signature, following which the Consultant shall sign and return the final Task Order to the *Employer* no later than seven (7) days after its receipt of the final Task Order (failing which the Employer may withdraw the Task Order at its sole discretion at no cost or liability to the Consultant) or
 - not agreed between the Parties, the *Employer* has the discretion to reissue a further draft Task Order to the *Consultant* pursuant to clause 56.2 in connection with the proposed Task or to withdraw the draft Task Order at its sole discretion and at no cost or liability to the *Consultant*.
- 56.8 If a draft Task Order issued by the *Employer* pursuant to clause 56.2 requires the *Consultant* to perform any services as a precursor (or prior) to that Task Order being issued,
- the *Employer* states this in the draft Task Order and the basis upon which it will remunerate the *Consultant* for undertaking such services,
 - in the *Consultant's* response to the draft Task Order as issued pursuant to clause 56.4, the costs of such services shall be identified in the response and form part of the *Consultant's* proposal for the overall Task Order and
 - if a final Task Order is
 - agreed between the Parties pursuant to clause 56.7, such costs will be paid to the *Consultant* on the basis set out in the Task Order by reference to an initial Task Milestone or
 - not agreed or is withdrawn by the *Employer*, the *Consultant* shall be entitled to include in its next application for payment issued pursuant to clause 50.1 an amount equal to the agreed value of such services.
- 56.9 Without prejudice to the generality of clause 19, the *Consultant* acknowledges and agrees that the decision to issue any Task Order shall be at the sole and absolute discretion of the Employer and that the *Employer* shall be entitled without payment of any compensation to the *Consultant*, to elect not to issue Task Orders for, or to elect to award to another person or persons a contract or contracts in respect of, the whole or any part of the services contemplated by this contract.
- 56.10 No general terms and conditions contained in any Task Order or other document customarily required by the *Consultant* in connection with any request, quotation, proposal and/or acceptance of a request to provide services and/or works (including where referred and/or annexed to any notice issued by the *Consultant* to the *Employer* under this clause 56) shall be binding on the *Employer*."



6. AMENDMENTS TO CLAUSE 6 – COMPENSATION EVENTS

- 6.1 In clause 60.1:
- replace the first sentence of clause 60.1 with the following wording:
"The following are compensation events, but only to the extent that they are not due to any negligence, default, unlawful act or omission or breach of or failure to comply with this contract by the *Consultant*"; and
 - in clause 60.1(1), replace "changing the Scope" with "changing the scope set out in a Task Order, save in respect of
 - any change made resolving any ambiguity or inconsistency which the *Consultant* had failed to notify to the *Employer* as soon as the *Consultant* was aware or reasonably should have been aware of the same,
 - any change arising from a failure by the *Consultant* to reply during the *period for reply* or
 - any instruction which is stated in this contract not to give rise to a compensation event."
- 6.2 Replace the wording of clause 60.1(11) with "A Force Majeure Event occurs."
- 6.3 At the end of clause 60.1(12) after the word "contract", insert "following an instruction from the *Employer* to do so, it having been agreed or determined that the *Consultant* was not responsible for the Defect".
- 6.4 Replace the wording of clause 60.1(14) with "Not used."
- 6.5 Replace the wording of clause 60.2 with "Not used."
- 6.6 In clause 61.3, insert "Task" before "Completion Date".
- 6.7 In clause 61.4, insert "Task" before all three instances of "Completion Date" and amend the final instance of "Completion Date" so that it reads "Completion Date(s)".
- 6.8 In the third line of the final paragraph of clause 61.4, before the word "treated" insert "not".
- 6.9 In clause 62.2, replace "Completion Date" with "Task Completion Date(s)".
- 6.10 Replace the final sentence of clause 62.6 with "The *Consultant's* quotation is not treated as accepted by the Employer until the Employer replies to the *Consultant* accepting it,".
- 6.11 In clause 63.2, insert "for or lump sum prices in respect of a Task" after "Time Charge".
- 6.12 In clause 63.4, replace "Completion Date" with "Task Completion Date(s)".
- 6.13 Insert a new clause 63.12 with the wording "Not used."



- 6.14 Insert a new clause 63.13 with the wording "Not used."
- 6.15 Insert a new clause 63.14 with the wording "Not used."
- 6.16 Insert a new clause 63.15 with the wording "Not used."
- 6.17 In clause 63.17, replace "Task Schedule" with "Task Order".
- 6.18 In clause 63.18, insert "or lump sum prices applicable to the relevant Task" after "Time Charge".
- 6.19 Insert a new clause 63.19 with the following wording:
"Where a compensation event or its effect is in part attributable to the *Consultant's* fault or to anything for which the *Consultant* is responsible under this contract, the Prices, the Task Completion Date or Key Dates shall not be changed to the extent attributable to the *Consultant's* fault. In this contract a "fault" of the *Consultant* includes, without prejudice to clause 1.25, any failure on the part of the *Consultant* or its Subconsultants (or its or their employees, agents or suppliers) to take any reasonable action to prevent the compensation event or to prevent or mitigate its adverse effects, or any negligence or breach of this contract on the part of the *Consultant* or its Subconsultants (or its or their employees, agents or suppliers)."
- 6.20 Insert a new clause 63.20 with the following wording:
"Notwithstanding any other provision of this contract, where the compensation event notified by the *Consultant* to the *Employer* is a Force Majeure Event, the *Consultant* shall not be entitled to any adjustment to the Prices and shall, subject to the provisions of clause 61 to clause 65 (inclusive), be entitled to an adjustment to any Key Date(s) and the Task Completion Date only."
- 6.21 Replace the final sentence of clause 64.4 with "The *Consultant's* quotation is not treated as accepted by the *Employer* until the *Employer* replies to the *Consultant* accepting it."
- 6.22 In clause 65.1:
- replace the ", " at the end of the first bulleted item in clause 65.1 with "or" and
 - delete the third bulleted item of the clause.
- 6.23 Insert a new clause 65.3 with the wording "Not used."
- 6.24 Insert a new clause 65.4 with the wording "Not used."



7. AMENDMENTS TO CLAUSE 7 – RIGHTS TO MATERIAL

7.1 Replace the wording of clause 70 in its entirety with the following wording:

"70 **Consultant Materials**

70.1 The Intellectual Property Rights in all Consultant Materials prepared by or on behalf of the *Consultant* in connection with the *services* and the Project shall remain vested in the *Consultant*, but the *Consultant* grants to the *Employer* and its nominees with full title guarantee an irrevocable, royalty-free, worldwide and non-exclusive licence in perpetuity to use, copy and reproduce the Consultant Materials for any purpose whatsoever, including but not limited to in connection with the Project (and any other project of the *Employer*) and in connection with (but without limitation) the design, construction, completion, operation, extension, maintenance, letting, management, sale, advertisement, alteration, reinstatement and repair of any element(s) of the Project (and any other project of the *Employer*).

70.2 The licence granted under clause 70.1, carries the right for the *Employer* to grant sub-licences (including, but not limited to, to any Contractor(s)), is transferable to third parties (including by way of an assignment and/or novation) and shall subsist notwithstanding the expiration of the Contract Period or the termination (for any reason) of the *Consultant's* employment under this contract or of any Task Order.

70.3 The right of the *Employer* to assign, novate, transfer or otherwise deal with the licence given under clause 70.1 pursuant to clause 70.2 shall include the right for the *Employer* to use such means to grant the licence to a Central Government Body or to any body which carries on any of the functions and/or activities that have previously been performed and/or carried on by the *Employer*.

70.4 Any change in the legal status of the *Employer* which means that it ceases to be a Central Government Body, shall not affect the validity of the licence granted in clause 70.1 and if the *Employer* ceases to be a Central Government Body, the successor body to the *Employer* shall be entitled to the benefit of the licence granted in clause 70.1.

70.5 If a licence granted under clause 70.1 is novated by the Employer pursuant to clause 70.2 or there is a change in the *Employer's* status as described at clause 70.4, the rights acquired on that novation or change of status shall not extend beyond those previously enjoyed by the *Employer* under this contract.

70.6 The *Consultant* unconditionally and irrevocably agrees to waive, in respect of any Consultant Materials in which it has granted a licence under clause 70.1 above, all moral rights to which the *Consultant* may now or at any future time be entitled under the Copyright, Designs and Patents Act 1988 and/or under any other applicable law in respect of the Consultant Materials, with this waiver being made in favour of the *Employer* and extended to (as the context permits) the *Employer's* sub-licensees, assignees, transferees and successors in title.

70.7 The Intellectual Property Rights in all Employer Materials shall remain vested in the *Employer* but the *Employer* shall grant to the *Consultant* and its nominees a non-exclusive and royalty-free licence to copy, use and reproduce such Employer Materials for any purpose in connection with the Project, provided always that such licence shall automatically terminate upon the termination of this contract or a specific Task Order (where such Employer Materials have been provided specifically in relation to that Task Order only).

70.8 The *Consultant* warrants and undertakes to the *Employer* that

- all Consultant Materials are and will continue to be its own original work (or the



original work of its Subconsultants, where appropriate),

- the licence granted in any Consultant Materials pursuant to clause 70.1 does not and will not at any time infringe the rights of any third party,
- it has not and will not infringe the rights of the *Employer* or any other third party in the use of any Employer Materials to which the licence provided by the *Employer* to the *Consultant* pursuant to clause 70.4 applies, and
- it has obtained (and shall maintain at all times) all of the necessary licenses and consents in relation to the Intellectual Property Rights that are used or may be used by the *Consultant* or licenced to and/or by the *Consultant* under or in connection with this contract and will provide evidence of the same on the written request of the *Employer*.

70.9 The *Consultant* shall not be liable for any such use by the *Employer*, its nominees or any other third parties (including any Beneficiary) of any Consultant Materials for any purpose other than that for which such Consultant Materials were prepared by or on its behalf.

70.10 The *Employer* shall have no liability whatsoever to the *Consultant* or any third party whatsoever (whether in contract, tort (including negligence), for breach of duty or otherwise) for any loss or damage of whatever kind and however caused arising out of or in connection with the use of and/or reliance by the *Consultant* on any Employer Materials (save for fraudulent misrepresentation) in respect of which a licence has been provided in favour of the *Consultant* pursuant to clause 70.7.

70.11 The *Consultant*, before the earlier of the date falling three (3) months after a Task Completion Date (for Materials relating to that Task) and the Contract Period Expiration Date, shall without further charge to the *Employer* deliver for the retention and use of the *Employer* the Materials and related information and other items of any kind whatsoever relating to this contract, the *services* and the Project in the *Consultant's* control custody or possession.

70.12 The *Consultant* shall indemnify the *Employer* and its sub-licensees, assignees, transferees and successors in title against, without limitation, all payments, losses, demands, claims, damages, actions, costs, legal fees, fines, financial penalties and expenses that are paid, made or incurred by the *Employer* as a consequence of and in relation to any actual and/or alleged infringement of Intellectual Property Rights arising out of or in connection with the Consultant Materials and/or the *Consultant's* use of the Employer Materials."

7.2 Replace the wording of clause 71 in its entirety with the following wording:

"71 **Confidentiality**

71.1 Except where expressly stated otherwise in this contract, the *Consultant*

- shall treat all Confidential Information as confidential and safeguard it accordingly and not disclose Confidential Information to any other person without the owner's prior written consent and
- does not and procures that its Subconsultants do not make any public statement relating to this contract and/or *services* without the prior written consent of the *Employer*, such consent not to be unreasonably withheld (provided that nothing in this bulleted item shall prevent the *Consultant* from complying with any legal obligation placed upon it or from making any announcement required by any securities exchange or regulatory or government body to which it subscribes including the London Stock Exchange or the Panel on Takeovers and Mergers).



- 71.2 Subject always to clause 71.7, the *Consultant's* obligations in relation to Confidential Information pursuant to clause 71.1 do not apply to the extent that (and nothing shall prevent the *Employer* from (acting reasonably and/or in compliance with or in furtherance of its own duties and obligations under any applicable law or that apply to the *Employer* in its capacity as a Crown body) disclosing the Consultant Confidential Information where)
- the disclosure is a requirement of applicable law placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA or the Environmental Information Regulations,
 - the information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner,
 - the information was obtained from a third party without obligation of confidentiality,
 - the information was already in the public domain at the time of disclosure otherwise than by a breach of this contract and/or
 - it is independently developed without access to the Employer Confidential Information.
- 71.3 The *Consultant* shall only disclose the Employer Confidential Information relevant to the carrying out and completion of the Project to its personnel (of any type) and Subconsultants who are directly involved in carrying out and completing the Project, and shall ensure that such persons are aware of and comply with their obligations in respect of Confidential Information.
- 71.4 The *Consultant* shall not, and shall procure that its personnel (of any type) and Subconsultants do not, use of any of the Employer Confidential Information received otherwise than for the purposes of this contract.
- 71.5 At the written request of the *Employer*, the *Consultant* shall procure that its personnel (of any type) and/or Subconsultants identified in the *Employer's* notice sign a confidentiality undertaking on similar terms to this contract prior to commencing any work in accordance with this contract.
- 71.6 Nothing in this contract shall prevent the *Employer* from (acting reasonably and/or in compliance with or in furtherance of its own duties and obligations under any applicable law that applies to the *Employer* in its capacity as a Crown body) disclosing the Consultant Confidential Information
- to any Crown body or any other public body on the understanding that they are entitled to further disclose the Confidential Information to other Crown bodies or other public bodies on the basis that the information is to be treated as confidential and is not to be disclosed to a third party which is not part of any Crown body or any public body,
 - to any party engaged by the *Employer* in connection with the Project or any person conducting a review of the Project (subject to any commercial redactions as may be reasonably appropriate so as not to disclose any commercially sensitive financial information of the *Consultant's* to a competitor organisation),
 - for the purpose of the examination and certification of the *Employer's* accounts and/or
 - for any examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the *Employer* has used



its resources.

- 71.7 The *Consultant* warrants and undertakes to the *Employer* that it will comply with the requirements of the Security Aspects Letter at all times in the performance of the services.
- 71.8 Notwithstanding clause 71.1 to clause 71.6 (inclusive), the *Consultant* warrants and undertakes to the *Employer* that it shall not (and shall ensure that its personnel (of any type) and its Subconsultants shall not) use and/or disclose to any third party any Foreground Materials and/or Employer Materials relating to any Security Measures in respect of the Project without the prior written approval of the *Employer* (not to be unreasonably withheld or delayed), provided always that this general prohibition shall not apply to such disclosure (on a limited basis) in connection with any tender and/or procurement processes undertaken by the *Consultant* in connection with the Project provided that the *Consultant* shall ensure that any recipient(s) of the relevant Foreground Materials and/or Employer Materials complies fully with all data security and/or disclosure policies forming part of or referred to in the Scope (including, for the avoidance of doubt, the Security Aspects Letter) or as otherwise issued by the *Employer* to the *Consultant* from time to time in writing in connection with such disclosure.
- 71.9 Notwithstanding any other term of this contract
- the *Consultant* consents that the *Employer* can publish this contract in its entirety, including from time to time agreed changes to this contract, to the general public,
 - the *Consultant* shall assist and co-operate with the *Employer* in order to make information available to the general public as required by the *Employer* from time to time and
 - prior to such publication the *Employer* may, at its sole discretion, in whole or in part, redact information that concerns national security, personal data, information protected by intellectual property law, information which is not in the public interest to disclose (under a FOIA analysis), third party confidential information, information technology security and/or the prevention of corruption and/or Fraud."
- 7.3 Insert a new clause 72 with the marginal heading "**Building information modelling**" with the following wording:
- "The *Consultant* shall comply with the Digital Construction Requirements at all times and shall input into the Building Information Model in accordance with the Digital Construction Requirements and other documents developed, prepared and/or contributed towards by the *Consultant* in connection with the Project as required by the BIM Coordinator from time to time."



8. AMENDMENTS TO CLAUSE 8 – INDEMNITY

8.1 Replace the wording of clause 81.1 in its entirety with the following wording:

"The *Consultant* provides the insurance stated in Contract Data: Part One as being provided by the *Consultant* with reputable insurers approved by the *Employer* and otherwise in accordance with the Scope and provides professional indemnity insurance to the level of indemnity stated in Contract Data: Part One."

8.2 Insert a new clause 81.3 with the marginal heading "**Professional indemnity insurance**" as follows:

"81.3 **Professional Indemnity insurance**

- Without prejudice to the generality of clause 81.1 and clause 81.2, the *Consultant* shall maintain professional indemnity insurance covering (inter alia) its potential liability under this contract for the given insurance policy year, in the event that it breaches this contract upon market norm terms and conditions prevailing for the time being in the insurance market, and with reputable insurers lawfully carrying on such insurance business in the United Kingdom, to an amount as stated in Contract Data: Part One in respect of any one claim or series of claims arising out of the same original cause or source (or equivalent), without limit to the number of claims in any annual policy period and in the aggregate annually in respect of fire safety, cladding pollution and contamination related claims for a period beginning now and ending on the End of Liability Date (unless stated otherwise in Contract Data: Part One), provided always that such insurance is available at commercially affordable rates and on terms such that prudent professional consultants who undertake design generally carry such insurance ("**Reasonable Rates and Terms**").
- Any increased or additional premium required by insurers by reason of the *Consultant's* own claims record or other acts, omissions, matters or things particular to the *Consultant* shall be deemed to be within Reasonable Rates and Terms.
- The *Consultant* shall immediately inform the *Employer* if such insurance ceases to be available upon Reasonable Rates and Terms in order that the *Consultant* and the *Employer* can discuss the most commercially appropriate means of protecting the *Employer's* position in respect of this contract and the *services* (and the *Consultant's* duties, responsibilities and liabilities under this contract) in the absence of such insurance.
- The *Consultant* shall co-operate with any measures reasonably required by the *Employer* including (without limitation) completing any proposals for insurance and associated documents, maintaining such insurance at rates above Reasonable Rates and Terms if the *Employer* undertakes in writing to reimburse the *Consultant* in respect of the net cost of such insurance to the *Consultant* above Reasonable Rates and Terms.
- Without prejudice to the generality of clause 81.2 and when reasonably requested to do so by the *Employer* the *Consultant* shall produce promptly for inspection and/or provide a copy of satisfactory documentary evidence (a copy of an insurance broker's letter or similar certificate shall be satisfactory) that the required professional indemnity insurance is being maintained.
- The *Consultant* shall notify the *Employer* in writing from time to time of any change in its professional indemnity insurance arrangements which take it



outside the requirements of this contract and within ten (10) days of the *Employer's* request at any time the *Consultant* will produce for inspection documentary evidence as to compliance with this clause 81.3.

- If the *Consultant* fails to comply with its obligations under this clause 83.1 the *Employer* may take out insurance to cover some or all of the loss or damage which could result from a breach of the *Consultant's* obligations under this contract and may recover the costs and expenses of taking out such insurance from the *Consultant* by way of deduction, set-off and/or as a debt.

8.3 Replace the wording of clause 82.2 in its entirety with "Not used."



9. AMENDMENTS TO CLAUSE 9 – TERMINATION

9.1 In clause 90.1:

- replace "Either Party" with "The *Employer*" and add ", this contract and/or any Task Order" after "Provide the Services";
- replace each instance "the other Party" with "the *Consultant*";
- after each of "made an arrangement with his creditors" and "made an arrangement with its creditors", insert "(or has applied to court for, or has obtained a moratorium under Part A 1 of the Insolvency Act 1986)"; and
- replace the words "had an administration order made against it" with "entered administration".

9.2 In clause 90.3:

- replace "the Consultant's obligation to Provide the Services" with "this contract and/or any Task Order";
- at the end of the first bulleted item, replace "or" with ", ".
- at the end of the second bulleted item, replace the full stop with ", " and insert new bulleted items with the following wording:
 - "the *Consultant* is in default of its obligations under (and determinable by reference to) clause 117.5 or clause 119.7,
 - the *Consultant's* engagement under the Framework Agreement has been terminated by Scape in accordance with the terms of the Framework Agreement,
 - it is discovered that the *Consultant* was, as at the Contract Date, subject to one of the provisions requiring mandatory exclusion from a procurement process as referred to in Regulation 57(1) of the Public Contracts Regulations 2015, including as a result of the application of Regulation 57(2) of the Public Contracts Regulations 2015 and should therefore have been excluded from the procurement procedure which resulted in the Parties entering into this contract or
 - this contract should not have been awarded to and entered into with the *Consultant* in view of a serious infringement of the obligations under the Treaty on European Union, the Treaty on the Functioning of the European Union and/or Directive 2014/24/EU of the European Parliament and of the Council (known as the "Public Contracts Directive") which have been declared by the European Court of Justice under a procedure under Article 258 of the Treaty of the Functioning European Union."

9.3 In clause 90.4, replace "the Consultant's obligation to Provide the Services" with "this contract and/or any Task Order".

9.4 Insert a new clause 90.5 with the marginal heading "**Termination at any time**" with the following wording:

"90.5 **Termination at any time**

- Notwithstanding any other provision of this contract



- the *Employer* may terminate this contract and/or any Task Order at any time and for any reason and
- in such circumstances, the *Employer* gives the *Consultant* not less than thirty (30) days' notice of such termination, within which period the *Consultant* ceases all activities under this contract or the relevant Task Order (as the context requires) in an orderly manner.
- Upon the expiry of the period referred to in the first bulleted item of this clause 90.5
 - the *Consultant's* engagement under this contract or in respect of the relevant Task Order (as the context requires) shall terminate,
 - the procedure to be followed and the assessment of any further payment that may be due to the *Consultant* arising out of or in connection with the termination under this clause 90.5 shall be determined pursuant to clause 91, clause 92.1 and clause 92.3 respectively".

9.5 In clause 91.1:

- insert "or where termination is of a Task Order, no further work necessary to Provide the Services under that Task Order" after "Provide the Services" in the first bulleted item of the clause; and
- insert a new fifth main bulleted item with the following wording: "the *Consultant*, upon notification from the *Employer*, delivers to the *Employer* all Material and other items of any kind whatsoever relating to this contract and the Project in the *Consultant's* control, custody or possession."

9.6 In clause 92.1:

- in the first and second sentence, insert "of the contract and/or any relevant Task Order(s) (as the context requires)" after each instance of "termination";
- insert "(provided that the *Consultant* has used reasonable endeavours to mitigate the same)" at the end of the second bulleted item; and
- after the bulleted list in clause 92.1, insert the following:

"The amounts covered under the preceding bulleted items do not include (and the *Consultant* shall have no entitlement to claim from the *Employer*) any amounts in respect of any loss or deferment of anticipated or actual profit, loss of expectation, loss of revenue, loss of turnover, loss of use, loss of opportunity, loss of production, costs of finance, business interruption and/or redeployment of workforce or any similar damage or for any consequential or indirect losses of any other kind arising out of or in connection with the termination of this contract and/or any relevant Task Order(s) (as the context requires), and/or of the *Consultant's* obligation to Provide the Services."

9.7 Replace the wording of clause 92.2 with the following:

"Subject to clause 93.3, where the *Employer* terminates this contract

- pursuant to clause 90.1,
- because of the substantial failure of the *Consultant* to comply with its obligations or
- in accordance with the second, third and/or fourth bulleted items of clause 90.3,

the amount due on termination shall be the amount determined in accordance with clause 92.1 less



a deduction of the additional cost to the *Employer* of completing the whole of the *services* and after termination the *Employer* shall not be obliged to make any further payment until that additional cost can be fully ascertained. In the event that such additional cost exceeds the amount calculated in accordance with clause 92.1, without prejudice to any other right or remedy of the *Employer*, the *Employer* may recover such excess from the *Consultant* as a debt."

- 9.8 Insert a new clause 92.3 with the marginal heading "**Payment on termination – additional rules**" with the following wording:

"92.3 **Payment on termination – additional rules**

- Within seven (7) days of the *Employer's* assessment of a final payment to or from the *Consultant* pursuant to this clause 92
 - the Party to whom final payment is due issues a statement to the other Party stating the amount which that Party considers to be due and the basis on which that amount has been calculated in accordance with the *Employer's* assessment under this clause 92.3 (a "**Termination Statement**") and
 - in the case of a Termination Statement from the *Consultant*, such Termination Statement includes a Valid Invoice showing the correct amount of value added tax properly chargeable in respect of the amount stated as due in the Termination Statement.
- If no pay less notice is issued by the payer in accordance with Option Y2.3 of this contract, the amount of the termination payment to be made is, subject to the provision of
 - a pay less notice under Option Y2.3 of this contract and
 - the submission of a Termination Statement by the payee together with (in the case of a Termination Statement of the *Consultant*) a Valid Invoice showing the correct amount of value added tax properly chargeable in respect of the amount stated as due in the Termination Statement,

the sum stated as due in the Termination Statement.
- The due date in respect of any payment referred to in clause 92.1 is one (1) week after the date of receipt by the payer of the Termination Statement pursuant to the first bulleted item of this clause 92.3.
- The payment by the *Employer* to the *Consultant* pursuant to clause 92.1 and clause 92.3 in connection with the termination shall be the sole and exclusive remedy of the *Consultant* arising out of or in connection with the termination of this contract (whether in contract, tort (including negligence) or any other basis of law) and the *Consultant* shall have no right to claim any amounts in respect of the termination above and beyond such sums, including (without limitation) amounts in respect of loss or deferment of anticipated or actual profit, loss of expectation, loss of revenue, loss of turnover, loss of use, loss of opportunity, loss of production, costs of finance, business interruption and/or redeployment of workforce or any similar damage or for any consequential or indirect losses of any other kind."

- 9.9 Insert a new clause 92.4:

"No sum is payable in respect of any sum due under this contract if the *Consultant* is "insolvent" as defined in sections 113(2) to (5) of the Housing Grants, Construction and Regeneration Act 1996 (as amended) after the date on which a pay less notice is issued in respect of that sum under Option



Y2.3 of this contract."



10. **ADDITIONAL CLAUSE 10 – ADDITIONAL PROVISIONS: PART 1**

10.1 Insert a new core clause 10 after core clause 9 (Termination) in the *conditions of contract* with the heading "**Additional Provisions: Part 1**"

10.2 Insert a new clause 101 with the marginal heading "**Convictions**" with the following wording:

"101 **Convictions**

101.1 Unless agreed in writing in advance by the *Employer*, the *Consultant* shall procure that, in respect of all potential persons performing any of the *services*, whether an employee of the *Consultant* or any Subconsultant (each a "**Named Employee**"), before a Named Employee begins to attend any site at which the *services* are being or are to be carried out in connection with this contract

- each Named Employee is questioned as to whether they have any Relevant Convictions,
- a Disclosure and Barring Services check is undertaken in respect of each Named Employee and
- save to the extent prohibited by applicable law, a copy of the results of such check are notified to the *Employer*.

101.2 The *Consultant* shall procure that no person who discloses any Relevant Convictions, or who is found to have any Relevant Convictions following the results of a Disclosure and Barring Services check is employed without the *Employer's* prior written consent (such consent not to be unreasonably withheld or delayed).

101.3 Save to the extent prohibited by applicable law, the *Consultant* shall procure that the *Employer* is informed if any member of staff of the *Consultant* (or any employee of a Subconsultant), whether a Named Employee or otherwise, involved in the provision of the *services* who, subsequent to their commencement of employment as a member of staff, receives a Relevant Conviction or whose previous Relevant Convictions become known to the *Consultant*.

101.4 Without prejudice to clause 101.1 to clause 101.3 (inclusive), where the *Employer* notifies the *Consultant* that the *Consultant* will be working in a regulated activity with vulnerable groups for the purposes of the Safeguarding Vulnerable Groups Act 2006, or is working in an environment deemed as sensitive and/or vulnerable for any reason by the *Employer*, the *Consultant* shall comply at its own cost with the *Employer's* requirements to the extent relevant to the delivery of the *services* to the *Employer*, which may include (without limitation)

- asking any person acting for or on behalf of the *Consultant* in connection with this contract for details of any Relevant Convictions, obtaining an enhanced Disclosure and Barring Services disclosure (including a barred list) check and/or
- complying with the HM Government Baseline Personnel Security Standard or similar standard,

and the results of such disclosures shall be shared with the *Employer* in writing, copied to the relevant representative for Scape under the Framework Agreement."

10.3 Insert a new clause 102 with the marginal heading "**Whistle Blowing**" with the following wording:

"102 **Whistle blowing**



The *Consultant* shall ensure that staff engaged by the *Consultant* in connection with any of the *services* (and use reasonable endeavours to ensure that any staff engaged by any Subconsultant, where appropriate) are aware of the requirements of the Public Interest Disclosure Act 1998, any whistle blowing policy that the *Consultant* may have and the arrangements to be followed in the event of any staff having any concerns and wishing to make a disclosure pursuant to the Public Interest Disclosure Act 1998."

10.4 Insert a new clause 103 with the marginal heading "**Competition law, corrupt gifts and payment**" with the following wording:

"103 **Competition law, corrupt gifts and payment**

103.1 The *Consultant* represents and warrants that neither it nor (as far as the *Consultant* is reasonably aware or can reasonably ascertain) any persons any person associated with the *Consultant* in connection with this contract and/or the Project have at any time prior to the Contract Date

- committed a Prohibited Act and/or have been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act,
- been listed by any governmental department or agency as being debarred, suspended, proposed for suspension or debarment and/or otherwise ineligible for participation in governmental procurement programmes or contracts on the grounds of a Prohibited Act and/or
- received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this contract, or otherwise suspects that any person directly or indirectly connected with the contract has committed or attempted to commit a Prohibited Act.

103.2 The *Consultant* shall

- not commit a Prohibited Act,
- comply with the Relevant Policies,
- comply with the Relevant Requirements,
- have and shall maintain in place throughout the term of this agreement its own policies and procedures, including adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements and the Relevant Policies and to prevent the occurrence of a Prohibited Act and shall enforce them as appropriate,
- provide reasonable evidence to demonstrate the *Consultant's* compliance with the provisions of this clause 103 as the *Employer* may reasonably request from time to time,
- ensure that any person associated with the *Consultant* who is performing services in connection with this contract (including any Subconsultant) does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on the *Consultant* in this clause 103 (the "**Relevant Terms**") and the *Consultant* shall be responsible for the observance and performance by such persons of the Relevant Terms, and shall be directly liable to the *Employer* and Scape for any breach by such persons of any of the Relevant Terms and
- not act in a manner, in relation to the performance of this contract, which the *Employer* reasonably considers to be inconsistent with the relevant "UK Construction Industry Competition Law Code of Conduct" or in breach of



Chapters I and/or II of the Competition Act 1998 and/or the Treaty on the Functioning of the European Union (2012/C 326/01) or any other applicable law that is equivalent in intent.

- 103.3 The *Consultant* shall immediately notify the *Employer* in writing if it becomes aware of any breach of this clause 103 or if it has reason to believe that it has or any person associated with the *Consultant* has
- been subject to an investigation or prosecution which relates to an alleged Prohibited Act,
 - been listed by any governmental department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in governmental procurement programmes or contracts on the grounds of a Prohibited Act and/or
 - received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this contract or otherwise suspects that any person directly or indirectly connected with the contract has committed or attempted to commit a Prohibited Act.
- 103.4 For the purpose of this clause 103, the meaning of "**adequate procedures**" and whether a person is "**associated**" with another person shall be determined in accordance with (as the context permits)
- section 7(2) of the Bribery Act 2010 and any guidance issued under section 9, section 6(5), section 6(6) and section 8 of the Bribery Act 2010 (as applicable) and
 - the definition of "associated person" in section 44(4) of the Criminal Finances Act 2017,
- and, for the purposes of this clause 103, a person associated with the *Consultant* includes any Subconsultant.
- 103.5 Any dispute, difference and/or question arising in respect of the interpretation of this clause 103 shall be decided by the *Employer* (acting reasonably), whose decision, in the absence of manifest error, shall be final and conclusive."



11. **ADDITIONAL CLAUSE 11 – ADDITIONAL PROVISIONS: PART 2**

- 11.1 Insert a new core clause 11 after the new core clause 10 (Addition Provisions: Part 1) in the *conditions of contract* with the heading "**Additional Provisions: Part 2**"
- 11.2 Insert a new clause 111 with the marginal heading "**Cooperation and coordination**" with the following wording:
- "111 **Cooperation and coordination**
- 111.1 The *Consultant* shall, using the standard of care set out at clause 21.2
- promote collaborative behaviours throughout its organisation and its supply chain in connection with the Project and act collaboratively with the Project Consultants and the Contractor(s) at all times,
 - comply with any requirements in the Scope in connection with the cooperation and/or interfacing with the Project Consultants and the Contractor(s) in connection with the Project,
 - establish an integrated collaborative team environment in order to encourage proactive, open and efficient sharing of knowledge and information between the *Consultant*, the Project Consultants and the Contractor(s) and
 - proactively consult the Project Consultants and the Contractor(s) when seeking to make decisions in relation to the Project,
- in each case so far as reasonably practicable on a Project Focused basis.
- 111.2 The *Consultant* shall work with the Project Consultants and the Contractor(s) (and using the standard of care set out at clause 21.2) to
- (to the extent reasonably within the *Consultant's* control) assist the Project Consultants and the Contractor(s) in performing their obligations under their respective Project Appointments or Building Contract (as the context permits) in respect of which they are reliant upon information provided and/or developed by and/or input provided by the *Consultant* in connection with the *services*,
 - share best practice in connection with the Project and
 - collaboratively seek to manage and mitigate any potential risks identified in relation to the design and construction of the Project,
- on a Project Focused basis.
- 111.3 The *Consultant* agrees, for the purposes referred to in this clause 111, to promptly supply or allow each Project Consultant access to all information and documentation in its possession or control that is reasonably requested by each Project Consultant in connection with the Project, insofar as the same is
- not subject to disclosure and/or confidentiality restrictions under applicable law or this contract and
 - reasonably required by a Project Consultant to properly perform its obligations under its Project Appointment.
- 111.4 The *Consultant* shall, in complying with its obligations under this clause 111, consult with each Project Consultant and the *Employer* and attend such meetings as and when reasonably requested by the *Employer* to discuss any matters arising under this



contract, any Project Appointment and/or in relation to any part(s) of the Project.

111.5 Nothing in this clause 111 shall require the *Consultant* to perform tasks and/or duties which are the responsibility of a Project Consultant under its Project Appointment."

11.3 Insert a new clause 112 with the marginal heading "**Conflicts of interest**" with the following wording:

"112 **Conflicts of interest**

112.1 The *Consultant* shall

- take appropriate steps to ensure that neither the *Consultant* nor any person engaged by or on behalf of it (including its Subconsultants) is placed in a position where, in the reasonable opinion of the *Employer*, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the *Consultant* and the duties owed to the *Employer* in connection with the Project and/or under this contract and
- notify the *Employer* immediately giving full particulars of any such conflict of interest which may arise."

11.4 Insert a new clause 113 with the marginal heading "**Tax compliance**" with the following wording:

"113 **Tax compliance**

113.1 If, during the *Consultant's* engagement under this contract, an Occasion of Tax Non-Compliance occurs, the *Consultant* shall notify the *Employer* in writing of such occasion within seven (7) days of its occurrence and promptly give the *Employer*

- details of the steps it is taking to address the Occasion of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors it considers relevant and
- such other information in relation to the Occasion of Tax Non-Compliance as the *Employer* may reasonably require.

113.2 If the *Consultant* or any persons engaged by it from time to time are liable to be taxed in the UK and/or to pay NICs in respect of consideration received under this contract, the *Consultant* shall

- at all times comply with ITEPA and all other statutes and regulations relating to income tax, SSCBA and all other statutes and regulations relating to NICs, in respect of that consideration and
- indemnify the *Employer* against any income tax, NICs and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made in connection with the provision of the *services* by the *Consultant* or any persons engaged by it."

11.5 Insert a new clause 114 with the marginal heading "**Data protection**" with the following wording:

"114 **Data protection**

114.1 The Parties acknowledge that

- for the purposes of the Data Protection Laws, the *Employer* is the Controller and the *Consultant* is the Processor unless otherwise specified in the Data Protection Schedule and
- the only Processing that the Processor is authorised to do is listed in the Data Protection Schedule by the Controller and may not be determined by the



Processor.

- 114.2 The Processor shall notify the Controller immediately if it considers that any of the Controller's instructions infringe the Data Protection Laws.
- 114.3 The Processor shall provide all reasonable assistance to the Controller in the preparation of any Data Protection Impact Assessment prior to commencing any Processing and such assistance may, at the discretion of the Controller, include
- a systematic description of the envisaged Processing operations and the purpose of the Processing,
 - an assessment of the necessity and proportionality of the Processing operations in relation to the *services*,
 - an assessment of the risks to the rights and freedoms of Data Subjects and/or
 - the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 114.4 The Processor shall, in relation to any Personal Data that is Processed in connection with its obligations under this contract
- Process that Personal Data only in accordance with the Data Protection Schedule, unless the Processor is required to do otherwise by applicable law (provided that if it is so required, the Processor shall promptly notify the Controller before Processing the Personal Data unless prohibited by applicable law),
 - ensure that it has in place Protective Measures appropriate to protect against a Data Loss Event, which the Controller may reasonably reject (but failure to reject shall not amount to approval by the Controller of the adequacy of the Protective Measures), having taken account of the
 - nature of the data to be protected,
 - harm that might result from a Data Loss Event,
 - state of technological development and
 - cost of implementing any measures and
 - ensure that
 - the Processor Personnel do not Process any Personal Data except in accordance with this contract (and in particular the Data Protection Schedule) and
 - 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
 - are aware of and comply with the Processor's duties under this clause 114,
 - are subject to appropriate confidentiality undertakings with the Processor or any Sub-Processor,
 - are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Controller or as otherwise permitted by this contract and
 - have undergone adequate training in the use, care,



protection and handling of Personal Data,

- it does not transfer Personal Data outside of the European Union unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled
 - the Controller or the Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with Article 46 of the GDPR or Article 37 of the LED) as determined by the Controller,
 - the Data Subject has enforceable rights and effective legal remedies,
 - the Processor complies with its obligations under the Data Protection Laws by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses all reasonable endeavours to assist the Controller in meeting its obligations) and
 - the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the Processing of the Personal Data and
 - at the written direction of the Controller, delete or return Personal Data (and any copies of it) to the Controller on termination of the contract unless the Processor is required by applicable law to retain the Personal Data.

114.5 Subject to clause 114.6, the Processor shall notify the Controller immediately if it

- receives a Data Subject Access Request (or purported Data Subject Access Request),
- receives a request to rectify, block or erase any Personal Data,
- receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Laws,
- receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data that is Processed under this contract,
- receives a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by applicable law and/or
- becomes aware of a Data Loss Event.

114.6 The Processor's notification obligation under clause 114.5 includes the provision of further information to the Controller in phases, as details become available.

114.7 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 Laws and any complaint, communication or request made under clause 114.5 (and insofar as possible within the timescales reasonably required by the Controller) including by promptly providing

- the Controller with full details and copies of the complaint, communication or



- request,
- such assistance as is reasonably requested by the Controller to enable the Controller to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Laws,
 - the Controller, at its request, with any Personal Data it holds in relation to a Data Subject,
 - assistance as requested by the Controller following any Data Loss Event and
 - 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.
- 114.8 Unless the Processor employs fewer than two-hundred and fifty (250) staff, the Processor shall maintain complete and accurate records and information to demonstrate its compliance with this clause 114 unless the Controller determines that
- the Processing is not occasional,
 - the Processing includes special categories of data under Article 9(1) of the GDPR or Personal Data concerning criminal convictions and offences under Article 10 of the GDPR and/or
 - the Processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 114.9 The Processor shall allow for audits of its Data Processing activity by the Controller or the Controller's designated auditor.
- 114.10 Each Party shall designate its own Data Protection Officer if required by the Data Protection Laws.
- 114.11 Before allowing any Sub-Processor to Process any Personal Data related to this contract, the Processor must
- notify the Controller in writing of the intended Sub-Processor and Processing,
 - obtain the written consent of the Controller,
 - enter into a written agreement with the Sub-Processor which give effect to the terms set out in this clause 114 such that they apply to the Sub-Processor and
 - provide the Controller with such information regarding the Sub-Processor as the Controller may reasonably require.
- 114.12 The Processor shall remain fully liable for all acts or omissions of any of its Sub-Processors.
- 114.13 The Controller may, at any time on not less than thirty (30) Business 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 contract).
- 114.14 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Controller may on not less than thirty (30) Business Days' notice to the Processor amend this agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.
- 114.15 The *Consultant* shall be liable for and hereby indemnifies the *Employer* from and against all claims, proceedings, damages, liabilities, losses, costs and expenses suffered or incurred by the *Employer* where and to the extent that the same arises in connection with any breach of this clause 114 by the *Consultant* and/or its personnel (of any type)



and/or its Subconsultants."

- 11.6 Insert a new clause 115 with the marginal heading "**Freedom of information**" with the following wording:

"115 **Freedom of information**

- 115.1 The *Consultant* acknowledges that the *Employer* is subject to the requirements of the FOIA and the Environmental Information Regulations and the *Consultant* shall assist and co-operate with the *Employer* (at its own expense) to enable it to comply with these information disclosure requirements.
- 115.2 The *Consultant* shall and shall ensure that its Subconsultants shall provide
- the *Employer* with a copy of all information in its possession, power or control in the form that they require within five (5) days (or such other period as the *Employer*, as the context permits, may notify to the *Consultant*) of receiving a written request from the *Employer* for such information and
 - all necessary assistance as is reasonably requested by the *Employer* to enable them to respond to a Request for Information within the time for compliance set out in section 10 of the FOIA or Regulation 5 of the Environmental Information Regulations, and the *Consultant* shall be liable for and hereby indemnifies the *Employer* from and against all claims, proceedings, damages, liabilities, losses, costs and expenses suffered or incurred by the *Employer* where and to the extent that the same arises in connection with any breach of this clause 115.2 by the *Consultant* and/or its personnel (of any type) and/or its Subconsultants.
- 115.3 If the *Consultant* considers that all or any information provided to the *Employer* under clause 106A.2 is a "trade secret" in accordance with section 43(1) of the FOIA, or a duty of confidentiality applies under section 41(1) of the FOIA, or is exempt by the operation of any other provision of FOIA
- it shall ensure that the relevant information and the claimed exemption is clearly identified as such to the *Employer* and
 - notwithstanding any such identification, the *Employer* (as the context permits) shall be solely responsible for determining at its absolute discretion whether such information and / or any other information is exempt from disclosure in accordance with the provisions of the current version of the Code of Practice, the FOIA and/or the Environmental Information Regulations or is to be disclosed in response to a Request for Information.
- 115.4 In no event shall the *Consultant* (or shall the *Consultant* allow its personnel (of any type) and/or its Subconsultants to) respond directly to any requests for information from members of the public unless expressly authorised to do so by the *Employer*.
- 115.5 The *Consultant* acknowledges that the *Employer* may, acting in accordance with the FOIA or the Environmental Information Regulations, be required to disclose information without consulting with the *Consultant* and/or following consultation with that *Contractor* and having considered its views."

- 11.7 Insert a new clause 116 with the marginal heading "**Equality legislation**" with the following wording:

"116 **Equality legislation**

- 116.1 The *Consultant* shall comply with and use all reasonable endeavours to ensure its personnel (of any type) and/or its Subconsultants comply at all times with the Human Rights Act 1998, the Employment Rights Act 1996, the Equality Act and all other



applicable laws relating to non-discrimination and equality."

117.2 Without prejudice to the generality of clause 116.1, the *Consultant*

- shall take all reasonable steps to prevent any act of third party harassment (within the meaning given to such term within Section 40 of the Equality Act) ("**Third Party Harassment**"),
- confirms that all of its employees engaged in connection with the *services* have received equality and diversity training in line with the principles contained within the Equality Act and the *Employer* reserves its right to request evidence to substantiate the same and
- shall indemnify the *Employer* against all costs, claims, liabilities and expenses (including legal expenses on an indemnity basis) incurred in connection with or as a result of any claim or demand by any employee or by any third party in connection with any employee's employment contract (whether in contract, tort, under statute, pursuant to European law or otherwise) in respect of any claim for any act of Third Party Harassment for which the *Employer* may be held liable under the Equality Act as a result of the action and/or inaction of the *Consultant*."

11.8 Insert a new clause 117 with the marginal heading "**Fraud, bribery and corruption** " with the following wording:

"117 **Fraud, bribery and corruption**

117.1 The *Consultant* shall take all reasonable steps to prevent Fraud or involvement in Fraud by the *Consultant* and the Consultant Personnel.

117.2 The *Consultant* notifies the *Employer* immediately if it has reason to suspect that any Fraud has occurred or is occurring or is likely to occur.

117.3 The *Consultant*

- shall discharge all of its obligations under this contract and shall otherwise conduct all of its activities relating to this contract in accordance with all applicable laws and regulations in respect of corruption and bribery including, but not limited to, the Bribery Act 2010 (as may be amended, re-enacted, consolidated or replaced from time to time),
- shall not (whether by act or omission) commit any breach of the Bribery Act 2010 in connection with its activities relating to this contract nor request that the *Employer* (whether by act or omission) or the Consultant Personnel or other party commit any breach of the Bribery Act 2010 (including, but not limited to, the payment of facilitation payments in order to secure customs clearance for deliveries) and
- shall not itself or in conjunction with any other person
 - corruptly solicit, receive or agree to receive for itself or for any other person or offer to agree to give any person in the *Employer's* service or in the service of any other party who has a contract with the *Employer*, any gift and/or consideration of any kind as an inducement or reward for doing or not doing anything, or for showing favour or disfavour to any person, in relation to this contract or
 - enter into any contract with the *Employer* in connection with which commission has been paid or agreed to be paid by it or on its behalf or to its knowledge unless, before any such contract is made, particulars of any such commission, and of the terms and conditions of any agreement for the payment thereof, have been disclosed in



writing to the *Employer*.

117.4 The *Consultant* acknowledges that it has been provided with a copy of the anti-bribery and corruption code of conduct of the *Employer* and warrants that it shall at all times comply with that code of conduct (as may be amended, varied or replaced from time to time by written notice from the *Employer*).

117.5 The *Employer* may terminate this contract or one (1) or more Task Orders immediately on written notice to the *Consultant* if

- the *Employer* is reasonably satisfied that the *Consultant* or anyone employed by it or acting on its behalf (whether with or without the knowledge of the *Consultant*) is in breach of this clause 117,
- the *Consultant* or anyone employed by it or acting on its behalf is convicted of any offence under the Bribery Act 2010 in relation to this contract, and/or any other Project Contract or is convicted of a criminal offence related to business or preferential conduct, or commits an act of grave misconduct in the course of business or profession or
- the *Consultant* is guilty of serious misrepresentation in providing any information required of it under this contract, and/or any other contract awarded under the Strategic Alliances Agreement,
and if the *Employer* so determines the appointment of the *Consultant* under this contract then the *Employer* shall (on behalf of any relevant "Additional Client" (as defined in the Strategic Alliances Agreement) or in its own right) be entitled to recover from the *Consultant* the amount or value of any such gift, consideration or commission.

117.6 The *Consultant* shall maintain full, accurate and up to date records as necessary to demonstrate its compliance with the requirements of this clause 117 and shall make copies of such records available to the *Employer* on request.

117.7 In this clause 117:

- all references to the *Employer* shall be deemed to include all Ministers of the Crown, Government Departments, Crown Agencies and similar authorities and
- references to the *Consultant* shall be deemed to include a company and every holding company of the *Consultant* for the time being, and every subsidiary for the time being of every such holding company."

11.9 Insert a new clause 118 with the marginal heading "**Sustainability**" with the following wording:

"118 **Sustainability**

118.1 The *Consultant* shall

- comply with the applicable Government Buying Standards,
- provide, from time to time, in a format reasonably required by the *Employer*, reports on the environmental effects of providing the *services*,
- maintain ISO 14001 (as the family of standards related to environmental management published by the International Organisation for Standardisation) or BS 8555 (as the standard published to help organisations improve their environmental performance by the British Standards Institution) or an equivalent standard intended to manage its environmental responsibilities and
- perform its obligations under this contract in a way that
 - supports the *Employer's* achievement of the Greening Government



Commitments,

- conserves energy, water, wood, paper and other resources,
- reduces waste and avoids the use of ozone depleting substances and
- minimises the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment."

11.10 Insert a new clause 119 with the marginal heading "**Security and vetting**" with the following wording:

"119 **Security and vetting**

- 119.1 Where the *Employer* advises the *Consultant* that Consultant Personnel are required to have a pass for admission to any Project Site and such Consultant Personnel are identified by the *Consultant* (provided always that the *Consultant* first notifies the *Employer* in writing of such Consultant Personnel within a reasonable period ahead of their scheduled attendance(s) at any such Project Site), the *Employer*, subject to its satisfactory completion of its own approval procedures in respect of such admission by Consultant Personnel, shall arrange for passes to be issued. Consultant Personnel who cannot produce a proper pass when required to do so by any of the *Employer's* personnel, or who contravene any conditions on the basis of which a pass was issued, may be refused admission to the relevant Project Site or required to leave that Project Site if already there.
- 119.2 The *Consultant* shall promptly return any pass issued to any Consultant Personnel pursuant to clause 119.1 if at any time the *Employer* so requires or if the person to whom the pass was issued ceases to be involved in the performance of the *services* at a Project Site. The *Consultant* shall promptly return such passes on completion or earlier termination of their appointment under this contract.
- 119.3 Consultant Personnel attending a Project Site may be subject to a search at any time. Strip searches are only conducted on the specific authority of the *Employer* under the same rules and conditions applying to the *Employer's* personnel. The *Consultant* is deemed to be familiar with the Prison Rules 1999 Part III and the Prison (Amendment) Rules 2005 and the Young Offender Institute Rules 2000 Part III and the Young Offender Institute (Amendment) Rules 2008 and all other applicable law in this regard.
- 119.4 The *Employer*, whose decision is final and conclusive, reserves the right to refuse admission to, or to withdraw permission to remain on, a Project Site or any premises occupied by or on behalf of the *Employer*, any Consultant Personnel whose admission or continued presence is, in the opinion of the *Employer*, undesirable.
- 119.5 If and when directed by the *Employer*, the *Consultant* shall provide a list of the names and addresses, national insurance numbers, periods of employment, immigration status and tax exemption certificates of all persons who it is expected may require admission in connection with the contract to a Project Site or any premises occupied by or on behalf of the *Employer*, specifying the capacities in which they are concerned with the Project and giving such other particulars as the *Employer* may reasonably desire.
- 119.6 The *Consultant* shall ensure that its Consultant Personnel undertaking services and/or works within the boundaries of a Government establishment shall comply with rules, regulations and requirements (including those relating to security arrangements) as may be in force from time to time for the conduct of Consultant Personnel when at that establishment and when outside that establishment.
- 119.7 If the *Consultant* fails to comply with clause 119.2 and/or clause 119.5, the *Employer*, (whose decision shall be final and conclusive in the matter) may decide that such failure



is prejudicial to the interests of the Crown and if that the *Consultant* does not comply with the *Employer's* reasonable requests within four (4) weeks of the date of a written notice from the *Employer* so to do, then the *Employer* may terminate the appointment of all or any part of the *Consultant's* appointment under this contract (including under any individual Task Order(s)) without providing the *Consultant* with a further period of time within which to remedy the default, provided that such termination does not prejudice or affect any right of action or remedy which has accrued or thereafter accrues to the *Employer*.

- 119.8 The *Consultant* shall bear the costs of complying with the requirements, notices, instructions or decisions received from the *Employer* in relation to its obligations in respect of information relating to Consultant Personnel pursuant to this clause 119.
- 119.9 The *Consultant* shall not employ any person that it knows, or by reason of the circumstances which it might reasonably be expected to know, is involved in any unlawful procurement of social security benefits or tax exemptions in connection with his employment by the *Consultant*. The *Consultant* shall not make, facilitate or participate in the procurement of any unlawful payments to any person employed by them, whether in the nature of social security fraud, evasion of tax or otherwise.
- 119.10 The *Consultant* shall comply with the *Employer's* procedures for the vetting of Consultant Personnel in respect of all persons to be employed or engaged to carry out and complete any part(s) of the Project. The *Consultant* shall confirm that all persons employed or engaged by it or that will be employed or engaged by it in relation to the contract are vetted and recruited on a basis that is equivalent to and no less strict than the Personnel Vetting Procedure.
- 119.11 Without prejudice to the generality of this clause 119, the *Employer* may require the *Consultant* to ensure that any person engaged by it in connection with the Project has undertaken a DBS Check as per the Personnel Vetting Procedure (or as otherwise requested by the *Employer*), with the level of DBS Check to be determined by the *Employer* at its sole discretion, or any other security check as may be required by the *Employer* from time to time. The *Consultant* shall ensure that no person who discloses that they have a Relevant Conviction, or is found by that *Consultant* to have a Relevant Conviction (whether as a result of a police check or through the DBS Check or otherwise) is employed or engaged in connection with the Project.
- 119.12 Individuals, including those held in lawful custody or on probation shall be regarded as vulnerable persons under the Safeguarding Vulnerable Groups Act 2006. Where the *Employer* deems it necessary, the *Consultant* shall provide a list of Consultant Personnel who are engaged by it in connection with the services that are vetted by the Disclosure and Barring Service. The *Employer* may in its sole discretion refuse access to a Project Site by any Consultant Personnel who do not successfully complete the vetting procedures under the Vetting and Barring Scheme.
- 119.13 Whilst on a Project Site, the *Consultant* must ensure that its Consultant Personnel comply with all security measures implemented by the *Employer* in respect of staff and other persons attending a Project Site. The *Employer* shall provide copies of its written security procedure to the *Consultant* on request. The *Consultant* and all of its Consultant Personnel shall be prohibited from taking any photographs on a Project Site unless the *Employer* has given prior written consent and a representative of the *Employer* is present so as to have full control over the subject matter of each photograph to be taken.
- 119.14 The *Employer* shall have the right to carry out any search of any Consultant Personnel or of vehicles used by the *Consultant* at a Project Site at its sole discretion from time to time.
- 119.14 The *Consultant* shall co-operate with any investigation relating to security which is carried out by the *Employer* or by any person who is responsible to the *Employer* for



security matters, and when required by the *Employer*

- take all reasonable measures to make any Consultant Personnel identified by the *Employer* available to be interviewed by the *Employer* or by a person who is responsible to the *Employer* for security matters, for the purposes of the investigation (and all Consultant Personnel have the right to be accompanied by and to be advised or represented to the other person whose attendance at the interview is acceptable to the *Employer*) and
- subject to any legal restriction on their disclosure, provide all documents, records or other material of any kind which may reasonably be required by the *Employer* or by a person who is responsible to the *Employer* for security matters, for the purposes of the investigation, so long as the provision of that material does not prevent the *Consultant* from carrying out and completing the *services* (and the *Employer* has the right to retain any such material for use in connection with the investigation and, so far as possible, provide the *Consultant* with a copy of any material retained)."

11.11 Insert a new clause 120 with the marginal heading "**Information security**" with the following wording:

"120 **Information Security**

120.1 The *Consultant* shall

- identify, keep and disclose to the *Employer* upon request a record of those members of the Consultant Personnel and third parties with access to or who are involved in handling Employer Data ("**users**"),
- provide to the *Employer* details of its policy for reporting, managing and recovering from information risk incidents, including losses of protected Personal Data and information and communications technology security incidents and its procedures for reducing risk and raising awareness and
- immediately report information security incidents to the *Employer*,
with the *Consultant* acknowledging that actual or potential losses of Personal Data may be shared with the Information Commissioner and the Cabinet Office by the *Employer*.

120.2 The *Consultant* shall protect Employer Data whose release or loss could cause harm or distress to individuals. Without prejudice to the generality of clause 103, the *Consultant* shall handle all such Employer Data as if it were confidential while it is processed or stored by the *Consultant* or Consultant Personnel, applying the measures set out in clauses 120.1 to 120.9 (inclusive).

120.3 When Employer Data is held on paper it shall be kept secure at all times, locked away when not in use and the premises on which it is held shall be secured. If Employer Data held on paper is transferred it shall be by an approved secure form of transfer with confirmation of receipt. When Employer Data is held and accessed on information and communications technology systems on secure premises, the *Consultant* shall (so far as is relevant to their role) implement such protection measures as are specified by the *Employer* pursuant to its risk assessment of such storage solution.

120.4 Wherever possible, Employer Data should be held and accessed on paper or information and communications technology on secure premises protected as above. The *Consultant* shall not use removable media (including laptops, removable discs, CD-ROMs, USB memory sticks and media card formats) for storage or access to such Employer Data where possible. Where the *Employer* agrees that this is not possible, the *Consultant* shall work to the following hierarchy, recording the reasons for a particular



approach not being adopted in a particular case or a particular business area:

- **best option**: hold and access data on information and communications technology systems on secure premises,
- **second best option**: secure remote access, so that Employer Data can be viewed or amended without being permanently stored on the remote computer, which is possible for Employer Data over the internet using products meeting the FIPS 140-2 standard or equivalent, unless otherwise agreed with the *Employer*,
- **third best option**: secured transfer of Employer Data to a remote computer on a secure site on which it will be permanently stored, provided that both the Employer Data at rest and the link should be protected at least to the FIPS 140-2 standard or equivalent and protectively marked Employer Data shall not be stored on privately owned computers unless they are protected in this way and
- in all cases the remote computer should be password protected, configured so that its functionality is minimised to its intended business use only, and have up to date software patches and anti-virus software.

120.5 Where the *Employer* agrees in writing that it is not possible to avoid the use of removable media in reference to the storage of Employer Data, the *Consultant* shall implement all of the following conditions

- the Employer Data transferred to the removal media should be the minimum necessary to achieve the business purposes, both in terms of the numbers of people covered by the Employer Data and the Employer Data held (and where possible, only anonymised Employer Data should be held),
- the removal media should be encrypted to a standard of at least FIPS 140-2 or equivalent in addition to being protected by an authentication mechanism, such as a password,
- user rights to transfer Employer Data to removable media shall be carefully considered and strictly limited to ensure that this is only provided where absolutely necessary for business purposes and subject to monitoring by the *Consultant* and the *Employer* and
- the individual responsible for the removable media should handle it themselves, or if they entrust it to others, act as if it were the equivalent of a large amount of its own finances.

120.6 Where the *Employer* agrees in writing that the second condition of encryption as referred to in clause 120.5 cannot be applied due to business continuity and disaster recovery considerations, such unprotected Employer Data shall only be recorded, moved, stored and monitored with strong controls.

120.7 All material that has been used for confidential Employer Data should be subject to controlled disposal. The *Consultant* shall

- destroy paper records containing protected Personal Data by incineration, pulping or shredding so that reconstruction is unlikely and
- dispose of electronic media that has been used for protected Personal Data through secure destruction, overwriting, erasure or degaussing for re-use.

120.8 The *Consultant* shall have appropriate mechanisms in place in order to comply with the *Employer's* requirements as set out in this clause 120 including adequate training in handling Employer Data and Confidential Information for their personnel.



120.9 The *Consultant* shall

- put in place arrangements to log the activity of Employer Data users in respect of electronically held protected personal information and for managers to check the arrangements are being properly conducted, with a particular focus on those working remotely and those with higher levels of functionality (and summary records of managers' activity shall be shared with the *Employer* and be available for inspection by the Information Commissioner's Office on request) and
- minimise the number of users with access to the Employer Data."

11.12 Insert a new clause 121 with the marginal heading "**Modern slavery**" with the following wording:

"121 **Modern slavery**

121.1 The *Consultant* undertakes that it shall comply with all requirements of the Modern Slavery Act 2015 and it warrants and represents to the *Employer* that neither the *Consultant* nor any of its employees, agents and/or Subconsultants (as far as the *Consultant* is aware, having made reasonable enquiries of each Subconsultant prior to the date of their subcontracts and having also included wording in their subcontracts that is no less onerous than this clause 121) has

- committed an MSA Offence,
- been notified that it is subject to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015 and/or
- is aware of any circumstances within its supply chain that could give rise to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015.

121.2 The *Consultant* shall notify the *Employer* immediately in writing if it becomes aware or has reason to believe that it has, or any of its employees, agents and/or subcontractors have, breached or potentially breached any of the *Consultant's* obligations under clause 121.1 and any such notice shall set out full details of the circumstances concerning the breach or potential breach of the *Consultant's* obligations under clause 121.1."



12.	AMENDMENTS TO OPTION W2 – DISPUTE RESOLUTION PROCEDURE (USED IN THE UNITED KINGDOM WHEN THE HOUSING GRANTS, CONSTRUCTION AND REGENERATION ACT 1996 APPLIES)
-----	--

- 12.1 In line 1 of clause W2.1(1), delete "is" and insert "may be".
- 12.2 In clause W2.2(1), delete "*starting date*" and insert "Task Start Date of the first Task Order".
- 12.3 After clause W2.3(4), insert a new clause W2.3(4A) with the following wording:
"The *Adjudicator* has the power to determine more than one dispute under this contract at the same time and, if requested to do so by either Party, determines any matter raised by such Party in the nature of set-off, abatement or counterclaim at the same time as he determines any other matter referred to him."
- 12.4 Delete the text of clause W2.4(1) and insert the following:
"A Party may refer any dispute under or in connection with this contract to the *tribunal*."



13. AMENDMENTS TO SECONDARY OPTION CLAUSES

- 13.1 In Option X1, make the following changes:
- X1.1 Insert "prior to the Completion Date" after "Contract Date". Delete the second and third paragraphs.
- X1.4 Insert "in respect only of a new Task Order issued by the Employer after such first anniversary" after "first anniversary".
- X1.2, X1.3, X1.5 and X1.6 shall be deleted.
- 13.2 Replace the wording of Option X8 in its entirety with the following:
- "X8 **Collateral warranty agreements**
- X8.1 Within twenty-eight (28) days of receiving notification from the *Employer*, the *Consultant* enters into a deed or deeds of Consultant Collateral Warranty in favour of any Beneficiary specified by the *Employer* and the *Consultant* acknowledges and agrees that the *Employer* shall not be bound to make any or all payments to the *Consultant* under this contract until the same is provided by the *Consultant*.
- X8.2 Within twenty-eight (28) days of receiving notification from the *Employer*, the *Consultant* procures that
- the Delivery Consultant enters into a deed or deeds of Delivery Consultant Collateral Warranty in favour of any Beneficiary specified by the *Employer* and/or
 - any Subconsultant (other than the Delivery Consultant) enters into a deed or deeds of Consultant Collateral Warranty in favour of any Beneficiary specified by the *Employer*,
- and the *Consultant* acknowledges and agrees that the *Employer* shall not be bound to make any or all payments to the *Consultant* under this contract relating to the services and/or works of such Delivery Consultant or Subconsultant (as the context requires) which would otherwise be due and payable under this contract until such relevant collateral warranty is provided.
- X8.3 If the Delivery Consultant engages a Subconsultant in connection with the Project at any point during the delivery of the *services*, the *Consultant* notifies the *Employer* and procures, within twenty-eight (28) days of receiving a request from the *Employer*, a Subconsultant Collateral Warranty in favour of
- the *Employer* and/or
 - any Beneficiary specified by the *Employer*,
- and the *Consultant* acknowledges and agrees that if the *Consultant* fails to procure the same within the time required, the *Consultant* is not entitled to payment of any sums relating to the services and/or works of such Subconsultant which would otherwise be due and payable under this contract as part of the sums due and payable to the *Consultant* in connection with the provision of the *services* so subcontracted until such relevant collateral warranty is provided."
- 13.3 Replace the wording of Option X18.3 with the following wording:
- "Notwithstanding the method by which one (1) or both of the Parties has executed this contract, the Parties agree and acknowledge that no Party shall commence a claim and/or proceedings



against the other Party arising out of or in connection with this contract after the End of Liability Date (provided always that nothing in this Option X18.3 shall invalidate and/or extinguish any claims and/or proceedings commenced by a Party prior to and concluding after the End of Liability Date)."



14.	AMENDMENTS TO OPTION Y(UK)2 – THE HOUSING GRANTS, CONSTRUCTION AND REGENERATION ACT 1996
-----	---

14.1 Replace the wording of the first paragraph of Option Y2.2 in its entirety with a new Option Y2.2(1) with the following wording:

"The date on which a payment becomes due is (the "**due date**"), where the payment is due from:

- the *Employer* to the *Consultant*, the later of seven (7) days after
 - the assessment date and
 - the date of receipt by the *Employer* of the *Consultant's* Valid Invoice or Termination Statement (as the case may be) and
- the *Consultant* to the *Employer*, as detailed in clause 51.7, the date of receipt by the *Consultant* of the Employer's Statement or Termination Statement (as the case may be)."

14.2 Replace the wording of the second paragraph of Option Y2.2 in its entirety with a new Option Y2.2(2) with the following wording:

"The "**final date for payment**" is, where a payment is due from

- the *Employer* to the *Consultant*, the later of thirty (30) days after
 - the date on which the payment becomes due and
 - the date of receipt by the *Employer* of the *Consultant's* Valid Invoice or
- the *Consultant* to the *Employer*, as detailed in clause 51.7, thirty (30) days after the due date."

14.3 In Option Y2.3:

- in the first sentence of Option Y2.3 after "less than the notified sum" insert "in a pay less notice, Employer's Statement or Termination Statement as the case may be" and
- after "the amount is calculated", insert ", even if the amount which the *Employer* determines to be due is zero, or a negative amount insofar as, on balance, sums are only due from the *Consultant* to the *Employer*".

14.4 Insert a new sentence at the start of Option Y2.4:

"The *Consultant* exercises its right to suspend performance under the Act by giving the Employer no less than fourteen (14) days' prior notice in writing of its intention to exercise that right."



15.	AMENDMENTS TO OPTION Y(UK)3 – CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999
-----	---

- 15.1 Replace the wording of Option Y3.1 in its entirety with the following:
- "Y3.1 Subject to the provisions of Option X8, nothing contained in this contract shall confer on any person any benefit or right to enforce any term of this contract whether pursuant to the Contracts (Rights of Third Parties) Act 1999 or otherwise."
- 15.2 Insert a new Option Y3.2 and Option Y3.3 with the following wording:
- "Y3.2 The *Consultant* does not assign, transfer, charge or otherwise deal with this contract (or any of its rights or obligations under it) nor grant, declare a trust of, create or dispose of any right or interest in it without the prior written consent of the *Employer*.
- Y3.3 The *Employer* may assign in whole or in part any benefit or right under this contract at any time to any person."



SCHEDULE 3

THE SCOPE

[TO BE INSERTED]



SCHEDULE 4

CONSULTANT COLLATERAL WARRANTY



This **DEED** is dated and delivered

20[20]

BETWEEN the Consultant [, the Employer]¹ and the Beneficiary named in the "Particulars" section of this Deed below and in consideration of the payment of ten pounds (£10.00) (receipt of which is hereby acknowledged) by the Beneficiary to the Consultant, the parties to this Deed hereby agree as follows:

1.	Particulars	
1.1	Consultant	PERFECT CIRCLE JV LTD (company number 10219126) whose registered office is situated at Halford House, Charles Street, Leicester, United Kingdom, LE1 1HA.
1.2	Beneficiary	[INSERT NAME] (company number [INSERT NUMBER]) whose registered office is at [INSERT ADDRESS].
1.3	Employer	THE SECRETARY OF STATE FOR JUSTICE of Ministry of Justice, 102 Petty France, Westminster, London SW1H 9AJ.
1.4	Project	The [INSERT DESCRIPTION] project as more particularly described as the "Project" in the Appointment.
1.5	Appointment	The NEC3 Professional Services Contract: Option G (as amended) dated [INSERT DATE] by which (inter alia) the Employer appointed the Consultant as [INSERT DESCRIPTION] in relation to the Project.
1.6	Minimum PI Cover²	[INSERT AMOUNT IN WORDS] pounds (£[INSERT AMOUNT AS A NUMBER]) any one claim or series of claims arising out of the same original cause or source (or equivalent), without limit to the number of claims in any annual policy period and in the aggregate annually in respect of fire safety, cladding pollution and contamination related claims.
1.7	Relevant Period	Is the period commencing on the date of the Appointment and ending on the "End of Liability Date" (as defined in the Appointment).
1.8	Documents	Means all existing and future designs, technical information, drawings, models, plans, specifications, schedules, design details and digital models and databases (including in relation to BIM), costings, budgets, calculations, bill of quantities, estimates and valuations, any photographs, brochures, reports, notes of meetings, computer aided design (CAD) materials and any other materials, including any data underlying such generated data in any medium (be it physical, hard copy or electronic, including digital), provided by or prepared on behalf of the Consultant in connection with the Appointment and/or any part(s) of the Project and all amendments and additions to them and any works, designs or inventions of the Consultant (or any other person as the case may be) incorporated or referred to in them.

2. EXERCISE OF SKILL AND CARE

- 2.1 The Consultant warrants and undertakes to the Beneficiary that it has not breached and will not breach any of its obligations under the Appointment and that in all services performed and to be performed pursuant to the Appointment, the Consultant has exercised and will continue to exercise all of the reasonable skill, care and diligence to be expected of an appropriately qualified, skilled, competent and experienced professional consultant (or, where the services involve the review, preparation, validation and/or revision of any designs in connection with the Project, architect) that is experienced in carrying out work such as its duties under the Appointment in relation to projects of a similar size, scope, value, character and complexity as the Project.

¹ **CW DRAFTING NOTE** – Delete if the Beneficiary will not have step-in rights (as it will not be a party to the warranty).

² **CW DRAFTING NOTE** – To be updated to reflect the expression of the insurance in the Appointment as required.



- 2.2 The Consultant further warrants and undertakes to the Beneficiary that it has exercised and will exercise the standard of care referred to in clause 2.1 to see that:
- 2.2.1 it has not used, specified for use, approved for use and/or accepted in connection with the Project in the provision of its services under the Appointment any materials which at the time that the relevant services are (or were) undertaken are generally accepted or reasonably suspected of:
- (a) being prohibited in themselves;
 - (b) becoming prohibited when used in a particular situation or in combination with other materials;
 - (c) becoming prohibited with the passage of time;
 - (d) becoming prohibited without a level of maintenance which is higher than that which would normally be expected of a structure of the type under construction; and/or
 - (e) being damaged by or causing damage to the structure in which they are incorporated or to which they are affixed,
- with a material being "prohibited" for the purposes of the clause 2.2 if, in the context of its use or specification in any part(s) of the Project (whether alone, in combination with other materials, or in a particular situation):
- (i) it poses a hazard to the health and safety of any person who may come into contact with it (at any stage of the Project);
 - (ii) it would or is likely to have the effect of reducing the normal life expectancy of any other material or structure in which the material is incorporated or to which it is affixed;
 - (iii) it poses a threat to the structural stability, performance or the physical integrity of any part, structure, element or component that is (or may be) the subject of construction works as part of the Project; and/or
 - (iv) it has been prohibited for use in the publication "Good Practice in the Selection of Construction Materials" (published by the British Council for Offices) current at the time of use or specification,
- in each case, whether in relation to a specific part of the Project or otherwise;
- 2.2.2 it notifies the Beneficiary in writing forthwith if in the performance of its duties under the Appointment the Consultant becomes aware that it or any other person has specified or used or authorised or approved the specification or use by others of any such products or materials (provided that this clause 2.2.2 does not create any additional duty for the Consultant to inspect or check the work of others which is not required by the Appointment); and
- 2.2.3 to the extent that the Consultant is responsible for the design of the Project its design will comply with all relevant legal requirements including without limitation the requirements of any relevant planning building regulations waste environmental or other authority or consent licence or approval of which the Consultant is or could reasonably be expected to be aware.



3. LICENCE TO USE DOCUMENTS

- 3.1 Copyright and registered and unregistered design right in all Documents will remain vested in the Consultant but the Consultant now grants (or if such a grant cannot legally take place until a later date agrees to grant) to the Beneficiary with effect from the date of this Deed or in the case of Documents not yet in existence with effect from the date of their creation with full title guarantee an irrevocable, royalty-free, worldwide and non-exclusive licence in perpetuity to use, copy and reproduce all Documents for any purpose whatsoever, including but not limited to in connection with the Project and/or in connection with (but without limitation) the design, construction, completion, operation, extension, maintenance, letting, management, sale, advertisement, alteration, reinstatement and repair of any element(s) of any part of the Project. The licence granted under this clause 3.1 carries the right for the Beneficiary to grant sub-licences, is transferable to third parties (including by way of an assignment and/or novation) and shall subsist notwithstanding the expiration or termination of the Appointment.
- 3.2 The Consultant will not be liable for any use the Beneficiary may make of the Documents for any purpose other than that for which they were originally provided unless the Consultant authorises such use and confirms that the Documents are suitable for it.
- 3.3 The Consultant warrants that the Documents (save to the extent that sub-consultants have been used to prepare them) are and will be its own original work and that in any event their use in connection with the Project will not infringe the rights of any other person. The Consultant further warrants that where sub-consultants have been or are used their work is and will be original and that it will obtain the necessary consents in relation to clause 3.1.
- 3.4 The Consultant agrees that on the Beneficiary's reasonable request at any time and following reasonable prior written notice it will give the Beneficiary or those authorised by it access to the Documents and will provide copies of them (including copy negatives and/or computer aided design (CAD) disks or other approved electronic versions) at the Beneficiary's expense.
- 3.5 The Consultant now waives and agrees to waive and not to assert (and agrees to procure that any sub-consultants do likewise) all moral rights in the Documents under Chapter IV of the Copyright, Designs and Patents Act 1988.

4. INSURANCE

- 4.1 The Consultant warrants to the Beneficiary that it holds professional indemnity insurance which will cover its potential liabilities under this Deed in an amount and on a basis at least equal to the Minimum PI Cover and that it will maintain such insurance with reputable insurers carrying on business in the European Union throughout the Relevant Period provided that such insurance is generally available in the market to members of the Consultant's profession at a commercially reasonable cost and on commercially reasonable terms (and if not so available then the Consultant shall maintain such reduced level of or reasonable alternative insurance as is so available). For the avoidance of doubt payment of any increased or additional premiums required by insurers by reason of the Consultant's own claims record or other acts omissions matters or things peculiar to it will be deemed to be within the Consultant's obligations.
- 4.2 The Consultant shall notify the Beneficiary in writing from time to time of any change in its professional indemnity insurance arrangements as set out above and within seven days of the Beneficiary's request at any time the Consultant will produce for inspection documentary evidence as to compliance with this clause 4 and that payment has been made in respect of the last premium payment due.
- 4.3 If the Consultant fails to comply with its obligations under this clause 4 the Beneficiary may take out insurance to cover some or all of the loss or damage which could result from a breach of the



Consultant's obligations under this Deed and may recover the costs and expenses of taking out such insurance from the Consultant.

5. RELIANCE BY THE BENEFICIARY

The Consultant acknowledges that the Beneficiary shall unless the contrary is clearly proved be deemed to have relied upon the performance by the Consultant of the Consultant's obligations under the Appointment.

6. ASSIGNMENT

6.1 The Beneficiary may without the consent of the Consultant assign (but no more than twice):

6.1.1 the benefit of all or any of the Consultant's obligations under this Deed; and/or

6.1.2 any benefit arising under or out of this Deed.

6.2 Assignment by way of security and re-assignment following discharge of that security and assignments between companies which are part of the same group shall not count towards the number of assignments without consent permitted by clause 6.1 but shall be deemed to always have consent. Companies are part of the same group if the same person or persons exercise ultimate control over at least fifty per cent (50%) of the voting rights in respect of both companies.

6.3 The Consultant will not contend that any permitted assignee is precluded from recovering any loss resulting from any breach of this Deed (whatever the date of such breach) by reason only that that person is an assignee and not the original Beneficiary under this Deed or by reason that the original Beneficiary or any intermediate Beneficiary escaped any loss resulting from such breach by reason of the disposal of any interest in the Project or that the original Beneficiary or any intermediate Beneficiary has not suffered any the same or as much loss.

7. EXTENT OF LIABILITY

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

7.2 The Consultant shall have no greater liability to the Beneficiary under this Deed than the Consultant would have had if the Beneficiary and the Employer jointly had appointed the Consultant under the Appointment and in the event of a claim brought against the Consultant by the Beneficiary the Consultant shall be entitled to rely on any defence or limitation available to it under the terms of the Appointment, but the Beneficiary shall not be affected (unless it has approved it) by any subsequent variation of the Appointment or the waiver compromise or withdrawal of any claim made by the Employer under it and the Consultant shall not be entitled to set-off any fee payments from sums due to the Beneficiary or to claim or counterclaim fees from the Beneficiary under this clause 7.

7.3 The Consultant's liabilities under this Deed will not be in any way reduced or extinguished by reason of any inspection or approval of the Documents or attendance at site meetings or other enquiry or inspection that the Beneficiary may make or procure to be made for its benefit or on its behalf.

7.4 The liability of the Consultant under this Deed (including where it is determined or held that this document has not taken effect as a deed) shall cease on the expiry of the Relevant Period save in relation to any claims notified by the Beneficiary to the Consultant in writing before its expiry.



- 7.5 The parties to this Deed do not intend that any of its provisions shall be enforceable by any person by virtue of the Contracts (Rights of Third Parties) Act 1999.

8. NOTICES

Any notice to be given under this Deed will be sufficiently served if sent by hand by facsimile transmission or by post to the registered office or if there is none the last known address of the party to be served. Any notice sent by hand will be deemed to be served on delivery and any notice sent by facsimile transmission will be deemed to be served in full at the time properly recorded on the sender's facsimile report sheet provided that if any notice sent by hand or facsimile is sent after 16:45 on any day it will be deemed to be served on the next day. Any notice sent by post will be deemed to have been duly served forty-eight (48) hours after the time of posting if the end of that period falls before 16:45 and otherwise on the next day.

9. GOVERNING LAW

This Deed and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) will be governed by and construed in accordance with English law and the parties shall submit to the non-exclusive jurisdiction of the English Courts.

10. [STEP IN RIGHTS]³

10.1 The Consultant shall not:

10.1.1 terminate the Appointment or its engagement under it;

10.1.2 treat the Appointment or its engagement under it as having been terminated or repudiated; or

10.1.3 discontinue or suspend the performance of any of its obligations under the Appointment,

before giving to the Beneficiary twenty-eight (28) days' prior written notice (seven (7) days' in the case of suspension for non-payment), with such notice. The notice shall give particulars of any alleged breach of the Appointment by the Employer.

10.2 The Beneficiary may, within twenty-eight (28) days of receipt of a notice given under clause 10.1, give notice to the Consultant that the Consultant is to accept the instructions of the Beneficiary or its nominee instead of the Employer under the Appointment.

10.3 Upon the Consultant's receipt of the notice referred to in clause 10.2:

10.3.1 the Consultant shall comply with it and shall not do any of the things referred to in clauses 10.1.1, 10.1.2 or 10.1.3;

10.3.2 the Appointment shall continue in full force and effect as if none of the rights of the Consultant referred to in clause 10.1 had arisen but the Consultant shall be liable to the Beneficiary and its nominee (if any) under the Appointment in lieu of its liability to the Employer;

10.3.3 the Beneficiary or its nominee shall as soon as practicable remedy any breach of the Appointment by the Employer which is capable of remedy by them and in particular shall pay any sums outstanding under the Appointment (but where notice was given under clause 10.1 excluding any which were not clearly notified to the Beneficiary as being

³ **CW DRAFTING NOTE** – Delete if the Beneficiary will not have step-in rights (which is to be confirmed with the MoJ in advance on a case-by-case basis).



outstanding prior to the service of notice by the Beneficiary under clause 10.2); but provided that this shall not affect or derogate from any right of action the Employer may have against the Consultant in respect of any breach of duty by the Consultant under or in connection with the Appointment occurring prior to the date of service of the notice by the Beneficiary under clause 10.2 or where the Consultant has wrongfully terminated or treated as terminated or discontinued or suspended performance of its obligations under the Appointment or its employment under it or has wrongfully treated it as having been terminated or repudiated by the Employer.

10.4 If any notice given by the Beneficiary under clause 10.2 requires the Consultant to accept the instructions of the Beneficiary's nominee the Beneficiary shall be liable to the Consultant as guarantor for the payment of all sums from time to time due to the Consultant from the Beneficiary's nominee.

10.5 Any notice which is given under clause 10.1 or 10.2 shall be copied concurrently to the Employer

10.6 The Employer the Beneficiary and the Consultant acknowledge that the Consultant shall:

10.6.1 rely upon and shall not question a notice which the Beneficiary gives to it under clause 10.2 as conclusive evidence (for the purpose of clause 10.2 only) of a breach of the Beneficiary's Agreement; and

10.6.2 not breach the Appointment if the Consultant complies with this clause 10.

10.7 Any notice which the Consultant gives under clause 10.1 shall not constitute a waiver of any of its rights under the Appointment.

10.8 Under the Appointment the Consultant is obliged to execute and/or procure that its sub-consultants execute collateral warranties in favour of certain third parties. The Consultant shall execute and/or procure the execution of any such collateral warranty when requested by the Beneficiary notwithstanding that it may not have been requested by the Employer and notwithstanding any dispute under or termination of the Appointment or the Consultant's engagement under it but provided that where both the Employer and the Beneficiary request the execution of the same collateral warranty the Consultant shall comply with the first request received and shall be entitled to ignore the second.]

11. EXECUTION AND DELIVERY

This document is executed as a deed and is delivered on the date stated at the beginning of this deed.

[INSERT EXECUTION BLOCKS]⁴

⁴ **CW DRAFTING NOTE** – If the Beneficiary will have step-in rights, ensure that execution blocks are included for the Delivery Consultant, the Beneficiary and the Employer.



SCHEDULE 4A
DELIVERY CONSULTANT COLLATERAL WARRANTY



This **DEED** is dated and delivered

20[20]

BETWEEN the Delivery Consultant, Perfect Circle [, the Employer]⁵ and the Beneficiary named in the "Particulars" section of this Deed below and in consideration of the payment of ten pounds (£10.00) (receipt of which is hereby acknowledged) by the Beneficiary to the Delivery Consultant, the parties to this Deed hereby agree as follows:

1.	Particulars	
1.1	Delivery Consultant	PICK EVERARD , a partnership whose head office is situated at Halford House, Charles Street, Leicester, United Kingdom, LE1 1HA.
1.2	Beneficiary⁶	[INSERT NAME] (company number [INSERT NUMBER]) whose registered office is at [INSERT ADDRESS].
1.3	Employer	THE SECRETARY OF STATE FOR JUSTICE of Ministry of Justice, 102 Petty France, Westminster, London SW1H 9AJ.
1.4	Project	The [INSERT DESCRIPTION] project as more particularly described as the "Project" in the Appointment.
1.5	Appointment	The agreement for Principal Supply Partner Services dated [INSERT DATE] by which (inter alia) Perfect Circle appointed the Delivery Consultant to discharge its obligations under its appointment contract with the Employer in relation to the Project.
1.6	Minimum PI Cover⁷	[INSERT AMOUNT IN WORDS] pounds (£[INSERT AMOUNT AS A NUMBER]) any one claim or series of claims arising out of the same original cause or source (or equivalent), without limit to the number of claims in any annual policy period and in the aggregate annually in respect of fire safety, cladding pollution and contamination related claims.
1.7	Perfect Circle	PERFECT CIRCLE JV LTD (company number 10219126) whose registered office is situated at Halford House, Charles Street, Leicester, United Kingdom, LE1 1HA (including its successors and assigns).
1.8	Relevant Period	Is the period commencing on the date of the Appointment and ending on the "End of Liability Date" (as defined in the Appointment).
1.9	Documents	Means all existing and future designs, technical information, drawings, models, plans, specifications, schedules, design details and digital models and databases (including in relation to BIM), costings, budgets, calculations, bill of quantities, estimates and valuations, any photographs, brochures, reports, notes of meetings, computer aided design (CAD) materials and any other materials, including any data underlying such generated data in any medium (be it physical, hard copy or electronic, including digital), provided by or prepared on behalf of the Delivery Consultant in connection with the Appointment and/or any part(s) of the Project and all amendments and additions to them and any works, designs or inventions of the Delivery Consultant (or any other person as the case may be) incorporated or referred to in them.

2. EXERCISE OF SKILL AND CARE

- 2.1 The Delivery Consultant warrants and undertakes to the Beneficiary that it has not breached and will not breach any of its obligations under the Appointment and that in all services performed and to be performed pursuant to the Appointment, the Delivery Consultant has exercised and will

⁵ **CW DRAFTING NOTE** – Delete if the Beneficiary will not have step-in rights (as it will not be a party to the warranty).

⁶ **CW DRAFTING NOTE** – Employer will also be a Beneficiary.

⁷ **CW DRAFTING NOTE** – To be updated to reflect the expression of the insurance in the Appointment as required.



continue to exercise all of the reasonable skill, care and diligence to be expected of an appropriately qualified, skilled, competent and experienced professional Delivery Consultant (or, where the services involve the review, preparation, validation and/or revision of any designs in connection with the Project, architect) that is experienced in carrying out work such as its duties under the Appointment in relation to projects of a similar size, scope, value, character and complexity as the Project.

2.2 The Delivery Consultant further warrants and undertakes to the Beneficiary that it has exercised and will exercise the standard of care referred to in clause 2.1 to see that:

2.2.1 it has not used, specified for use, approved for use and/or accepted in connection with the Project in the provision of its services under the Appointment any materials which at the time that the relevant services are (or were) undertaken are generally accepted or reasonably suspected of:

- (a) being prohibited in themselves;
- (b) becoming prohibited when used in a particular situation or in combination with other materials;
- (c) becoming prohibited with the passage of time;
- (d) becoming prohibited without a level of maintenance which is higher than that which would normally be expected of a structure of the type under construction; and/or
- (e) being damaged by or causing damage to the structure in which they are incorporated or to which they are affixed,

with a material being "prohibited" for the purposes of the clause 2.2 if, in the context of its use or specification in any part(s) of the Project (whether alone, in combination with other materials, or in a particular situation):

- (i) it poses a hazard to the health and safety of any person who may come into contact with it (at any stage of the Project);
- (ii) it would or is likely to have the effect of reducing the normal life expectancy of any other material or structure in which the material is incorporated or to which it is affixed;
- (iii) it poses a threat to the structural stability, performance or the physical integrity of any part, structure, element or component that is (or may be) the subject of construction works as part of the Project; and/or
- (iv) it has been prohibited for use in the publication "Good Practice in the Selection of Construction Materials" (published by the British Council for Offices) current at the time of use or specification,

in each case, whether in relation to a specific part of the Project or otherwise;

2.2.2 it notifies the Beneficiary in writing forthwith if in the performance of its duties under the Appointment the Delivery Consultant becomes aware that it or any other person has specified or used or authorised or approved the specification or use by others of any such products or materials (provided that this clause 2.2.2 does not create any additional duty for the Delivery Consultant to inspect or check the work of others which is not required by the Appointment); and



- 2.2.3 to the extent that the Delivery Consultant is responsible for the design of the Project its design will comply with all relevant legal requirements including without limitation the requirements of any relevant planning building regulations waste environmental or other authority or consent licence or approval of which the Delivery Consultant is or could reasonably be expected to be aware.

3. LICENCE TO USE DOCUMENTS

- 3.1 Copyright and registered and unregistered design right in all Documents will remain vested in the Delivery Consultant but the Delivery Consultant now grants (or if such a grant cannot legally take place until a later date agrees to grant) to the Beneficiary with effect from the date of this Deed or in the case of Documents not yet in existence with effect from the date of their creation with full title guarantee an irrevocable, royalty-free, worldwide and non-exclusive licence in perpetuity to use, copy and reproduce all Documents for any purpose whatsoever, including but not limited to in connection with the Project and/or in connection with (but without limitation) the design, construction, completion, operation, extension, maintenance, letting, management, sale, advertisement, alteration, reinstatement and repair of any element(s) of any part of the Project. The licence granted under this clause 3.1 carries the right for the Beneficiary to grant sub-licences, is transferable to third parties (including by way of an assignment and/or novation) and shall subsist notwithstanding the expiration or termination of the Appointment.
- 3.2 The Delivery Consultant will not be liable for any use the Beneficiary may make of the Documents for any purpose other than that for which they were originally provided unless the Delivery Consultant authorises such use and confirms that the Documents are suitable for it.
- 3.3 The Delivery Consultant warrants that the Documents (save to the extent that sub-consultants have been used to prepare them) are and will be its own original work and that in any event their use in connection with the Project will not infringe the rights of any other person. The Delivery Consultant further warrants that where sub-consultants have been or are used their work is and will be original and that it will obtain the necessary consents in relation to clause 3.1.
- 3.4 The Delivery Consultant agrees that on the Beneficiary's reasonable request at any time and following reasonable prior written notice it will give the Beneficiary or those authorised by it access to the Documents and will provide copies of them (including copy negatives and/or computer aided design (CAD) disks or other approved electronic versions) at the Beneficiary's expense.
- 3.5 The Delivery Consultant now waives and agrees to waive and not to assert (and agrees to procure that any sub-consultants do likewise) all moral rights in the Documents under Chapter IV of the Copyright, Designs and Patents Act 1988.

4. INSURANCE

- 4.1 The Delivery Consultant warrants to the Beneficiary that it holds professional indemnity insurance which will cover its potential liabilities under this Deed in an amount and on a basis at least equal to the Minimum PI Cover and that it will maintain such insurance with reputable insurers carrying on business in the European Union throughout the Relevant Period provided that such insurance is generally available in the market to members of the Delivery Consultant's profession at a commercially reasonable cost and on commercially reasonable terms (and if not so available then the Delivery Consultant shall maintain such reduced level of or reasonable alternative insurance as is so available). For the avoidance of doubt payment of any increased or additional premiums required by insurers by reason of the Delivery Consultant's own claims record or other acts omissions matters or things peculiar to it will be deemed to be within the Delivery Consultant's obligations.
- 4.2 The Delivery Consultant shall notify the Beneficiary in writing from time to time of any change in its professional indemnity insurance arrangements as set out above and within seven days of the



Beneficiary's request at any time the Delivery Consultant will produce for inspection documentary evidence as to compliance with this clause 4 and that payment has been made in respect of the last premium payment due.

- 4.3 If the Delivery Consultant fails to comply with its obligations under this clause 4 the Beneficiary may take out insurance to cover some or all of the loss or damage which could result from a breach of the Delivery Consultant's obligations under this Deed and may recover the costs and expenses of taking out such insurance from the Delivery Consultant.

5. RELIANCE BY THE BENEFICIARY

The Delivery Consultant acknowledges that the Beneficiary shall unless the contrary is clearly proved be deemed to have relied upon the performance by the Delivery Consultant of the Delivery Consultant's obligations under the Appointment.

6. ASSIGNMENT

- 6.1 The Beneficiary may without the consent of the Delivery Consultant assign (but no more than twice):

6.1.1 the benefit of all or any of the Delivery Consultant's obligations under this Deed; and/or

6.1.2 any benefit arising under or out of this Deed.

- 6.2 Assignment by way of security and re-assignment following discharge of that security and assignments between companies which are part of the same group shall not count towards the number of assignments without consent permitted by clause 6.1 but shall be deemed to always have consent. Companies are part of the same group if the same person or persons exercise ultimate control over at least fifty per cent (50%) of the voting rights in respect of both companies.

- 6.3 The Delivery Consultant will not contend that any permitted assignee is precluded from recovering any loss resulting from any breach of this Deed (whatever the date of such breach) by reason only that that person is an assignee and not the original Beneficiary under this Deed or by reason that the original Beneficiary or any intermediate Beneficiary escaped any loss resulting from such breach by reason of the disposal of any interest in the Project or that the original Beneficiary or any intermediate Beneficiary has not suffered any the same or as much loss.

7. EXTENT OF LIABILITY

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

- 7.2 The Delivery Consultant shall have no greater liability to the Beneficiary under this Deed than the Delivery Consultant would have had if the Beneficiary and Perfect Circle jointly had appointed the Delivery Consultant under the Appointment and in the event of a claim brought against the Delivery Consultant by the Beneficiary the Delivery Consultant shall be entitled to rely on any defence or limitation available to it under the terms of the Appointment, but the Beneficiary shall not be affected (unless it has approved it) by any subsequent variation of the Appointment or the waiver compromise or withdrawal of any claim made by Perfect Circle under it and the Delivery Consultant shall not be entitled to set-off any fee payments from sums due to the Beneficiary or to claim or counterclaim fees from the Beneficiary under this clause 7.

- 7.3 The Delivery Consultant's liabilities under this Deed will not be in any way reduced or extinguished by reason of any inspection or approval of the Documents or attendance at site meetings or other



enquiry or inspection that the Beneficiary may make or procure to be made for its benefit or on its behalf.

- 7.4 The liability of the Delivery Consultant under this Deed (including where it is determined or held that this document has not taken effect as a deed) shall cease on the expiry of the Relevant Period save in relation to any claims notified by the Beneficiary to the Delivery Consultant in writing before its expiry.
- 7.5 The parties to this Deed do not intend that any of its provisions shall be enforceable by any person by virtue of the Contracts (Rights of Third Parties) Act 1999.

8. NOTICES

Any notice to be given under this Deed will be sufficiently served if sent by hand by facsimile transmission or by post to the registered office or if there is none the last known address of the party to be served. Any notice sent by hand will be deemed to be served on delivery and any notice sent by facsimile transmission will be deemed to be served in full at the time properly recorded on the sender's facsimile report sheet provided that if any notice sent by hand or facsimile is sent after 16:45 on any day it will be deemed to be served on the next day. Any notice sent by post will be deemed to have been duly served forty-eight (48) hours after the time of posting if the end of that period falls before 16:45 and otherwise on the next day.

9. GOVERNING LAW

This Deed and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) will be governed by and construed in accordance with English law and the parties shall submit to the non-exclusive jurisdiction of the English Courts.

10. [STEP IN RIGHTS]⁸

10.1 The Delivery Consultant shall not:

10.1.1 terminate the Appointment or its engagement under it;

10.1.2 treat the Appointment or its engagement under it as having been terminated or repudiated; or

10.1.3 discontinue or suspend the performance of any of its obligations under the Appointment,

before giving to the Beneficiary twenty-eight (28) days' prior written notice (seven (7) days' in the case of suspension for non-payment), with such notice. The notice shall give particulars of any alleged breach of the Appointment by Perfect Circle.

10.2 The Beneficiary may, within twenty-eight (28) days of receipt of a notice given under clause 10.1, give notice to the Delivery Consultant that the Delivery Consultant is to accept the instructions of the Beneficiary or its nominee instead of Perfect Circle under the Appointment.

10.3 Upon the Delivery Consultant's receipt of the notice referred to in clause 10.2:

10.3.1 the Delivery Consultant shall comply with it and shall not do any of the things referred to in clauses 10.1.1, 10.1.2 or 10.1.3;

⁸ **CW DRAFTING NOTE** – Delete if the Beneficiary will not have step-in rights (which is to be confirmed with the MoJ in advance on a case-by-case basis).



10.3.2 the Appointment shall continue in full force and effect as if none of the rights of the Delivery Consultant referred to in clause 10.1 had arisen but the Delivery Consultant shall be liable to the Beneficiary and its nominee (if any) under the Appointment in lieu of its liability to Perfect Circle;

10.3.3 the Beneficiary or its nominee shall as soon as practicable remedy any breach of the Appointment by Perfect Circle which is capable of remedy by them and in particular shall pay any sums outstanding under the Appointment (but where notice was given under clause 10.1 excluding any which were not clearly notified to the Beneficiary as being outstanding prior to the service of notice by the Beneficiary under clause 10.2); but provided that this shall not affect or derogate from any right of action Perfect Circle may have against the Delivery Consultant in respect of any breach of duty by the Delivery Consultant under or in connection with the Appointment occurring prior to the date of service of the notice by the Beneficiary under clause 10.2 or where the Delivery Consultant has wrongfully terminated or treated as terminated or discontinued or suspended performance of its obligations under the Appointment or its employment under it or has wrongfully treated it as having been terminated or repudiated by Perfect Circle.

10.4 If any notice given by the Beneficiary under clause 10.2 requires the Delivery Consultant to accept the instructions of the Beneficiary's nominee the Beneficiary shall be liable to the Delivery Consultant as guarantor for the payment of all sums from time to time due to the Delivery Consultant from the Beneficiary's nominee.

10.5 Any notice which is given under clause 10.1 or 10.2 shall be copied concurrently to Perfect Circle.

10.6 Perfect Circle, the Beneficiary and the Delivery Consultant acknowledge that the Delivery Consultant shall:

10.6.1 rely upon and shall not question a notice which the Beneficiary gives to it under clause 10.2 as conclusive evidence (for the purpose of clause 10.2 only) of a breach of the Beneficiary's Agreement; and

10.6.2 not breach the Appointment if the Delivery Consultant complies with this clause 10.

10.7 Any notice which the Delivery Consultant gives under clause 10.1 shall not constitute a waiver of any of its rights under the Appointment.

10.8 Under the Appointment the Delivery Consultant is obliged to execute and/or procure that its sub-consultants execute collateral warranties in favour of certain third parties. The Delivery Consultant shall execute and/or procure the execution of any such collateral warranty when requested by the Beneficiary notwithstanding that it may not have been requested by the Employer and notwithstanding any dispute under or termination of the Appointment or the Delivery Consultant's engagement under it but provided that where both Perfect Circle and the Beneficiary request the execution of the same collateral warranty the Delivery Consultant shall comply with the first request received and shall be entitled to ignore the second.]

11. EXECUTION AND DELIVERY

This document is executed as a deed and is delivered on the date stated at the beginning of this deed.

[INSERT EXECUTION BLOCKS]⁹

⁹ **CW DRAFTING NOTE** – If the Beneficiary will have step-in rights, ensure that execution blocks are included for the Delivery Consultant, the Beneficiary and the Employer.



SCHEDULE 5

SUBCONSULTANT COLLATERAL WARRANTY



This DEED is dated and delivered

20[20]

BETWEEN the Subconsultant[, the Consultant / Delivery Consultant]¹⁰ and the Beneficiary named in the "Particulars" section of this Deed below and in consideration of the payment of ten pounds (£10.00) (receipt of which is hereby acknowledged) by the Beneficiary to the Subconsultant, the parties to this Deed hereby agree as follows:

1.	Particulars	
1.1	Subconsultant	[INSERT NAME] (company number [INSERT NUMBER]) whose registered office is at [INSERT ADDRESS].
1.2	Beneficiary	[INSERT NAME] (company number [INSERT NUMBER]) whose registered office is at [INSERT ADDRESS].
1.3	Consultant	PERFECT CIRCLE JV LTD (company number 10219126) whose registered office is situated at Halford House, Charles Street, Leicester, United Kingdom, LE1 1HA.
1.4	[Delivery Consultant]	PICK EVERARD, a partnership whose head office is situated at Halford House, Charles Street, Leicester, United Kingdom, LE1 1HA. ¹¹
1.5	[Delivery Consultant Appointment]	An appointment dated [INSERT DATE] by which (inter alia) the Consultant appointed the Delivery Consultant as [INSERT DESCRIPTION] in relation to the Project. ¹²
1.6	Project	The [INSERT DESCRIPTION] project as more particularly described as the "Project" in the Main Appointment.
1.7	Subconsultant Appointment	An appointment dated [INSERT DATE] by which (inter alia) the [Consultant / Delivery Consultant] ¹³ appointed the Subconsultant as [INSERT DESCRIPTION] in relation to the Project [pursuant to the Delivery Consultant Appointment] ¹⁴ .
1.8	Main Appointment	The NEC3 Professional Services Contract: Option G (as amended) dated [INSERT DATE] by which (inter alia) the [Beneficiary / Secretary of State for Justice (of the Ministry of Justice)] ¹⁵ appointed the Consultant as [INSERT DESCRIPTION] in relation to the Project.
1.9	Minimum PI Cover¹⁶	[INSERT AMOUNT IN WORDS] pounds (£[INSERT AMOUNT AS A NUMBER]) any one claim or series of claims arising out of the same original cause or source (or equivalent), without limit to the number of claims in any annual policy period and in the aggregate annually in respect of fire safety, cladding pollution and contamination related claims.
1.10	Relevant Period	Is the period commencing on the date of the Subconsultant Appointment and ending on the "End of Liability Date" (as defined in the Main Appointment).
1.11	Documents	Means all existing and future designs, technical information, drawings, models, plans, specifications, schedules, design details and digital models and databases (including in relation to BIM), costings, budgets, calculations, bill of quantities, estimates and valuations, any photographs, brochures, reports, notes of meetings, computer aided design (CAD) materials and any

¹⁰ **CW DRAFTING NOTE** – Delete if the Beneficiary will not have step-in rights (as it will not be a party to the warranty). Otherwise update to reflect whether the Consultant or the Delivery Consultant will be entering into the warranty.

¹¹ **CW DRAFTING NOTE** – Delete if the Subconsultant is appointed directly by the Consultant and not by the Delivery Consultant.

¹² **CW DRAFTING NOTE** – Delete if the Subconsultant is appointed directly by the Consultant and not by the Delivery Consultant.

¹³ **CW DRAFTING NOTE** – Update to reflect the party that has appointed the Subconsultant.

¹⁴ **CW DRAFTING NOTE** – Delete if the Subconsultant is engaged directly by the Consultant.

¹⁵ **CW DRAFTING NOTE** – Update to reflect the identity of the Beneficiary.

¹⁶ **CW DRAFTING NOTE** – To be updated to reflect the expression of such insurance in the Sub-consultant Appointment as required.



		other materials, including any data underlying such generated data in any medium (be it physical, hard copy or electronic, including digital), provided by or prepared on behalf of the Subconsultant in connection with the Subconsultant Appointment and/or any part(s) of the Project and all amendments and additions to them and any works, designs or inventions of the Subconsultant (or any other person as the case may be) incorporated or referred to in them.
--	--	---

2. EXERCISE OF SKILL AND CARE

2.1 The Subconsultant warrants and undertakes to the Beneficiary that it has not breached and will not breach any of its obligations under the Subconsultant Appointment and that in all services performed and to be performed pursuant to the Subconsultant Appointment, the Subconsultant has exercised and will continue to exercise all of the reasonable skill, care and diligence to be expected of an appropriately qualified, skilled, competent and experienced professional Consultant (or, where the services involve the review, preparation, validation and/or revision of any designs in connection with the Project, architect) that is experienced in carrying out work such as its duties under the Subconsultant Appointment in relation to projects of a similar size, scope, value, character and complexity as the Project.

2.2 The Subconsultant further warrants and undertakes to the Beneficiary that it has exercised and will exercise the standard of care referred to in clause 2.1 to see that:

2.2.1 it has not used, specified for use, approved for use and/or accepted in connection with the Project in the provision of its services under the Subconsultant Appointment any materials which at the time that the relevant services are (or were) undertaken are generally accepted or reasonably suspected of:

- (a) being prohibited in themselves;
- (b) becoming prohibited when used in a particular situation or in combination with other materials;
- (c) becoming prohibited with the passage of time;
- (d) becoming prohibited without a level of maintenance which is higher than that which would normally be expected of a structure of the type under construction; and/or
- (e) being damaged by or causing damage to the structure in which they are incorporated or to which they are affixed,

with a material being "prohibited" for the purposes of the clause 2.2 if, in the context of its use or specification in any part(s) of the Project (whether alone, in combination with other materials, or in a particular situation):

- (i) it poses a hazard to the health and safety of any person who may come into contact with it (at any stage of the Project);
- (ii) it would or is likely to have the effect of reducing the normal life expectancy of any other material or structure in which the material is incorporated or to which it is affixed;
- (iii) it poses a threat to the structural stability, performance or the physical integrity of any part, structure, element or component that is (or may be) the subject of construction works as part of the Project; and/or



- (iv) it has been prohibited for use in the publication "Good Practice in the Selection of Construction Materials" (published by the British Council for Offices) current at the time of use or specification,

in each case, whether in relation to a specific part of the Project or otherwise;

- 2.2.2 it notifies the Beneficiary in writing forthwith if in the performance of its duties under the Subconsultant Appointment the Subconsultant becomes aware that it or any other person has specified or used or authorised or approved the specification or use by others of any such products or materials (provided that this clause 2.2.2 does not create any additional duty for the Subconsultant to inspect or check the work of others which is not required by the Subconsultant Appointment); and
- 2.2.3 to the extent that the Subconsultant is responsible for the design of the Project its design will comply with all relevant legal requirements including without limitation the requirements of any relevant planning building regulations waste environmental or other authority or consent licence or approval of which the Subconsultant is or could reasonably be expected to be aware.

3. LICENCE TO USE DOCUMENTS

- 3.1 Copyright and registered and unregistered design right in all Documents will remain vested in the Subconsultant but the Subconsultant now grants (or if such a grant cannot legally take place until a later date agrees to grant) to the Beneficiary with effect from the date of this Deed or in the case of Documents not yet in existence with effect from the date of their creation with full title guarantee an irrevocable, royalty-free, worldwide and non-exclusive licence in perpetuity to use, copy and reproduce all Documents for any purpose whatsoever, including but not limited to in connection with the Project and/or in connection with (but without limitation) the design, construction, completion, operation, extension, maintenance, letting, management, sale, advertisement, alteration, reinstatement and repair of any element(s) of any part of the Project. The licence granted under this clause 3.1 carries the right for the Beneficiary to grant sub-licences, is transferable to third parties (including by way of an assignment and/or novation) and shall subsist notwithstanding the expiration or termination of the Subconsultant Appointment.
- 3.2 The Subconsultant will not be liable for any use the Beneficiary may make of the Documents for any purpose other than that for which they were originally provided unless the Subconsultant authorises such use and confirms that the Documents are suitable for it.
- 3.3 The Subconsultant warrants that the Documents (save to the extent that duly authorised sub-sub-consultants have been used to prepare them) are and will be its own original work and that in any event their use in connection with the Project will not infringe the rights of any other person. The Subconsultant further warrants that where duly authorised sub-sub-consultants have been or are used their work is and will be original and that it will obtain the necessary consents in relation to clause 3.1.
- 3.4 The Subconsultant agrees that on the Beneficiary's reasonable request at any time and following reasonable prior written notice it will give the Beneficiary or those authorised by it access to the Documents and will provide copies of them (including copy negatives and/or CAD disks or other approved electronic versions) at the Beneficiary's expense.
- 3.5 The Subconsultant now waives and agrees to waive and not to assert (and agrees to procure that any sub-sub-consultants do likewise) all moral rights in the Documents under Chapter IV of the Copyright, Designs and Patents Act 1988.

4. INSURANCE



- 4.1 The Subconsultant warrants to the Beneficiary that it holds professional indemnity insurance which will cover its potential liabilities under this Deed in an amount and on a basis at least equal to the Minimum PI Cover and that it will maintain such insurance with reputable insurers carrying on business in the European Union throughout the Relevant Period provided that such insurance is generally available in the market to members of the Subconsultant's profession at a commercially reasonable cost and on commercially reasonable terms (and if not so available then the Subconsultant shall maintain such reduced level of or reasonable alternative insurance as is so available). For the avoidance of doubt payment of any increased or additional premiums required by insurers by reason of the Subconsultant's own claims record or other acts omissions matters or things peculiar to it will be deemed to be within the Subconsultant's obligations.
- 4.2 The Subconsultant shall notify the Beneficiary in writing from time to time of any change in its professional indemnity insurance arrangements as set out above and within seven days of the Beneficiary's request at any time the Subconsultant will produce for inspection documentary evidence as to compliance with this clause 4 and that payment has been made in respect of the last premium payment due.
- 4.3 If the Subconsultant fails to comply with its obligations under this clause 4 the Beneficiary may take out insurance to cover some or all of the loss or damage which could result from a breach of the Subconsultant's obligations under this Deed and may recover the costs and expenses of taking out such insurance from the Subconsultant.

5. **RELIANCE BY THE BENEFICIARY**

The Subconsultant acknowledges that the Beneficiary shall unless the contrary is clearly proved be deemed to have relied upon the performance by the Subconsultant of the Subconsultant's obligations under the Subconsultant Appointment.

6. **ASSIGNMENT**

- 6.1 The Beneficiary may without the consent of the Subconsultant assign [(but no more than twice)]¹⁷:

6.1.1 the benefit of all or any of the Subconsultant's obligations under this Deed; and/or

6.1.2 any benefit arising under or out of this Deed.

- 6.2 [Assignment by way of security and re-assignment following discharge of that security and assignments between companies which are part of the same group shall not count towards the number of assignments without consent permitted by clause 6.1 but shall be deemed to always have consent. Companies are part of the same group if the same person or persons exercise ultimate control over at least fifty per cent (50%) of the voting rights in respect of both companies.]

¹⁸

- 6.3 The Subconsultant will not contend that any permitted assignee is precluded from recovering any loss resulting from any breach of this Deed (whatever the date of such breach) by reason only that that person is an assignee and not the original Beneficiary under this Deed or by reason that the original Beneficiary or any intermediate Beneficiary escaped any loss resulting from such breach by reason of the disposal of any interest in the Project or that the original Beneficiary or any intermediate Beneficiary has not suffered any the same or as much loss.

7. **EXTENT OF LIABILITY**

¹⁷ **CW DRAFTING NOTE** – Delete this wording in any collateral warranty in favour of the MoJ.

¹⁸ **CW DRAFTING NOTE** – Delete this wording in any collateral warranty in favour of the MoJ.



- 7.1 The rights and benefits conferred upon the Beneficiary by this Deed are in addition to any other rights and remedies the Beneficiary may have against the Subconsultant including without prejudice to the generality of the foregoing any remedies for negligence.
- 7.2 The Subconsultant shall have no greater liability to the Beneficiary under this Deed than the Subconsultant would have had if the Beneficiary and the [Delivery]¹⁹ Consultant jointly had appointed the Subconsultant under the Subconsultant Appointment and in the event of a claim brought against the Subconsultant by the Beneficiary the Subconsultant shall be entitled to rely on any defence or limitation available to it under the terms of the Subconsultant Appointment, but the Beneficiary shall not be affected (unless it has approved it) by any subsequent variation of the Subconsultant Appointment or the waiver compromise or withdrawal of any claim made by the [Delivery]²⁰ Consultant under it and the Subconsultant shall not be entitled to set-off any fee payments from sums due to the Beneficiary or to claim or counterclaim fees from the Beneficiary under this clause 7.
- 7.3 The Subconsultant's liabilities under this Deed will not be in any way reduced or extinguished by reason of any inspection or approval of the Documents or attendance at site meetings or other enquiry or inspection that the Beneficiary may make or procure to be made for its benefit or on its behalf.
- 7.4 The liability of the Subconsultant under this Deed (including where it is determined or held that this document has not taken effect as a deed) shall cease on the expiry of the Relevant Period save in relation to any claims notified by the Beneficiary to the Subconsultant in writing before its expiry.
- 7.5 The parties to this Deed do not intend that any of its provisions shall be enforceable by any person by virtue of the Contracts (Rights of Third Parties) Act 1999.

8. NOTICES

Any notice to be given under this Deed will be sufficiently served if sent by hand by facsimile transmission or by post to the registered office or if there is none the last known address of the party to be served. Any notice sent by hand will be deemed to be served on delivery and any notice sent by facsimile transmission will be deemed to be served in full at the time properly recorded on the sender's facsimile report sheet provided that if any notice sent by hand or facsimile is sent after 16:45 on any day it will be deemed to be served on the next day. Any notice sent by post will be deemed to have been duly served forty-eight (48) hours after the time of posting if the end of that period falls before 16:45 pm and otherwise on the next day.

9. GOVERNING LAW

This Deed and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) will be governed by and construed in accordance with English law and the parties shall submit to the non-exclusive jurisdiction of the English Courts.

10. [STEP IN RIGHTS]²¹

10.1 The Subconsultant shall not:

10.1.1 terminate the Subconsultant Appointment or its engagement under it;

10.1.2 treat the Subconsultant Appointment or its engagement under it as having been terminated or repudiated; or

¹⁹ **CW DRAFTING NOTE** – Update to reflect which party has appointed the Subconsultant.

²⁰ **CW DRAFTING NOTE** – Update to reflect which party has appointed the Subconsultant.

²¹ **CW DRAFTING NOTE** – Delete if the Beneficiary will not have step-in rights.



10.1.3 discontinue or suspend the performance of any of its obligations under the Subconsultant Appointment,

before giving to the Beneficiary twenty-eight (28) days' prior written notice (seven (7) days' in the case of suspension for non-payment), with such notice. The notice shall give particulars of any alleged breach of the Subconsultant Appointment by the [Delivery]²² Consultant.

10.2 The Beneficiary may, within twenty-eight (28) days of receipt of a notice given under clause 10.1, give notice to the Subconsultant that the Subconsultant is to accept the instructions of the Beneficiary or its nominee instead of the [Delivery]²³ Consultant under the Subconsultant Appointment.

10.3 Upon the Subconsultant's receipt of the notice referred to in clause 10.2:

10.3.1 the Subconsultant shall comply with it and shall not do any of the things referred to in clauses 10.1.1, 10.1.2 or 10.1.3;

10.3.2 the Subconsultant Appointment shall continue in full force and effect as if none of the rights of the Subconsultant referred to in clause 10.1 had arisen but the Subconsultant shall be liable to the Beneficiary and its nominee (if any) under the Subconsultant Appointment in lieu of its liability to the [Delivery]²⁴ Consultant;

10.3.3 the Beneficiary or its nominee shall as soon as practicable remedy any breach of the Subconsultant Appointment by the [Delivery]²⁵ Consultant which is capable of remedy by them and in particular shall pay any sums outstanding under the Subconsultant Appointment (but where notice was given under clause 10.1 excluding any which were not clearly notified to the Beneficiary as being outstanding prior to the service of notice by the Beneficiary under clause 10.2); but provided that this shall not affect or derogate from any right of action the [Delivery]²⁶ Consultant may have against the Subconsultant in respect of any breach of duty by the Subconsultant under or in connection with the Subconsultant Appointment occurring prior to the date of service of the notice by the Beneficiary under clause 10.2 or where the Subconsultant has wrongfully terminated or treated as terminated or discontinued or suspended performance of its obligations under the Subconsultant Appointment or its employment under it or has wrongfully treated it as having been terminated or repudiated by the [Delivery]²⁷ Consultant.

10.4 If any notice given by the Beneficiary under clause 10.2 requires the Subconsultant to accept the instructions of the Beneficiary's nominee the Beneficiary shall be liable to the Subconsultant as guarantor for the payment of all sums from time to time due to the Subconsultant from the Beneficiary's nominee.

10.5 Any notice which is given under clause 10.1 or 10.2 shall be copied concurrently to the [Delivery]²⁸ Consultant.

10.6 The [Delivery]²⁹ Consultant the Beneficiary and the Subconsultant acknowledge that the Subconsultant shall:

10.6.1 rely upon and shall not question a notice which the Beneficiary gives to it under clause 10.2 as conclusive evidence (for the purpose of clause 10.2 only) of a breach of the

²² **CW DRAFTING NOTE** – Update to reflect which party has appointed the Subconsultant.

²³ **CW DRAFTING NOTE** – As above.

²⁴ **CW DRAFTING NOTE** – As above.

²⁵ **CW DRAFTING NOTE** – As above.

²⁶ **CW DRAFTING NOTE** – As above.

²⁷ **CW DRAFTING NOTE** – As above.

²⁸ **CW DRAFTING NOTE** – As above.

²⁹ **CW DRAFTING NOTE** – As above.



Beneficiary's Agreement; and

10.6.2 not breach the Subconsultant Appointment if the Subconsultant complies with this clause 10.

10.7 Any notice which the Subconsultant gives under clause 10.1 shall not constitute a waiver of any of its rights under the Subconsultant Appointment.

10.8 Under the Subconsultant Appointment the Subconsultant is obliged to execute and/or procure that its sub-subconsultants execute collateral warranties in favour of certain third parties. The Subconsultant shall execute and/or procure the execution of any such collateral warranty when requested by the Beneficiary notwithstanding that it may not have been requested by the [Delivery]³⁰ Consultant and notwithstanding any dispute under or termination of the Subconsultant Appointment or the Subconsultant's engagement under it but provided that where both the [Delivery]³¹ Consultant and the Beneficiary request the execution of the same collateral warranty the Subconsultant shall comply with the first request received and shall be entitled to ignore the second.]

11. EXECUTION AND DELIVERY

This document is executed as a deed and is delivered on the date stated at the beginning of this deed.

[INSERT EXECUTION BLOCKS]³²

³⁰ **CW DRAFTING NOTE** – As above.

³¹ **CW DRAFTING NOTE** – As above.

³² **CW DRAFTING NOTE** – If the Beneficiary will have step-in rights, ensure that execution blocks are included for the Delivery Consultant, the Beneficiary and the Employer.



SCHEDULE 6

PART 1 - TEMPLATE TASK ORDER



TASK ORDER

EMPLOYER:	THE SECRETARY OF STATE FOR JUSTICE of Ministry of Justice, 102 Petty France, Westminster, London SW1H 9AJ
CONSULTANT:	PERFECT CIRCLE JV LTD (company number 10219126) whose registered office is situated at Halford House, Charles Street, Leicester, United Kingdom, LE1 1HA
CONTRACT:	An NEC3 Professional Services Contract: Option G (as amended) between (1) the Employer and (2) the Consultant dated [INSERT DATE] 2020
DATE:	[INSERT DATE]

Unless otherwise stated, capitalised terms used in this Task Order shall have the meaning given to such terms in the contract as identified above (the "**Contract**"). Any attachments referenced in this Task Order form part of the Task Order. The Parties acknowledge and agree that this Task Order is issued pursuant to, forms part of and shall be subject to the terms and conditions of the Contract.

SECTION 1 – KEY INFORMATION

Task Order number:	[INSERT NUMBER]
Purchase order number:	[INSERT NUMBER]
Task Order title:	[INSERT DESCRIPTION]
Consultant's representative:	[INSERT NAME] (email address: [INSERT EMAIL ADDRESS])
Employer's representative:	[INSERT NAME] (email address: [INSERT EMAIL ADDRESS])

SECTION 2 – SCOPE

The services:	[INSERT DESCRIPTION]
Task-specific Scope:	[INSERT DETAILS (INCLUDING DELIVERABLES)]
Physical works required:	[Yes – the requirements in respect of which are more particularly described in [INSERT LOCATION]] [No]
Project Site(s):	[Insert details of the relevant Project Site(s), whether by reference to the original Scope in the contract or otherwise]

SECTION 3 – START DATE, COMPLETION DATE & MILESTONES

Task Start Date:	[INSERT NUMBER]
Task Completion Date:	[INSERT NUMBER]
Task Milestones:³³	[INSERT DESCRIPTION] [Not used]
Key Dates and Conditions:	[Details of the Key Dates and their associated Conditions are set out at [INSERT LOCATION]] [Not used]
Access Dates:	[INSERT DETAILS] [Not used]

SECTION 4 – PAYMENT

³³ **TASK ORDER DRAFTING NOTE** – These are milestones that are to be completed as part of the Task and need to be completed in order for the Delivery Consultant to claim payment for the relevant milestone. The contract assumes that milestones will be used as default.



Basis of payment:	[Lump sum / Time Charge / Combination of lump sum and Time Charge] as set out below
[Agreed lump sum]:	[INSERT SUM IN WORDS] pounds (£[INSERT NUMBER])
[Agreed Time Charge rates]:	As set out at [INSERT LOCATION]
[Task Milestone(s) breakdown]: ³⁴	[INSERT DETAILS OF ANY BREAKDOWN OF THE AGREED PRICES ACROSS THE MILESTONES]
[Task Milestone Payment Cap(s)]: ³⁵	[INSERT NUMBER]
Management Fee (for the purposes of the Framework Agreement): ³⁶	[As set out in Annex 1 of this Task Order]

SECTION 5 – OTHER

Key Persons:	[INSERT DETAILS]
Additional information:	[INSERT DETAILS]

SECTION 6 – TASK ORDER ACCEPTANCE BY THE EMPLOYER

This Task Order is accepted by the *Employer* acting by its authorised representative:

Print name:	_____
Signature:	_____
Position:	_____
Date:	_____

SECTION 7 – TASK ORDER ACCEPTANCE BY THE CONSULTANT

This Task Order is accepted by the *Consultant* acting by its authorised representative:

Print name:	_____
Signature:	_____
Position:	_____
Date:	_____

³⁴ **TASK ORDER DRAFTING NOTE** – If Task Milestones are used in conjunction with a lump sum (or lump sums), the lump sum(s) can be split across multiple Task Milestones as required.

³⁵ **TASK ORDER DRAFTING NOTE** – If any Task(s) will be paid on a Time Charge basis, the amount payable to the Consultant can be capped by allocating a fixed (cap) amount to each specified milestone.

³⁶ **TASK ORDER DRAFTING NOTE** – This is required as per the standard Scape document.



ANNEX 1

PART 1 – ANCILLARY DETAILS AND INFORMATION

INSERT ANY ANCILLARY DETAILS AND INFORMATION REFERRED TO IN THE BODY OF THE TASK ORDER HERE, ENSURING THAT THE "MANAGEMENT FEE" IS CLEARLY STATED, AS PER THE REQUIREMENTS OF THE FRAMEWORK AGREEMENT.

PART 2 – TASK SCHEDULE

- i. Structural Investigation Surveys for 7 sites
- ii. Ground Source Heat Pump surveys for the 7 sites
- iii. Landscape and Visual Appraisal for the 7 sites
- iv. Utilities surveys for 4 sites
- v. Surveys related to design development of 4 sites
- vi. Surveys related to design of solar farm at 4 sites



SCHEDULE 7
DATA PROTECTION SCHEDULE



DATA PROTECTION SCHEDULE

This Schedule 7 sets out the data processing particulars.

The contact details of the data protection officers (if required by law) for each of the *Employer* and the *Consultant* are as follows:

Party	Name	Email address	Telephone no.
<i>Employer</i>	[REDACTED]	[REDACTED]	[REDACTED]
<i>Consultant</i>	[REDACTED]	[REDACTED]	[REDACTED]

Without prejudice to the generality of clause 104 and this Schedule 7:

- the *Consultant* shall comply with any further written instructions from the *Employer* / Controller in connection with the Processing of any Personal Data in relation to the contract; and
- any such further instruction shall be deemed to be automatically incorporated into this Schedule 6 as from the date of any such instruction.

Description	Details
Identity of the Controller and Processor	The Parties acknowledge and agree that, for the purpose of the Data Protection Laws and clause 104A of this contract: <ul style="list-style-type: none"> the <i>Employer</i> is the Controller; and the <i>Consultant</i> is the Processor.
Permitted Purpose	The <i>Consultant</i> shall be permitted to Process the Personal Data solely to the extent required to allow the <i>Consultant</i> to Provide the Services in accordance with this contract (and/or where such Processing is a reasonably incidental requirement of so Providing the Services).
Duration of the Processing	Unless otherwise expressly agreed by the <i>Employer</i> in writing, the duration of the <i>period for retention</i> .
Nature of the Processing	The nature of the Processing means any operations including the collection, recording, organisation, structuring, storage, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, erasure, destruction of Personal Data (whether or not by automated means) for purposes limited to the performance of the <i>Consultant's</i> obligations under and in accordance with the terms of this contract.
Type of Personal Data	These are as follows: <ul style="list-style-type: none"> full name; occupation; workplace / home address; workplace / home telephone number; date of birth; place of birth; age; nationality; next of kin and emergency contact details; email address; national insurance number; tax code;



	<ul style="list-style-type: none"> • salary or remuneration; • photographic facial image; • contract type; • start date, end date and any reason(s) for early termination; • curriculum vitae; • passport and driving licence details; • visa details; • right to work documentation; • hours worked and records of absence / annual leave; • details of physical and psychological health of medical conditions; • information about investigations and criminal proceedings; • equalities monitoring information (age, disability, gender, sexual orientation, race, religion belief and ethnicity); and • voice recordings from calls.
Categories of Data Subject	<p>These are:</p> <ul style="list-style-type: none"> • the <i>Consultant's</i> agents / staff and Subconsultants or suppliers of any type; and • any user of the <i>services</i> of any type (if required by law).
Plan for return and destruction of the Personal Data once the processing is complete	<p>The Personal Data will be retained for the <i>period for retention</i>.</p> <p>The <i>Consultant</i> will ensure that there is an effective policy to control access to computerised data and to prevent unauthorised access at all times. On termination of this contract, all relevant documentation and records will be transferred back to the <i>Employer</i> or to any new provider of the <i>services</i>, which is applicable. Any such transfer of these records will be conducted in accordance with the requirements of the Data Protection Laws.</p> <p>Notwithstanding the above, the <i>Consultant</i> shall either return or destroy the Personal Data upon the expiration of the <i>period for retention</i> at the <i>Employer's</i> election (unless otherwise advised by the <i>Employer</i>).</p>