



DATED \_\_\_\_\_ 2024

(1) THE SECRETARY OF STATE FOR JUSTICE

AND

(2) MCBAINS LIMITED

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PROPERTY PROFESSIONAL SERVICES (2024)

AGREEMENT FOR COST MANAGEMENT SERVICES:

NORTH REGION

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THIS AGREEMENT is made the \_\_\_\_\_ day of \_\_\_\_\_ 2024

**BETWEEN:**

- (1) **THE SECRETARY OF STATE FOR JUSTICE** of the Ministry of Justice, 102 Petty France, Westminster, London SW1H 9AJ acting as part of the Crown (the "**Authority**", with such term including the Authority's successors in title and legal assigns); and
- (2) **MCBAINS LIMITED** (company number 03094139), whose registered office is at 5th Floor, 26 Finsbury Square, London, UK. EC2A 1DS (the "**Consultant**").

**RECITALS:**

- (A) Pursuant to a public procurement process undertaken by CCS between 2020 and 2021, CCS has established the CCS Framework.
- (B) The Consultant:
  - i. has been appointed to the CCS Framework following such public procurement process; and
  - ii. is a party to an ACA Framework Alliance Contract (FAC-1) (as amended) dated 1 October 2021 between (1) CCS and (2) the Consultant (and other parties) in relation to a lot forming part of the CCS Framework named "Construction Professional Services" and known as Lot 1 (Built Environment & General Infrastructure) (the "**CCS Framework Agreement**").
- (C) For the purpose of the CCS Framework and the CCS Framework Agreement:
  - i. the Authority is an "Additional Client" that has submitted a "Registration Notice" to and which has been accepted by CCS;
  - ii. CCS has notified the parties to the CCS Framework Agreement that the Authority is an "Additional Client" thereunder; and
  - iii. accordingly, the Authority has the right to issue to the Consultant (and the other parties to the CCS Framework Agreement) a "Project Contract" pursuant to and in accordance with the terms of the CCS Framework Agreement,with the terms "**Additional Client**", "**Registration Notice**" and "**Project Contract**" having the meanings given to them in the CCS Framework Agreement for the purposes of this Recital (C) only.
- (D) The Authority wishes to appoint a consultant to provide certain professional services of the type referred to in this Agreement in connection with potential and/or actual construction works across its custodial and non-custodial estate, as well as on an ad hoc basis from time to time.
- (E) Following the completion of a "Competitive Award Procedure" undertaken in accordance with (and as such term is defined in) the CCS Framework Agreement (Jaggaer Unique Reference Number PRJ-7828), pursuant to which the Authority requested that the Consultant (and other eligible parties to the CCS Framework Agreement) prepared and submitted tender submissions in connection with the Authority's requirements in relation to the above and in response to which the Consultant (and other such parties) did so:
  - i. the Authority now wishes to appoint the Consultant under this Agreement as a potential provider of the services referred to in this Agreement during the Term; and
  - ii. the Consultant has agreed to enter into this Agreement with the Authority,



on the basis set out in this Agreement, which is a "**Project Contract**" for the purposes of (and as defined in) the CCS Framework Agreement.

- (F) The Authority and the Consultant acknowledge and agree that this Agreement is not intended to nor shall be construed in any way as constituting a framework agreement as between the Authority and the Consultant.

## 1. DEFINITIONS & INTERPRETATION

- 1.1 Unless the context otherwise requires, the following words and phrases shall have the meanings stated and/or referred to below where used in this Agreement:

**"Adjudicator"** means an adjudicator nominated by the Royal Institute of Chartered Surveyors;

**"Affected ICT System"** has the meaning given to such term in clause 15.2;

**"Affected Party"** has the meaning given to such term in clause 15.2;

**"Affiliate"** means, in relation to the Consultant:

- (a) each holding company and subsidiary of such holding company (excluding the Consultant);
- (b) each joint venture company in which the Consultant holds at least twenty-five per cent (25%) of the voting rights or where the Consultant has the right to appoint or remove at least twenty-five per cent (25%) of its board of directors;
- (c) each partnership and/or limited partnership in which the Consultant is a partner (whether a limited or general partner); and/or
- (d) any limited liability partnership of which the Consultant is a partner;

**"Agreement"** means this agreement;

**"Agreement Liability Period"** means the period commencing on the Effective Date and ending on the date falling twelve (12) years after the earlier of the following events to occur:

- (a) the expiration of the Term; and
- (b) the termination of this Agreement (or the Consultant's engagement hereunder, as the context requires),

provided always that where, as at the date of occurrence of the relevant event above, the Consultant continues to be engaged by the Authority under one (1) or more Orders, such period shall end on the expiration of the final Order Liability Date applicable to any such Order(s);



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| <b>"Agreement Records"</b>         | has the meaning given to such term in clause 30.1;  |
| <b>"Anti-Slavery Policies"</b>     | has the meaning given to such term in clause 29.1.3;  |
| <b>"Anti-Slavery Requirements"</b> | has the meaning given to such term in clause 29.1.1;  |
| <b>"Anti-Slavery Terms"</b>        | has the meaning given to such term in clause 29.3.1;  |
| <b>"Anti-Virus Software"</b>       | <p>means all software and programs of any type as developed, distributed and continuously maintained and/or updated by a reputable and industry-accepted cybersecurity and anti-virus software developer whose principal purpose is to:</p> <ul style="list-style-type: none"><li>(a) detect and prevent the infection of an ICT System by Malicious Code; and/or</li><li>(b) detect and remove Malicious Code from an ICT System and (as the context requires) inoculate that ICT System against such Malicious Code in the future;</li></ul>  |
| <b>"Applicable Law"</b>            | <p>means any and all of the following:</p> <ul style="list-style-type: none"><li>(a) any Act of Parliament or subordinate legislation, any exercise of the Royal Prerogative, any planning or building permission 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 Authority and/or the Consultant has a legal obligation to comply;</li><li>(b) any Rule of equity, common law or the ruling, judgment or order of any Court; and</li><li>(c) 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;</li></ul> |
| <b>"Authority Data"</b>            | <p>means:</p> <ul style="list-style-type: none"><li>(a) any Materials that:<ul style="list-style-type: none"><li>(i) are Authority Materials; and/or</li><li>(ii) the Consultant is required to generate, process, store and/or transmit pursuant to this Agreement and/or any Order; and</li></ul></li><li>(b) any Personal Data in respect of which the Authority is the Controller;</li></ul>  |



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| <b>"Authority ICT System"</b>    | means any ICT System used by the Authority in connection with this Agreement and/or any Order which is owned by and/or licensed to the Authority by a third party and which interfaces with any Consultant ICT System and/or which is provided for use by the Authority in connection with this Agreement (but excluding any Consultant ICT System);   |
| <b>"Authority Materials"</b>     | means all Materials prepared by and/or on behalf of the Authority and provided to the Consultant in connection with this Agreement and/or any Order (but excluding any Consultant Materials) at any time;  |
| <b>"Authority's Policies"</b>    | means the policies of the Authority as provided by the Authority to the Consultant (in each case, as may be updated, supplemented and/or replaced from time to time);  |
| <b>"BPSS"</b>                    | means the "Baseline Personnel Security Standard" as more particularly described in the Cabinet Office publication "HMG Personnel Security Controls (Version 2.0 – April 2014)" as may be amended, updated and/or replaced from time to time;   |
| <b>"Business Day"</b>            | means a day other than a Saturday or Sunday, Christmas Day or Good Friday or any other day which under the Banking and Financial Dealings Act 1971 is a bank holiday in England and Wales;   |
| <b>"CAN Period"</b>              | has the meaning given to such term in clause 10.3.2(a);  |
| <b>"CCS"</b>                     | means the Minister for the Cabinet Office as represented by Crown Commercial Service, a trading fund of the Cabinet Office, whose offices are located at 9th Floor, The Capital, Old Hall Street, Liverpool, L3 9PP;   |
| <b>"CCS Framework"</b>           | means a framework with multiple professional service providers across multiple lots which is known as the "Construction Professional Services" framework (reference number RM6165);  |
| <b>"CCS Framework Agreement"</b> | has the meaning given to such term in the "Recitals" section of this Agreement;  |
| <b>"Central Government Body"</b> | <p>means a body listed in one of the following sub-categories of the "Central Government" classification of the "Public Sector Classification Guide", as published and amended from time to time by the Office for National Statistics:</p> <ul style="list-style-type: none"><li>(a) government department;</li><li>(b) non-departmental public body or assembly sponsored public body (advisory, executive, or tribunal);</li><li>(c) non-ministerial department; or</li></ul> |



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|                                  | (d) executive agency;   |
| "CFA 2017"                       | means the Criminal Finances Act 2017;   |
| "Change of Control"              | means, in relation to the Consultant, a transfer of any part of the share capital of the Consultant (or any holding company of the Consultant) or any Corporate Interest in such shares resulting in any person who does not at the Effective Date have a Controlling Interest in the Consultant (alone or together with any person with whom it is acting in concert, as defined in the "City Code on Takeovers and Mergers" from time to time) directly or indirectly acquiring a Controlling Interest in the Consultant, whether such transfer occurs as a result of one transaction or a series of transactions;  |
| "Change of Control Event"        | has the meaning given to such term in clause 18.1;  |
| "Code of Practice"               | means 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";  |
| "Collateral Warranty Schedule"   | means Schedule 8;   |
| "Consultant Collateral Warranty" | means the document identified as such at Part 1 of the Collateral Warranty Schedule;  |
| "Confidential Information"       | means: <ul style="list-style-type: none"> <li>(a) the terms and schedules of this Agreement, each Draft Order Form, Order Form and/or Order and anything referred to therein;</li> <li>(b) all Materials and any other information, including all Personal Data, which (however it is conveyed) is provided or otherwise disclosed by a Disclosing Party pursuant to or in anticipation of entering into this Agreement and/or any Order, including in relation to:               <ul style="list-style-type: none"> <li>(i) the Disclosing Party's Group; and/or</li> <li>(ii) the operations, business, affairs, developments, Intellectual Property Rights, trade secrets, know-how, methods and techniques for construction and/or personnel of the Disclosing Party's Group;</li> </ul> </li> <li>(c) other Materials and any other information provided by a Disclosing Party pursuant to or in anticipation of entering into this Agreement and/or any Order that is clearly designated as being confidential or equivalent or that ought reasonably to be considered to be confidential (whether or not it is so marked) which</li> </ul> |



comes (or has come) to a Recipient's attention or into its possession in connection with this Agreement, any Draft Order Form, any Order Form and/or any Order;

- (d) discussions, negotiations and/or correspondence between a Disclosing Party and/or any of its directors, officers, employees, consultants or professional advisers and a Recipient or any of its directors, officers, employees, consultants and professional advisers in connection with this Agreement, any Draft Order Form, any Order Form and/or any Order and any and all matters arising therefrom; and
- (e) any and all Materials and information of any type and/or nature derived from any of the above,

in each case excluding any Materials or information:

- (i) already in the possession of a party without an obligation of confidentiality in respect of such Materials and/or information prior to their disclosure by the relevant Disclosing Party;
- (ii) obtained by a party on a non-confidential basis from a third party who is not, to its knowledge or belief, bound by a confidentiality agreement with the relevant Disclosing Party or otherwise prohibited from disclosing the information to that party;
- (iii) already generally available and in the public domain at the time of its disclosure otherwise than by a breach of this Agreement, any Draft Order Form, any Order Form and/or any Order;
- (iv) independently developed by a party without access to the Materials or information referred to above; and/or
- (v) relating to the Consultant's performance under this Agreement and/or any Order,

with the term "**party**" in limbs (i) to (v) above meaning, as the context requires, the Consultant or the Authority;

**"Conflict of Interest"**

has the meaning given to such term in clause 24.1.1;

**"Constructor"**

means (as the context requires):

- (a) a CSF Constructor; and
- (a) any other potential and/or actual contractor that the Authority may notify to the Consultant in writing from time to time in relation to a Works Package;

**"Constructor Contract"**

means (as the context requires):



- (a) a CSF Call-Off Contract; or
- (b) any other construction contract entered into between the Authority and a Constructor that is not a CSF Constructor from time to time,

in connection with an actual or potential Works Package;

**"Constructor Services Framework"**

means each of the framework agreements between:

- (a) [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]
- (h) [REDACTED]



[REDACTED]

[REDACTED]

with **"Constructor Services Frameworks"** being construed accordingly;

**"Consultant Background Materials"**

means all Materials:

- (a) owned by the Consultant before the Effective Date; and/or
- (b) created by the Consultant independently of this Agreement and/or any Order,

which, in each case, are or will be used by the Consultant on or after the Effective Date in connection with the performance and discharge of its duties and obligations under or in connection with this Agreement and/or any actual or potential Order;

**"Consultant Default"**

means (as the context requires):

- (a) a Correctable Default; or
- (b) a Critical Default;

**"Consultant ICT System"**

means any ICT System which is owned by the Consultant and/or licensed to the Consultant by a third party and which is operated by the Consultant and/or any of its Consultant Related Parties in connection with this Agreement (and excluding any Authority ICT System);

**"Consultant Materials"**

means all Consultant Background Materials and/or Foreground Materials (as the context requires);

**"Consultant Related Party"**

means any employee and/or third party engaged by the Consultant under or in connection with this Agreement and/or any Order, including all sub-consultants at any tier;

**"Consultant Representative"**

[REDACTED]

**"Controller"**

has the meaning given to that term in the GDPR;

**"Controlling Interest"**

means, in relation to the Consultant, a Corporate Interest in shares comprising fifty per cent (50%) or more of the shares in



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|                                 | the Consultant (or any holding company of the Consultant) for the time being in issue or otherwise conferring in aggregate of fifty per cent (50%) or more of the total voting rights of the Consultant (or any holding company of the Consultant) conferred by all the shares in the relevant company for the time being in issue and/or the ability to appoint and/or remove fifty per cent (50%) or more by number of the directors of the Consultant (or any holding company of the Consultant); |
| "Conviction"                    | means, other than in relation to minor road traffic offences, any previous or 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;                                      |
| "Corporate Interest"            | means an interest in any of the shares in the Consultant and/or the right to exercise the votes attached to such share(s) and/or the ability to appoint and/or remove any of its board of directors;   |
| "Correctable Default"           | has the meaning given to such term in clause 20.2;   |
| "Corrective Action Notice"      | has the meaning given to such term in clause 10.3.1;   |
| "Critical Default"              | has the meaning given to such term in clause 20.3;   |
| "Critical KPI"                  | means any KPI identified as such in the KPI Schedule;  |
| "Critical KPI Target"           | means, in relation to each Critical KPI, the scoring of three (3) or more points by the Consultant against the KPI Standard for that Critical KPI, or such other target as may be notified by the Authority to the Consultant at its sole discretion during the KPI Development Period;  |
| "Critical KPI Underperformance" | means a failure by the Consultant to achieve a Critical KPI Target for any single Critical KPI;  |
| "Cross-Claim"                   | has the meaning given to such term in clause 35.11;  |
| "Crown"                         | means the government of the United Kingdom (including the Northern Ireland Executive Committee and Northern Ireland Departments, the Scottish Executive and the National Assembly for Wales), including, but not limited to, government ministers, government departments, government offices and government agencies (with " <b>Crown Body</b> " being an emanation of the foregoing);  |
| "CSF Call-Off Contract"         | means a call-off contract entered (or which may be entered) into between the Authority and a CSF Constructor pursuant to and in  |



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|  | accordance with its Constructor Services Framework from time to time;   |
| <b>"CSF Constructor"</b>                   | means a contractor party to any Constructor Services Framework that is not the Authority;   |
| <b>"Data Loss Event"</b>                   | means any event that results, or may result, in unauthorised access to Personal Data held by the Processor under this Agreement and/or actual or potential loss and/or destruction of such Personal Data, including any Personal Data Breach;   |
| <b>"Data Protection Impact Assessment"</b> | means an assessment by the Controller of the impact of the envisaged Processing on the protection of Personal Data;   |
| <b>"Data Protection Laws"</b>              | means: <ul style="list-style-type: none"><li>(a) the GDPR;</li><li>(b) the LED;</li><li>(c) the Data Protection Act 2018 (to the extent it relates to Processing of Personal Data and privacy); and</li><li>(d) all applicable laws about the Processing of Personal Data and privacy;</li></ul>  |
| <b>"Data Protection Officer"</b>           | has the meaning given to such term in the GDPR;   |
| <b>"Data Protection Schedule"</b>          | means Schedule 13 of this Agreement and/or any equivalent schedule that is issued to the Consultant from time to time in connection with a specific Order;  |
| <b>"Data Subject"</b>                      | has the meaning given to such term in the GDPR;   |
| <b>"Data Subject Access Request"</b>       | means a request made by, or on behalf of, a Data Subject under the Data Protection Laws to access its Personal Data;  |
| <b>"day"</b>                               | means a calendar day (whether a Business Day or otherwise);   |
| <b>"Disclosing Party"</b>                  | means a party which discloses or makes available, directly or indirectly, its Confidential Information to a Recipient;  |
| <b>"Disclosing Party's Group"</b>          | means: <ul style="list-style-type: none"><li>(a) where the Disclosing Party is the Consultant, its Consultant Related Parties and its Affiliates; and</li><li>(b) where the Disclosing Party is the Authority, the Authority and any Central Government Body with whom it or the Consultant interacts in connection with this</li></ul> |



Agreement, any Draft Order Form, any Order Form and/or any Order;

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| <b>"Disclosure and Barring Service"</b>        | means the body of the same name as established under the Protection of Freedoms Act 2012;  |
| <b>"Draft OF Response"</b>                     | has the meaning given to such term in clause 8.3;  |
| <b>"Draft Order Form"</b>                      | has the meaning given to such term in clause 8.1;  |
| <b>"Draft Partnering Contract"</b>             | has the meaning given to such term in clause 9.2.1;  |
| <b>"Draft PC Response"</b>                     | has the meaning given to such term in clause 9.2.2;  |
| <b>"Early Warning Notice"</b>                  | has the meaning given to such term in clause 10.2;   |
| <b>"Effective Date"</b>                        | means the date of this Agreement;  |
| <b>"Environmental Information Regulations"</b> | 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;  |
| <b>"Equality Requirements"</b>                 | has the meaning given to such term in clause 28.1;   |
| <b>"Excluded"</b>                              | has the meaning given to such term in clause 6.5;  |
| <b>"FOIA"</b>                                  | 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 the Freedom of Information Act 2000 (including the Code of Practice); |
| <b>"Foreground Materials"</b>                  | <p>means all Materials:</p> <ul style="list-style-type: none"><li>(a) created by the Consultant (or a third party on behalf of the Consultant) specifically for the purposes of performing and discharging its duties and obligations; and/or</li><li>(b) arising out of or in connection with the performance of the Consultant's duties and obligations,</li></ul>   |



under or in connection with this Agreement and/or any Order (including in relation to any Draft Order Form and/or Order Form, but excluding the Consultant Background Materials);

**"GDPR"**

means:

- (a) Regulation (EU) 2016/679 of the European Parliament and of the European Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation); and
- (b) Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (United Kingdom General Data Protection Regulation), as it forms part of the law of England and Wales, Scotland and Northern Ireland by virtue of section 3 of the European Union (Withdrawal) Act 2018;

**"holding company"**

has the meaning given to such term in section 1159 of the Companies Act 2006;

**"ICT System"**

means an information and communications technology system that principally (but not exclusively) uses computer systems and digital technology to store, retrieve, transmit and/or manipulate data of any type (including all associated and ancillary hardware, software, telecommunications systems, data networks, servers, interfaces, active and passive data back-up systems, devices, peripherals, equipment, infrastructure, ducts, cabling and ancillary fixtures and fittings and power supplies);

**"Identifying Party"**

has the meaning given to such term in clause 15.2;

**"Indexation Adjustment"**

has the meaning given to such term in clause 16.2;

**"Indexation Adjustment Date"**

has the meaning given to such term in clause 16.2;

**"Indexation Schedule"**

means Schedule 3;

**"Improvement Notice"**

means a written notice issued by the Authority to the Consultant that:

- (a) advises that the Consultant is subject to an on-going Non-Critical KPI Underperformance and/or a Critical KPI Underperformance, providing details of such underperformance by reference to the relevant KPI Standard(s); and
- (b) specifies the actions to be undertaken by the Consultant, as required by the Authority, in order to



|  | remedy such on-going Non-Critical KPI<br>Underperformance and/or Critical KPI<br>Underperformance;  |
|--|---|
| <b>"Improvement Plan"</b>                      | means the plan prepared and submitted by the Consultant to the Authority in writing that specifies, in response to a notice issued by the Authority pursuant to clause 12.3.1, how the Consultant will remedy an identified and on-going Non-Critical KPI Underperformance and/or Critical KPI Underperformance;  |
| <b>"Information and Security Requirements"</b> | means the information and security requirements set out at Schedule 12 of this Agreement as may be amended, supplemented or replaced from time to time by the Authority (at its sole discretion) and notified to the Consultant;  |
| <b>"Insolvency Event"</b>                      | means where any of the following events occurs in relation to the affected Party or (as the context requires) any holding company of such affected Party: <ul style="list-style-type: none"><li>(a) an order is made for its winding-up or a petition or notice is presented or a meeting is convened for the purpose of considering a resolution for its winding-up or any such resolution is passed;</li><li>(b) a receiver (including any administrative receiver) or similar person is appointed in respect of, or an encumbrancer takes possession of, the whole or any part of any of its property, assets or undertaking or any step is taken by any person to enforce any rights under or pursuant to any security interest or encumbrance of any kind over any of its undertaking, property or assets;</li><li>(c) an administrator is appointed (whether by the court or otherwise) or any step is taken (whether in or out of court) for the appointment of an administrator or any notice is given of an intention to appoint an administrator;</li><li>(d) any distress, execution, sequestration or other similar process is levied or applied for in respect of the whole or any part of any of its property, assets or undertaking which is not remedied within fourteen (14) days of the same;</li><li>(e) any composition in satisfaction of its debts or scheme of arrangement of its affairs or compromise or arrangement between it and its creditors generally (or any class of its creditors) and/or its members is proposed, applied for, sanctioned or approved;</li><li>(f) it is unable to pay its debts for the purposes of the Insolvency Act 1986, or becomes insolvent under any Applicable Law;</li></ul> |



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|                                       | (g) it has applied to court for, or has obtained, a moratorium under Part A1 of the Insolvency Act 1986; or  |
|                                       | (h) an event analogous to any of the above occurs,   |
|                                       | in each case, in any jurisdiction where it carries on business or has assets;  |
| <b>"Insurance Schedule"</b>           | means Schedule 4;  |
| <b>"Intellectual Property Rights"</b> | means any and all current and future intellectual or industrial property rights of any nature anywhere in the world (whether legal or equitable and whether registered or unregistered), including patents, copyrights (including related moral rights), design rights, trademarks, trade secrets, know-how, methodologies, processes and other intellectual property rights of a similar nature (whether or not subsisting in computer software, computer programmes, websites, materials, information, techniques, business methods, drawings, logos, instruction manuals, lists, procedures, marketing methods and procedures and advertising literature), together with any right to apply for or register any of the foregoing; |
| <b>"Interest Rate"</b>                | means the rate of three per cent (3%) above the base rate of the Bank of England from time to time;  |
| <b>"ITEPA"</b>                        | means the Income Tax (Earnings and Pensions) Act 2003;   |
| <b>"Joint Venture"</b>                | means an arrangement pursuant to which the Consultant comprises two (2) or more persons in joint venture, partnership, consortium or other unincorporated grouping;  |
| <b>"KPIs "</b>                        | means the Non-Critical KPIs and Critical KPIs identified as such in the KPI Schedule as at the Effective Date, as may later be amended, updated and/or replaced by the Authority in accordance with and pursuant to clause 12;   |
| <b>"Key Personnel"</b>                | means the personnel named as such by the Consultant and identified in its Tendered Information;  |
| <b>"KPI Development Period"</b>       | means the period of twelve (12) months from the Effective Date;  |
| <b>"KPI Schedule"</b>                 | means the Authority's requirements in relation to the KPIs and its assessment methodology in respect of the same as set out at Schedule 14 (as may be updated from time to time);  |
| <b>"KPI Standard"</b>                 | means the minimum standard of performance in respect of a KPI, as specified in the KPI Schedule;   |
| <b>"LED"</b>                          | means the Law Enforcement Directive (Directive (EU) 2016/680);   |



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| <b>"Malicious Code"</b>             | means any software program or code that is intended to destroy, interfere with, corrupt and/or detrimentally affect program files, data or other information, executable code or application software macros, whether or not its operation is immediate or delayed, and whether introduced wilfully, negligently or without knowledge of its existence;   |
| <b>"Materials"</b>                  | means all technical information, drawings, models, plans, specifications, schedules, digital models and databases (provided that the same do not contain any Personal Data) (including relating to building information modelling (BIM)), costings, budgets, calculations, bill of quantities, estimates and valuations, photographs, brochures, reports, meeting notes, and any other materials, in any medium produced or procured by or on behalf of (as the context requires) the Consultant and/or the Authority in connection with this Agreement and/or any actual or potential Order and all updates, amendments, additions and revisions to them and any works, designs, or inventions incorporated or referred to in them for any purpose relating to the same; |
| <b>"Mini-Competition ITT"</b>       | means the invitation to tender issued by the Authority to the Consultant and other parties to the CCS Framework Agreement dated 28 June 2023 pursuant to and as part of the "Competitive Award Procedure" undertaken in accordance with (and as such term is defined in) the CCS Framework Agreement, as more particularly referred to in the Recitals to this Agreement;   |
| <b>"Model Order Form"</b>           | means the model order form as set out at Schedule 5 (as may incorporate such amendments as the Authority may require in the context of any specific Services and/or the Works Package to which it relates from time to time);   |
| <b>"Model Partnering Contract "</b> | means the terms of the model partnering contract as set out at Schedule 7 (as may incorporate such amendments as the Authority may require in the context of any specific Services and/or the Works Package to which it relates from time to time);   |
| <b>"MoJ Security Requirements"</b>  | means the security requirements of the Authority as set out at Schedule 11 as may be amended, supplemented or replaced from time to time by the Authority (at its sole discretion) and notified to the Consultant;  |
| <b>"Named Employee"</b>             | has the meaning given to such term in clause 14;  |
| <b>"Non-Critical KPI"</b>           | means any KPI identified as such in the KPI Schedule;   |
| <b>"Non-Critical KPI Target"</b>    | means, in relation to each Non-Critical KPI, the scoring of three (3) or more points by the Consultant against the KPI Standard for that Non-Critical KPI, or such other target as may be notified by the Authority to the Consultant at its sole discretion during the KPI Development Period;   |



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| <b>"Non-Critical KPI Underperformance"</b> | means a failure by the Consultant to achieve the Non-Critical KPI Targets for two (2) or more Non-Critical KPIs;  |
| <b>"Official Secrets Acts"</b>             | means the Official Secrets Acts 1911 to 1989 (inclusive);   |
| <b>"Open Book Basis"</b>                   | means an approach to pricing and the disclosure of internal reporting which is fully open and transparent and includes (without limitation) the unrestricted provision to the Authority (or its nominee) of information in connection with the Consultant's engagement under this Agreement and any Order from time to time (subject to legal professional privilege) to enable the effective assessment and verification of any sums claimed by or paid to the Consultant under any Order;   |
| <b>"Order"</b>                             | <p>means:</p> <ul style="list-style-type: none"><li>(a) an Order Form for the provision of Services by the Consultant as entered into (or deemed to have been entered into) between the Authority and the Consultant pursuant to and in accordance with clause 8 (and specifically clause 8.9.1); and/or</li><li>(b) a Partnering Contract under which the Consultant is required to provide Services as entered into between the Authority and the Consultant (and one (1) or more third parties, as the case may be) pursuant to and in accordance with clause 9 (and specifically clause 9.7.1),</li></ul> <p>as the context requires;</p> |
| <b>"Order Form"</b>                        | means the order form (based upon the Model Order Form or in the form of an amended NEC4 Professional Services Contract) that is entered into (or deemed to have been entered into) by the Authority and the Consultant in respect of the provision of Services pursuant to and in accordance with clause 8 (and specifically clause 8.9.1);   |
| <b>"Order Liability Date"</b>              | <p>means:</p> <ul style="list-style-type: none"><li>(a) for each Order in respect of which an Order Form (and not a Partnering Contract) has been entered into between the Parties, the period identified as such in that Order; and/or</li><li>(b) for each Order in respect of which a Partnering Contract (and not an Order Form) has been entered between the Parties:<ul style="list-style-type: none"><li>(i) where a "period of limitations" is identified as such in the Partnering Contract, the date on which such period expires pursuant to and in accordance with the Partnering Contract; or</li></ul></li></ul>                |



- (ii) where a "period of limitations" is not so identified, the date falling twelve (12) years on the later of the following events to occur:
- (1) the last date on which the Consultant (as a "Partnering Team member") performed any works and/or services in connection with the Works Package that is the subject of the Partnering Contract under the Partnering Contract;
  - (2) the date on which the Consultant's engagement under the Partnering Contract is terminated; or
  - (3) the date of "Project Completion" of the Works Package that is the subject of the Partnering Contract pursuant to and in accordance with its terms;

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| <b>"Order Terms"</b>              | means the terms and conditions set out at Schedule 6;   |
| <b>"Parent Company Guarantee"</b> | means a parent company guarantee in the form set out at Schedule 15;  |
| <b>"Party"</b>                    | means the Authority or the Consultant as the context requires (and <b>"Parties"</b> means both of the Authority and the Consultant);  |
| <b>"Personal Data"</b>            | has the meaning given to such term in the GDPR;   |
| <b>"Personal Data Breach"</b>     | has the meaning given to such term in the GDPR;   |
| <b>"PPS Budget"</b>               | means the sum of two hundred million pounds (£200,000,000);   |
| <b>"Pricing Schedule"</b>         | means Schedule 2;   |
| <b>"Process"</b>                  | has the meaning given such term under the Data Protection Laws (and <b>"Processed"</b> and <b>"Processing"</b> shall be construed accordingly);   |
| <b>"Processor"</b>                | has the meaning given to such term in the GDPR;   |
| <b>"Processor Personnel"</b>      | means all directors, officers, employees, agents, consultants and constructors of the Processor and/or of any Sub-Processor engaged in performing the Processor's obligations under this Agreement; |



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| "Procurement Guidance"    | means any guidance issued by the United Kingdom government in connection with the Procurement Regulations from time to time;   |
| "Procurement Regulations" | means the Public Contracts Regulations 2015;   |
| "Procurement Rules"       | means the Procurement Regulations and the Procurement Guidance;  |
| "Progress Meeting"        | has the meaning given to such term in clause 11.1;   |
| "Progress Report"         | has the meaning given to such term in clause 11.3;   |
| "Protective Measures"     | means all appropriate technical and organisational measures ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of such measures adopted by it, including those outlined in the Data Protection Schedule; |
| "public body"             | means a body listed under the heading of "Public Institutional Sectors / Sub-Sectors" in the "Public Sector Classification Guide", as published by the Office for National Statistics and as amended from time to time;  |
| "Quarter"                 | means a three (3) month period beginning on 1st January, 1st April, 1st July or 1st October in a calendar year, as the context requires (and "Quarterly" shall be construed accordingly);  |
| "Recipient"               | means the party which receives or obtains, directly or indirectly, Confidential Information from a Disclosing Party;   |
| "Referring Party"         | has the meaning given to such term in clause 35.1;   |
| "Related Agreement"       | means each of the agreements between:  |

(a)

[REDACTED]

[REDACTED]

[REDACTED]



[REDACTED]

with **"Related Agreements"** being construed accordingly;

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| <b>"Related Consultant"</b>         | means a consultant party to any Related Agreement that is not the Authority;   |
| <b>"Related Consultant Parties"</b> | means any employee and/or third party engaged by a Related Consultant under or in connection with its Related Agreement and/or a Related Order, including all sub-consultants at any tier;   |
| <b>"Related Order"</b>              | means an actual or potential "Order" between the Authority and a Related Consultant entered (or to be entered) into pursuant to and in accordance with a Related Agreement;  |
| <b>"Reputational Risk"</b>          | has the meaning given to such term in clause 24.1.2;   |
| <b>"Request for Information"</b>    | means a request for information relating to this Agreement and/or any Order or apparent request for such information under the FOIA or the Environment Information Regulations;  |
| <b>"Respondent Party"</b>           | has the meaning given to such term in clause 35.1;   |
| <b>"Security Measures"</b>          | <p>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:</p> <ul style="list-style-type: none"><li>(a) maintain the safety of persons and public and personal property;</li><li>(b) prevent the risk of any person being exposed to actual or potential death, personal injury or any other type of harm howsoever caused (including by fire);</li><li>(c) prevent the risk of actual or potential damage or harm to public and personal property howsoever caused (including by fire);</li><li>(d) maintain political, national and/or international security;</li><li>(e) 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</li><li>(f) (as the context requires) facilitate the detention or imprisonment (or continued detention or imprisonment) of persons, in accordance with Applicable Law,</li></ul> |



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|   | such as intruder detector systems, lighting systems, closed circuit television and other surveillance systems, natural surveillance models, physical barriers, information technology systems, artificial intelligence systems, communications systems, mechanical and electronic access control systems, screening arches and areas, biometric and physical entry systems, fire security and safety systems, reinforced (blast, bullet and/or vandal resistance) glass, screening areas and strategic layouts;  |
| <b>"Services"</b>                           | means any services that the Consultant is appointed (or may be appointed) to undertake under an actual or potential Order;   |
| <b>"Services Schedule"</b>                  | means Schedule 1;  |
| <b>"Special Interest Group Meeting"</b>     | has the meaning given to such term at clause 4.3;  |
| <b>"Statutory Authority"</b>                | <p>means any governmental or local authority, statutory undertaker or other body of competent jurisdiction:</p> <ul style="list-style-type: none"><li>(a) which has any jurisdiction with regard to the performance of the Consultant's obligations under this Agreement and/or any Order in any jurisdiction;</li><li>(b) which has any jurisdiction with regard to any Services and/or any Works Package, including any jurisdiction to control the development on any Works Package Site or any part of it;</li><li>(c) with whose requirements the Authority is required to comply or accustomed to complying; and/or</li><li>(d) with whose systems the Works Package are or will be connected;</li></ul> |
| <b>"Sub-Consultant Collateral Warranty"</b> | means the document identified as such at Part 2 of the Collateral Warranty Schedule;   |
| <b>"Sub-Processor"</b>                      | means any third party appointed to Process any Personal Data on behalf of a Processor in connection with this Agreement;   |
| <b>"subsidiary"</b>                         | has the meaning given to such term in section 1159 of the Companies Act 2006 (except that for the purposes of the membership requirement in section 1159(1)(b) and section (1)(c) of the Act, a company shall be treated as a member of another company even if its shares in that other company are registered in the name of its nominee or in the name of a person (or the nominee of that person) who is holding the shares as security);  |
| <b>"Suspension Notice"</b>                  | has the meaning given to such term in clause 21.1  |



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| "Tax Liabilities"          | means any income tax, national insurance contributions (including secondary contributions), apprenticeship levy and any other liability, deduction, contribution, assessment or claim (including any interest, fines, penalties or expenses thereon);  |
| "Tendered Information"     | means the information included in Schedule 10 which has been submitted by the Consultant in response to the Mini-Competition ITT;  |
| "Term"                     | has the meaning given to such term in clause 2.1;  |
| "Third Parties Rights Act" | means the Contracts (Rights of Third Parties) Act 1999;  |
| "value for money"          | means the most economic, efficient and effective manner appropriate to fulfilling (as the context requires) the requirements of the Authority under this Agreement generally and in the context of each Works Package to be delivered under any actual or potential Order;   |
| "VAT"                      | means value added tax at the rate prevailing at the time of the relevant supply charged in accordance with the provisions of the Value Added Tax Act 1994;   |
| "Works Package"            | means any potential or actual construction works (including pre-construction services and enabling works) that the Authority may appoint or has appointed a Constructor to carry out and complete at a Works Package Site pursuant to and in accordance with a Constructor Contract, with such term including, as the context requires, multiple Constructor Contracts in relation to the same Works Package Site; |
| "Works Package Programme"  | means, as at the Effective Date, the programme set out at Schedule 9, as may be updated, supplemented and/or replaced by the Authority by written notice to the Consultant from time to time;  |
| "Works Package Site"       | means any site of the Authority across its custodial and non-custodial estate at which the Authority has appointed or intends to appoint a Constructor to carry out and complete a Works Package under a Constructor Contract;   |
| "Unable"                   | <p>means where the Authority determines (acting reasonably) that the Consultant:</p> <p>(a) has insufficient technical capability and/or professional competency to enable it to carry out and complete the relevant Services;</p> <p>(b) has insufficient resource to perform the relevant Services;</p>  |



- (c) is unable to meet the programme requirements of the Authority in respect of the relevant Services; and/or
- (d) is not adequately performing in respect of any Services that are already the subject of an Order entered into between the Authority and the Consultant; and

**"Unwilling"**

means where the Consultant:

- (a) has declared that it does not wish to perform relevant Services;
- (b) has submitted an inadequate response (as determined by the Authority with reasons) in respect of the relevant Services; and/or
- (c) has not submitted a response in respect of the relevant Services.

**1.2 In this Agreement:**

- 1.2.1 all headings and sub-headings are for ease of reference only and are not to be taken into consideration in the interpretation and/or construction of this Agreement;
- 1.2.2 references to clauses, recitals and schedules (whether capitalised or otherwise) are references to clauses, recitals and schedules of and/or to this Agreement unless expressly stated;
- 1.2.3 references to specific legal or regulatory provisions (including Applicable Law) include any amendment, update, replacement, consolidation and/or re-enactment of the same (in whatever form) from time to time and include any and all subordinate instruments, orders, rules, regulations and byelaws made thereunder and any guidelines issued in respect thereof from time to time;
- 1.2.4 references to specific standards and codes of practice, guidance and/or other instruments include any amendment, update, replacement, consolidation and/or re-enactment of the same from time to time;
- 1.2.5 a reference to a person includes a reference to a firm, a body corporate, an unincorporated association, a partnership or a legal entity or public body of any kind;
- 1.2.6 any reference to a public body shall be deemed to include any successor to such organisation or authority which takes over its functions or responsibilities;
- 1.2.7 words used in this Agreement, regardless of the gender specifically used, shall be deemed and construed to the masculine, feminine or neuter, as the context requires;
- 1.2.8 words expressed in the singular include the plural and vice versa;
- 1.2.9 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 and the "ejusdem generis" rule shall not apply;
- 1.2.10 an obligation on the Consultant to do any act, matter or thing includes, unless expressly stated otherwise, an obligation to procure that it is done;



- 1.2.11 where the Authority is required to provide its "approval" under this Agreement, such approval shall be in writing (and "approve" and "approved" shall be construed accordingly); and
- 1.2.12 this Agreement shall not be construed or interpreted against or to the disadvantage of the Authority on the grounds that this Agreement represents the Authority's standard terms and conditions of business and/or that this Agreement and/or any particular term or condition hereof may have originated from the Authority.

## 2. TERM

- 2.1 This Agreement shall commence on the Effective Date and shall (subject to clause 20) continue in force and effect for a period not exceeding forty-eight (48) months from the Effective Date (the "Term") whereupon, subject to clause 2.2, it shall automatically terminate.
- 2.2 The Authority may, at its sole discretion, by written notice to the Consultant not less than thirty (30) days before the expiration of Term (as it then stands), extend the Term for a further period of twelve (12) months and on each such extension the term "Term" shall be amended to take into account such period of extension, provided always that the maximum duration of this Agreement shall be eighty-four (84) months from the Effective Date.

## 3. PARENT COMPANY GUARANTEE

- 3.1 The Consultant shall provide to the Authority, no later than ten (10) Business Days from the Effective Date, a Parent Company Guarantee executed by its ultimate parent company (or such other parent company that the Authority may approve in advance and at its sole discretion), guaranteeing the performance and discharge of its duties, obligations and liabilities under this Agreement and under each Order that the Parties may enter into pursuant to and in accordance with this Agreement from time to time during the Term.
- 3.2 Where the Consultant fails to provide the Parent Company Guarantee required by clause 3.1 within the period stated therein, the Consultant shall:
  - 3.2.1 be treated as Excluded until such time as the Parent Company Guarantee is provided; and
  - 3.2.2 have no entitlement to any payment whatsoever under any Order that may have been entered into between the Parties prior to the provision of the Parent Company Guarantee pursuant to and in accordance with clause 3.1.

## 4. AUTHORITY OBJECTIVES

- 4.1 The Consultant shall:
  - 4.1.1 work with the Authority and, as the context requires in the context of a specific Works Package, each Related Consultant and Constructor, in the spirit of trust, fairness and mutual cooperation in furthering and achieving the Authority's objectives in connection with this Agreement, any Order and any Works Package (as notified by the Authority to the Consultant from time to time in writing); and
  - 4.1.2 not interfere with the rights of any Related Consultants and their respective Related Consultant Parties in the performance of their respective obligations under any Related Agreement and/or Related Orders nor in any other way hinder or prevent such Related Consultants and their respective Related Consultant Parties from performing and discharging those obligations.



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- 4.2 The Consultant shall investigate and submit proposals to the Authority in respect of any matter relevant to the Authority objectives referred to at clause 4.1 from time to time, with the decision of the Authority (at its sole discretion) in relation to the implementation of such proposals being final.
- 4.3 The Consultant shall participate in Special Interest Group Meetings with the Authority and other third parties (including Related Consultants and Constructors) at such frequency as the Authority may notify to the Consultant in writing from time to time on a date to be notified in writing by the Authority to the Consultant in advance of the intended date of the Special Interest Group Meeting (each a "**Special Interest Group Meeting**"). At each Special Interest Group Meeting the Authority and the Consultant shall collaborate in relation to the advancement and development of matters including, but not limited to:
- 4.3.1 social value;
  - 4.3.2 sustainability;
  - 4.3.3 government soft landings;
  - 4.3.4 handover;
  - 4.3.5 continuous improvement; and
  - 4.3.6 project controls.
5. **WORKS PACKAGE PROGRAMME**
- 5.1 Subject to clause 6.2, the Authority intends to procure the delivery of Works Packages in accordance with the Works Package Programme at Works Package Sites during the Term.
- 5.2 The Consultant acknowledges and agrees that the Works Package Programme may be updated from time to time and is referred to in this Agreement for indicative purposes only and is not intended to represent, nor should it be construed as representing, any commitment and/or guarantee as to the actual volume, value and/or programme of the Works Packages in respect of which Services may be required by the Authority from time to time pursuant to and in accordance with this Agreement.
6. **BASIS OF ENGAGEMENT & NON-EXCLUSIVITY**
- 6.1 As from the Effective Date, the Authority appoints the Consultant as a potential provider of Services, whether in connection with an actual or potential Works Package or otherwise, and, subject to clause 6.2, and save where the Consultant is Excluded, the Consultant shall be eligible to be considered by the Authority pursuant to and in accordance with the terms of this Agreement to carry out and complete Services under Orders during the Term in accordance with the terms of this Agreement.
- 6.2 Pursuant to and in accordance with the Mini-Competition ITT, the Authority anticipates that the total value in the aggregate of:
- 6.2.1 all Orders that may be placed pursuant to this Agreement; and
  - 6.2.2 Related Orders that may be placed under the Related Agreements,
- will not exceed the PPS Budget during the first four (4) years of the Term.
- 6.3 Notwithstanding clause 6.2, the Consultant acknowledges and agrees that:
- 6.3.1 it does not have the exclusive right to undertake any professional services to be performed and undertaken on behalf of the Authority under or pursuant to this Agreement and the



Authority may, at its sole and exclusive discretion, issue instructions to third parties to carry out professional services and/or tasks in relation to any actual or potential Works Packages which are the same as or similar to the professional services as set out in the Services Schedule;

- 6.3.2 the Authority makes no guarantee to the Consultant that it will be awarded any Order(s) whatsoever and the Consultant shall have an entitlement to perform the same; and
- 6.3.3 the Consultant shall have no entitlement to make any claim against the Authority whatsoever (whether in contract, tort or any other basis of law) in respect of, without limitation, any costs, damages, expenses and/or losses (whether direct, indirect, consequential, linked to loss of profit, loss of opportunity, loss of goodwill or otherwise) arising out of or in connection with it not being awarded any minimum amount or number of professional services and/or Orders under or in relation to this Agreement.

6.4 Without prejudice to the generality of clause 6.3:

6.4.1 where the Authority has completed the process set out at clause 8 or clause 9 (as the context requires) under this Agreement or under a Related Agreement and, prior to the Authority entering into the relevant Order with the Consultant or a Related Order with a Related Consultant (as applicable), the Consultant or Related Consultant who is entering into the relevant Order or Related Order (as applicable):

- (a) is or has become:
  - (i) Excluded; and/or
  - (ii) subject to a material detrimental change in financial standing and/or credit rating which adversely impacts on its ability to perform its obligations under the Order or could be reasonably expected to adversely impact its ability to perform its obligations under the Order; or
- (b) is Unwilling or Unable to undertake the relevant Services in accordance with the draft or final Order pursuant to and in accordance with clause 8 and clause 9 respectively; or
- (c) submits a revised price to carry out the relevant Services which the Authority is not satisfied with (acting reasonably),

the Authority may, at its sole discretion, utilise the process set out at clause 8 or clause 9 (as the context requires) under this Agreement or under a Related Agreement (as applicable) to enter into an Order with the Consultant or a Related Order with a Related Consultant (as applicable) in respect of the professional services falling under the scope of this Agreement or the Related Agreement (as applicable); and/or

6.4.2 where the Authority requires professional services:

- (a) the same as or similar to the Services and the professional services are deemed by the Authority, in its absolute discretion, to be of an urgent or emergency nature then the Authority may enter into a Related Order with a Related Consultant pursuant to and in accordance with any Related Agreement;
- (b) the same as or similar to the professional services anticipated to be carried out under a Related Agreement and those services are deemed by the Authority, in its absolute discretion to be of an urgent or emergency nature, then the Authority may enter into an Order with the Consultant for those urgent or emergency professional services falling under the scope of that Related Agreement pursuant



to this Agreement and any such services awarded to the Consultant pursuant to this clause 6.4.2 shall be "Services" for the purposes of this Agreement; and/or

- (c) in respect of a Works Package where the relevant Works Package Site is located outside of the geographical region covered by this Agreement, the Authority may, at its sole discretion, seek to procure the professional services required at that Works Package Site pursuant to and in accordance with this Agreement.

6.5 In this Agreement where used in the context of clause 10.3.4, the term "**Excluded**" shall mean that the Authority shall be entitled to exclude the Consultant from participating in any new opportunity to be appointed under any Order in relation to any proposed Services that it seeks to procure pursuant to clause 8 or clause 9 (as the context requires) during the CAN Period and where the Consultant is Excluded under this Agreement, the Consultant shall have no entitlement to make any claim against the Authority whatsoever (whether in contract, tort or any other basis of law) in respect of, without limitation, costs, damages, expense and/or loss (whether direct, indirect, consequential, linked to loss of profit, loss of opportunity, loss of goodwill or otherwise) or on any other basis, arising out of it being so Excluded.

## 7. WARRANTIES

7.1 The Consultant warrants to the Authority that:

- 7.1.1 in performing and/or satisfying its duties, obligations and liabilities under this Agreement and under each Order, it shall comply (and ensure that its Consultant Related Parties comply) with:
  - (a) all Applicable Law; and
  - (b) the Authority's Policies in force from time to time;
- 7.1.2 it is a duly incorporated and validly existing legal entity under the law of its jurisdiction of incorporation;
- 7.1.3 it has the power to own its assets and carry on its business as it is being conducted;
- 7.1.4 it has the power, capacity and authority to enter into, perform and deliver, and has taken and will take all necessary action to authorise its lawful entry into this Agreement and the legally binding transactions contemplated by this Agreement, including the entering into any Orders, and to do so does not and shall not conflict with any Applicable Law, its constitutional documents or any agreement or instrument binding on it or any of its assets;
- 7.1.5 this Agreement is, and any Order entered into pursuant to this Agreement will be, executed by its duly authorised representative(s);
- 7.1.6 it is not subject to any contractual obligation that the compliance of is likely to have a material adverse effect on its ability to perform its obligations under this Agreement and/or any Order;
- 7.1.7 no litigation, arbitration or administrative proceedings or investigations of, or before, any court, arbitral tribunal or agency have been threatened and/or commenced that, if determined in favour of a party other than the Consultant, are reasonably likely to have (to the best of its knowledge and belief) a materially adverse effect on its ability to perform its obligations under this Agreement and/or any Order;
- 7.1.8 no judgment or order of a court, arbitral tribunal or other tribunal or any order or sanction of any governmental or other regulatory body has (to the best of its knowledge and belief)



been made against it that is reasonably likely to have a materially adverse effect on its ability to perform its obligations under this Agreement and/or any Order;

- 7.1.9 it is not affected by an Insolvency Event;
- 7.1.10 all written statements and representations in any written submissions contained in its Tendered Information remain true, accurate, and are not misleading in any material respects (save as may have been specifically disclosed in writing to the Authority or superseded or varied by this Agreement during the Term); and
- 7.1.11 in respect of itself and each of its Affiliates, in the two (2) years prior to the Effective Date and continuing throughout the Term, it has:
  - (a) conducted and will conduct all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files its accounts;
  - (b) fully complied and will fully comply with all applicable securities laws and regulations in the jurisdiction in which it is established; and
  - (c) not performed and will not perform any act or omission with respect to its financial accounting or reporting which could have an adverse effect on the Consultant's position as a continuing business concern or its ability to fulfil its obligations under this Agreement and/or any Order,

provided that, if the Consultant is a Joint Venture, the warranties given by the Consultant under this clause 7.1 shall be deemed to have been given by each party comprising the Consultant.

- 7.2 If the Consultant becomes aware that a warranty given by it under clause 7.1 has been breached, is incorrect or is misleading, it shall immediately notify the Authority in writing of the relevant breach, error or inaccuracy in sufficient detail so as to allow the Authority to make an accurate assessment of the disclosed issue(s).
- 7.3 Each time that an Order is entered into pursuant to this Agreement, the warranties given by the Consultant under clause 7.1 shall be deemed to be repeated by the Consultant in the context of that Order.

## 8. ORDERS: GENERAL

- 8.1 From time to time (and subject always to clause 9), the Authority may issue to the Consultant a draft order form:
  - 8.1.1 substantially based upon the Model Order Form; or
  - 8.1.2 (at the sole discretion of the Authority) in the form of the then current version of the NEC4 Professional Services Contract, amended to reflect the principles, requirements, duties, obligations and liabilities set out in the Order Terms and reflecting the pricing option required by the Authority in the context of the relevant Services,

in respect of a potential Order and advise the Consultant in writing that the Authority intends to, subject to the provisions of this clause 8, instruct the Consultant to carry out and complete Services in connection with a specific Works Package or otherwise (a "**Draft Order Form**").

- 8.2 The Authority shall set out in the Draft Order Form (amongst other things):



- 8.2.1 the proposed scope of the professional services to be provided by the Consultant as part of the Services (as set out in the "Services Schedule" referred to therein);
- 8.2.2 what (if any) professional services in addition to those set out in the Services Schedule (but which are reasonably ancillary to the same) the Authority requires the Consultant to provide as part of the Services (as set out in the "Services Schedule" referred to therein);
- 8.2.3 the Works Package (if any) to which the Services relate;
- 8.2.4 the Works Package Site (if any) to which the Services relate;
- 8.2.5 the timeframe(s) within which the relevant Services are to be completed by the Consultant (including any specific milestone date(s) that apply to the Services);
- 8.2.6 what (if any) modifications to the Model Order Form, the Order Terms (or, as applicable, the then current version of the NEC4 Professional Services Contract (as applicable) the Authority requires to reflect the type and nature of the Services required;
- 8.2.7 whether the provisions of clause 9 of this Agreement will (or might) apply to the Order;
- 8.2.8 the basis upon which the Consultant will be remunerated for providing the Services (as set out in the "Payment Schedule" referred to therein); and
- 8.2.9 what, if any, sections of the Draft Order Form the Authority requires the Consultant to complete as part of its Draft OF Response pursuant to clause 8.3,

provided always that, where the Draft Order Form does not specify that clause 9 of this Agreement will (or might) apply to the Order, this will not prevent the Authority from exercising its rights under clause 9 on or after the date of the Order Form forming part of the Order that is entered into with the Consultant pursuant to and in accordance with this clause 8.

- 8.3 Following its receipt of the Draft Order Form, the Consultant shall, within five (5) Business Days (or such longer period as the Authority may agree, acting reasonably), issue a written notification to the Authority (a "**Draft OF Response**");

- 8.3.1 confirming:
  - (a) that the Consultant accepts the content of the Draft Order Form as drafted;
  - (b) that it has populated any sections of the Draft Order Form that the Authority required the Consultant to complete as stated in the Draft Order Form;
  - (c) that the Consultant agrees to undertake the scope of the Services identified in the Draft Order Form and can do so within the timeframes specified therein;
  - (d) that the basis of remuneration set out in the Draft Order Form is correct (provided always that nothing shall preclude the Consultant from proposing a discount to one (1) or more of its rates as set out in the Pricing Schedule in connection with any element(s) of the Services); or
- 8.3.2 advising that the Consultant does not agree with the content of the Draft Order Form or is unable to provide its confirmation pursuant to clause 8.3.1 without further clarification from the Authority on one (1) or more points in relation to the Draft Order Form, providing sufficient detail so as to enable the Authority to properly evaluate the Consultant's notification.



- 8.4 Following the Authority's receipt of a Draft OF Response from the Consultant pursuant to clause 8.3 or any response issued by the Consultant pursuant to clause 8.4.2 below:
- 8.4.1 the Authority may (as the context requires):
- (a) request further written clarification from the Consultant on one (1) or more elements of the Draft OF Response; or
  - (b) respond to a notification submitted by the Consultant pursuant to clause 8.4.2 by clarifying and/or revising and reissuing or withdrawing the Draft Order Form as it considers appropriate,
- as soon as reasonably practicable upon receiving the Consultant's notification;
- 8.4.2 the Consultant shall:
- (a) respond to any request for further clarification issued by the Authority pursuant to clause 8.4.1(a); or
  - (b) confirm its acceptance or otherwise to any point of clarification issued by the Authority pursuant to clause 8.4.1(b),
- within three (3) Business Days of receiving such request or clarification; and
- 8.4.3 the Authority may, following the resolution of any points of clarification or otherwise in accordance with clause 8.4.1 and/or clause 8.4.2, reissue the Draft Order Form to the Consultant in accordance with clause 8.4.1(b) in its proposed final form and the provisions of clause 8.3 shall apply to such reissued Draft Order Form mutatis mutandis.
- 8.5 If, in response to a Draft Order Form, the Consultant confirms its acceptance of the content of the Draft Order Form and the Authority approves the submissions of the Consultant submitted pursuant to and in accordance with the provisions of clause 8.1 to clause 8.4 (inclusive) in respect of the same:
- 8.5.1 the Authority will issue an execution form of the final Order Form for the Services to the Consultant as soon as reasonably practicable following its receipt of the Consultant's notification, particularised, populated and finalised to reflect all relevant details and supporting documentation in respect of the relevant Services as agreed with the Consultant pursuant to clause 8.1 to clause 8.4 (inclusive), and any other information relevant to the Services;
- 8.5.2 the Consultant shall:
- (a) sign and return the Order Form to the Authority within two (2) Business Days of receiving the execution form of such Order Form from the Authority (provided always that if the Consultant fails to sign and return the Order Form to the Authority within this period and has not advised the Authority in writing that it no longer wishes to undertake the Services in accordance with the issued Order Form, the Consultant shall be deemed to have accepted the content of the Order Form in full and be bound by the same as if the Consultant had so signed and returned the Order Form to the Authority); and
  - (b) thereafter undertake the relevant Services as instructed by the Authority pursuant to clause 8.5.1 from time to time,
- provided always that the Authority may at its sole discretion from time to time elect to effect the execution of an Order Form electronically on prior written notice to the Consultant of its requirements and procedures to effect execution in such a manner.



- 8.6 Without prejudice to the generality of clause 8.5.2(b), the Consultant acknowledges and agrees that it shall:
- 8.6.1 not be authorised by the Authority to commence or otherwise undertake any part of the Services as specified in an Order Form without first receiving a written instruction from the Authority to commence the same; and
  - 8.6.2 have no entitlement to any payment that relates to any such part of the relevant Services that are the subject of an Order Form (or Draft Order Form) or otherwise where the Consultant commences and/or otherwise undertakes any Services prior to the date of receiving a written instruction to do so from the Authority (and if it does so, it will be at the Consultant's own cost and risk).
- 8.7 The Consultant acknowledges and agrees that:
- 8.7.1 at any time during the period referred to in clause 8.5.2:
    - (a) the Authority shall, at its sole discretion, have the right to notify the Consultant in writing that it no longer intends to enter into contract with the Consultant in respect of the Services that are the subject of the relevant Order Form; and
    - (b) in such a circumstance:
      - (i) the deemed acceptance provisions of clause 8.5.2 shall not apply to that Order Form;
      - (ii) the Consultant shall not be authorised to execute and/or date; and
      - (iii) the Consultant shall be required to return the Order Form to the Authority within two (2) Business Days of the date of such notice; or
  - 8.7.2 the Consultant otherwise seeks to incorporate into the Order Form any amendments to its content when returning the executed Order Form to the Authority following the completion of the process(es) set out at clause 8.1 to clause 8.4 (as appropriate), the Authority shall, at its sole discretion, have the ability to withdraw the Order Form immediately on written notice to the Consultant,
- and, in either case (and without prejudice to any other provision of this Agreement), the Authority may seek to engage another third party (including any other Relevant Consultant pursuant to and in accordance with a Relevant Agreement) to undertake such Services at no liability to the Consultant whatsoever arising out of or in connection with any failure by the Authority to enter into that Order Form with the Consultant (whether in contract, tort or any other basis of law).
- 8.8 Notwithstanding any other provision of this Agreement, the Authority may (at its sole discretion) decline to enter into a draft or agreed form of Order Form with the Consultant at any time and in such a circumstance, the Authority shall have no liability to the Consultant whatsoever arising out of or in connection with any failure by the Authority to enter into that Order Form with the Consultant (whether in contract, tort or any other basis of law).
- 8.9 The Consultant acknowledges and agrees that:
- 8.9.1 once an Order Form is executed by the Parties or treated as having been accepted by the Parties pursuant to and in accordance with clause 8.5, that Order Form shall be treated as an **"Order"** for the purposes of this Agreement;
  - 8.9.2 this Agreement and each Order shall be treated as complementary of one another and it shall be the duty of the Consultant to notify the Authority of any error, omission or



discrepancy of which it becomes aware as between this Agreement and any Order and to put forward proposals to resolve such error, omission or discrepancy fairly and constructively, whilst minimising any adverse effect on any Order and this Agreement, provided always that any such proposal shall be subject to prior approval by the Authority at its sole discretion; and

- 8.9.3 it shall be responsible for and bear the costs of the consequences of any error or omission in, or any discrepancy between, this Agreement and any Order.

## 9. ORDERS: PARTNERING CONTRACT

- 9.1 The Consultant acknowledges and agrees that:

- 9.1.1 where the Consultant is appointed to provide Services under an Order in connection with a Works Package:

- (a) the Authority reserves the right to require the Consultant to, at a later date, transition the provision of its Services into a Partnering Contract by entering into a Partnering Contract with the Authority (and other parties, including a Constructor) to provide Services under the Partnering Contract in connection with the Works Package that is the subject of such Order; and
- (b) where the Authority has already entered into a CSF Call-Off Contract with a Constructor in substantially the same form as the Partnering Contract in connection with that Works Package as at the date that the Authority wishes to engage the Consultant in connection with the Works Package, the term **"Partnering Contract"** in this clause 9 shall be construed as being a written agreement by which the Consultant shall agree to become a party to such existing agreement as an additional consultant (and not contractor) party on the terms and conditions set out therein; and

- 9.1.2 in lieu of requiring the Consultant to provide Services under the relevant Order in connection with a Works Package, the Authority may require the Consultant to enter into a Partnering Contract with the Authority (and other parties, including a Constructor) to provide Services under the Partnering Contract in connection with that Works Package; and

- 9.1.3 the Authority intends that, in both of the circumstances specified at clause 9.1.1(a) and clause 9.1.1(b), the duties, obligations and liabilities of the Consultant under the form of Partnering Contract shall be substantially in the form set out in the Model Partnering Contract, however the actual form of Partnering Contract that the Consultant may be required to enter into may differ from the Model Partnering Contract to reflect requirements that are specific to the Works Package that is (or will be) the subject of the Works Package,

with any such request being subject to and governed by the provisions of clause 9.2 to clause 9.8 (inclusive).

- 9.2 Where the Authority wishes to instruct the Consultant to provide Services under a Partnering Contract in connection with a Works Package on the basis referred to at clause 9.1:

- 9.2.1 the Authority will issue the proposed form of Partnering Contract to the Consultant (as the **"Draft Partnering Contract"**) that sets out (amongst other things):

- (a) (by reference to the relevant sections of the Services Schedule) the proposed scope of the professional services to be provided by the Consultant as part of the Services (and referred to in such Partnering Contract as "Partnering Services" and to be set out in the "Consultant Services Schedule" thereunder);



- (b) what (if any) professional services in addition to those set out in the Services Schedule (but which are reasonably ancillary to the same) the Authority requires the Consultant to provide as part of the Services (on the same basis as above);
- (c) the identities of the other known (and potential) parties to the Partnering Contract and their roles under the Partnering Contract;
- (d) what parts of the Partnering Contract (if any) the Authority requires the Consultant to complete and return for the Authority's consideration;
- (e) the Works Package to which the Services relate;
- (f) the Works Package Site to which the Services relate;
- (g) the timeframe(s) within which the relevant Services are to be completed by the Consultant (including any specific milestone date(s) that apply to the Services);
- (h) what (if any) modifications to the Model Partnering Contract have been made by the Authority to reflect the type and nature of the Services required;
- (i) (at the Authority's sole discretion) any performance-based incentivisation measures that will apply to the provision of the Services to be provided by the Consultant under the Partnering Contract; and
- (j) by reference to the Pricing Schedule, the basis upon which the Consultant will be remunerated for providing the Services under the Partnering Contract (and to be set out in the "Consultant Payment Terms" section of the Partnering Contract);

9.2.2 following its receipt of the Draft Partnering Contract, the Consultant shall, within five (5) Business Days (or such longer period as the Authority may agree, acting reasonably), issue a written notification to the Authority (a "**Draft PC Response**"):

- (a) confirming:
  - (i) that the Consultant accepts the content of the Draft Partnering Contract as drafted;
  - (ii) that the Consultant agrees to undertake the scope of the Services identified in the Draft Partnering Contract and can do so within the timeframes specified therein;
  - (iii) the identity of the key personnel at the Consultant that will undertake the Services; and
  - (iv) that the basis of remuneration set out in the Draft Partnering Contract is correct (provided always that nothing shall preclude the Consultant from proposing a discount to one (1) or more of its rates as set out in the Pricing Schedule in connection with any element(s) of the Services); or
- (b) advising that the Consultant does not agree with the content of the Draft Partnering Contract or is unable to provide its confirmation pursuant to clause 9.2.2(a) without further clarification from the Authority on one (1) or more points in relation to the draft Partnering Contract, providing sufficient detail so as to enable the Authority to properly evaluate the Consultant's notification.



- 9.3 Following the Authority's receipt of a Draft PC Response from the Consultant pursuant to clause 9.2 or any response issued by the Consultant pursuant to clause 9.3.2 below:
- 9.3.1 the Authority may (as the context requires):
- (a) request further written clarification from the Consultant on one (1) or more elements of the Draft PC Response; or
  - (b) respond to a notification submitted by the Consultant pursuant to clause 9.3.2 by clarifying and/or revising and reissuing or withdrawing the Draft Partnering Contract as it considers appropriate,
- as soon as reasonably practicable upon receiving the Consultant's notification;
- 9.3.2 the Consultant shall:
- (a) respond to any request for further clarification issued by the Authority pursuant to clause 9.3.1(a); or
  - (b) confirm its acceptance or otherwise to any point of clarification issued by the Authority pursuant to clause 9.3.1(b),
- within three (3) Business Days of receiving such request or clarification; and
- 9.3.3 the Authority may, following the resolution of any points of clarification or otherwise in accordance with clause 9.3.1 and/or clause 9.3.2, reissue the Draft Partnering Contract to the Consultant in accordance with clause 9.3.1(b) in its proposed final form and the provisions of clause 9.2 shall apply to such reissued Draft Partnering Contract mutatis mutandis.
- 9.4 If, in response to a Draft Partnering Contract, the Consultant confirms its acceptance of the content of the Draft Partnering Contract and the Authority approves the submissions of the Consultant submitted pursuant to and in accordance with clause 9.2 to clause 9.3 (inclusive) in respect of the same:
- 9.4.1 the Authority will issue an execution form of the final Partnering Contract to which the Services will relate to the Consultant as soon as reasonably practicable following its receipt of the Consultant's notification, particularised, populated and finalised to reflect all relevant details and supporting documentation in respect of the relevant Services as agreed with the Consultant pursuant to clause 9.2 and clause 9.3 (inclusive), and any other information relevant to the Services;
- 9.4.2 the Consultant shall sign and return (but not date) the Partnering Contract to the Authority within ten (10) Business Days of receiving the execution form of such Partnering Contract from the Authority and in any event prior to commencing the Partnering Services in respect of the same (and the Consultant shall not have any authority to date the Partnering Contract unless expressly authorised in writing in advance by the Authority); and
- 9.4.3 the Authority, following its receipt of the Consultant's duly executed Partnering Contract, shall date the same and confirm to the Consultant in writing that the Partnering Contract is effective and binding as between the parties to the Partnering Contract,
- provided always that the Authority may at its sole discretion from time to time elect to effect the execution of a Partnering Contract electronically on prior written notice to the Consultant of its requirements and procedures to effect execution in such a manner.



- 9.5 Where the Consultant fails to sign and return the Partnering Contract within the period specified in clause 9.4 and/or otherwise requests and/or seeks to incorporate into the Partnering Contract any amendments to its content following the completion of process referred to in clause 9.2 and clause 9.3 (as appropriate):
- 9.5.1 the Authority shall, at its sole discretion, have the right to notify the Consultant in writing that it no longer intends to enter into contract with the Consultant in respect of the Services that are the subject of the Partnering Contract;
  - 9.5.2 in such a circumstance, the Consultant shall not be authorised to execute and/or date and shall be required to return the Partnering Contract to the Authority within two (2) Business Days of the date of such notice; and
  - 9.5.3 the Authority may seek to engage another third party (including any other Relevant Consultant pursuant to and in accordance with a Relevant Agreement) to undertake such Services at no liability to the Consultant whatsoever arising out of or in connection with any failure by the Authority to enter into the Partnering Contract with the Consultant (whether in contract, tort or any other basis of law).
- 9.6 Notwithstanding any other provision of this Agreement, the Authority may (at its sole discretion) decline to enter into a draft or agreed form of Partnering Contract with the Consultant at any time and in such a circumstance it shall have no liability to the Consultant whatsoever arising out of or in connection with any failure by it to enter into that Partnering Contract with the Consultant (whether in contract, tort or any other basis of law).
- 9.7 The Consultant acknowledges and agrees that:
- 9.7.1 once a Partnering Contract is executed by the Parties pursuant to and in accordance with clause 9.4, that Partnering Contract shall be treated as an "**Order**" for the purposes of this Agreement;
  - 9.7.2 it shall be the duty of the Consultant to, if awarded a Partnering Contract pursuant to the provisions of this clause 9, notify the Authority (as appropriate) of any error, omission or discrepancy of which it becomes aware as between the terms of this Agreement and any Services provided in respect of the relevant Works Package and the Partnering Contract prior to executing the Partnering Contract and to put forward proposals to resolve such error, omission or discrepancy fairly and constructively, whilst minimising any adverse effect on this Agreement, the Partnering Contract and/or the Works Package, provided always that any such proposal shall be subject to prior approval by the Authority at its absolute discretion; and
  - 9.7.3 it shall be responsible for and bear the costs of the consequences of any error or omission in, or any discrepancy between, this Agreement and the Partnering Contract.
- 9.8 Where the Authority enters into a Partnering Contract with the Consultant pursuant to this clause 9 and, prior to the date of the Partnering Contract being entered into, the Consultant has been engaged under an Order in relation to the Works Package that is the subject of the Partnering Contract (and save as otherwise set out in the Partnering Contract):
- 9.8.1 the respective rights and liabilities of the Authority and the Consultant in respect of all matters with which this Agreement is concerned in relation to any Services provided by the Consultant in relation to the Project that are the subject of the Partnering Contract prior to the date of the Partnering Contract shall become subject solely to the terms and conditions of the Partnering Contract; and
  - 9.8.2 the Consultant acknowledges and agrees that the terms of the Partnering Contract shall be expressed as retrospectively governing such Services and other activities of the



Consultant performed (or as required to be performed) by the Consultant or on the Consultant's behalf under this Agreement in connection with that Works Package,

provided always that the Authority shall not be relieved of its obligations under this Agreement to pay to the Consultant any undisputed sums that are the subject of an invoice submitted by the Consultant and assessed by the Authority pursuant to and in accordance with an existing Order as at the date that the Partnering Contract is entered into in accordance with this clause 9, with the Consultant having no entitlement to receive and/or the ability to claim from the Authority any:

- (a) further sums relating to the provision of any Services in connection with the Project that is the subject of the Partnering Contract under this Agreement after the relevant due date(s) for such undisputed sums; and
- (b) payment under the Partnering Contract in relation to any Services that it has performed under and pursuant to this Agreement in connection with such Works Package.

## 10. EARLY WARNING & CORRECTIVE ACTION NOTICES

10.1 Except as otherwise approved by the Authority in advance and in writing:

- 10.1.1 all notices, reports, submissions, decisions, consents, approvals, agreements, opinions, instructions and other communications issued in relation to this Agreement shall be in writing, the effectiveness of which shall be determined pursuant to clause 41; and
- 10.1.2 each and every document (in whatever medium) and/or communication prepared and/or issued by or on behalf of the Consultant pursuant to this Agreement must be clearly marked "**OFFICIAL SENSITIVE**" or with such other security-related designation that the Authority notifies to the Consultant in writing from time to time.

10.2 The Consultant shall notify the Authority in writing (as an "**Early Warning Notice**") as soon as it becomes aware of any actual or potential:

- 10.2.1 Consultant Default;
- 10.2.2 Non-Critical KPI Underperformance and/or Critical KPI Underperformance; and
- 10.2.3 adverse effect and/or threat to this Agreement and/or any Order,

as well as proposing, in the Consultant's reasonable opinion, how any such matter(s) could be avoided or how their impact can be reduced, pursuant to which:

- (a) any such matter(s) shall be noted by the Authority as part of its internal risk register in connection with this Agreement and any Order; and
- (b) the Authority and the Consultant shall meet within ten (10) Business Days from the date of such Early Warning Notice to discuss its content and agree in writing the most appropriate course of action to avoid or minimise (as the context requires) such matter(s) (unless a longer time period is agreed by the Authority, acting reasonably) (the "**Early Warning Proposal**"),

with each Early Warning Notice and Early Warning Proposal being the subject of continued monitoring by the Authority and the Consultant at any future Progress Meetings.

10.3 Without prejudice to the generality of clause 10.2 (and without prejudice to the rights of the Authority under any individual Order):



- 10.3.1 the Authority may issue a written notice to the Consultant at any time (a "**Corrective Action Notice**") where the Consultant:
- (a) may, in the reasonable opinion of the Authority, fail or has failed to implement any agreed actions on the part of the Consultant as set out in an Early Warning Proposal;
  - (b) may be, or is subject to and/or affected by, in the reasonable opinion of the Authority:
    - (i) a Consultant Default; and/or
    - (ii) any other adverse circumstance that is affecting or threatening or could affect and/or threaten (as the context requires) this Agreement and/or any Order; and/or
  - (c) may, in the reasonable opinion of the Authority (but subject always to the provisions of clause 12), be subject to a Non-Critical KPI Underperformance and/or a Critical KPI Underperformance if the Consultant does not take reasonable steps to avoid the continued and/or anticipated underperformance of its obligations that are assessable by the Authority under this Agreement by reference to the KPI Schedule, as identified by the Authority in the Corrective Action Notice;
- 10.3.2 any Corrective Action Notice issued pursuant to clause 10.3.1 shall:
- (a) set out the minimum period during which the Corrective Action Notice will remain in force (the "**CAN Period**"); and
  - (b) specify any remedial action which the Authority requires the Consultant to undertake as a pre-condition to discharge of the Corrective Action Notice;
- 10.3.3 following the issue of a Corrective Action Notice, the Consultant and the Authority shall meet as soon as reasonably possible (and thereafter, on such further dates as the Authority may reasonably require from time to time) in order to discuss the progress of the Consultant in discharging any remedial actions referred to in the Corrective Action Notice; and
- 10.3.4 the Consultant acknowledges and agrees that, where stated as such in the Corrective Action Notice, it shall be Excluded during the CAN Period (provided always that where the Consultant fails to avoid any potential underperformance in relation to the KPI Schedule that are identified in a Corrective Action Notice pursuant to clause 10.3.1(c) and such underperformance then occurs, such underperformance shall be governed by the provisions of clause 12).

## 11. PROGRESS MEETINGS & REPORTING

- 11.1 The Consultant shall (individually and without the presence of any Related Consultants) attend a meeting with the Authority on a Quarterly basis (or at such other frequency as the Authority may notify to the Consultant in writing from time to time) on a date to be notified in writing by the Authority to the Consultant no later than five (5) Business Days before the intended date of the meeting (or, as the Authority may agree at its sole discretion, on such other date as it may agree with the Consultant in writing) (each a "**Progress Meeting**") to review and discuss (without limitation):
- 11.1.1 in the context of each Order to which the Consultant is (or will be) a party pursuant to any award under this Agreement, details of:
- (a) the delivery of the Services;



- (b) the status and progress of the Works Package(s) to which the Services relate (if any);
  - (c) any sums (of any type) paid or anticipated to be paid to the Consultant by the Authority pursuant to and in accordance with the terms of that Order as at (or, as the context requires, by) the date of the Progress Meeting;
  - (d) all sums paid by the Consultant to the Authority and any third parties and Consultant Related Parties under and in accordance with that Order; and
  - (e) (to the extent applicable) any rebates received and/or paid by the Consultant in connection with that Order;
- 11.1.2 the content of any Progress Reports submitted by the Consultant during the preceding Quarter;
- 11.1.3 the Consultant's progress in relation to achieving the KPIs, including the remedying by the Consultant of any Non-Critical KPI Underperformance and/or Critical KPI Underperformance;
- 11.1.4 any current Early Warning Notices, the progress of any Early Warning Proposals and any current Corrective Action Notices;
- 11.1.5 any marketing initiatives in connection with this Agreement;
- 11.1.6 any case studies to be provided by the Consultant in connection with any completed Services;
- 11.1.7 the performance of the Consultant generally under this Agreement and each Order;
- 11.1.8 any anticipated or actual amendments to the Works Package Programme;
- 11.1.9 any anticipated Works Packages that the Authority may be seeking to procure under this Agreement during the following Quarter (and beyond, as appropriate);
- 11.1.10 the Consultant's likely capacity and ability to undertake, if required, any Services during the following Quarter (and beyond, as appropriate);
- 11.1.11 any potential differences and/or disputes under this Agreement and/or any Orders;
- 11.1.12 the health and safety records of the Consultant in connection with any Services; and/or
- 11.1.13 any other item(s) that the Authority notifies to the Consultant in advance of the Progress Meeting.
- 11.2 The Consultant shall ensure that its Consultant Representative (or such deputy or deputies as the Authority may approve in advance of the Progress Meeting in writing, provided that at least two (2) Business Days' notice of the same is given by the Consultant to the Authority) attends each Progress Meeting.
- 11.3 The Consultant shall provide a written report to the Authority (in a form to be approved by the Authority in writing in advance of the submission of the first of such report) on the first (1st) Business Day of each month throughout the Term (or at such other frequency and on such other date as the Authority may notify to the Consultant in writing from time to time) (each a "**Progress Report**") that provides an objective and transparent assessment on the items referred to in clause 11.1.1, clause 11.1.7, clause 11.1.10 and clause 11.1.12, as well as any other items that the Consultant



(acting reasonably) determines that the Authority should be aware of in connection with this Agreement and/or any Order on an Open Book Basis.

## 12. KEY PERFORMANCE INDICATORS

### 12.1 The Consultant acknowledges and agrees that:

12.1.1 during the KPI Development Period, it shall use all reasonable endeavours to work with the Authority to develop, supplement and/or refine (as the context requires) the KPIs in order to agree tangible, clearly defined and continually measurable performance criteria, against which the Authority will be able to assess the performance of the Consultant under or in connection with this Agreement and in respect of each Order; and

12.1.2 following the expiration of the KPI Development Period (or on such earlier date that the Authority may determine on written notice to the Consultant in its sole discretion), the Authority may provide to the Consultant, by way of a notice in writing, an updated version of the KPI Schedule and the Non-Critical KPIs and Critical KPIs stated in such updated KPI Schedule document shall be deemed to supersede the KPI Schedule included in this Agreement as at the Effective Date as from the date of such notice and for the remainder of the Term.

12.2 The Consultant shall use all reasonable endeavours to achieve the KPI Standard for each KPI throughout the Term and the Authority shall provide a written assessment of the Consultant's performance against the KPIs at each Progress Meeting or, at its sole discretion, at such other time(s) as it considers appropriate in the circumstances.

12.3 Without prejudice to any other rights or remedies of the Authority under this Agreement (including under clause 20 and clause 21), the Consultant acknowledges and agrees that where it is subject to a Non-Critical KPI Underperformance or Critical KPI Underperformance at any time, the Authority shall have the right to exercise (in its absolute and sole discretion) all or any of the following remedies:

12.3.1 the Authority may, by written notice to the Consultant identifying an on-going Non-Critical KPI Underperformance and/or a Critical KPI Underperformance, require the Consultant to prepare and submit an Improvement Plan to the Authority for approval within ten (10) Business Days of the date of the notice, following which:

(a) where, upon receiving the Improvement Plan, the Improvement Plan is:

(i) not approved by the Authority, the Authority shall:

(1) notify the Consultant in writing of such non-approval in writing as soon as is reasonably practicable in the circumstances, specifying why the Improvement Plan is not approved and specifying the Authority's requirements in relation to the content of the Improvement Plan;

(2) require the Consultant to resubmit an updated Improvement Plan within five (5) Business Days of the date of such notice; and

(3) unless the Authority specifies otherwise in writing, the process set out at clauses 12.3.1(a)(i)(1) and 12.3.1(a)(i)(2) shall be repeated until such time as the Authority approves any updated Improvement Plan; or

(ii) approved by the Authority:



- (1) the Authority shall notify the Consultant of such approval in writing as soon as is reasonably practicable in the circumstances; and
- (2) the Consultant shall implement any corrective actions specified in the approved Improvement Plan in accordance with the requirements and within any timescales specified in such agreed Improvement Plan;

12.3.2 the Authority may issue an Improvement Notice to the Consultant, following which the Consultant shall implement any corrective actions specified in the Improvement Notice in accordance with the requirements of the Authority and within any timescales specified by the Authority in the Improvement Notice; and/or

12.3.3 the Authority may, by written notice to the Consultant, require the Consultant to attend one (1) or more meetings with the Authority, at a time and location to be specified by the Authority in writing, to discuss and resolve any issues identified by the Authority in relation to the identified Non-Critical KPI Underperformance or Critical KPI Underperformance in such notice,

and where the Consultant fails to comply with the requirements specified in an agreed Improvement Plan and/or an Improvement Notice issued by the Authority, or fails to remedy any Non-Critical KPI Underperformance and/or a Critical KPI Underperformance in a manner agreed with the Authority at the meeting convened pursuant to clause 12.3.3, the Authority shall be entitled to terminate the engagement of the Consultant under this Agreement with immediate effect in writing.

### 13. KEY PERSONNEL & EMPLOYEES

13.1 The Consultant shall ensure that its Key Personnel have the necessary skills, qualifications and experience to fulfil the Consultant's role, expertise and responsibilities under this Agreement and the removal or replacement of any of the Key Personnel shall be subject to the provisions of clause 13.2 and clause 14.

13.2 The Consultant shall:

13.2.1 ensure that the Key Personnel shall be engaged in fulfilling the Consultant's obligations under this Agreement and that each such person has a deputy who is aware of the structure and progress of this Agreement and is able to provide continuity should it become necessary for any Key Personnel to be replaced; and

13.2.2 in a circumstance where it is necessary for the Consultant to replace a member of the Key Personnel:

- (a) notify the Authority of the same;
- (b) provide details for approval by the Authority of the identity of the proposed replacement; and
- (c) use reasonable endeavours to ensure a handover period of at least four (4) weeks during which the approved replacement shall work in parallel with the person being replaced.

13.3 Without prejudice to clause 14, if any Consultant Related Party disrupts or otherwise adversely affects this Agreement and/or any Order, the Authority may require the exclusion of that individual or organisation from participating in this Agreement and/or any Order and the Consultant shall engage a suitable replacement and notify the Authority accordingly.



- 13.4 The Authority may, by notice to the Consultant, refuse to admit onto or withdraw permission to remain on a Works Package Site:

13.4.1 any Consultant Related Party; or

13.4.2 any person employed or engaged by a Consultant Related Party,

whose admission or continued presence at that Works Package Site would, in the Authority's reasonable opinion, be undesirable.

#### 14. SECURITY & VETTING

- 14.1 The Consultant shall:

14.1.1 procure that, in respect of all potential individuals and parties to be engaged by the Consultant in connection with this Agreement and/or any Order (whether an employee of the Consultant or any Consultant Related Party) (each a **"Named Employee"**), before attending any Works Package Site:

- (a) that Named Employee is questioned as to whether they have any Convictions;
- (b) a Disclosure and Barring Service check is undertaken in respect of that Named Employee; and
- (c) save to the extent prohibited by Applicable Law, a copy of the results of such check are notified to the Authority;

14.1.2 procure that no person who discloses any Convictions, or who is found to have any Convictions following the results of a Disclosure and Barring Service check, is employed without the prior written consent of the Authority in connection with this Agreement and/or any Order (such consent not to be unreasonably withheld or delayed);

14.1.3 save to the extent prohibited by Applicable Law, procure that the Authority is informed if any member of the Consultant's staff (or any employee of a Consultant Related Party), whether a Named Employee or otherwise, involved in connection with this Agreement and/or any Order who, subsequent to their commencement of employment as a member of staff, receives a Conviction or whose previous Convictions become known to the Consultant; and

14.1.4 without prejudice to clause 14.1.1 to clause 14.1.3 (inclusive), where the Authority notifies the Consultant that it 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 Authority, comply at its own cost with the requirements of the Authority to the extent relevant to the delivery of the relevant Services and/or Works Package, which may include (without limitation):

- (a) asking any person acting for or on behalf of the Consultant in connection with the Services and/or Works Package for the details of any Convictions, obtaining an enhanced Disclosure and Barring Service disclosure (including a barred list) check; and/or
- (b) complying with the BPSS or similar standard,

and the results of such disclosures shall be shared with the Authority in writing.

- 14.2 The Consultant:



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- 14.2.1 shall ensure that it and its sub-constructors comply with the Official Secrets Acts and (as the context requires), the provisions of section 11 of the Atomic Energy Act 1946 in the performance of its duties and obligations under this Agreement and/or any Order;
- 14.2.2 shall notify its employees and each of its Consultant Related Parties of their duties pursuant to and in accordance with this clause 14.2; and
- 14.2.3 acknowledges and agrees that it shall comply with and shall ensure that its Consultant Related Parties comply with any security, safeguarding and/or vetting requirements and/or instructions:
- (a) that the Authority notifies the Consultant of in writing from time to time in connection with the attendance of the Consultant at a Works Package Site; and/or
  - (b) as may be specified and/or referred to in an Order.
- 14.3 The Consultant agrees and acknowledges that at all times during its engagement under this Agreement and/or any Order:
- 14.3.1 it shall comply in all respects with any security requirements specified by the Authority in any Order and it shall comply in all respects with the MoJ Security Requirements;
- 14.3.2 it shall comply with the Information and Security Requirements;
- 14.3.3 the Authority may, without prior notice, search any persons or vehicles engaged or used by the Consultant and/or a Consultant Related Party at any of its Works Package Sites from time to time and at its sole discretion;
- 14.3.4 at the written request of the Authority the Consultant shall, at its own cost, provide a list of the names, addresses, national insurance numbers and immigration status of all individuals who may require admission to the Works Package Site(s) of the Authority, specifying the capacities in which such individuals are engaged by the Consultant in connection with the relevant Works Package(s) and provide such further information and details as may be reasonably requested by the Authority; and
- 14.3.5 the Consultant shall ensure that it and all its Consultant Related Parties who have access to a Works Package Site, an Authority ICT System or Authority Data have been cleared and authorised to access the same pursuant to and in accordance with the BPSS.
- 14.4 Without prejudice to the generality of clauses 14.1 to 14.3 (inclusive), the Authority shall provide to the Consultant (as the context requires), upon receipt of a written request from the Consultant for the same, a written copy of its security policies and procedures current as at the time of the request.
15. **MALICIOUS CODE**
- 15.1 The Consultant shall, at all times during its engagement under this Agreement and any Order, ensure that:
- 15.1.1 Anti-Virus Software is installed on its Consultant ICT System;
- 15.1.2 such Anti-Virus Software is used on a continuous basis to:
- (a) identify, detect and/or remove Malicious Code from its Consultant ICT System(s);
  - (b) prevent the transmission of Malicious Code from its Consultant ICT System onto any Authority ICT System or other Consultant ICT System(s); and



- (c) protect (and inoculate) the Consultant ICT System and protect any Authority ICT System and other Consultant ICT System against Malicious Code;
- 15.1.3 such Anti-Virus Software is maintained and updated on a continuous basis with all (without limitation) anti-virus definitions and signatures that are developed and distributed by the developer of such Anti-Virus Software from time to time;
- 15.1.4 where such Anti-Virus Software is maintained and updated by its developer on a subscription basis, its subscription is maintained on a continuous basis and is not permitted to lapse; and
- 15.1.5 where a piece of Anti-Virus Software ceases to be maintained on a continuous basis by its developer or is discontinued, it is replaced by at least an equivalent piece of Anti-Virus Software.
- 15.2 Without prejudice to the generality of clause 15.1, where (as an **"Identifying Party"**):
  - 15.2.1 the Consultant becomes aware of the presence of or exposure to Malicious Code on its Consultant ICT System(s) and / or any Authority ICT System; or
  - 15.2.2 the Authority becomes aware of the presence of or exposure to Malicious Code on its Authority ICT Systems and/or any Consultant ICT System,each an **"Affected ICT System"**, the Identifying Party shall immediately notify (as the context requires) the other Party who, in the reasonable opinion of the Identifying Party has been exposed to Malicious Code (each an **"Affected Party"**), following which:
  - (a) the Identifying Party and each Affected Party shall cooperate to actively minimise the effect and (as the context requires) remove from and/or protect the Affected ICT System(s) from such Malicious Code as soon as reasonably practicable upon becoming aware of its presence on the Affected ICT System(s) or their exposure to the Malicious Code; and
  - (b) where such Malicious Code causes (or could cause) a loss of operational efficiency and/or loss or corruption of the Authority Data, the Identifying Party and each Affected Party shall assist each other in order to:
    - (i) mitigate the immediate and long-term impact of the Malicious Code on the Affected ICT System(s);
    - (ii) minimise any actual or potential losses of operational efficiency or corruption of Authority Data on such Affected ICT System(s) (including by, as the context requires, restoring any affected Authority Data from the most recent back-ups of the Authority Data); and
    - (iii) protect (and inoculate) the Affected ICT System(s) against the Malicious Code in order to restore and maintain the full security of the Affected ICT Systems and protect the Authority Data from Malicious Code.
- 15.3 Where an Affected ICT System is affected by Malicious Code that has originated from the Consultant ICT System (including from Authority Data that was under the control of the Consultant at the relevant time), the Consultant from whose Consultant ICT System(s) the Malicious Code originated shall comply with the requirements of clause 15.2 at its own cost and reimburse each Affected Party in full in respect of any costs, losses and expenses arising out of or in connection with presence and impact on and/or removal of such Malicious Code on its Affected ICT System.



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16. **PRICING SCHEDULE & PAYMENT**

- 16.1 Subject to clause 16.2, the Consultant's rates and prices (and anything else stated) in the Pricing Schedule shall be fixed for the duration of the Term and shall not be capable of adjustment.
- 16.2 On the second (2nd) anniversary of the Effective Date and annually thereafter (each being an "**Indexation Adjustment Date**"), indexation shall be applied to the rates and prices in the Pricing Schedule subject to and in accordance with the terms of the Indexation Schedule (each being an "**Indexation Adjustment**").
- 16.3 Following an Indexation Adjustment pursuant to clause 16.2 and the Indexation Schedule:
- 16.3.1 the rates and prices in the Pricing Schedule to which the Indexation Adjustment applies shall be deemed to be adjusted accordingly as from the date of the Indexation Adjustment;
- 16.3.2 such adjusted rates and prices shall apply to each new Order entered into between the Parties following the Indexation Adjustment until the date of the next Indexation Adjustment pursuant to this clause 16,
- provided always that such adjusted rates and prices shall not apply to:
- (a) any Order already entered into between the Parties pursuant to and in accordance with this Agreement; and/or
- (b) any Order or potential Order that is the subject of the process set out at clause 8 or clause 9 but has not yet been entered into between the Parties,
- as at the date of the Indexation Adjustment.
- 16.4 Unless specifically stated in this Agreement (and without prejudice to the terms and conditions of each individual Order), the Consultant shall comply with its obligations under this Agreement at its own cost and expense and shall have no entitlement to payment from the Authority for complying with such obligations.

17. **PREVENTION OF THE FACILITATION OF TAX EVASION**

- 17.1 The Consultant hereby warrants and confirms to the Authority that:
- 17.1.1 it and its associated persons have not and will not engage in any activity, practice, conduct or thing which would (or the omission of which would) contravene Part 3 of the CFA 2017;
- 17.1.2 it and (where applicable) its associated persons have maintained at all times and will continue to maintain at all times, reasonable prevention procedures designed to ensure continued compliance with the CFA 2017 by the Consultant and its associated persons and it has taken steps, so far as it is reasonably practicable to do so, to ensure that its associated persons have adhered to such procedures;
- 17.1.3 it and its associated persons have not been investigated in connection with, or charged with having committed an offence under the CFA 2017; and
- 17.1.4 it and its associated persons have not received any court orders, warrants or oral or written notices from a government prosecuting authority concerning any actual or alleged violation by it of an offence under the CFA 2017.
- 17.2 The Consultant shall:



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- 17.2.1 comply with any of the Authority's tax compliance policies (as may be notified in writing to the Consultant) and all laws, statutes, regulations, guidance, relevant industry code, or accepted practice relating to tax, the prevention of tax evasion, or an offence under the CFA 2017, as may be updated from time to time;
- 17.2.2 immediately notify the Authority in writing on becoming aware of, or suspecting, any failure to comply with any provision of this clause 17;
- 17.2.3 upon the written request of the Authority, certify to the Authority in writing signed by an officer of the Consultant, compliance with this clause 17, in such form as the Authority may require; and
- 17.2.4 promptly provide such supporting evidence of compliance with this clause 17 as the Authority may request at any time.
- 17.3 The Consultant shall:
- 17.3.1 ensure that any of its associated persons who are engaged in connection with this Agreement and/or any Order do so only on the basis of written terms (including warranties) equivalent to those applying to or given by the Consultant in this clause 17; and
- 17.3.2 be directly liable to the Authority for any breach by such persons of those terms (including warranties).
- 17.4 For the purpose of this clause 17, the meaning of prevention procedures and whether a person is associated with another person shall be determined in accordance with sections 44(4), 44(5), 45(3) and 46(4) (as applicable) of the CFA 2017 (and any guidance issued under section 47 of the CFA 2017).
- 17.5 The Consultant hereby agrees to indemnify the Authority in respect of any legally enforceable losses, damages, fines, penalties, charges or other costs which the Authority suffers in the event that the Consultant is in breach of this clause 17, to the extent that such recovery is not prohibited by law (subject always to the Authority being required to use reasonable endeavours, insofar as it is able to in the circumstances, to mitigate the actual or potential impact and/or value of the same).
18. **CHANGE OF CONTROL**
- 18.1 The Consultant shall notify the Authority within ten (10) Business Days of it:
- 18.1.1 becoming aware that it may be subject to a Change of Control (provided always that where to do so would contravene any Applicable Law, the Consultant shall notify the Authority of such proposed Change of Control immediately upon it becoming permitted by Applicable Law to do so); or
- 18.1.2 (in any event) being subject to a Change in Control,
- with each of these circumstances being a "**Change of Control Event**".
- 18.2 A failure by the Consultant to notify the Authority of a Change of Control Event within the time periods specified in clause 18.1 shall entitle the Authority to terminate the appointment of the Consultant under this Agreement immediately on written notice to the Consultant.
- 18.3 Following the Authority receiving a notification of a Change of Control Event pursuant to clause 18.1:
- (a) the Authority shall undertake and complete its own due diligence on the Consultant to determine (acting reasonably) whether, following such proposed or actual Change of Control, the Consultant shall satisfy or continue to satisfy (without limitation) the economic



and financial standing and technical and professional competency requirements that the Consultant, prior to the Change of Control, was required to satisfy as a precondition to being appointed under this Agreement, whether stated and/or referred to in the Mini-Competition ITT and/or its Tendered Information; and

- (b) if the Authority is not satisfied (in its sole discretion) that such requirements will be satisfied by the Consultant if a potential Change of Control occurs or are not satisfied by the Consultant following an actual Change of Control (as the context requires), the Authority shall be entitled to terminate the appointment of the Consultant under this Agreement immediately on written notice to the Consultant.

## 19. INSURANCES

19.1 The Consultant shall maintain professional indemnity insurance covering (inter alia) its liabilities under this Agreement upon market 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:

19.1.1 of a type of cover as specified in the Insurance Schedule;

19.1.2 in an amount specified in the Insurance Schedule; and

19.1.3 for the period specified in the Insurance Schedule (but commencing on the Effective Date),

provided always that the said terms and conditions shall not include any term or condition to the effect that the Consultant must discharge any liability before being entitled to recover from the insurers, or any other term or condition which might adversely affect the rights of any person to recover from the insurers pursuant to the Third Parties (Rights Against Insurers) Act 1930, or any amendment or re-enactment thereof.

19.2 The Consultant shall maintain:

19.2.1 third party and public liability cover in connection with its duties and obligations under this Agreement in an amount not less than that stated in the Insurance Schedule; and

19.2.2 employer's liability insurance cover to cover any claim for personal injury to or the death of any person under a contract of service or apprenticeship with the Consultant and arising out of and in the course of the person's employment in connection with this Agreement, providing cover in an amount not less than that specified in the Insurance Schedule (and complying with the requirements of the Employer's Liability (Compulsory Insurance) Act 1969).

19.3 The Consultant shall not:

19.3.1 without the prior approval in writing of the Authority, settle or compromise with the insurers any claim which the Consultant may have against the insurers and which relates to a claim by the Authority against the Consultant, or by any act or omission lose or prejudice the Consultant's right to make or proceed with such a claim against the insurers; and

19.3.2 do anything which might render any of the insurance policies referred to in this clause 19 void or voidable and shall carry out its obligations under this Agreement and shall use all reasonable endeavours to ensure that its servants or agents shall carry out their respective obligations, in a manner that fully complies with all requirements, terms, conditions, stipulations and provisions of such insurances.

19.4 The Consultant shall immediately inform the Authority if any insurances that it is required to take out and maintain pursuant to this clause 19 ceases to be available at commercially reasonable rates in



order that the Consultant and the Authority can discuss means of best protecting the respective positions of the Authority and the Consultant in respect of the Agreement in the absence of such insurance.

19.5 The Consultant shall fully co-operate with any measures reasonably required by the Authority, including (without limitation):

19.5.1 completing any proposals for insurance and associated documents;

19.5.2 maintaining any insurances that it is required to maintain pursuant to this clause 19 at rates above commercially reasonable rates if the Authority undertakes in writing to reimburse the Consultant in respect of the net cost of such insurance to the Consultant above commercially reasonable rates; or

19.5.3 if the Authority effects such insurance at rates at or above commercially reasonable rates, reimbursing the Authority in respect of what the net cost of such insurance to the Authority would have been at commercially reasonable rates.

19.6 As and when reasonably requested to do so by the Authority the Consultant shall produce for inspection documentary evidence (including, if required by the Authority, a broker's certificate) that any insurances that it is required to maintain pursuant to this clause 19 are being maintained.

19.7 The Consultant's obligations to maintain insurance policies under this clause 19 shall in no way negate or limit any or all of its obligations or duties hereunder nor its liability in respect of any breach or non-performance of the same.

19.8 The Consultant's obligations to maintain professional indemnity insurance under clause 19.1 shall continue notwithstanding the termination of this Agreement for any reason whatsoever (including the termination of the Consultant's engagement hereunder).

## 20. TERMINATION

20.1 The Authority may, at its sole discretion at any time, terminate (for any reason) this Agreement immediately on written notice to the Consultant.

20.2 Where the Consultant is in default of any of its obligations under this Agreement and such default does not constitute a Critical Default (a "**Correctable Default**") and the Consultant fails to remedy such Correctable Default within ten (10) Business Days of the Authority notifying the Consultant of the nature of the Correctable Default and requiring it to remedy the same within such time period, the Authority may terminate the appointment of the Consultant under this Agreement by written notice to the Consultant with immediate effect.

20.3 Where:

20.3.1 any of the circumstances referred to in regulation 73(1)(a), 73(1)(b) or 73(1)(c) of the Public Contracts Regulations 2015 apply to the Consultant;

20.3.2 any Order between the Consultant and the Authority has been terminated as a consequence of a default of the Consultant in accordance with the terms of that Order;

20.3.3 the Consultant (or, where the Consultant is a Joint Venture, a party comprising the Consultant) suffers an Insolvency Event;

20.3.4 the Authority has a right to terminate the appointment of the Consultant in connection with:

(a) a Change of Control Event under clause 18;



- (b) a Non-Critical KPI Underperformance or a Critical KPI Default under clause 12.3;
- (c) a Conflict of Interest and/or a Reputational Risk under clause 24.3; or
- 20.3.5 without prejudice to clauses 20.3.4 and 20.3.7, the Consultant commits a material and/or persistent and repeated breach of its duties and obligations under this Agreement;
- 20.3.6 in any twelve (12) month period during the Term, the Consultant is Unwilling and/or Unable to undertake seventy-five percent (75%) or more of the Orders that the Authority seeks to source delivery of through this Agreement in that twelve (12) month period;
- 20.3.7 the Consultant breaches:
  - (a) clause 7 (Consultant Warranties);
  - (b) clause 22 (Intellectual Property);
  - (c) clause 23 (Bribery and Corruption);
  - (d) clause 26 (Data Protection);
  - (e) clause 28 (Equality and Diversity); and/or
  - (f) clause 29 (Anti-Slavery and Trafficking); and/or
- 20.3.8 any contract between the Consultant and a Central Government Body has been terminated as a consequence of a default of the Consultant in accordance with the terms of that contract,

with each being a "**Critical Default**", the Authority may terminate the appointment of the Consultant under this Agreement by written notice to the Consultant with immediate effect.

- 20.4 Where this Agreement or the appointment of the Consultant under this Agreement is terminated:
  - 20.4.1 the rights and obligations of the Authority and the Consultant under each subsisting Order shall remain in full force and effect unless and until each such Order is terminated pursuant to its terms;
  - 20.4.2 the Consultant shall have no entitlement to:
    - (a) any payment and/or other compensation from; and/or
    - (b) make any claim against,

the Authority whatsoever (whether in contract, tort or any other basis of law) in respect of, without limitation, costs, damages, expense and/or loss (whether direct, indirect, consequential, linked to loss of profit, loss of opportunity, loss of goodwill or otherwise) or on any other basis, arising out of or in connection with such termination;
  - 20.4.3 as a consequence of the Consultant Default, the Consultant shall indemnify the Authority in full in respect of any costs, losses and expenses (of any type) that the Authority may incur in connection with appointing a third party to replace the Consultant under this Agreement; and
  - 20.4.4 such termination shall not affect the:



- (a) accrued rights and obligations of the Authority and/or the Consultant under this Agreement as at the effective date of the termination; and
- (b) rights and/or obligations of the Authority and the Consultant on a continuing basis under the clauses referred to below:

| Clause / schedule | clause / schedule heading                       |
|-------------------|---|
| Clause 1          | Definitions & Interpretation                    |
| Clause 3          | Parent Company Guarantee                        |
| Clause 6          | Basis of Engagement & Non-Exclusivity           |
| Clause 7          | Consultant Warranties                           |
| Clause 11         | Progress Meetings & Reports                     |
| Clause 14         | Security & Vetting                              |
| Clause 15         | Malicious Code                                  |
| Clause 19         | Insurances                                      |
| Clause 20         | Termination                                     |
| Clause 21         | Suspension                                      |
| Clause 22         | Intellectual Property                           |
| Clause 23         | Bribery & Corruption                            |
| Clause 24         | Conflicts of Interest & Reputational Risk       |
| Clause 25         | Confidentiality                                 |
| Clause 26         | Data Protection                                 |
| Clause 27         | Freedom of Information                          |
| Clause 28         | Equality & Diversity                            |
| Clause 29         | Anti-Slavery & Trafficking                      |
| Clause 30         | Audit   |
| Clause 31         | Order of Precedence of Documents                |
| Clause 33         | Liability of the Consultant                     |
| Clause 34         | Problem Solving, Dispute Avoidance & Resolution |
| Clauses 36 to 49  | Miscellaneous                                   |

## 21. SUSPENSION

- 21.1 Where the Authority is entitled to terminate the appointment of the Consultant under this Agreement due to the Consultant Default, the Authority may elect, in its sole discretion and on prior written notice to the Consultant (the "**Suspension Notice**"), to instead suspend the appointment of the Consultant under this Agreement for the period specified in such Suspension Notice.
- 21.2 The issue of a Suspension Notice by the Authority pursuant to clause 21.1, shall:
- 21.2.1 not affect the Consultant's general requirement to comply with its duties and obligations under this Agreement insofar as they are compatible with such suspension;
- 21.2.2 be without prejudice to any right of termination in favour of the Authority that has accrued as at or subsequently accrues after the date of the Suspension Notice;



21.2.3 not affect the requirement for the Consultant to continue to comply with its duties and obligations under this Agreement and any Order; and

21.2.4 not give rise to an extension to the Term.

21.3 Where:

21.3.1 the Authority is entitled to terminate the appointment of the Consultant under this Agreement due to a Consultant Default;

21.3.2 a Central Government Body has terminated the appointment of the Consultant under any contract between the Consultant and the Central Government Body as a consequence of a default of the Consultant in accordance with the terms of that contract; and/or

21.3.3 the Authority is entitled to terminate the appointment of the Consultant under any Order as a consequence of a default of the Consultant in accordance with the terms of that Order,

the Consultant shall, whilst the termination entitlements referred to in this clause 21.3 are subsisting, be "**Excluded**".

## 22. INTELLECTUAL PROPERTY

22.1 The Consultant agrees and acknowledges that:

22.1.1 the Intellectual Property Rights in all Consultant Materials shall remain vested in the Consultant, but the Consultant grants to the Authority (and its nominees):

(a) in relation to Consultant Materials that relate primarily to this Agreement (and are not specific to an Order); and

(b) in relation to Consultant Materials that relate to an Order,

with full title guarantee an irrevocable, royalty-free, worldwide and non-exclusive licence in perpetuity to use, copy and reproduce its Materials for any purpose whatsoever, including but not limited to in connection with this Agreement and/or the Order and in connection with (but without limitation) the design, construction, completion, operation, extension, maintenance, letting, management, sale, advertisement, alteration, reinstatement and repair of any part of any Works Package (and any other project of the Authority);

22.1.2 the Intellectual Property Rights in all Authority Materials shall remain vested in the Authority but it shall grant to the Consultant and its nominees a non-exclusive and royalty-free licence to copy, use and reproduce such Authority Materials for any purpose in connection with this Agreement and each relevant Order, provided always that such licence shall automatically terminate upon the termination of this Agreement (or, where such Authority Materials relate to a specific Order, on the termination of that Order, if later);

22.1.3 the licence granted under clause 22.1.1 carries the right for the Authority to grant sub-licences, is transferable to third parties (including by way of an assignment and/or novation) and shall subsist notwithstanding the expiry of this Agreement or termination of this Agreement and/or the Consultant's appointment hereunder (for any reason);

22.1.4 the rights given to the Authority to assign, novate, transfer and/or otherwise deal with the licence given under clause 22.1.1, pursuant to clause 22.1.3 or otherwise, shall include the right for the Authority 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 Authority at any time;



- 22.1.5 any change in the legal status of the Authority which means that it ceases to be a Central Government Body shall not affect the validity of the licences granted under clause 22.1.1 and, if the Authority ceases to be a Central Government Body, the successor body to the Authority shall be entitled to the benefit of the licence granted in clause 22.1.1; and
- 22.1.6 if a licence granted under clause 22.1.1 is novated as permitted by this clause 22 or there is a change in the Authority's status pursuant to clause 22.1.5, the rights acquired on that novation or change of status shall not extend beyond those previously enjoyed by the Authority.
- 22.2 The Consultant unconditionally and irrevocably agrees to waive, in respect of any Consultant Materials in respect of which it has granted a licence clause 22.1.1, 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 Authority and extended to (as the context requires) the sub-licensees, assignees, transferees and successors in title of the Authority.
- 22.3 The Consultant warrants and undertakes that:
- 22.3.1 all Consultant Materials are and will continue to be its own original work (or the original work of Consultant Related Parties, as appropriate);
- 22.3.2 the licence granted in any Consultant Materials pursuant to clause 22.1.1 does not and will not at any time infringe the rights of any third party;
- 22.3.3 it has not and will not infringe the rights of the Authority or any other third party in the use of any Authority Materials to which the licence provided by the Authority pursuant to clause 22.1.2 applies; and
- 22.3.4 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 it or licenced to and/or by it under or in connection with this Agreement and/or any Order and will provide evidence of the same on the written request of the Authority.
- 22.4 The Consultant shall not be liable for any such use by the Authority or its nominees, sub-licensees, transferees and/or successors in title of any Consultant Materials licenced to the Authority under clause 22.1.1 for any purpose other than that for which the Consultant Materials were prepared and/or provided (as the context requires) by the Consultant.
- 22.5 The Authority 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 Authority Materials (save for fraudulent misrepresentation) in respect of which a licence has been provided in favour of the Consultant pursuant to clause 22.1.2.
- 22.6 The Consultant shall indemnify the Authority 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 Authority 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 its Consultant Materials and/or the Consultant's use of the Authority Materials.
23. **BRIBERY & CORRUPTION**
- 23.1 The Consultant warrants that:
- 23.1.1 it shall:



- (a) comply with all Applicable Laws and sanctions relating to anti-bribery and anti-corruption (including the Bribery Act 2010 and Section 117 of the Local Government Act 1972);
  - (b) not engage in any activity, practice or conduct at any time which would constitute an offence under the Bribery Act 2010 if such activity, practice or conduct had been carried out in the United Kingdom;
  - (c) comply with the Authority's anti-bribery and anti-corruption policies as published and updated by the Authority from time to time (whether identified as part of the Authority's Policies or otherwise);
  - (d) have, maintain and enforce throughout the Term its own anti-bribery and anti-corruption policies and procedures, including procedures to ensure compliance with the Bribery Act 2010 and the policies referred to in clause 23.1.1(c);
  - (e) immediately notify the Authority if a foreign public official becomes an officer or employee of the Consultant or acquires a direct or indirect interest in the Consultant (and the Consultant further warrants that it has no public officials as officers, employees or direct or indirect owners as at the Effective Date); and
  - (f) ensure that all Consultant Related Parties comply with this clause 23.1; and
- 23.1.2 as at the Effective Date, it has not done and none of its officers, Consultant Related Parties or other persons acting with the authority of the Consultant have done anything that would have placed it or them in breach of the obligations at this clause 23.1.
- 23.2 The Consultant shall indemnify the Authority against all payments, losses, damages, action, costs, fines, financial penalties and expenses that are paid, made or incurred by the Authority as a consequence of the Consultant being in breach of its obligations, representations and/or warranties under this clause 23.
- 24. **CONFLICTS OF INTEREST & REPUTATIONAL RISK**
- 24.1 The Consultant shall take all appropriate steps to ensure that neither it nor any personnel and/or party employed and/or engaged by the Consultant (in whatever capacity) is placed in a position where, in the reasonable opinion of the Authority:
  - 24.1.1 there is or may be an actual conflict or potential conflict, between the pecuniary or personal interests of the Consultant or any Consultant Related Parties and the duties owed to the Authority under the provisions of this Agreement and/or any Order (a "**Conflict of Interest**"); or
  - 24.1.2 the behaviour of the Consultant or any Consultant Related Parties engaged by it is not in the Authority's best interest or might adversely affect the Authority's reputation (a "**Reputational Risk**").
- 24.2 The Consultant:
  - 24.2.1 warrants that, as at the Effective Date, it is not aware of any actual or potential Conflict of Interest and/or Reputational Risk; and
  - 24.2.2 shall notify and disclose to the Authority full particulars of any behaviour which might give rise to an actual or potential Conflict of Interest and/or Reputational Risk immediately upon becoming aware of the same.



- 24.3 The Authority may terminate the Consultant's appointment under this Agreement with immediate effect on written notice to the Consultant pursuant to clause 20.3.4(c) and/or take such other steps it deems necessary where, in the reasonable opinion of the Authority, there is or may be an actual or potential Conflict of Interest and/or Reputational Risk that is not capable of being remedied by the Consultant.
25. **CONFIDENTIALITY**
- 25.1 Except to the extent set out in this clause 25 or where disclosure of any Confidential Information is expressly permitted elsewhere in this Agreement, a Recipient shall:
- 25.1.1 treat a Disclosing Party's Confidential Information as strictly confidential and keep it in secure custody (at a location and in a manner commensurate to the nature, content and sensitivity of the Confidential Information and the medium upon which it is stored);
  - 25.1.2 not disclose a Disclosing Party's Confidential Information to any other person except as expressly set out in this Agreement or without obtaining a Disclosing Party's prior written consent;
  - 25.1.3 not use or exploit a Disclosing Party's Confidential Information in any way except for the purposes anticipated under this Agreement; and
  - 25.1.4 immediately notify the relevant Disclosing Party if it suspects or becomes aware of any unauthorised access, copying, use or disclosure in any form of any of that Disclosing Party's Confidential Information.
- 25.2 Subject always to clause 25.6, where the Recipient is the Authority, a Recipient shall be entitled to disclose the Confidential Information of a Disclosing Party where:
- 25.2.1 the Recipient is required to disclose the Confidential Information under Applicable Law, provided that clause 27 shall apply to any disclosures of Confidential Information required under the FOIA or the Environmental Information Regulations;
  - 25.2.2 the need for such disclosure arises out of or in connection with:
    - (a) any legal challenge or potential legal challenge against the Authority arising out of or in connection with this Agreement and/or any Order;
    - (b) regulations 106, 108, 110 and 112 of the Procurement Regulations;
    - (c) the examination and certification of the accounts of the Authority (provided that the disclosure is made on a confidential basis) or for any examination pursuant to section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Authority makes use of any Works Packages awarded pursuant to and in accordance with this Agreement; or
    - (d) the conduct of a Central Government Body review in respect of this Agreement and/or any Order; or
  - 25.2.3 that Recipient has reasonable grounds to believe that the relevant Disclosing Party is involved in activity that may constitute a criminal offence under the Bribery Act 2010 and/or any breach of clause 23 and the disclosure is being made to the Serious Fraud Office.
- 25.3 If a Recipient is required by Applicable Law to make a disclosure of Confidential Information, that Recipient shall as soon as reasonably practicable and to the extent permitted by Applicable Law notify the Disclosing Party (or Disclosing Parties) of the full circumstances of the required disclosure



including the relevant Applicable Law and/or regulatory body requiring such disclosure and the Confidential Information to which such disclosure would apply.

25.4 Subject to clause 25.8, the Consultant, as a Recipient, may disclose the Confidential Information of the Authority on a confidential basis only to:

25.4.1 its Consultant Related Parties who are directly involved in the anticipated award of and/or undertaking of any Works Packages under an Order and need to know the Confidential Information to enable performance of the Consultant's obligations under this Agreement and the relevant Order;

25.4.2 its auditors; and

25.4.3 its professional advisers for the purposes of obtaining advice in relation to this Agreement and/or any Order,

and where the Consultant discloses any Confidential Information of the Authority pursuant to this clause 25.4, it shall remain responsible at all times for compliance with the confidentiality obligations set out in this Agreement by the persons to whom disclosure has been made.

25.5 The Consultant shall not (and shall ensure that its Consultant Related Parties do not):

25.5.1 publish, alone or in conjunction with any other party, any articles, illustrations, photographs, videos, press announcements or any other externally focused communications (in each case of any type and in any medium) in relation to this Agreement and/or any Order; or

25.5.2 take photographs on or of a Works Package Site,

without the prior written approval of the Authority.

25.6 Without prejudice to the generality of clause 25.2, the Consultant acknowledges and agrees that the Authority shall, at its sole discretion, be entitled to disclose and/or publish the Confidential Information of the Consultant, this Agreement and/or each Order in its entirety, in each case as amended from time to time and for any reason, including disclosure:

25.6.1 to any Central Government Body for any proper purpose of the Authority;

25.6.2 to parliament and parliamentary committees or if required by any parliamentary reporting requirement;

25.6.3 where, acting reasonably, the Authority deems disclosure necessary or appropriate in the course of carrying out its public functions;

25.6.4 on a confidential basis to a professional adviser, consultant, supplier or other person engaged by any of the entities described in clause 25.6.1 (including any benchmarking organisation) for any purpose relating to or connected with this Agreement and/or any Order; and/or

25.6.5 on a confidential basis to a proposed successor of the Authority in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under this Agreement.

25.7 Subject to clause 25.8, in the case of the Consultant only, nothing in this clause 25 shall prevent a Recipient from using any techniques, ideas or know-how gained during the performance of this Agreement and/or any Order in the course of its normal business to the extent that this use does not result in a disclosure of the Disclosing Party's Confidential Information or an infringement of its Intellectual Property Rights.



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- 25.8 Without prejudice to any other provision of this Agreement, the Consultant warrants and undertakes to the Authority that it shall not (and shall ensure that its Consultant Related Parties shall not) use and/or disclose to any third party any Consultant Materials and/or Authority Materials relating to any Security Measures in relation to a Works Package in connection with any other project or matter of any type and at any location without the prior written approval of the Authority (at its sole discretion).
- 25.9 The Consultant shall ensure that any Consultant Related Party to whom it discloses Confidential Information as expressly permitted pursuant to this clause 25 are subject to obligations of confidentiality and non-disclosure that are no less onerous than those contained in this clause 25.
- 25.10 The Consultant shall indemnify the Authority against all payments, losses, damages, action, costs, fines, financial penalties and expenses that are paid, made or incurred by the Authority as a consequence of the Consultant and/or its Consultant Related Party being in breach of the requirements of this clause 25.
26. **DATA PROTECTION**
- 26.1 The Consultant acknowledges and agrees that:
- 26.1.1 for the purposes of the Data Protection Laws, the Authority is a Controller and the Consultant is a Processor unless otherwise specified in the Data Protection Schedule; and
- 26.1.2 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.
- 26.2 A Processor shall notify the Controller immediately if it considers that any of the Controller's instructions infringe the Data Protection Laws.
- 26.3 A Processor shall provide all reasonable assistance to the Controller in the preparation of any Data Protection Impact Assessment prior to commencing any Processing and such assistance may, at the discretion of the Controller, include:
- 26.3.1 a systematic description of the envisaged Processing operations and the purpose of the Processing;
- 26.3.2 an assessment of the necessity and proportionality of the Processing operations in relation to this Agreement;
- 26.3.3 an assessment of the risks to the rights and freedoms of Data Subjects; and/or
- 26.3.4 the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 26.4 A Processor shall, in relation to any Personal Data that is Processed in connection with its obligations under this Agreement:
- 26.4.1 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);
- 26.4.2 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:
- (a) the nature of the data to be protected;



- (b) any harm that might result from a Data Loss Event;
- (c) the state of technological development; and
- (d) the cost of implementing any measures;

26.4.3 ensure that:

- (a) its Processor Personnel do not Process any Personal Data except in accordance with this Agreement (and in particular the Data Protection Schedule); and
- (b) 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:
  - (i) are aware of and comply with its duties as a Processor under this clause 26;
  - (ii) are subject to appropriate confidentiality undertakings with the Processor or any Sub-Processor;
  - (iii) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Controller or as otherwise permitted by this Agreement; and
  - (iv) have undergone adequate training in the use, care, protection and handling of Personal Data;
- (c) it does not transfer Personal Data outside of the United Kingdom unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:
  - (i) the Controller or the Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with Article 46 of the GDPR or Article 37 of the LED) as determined by the Controller;
  - (ii) the Data Subject has enforceable rights and effective legal remedies;
  - (iii) the Processor complies with its obligations under the Data Protection Law by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses all reasonable endeavours to assist the Controller in meeting its obligations); and
  - (iv) the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the Processing of the Personal Data; and
- (d) at the written direction of the Controller, it shall delete or return Personal Data (and any copies of it) to the Controller on termination of this Agreement unless the Processor is required by Applicable Law to retain the Personal Data.

26.5 Subject to clause 26.6, a Processor shall notify the Controller immediately if it:

26.5.1 receives a Data Subject Access Request (or purported Data Subject Access Request);

26.5.2 receives a request to rectify, block or erase any Personal Data;



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- 26.5.3 receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Laws;
- 26.5.4 receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data that is Processed under this Agreement;
- 26.5.5 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
- 26.5.6 becomes aware of a Data Loss Event.
- 26.6 A Processor's notification obligation under clause 26.5 includes the provision of further information to the Controller in phases, as details become available.
- 26.7 Taking into account the nature of the Processing, a Processor shall provide the Controller with full assistance in relation to either Party's obligations under Data Protection Laws and any complaint, communication or request made under clause 26.5 (and insofar as possible within the timescales reasonably required by the Controller) including by promptly providing:
- 26.7.1 the Controller with full details and copies of the complaint, communication or request;
- 26.7.2 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;
- 26.7.3 the Controller, at its request, with any Personal Data it holds in relation to a Data Subject;
- 26.7.4 assistance as requested by the Controller following any Data Loss Event; and
- 26.7.5 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.
- 26.8 Unless a Processor employs fewer than two-hundred and fifty (250) staff, a Processor shall maintain complete and accurate records and information to demonstrate its compliance with this clause 26 unless the Controller determines that:
- 26.8.1 the Processing is not occasional;
- 26.8.2 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
- 26.8.3 the Processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 26.9 A Processor shall allow for audits of its Data Processing activity by the Controller or the Controller's designated auditor.
- 26.10 The Consultant shall designate its own Data Protection Officer if required by the Data Protection Law.
- 26.11 Before allowing any Sub-Processor to Process any Personal Data related to this Agreement, a Processor must:
- 26.11.1 notify the Controller in writing of the intended Sub-Processor and Processing;
- 26.11.2 obtain the written consent of the Controller;



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- 26.11.3 enter into a written agreement with the Sub-Processor which gives effect to the terms set out in this clause 26 such that they apply to the Sub-Processor; and
- 26.11.4 provide the Controller with such information regarding the Sub-Processor as the Controller may reasonably require.
- 26.12 A Processor shall remain fully liable for all acts or omissions of any of its Sub-Processors.
- 26.13 The Controller may, at any time on not less than thirty (30) Business Days' notice, revise this clause 26 by replacing it with any applicable "Controller" to "Processor" standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Agreement).
- 26.14 The Consultant agrees to take account of any guidance issued by the Information Commissioner's Office and the Controller may on not less than thirty (30) Business Days' notice to the Consultant, amend this Agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.
- 26.15 Each Processor shall be liable for and hereby indemnifies the Controller from and against all claims, proceedings, damages, liabilities, losses, costs and expenses suffered or incurred by the Controller where and to the extent that the same arises in connection with any breach of this clause 26 by that Processor and/or its personnel (of any type) and/or its Consultant Related Parties (as the context requires).
27. **FREEDOM OF INFORMATION**
- 27.1 The Consultant acknowledges that the Authority is subject to the requirements of the FOIA and the Environmental Information Regulations and in such event, the Consultant shall assist and co-operate with the Authority (at its own expense) to enable them to comply with these information disclosure requirements.
- 27.2 The Consultant shall and shall ensure that its Consultant Related Parties shall provide:
- 27.2.1 the Authority 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 Authority may notify to the Consultant) of receiving a written request from the Authority for such information; and
- 27.2.2 all necessary assistance as is reasonably requested by the Authority 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 Authority from and against all claims, proceedings, damages, liabilities, losses, costs and expenses suffered or incurred by the Authority where and to the extent that the same arise in connection with any breach of this clause 27.2 by the Consultant and/or its Consultant Related Parties.
- 27.3 If the Consultant considers that all or any information provided to the Authority under clause 27.2 is a "trade secret" for the purposes of 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:
- 27.3.1 it shall ensure that the relevant information and the claimed exemption is clearly identified as such to the Authority when such information is disclosed and/or provided to it; and
- 27.3.2 notwithstanding any such identification, the Authority shall be solely responsible for determining at its absolute discretion whether such Information and/or any other information:



(a) is exempt from disclosure in accordance with the provisions of the Code of Practice, the FOIA or the Environmental Information Regulations; or

(b) is to be disclosed in response to a Request for Information.

27.4 In no event shall the Consultant (or shall the Consultant allow a Consultant Related Party to) respond directly to any requests for information from members of the public unless expressly authorised to do so by the Authority.

27.5 Without prejudice to the generality of clause 25.6, the Consultant acknowledges that the Authority may, acting in accordance with the FOIA or the Environmental Information Regulations, be required to disclose information:

27.5.1 without consulting with the Consultant; or

27.5.2 following consultation with the Consultant and having considered its views.

## 28. **EQUALITY & DIVERSITY**

28.1 The Consultant shall comply with and shall ensure that its Consultant Related Parties comply with:

28.1.1 the Equality Act 2010;

28.1.2 all Applicable Law in relation to human rights, equality, diversity and unlawful discrimination (including in relation to race, sex, sexual orientation, gender and gender reassignment, religion or belief, disability, pregnancy, maternity, marital status, age or otherwise); and

28.1.3 any other requirements and/or instructions that the Authority notifies the Consultant of in writing from time to time in connection with equality and diversity obligations (whether stated as part of the Authority's Policies or otherwise and as provided to the Consultant by the Authority from time to time),

together the "**Equality Requirements**".

28.2 The Consultant shall indemnify the Authority against all payments, losses, damages, action, costs, fines, financial penalties and expenses that are paid, made or incurred by the Authority as a consequence of the Consultant and/or a Consultant Related Party being in breach of the requirements of this clause 28.

28.3 The Consultant agrees that it will provide the Authority with all information reasonably requested by it to allow it to monitor compliance with the Equality Requirements.

## 29. **ANTI-SLAVERY & TRAFFICKING**

29.1 The Consultant shall, and shall procure that all Consultant Related Parties shall:

29.1.1 comply with all Applicable Law relating to slavery and human trafficking including, without limitation, the Modern Slavery Act 2015 ("**Anti-Slavery Requirements**");

29.1.2 not take or knowingly permit any action to be taken that would or might cause or lead the Authority to be in breach of any Anti-Slavery Requirements;

29.1.3 comply with the Authority's anti-slavery and trafficking policies (whether stated as part of the Authority's Policies or otherwise and as provided to the Consultant by the Authority from time to time) ("**Anti-Slavery Policies**");



- 29.1.4 have, maintain and enforce throughout the Term its own policies and procedures to ensure compliance with the Anti-Slavery Requirements, the Anti-Slavery Policies and this clause 29;
- 29.1.5 promptly report to the Authority if it becomes aware of any breach or potential breach of the Anti-Slavery Requirements, the Anti-Slavery Policies and this clause 29; and
- 29.1.6 promptly upon the request of the Authority provide it with any information and/or documentation that has been requested in connection with the Anti-Slavery Requirements.
- 29.2 The Consultant warrants to the Authority that neither it nor any other person in its supply chain (including those described in clause 29.1) uses trafficked, bonded, child or forced labour or has attempted to use trafficked, bonded, child or forced labour within its supply chain.
- 29.3 The Consultant shall:
- 29.3.1 ensure that any Consultant Related Party who is performing professional services and/or providing goods in connection with this Agreement does so only on the basis of a written contract which imposes on and secures from such Consultant Related Party terms equivalent to those imposed on the Consultant in this clause 29 (the "**Anti-Slavery Terms**"); and
- 29.3.2 be responsible for the observance and performance by such persons of the Anti-Slavery Terms, and shall be directly liable to the Authority for any breach by such persons of any of the Anti-Slavery Terms.
- 29.4 The Consultant shall indemnify the Authority against all payments, losses, damages, actions, costs, fines, financial penalties and expenses that are paid, made or incurred by the Authority as a consequence of the Consultant and/or a Consultant Related Party being in breach of the requirements of this clause 29.
30. **AUDIT**
- 30.1 The Consultant shall keep and maintain and shall procure that its Consultant Related Parties keep and maintain until the expiration of the Agreement Liability Period, full and accurate reports, records, financial information and accounts in connection with its appointment under this Agreement and any Order (and each Consultant Related Party's engagement in connection with the same), including:
- 30.1.1 records of negotiations as to price and terms and conditions and tender documentation;
- 30.1.2 orders placed with any Consultant Related Parties (including in relation to any re-tendering process or replacement of any the Consultant Related Parties);
- 30.1.3 the works, services and/or materials supplied under each Order;
- 30.1.4 risk management and special audit documentation;
- 30.1.5 all sums (of any type) received by it pursuant to this Agreement;
- 30.1.6 all sums paid by the Consultant to the Authority and any third parties and Consultant Related Parties; and
- 30.1.7 details of any rebates received and/or paid by the Consultant,
- together the "**Agreement Records**", with all Agreement Records concerning any sums expended and/or received by the Consultant in connection with an Order being kept, maintained and (as the context requires) disclosed on an Open Book Basis.



- 30.2 The Consultant shall allow the Authority and any regulatory authority (including, without limitation, the Competition and Markets Authority) such access to its Agreement Records as may be required by the Authority or any regulatory authority from time to time.
- 30.3 Without prejudice to the generality of clause 30.2, the Consultant shall permit and shall procure that all Consultant Related Parties shall permit:
- 30.3.1 the Comptroller and Auditor General (and their appointed representatives) access, free of charge and during normal business hours on reasonable notice, to the Agreement Records for the purposes of the financial audit of the and for carrying out examinations into the economy, efficiency and effectiveness with which the Authority has used resources in connection with this Agreement and any Order, as well as provide such explanations as are reasonably required for these purposes; and
- 30.3.2 any regulatory authority (including, without limitation, the Competition and Markets Authority) access, free of charge and during normal business hours on reasonable notice, to the Agreement Records and shall comply with any requirements of such regulatory authority in respect of any audit of the Agreement Records.
- 30.4 Nothing in this clause 30 should be deemed to constitute a requirement or agreement for the examination, certification or inspection of the accounts of the Consultant by the Comptroller and Auditor General under section 6(3)(d) of the National Audit Act 1983.
31. **ORDER OF PRIORITY OF DOCUMENTS**
- 31.1 Subject always to clause 31.2, any conflict, ambiguity and/or inconsistency as between the application and effect of the terms and conditions of this Agreement and any other document referred to in or annexed hereto shall be resolved in the following order of priority and precedence:
- 31.1.1 the body of this Agreement, which shall be deemed to include the recitals and clauses 1 to 49 (inclusive);
- 31.1.2 Schedule 1 – Services Schedule; REDACTED
- 31.1.3 Schedule 2 – Pricing Schedule; REDACTED
- 31.1.4 Schedule 4 – Insurance Schedule; REDACTED
- 31.1.5 Schedule 5 – Model Order Form; REDACTED
- 31.1.6 Schedule 6 – Order Terms; REDACTED
- 31.1.7 Schedule 7 – Model Partnering Contract; REDACTED
- 31.1.8 Schedule 11 – MoJ Security Requirements; REDACTED
- 31.1.9 Schedule 12 – Information and Security Requirements; REDACTED
- 31.1.10 Schedule 13 – Data Protection Schedule; REDACTED
- 31.1.11 Schedule 3 – Indexation Schedule; REDACTED
- 31.1.12 Schedule 8 – Collateral Warranties Schedule; REDACTED
- 31.1.13 Schedule 15 – Parent Company Guarantee; REDACTED
- 31.1.14 Schedule 9 – Works Package Programme; REDACTED



31.1.15 Schedule 14 – KPI Schedule; and REDACTED

31.1.16 Schedule 10 – Tendered Information. REDACTED

31.2 Notwithstanding clause 31.1:

31.2.1 the Authority may elect at its sole discretion to instruct the Consultant in writing that, in resolving any conflict, ambiguity and/or inconsistency as between the documents referred to in clause 31.1, the provisions in the conflicting, ambiguous and/or inconsistent documents that are the most favourable to the Authority shall prevail and take priority and precedence over such other provisions; and

31.2.2 any conflict, ambiguity and/or inconsistency as between the application and effect of the terms and conditions of an Order and any other document referred to in or annexed hereto shall be resolved pursuant to and in accordance with the terms of the Order.

## 32. DUE DILIGENCE & NON-RELIANCE

32.1 The Consultant acknowledges and agrees that:

32.1.1 prior to the Effective Date:

- (a) the Authority has delivered and/or made available to the Consultant all of the information and documents that the Consultant considers necessary and/or relevant for the performance of its obligations under this Agreement (including the content of the Mini-Competition ITT); and
- (b) the Consultant has made its own independent enquiries and has satisfied itself as to the accuracy and adequacy of such information and documents, as well as all of the relevant details relating to this Agreement,

and accordingly, the Consultant shall not be excused from the performance of any of its obligations under this Agreement, nor shall it be entitled to recover any additional costs or charges:

- (i) arising as a result of any misinterpretation of the purpose and/or intent of this Agreement (as stated in the Mini-Competition ITT or otherwise); and/or
- (ii) on the grounds of any failure by the Consultant to satisfy itself as to the accuracy and/or adequacy of such information in the manner referred to in clauses 32.1.1(a); and

32.1.2 prior to entering into any Order:

- (a) the Consultant shall make its own enquiries and satisfy itself as to the accuracy and adequacy of any information and documentation supplied by the Authority in connection with such Order; and
- (b) it shall satisfy itself of all the relevant details relating to the Order,

and accordingly, the Consultant shall not be excused from the performance of any of its obligations under this Agreement that relate to the performance of any obligations under an Order, nor shall it be entitled to recover any additional costs or charges from the Authority:



- (i) arising as a result of any misinterpretation of the purpose and/or intent of an Order (as disclosed to the Consultant pursuant to the Order Procedure or otherwise); and/or
- (ii) on the grounds of any failure by the Consultant to satisfy itself as to the accuracy and/or adequacy of such information provided to it in connection with the Order in the manner referred to at clauses 32.1.2(a) to 32.1.2(b) (inclusive).

32.2 Without prejudice to the generality of clause 32.1 and any liability the Authority may have in respect of fraudulent misrepresentation, the Consultant acknowledges and agrees that in entering into:

32.2.1 this Agreement, it has not placed and shall not place; and

32.2.2 any Order, it shall not place,

any reliance upon any statement, representation or warranty made or given by the Authority (in whatever form) in connection with this Agreement or any Order from time to time, in each case whether negligently or innocently made, which is not reflected in the documents comprising this Agreement or the relevant Order (as the context requires), as may be updated from time to time.

### 33. LIABILITY OF THE CONSULTANT

33.1 Subject to clause 33.2, the Consultant shall be liable to the Authority for the performance of its obligations, liabilities, acts and omissions under and pursuant to this Agreement.

33.2 If the Consultant is a Joint Venture, the Consultant acknowledges and agrees that:

33.2.1 each of the parties comprising the Consultant shall be jointly and severally liable to the Authority for the performance of its obligations under this Agreement and each Order and all liabilities, acts and omissions of the Consultant under or in connection with this Agreement and each Order shall be deemed to be the liabilities, acts or omissions of each party comprising the Consultant;

33.2.2 without limiting or prejudicing any other provisions of this Agreement and any Order, if any of the parties comprising the Consultant ceases to be a member of the Consultant or suffers an Insolvency Event, the other parties or party comprising the Consultant must carry out and complete the obligations of the Consultant in accordance with this Agreement and each Order; and

33.2.3 the Consultant shall give notice to the Authority as to which of the parties comprising the Consultant has the authority to bind the Consultant for all the purposes of this Agreement (including the entering into of Orders).

33.3 It is agreed that whatever the manner in which the Parties have executed this Agreement, the period of limitations (in respect of which the Parties hereby waive all and any rights, whether already existing, arising now and/or in the future to raise as a defence to any claim brought under this Agreement under the Limitation Act 1980) applicable to any claim or claims arising out of or in connection with this Agreement shall expire on the expiration of the Agreement Liability Period.

### 34. PROBLEM SOLVING, DISPUTE AVOIDANCE & RESOLUTION

34.1 Subject always to clause 34.2, where a Party notifies another Party (or Parties, as the context requires) in writing of an actual or potential difference or dispute between them (with each such Party being a "**Relevant Party**" and together the "**Relevant Parties**") arising out of or in connection with this Agreement:



- 34.1.1 the Relevant Parties shall use all reasonable endeavours in good faith to resolve such difference or dispute as soon as reasonably practicable following the date of such written notification;
- 34.1.2 where a resolution in relation to the notified difference or dispute cannot be agreed between the Relevant Parties within fifteen (15) Business Days of the date of such notification:
- (a) each Relevant Party shall refer the difference or dispute to their respective senior representatives for resolution; and
  - (b) if the dispute continues to remain unresolved after the period of ten (10) Business Days from the date of such referral:
    - (i) any Relevant Party may propose, by service of written notice to the other Relevant Party (or Relevant Parties) that the difference or dispute be referred to mediation; and
    - (ii) if such proposal is accepted by the other Relevant Party (or Relevant Parties), the mediator(s) (if not appointed by the written agreement of the Relevant Parties within ten (10) Business Days of the service of such written notice) shall be nominated by and the mediation shall be governed by the rules of the Centre for Dispute Resolution; and
  - (c) if the difference or dispute referred to mediation is not resolved by such mediation within sixty (60) days of a mediator being appointed or if the Relevant Parties do not agree to refer the dispute to mediation under clause 34.1.2(b), then any of the Relevant Parties may refer the difference or dispute to adjudication.

34.2 Notwithstanding the provisions of clause 34.1, any Party may refer a dispute arising out of or in connection with this Agreement to adjudication at any time pursuant to and in accordance with the provisions of clause 35.

## 35. ADJUDICATION

35.1 If a dispute or difference arises under this Agreement, either Party may give notice of its intention to refer such dispute or difference to adjudication at any time and shall within seven (7) days thereafter refer the same to the decision of the Adjudicator, with the Party referring such dispute being referred to in this clause 35 as the **"Referring Party"** and the Party responding being referred to as the **"Respondent Party"**.

35.2 Where either Party has given notice of its intention to refer a dispute to adjudication then:

- 35.2.1 any agreement by the Parties on the appointment of the Adjudicator must be reached and the appointment made in sufficient time so that the dispute or difference can be referred to the Adjudicator within seven (7) days of the date of the notice of intention to refer; and
- 35.2.2 if the Parties are unable to agree on the appointment of the Adjudicator, then application to the the Royal Institute of Chartered Surveyors for the appointment of the Adjudicator must be made with the object of securing the appointment of and the referral of the dispute or difference to the Adjudicator within seven (7) days of the date of the intention to refer.

35.3 Upon the appointment of the Adjudicator the Parties shall comply with all the directions which he may issue for the purposes of fairly and expeditiously considering the facts and issues in the dispute and so that the Adjudicator shall reach a decision within twenty-eight (28) days of the date of referral to them under clause 35.1 or such longer period as is agreed by the Parties after the dispute has been referred and the Adjudicator may extend the period of twenty-eight (28) days by up to fourteen (14) days with the Referring Party's consent.



- 35.4 The Adjudicator shall act fairly and impartially and shall take the initiative in ascertaining the facts and the law and shall reach its decision in accordance with the law in relation to this Agreement and shall publish its decision simultaneously to both Parties.
- 35.5 In determining any dispute referred to it for a decision, the Adjudicator:
- 35.5.1 shall consider any written representations, statements and expert's reports submitted to it by the Parties (which shall be exchanged between the Parties when the same are supplied to the Adjudicator);
  - 35.5.2 shall afford the Parties the opportunity to address it in a meeting or meetings at which both Parties must be present;
  - 35.5.3 shall permit the Parties to be represented by such legal or other representatives as they shall see fit;
  - 35.5.4 shall have the power to require the Parties to produce to it and to the other Party copies of any documents they are able to produce which may assist in the reference (save any which would be privileged from production in Court proceedings) between the Parties relating to the dispute; and
  - 35.5.5 shall be entitled to instruct an expert and to take counsel's opinion as to any matter within their field of expertise raised by the reference, but shall not be entitled to delegate its decision(s) to such expert or counsel.
- 35.6 The Adjudicator may in its decision allocate its fees and expenses between the Parties.
- 35.7 The Adjudicator's decision is binding upon the Parties until finally determined by legal proceedings or by agreement.
- 35.8 The Adjudicator may, within five (5) days of giving its decision to the Parties, correct the decision to remove a clerical or typographical error arising by accident or omission.
- 35.9 The Parties hereby agree that the Adjudicator (including any employee or agent of the Adjudicator) appointed in accordance with this clause 35 shall not be liable for anything done or omitted in the discharge or purported discharge of its functions as Adjudicator unless the act or omission is in bad faith.
- 35.10 If either Party does not comply with the decision of the Adjudicator the other Party shall be entitled to take proceedings in the Courts to secure such compliance pending any final determination of the referred dispute or difference pursuant to clause 35.7.
- 35.11 Subject to the provisions of clauses 35.3, 35.4, 35.5 and 35.13, in deciding any dispute referred to it, the Adjudicator shall determine and take into account any matter raised by the Respondent Party to the notice to refer by way of defence or set-off or counter claim (a "**Cross-Claim**"), provided such Cross-Claim arises under this Agreement.
- 35.12 Clauses 35.3 to 35.10 (inclusive) shall apply to any Cross-Claim as they apply to any dispute referred to the Adjudicator pursuant to clause 35.1.
- 35.13 clauses 35.11 and 35.12 shall not apply to any Cross-Claim if such Cross-Claim is being decided or has been decided by an adjudicator other than the Adjudicator appointed pursuant to clauses 35.1 to 35.3 inclusive to determine the relevant dispute or difference.



36. **NO WAIVER**

- 36.1 Failure or any relaxation, forbearance, indulgence or delay by a Party at any time to enforce any provision of this Agreement against the other shall not be construed as a waiver of such entitlement and shall not affect the validity of this Agreement or any part or parts hereof or the right of the relevant Party to enforce any provision in accordance with its terms.
- 36.2 The rights and/or remedies of a Party may only be waived by formal written waiver which is signed by a duly authorised representative of the Party waiving its rights and which makes express and unequivocal reference to the waiver being made pursuant to this clause 36.

37. **CUMULATIVE RIGHTS**

The rights and remedies provided by this Agreement are cumulative and (except as otherwise provided in this Agreement) are not exclusive of any rights or remedies provided by Applicable Law or in equity and to the extent that any right or remedy provided by this Agreement or by Applicable Law or in equity can be exercised more than once and/or in combination with other rights and/or remedies provided by this Agreement or by Applicable Law or in equity, no single or partial exercise of such right or remedy by a Party shall prevent the further exercise by that Party of that right or remedy or the exercise of any other right or remedy.

38. **COUNTERPARTS**

This Agreement may be executed in any number of counterparts and by different parties on separate counterparts, each of which when executed and delivered will be an original and all of which together will constitute a single agreement.

39. **SEVERANCE**

- 39.1 If any provision of this Agreement is found:
- 39.1.1 by any court or administrative body of competent jurisdiction to be invalid or unenforceable, such invalidity or unenforceability will not affect the other provisions of this Agreement which will remain in full force and effect; and
- 39.1.2 to be invalid or unenforceable but would be valid or enforceable if some part of the provision were deleted, the provision in question will apply with such modification(s) as may be necessary to make it valid.
- 39.2 The Parties agree, if either of the circumstances described in clause 39.1.1 occur and it is not possible to amend the provision in question in accordance with clause 39.1.2 without materially amending the original intention of the clause, that:
- 39.2.1 they will use all reasonable endeavours to attempt to substitute for any invalid or unenforceable provision a valid or enforceable provision which achieves to the greatest extent possible the same effect as would have been achieved by the invalid or unenforceable provision; and
- 39.2.2 the obligations of the Parties under any invalid or unenforceable provision of this Agreement will be suspended while an attempt at such substitution is made.

40. **ASSIGNMENT & SUB-CONTRACTING**

- 40.1 The Consultant shall not be permitted to assign, novate and/or otherwise dispose all or part of this Agreement and/or any Order without the prior written approval of the Authority.
- 40.2 The Consultant:



40.2.1 shall not delegate or sub-contract the whole or any part of the performance its duties and obligations under this Agreement and/or any Order without the Authority's prior written approval, such approval not to be unreasonably withheld or delayed; and

40.2.2 shall remain fully responsible and liable for any part of its duties and/or obligations that it sub-contracts or delegates to a third party as if it had performed those services itself and any subcontracting or delegation, whether or not the Authority has given its approval, shall not in any way relieve the Consultant from or reduce the Consultant's obligations and liabilities under this Agreement.

40.3 The Authority may assign, novate and/or otherwise dispose of its rights and obligations under this Agreement and/or any Order or any part thereof to:

40.3.1 any other Crown Body or public body;

40.3.2 any new body established to perform any of the functions that had previously been performed by the Authority; and

40.3.3 any private sector body which substantially performs the functions of the Authority,

and the Consultant shall, at the Authority's written request, enter into a novation agreement in such form as reasonably specified by the Authority in order to enable the Authority to exercise its rights under this clause 40.3.

40.4 A change in the legal status of the Authority (or that of any party to which this Agreement and/or any Order is assigned, novated and/or otherwise disposed of pursuant to clause 40.3) pursuant to which it ceases to be a "contracting authority" (as defined in Regulation 2(1) of the Procurement Regulations) shall not affect the validity of this Agreement and this Agreement shall continue to be binding on any successor body of the Authority (or that of any party to which this Agreement is assigned, novated and/or otherwise disposed of pursuant to clause 40.3).

#### 41. NOTICES

41.1 Save as specified otherwise in any Authority Policy that may be issued by the Authority to the Consultant from time to time in relation to the issuance and/or receipt of digital correspondence and/or use of digital signatures under or in connection with this Agreement, any notice or other communication required to be given under or in relation to this Agreement (referred to in this clause 41 as a "**notice**") by a Party must be in writing and given by:

41.1.1 personal delivery or by sending it by pre-paid first-class post, recorded delivery or registered post (or registered airmail in the case of an address for service outside the United Kingdom); or

41.1.2 by electronic mail,

to the address and for the attention of the relevant recipient as set out in clause 41.3 or, in the event that alternative contact details have been notified by a Party hereunder to the other Parties in accordance with and making specific reference to this clause 41, to such alternative address(es), provided always that any service of proceedings and/or other documents in any legal action (including in respect of adjudication, arbitration and/or any other method of dispute resolution) by electronic mail alone shall not be permitted and such service shall only be deemed to be effective on the date on which any hard copy of the relevant notice is provided to the intended recipient pursuant to clause 41.2.4.

41.2 Any notice issued by a Party pursuant to clause 41.1 will be deemed to have been received:

41.2.1 if delivered personally, at the time of delivery;



- 41.2.2 in the case of pre-paid first-class post, recorded delivery or registered post, forty-eight (48) hours from the date of posting if from and to an address in the United Kingdom or Northern Ireland and five (5) days from the date of posting if from and to an address elsewhere;
- 41.2.3 in the case of registered airmail, five (5) days from the date of posting; and
- 41.2.4 in the case of electronic mail, at the time of transmission to the intended recipient provided that no error message indicating failure to deliver has been received by the sender and provided further that within twenty-four (24) hours of such transmission a hard copy of the electronic mail is sent by post to the intended recipient in accordance with the provisions of clause 41.1,
- in each case:
- (a) provided that, if deemed receipt occurs before 09.00 on a Business Day, the notice will be deemed to have been received at 09.00 on that day, and if deemed receipt occurs after 17.00 on a Business Day, or on a day which is not a Business Day, the notice will be deemed to have been received at 09.00 on the next Business Day; and
- (b) in proving such service it will be sufficient to prove that the envelope containing such notice was addressed to the address of the relevant Party set out in clause 41.3 (or as otherwise notified by that Party hereunder) and delivered either to that address or into the custody of the postal authorities as a pre-paid recorded delivery, registered post or airmail letter.

- 41.3 The postal address and email address of the Authority and the Consultant for the purposes of clause 41.1 are:

|                           |  |
|---------------------------|--|
| <b>For the Authority:</b> |  |
| Address:                  |  |
| For the attention of:     |  |
| Email address:            |  |

|                            |  |
|----------------------------|--|
| <b>For the Consultant:</b> |  |
| Address:                   |  |
| For the attention of:      |  |
| Email address:             |  |

42. **NO PARTNERSHIP OR AGENCY**

- 42.1 Nothing in this Agreement and/or any Order is intended to or shall operate to create a partnership or joint venture of any kind between the Parties or any of them, or to authorise any Party to act as agent for any other or to establish any other fiduciary relationship between the Parties.
- 42.2 No Party shall have authority to act in the name or on behalf of or otherwise to bind any other Party in any way (including but not limited to the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power) under or in connection with this Agreement and/or any Order.



43. **VARIATIONS**

No variation, addition, amendment and/or modification to the terms and conditions of this Agreement and/or any Order shall be valid unless it is in writing and signed by or on behalf of each of the Parties by a duly authorised representative of each Party.

44. **COSTS & EXPENSES**

Each Party shall be responsible for paying its own costs and expenses incurred in connection with the negotiation, preparation, execution and implementation of this Agreement and/or any Order and of each document referred to therein.

45. **THIRD PARTY RIGHTS**

45.1 This Agreement does not create any right enforceable by any person not a party to it (whether pursuant to the Third Parties Rights Act or otherwise) except that a person who is the successor to or the permitted assignee of the rights of the Authority is deemed to be a party to this Agreement and/or any Order.

45.2 Any amendments and/or modifications to this Agreement and/or any Order may be made and any rights created under clause 45.1 may be amended and/or rescinded, in whole or in part, by the Authority at any time without the prior approval of the Consultant.

46. **WELSH LANGUAGE REQUIREMENTS**

46.1 The Consultant shall:

46.1.1 at all times comply with:

- (a) the Welsh Language Act 1993; and
- (b) in the context of each Works Package, comply with the Welsh language scheme of the Authority (as such Welsh language scheme may be amended from time to time) as if it were the Authority; and

46.1.2 use reasonable endeavours to promote and facilitate the use of the Welsh language at all times and so far as is practicable when undertaking (or preparing to undertake) a Works Package at a Works Package Site that is located in Wales.

47. **FURTHER ASSURANCE**

The Consultant shall, at its own expense, use all reasonable endeavours to do or procure to be done all such further acts and things and execute or procure the execution of all such other documents as the Authority may from time to time require for the purpose of giving full effect to the provisions of this Agreement and/or any Order.

48. **ENTIRE AGREEMENT**

This Agreement, together with the documents referred to in it, constitutes the entire agreement and understanding between the Parties in respect of the subject matter of this Agreement and supersedes any previous agreement, understanding or arrangement between the Parties or any of them relating to such subject matter.

49. **GOVERNING LAW**

49.1 This Agreement shall be governed by and construed in accordance with the laws of England and Wales.



- 
- 49.2 This Agreement and any non-contractual obligations in connection with this Agreement are subject in all respects to English law and the Parties hereby submit to the exclusive jurisdiction of the English Courts, provided that other jurisdictions may apply solely for the purpose of giving effect to this clause 49 and for the enforcement of any judgment, order or award given under English jurisdiction.

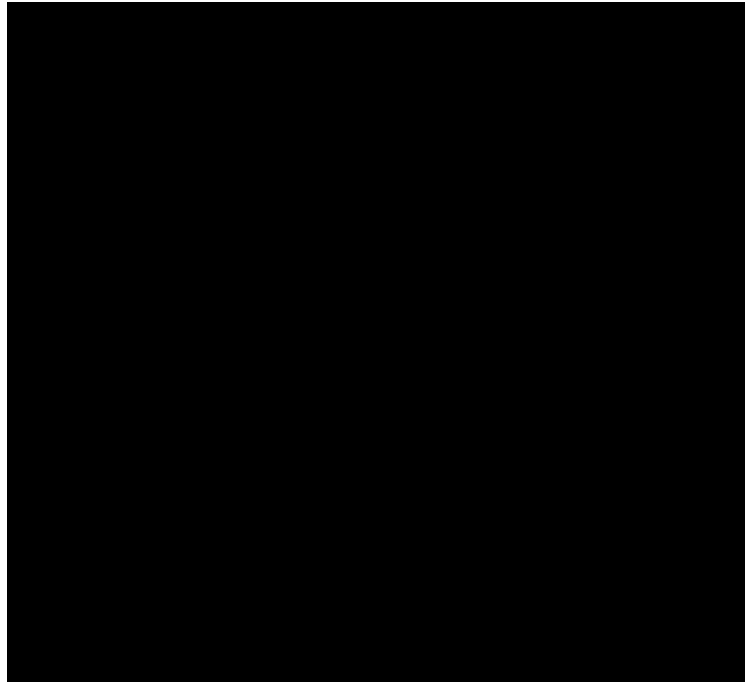


IN WITNESS WHEREOF THIS AGREEMENT HAS BEEN EXECUTED BY THE PARTIES AS A DEED ON  
THE DATE FIRST WRITTEN ABOVE

SIGNED AS A DEED by THE SECRETARY OF STATE FOR JUSTICE acting by affixing hereto its corporate  
seal and authenticated by:

Authenticated by (signature):

Authenticated by (printed name):





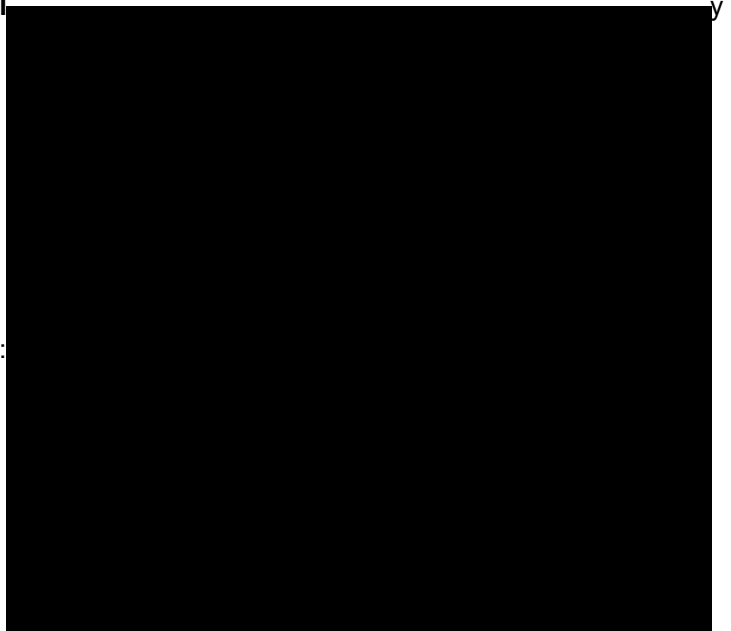
EXECUTED AS A DEED by MCBAINS LIMITED  
secretary:

Director (signature):

Director (printed name):

Director / company secretary (signature):

Director / company secretary (printed name):





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**SCHEDULE 1**

**SERVICES SCHEDULE**

REDACTED



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**SCHEDULE 2**

**PRICING SCHEDULE**

REDACTED



## INDEXATION SCHEDULE

[illegible]



3.

[REDACTED]

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| [REDACTED] |            |            |            |
| [REDACTED] | [REDACTED] | [REDACTED] | [REDACTED] |
| [REDACTED] |            |            |            |



SCHEDULE 4

INSURANCE SCHEDULE

| PROFESSIONAL INDEMNITY INSURANCE |   |
|----------------------------------|---|
| Type of cover                    |   |
|                                  |   |
| Period of cover                  | Until the expiration of the Agreement Liability Period. |

| THIRD PARTY & PUBLIC LIABILITY INSURANCE |                             |
|--|-----------------------------|
| Type of cover                            |                             |
|  |                             |
| Period of cover                          | The Term of this Agreement. |

| EMPLOYER'S LIABILITY INSURANCE |                             |
|--------------------------------|-----------------------------|
| Amount of cover (£)            |                             |
|                                |                             |
| Period of cover                | The Term of this Agreement. |



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**SCHEDULE 5**

**MODEL ORDER FORM**

REDACTED



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**SCHEDULE 6**

**ORDER TERMS**

REDACTED



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SCHEDULE 7

MODEL PARTNERING CONTRACT

[REDACTED]

[REDACTED]

REDACTED



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**SCHEDULE 8**

**COLLATERAL WARRANTY SCHEDULE**

**PART 1 – CONSULTANT COLLATERAL WARRANTY**

REDACTED

DRAFT



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SCHEDULE 9

WORKS PACKAGE PROGRAMME



DRAFT



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SCHEDULE 10

TENDERED INFORMATION

[REDACTED]

REDACTED

DRAFT



PROPERTY PROFESSIONAL SERVICES (2023)  
DISCIPLINE: [MULTI-DISCIPLINARY / COST MANAGEMENT] SERVICES  
REGION: [NORTH / WALES & CENTRAL ENGLAND / LONDON & THE EAST / SOUTH]  
INVITATION TO TENDER VERSION (JUNE 2023)

## MOJ SECURITY REQUIREMENTS

134



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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

## INFORMATION & SECURITY REQUIREMENTS

[illegible]



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PROPERTY PROFESSIONAL SERVICES (2023)  
DISCIPLINE: [MULTI-DISCIPLINARY / COST MANAGEMENT] SERVICES  
REGION: [NORTH / WALES & CENTRAL ENGLAND / LONDON & THE EAST / SOUTH]  
INVITATION TO TENDER VERSION (JUNE 2023)

[illegible]



## PROPERTY PROFESSIONAL SERVICES (2023)

DISCIPLINE: [MULTI-DISCIPLINARY / COST MANAGEMENT] SERVICES  
REGION: [NORTH / WALES & CENTRAL ENGLAND / LONDON & THE EAST / SOUTH]  
INVITATION TO TENDER VERSION (JUNE 2023)

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## PROPERTY PROFESSIONAL SERVICES (2023)

DISCIPLINE: [MULTI-DISCIPLINARY / COST MANAGEMENT] SERVICES  
REGION: [NORTH / WALES & CENTRAL ENGLAND / LONDON & THE EAST / SOUTH]  
INVITATION TO TENDER VERSION (JUNE 2023)

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PROPERTY PROFESSIONAL SERVICES (2023)  
DISCIPLINE: [MULTI-DISCIPLINARY / COST MANAGEMENT] SERVICES  
REGION: [NORTH / WALES & CENTRAL ENGLAND / LONDON & THE EAST / SOUTH]  
INVITATION TO TENDER VERSION (JUNE 2023)

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PROPERTY PROFESSIONAL SERVICES (2023)  
DISCIPLINE: [MULTI-DISCIPLINARY / COST MANAGEMENT] SERVICES  
REGION: [NORTH / WALES & CENTRAL ENGLAND / LONDON & THE EAST / SOUTH]  
INVITATION TO TENDER VERSION (JUNE 2023)

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DISCIPLINE: [MULTI-DISCIPLINARY / COST MANAGEMENT] SERVICES  
REGION: [NORTH / WALES & CENTRAL ENGLAND / LONDON & THE EAST / SOUTH]  
INVITATION TO TENDER VERSION (JUNE 2023)



[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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### SCHEDULE 13

#### DATA PROTECTION SCHEDULE

This Schedule sets out the data processing particulars.

The contact details of the data protection officers for each of the Authority and the Consultant are as follows:

| Party     | Name | Email address | Telephone number |
|-----------|------|---------------|------------------|
| Authority |      |               |                  |
|           |      |               |                  |

Capitalised terms in this Schedule have the meaning given to them in the Agreement and/or the Order Terms (as the context requires) unless otherwise specified.

Without prejudice to the generality of the Agreement and this Schedule:

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

| Description                                     | Details  |
|---|--|
| <b>Identity of the Controller and Processor</b> | <p>The Parties acknowledge and agree that, for the purpose of the Data Protection Laws and the provisions of the Agreement:</p> <ul style="list-style-type: none"> <li>the Authority is the Controller; and</li> <li>the Consultant is the Processor.</li> </ul>   |
| <b>Permitted Purpose</b>                        | <p>The Consultant shall be permitted to Process the Personal Data solely to the extent required to allow the Consultant to perform its obligations in accordance with this Agreement (and/or where such Processing is a reasonably incidental requirement of performing its obligations in accordance with this Agreement).</p>  |
| <b>Duration of the Processing</b>               | <p>Unless otherwise expressly agreed by the Authority in writing, the duration of the Term.</p>  |
| <b>Nature of the Processing</b>                 | <p>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 Consultant's obligations under and in accordance with the terms of this Agreement.</p> |
| <b>Type of Personal Data</b>                    | <p>These are as follows:</p>   |



|                                   |  |
|-----------------------------------|--|
|                                   | <ul style="list-style-type: none"> <li>• full name;</li> <li>• occupation;</li> <li>• workplace / home address;</li> <li>• workplace / home telephone number;</li> <li>• date of birth;</li> <li>• place of birth;</li> <li>• age;</li> <li>• nationality;</li> <li>• next of kin and emergency contact details;</li> <li>• email address;</li> <li>• national insurance number;</li> <li>• tax code;</li> <li>• salary or remuneration;</li> <li>• photographic facial image;</li> <li>• contract type;</li> <li>• start date, end date and any reason(s) for early termination;</li> <li>• curriculum vitae;</li> <li>• passport and driving licence details;</li> <li>• visa details;</li> <li>• right to work documentation;</li> <li>• hours worked and records of absence / annual leave;</li> <li>• details of physical and psychological health of medical conditions;</li> <li>• information about investigations and criminal proceedings;</li> <li>• equalities monitoring information (age, disability, gender, sexual orientation, race, religion belief and ethnicity); and</li> <li>• voice recordings from calls.</li> </ul> |
| <b>Categories of Data Subject</b> | These are:   |



|   |  |
|---|--|
|   | <ul style="list-style-type: none"><li>the Consultant's agents / staff and Sub-Consultants or suppliers of any type; and</li><li>any user of the Services of any type.</li></ul>  |
| <b>Plan for return and destruction of the Personal Data once the processing is complete</b> | <p>The Personal Data will be retained for the Term.</p> <p>The Consultant 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 Agreement, all relevant documentation and records will be transferred back to the Authority. 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 Consultant shall either return or destroy the Personal Data upon the expiration of the Term at the Authority's election (unless otherwise advised by the Authority).</p> |



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SCHEDULE 14 -

KPI SCHEDULE<sup>28</sup>



REDACTED

DRAFT

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<sup>28</sup> **ITT DRAFTING NOTE (JUNE 2023):** The ITT version of this document will be incorporated into the post-award / execution version of each Agreement (on a Lot / Region specific basis).



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SCHEDULE 15

PARENT COMPANY GUARANTEE

REDACTED

DRAFT



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**SCHEDULE 8**

**COLLATERAL WARRANTY SCHEDULE**

**PART 1 – CONSULTANT COLLATERAL WARRANTY**

REDACTED



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**SCHEDULE 9**

**WORKS PACKAGE PROGRAMME**

REDACTED



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SCHEDULE 10

TENDERED INFORMATION



REDACTED



## MOJ SECURITY REQUIREMENTS

[illegible]

3.1 [REDACTED]



[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

4.2

[REDACTED]



## INFORMATION & SECURITY REQUIREMENTS

137



[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



PROPERTY PROFESSIONAL SERVICES (2024)  
DISCIPLINE: COST MANAGEMENT SERVICES  
REGION: NORTH  
EXECUTION VERSION (JANUARY 2024)

139





[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



PROPERTY PROFESSIONAL SERVICES (2024)  
DISCIPLINE: COST MANAGEMENT SERVICES  
REGION: NORTH  
EXECUTION VERSION (JANUARY 2024)

142



[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

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**PROPERTY PROFESSIONAL SERVICES (2024)**  
**DISCIPLINE: COST MANAGEMENT SERVICES**  
**REGION: NORTH**  
**EXECUTION VERSION (JANUARY 2024)**

147



[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]



149



[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



### SCHEDULE 13

#### DATA PROTECTION SCHEDULE

This Schedule sets out the data processing particulars.

The contact details of the data protection officers for each of the Authority and the Consultant are as follows:

| Party     | Name | Email address | Telephone number |
|-----------|------|---------------|------------------|
| Authority |      |               |                  |
|           |      |               |                  |

Capitalised terms in this Schedule have the meaning given to them in the Agreement and/or the Order Terms (as the context requires) unless otherwise specified.

Without prejudice to the generality of the Agreement and this Schedule:

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

| Description                                     | Details   |
|---|---|
| <b>Identity of the Controller and Processor</b> | The Parties acknowledge and agree that, for the purpose of the Data Protection Laws and the provisions of the Agreement: <ul style="list-style-type: none"><li>the Authority is the Controller; and</li><li>the Consultant is the Processor.</li></ul>  |
| <b>Permitted Purpose</b>                        | The Consultant shall be permitted to Process the Personal Data solely to the extent required to allow the Consultant to perform its obligations in accordance with this Agreement (and/or where such Processing is a reasonably incidental requirement of performing its obligations in accordance with this Agreement).  |
| <b>Duration of the Processing</b>               | Unless otherwise expressly agreed by the Authority in writing, the duration of the Term.  |
| <b>Nature of the Processing</b>                 | 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 Consultant's obligations under and in accordance with the terms of this Agreement. |
| <b>Type of Personal Data</b>                    | These are as follows: <ul style="list-style-type: none"><li>full name;</li><li>occupation;</li></ul>  |



|                                   |   |
|-----------------------------------|---|
|                                   | <ul style="list-style-type: none"><li>• workplace / home address;</li><li>• workplace / home telephone number;</li><li>• date of birth;</li><li>• place of birth;</li><li>• age;</li><li>• nationality;</li><li>• next of kin and emergency contact details;</li><li>• email address;</li><li>• national insurance number;</li><li>• tax code;</li><li>• salary or remuneration;</li><li>• photographic facial image;</li><li>• contract type;</li><li>• start date, end date and any reason(s) for early termination;</li><li>• curriculum vitae;</li><li>• passport and driving licence details;</li><li>• visa details;</li><li>• right to work documentation;</li><li>• hours worked and records of absence / annual leave;</li><li>• details of physical and psychological health of medical conditions;</li><li>• information about investigations and criminal proceedings;</li><li>• equalities monitoring information (age, disability, gender, sexual orientation, race, religion belief and ethnicity); and</li><li>• voice recordings from calls.</li></ul> |
| <b>Categories of Data Subject</b> | <p>These are:</p> <ul style="list-style-type: none"><li>• the Consultant's agents / staff and Sub-Consultants or suppliers of any type; and</li><li>• any user of the Services of any type.</li></ul>   |



|   |  |
|---|--|
| <b>Plan for return and destruction of the Personal Data once the processing is complete</b> | <p>The Personal Data will be retained for the Term.</p> <p>The Consultant 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 Agreement, all relevant documentation and records will be transferred back to the Authority. 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 Consultant shall either return or destroy the Personal Data upon the expiration of the Term at the Authority's election (unless otherwise advised by the Authority).</p> |
|---|--|



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**SCHEDULE 14 -**

**KPI SCHEDULE**

REDACTED



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**SCHEDULE 15**

**PARENT COMPANY GUARANTEE**

REDACTED