





Establishment: HMP Coldingley

Project: Improvement Works & District

Heating Mains

BPRN: 640/379/4101

COMMENCEMENT AGREEMENT

CONTENTS

Commencement A	greement
Appendix	Title
A	Project Timetable
В	Construction Phase Health and Safety Information Pack
C D	Pre-commencement surveys
D	Planning issues Section
E	Developed Project Brief and Project Proposals Including: Signed DPP Form of Tender Summary scope of works Sequence drawings Drawing Register Specifications and Drawings Sustainability Statement Quality Management Plan Statement of any derogations from MOJ standard specifications Whole life costing statement
F	List of Specialists
G	Agreed Maximum Price and Price Framework Including: Summary of the AMP Risk Register Cash flow forecast
Н	Site Waste Management Plan
J	Evidence of insurance
K	Key Performance Indicators
L	Queries raised by the Technical Assessors and the responses to these queries

The Partnering Team members, as named below, in accordance with and subject to the terms of a partnering contract dated the 26th day of October 2021 (the 'Partnering Contract') made between them in relation to:

Project: Improvement Works + Heating District Mains

Site: HMP Coldingley

The Partnering Team members:

Client	Secretary of State for Justice
Constructor and Lead Designer	ISG Construction Ltd.
Client Representative	AtkinsRéalis PPS Limited (formerly known as Faithful + Gould Limited)
Cost Consultant	Gleeds Advisory Ltd
Principal Designer	AtkinsRéalis PPS Limited (formerly known as Faithful + Gould Limited)

Agree under this Commencement Agreement that:

- 1. Words and expressions used in this Commencement Agreement shall have the same meanings as in the Partnering Contract.
- 2. To the best of their knowledge the Project is ready to commence on Site.
- 3. The following details shall apply by reference to the listed clauses of the Partnering Terms:

Reference in Partnering Term	
Clause 6.2	The Project Timetable is included in the Developed Project Proposals attached as Appendix A
Clause 6.2	Date of Possession
	12 th August 2024
Clause 6.2	Date for Completion
	11 th February 2028
Clause 6.3	Project in sections
	As per the Partnering Timetable and Project Timetable and Special Term 28.11 of the Project Partnering Agreement.
Clauses 6.4 and 15.3 (i)	Parts of site in exclusive or non-exclusive possession:
	As per the Partnering Timetable and Project Timetable and Special Term 28.11 of the Project Partnering Agreement.
Clauses 6.4 and 15.3 (i)	Constraints on Site possession/access
	All in accordance with Special Term 28.11 of the Project Partnering Agreement. Arrangements for Client access to be agreed.
Clauses 6.4 and	
15.3 (i)	Arrangements for deferred or interrupted Site possession
	As per the Partnering Timetable and Project Timetable and Special Term 28.11 of the Project Partnering Agreement.
Clause 7.1	The Construction Phase Plan is within the Health and Safety Information Pack which is included in Appendix B
Clause 8	Project Brief and Project Proposals are included in Appendix E

Reference in

Partnering Terms	
Clause 12	The Agreed Maximum Price is £61,253,648 (exclusive of VAT)
Clause 12	The Price Framework is included in Appendix G
Clause 18.2	The risk sharing arrangements are detailed in the Appendix G
Clause 18.3(iii)	Third party consents entitling claim for extension of time
	None other than those items identified as Client Risk items within the Risk Register
Clause 18.3(xvi)	Additional events entitling claim for extension of time
	None other than those items identified as Client Risk items within the Risk Register
Clause 18.5	Adjusted extensions of time entitling additional Site Overheads
	None other than those items identified as Client Risk items within the Risk Register
Clause 18.6	Adjusted extensions of time entitling claim for unavoidable work/expenditure
	None other than those items identified as Client Risk items within the Risk Register
Clause 18.9	Exceptions to Constructor risk as to Site
	None other than those items identified as Client Risk items within the Risk Register

Reference in Partnering Terms

Clause 19.1

Insurance of the Project shall be taken out by the Constructor

Insurance of all existing structures (and their contents) shall either be taken out by the Client and or the Client shall bear the risk of loss or damage thereto.

With waiver of rights of subrogation against:

Not applicable

With the following percentage addition for fees:



With the following additional or adjusted risks:

None required

Reference in Partnering Terms

Clause 19.1 Insurance third party property damage by the Constructor in the sum of:

None required.

Clause 19.5 Environmental Risk Insurance by:

None required

Clause 19.6 Latent Defects Insurance by:

None required

Clause 19.7 Whole Project Insurance by:

None required

Clause 19.9 Amount and form of any advance payment guarantee/performance

bond/parent company guarantee/retention bond:

None required.

Clause 20.18 A Project Bank Account will be used.

Clause 27.2 Problem-Solving Hierarchy is as attached to the Partnering Contract

Clause 28 Special Terms additional to those set out in or attached to the Partnering

Contract:

28.1 Project Bank Account

The wording of clause 20.18 shall be replaced with the following:

"The Client and the Constructor shall, within five (5) Working Days (or such other time as may be agreed by the Client in writing at its sole discretion), of entering into the Commencement Agreement enter into the Trust Deed and the Constructor shall obtain signature to the Trust Deed by those Specialists or sub-sub-contractors identified at that stage to be Bank Account Parties. The Client acknowledges that it may take up to four (4) months from the date of last execution of the Trust Deed for the Bank Account to become operational and agrees that any and all payments due to the Constructor prior to the date that the Bank Account becomes operational shall be paid to the Constructor in accordance with the provisions of the Partnering Contract, as if there were no requirement for a Bank Account."

Insert the following new clause 20.19 as follows:

"The Client and Constructor shall each:

- (a) nominate individuals authorised to issue instructions to the Bank;
- (b) authorise those individuals to issue instructions to the Bank to allow payments to be made to the Bank Account Parties in accordance with the terms of the Trust Deed as and when required; and
- (c) not cancel the nomination of any such individual without the prior consent of the Client."

Insert new clause 20.20 as follows:

"Within five (5) Working Days from the date of issue of a payment notice in accordance with clause 20.3 or a pay less notice in accordance with clause 20.7, the Constructor shall issue to the Client a breakdown of amounts forming part of the relevant payment or pay less notice identifying all amounts due to those Specialists who are Bank Account Parties and amounts due to the Constructor (including amounts due to those Specialists who are not Bank Account Parties)."

Insert new clause 20.21 as follows:

"The Constructor acknowledges that payments into the Bank Account shall take effect as a payment by the Client to the Constructor under the Partnering Contract to the extent of that payment."

Insert the following new Clause 20.21A to 20.21K as follows:

"20.21A The Constructor pays any charges and is paid any interest in relation to the Bank Account.

20.21B The Constructor provides to the Client copies of communications with the Bank in connection with the Bank Account.

20.21C The Constructor includes in its contracts with the Bank Account Parties the arrangements in this contract for the operation of the Bank Account and the Trust Deed. The Constructor notifies the Bank Account Parties of the details of the Bank Account and the arrangements for payment of amounts due under their contracts.

20.21D The Constructor submits proposals for adding a Specialist and/or sub-sub-contractor to the Bank Account Parties to the Client in writing. If accepted by the Client the Constructor shall procure that such Specialist or sub-sub-contractor who is not a party to the Trust Deed but becomes a party to the Bank Account shall sign a Joining Deed.

20.21E No later than one day before the final date for payment, the *Client* makes payment to the Bank Account of the amount which is due to be paid to the *Constructor*.

20.21F The Constructor makes payment to the Bank Account of:

- any amount not paid by the *Client* and
- any amount required to make payment in full to the Bank Account Parties.

20.21G The Constructor prepares an authorisation, setting out the sums due to the Bank Account Parties as assessed by the Constructor and to the Constructor for the balance of the certified payment ("Authorisation"). After signing the Authorisation, the Constructor submits it to the Client and then submits it to the Bank. The Constructor provides the Client with such information as it may reasonably require to understand the payments to be made from the account including names of Bank Account Parties and relevant amounts.

20.21H The Constructor and the Bank Account Parties receive payment from the Bank Account of the sums set out in the Authorisation as soon as practicable after the Bank Account receives payment.

20.21I A payment which is due from the Constructor to the Client is not made through the Bank Account.

20.21J Payments made from the Bank Account are treated as payments from the Client to the Constructor in accordance with this contract or from the Constructor or Specialist to Bank Account Parties in accordance with their contracts as applicable.

20.21K If this contract is terminated, no further payment is to be made into the Bank Account."

The relevant definitions to be added as follows:

"Authorisation" has the meaning ascribed to that term in clause 20.21G.

"Bank" means Santander, the bank operating the Bank Account.

"Bank Account" means the bank account set up by the Client and the Constructor with the Bank to allow direct payments to be made to the Bank Account Parties

"Bank Account Parties" — the Constructor, those Specialists or subsub-contractors who execute the Trust Deed and any Specialists or subsub-contractors who may subsequently become a party to the Bank Account by signing a Joining Deed;

"Joining Deed" – an agreement in the form set out at Part B of Annex 1 to the Commencement Agreement.

Trust Deed - an agreement in the form set out at Part A of Annex 1 to the Commencement Agreement (subject to such reasonable

amendments as may be agreed between the Constructor and the Client, both parties acting reasonably."

THE SECRETARY OF STATE FOR JUSTICE

of Ministry of Justice 10th Floor, 102 Petty France London SW1H 9AJ

(the "Client")

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

or Acting by

Authorised signatory

Authorised signatory

Dated the 9th day of August 2024

whose registered office is situated at Woodcote Grove Ashley Road, Epsom Surrey **KT18 5BW** (the "Client Representative") EXECUTED AS A DEED by the Client Representative by affixing hereto its common seal in the presence of or Acting by Director Name Name of Witness Signature of Witness Address of Witness Occupation of Witness

AtkinsRéalis PPS Limited (formerly known as Faithful + Gould Limited)

ISG Construction Ltd

whose registered office is situated at

Aldgate House 33 Aldgate High Street London EC3N 1AG

(the "Constructor" and "Lead Designer")

EXECUTED AS A DEED by the **Constructor and Lead Designer**



Gleeds Advisory Ltd whose registered office is situated at

95 New Cavendish Street London W1W 6XF

(the "Cost Consultant")

EXECUTED AS A DEED by the **Cost Consultant**

by affixing hereto its	s common seal in the presen	ce of
or Acting by		
Director		
Director/Secretary		

AtkinsRéalis PPS Limited (formerly known as Faithful + Gould Limited) whose registered office is situated at
Woodcote Grove Ashley Road, Epsom Surrey
KT18 5BW
(the "Principal Designer")
EXECUTED AS A DEED by the Principal Designer
by affixing hereto its common seal in the presence of
or Acting by
Director
Name
Name of Witness
Signature of Witness
Address of Witness
Occupation of Witness

ANNEX 1

BANK ACCOUNT DEEDS

PART A

TRUST DEED

This trust deed (the "Trust Deed") is made on	2024
between the Client, the Constructor and the other parties referred to at paragraph (E	3) below
(each a "Party" and together the "Parties").	

Terms in this Trust Deed have the meanings given to them in the contract between the Client, the Constructor and the Consultants in relation to HMP Coldingley (the "**Project**").

Background

- (A) The Client and the Constructor have entered into a partnering contract in relation to the Project.
- (B) The Bank Account Parties have entered into contracts with the Constructor or a Specialist in connection with the Project:

Name	Contract Details	Contract Date
registration number [INSERT NUMBER],	A [INSERT DETAILS OF CONTRACT] between (1) [INSERT NAME] and (2) [INSERT NAME] in respect of [INSERT DETAILS]	[INSERT DATE]

with each of the Constructor and the above-mentioned parties being a "Bank Account Party" and collectively the "Bank Account Parties" for the purposes of this Trust Deed.

(C) At no cost to the Client, a Project Bank Account will be established to make provision for payment to the Constructor and the Specialists if a Commencement Agreement is entered into.

Agreement

- 1.1 sums due to the Constructor and the Bank Account Parties in connection with the Project are held in trust in the Bank Account for distribution to the Bank Account Parties in accordance with the banking arrangements applicable to the Bank Account,
- 1.2 further parties (as additional "Bank Account Parties") may be added as parties to this Trust Deed with the agreement of the Client and the Constructor:
- 1.3 the agreement of the Client and the Constructor is treated as agreement by the Bank Account Parties;

- 1.4 this Trust Deed is subject to the law of the contract for the Project; and
- 1.5 the benefits under this Trust Deed may not be assigned.

THIS TRUST DEED HAS BEEN EXECUTED AS A DEED AND IS DELIVERED AND TAKES EFFECT ON THE DATE STATED AT THE BEGINNING OF IT.

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

OR		
Acting by:		
Authorised Signatory:		
Authorised Signatory:		
EXECUTED AS A DEED by the witness:	CONSTRUCTOR acting by	a director in the presence of a
Director:		
Witness:		
Witness Name		_
Witness Address		
Witness Occupation		

¹ acting by two directors or a director and a company secretary:
Director:
Director / Secretary:

 $^{^{\}rm 1}$ Signature block to be populated and repeated for each additional bank account party 18

PART B

JOINING DEED

This joining agreement (the "**Joining Agreement**") is made on ______ 20[24] between the Client, the Constructor and each Additional Bank Account Party referred to at paragraph D below (each a "**Party**" and together the "**Parties**")

Terms in this Joining Agreement have the meanings given to them in the contract between the Client, the Constructor and the Consultants in relation to HMP Coldingley (the Project).

Background

- (A) The Client and the Constructor have entered into a partnering contract in relation to the Project.
- (B) Certain parties have entered into contracts with the Constructor or a Specialist in connection with the Project (whether as sub-contractors or otherwise) and are identified, in addition to the Constructor, as Bank Account Parties in the Partnering Contract.
- (C) The Client and the Constructor have established a Bank Account to make provision for payment to the Constructor and the Bank Account Parties.
- (D) The Client, the Constructor and the (as at the date of this Joining Agreement) current Bank Account Parties have entered into a trust deed as annexed to this Joining Deed (the "**Trust Deed**") and have agreed that the following parties may join the Trust Deed:

Name	Contract Details	Contract Date
[INSERT NUMBER], whose registered office is	CONTRACT] between (1) [INSERT NAME] and (2)	

with each of the above-mentioned parties being an "Additional Bank Account Party" and collectively the "Additional Bank Account Parties" for the purposes of this Joining Agreement.

Agreement

- 2.1 the Additional Bank Account Party becomes a party to the Trust Deed from the date set out below;
- 2.2 the agreement of the Client and the Constructor is treated as agreement by the Bank Account Parties:
- 2.3 this Joining Agreement is subject to the law of the contract for the Project; and
- 2.4 the benefits under this Joining Agreement may not be assigned.

Page 19 of 21

Version 2.0 11062024

Reference No: BPRN: 640/379/4101

	AS BEEN EXECUTED AS A DEED AND IS DELIVERED AND E STATED AT THE BEGINNING OF IT.
EXECUTED AS A DEED by the	CLIENT by affixing hereto its common seal in the presence
of:	CLIENT by anixing hereto its common sear in the presence
OR	
acting by:	
Authorised Signatory:	
_	
Authorised Signatory:	
EXECUTED AS A DEED by th witness:	e CONSTRUCTOR acting by a director in the presence of a
Director:	
Witness:	
Witness Name	
Witness Address	
Witness Occupation	
	Page 20 of 21
Version 2.0 11062024	·

Reference No: BPRN: 640/379/4101

OFFICIAL

EXECUTED AS A DEED by the [INSERT NAME] (as an "Additional Bank Account Party") acting by two directors or a director and a company secretary:
Director:
Director / Secretary: