

DATED

2024



Establishment: Haslar IRC

Project: Redevelopment - Phase 1 (Refurbishment)

BPRN: 8128

COMMENCEMENT AGREEMENT

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In consideration of the Parties entering into this Commencement Agreement, the Client has agreed to pay the Constructor £1.

The Partnering Team members, as named below, in accordance with and subject to the terms of a partnering contract dated the 12th day of April 2023 (the 'Partnering Contract') made between them in relation to:

Project: Redevelopment - Phase 1 (Refurbishment)

Site: Haslar IRC

The Partnering Team members:

Client	THE SECRETARY OF STATE FOR THE HOME DEPARTMENT acting on behalf of the Crown
Constructor and Lead Designer	GALLIFORD TRY CONSTRUCTION LIMITED
Client Representative	ATKINSRÉALIS PPS LIMITED
Cost Consultant	GLEEDS ADVISORY LIMITED
Principal Designer	GALLIFORD TRY CONSTRUCTION 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:

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Agree under this Commencement Agreement that: (Continued)*Reference in
Partnering Term*

Clause 6.2	The Project Timetable is attached as Appendix A
Clause 6.2	Date of Possession 11 July 2023
Clause 6.2	Date for Completion 19 December 2025
Clause 6.3	Project in sections Sectional Completion of Zone 1 as set out in the Project Timetable (Appendix A) for 30 July 2025
Clauses 6.4, 15.3 (i) and Special Term 28.11	Parts of site in exclusive or non-exclusive possession and period of non-exclusive possession: As set out in the Partnering Timetable (as set out in Annexure A and Appendix G to the Project Partnering Agreement) and Project Timetable (as set out at Appendix A) and in accordance with 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 (as set out in Annexure A and Appendix G to the Project Partnering Agreement) and Project Timetable (as set out at Appendix A) and Special Term 28.11 of the Project Partnering Agreement.
Clause 7.1	The Construction Phase Plan is set out at Appendix B
Clause 8	Project Brief and Project Proposals are included in Appendix E

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Agree under this Commencement Agreement that: (Continued)*Reference in
Partnering Terms*

Clause 12	The Agreed Maximum Price is [REDACTED] [REDACTED] [REDACTED]
Clause 12	The Price Framework is included in Appendix G
Clause 15.5	The form of Vesting Agreement is set out in Annex 2.
Clause 18.2	The risk sharing arrangements are detailed in 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

Agree under this Commencement Agreement that: (Continued)

*Reference in
Partnering Terms*

Clause 19.1 Insurance of the Project shall be taken out by the Constructor in the names of the Constructor and the Client.

With waiver of rights of subrogation against:

The Client

With the following percentage addition for fees:

■

With the following additional or adjusted risks:

None required

Clause 19.1 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.

Agree under this Commencement Agreement that: (Continued)*Reference in
Partnering Terms*

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

[REDACTED]

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:

A parent company guarantee is required in the form set out in Annex 1. The Parties agree that no further statement on the parent company guarantee is made in the Project Brief on the basis it is referred to here in the Commencement Agreement.

Clause 21.7 (i) and
(ii)

Rate of liquidated and ascertained damages is [REDACTED]

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 Site Waste
Management Plan

Add a new **Special Term 28.1:**

"The Partnering Team members shall comply with the "Site Waste Management Plan annexed at Appendix H of this Commencement Agreement."

28.2 Building
Regulations

Add a new **Special Term 28.2:**

The Constructor warrants to the Client that it:

28.2.1. has complied and will comply with the requirements of Part 2A of the Building Regulations in the performance of the Project and in the performance of its duties and obligations generally under

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the Partnering Documents;

28.2.2 has the Competence to discharge its duties under Part 2A of the Building Regulations and undertakes the role(s) of Principal Contractor and Principal Designer as referred to in the Building Regulations;

28.2.3 (subject to Special Term 28.2.2 and to the extent that the Project involves the preparation, review and/or validation of any designs in connection with the Project Programme) it shall be a "designer" in respect of the same as such term is defined in the Building Regulations;

28.2.4 will notify each of the Specialists and wider members of its supply chain of their obligations under the Building Regulations and ensure that each has the Competence and is adequately resourced to meet those obligations;

28.2.5 does not carry out the Project or permit any Specialists to carry out the Project where Competence has not been established for the purposes of Part 2A of the Building Regulations;

28.2.6 notifies the Client if the Constructor ceases to have the Competence required for the purposes of Part 2A of the Building Regulations;

28.2.7 designates an individual who has the task of managing the functions of the Principal Contractor and Principal Designer; and

28.2.8 allocates adequate resources in relation to health and safety in relation to the Project Programme to enable it to perform its duties and obligations under Part 2A of the Building Regulations."

Add the following definitions in **Clause 1**:

"Building Regulations - the Building Regulations 2010 (as amended by the Building Regulations etc. (Amendment) (England) Regulations 2023, SI 2023/911)

Competence - where the Constructor is an individual, the skills knowledge, experience and behaviours necessary, and where the Alliance Member is not an individual, the organisational capability

Principal Contractor – has the meaning given to the term "principal contractor" in regulation 2(1) of the CDM Regulations or Part 2A of the Building Regulations (as the case may be);

Principal Designer – has the meaning given to the term "principal designer" in regulation 2(1) of the CDM Regulations or Part 2A of the Building Regulations (as the case may be);"

28.3 Entire agreement

Add a new **Special Term 28.3**:

"28.3.1 This Commencement Agreement and the other Partnering Documents shall together represent the entire agreement between the Client and the Constructor and supersedes all

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and any other agreements or arrangements that may have existed between them.

28.3.2 Without prejudice to the generality of clause 28.3.1, the Constructor acknowledges and agrees that:

- .1 this Commencement Agreement supersedes all of the pre-construction agreements entered into on or around 12 July 2023 (PCA01), 3 August 2023 (PCA02), 3 August 2023 (PCA03), 25 September 2023 (PCA04), 6 November 2023 (PCA05) and 28 May 2024 (PCA06) by the Client and the Constructor (the "**Pre-Construction Agreements**") and any services and/or any works undertaken pursuant to those Pre-Construction Agreements shall be deemed to have been carried out under the terms of this Commencement Agreement;
- .2 all payments from the Client to the Constructor under the Pre-Construction Agreements shall be included within and treated as paid on account of the Agreed Maximum Price under this Commencement Agreement (and for the avoidance of doubt the Client shall not be required to make any further payments under the Pre-Construction Agreements after the date of this Commencement Agreement)."

28.4 Early access Add a new **Special Term 28.4**:

"28.4 The proposals are submitted on the basis that all parts of the Site will be in the exclusive possession of the Constructor until the period immediately prior to the Completion Date when the Client may need access to agreed areas of the Site in order to commence installation of agreed fixtures and fittings. The details for early access will be agreed between the Parties, acting reasonably after the Commencement Agreement has been signed."

28.5 Vesting agreement Add a new **Clause 15.5**:

"i. It is a precondition to payment for any materials, goods and/or equipment that the Constructor marks and stores such materials, goods or equipment in accordance with the Partnering Contract (including the Project Brief) and, unless otherwise agreed in advance and in writing by the Client Representative, provides a properly executed Vesting Agreement in favour of the Client in respect of such materials, goods or equipment in the form referred to in the Partnering Agreement (with such amendments as the Client Representative may approve in advance, acting reasonably) or in such alternative form as is acceptable to the Client Representative, acting reasonably.

ii. Upon request, the Constructor provides reasonable proof to the Client (in a form to be agreed in writing in advance with the Client Representative) that the relevant item of materials, goods or

equipment has been so set aside and marked (including procuring access for the Client and/or the Client Representative to inspect the item of materials, goods or equipment at the relevant place of storage)."

Add the following definition in **Clause 1**:

"Vesting Agreement - a vesting agreement in the form identified as such in the Commencement Agreement;"

28.6 Limitation on damages for failure to complete the Project by the Date for Completion

Add a new **Clause 21.9**:

"Without prejudice to the foregoing and notwithstanding Clause 22.1, the Constructor's liability to the Client or any other party for any failure to complete the Project by the Date for Completion under this Commencement Agreement or otherwise at law, shall be limited to the maximum sum of [REDACTED]
[REDACTED]"

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THE SECRETARY OF STATE FOR THE HOME DEPARTMENT (acting through the Home Office) whose principal place of business is at 2 Marsham Street, London SW1P 4DF

(the “**Client**”)

SIGNED AS AN AGREEMENT by the **Client**

Acting by

Authorised signatory _____

Dated the 23rd day of August 2024

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ATKINSRÉALIS PPS LTD (formerly known as FAITHFUL+GOULD LTD)

Whose registered office is situated at
Woodcote Grove
Ashley Road
Epsom
Surrey
KT18 5BW

(the “**Client Representative**”)

SIGNED AS AN AGREEMENT for and on behalf of the **Client Representative**

Acting by

Director _____

GALLIFORD TRY CONSTRUCTION LIMITED

Whose registered office is situated at
Blake House 3 Frayswater Place
Cowley
Uxbridge
Middlesex
United Kingdom
UB8 2AD

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

SIGNED AS AN AGREEMENT for and on behalf of the **Constructor and Lead Designer**

Acting by

Director _____

GLEEDS ADVISORY LIMITED

Whose registered office is situated at
95 New Cavendish Street,
London
W1W 6XF

(the “**Cost Consultant**”)

SIGNED AS AN AGREEMENT for and on behalf of the **Cost Consultant**

Acting by

Director _____

GALLIFORD TRY CONSTRUCTION LIMITED

Whose registered office is situated at
Blake House 3 Frayswater Place
Cowley
Uxbridge
Middlesex
United Kingdom
UB8 2AD.

(the “**Principal Designer**”)

SIGNED AS AN AGREEMENT for and on behalf of the **Principal Designer**

Acting by

Director _____

ANNEX 1 – PARENT COMPANY GUARANTEE

DATED

20[]

[Guarantor Entity]

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

DEED OF GUARANTEE

in respect of

redevelopment works (Phase 1) at Haslar IRC

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THIS DEED OF GUARANTEE is made on

20[]

BY

[**GUARANTOR ENTITY**] a company incorporated under the laws of [] having its registered office at [] (registered number []) (the "**Guarantor**")

IN FAVOUR OF

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT (acting through the Home Office) whose principal place of business is at 2 Marsham Street, London SW1P 4DF (the "**Beneficiary**" which expression includes its permitted successors and assigns)

WHEREAS:

- (A) The Beneficiary and GALLIFORD TRY CONSTRUCTION LIMITED, a company incorporated under the laws of England and Wales and having its registered office at Blake House 3 Frayswater Place, Cowley, Uxbridge, Middlesex, United Kingdom, UB8 2AD (registered number 02472080) (the "**Constructor**") have entered into a contract for the redevelopment (Phase 1) of Haslar IRC (the "**Contract**").
- (B) The Constructor is an Affiliate of the Guarantor (where "**Affiliate**" means a subsidiary or holding company or a subsidiary of the Guarantor (where "subsidiary" and "holding company" are defined in section 1159 of the Companies Act 2006)).
- (C) The Guarantor has agreed to guarantee the Constructor's obligations pursuant to the Contract in accordance with the terms and conditions contained in this Deed.

IT IS AGREED as follows:-

1. **DEFINITIONS AND INTERPRETATION**

1.1 **In this Deed:**

- 1.1.1 "**Business Day**" means a day (other than a Saturday or Sunday) on which banks are open for business in London; and
- 1.1.2 "**Tax**" means any tax, levy, impost, duty or other charge or withholding of a similar nature (including any penalty or interest payable in connection with any failure to pay or any delay in paying any of the same).

1.2 Headings are for ease of reference only and shall not affect the interpretation of this Deed.

1.3 Unless otherwise defined herein, all capitalised terms used herein shall bear the meanings as defined in the Contract. All references to the Contract contained herein shall be construed to mean the Contract as amended from time to time.

2. **GUARANTEE AND INDEMNITY**

2.1 In consideration of the Beneficiary [entering into the Contract] [accepting this Deed in discharge of the Constructor's obligation under the Contract to procure this Deed], the Guarantor hereby irrevocably and unconditionally guarantees to the Beneficiary, as a primary obligation and not merely as surety:

- 2.1.1 the full and prompt payment when due of all of the Constructor's payment obligations and/or financial liabilities arising under or in connection with or as result of a breach

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of the Contract ([whether sole or joint with one or more persons, and] whether of principal, interest or otherwise); and

- 2.1.2 the full and prompt performance when due of all the Constructor's obligations, representations, warranties, indemnities, covenants, undertakings, duties and agreements contained in or arising in connection with the Contract.
- 2.2 All obligations, representations, warranties, indemnities, covenants, undertakings, duties and agreements described in clauses 2.1.1 and 2.1.2 above are collectively referred to herein as the "**Obligations**". If at any time the Constructor fails, neglects or refuses to timely or fully perform any of the Obligations as expressly provided in the terms and conditions of the Contract or commits any breach of any provision of the Contract, then, upon receipt of written notice from the Beneficiary specifying the failure or breach (as appropriate) and requiring the Guarantor to so perform, the Guarantor shall immediately commence to perform, or to cause to be performed, in place of the Constructor all or any of the Obligations or responsibility as required pursuant to the terms and conditions of the Contract.
- 2.3 In addition to its obligations set out in clauses 2.1 and 2.2 above, as a separate, additional continuing primary obligation under this Guarantee, the Guarantor agrees to indemnify (and keep indemnified) and hold harmless the Beneficiary on demand:
- 2.3.1 against all losses, damages, costs and/or expenses which the Beneficiary may incur by reason of any breach by the Constructor of the Obligations; and
- 2.3.2 against any loss or liability suffered by the Beneficiary if any of the Obligations is or becomes unenforceable, invalid or illegal as if such Obligation had not become unenforceable, invalid or illegal provided that Clause 2.3.2 shall apply only:
- (a) if the Obligation is or has become, unenforceable, invalid or illegal as a result of (i) the Constructor not having the due status, capacity, power or authorisation to enter into the Contract (ii) the Constructor not validly executing the Contract (iii) the Constructor not being validly incorporated and existing (iv) the entry into the Contract by the Constructor conflicting with its constitutional documents or (v) insolvency, bankruptcy, or similar proceedings or circumstances affecting the Constructor, or
- (b) where the Obligation would not be or have become generally unenforceable, invalid or illegal against a person performing the role of the Constructor under the Contract.
- 2.4 Subject to Clause 2.3.2 and Clause 9:
- 2.4.1 the Guarantor's liability hereunder in respect of any matter shall be no greater in amount or duration than it would have been if it had been named as a Constructor under the Contract having joint and several liability with the Constructor, and
- 2.4.2 with respect to any claim, action or proceeding against the Guarantor in connection with this Guarantee, the Guarantor shall be entitled to rely upon those defences which the Constructor would be able to assert under the Contract if such claim, action or proceeding were to be asserted or instituted against the Constructor under the Contract.
3. **BENEFICIARY PROTECTION**
- 3.1 Without prejudice to Clauses 2.4 and 5, the Guarantor's liability under this Deed shall not be discharged, reduced or otherwise affected by:

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-
- 3.1.1 the Beneficiary giving the Constructor any time or any other concession;
- 3.1.2 any composition, discharge, release or other variation of liability entered into with, or granted to, the Constructor (save to the extent of such composition, discharge, release or other variation of liability);
- 3.1.3 any amendment, variation, supplement or waiver of any provision of the Contract (such that references in this Deed to the Contract shall include each such variation, amendment or supplement);
- 3.1.4 any legal limitation or incapacity relating to the Constructor;
- 3.1.5 any insolvency, liquidation, dissolution, reconstruction, or amalgamation of the Constructor; or
- 3.1.6 any other act or omission of the Beneficiary (save where the Beneficiary has expressly agreed to discharge, reduce or amend the liability of the Guarantor).
- 3.2 This Deed is in addition to and not in substitution for and shall not merge with any other right, remedy, guarantee or security which the Beneficiary may at any time hold for the performance by the Constructor of its obligations under the Contract.
- 3.3 The Guarantor agrees, without prejudice to Clause 7, that its liability under this Deed shall not be conditional or contingent upon the prior pursuit by the Beneficiary of any remedy against the Constructor or any other person, including, for the avoidance of doubt, enforcement by the Beneficiary of any other guarantee or security from time to time held by the Beneficiary in respect of the duties and/or obligations of the Constructor under the Contract.
- 3.4 In the event that any provision or portion of this Deed, or the application thereof, is found to be ineffective, inoperable or unenforceable for any reason, it shall be severed and deemed to be deleted from this Deed and the remaining provisions of this Deed shall continue to have full force and effect.
- 3.5 Any settlement or discharge between the Beneficiary and the Constructor or the Guarantor shall be conditional upon no settlement with or payment to the Beneficiary by the Constructor or the Guarantor or any other person being set aside, avoided or ordered to be refunded or reduced by virtue of any provision or enactment relating to bankruptcy, insolvency or liquidation for the time being in force. Accordingly, if a settlement or payment is so set aside, avoided or ordered to be refunded or reduced (and without limiting the Beneficiary's other rights under this Deed), the Beneficiary shall be entitled to recover from the Guarantor, as if such settlement or discharge had not occurred, the value the Beneficiary has placed upon such settlement or the amount of any such payment or reduced payment as the case may be.
- 3.6 For all purposes directly or indirectly connected with any voluntary arrangement under Part 1 of the Insolvency Act 1986 proposed in respect of the Constructor where the voluntary arrangement seeks to restrict in any way the Beneficiary's' rights hereunder, the Guarantor hereby releases and discharges its whole rights of recourse, contribution, relief or subrogation against the Constructor in respect of or in connection with all payments made or to be made by the Guarantor under or pursuant to this Deed to the intent and effect that the Guarantor shall not be a creditor of the Constructor in respect of any such payments or liabilities for the purposes of any such voluntary arrangement.
- 4. DURATION OF GUARANTEE AND TERMINATION**
- 4.1 This Deed is a continuing guarantee by the Guarantor and shall continue in full force and effect (notwithstanding any intermediate satisfaction by the Constructor, the Guarantor or any other person) until all the Obligations have been fully performed.
-

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5. LIMITATION RE PROCEEDINGS

- 5.1 The Beneficiary shall not be entitled to commence proceedings against the Guarantor under this Deed in respect of any claim once any proceedings against the Constructor in respect of the corresponding claim under the Contract would be statute barred.

6. ASSIGNMENT

- 6.1 The Beneficiary may not assign or transfer any of its rights or obligations hereunder without the prior written consent of the Guarantor (such consent not to be unreasonably withheld or delayed), provided that the Beneficiary may assign all such rights contemporaneously with an assignment to a permitted assignee under the terms of the Contract.

7. DEMANDS, PAYMENTS AND TAXATION

- 7.1 All payments to be made by the Guarantor under this Deed shall be made in immediately available funds and, unless otherwise agreed in the case of a given payment, in the currency in which the relevant amount is payable by the Constructor, free and clear, without prejudice to Clauses 2.4 and 5, of all deductions and withholdings of any kind.

- 7.2 ¹

8. NON-SUBROGATION

- 8.1 Until all amounts which may be or become payable under the Contract or this Deed have been irrevocably paid in full, the Guarantor shall not, without the Beneficiary's written consent, in respect of any payment under this Deed, be subrogated to any right or security of the Beneficiary or claim or prove in competition with the Beneficiary against the Constructor or any other person or, in respect of any such payment, demand or accept repayment of any monies or, in respect of any such payment, claim any right of contribution, set-off or indemnity, or take any security from the Constructor in connection with this Deed (and, if taken, any such security shall be held by the Guarantor as security for its liability to the Beneficiary under this Deed).
- 8.2 Any sums received by the Guarantor or the amount of any set-off exercised by the Guarantor in breach of Clause 8.1 shall be held by the Guarantor in trust for, and shall be promptly paid to, the Beneficiary.

9. INTEREST AND COSTS

- 9.1 Subject always to the limits of liability set out in this Deed, any amount payable hereunder and not paid within 5 Business Days of its becoming due shall bear interest at the rate specified in the Contract for payments by the Constructor from the date the payment becomes due to the date of payment of the amount due (and any accrued interest) which interest rate shall apply before and after judgment. Such interest shall be calculated on a day to day basis but not compounded.
- 9.2 The Beneficiary's reasonable costs and expenses (including reasonable legal fees) and, on a full indemnity basis, any stamp duties and any value added tax incurred in connection with the valid enforcement of this Deed shall be reimbursed by the Guarantor to the Beneficiary on the production of invoices and receipts with such detail as is reasonable in order for the Guarantor to be able to assess the reasonableness of the costs and expenses.

¹ if Guarantor is not UK based then the clauses in the Schedule should be inserted here and the schedule deleted. Otherwise the schedule should be deleted.

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10. **NO WAIVER**

No delay or omission of the Beneficiary in exercising any right, power or privilege under this Deed shall impair or be construed as a waiver of such right, power or privilege, nor shall any single or partial exercise of any such right, power or privilege preclude any further exercise of such right, power or privilege or the exercise of any other right, power or privilege. The rights and remedies of the Beneficiary provided for in this Deed are cumulative and not exclusive of any rights or remedies provided by law.

11. **NOTICES**

11.1 Any demand, notice or other communication to be given under this Deed shall be in writing, shall be addressed as provided by Clause[s] 11.4 [and 13 (*Agent for Service*)] below (or to any other address as the parties hereto may from time to time notify the other parties for the purpose of this Clause 11), and in the case of a demand shall be served personally.

11.2 A demand shall subject to Clause 11.5 be deemed to have been served upon delivery at the address of the Guarantor.

11.3 A notice or communication other than a demand shall subject to Clause 11.5 be deemed to have been served on the recipient as follows:

11.3.1 if sent by personal delivery, upon delivery at the address of the relevant party; and

11.3.2 if sent by first class post, two Business Days after the date of posting.

11.4 The contact details of the parties are as follows:

11.4.1 In respect of the Beneficiary:

[Address]

For the attention of: []

11.4.2 In respect of the Guarantor:

[Address]

For the attention of: []

11.5 Any demand, notice or other communication received on a day which is not a Business Day, or after 5pm (in the time zone pertaining to the place of receipt) on a Business Day, will be deemed to be served on the next Business Day.

12. **WARRANTIES**

12.1 The Guarantor additionally represents and warrants to the Beneficiary on the date of this Deed as follows:

12.1.1 the Guarantor is a corporation validly incorporated under the law of the jurisdiction of its incorporation;

12.1.2 the Guarantor has the corporate power to enter into and perform this Deed and has taken all necessary actions (including the obtaining of any necessary consents) in order to authorise its entry into, and performance and delivery of, this Deed, and its performance of the transactions contemplated hereby;

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- 12.1.3 the entry into and performance of this Deed does not result in a breach of (i) any law or regulation applicable to it or any official or judicial order applicable to it or (ii) its articles of association;
- 12.1.4 the Deed constitutes valid, legally binding and enforceable obligations of the Guarantor, subject, as to enforcement, to insolvency, moratorium and similar laws of general applicability relating to or affecting creditors' rights; and
- 12.1.5 it has not entered into this Deed in reliance upon, nor has it been induced to enter into this Deed by any representation, warranty or undertaking made by or on behalf of the Beneficiary (whether express or implied and whether pursuant to statute or otherwise) which is not set out in this Deed.

13. [AGENCY ²

- 13.1 The Guarantor hereby irrevocably designates, appoints and empowers [...] at its registered office from time to time to act as its authorised agent to receive service of process and any other legal summons in England and Wales for the purposes of any legal action or proceeding brought or to be brought by the Beneficiary in respect of this Deed. The Guarantor hereby irrevocably consents to the service of process or any other legal summons served in such way. This clause does not affect any other method of service allowed by law.]

14. RIGHTS OF THIRD PARTIES

- 14.1 No person who is not a party to this Deed shall have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Deed.

15. COUNTERPARTS

- 15.1 This Deed may be executed in any number of counterparts. This has the same effect as if the signatures on the counterparts were on a single copy of this Deed.

16. LAW AND JURISDICTION

- 16.1 This Deed and any non-contractual obligations arising out of or in connection with it shall be governed by English law. The Guarantor and the Beneficiary hereby irrevocably and unconditionally submit to the exclusive jurisdiction of the Courts of England with respect to any dispute or difference arising out of or in connection with this Deed, save in connection with the enforcement of any judgment of the Courts of England.

IN WITNESS WHEREOF the Guarantor and the Beneficiary have executed and delivered this Deed as a deed on the date first written above.

[INSERT EXECUTION BLOCKS FOR EACH OF THE GUARANTOR AND THE BENEFICIARY]

² delete unless Guarantor not based in UK

Schedule***Tax Grossing up provisions to insert at Clause 7.2***

- 7.2 Subject to the limits on the Guarantor's liability in this Deed and to the following provisions of this Clause 7, if any deduction or withholding must be made by law, the Guarantor will pay that additional amount which is necessary to ensure that the Beneficiary receives a net amount equal to the full amount which it would have received if the payment had been made without the deduction or withholding.
- 7.3 If an additional amount is paid by the Guarantor pursuant to Clause 7.2 and the Beneficiary determines (in its discretion, acting reasonably) that it has obtained a credit, repayment or other financial benefit relating to Tax as a result of the payment of the additional amount, the Beneficiary shall pay to the Guarantor an amount which it determines (in its discretion, acting reasonably) will leave it (after the making of that payment) in the same after-Tax position as it would have been in had no deduction or withholding been required to be made by the Guarantor.
- 7.4 The Guarantor shall not be obliged to pay the additional amount referred to in Clause 7.2, to the extent that the payment made under this Deed is in respect of an amount paid or liability discharged by the Beneficiary which gives rise to, or the circumstances in which such amount is payable or such liability is discharged gives rise to, a Tax relief to the Beneficiary and the Tax relief is capable of being utilised by the Beneficiary to reduce the Tax payable by it whether on the amount paid under this Deed or otherwise and assuming such relief is utilised to the maximum extent possible.

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ANNEX 2 – VESTING AGREEMENT

DATED _____ **20**^{**[1]**}

(1) THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

and

(2) [INSERT CONSTRUCTOR]

VESTING AGREEMENT

relating to

[INSERT PROJECT DETAILS]

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THIS VESTING AGREEMENT IS MADE ON THE

OF

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BETWEEN:

- (1) **THE SECRETARY OF STATE FOR THE HOME DEPARTMENT** (acting through the Home Office) whose principal place of business is at 2 Marsham Street, London SW1P 4DF (the "**Client**", with such term including its successors in title and permitted assigns); and
- (2) **[INSERT NAME OF CONSTRUCTOR]** (company number **[INSERT NUMBER]**), whose registered office is at **[INSERT ADDRESS]** (the "**Constructor**"),
- each a "**Party**" and together the "**Parties**."

WHEREAS:

- (A) The Parties have entered into an ACA Standard Form of Contract for Project Partnering (PPC2000 – amended 2013) (as amended) dated **[INSERT DATE]** (the "**Partnering Contract**") relating to the design, supply and construction of **[INSERT DESCRIPTION OF THE PROJECT]** (the "**Project**", as more particularly described in the Partnering Contract) at **[INSERT NAME OF THE SITE]** (the "**Site**").
- (B) Pursuant to and in accordance with the provisions of the Partnering Contract, in consideration of the Client's agreement to include in the next application for payment in connection with the Project the sum of **[INSERT SUM IN WORDS]** (£**[INSERT SUM AS A NUMBER]**) (the "**Payment**") in respect of the plant, goods and/or materials identified in Annex 1 to this Vesting Agreement (referred to herein as the "**Relevant Materials**") prior to delivery to the Site, the Constructor has agreed to enter into this Vesting Agreement in favour of the Client.
- (C) This Vesting Agreement is supplemental to the Partnering Contract.

THIS DEED HEREBY WITNESSES as follows:

1. The Constructor warrants to the Client that:
- 1.1 **[legal title to and property in the Relevant Materials is vested absolutely in the Constructor][not used]**³;
- 1.2 **[the Relevant Materials are free from all third party liens, charges and other encumbrances][not used]**⁴;
- 1.3 the Relevant Materials are stored at the premises identified in Annex 1 to this Vesting Agreement and have been set apart from all other plant and/or materials at such location and are clearly and visibly marked, individually or in sets (either by letters or figures or by reference to a pre-determined code) so as to identify the Client and their destination, citing both the Project and the Site; and
- 1.4 pursuant to paragraph 1.3, the Relevant Materials shall not be moved from the stated location, except for the purpose of manufacture or assembly for the Project, or delivered to the Site, unless specifically instructed and required the Client.
2. The Constructor warrants and undertakes to the Client that legal title to and property in the Relevant Materials will automatically transfer to the Client free from all liens, charges and encumbrances on the date that the Payment has been made to the Constructor.

³ **DRAFTING NOTE** – To be updated on a case-by-case basis (i.e. if the Constructor does not have title in the Relevant Materials due to them not being in its possession).

⁴ **DRAFTING NOTE** – As footnote (1).

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3. The Constructor warrants and undertakes to the Client that pending delivery of the Relevant Materials to the Site and incorporation in the Project, the Relevant Materials:
- 3.1 shall be kept and maintained in good, safe and secure conditions at the premises identified in Annex 1 of this Vesting Agreement; and
- 3.2 will continue to be kept apart from all other plant and/or materials at such location and will be clearly and visibly marked as the property of the Client destined for the Project.
4. Save in the event of an emergency threatening the loss or destruction of or damage to the Relevant Materials, pending delivery of the Relevant Materials to the Site and incorporation in the Project the Constructor shall not move or remove or cause or permit the Relevant Materials to be moved or removed without the Client's prior written consent.
5. The Client (and/or a person acting on its behalf) shall be entitled to inspect the Relevant Materials at any time upon reasonable prior notice to the Constructor.
6. The Constructor shall:
- 6.1 be responsible for any loss and/or destruction of and/or damage to the Relevant Materials whilst in the Constructor's custody or in transit by or on behalf of the Constructor;
- 6.2 pending delivery of the Relevant Materials to the Site and incorporation in the Project, the Constructor shall insure the Relevant Materials for their full reinstatement value under a policy of insurance protecting the interests of both the Client and the Constructor against the risk of loss, destruction and damage howsoever arising; and
- 6.3 as and when reasonably requested to do so by the Client, the Constructor shall provide the Client with documentary evidence that the insurance required pursuant to this paragraph 6 is in full force and is being maintained.
7. Nothing contained in this Vesting Agreement, the Partnering Contract or any payment that may be made to the Constructor in respect of the Relevant Materials shall be taken as any approval or acceptance by the Client or any of the Client's agents that the Relevant Materials are necessarily in accordance with the Partnering Contract.
8. The Constructor shall indemnify the Client against any demands, claims, proceedings, losses, liabilities, damages, costs and/or expenses of whatsoever nature suffered or incurred by the Client (subject to the Client using reasonable endeavours to mitigate the same) arising out of any breach of any of the terms contained in this Vesting Agreement.
9. In the event of the termination of the obligation of the Constructor to undertake and complete the Project under the Partnering Contract for a reason that is attributable to a breach by the Constructor or the Constructor being subject to bankruptcy or insolvency in accordance with Clause 26.2 of the Partnering Contract:
- 9.1 the Constructor shall, at its cost, deliver the Relevant Materials to (or adjacent to) the Site or to an alternative location for the purposes of storage, as instructed by the Client; and
- 9.2 if the Constructor fails to promptly perform such delivery, the Constructor authorises the Client to enter the site referred to in Annex 1 and, at the Constructor's cost, collect and take the Relevant Materials to (or adjacent to) the Site or to any location for the purposes of storage at the Client's sole discretion,
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provided always that if the obligation of the Constructor to undertake and complete the Project is terminated by the Client under the Partnering Contract for any other reason, the Client shall be entitled to collect such Relevant Materials at its own cost (or request that the Constructor delivers the same to the Site or such other premises as specified by the Client, subject to the Client reimbursing the Constructor its reasonable costs for doing so).

10. This Vesting Agreement does not create any right enforceable by any person not a Party to it (whether pursuant to the Contracts (Rights of Third Parties) Act 1999 or otherwise), save that the Client may assign the benefit of this Vesting Agreement to any person to whom it assigns the benefit of the Partnering Contract, provided that such assignment takes place at the same time (and to the same person) as the assignment of the benefit of the Partnering Contract or at the same time (and to the same person) as a novation of the Partnering Contract, with any reference to the "Client" in this Vesting Agreement included the Client's permitted assignees.
11. In the event of any dispute and/or difference under or in respect of this Vesting Agreement, such dispute and/or difference shall be settled in the same way as a dispute and/or difference in connection with the Project under the Partnering Contract and shall be subject to the same governing law and jurisdiction as the Partnering Contract.
12. It is agreed that whatever the manner in which the Parties have executed this Vesting Agreement, the period of limitations (in respect of which the Constructor and the Client 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 Vesting Agreement, the Limitation Act 1980 and any statute, regulation or similar amending, consolidating and/or replacing that Act) applicable to any claim or claims arising out of or in connection with this Vesting Agreement shall expire twelve (12) years from the date of the Client Representative's notice that the Constructor has fulfilled its obligations pursuant to Clause 21.5 of the Partnering Contract.
13. This Vesting Agreement is without prejudice to the terms of the Partnering Contract, which shall continue to be binding and of full force and effect and shall not be amended, waived or affected by this Vesting Agreement.

[INSERT EXECUTION BLOCKS]

ANNEX 1

MATERIALS

The following items of plant and materials are held by the Constructor at the location(s) referred to below:

[illegible]

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CONTENTS – The following parts of this contract have been redacted:

Commencement Agreement	
<i>Appendix</i>	<i>Title</i>
A	Project Timetable
B	Construction Phase Plan
C	Pre-commencement surveys
D	Planning issues
E	<p>Project Brief and Project Proposals, including:</p> <ul style="list-style-type: none"> 10. Signed DPP Form of Tender 11. Summary scope of works (including Project Proposals) 12. Sequence drawings (Not Used) 13. Drawing Register 14. Specifications and Drawings – see Section 6 of the Project Proposals as included in Appendix E2 15. Sustainability Statement – see Section 9 of the Project Proposals as included in Appendix E2 16. Quality Management Plan 17. Statement of any derogations from standard specifications 18. Whole life costing statement (Not Used)
F	List of Specialists
G	<p>Agreed Maximum Price and Price Framework, including:</p> <ul style="list-style-type: none"> 4. Summary of the AMP 5. Risk Register 6. Cash flow forecast (Not used)
H	Site Waste Management Plan
J	Evidence of insurance
K	Key Performance Indicators (Not used)
L	Queries raised by the Technical Assessors and the responses to these queries