

**DATED**

**2017**

**SECRETARY OF STATE FOR EDUCATION**

**AND**

**RIDER LEVETT BUCKNALL UK LIMITED**

**AGREEMENT**

**relating to**

**the engagement of a consultant for the provision  
of professional survey services in connection with the  
Condition Data Collection Project**

**BETWEEN:**

- (1) **THE SECRETARY OF STATE FOR EDUCATION** of Sanctuary Buildings, Great Smith Street, London SW1P 3BT ("**SoSE**"); and
- (2) **RIDER LEVETT BUCKNALL UK LIMITED** (company no. 04653580) whose registered office is at 15 Colmore Row, Birmingham, West Midlands, England, B3 2BH ("**the Consultant**")

**1 BACKGROUND**

**Appointment of Consultant**

- 1.1 SoSE has been commissioned to manage the delivery of a national programme of school conditions assessments called Condition Data Collection ("CDC") to collect information on the building condition of the education estate and is appointing a number of consultants to carry out CDC across the whole of the schools estate.
- 1.2 The Consultant will be one of a number of Surveying Organisations delivering data collection services in accordance with Schedule 2.
- 1.3 The TSM will oversee the Services by providing the Project with technical leadership and programme management services.

**Role of this agreement**

- 1.4 This agreement governs the provision of the Services by the Consultant.

**2 DEFINITIONS AND INTERPRETATION**

**Definitions**

- 2.1 In this Agreement, the following expressions shall have the following meanings:

**"Additional Fee"**

means any fee to be paid to the Consultant in consideration of the performance of Additional Services such fee being the amount calculated in accordance with clause 6.5

**"Additional Services"**

any:

- (a) additional services that are not comprised in the Services; and/or
  - (b) variations to the Services (including a suspension of any part of the Services)
- that SoSE requires the Consultant to perform or cease to perform (as the case may be) in connection with the Project.

**"Agreed Rates"**

the rates for the provision of Additional Services by the Consultant as identified and set out in Schedule 1

**"Agreement"**

this agreement and its schedules

**"Commencement Date"**

29 December 2016

**"Confidential Information"**

all financial, technical, business or similar information relating to the Services including records, documents, papers and other materials however originating relating to the Services or to the business affairs of SoSE and/or any Customer

**"Consultant's Representative"**

the representative of the Consultant appointed pursuant to clause 5.2

**"Customer"**

any of the following bodies or other such replacement bodies carrying out such functions and activities who have an interest in the Project and/or own or occupy one or more of the Sites :

Community schools

Foundation and trust schools

Voluntary-aided schools

Voluntary-controlled schools

Academies – multi-academy trust (MAT)

Academies – single-academy trust (SAT)

City technology colleges

Nursery Schools (not privately owned)

Non-maintained special schools (NMSS)

Free schools, studio schools

University technology colleges (UTCs)

**"Customer Representative"**

such person as the Customer for each Site may appoint from time to time and notify to the Consultant who shall act as the representative of, and point of contact for, the relevant Customer

**"Disclosure and Barring Service"**

means the non-departmental public body established pursuant to the Protection of Freedoms Act 2012

**"Documents"**

all reports, drawings, templates, details, designs, charts, specifications, plans and any other documents or materials (including any computer software developed by the Consultant used to generate them and any designs contained in them) but excluding internal memoranda and documents and working papers, which have been created

and/or developed by the Consultant in the course of performing its obligations under this Agreement

**"Fee"**

the Consultant's fee for the performance of the Services (including the expenses and disbursements) as set out in Schedule 1

**"FOIA"**

the Freedom of Information Act 2000

**"Initial Survey"**

the initial surveys to be carried out by the Consultant following receipt of the Project Documentation and the Project Dataset

**"IT Hardware Requirements"**

the IT Hardware requirements as set out in Schedule 7

**"IT Solution"**

means the IT Solution that is being procured by SoSE to support the delivery of the Project

**"Intellectual Property"**

all copyright and all neighbouring and database rights and moral rights, registered designs, registered and unregistered design rights, or any rights or property similar to the foregoing in any part of the world whether registered or unregistered together with the right to apply for the registration of such rights in any part of the world and the rights to current applications for registration of any such intellectual property

**"Interest Rate"**

8% per annum over the base rate of the Bank of England from time to time

**"KPI Review Period"**

has the meaning ascribed to it in clause 23.7

**"Key Performance Indicators"**

the key performance indicators set out in Schedule 6

**"Key Personnel"**

the persons listed in Schedule 4

**"Legislation"**

the FOIA and the Environmental Information Regulations 2004

**"Liability Period"**

the period from the date of this Agreement until no less than 12 years after completion of the last of the Services

**"Manager"**

Julian Wood or such other person appointed and authorised by SoSE for the purposes of this Agreement as notified by SoSE to the Consultant

**"Method Statement"**

the Consultant's response to the ITT setting out how they will undertake the Services, a copy of which is attached at Schedule 11

**"Notice of Intention to Suspend"**

a notice in writing specifying the Consultant's intention to suspend performance of any or all of its obligations under this Agreement stating the ground(s) on which the Consultant intends to suspend performance

**"Parties"**

the parties to this Agreement and Party shall be construed accordingly

**"Payment Application"**

an application for payment submitted in writing by the Consultant to SoSE in accordance with this Agreement which shall be in the form of a valid VAT invoice and shall state:

- a) the instalment of the Fee for which the application is made and the basis upon which such instalment is calculated;
- b) the amounts on account of the Fee previously paid by SoSE to the Consultant;
- c) the amounts of any Additional Fees payable by SoSE to the Consultant,

and shall be supported by such documents, vouchers and receipts as may reasonably be requested by SoSE

**"Professional Indemnity Insurance"**

professional indemnity insurance with a limit of indemnity of not less than £5,000,000 (five million pounds) for any one occurrence or series of occurrences arising out of any one event

**"Programme"**

the programme agreed between SoSE and the Consultant in accordance with clause 4.2.3 as amended from time to time and approved by SoSE for the carrying out and completion of the Services outstanding following completion of the Initial Surveys

**"Project"**

the delivery of the CDC programme

**"Project Dataset"**

the CDC dataset to be supplied by SoSE

**"Project Documentation"**

the CDC documentation template form supplied with the ITT for completion by the Consultant

**"Report"**

the written notice to be provided by the Consultant and approved by SoSE in respect of the Consultant's performance against the Key Performance Indicators prior to any Payment Application

**"Request for Information"**

have the meaning set out in the FOIA

**"Retail Prices Index"**

the "All Items" index figure of the Index of Retail Prices published by the Office for National Statistics or any successor ministry or department of government

**"Services"**

the condition data collection services (or parts thereof) to be provided by the Consultant to SoSE in relation to any part or parts of the Project as more particularly described in Schedule 2, any Additional Services, any other obligations to be performed by the Consultant under this Agreement and any other services reasonably incidental to the above requested by SoSE

**"Site(s)"**

the site or sites where the Services are to be carried out as notified to the Consultant by SoSE following completion of the Initial Surveys

**"Site Programme"**

has the meaning ascribed to it in clause 4.4

**"Site Requirements"**

the Site specific conditions set out in Schedule 5

**"Surveying Organisations"**

the consultants listed at Schedule 10 responsible for providing the Services in respect of the Sites

**"TSM"**

the technical survey management consultant appointed by SoSE

**"TSM Services"**

the technical leadership and programme management services performed by the TSM in respect of the Project

**"Working Day"**

any day on which banks are generally open for business (other than Saturdays, Sundays or public holidays).

- 2.2 References to clauses and schedules are references to clauses of and schedules to this Agreement.
- 2.3 The provisions of the schedules are incorporated in this Agreement.
- 2.4 Any reference to the singular includes the plural and vice versa and references to any gender includes both genders.
- 2.5 Any references to a person includes any individual, firm, unincorporated association or body corporate.

- 2.6 The headings in this Agreement are included for ease of reference only and shall not affect the interpretation or construction of this Agreement.
- 2.7 Any periods of time referred to in this Agreement and expressed in days shall refer to calendar days unless stated otherwise.
- 2.8 Any reference to any statute or any section of any statute includes any statutory extension, amendment, modification, consolidation or re-enactment and any statutory instrument, order or regulation made under any statute for the time being in force.
- 2.9 The words "include", "includes" and "including" are to be construed as if they were immediately followed by the words "without limitation".

### **3 THE TERM OF THIS AGREEMENT**

#### **Expiry**

- 3.1 Subject to earlier termination in accordance with clause 26, this Agreement shall commence on the Commencement Date and shall continue for thirty six (36) months from the Commencement Date unless extended in accordance with clauses 3.2 and 3.3.

#### **Option to Extend**

- 3.2 SoSE may give notice to the Consultant at any time before the expiry of this Agreement in accordance with clause 3.1 to extend the period of this Agreement for a further period of up to one (1) year.
- 3.3 Where SoSE extends the period of the Agreement for a further period of one year in accordance with clause 3.2, SoSE may give notice to the Consultant at any time before the expiry of the further one year period to extend the period of the Agreement for a second further period of up to one (1) year.

#### **No Guarantee**

- 3.4 This Agreement does not give rise to any expectation or entitlement on the part of the Consultant that it will be awarded any minimum volume of work in relation to the Project.

### **4 CONSULTANT'S OBLIGATIONS**

- 4.1 The terms and conditions of this Agreement and the warranties and undertakings which it contains are deemed to apply to all services performed and to be performed by the Consultant in relation to the Project both before and after the date of this Agreement.
- 4.2 The Consultant shall, in the performance of the Services, exercise the degree of skill, care and diligence reasonably to be expected from an appropriately qualified and competent professional person holding himself out as competent to perform

those services' duties and obligations in relation to projects of a similar size, scope and nature to the Project and shall:

- 4.2.1 unless and insofar as SoSE otherwise directs, assess the suitability of materials and goods as examined during the carrying out of the Services in accordance with all relevant permissions, current British and European standards and any other approved criteria and relevant codes of practice;
- 4.2.2 comply with all statutory provisions relevant to the provision of the Services;
- 4.2.3 promptly agree the Programme with SoSE upon completion of the Initial Surveys;
- 4.2.4 carry out the Services expeditiously and complete them as soon as reasonably practicable and in any event by September 2019 and in accordance with the Programme (subject to any extension of this Agreement in accordance with the provisions of clause 3);
- 4.2.5 ensure the Services are carried out in a manner that satisfies the IT Hardware Requirements;
- 4.2.6 ensure that the Services comply with (and ensure the completed Project complies with) any:
  - 4.2.6.1 Act of Parliament;
  - 4.2.6.2 instrument, rule or order made under any Act of Parliament; and
  - 4.2.6.3 regulation or bye-law of any local authority, statutory undertaker or public or private utility or undertaking that has any jurisdiction over the Project or with whose systems or property the Project is or will be connected;
- 4.2.7 ensure that all persons concerned in the performance of the Services are suitably qualified, experienced and competent having regard to the tasks and functions expected from them and shall use reasonable endeavours to ensure that they liaise as necessary between themselves;
- 4.2.8 visit the Sites as often as is required to procure the proper performance of the Services and comply with the Site Requirements as set out in Schedule 5 (as may be amended and notified to the Consultant from time to time);
- 4.2.9 ensure that the Services are carried out in accordance with the Consultant's Method Statement. In the event of any inconsistency or



discrepancy between the provisions of the body of this Agreement, the Services and the Method Statement, the conflict should be resolved according to the following descending order of priority: i) the body of this Agreement; ii) the Services and iii) the Method Statement.

- 4.3 Without prejudice to the generality of clause 4.2, the Consultant shall keep the SoSE and the Customer for each Site regularly and reliably informed of the progress of the Services.
- 4.4 The Consultant shall promptly agree with the Customer for each Site a programme for the carrying out of the Services ("the Site Programme"). The Consultant shall carry out the Services diligently and in accordance with the Site Programme.
- 4.5 The Consultant shall immediately inform SoSE in writing if it is unable to perform the Services in accordance with this Agreement or comply with the Site Programme.

## **5 CONSULTANT'S KEY PERSONNEL AND REPRESENTATIVE**

- 5.1 The Consultant shall use the Key Personnel in the performance of the Services and shall not make any changes to the Key Personnel without the prior written consent of SoSE (which shall not be unreasonably withheld, provided that any replacements for any Key Personnel shall be no less qualified to perform the relevant role than the person replaced).
- 5.2 The Consultant shall immediately appoint a Consultant's Representative for the Project to direct and control the overall performance by the Consultant of the Services and act as the primary contact and liaison with SoSE and any Customer. Such person (or any replacement approved by SoSE pursuant to clause 5.3 from time to time) shall have full authority to act on behalf of the Consultant for all purposes in connection with this Agreement.
- 5.3 The Consultant shall not replace the Consultant's Representative (nor any replacement approved by the SoSE pursuant to this clause 5.3) without the prior approval of SoSE (which approval shall not be unreasonably withheld or delayed) as to the fact and identity of such replacement.

## **6 FEE**

- 6.1 Subject to a satisfactory Report, SoSE shall pay to the Consultant the Fee and any Additional Fee in accordance with this clause 6. The Fee and any Additional Fee shall be deemed to include all expenses and disbursements incurred by the Consultant in relation to the performance of the Services.
- 6.2 The Fee and any Additional Fee shall be payable in instalments. The Consultant shall submit no more than one Payment Application to SoSE each month for the proportion of the Fee properly payable in accordance with Schedule 1 in respect

of the Services and any Additional Fee for Additional Services completed in the preceding month

- 6.3 The due date for payment of each instalment shall be the date on which the relevant Payment Application is received by SoSE. The final date for payment of each instalment shall be 30 days after it becomes due.
- 6.4 SoSE's obligation to pay the Fee, any Additional Fee and any other sums payable under this Agreement to the Consultant shall be subject to the receipt by SoSE of a properly prepared Payment Application and valid Value Added Tax invoice.
- 6.5 If SoSE requires the Consultant to perform any Additional Services in accordance with clause 7, SoSE shall pay to the Consultant such Additional Fee as may be agreed between SoSE and the Consultant (both parties exercising reasonable endeavours to reach such agreement) or failing agreement, such additional fee or fees as calculated based on the Agreed Rates.
- 6.6 SoSE may, at its discretion, recalculate and adjust the amounts and timing of instalment payments to ensure that such payments properly reflect the proportion of the Fee that has already been paid for the Services performed. The balance of the unpaid proportion of the Fee shall be paid in appropriate instalments consistent with the Services due to be performed by the Consultant.
- 6.7 Not later than 5 days after the date on which a payment becomes due in accordance with clause 6.3, SoSE shall give notice to the Consultant of the amount (if any) of the payment made, or proposed to be made and the basis (if this is not otherwise clear from the Consultant's relevant invoice) on which that amount was calculated.
- 6.8 SoSE shall not pay less than the sum notified in accordance with clause 6.7 unless it has given to the Consultant, not later than 5 days before the final date for payment, a notice specifying the lesser sum due to the Consultant and the basis on which such sum has been calculated.
- 6.9 All costs fees and disbursements expressed to be payable or reimbursable to SoSE are exclusive of Value Added Tax unless otherwise stated. Value Added Tax shall be payable by SoSE on the submission by the Consultant of a valid Value Added Tax invoice.
- 6.10 The fees payable to the Consultant shall cover the reasonable and proper cost of all prints, plans, drawings, sketches, specifications, and other documents including any material SoSE may wish to use in legal documents and any copying charges.
- 6.11 If any sum payable under this Agreement is not paid by the final date for payment then, without prejudice to the Consultant's other rights under this Agreement:
  - 6.11.1 that sum shall bear the Interest Rate from the final date for payment until payment is made in full, both before and after any judgment. The Parties agree that this clause 6.11.1 is a substantial remedy for late payment of

any sum payable under this Agreement in accordance with section 8(2) Late Payment of Commercial Debts (Interest) Act 1998;

6.11.2 the Consultant shall be entitled to serve a Notice of Intention to Suspend on SoSE and if SoSE has failed to pay any sum due to the Consultant for a minimum period of seven days following the date on which the Notice of Intention to Suspend was served on SoSE, the Consultant shall be entitled to:

6.11.2.1 suspend any or all of its obligations under this Agreement; and

6.11.2.2 reimbursement by SoSE of a reasonable sum to cover costs and expenses reasonably incurred by the Consultant as a result of exercising its right to suspend in accordance with this clause 6.11.2,

provided that such right to suspend shall cease immediately upon payment in full by SoSE of the sum due to the Consultant.

## **7 ADDITIONAL SERVICES**

7.1 In addition to the Services, the Consultant shall perform the Additional Services in relation to the Project as SoSE may from time to time instruct in writing. SoSE shall pay an Additional Fee to the Consultant in respect of the Additional Services in accordance with clause 6.5.

7.2 The Consultant shall immediately comply with all reasonable instructions issued by SoSE unless any such instructions conflict with any statutory requirements. If the Consultant fails to comply within 7 days of any such instructions, SoSE may employ a third party to give effect to such instructions and the additional cost to SoSE shall be recoverable from the Consultant or deducted from any amount otherwise due to the Consultant.

## **8 OBLIGATIONS OF THE CUSTOMER**

8.1 Throughout the period of this Agreement during normal business hours in Customer's school term times only and subject to the Site Requirements as set out in Schedule 5, the Consultant shall be entitled to reasonable access to the Site(s) for the purpose of carrying out the Services and SoSE shall use reasonable endeavours to procure that the Customer shall supply any relevant information and other written material in the possession of the Customer as the Consultant shall require to perform the Services.

8.2 SoSE shall use reasonable endeavours to procure that the Customer for each Site shall appoint one or more appropriate personnel (which shall include the Customer's Representative) to liaise with the Consultant.

## **9 MANAGEMENT**

- 9.1 The Consultant shall comply with any reasonable guidance, guidelines, requests or directions issued by the SoSE or the TSM from time to time in respect of the Services.
- 9.2 The Consultant shall address any enquiries about procedural or contractual matters in writing to the SoSE and the TSM.
- 9.3 SoSE reserves the right to call performance monitoring and/or Customer care meetings to be held at the Consultant's facilities if required. These shall be attended by the Consultant (at no cost to SoSE and/or the Customer), the TSM and any other person SoSE wishes to attend.

## **10 CONSULTANT'S EMPLOYEES AND SUB-CONSULTANTS**

- 10.1 The Consultant shall include in its contracts with suppliers or sub-consultants engaged for the purposes of the Services, a written condition undertaking to make payment for the supply of their goods and/or services within 30 days of receipt of the supplier's or sub-consultant's invoice (provided that such goods and/or services have been supplied in accordance with the relevant contract).
- 10.2 The Consultant shall take all reasonable steps to satisfy itself that its employees or sub-consultants (or their employees) are suitable in all respects to perform the Services.
- 10.3 The Consultant shall immediately notify SoSE and the TSM if they have any concerns regarding the propriety of any of its employees or sub-consultants in respect of work/services rendered in connection with this Agreement.
- 10.4 The Consultant shall provide SoSE and the TSM with a list of any sub-consultants it intends to engage, what work it intends to award to such sub-consultants and the value of work to be sub-contracted to each sub-consultant as part of the information required by Clause 23.4.

## **11 INTELLECTUAL PROPERTY RIGHTS**

- 11.1 Subject to the following provisions of this Agreement, all Intellectual Property in the Documents is the property of and vested in SoSE. SoSE reserves the right to reproduce such Documents or to execute, or have executed, such work or services in accordance with the Documents as it may require.
- 11.2 SoSE grants (or, if such grant cannot legally take place until a later date, agrees to grant) to the Consultant with effect from the date of this Agreement or in the case of Intellectual Property not yet in existence with effect from the creation of such Intellectual Property, an irrevocable royalty-free non-exclusive licence (such licence to remain in full force and effect until the completion of the Consultant's obligations or the termination of this Agreement or the determination of the Consultant's engagement under this Agreement but notwithstanding any dispute under this Agreement) to use the Intellectual Property and to reproduce all

Documents for any purpose whatsoever connected with the Project and such other purposes as are reasonably incidental to the provision of the Services and such licence will carry the right to grant sub-licences and will be transferable to third parties. The Consultant will not hold SoSE liable for any use it may make of the Documents for any purpose other than that for which they were originally provided by it.

- 11.3 The Consultant warrants to SoSE that it has not and shall not grant the right to any third party to use or otherwise exploit any of the Documents other than in respect of any sub-licence granted in accordance with clause 11.2.
- 11.4 SoSE shall not be liable for any use the Consultant may make of the Documents.
- 11.5 The Consultant warrants to SoSE that the Documents (save to the extent duly appointed sub-consultants have been used to prepare the same) are the Consultant's own original work and that in any event their use in connection with the Project will not infringe the rights of any third party. The Consultant further warrants that where duly authorised sub-consultants are used their work shall be original and that it will arrange for the Intellectual Property in such work to be vested in the Consultant for the sole purpose of vesting the Intellectual Property in the Documents in SoSE under clause 11.1.
- 11.6 The Consultant agrees to give to SoSE, or those authorised by SoSE, access to the Documents and to provide copies (including electronic copies in a readable form) of the Documents at the expense of SoSE.
- 11.7 The Consultant waives and agrees not to assert (and to procure that any sub-consultants do likewise) any moral rights in the Documents or in relation to the Project that it (or any sub-consultants) may have pursuant to Part 1 Chapter IV of the Copyright, Designs and Patents Act 1988 or any re-enactment or modification of it.
- 11.8 Notwithstanding the provisions of clause 11.5 or any other part of this clause 11, in the event that the Consultant is unable to obtain an assignment of any Intellectual Property belonging to any authorised sub-consultants (or any other third party), then it shall procure that the authorised sub-consultant (or any other relevant third party) shall grant an irrevocable royalty-free, non-exclusive licence for SoSE to use such Intellectual Property for all purposes reasonably required for the delivery of the Project.

## **12 WARRANTY AND INDEMNITY**

- 12.1 The Consultant warrants to SoSE:
  - 12.1.1 that the obligations of the Consultant under this Agreement will be performed by appropriately qualified and trained personnel in accordance with the standard of care imposed in clause 4.2; and

- 12.1.2 that the accuracy of all representations or statements made and the advice given by the Consultant in connection with the performance of the Services and the accuracy of any Documents conceived, originated, made or developed by the Consultant under this Agreement will be carried out in accordance with the standard of care imposed in clause 4.2.
- 12.2 Without prejudice to any other remedy, if any part of the Services is not performed in accordance with this Agreement, SoSE shall be entitled to require the Consultant promptly to re-perform or replace the relevant part of the Services without additional charge to SoSE and, if the Consultant does not so re-perform or replace the relevant part of the Services within a reasonable period, assess the cost of remedying the failure ("the Assessed Cost") and to deduct from any sums due to the Consultant the Assessed Cost for the period that such failure continues.
- 12.3 The Consultant shall be liable for and shall indemnify SoSE, the Customer and their employees in full against any expense, liability, loss, claim or proceedings arising under statute or at common law in respect of personal injury to or death of any person whomsoever or loss of or damage to property real or personal arising out of the provision of the Services insofar as such damage or injury shall be due to any negligent act or omission of the Consultant, its employees, agents, officers, or sub-contractors.
- 12.4 The Consultant shall be liable for and shall indemnify SoSE, the Customer and their employees against any expense, liability, loss, claim or proceedings arising as a result of or in connection with any breach of the terms this Appointment through the negligent act or omission of the Consultant, its employees, agents and sub-contractors. SoSE and the Customer shall take all reasonable steps to mitigate the amount of loss and its consequent claims under this indemnity.
- 12.5 All property of the Consultant whilst on the Site(s) shall be there at the risk of the Consultant and SoSE and/or the Customer shall accept no liability for any loss or damage howsoever occurring to it.
- 12.6 Except in the case of death or personal injury caused by one Party's negligence or in other circumstances where liability may not be limited under applicable law, neither Party shall be liable to the other for any loss of income, loss of profit or any type of special, indirect or consequential loss.

### **13 PROFESSIONAL INDEMNITY INSURANCE**

- 13.1 The Consultant shall take out and maintain Professional Indemnity Insurance, for the duration of the Liability Period with reputable insurers carrying on business in the European Union, provided always that:
- 13.1.1 the insurance premiums in respect of the insurance shall at all times be the responsibility of the Consultant;

- 13.1.2 if such insurance is not available to the Consultant at commercially reasonable rates and terms (excluding any increase in premiums attributable to the actions, omissions, errors or defaults of the Consultant), the Parties shall meet, the Consultant shall outline the steps he intends to take to manage such risks and the Parties shall use reasonable endeavours to agree a method of managing such risk;
- 13.1.3 the Consultant shall provide SoSE with reasonable evidence that the policies referred to in this clause 13 or clause 14 are in full force and effect.

## **14 PUBLIC LIABILITY INSURANCE**

The Consultant shall maintain, or shall ensure that its sub-consultants or contractors carrying out any works in connection with the provision of the Services maintain, public liability insurance in respect of damage to any property of the Customer or any property of any third party and any death or personal injury to any person caused by the carrying out of such works and the Consultant shall make good any damage or loss so caused or suffered.

## **15 LIMIT OF LIABILITY**

- 15.1 No action or proceedings under or in respect of this Agreement, whether in contract or in tort, in negligence or for the breach of statutory duty or otherwise shall be commenced against the Consultant after the expiry of the Liability Period or such earlier date as may be prescribed by law.
- 15.2 The Consultant's liability in the aggregate to SoSE under or in connection with this Agreement, whether in contract or in tort or in negligence or breach of statutory duty or otherwise (other than in respect of death or personal injury), shall not exceed the limit of indemnity of the Professional Indemnity Insurance required to be maintained by the Consultant in accordance with clause 13.

## **16 FREEDOM OF INFORMATION**

- 16.1 The Consultant acknowledges that SoSE and the Customers are subject to the requirements of the FOIA and shall facilitate SoSE's and the Customer's compliance with its information disclosure requirements pursuant to the same in the manner provided for in clauses 16.2 to 16.8 (inclusive).
- 16.2 Where SoSE or the Customer receives a Request for Information in relation to information that the Consultant is holding on its behalf, SoSE or the Customer (as applicable) shall transfer to the Consultant such Request for Information that it receives as soon as reasonably practicable and the Consultant shall provide:
  - 16.2.1 SoSE or the Customer (as applicable) with a copy of all such Information in the form that SoSE or the Customer (as applicable) reasonably requires within five Working Days (or such other period as SoSE or the Customer (as applicable) may reasonably specify) of SoSE or the Customer's (as applicable) request; and

- 16.2.2 all necessary assistance as reasonably requested by SoSE or the Customer in connection with any such information, to enable SoSE or the Customer (as applicable) to respond to a Request for Information within the time for compliance set out in the Legislation.
- 16.3 SoSE or the Customer (as applicable) shall be responsible for determining in its absolute discretion:
  - 16.3.1 whether the information is exempt from disclosure under the Legislation;
  - 16.3.2 whether the information is to be disclosed in response to a Request for Information, and
  - 16.3.3 in no event shall the Consultant respond directly to a Request for Information unless expressly authorised to do so by SoSE or the Customer (as applicable).
- 16.4 The Consultant acknowledges that SoSE or the Customer may, acting in accordance with any Code of Practice issued under Part 1 of the FOIA, or any Department for Education Code of Practice, disclose information:
  - 16.4.1 without consulting with the Consultant;
  - 16.4.2 following consultation with the Consultant and having taken their views into account.
- 16.5 Subject to clause 16.4 in the event that, pursuant to a request which the SoSE or the Customer has received under the Legislation, SoSE or the Customer (as applicable) is requested to disclose any information provided to it by the Consultant, it will notify the Consultant promptly and it will consult with the Consultant prior to disclosing such information. SoSE or the Customer (as applicable) agrees to pay due regard to any representations which the Consultant may make in connection with such disclosure and in accordance with clause 16.3, apply any relevant exemptions/exceptions which may exist under the Legislation to such information.
- 16.6 The Consultant shall ensure that all information held on behalf of SoSE or the Customer (as applicable) is retained for disclosure and shall provide copies of such information as is reasonably requested.
- 16.7 The Consultant shall transfer to SoSE or the Customer (as applicable) any Request for Information received by the Consultant as soon as practicable and in any event within two Working Days of receiving it and shall not make any representations in such a way to prejudice SoSE or the Customer's (as applicable) position in relation to such request for information.
- 16.8 The Consultant acknowledges that any lists provided by him listing or outlining Confidential Information, are of indicative value only and that SoSE or the Customer may nevertheless be obliged to disclose Confidential Information in accordance with the provisions of this Agreement.



## **17 Access and Information**

Subject to agreement of the conditions upon which access is to be granted and discussions are to take place, the Consultant shall provide access at all reasonable times to SoSE's internal auditors or other duly authorised staff or agents to inspect such documents as the Consultant is required by statute to provide to such internal auditors or other duly authorised staff or agents.

## **18 Transfer of Responsibility on Expiry or Termination**

18.1 The Consultant shall, at no cost to SoSE, promptly provide such assistance and comply with such timetable as SoSE may reasonably require for the purpose of ensuring an orderly transfer of responsibility upon the expiry or other termination of this Agreement. SoSE shall be entitled to require the provision of such assistance both prior to and, for a reasonable period of time after the expiry or other termination of this Agreement.

18.2 The Consultant undertakes that it shall not knowingly do or omit to do anything which may adversely affect the ability of SoSE to ensure an orderly transfer of responsibility.

## **19 AMENDMENT AND VARIATION**

No amendment or variation to the Agreement shall be valid or binding on either Party unless it is in writing, refers expressly to this Agreement and is signed by or on behalf of each of the Parties. The Consultant shall comply with any formal procedures for amending or varying contracts which SoSE may have in place from time to time.

## **20 DATA PROTECTION**

20.1 The Consultant shall comply with the requirements of the Data Protection Act 1998 together with all relevant subordinate legislation and any other data protection legislation for the time being in force and shall not disclose or allow access to any personal data provided by SoSE or the Customer or acquired by the Consultant during the term of the Agreement other than to a person employed or engaged by SoSE or the Consultant.

20.2 The Consultant agrees to have in effect and maintain appropriate technical and organisational security measures to prevent unauthorised or unlawful processing of personal data and accidental loss or destruction of, or damage to, personal data.

20.3 The Consultant agrees that SoSE may process any personal and sensitive data concerning the Consultant.

20.4 Any use, disclosure of or access to personal data allowed under clause 20.3 shall be made in confidence and shall extend only so far as that which is specifically necessary in connection with the Agreement.

20.5 The Consultant shall store or process such personal data only in accordance with SoSE's or the Customer's reasonable instructions and at Sites specifically agreed in writing in advance with SoSE and/or the Customer.

20.6 For the purpose of this clause 20, "process" or "processing" has the same meaning as that in the Data Protection Act 1998.

## **21 WAIVER**

No delay by or omission by either Party in exercising any right, power, privilege or remedy under this Agreement shall operate to impair such right, power, privilege or remedy or be construed as a waiver thereof. Any single or partial exercise of any such right, power, privilege or remedy shall not preclude any other or further exercise thereof or the exercise of any other right, power, privilege or remedy.

## **22 CHANGING THE AGREED RATES**

The Agreed Rates and Fee will be reviewed only in the third and fourth years of this Agreement in the event that SoSE exercises its option to extend the period of this Agreement under clauses 3.2 and 3.3. Where necessary the Agreed Rates and Fee will be varied with effect from 1st April in the relevant year by the percentage change in the Retail Price Index (excluding mortgage interest payments) or such other lesser value as is agreed by the Parties for the preceding 12 months. For the avoidance of doubt, SoSE (at its sole discretion) reserves the right to use an alternative index should the Retail Price Index (excluding mortgage interest payments) be no longer available.

## **23 MEASUREMENT OF PERFORMANCE**

### **Measurement of Consultant's performance**

#### **Monitoring by SoSE and TSM**

23.1 Throughout the period of this Agreement, the performance of the Consultant in relation to the Services shall be monitored by SoSE and the TSM. The Consultant shall provide the Report promptly for review by SoSE and the TSM monthly in advance of any Payment Application. The Consultant shall resubmit the Report in the event that the SoSE cannot agree its content. Such monitoring may include but shall not be limited to obtaining feedback on the Consultant's performance from Customers. SoSE reserves the right to share feedback and any other performance monitoring information which is obtained by SoSE with any Customer including, for the avoidance of doubt, the management information referred to in clause 23.4.

#### **Monitoring by Customers**

23.2 The Consultant's performance of the Services with a Customer may be monitored by the Customer.

#### **Records of Performance Monitoring**

- 23.3 The Consultant shall keep a written record of any performance monitoring carried out by a Customer pursuant to the Services and shall at the written request of SoSE provide access to such records to SoSE and TSM for contract monitoring purposes.

### **Management Information**

- 23.4 The Consultant will provide the Report in accordance with clause 23.1 and any additional management information to SoSE and the TSM bi-annually (on 1st April and 1st October each year) and on an ad hoc basis as requested by SoSE. The information to be provided to SoSE may include but not be limited to the following:
- 23.4.1 description of all Sites on which the Consultant is currently carrying out the Services including details of work in progress and expected completion date(s);
  - 23.4.2 details of the Consultant's personnel currently carrying out the Services;
  - 23.4.3 description of all Sites in respect of which the Consultant has not yet commenced the carrying out of the Services and estimated costs;
  - 23.4.4 fees invoiced to date for the carrying out of the Services;
  - 23.4.5 Customer Representative details for each Site for the Services (name, Customer, address); and
  - 23.4.6 comparison of activities against agreed milestones and deliverable tasks.

### **Evaluation Feedback**

- 23.5 The Consultant will comply with agreed evaluation and feedback procedures discussed with the Manager where appropriate.

### **Key Performance Indicators**

- 23.6 In the performance of the Services the Consultant shall meet the Key Performance Indicators.
- 23.7 SoSE and the TSM shall each monitor the Consultant's compliance with the Key Performance Indicators at monthly intervals throughout the duration of this Agreement ("the KPI Review Period").
- 23.8 If in any KPI Review Period the Consultant has failed to meet any of the Key Performance Indicators then:
- 23.8.1 SoSE may serve notice on the Consultant specifying the non-compliance(s); and

23.8.2 the Consultant shall submit its proposals in response to SoSE's notice no later than five Working Days from the date of such notice.

23.9 In the event that the Consultant fails to meet the Key Performance Indicators in the time category set out in the first column of the table at Schedule 6 for three consecutive KPI Review Periods, SoSE may terminate the Consultant's engagement under this Agreement. The consequences of a termination under this clause 23.9 shall be as set out in clause 26.3.

## **24 CONTINUOUS IMPROVEMENT AND CO-OPERATION**

### **Commitment to seek Continuous Improvement**

24.1 The Consultant shall, throughout the period of this Agreement, look for and seek to achieve, in conjunction with the TSM, the Surveying Organisations, other consultants and others involved in the delivery of the Project with which the Consultant is involved, continuous improvement in the quality of the Services.

### **Participation in meetings etc**

24.2 The Consultant shall contribute to the Project by providing briefings or other content related to their Services, and/or participate in meetings to be held at the Consultants facilities if required at no cost with SoSE, TSM and/or with other consultants engaged by SoSE or other Customers in relation to the Project an indicative list of such meetings is set out at Schedule 9.

24.3 The obligation in clause 24.2 includes discussing actual or potential improvements to the delivery of the Services based on the Consultant's experience of carrying out the Services. Such contribution, facilities and/or participation by the Consultant shall be for no more than four person - days of effort per year and shall be at no cost to SoSE.

24.4 The Consultant shall co-operate and communicate with SoSE, the Department for Education and any other national advisers involved in or appointed under the Project. The Consultant shall, unless agreed otherwise with the SoSE and the Department for Education, adopt and utilise any standardised documentation developed for the Project by SoSE and/or their advisers.

24.5 Where requested by SoSE, the Consultant agrees to share best practice with TSM and other advisers appointed on other aspects of the Project either at a local or national level.

## **25 ASSIGNMENT**

### **Assignment by SoSE**

25.1 SoSE shall be entitled to assign this Agreement to any successor to SoSE's functions (and the Consultant agrees to join in any written agreement which may be necessary to achieve this purpose), but it shall not otherwise be entitled to

assign the benefit of this Agreement without the prior written consent of the Consultant, such consent not to be unreasonably withheld.

#### **Assignment and Subcontracting by the Consultant**

- 25.2 The Consultant shall not be entitled to assign, sub-contract or otherwise transfer the whole or any part of the benefit of, or any of its rights or obligations and/or delegate or sub-contract the whole or any part of its duties under, this Agreement either in whole or in part without the prior written consent of SoSE. Where such consent is given, this may be subject to conditions at the discretion of SoSE.

## **26 TERMINATION and SUSPENSION**

#### **Suspension by SoSE**

- 26.1 SoSE may at any time by notice to the Consultant immediately suspend the whole or part of the Consultant's engagement under this Agreement. Save for where such suspension arises from a default on the part of the Consultant, upon suspension the Consultant shall be entitled to fees in accordance with clause 26.5. If a suspension lasts more than six months, the Consultant may make a written request for the services to be resumed and if no instructions to resume are given within 28 days of such request, the employment of the Consultant under this Agreement shall terminate.

#### **Termination by SoSE**

- 26.2 In addition to any other rights and remedies which SoSE may have, SoSE may at any time by notice to the Consultant immediately terminate the whole or part of the Consultant's engagement under this Agreement.

#### **Termination by the Consultant**

- 26.3 Upon the happening of one or more of the following events, namely if SoSE:
- 26.3.1 fails to pay to the Consultant any amount properly due and payable under this Agreement (subject to any deductions which SoSE may be entitled to make); or
  - 26.3.2 is otherwise in breach of this Agreement and such breach has prevented the Consultant from carrying out its obligations for a continuous period of one month or more;

the Consultant may, without prejudice to any other right or remedy, serve notice in writing on SoSE specifying the event and requiring its remedy and, if SoSE fails to remedy the same within 14 days of service of such notice, the Consultant may by further notice in writing immediately terminate this Agreement.

#### **Effect of Termination**

- 26.4 If the Consultant's employment under this Agreement is terminated by SoSE under clause 26.2, SoSE shall not be bound to make any further payment to the Consultant until the amount of all loss and/or expense suffered or incurred by SoSE by reason of the termination and any breaches of this Agreement by the Consultant (including the full and final cost of completion of the Services by others) has been ascertained and notified in writing by SoSE. If such amount, when added to the monies paid to the Consultant before the date of termination, exceeds the total value of work properly executed together with any adjustments to the Fee ascertained in accordance with this Agreement up to the date of termination, the difference shall be a debt payable to SoSE by the Consultant.
- 26.5 If this Agreement is terminated by the Consultant under clause 26.3, as soon as is reasonably practicable SoSE shall ascertain and pay to the Consultant the total amount properly due to the Consultant up to the date of termination. For the avoidance of doubt, the Consultant shall not be entitled to claim for any loss of income, loss of profit or any type of special, indirect or consequential loss.
- 26.6 Termination of this appointment or the Consultant's employment under it shall not prejudice the accrued rights and remedies of either party at the date of termination.

## **27 PROBLEM SOLVING AND DISPUTE AVOIDANCE OR RESOLUTION**

### **Notification**

- 27.1 As soon as either Party is aware of any difference or dispute with the other arising out of, or in connection with, this Agreement they shall give notice to the other Party.

### **Negotiation**

- 27.2 The Parties will endeavour to resolve any difference or dispute by direct negotiation in good faith between senior executives and each Party shall give serious consideration to a request by the other to refer a difference or dispute to mediation.

### **Adjudication**

- 27.3 Any disputes arising under or in connection with this Agreement may be referred by either Party to adjudication at any time in accordance with the Scheme for Construction Contracts. In the absence of agreement between the Parties as to the choice of adjudicator, the adjudicator shall be appointed by the Chairman for the time being of the Technology and the Construction Solicitors Association (or any successor body) or his nominated representative.
- 27.4 The decision of any adjudicator shall be binding on, and implemented by, both Parties pending final determination of the relevant dispute by the English courts.

## **28 NOTICES**

## **Notices in Writing**

28.1 All notices must be in writing.

## **Forms of Service**

28.2 Any notice may be served by leaving it with, or sending it by pre-paid first class post to the Parties at their addresses set out in this Agreement (or to such addresses as shall have been duly notified in accordance with this clause 28.2):

## **Times of Service**

28.3 Notices delivered by hand shall be deemed to have been delivered when handed over. Notices sent by post shall be deemed to have been delivered on the first Working Day after posting.

## **29 NO AGENCY, PARTNERSHIP OR JOINT VENTURE**

Nothing contained in this Agreement shall be construed as creating an agency, partnership or joint venture relationship between the Parties.

## **30 APPLICABLE LAW**

This Agreement shall be governed by English law and the Parties submit to the exclusive jurisdiction of the English courts.

## **31 RIGHTS OF THIRD PARTIES**

Save for any right conferred by this Agreement on a Customer, the provisions of the Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement and accordingly the Parties do not intend any third party (other than a Customer) to have any right in respect of this Agreement by virtue of that Act.

## **32 CORRUPT GIFTS AND PAYMENT OF COMMISSION**

The Consultant shall not, and shall use best endeavours to ensure that any sub-contractors shall not, pay any commission, fees or grant any rebates to any employee, officer or agent of SoSE nor favour any employee, officer or agent of SoSE with gifts or entertainment of significant cost or value nor enter into any business arrangement with employees, officers or agents of SoSE other than as a representative of SoSE, without SoSE's written approval. SoSE shall have the right to audit any and all such records necessary to confirm compliance with this clause 32 at any time whilst the Agreement is in force and during the three year period following expiry or termination of the Agreement. Breach of this clause 32 or commission of an offence by the Consultant, its officers, employees and/or agents under the Bribery Act 2010 shall entitle SoSE to terminate the Agreement and any other contracts between the Consultant and SoSE with immediate effect.

## **33 CONFIDENTIALITY**

- 33.1 Subject to clauses 33.1.1, 33.1.2 and 33.1.3, the Parties shall keep secret and not disclose and shall procure that their employees and any subcontractors keep secret and do not disclose any information of a confidential nature obtained by them by reason of the Agreement. This obligation shall not apply to information:
- 33.1.1 which is in or enters (other than as a result of a breach of this clause 33.1.1) the public domain or is trivial or cannot reasonably be considered to be confidential;
  - 33.1.2 which SoSE is required to disclose as a matter of law or in discharge of its obligations of public accountability and freedom of information; or
  - 33.1.3 which the Consultant is required to disclose by law or pursuant to a request by any regulatory authority with whose regulations the Parties are bound to comply.
- 33.2 In the event of the Parties needing to make a disclosure under clause 33.1.2 or 33.1.3, each Party shall liaise with the other as to the extent and the timing of the disclosure, provided always that such obligation to liaise with the other Party shall not breach any legal or regulatory requirement.
- 33.3 The Consultant agrees that SoSE may supply information to Customers with an interest in each Site. Customers will be required to enter into a form of confidentiality agreement before gaining access to confidential information held by SoSE in relation to any Consultant.
- 33.4 The Consultant undertakes to make no reference in any advertising or other promotional material to the Agreement without the prior written consent of SoSE.
- 33.5 In the event that, pursuant to a request which SoSE has received under the Legislation, SoSE is required to disclose any information provided to it by the Consultant, it will notify the Consultant promptly and will consult with the Consultant prior to disclosing such information. SoSE agrees to pay due regard to any representations which the Consultant may make in connection with such disclosure and to apply any relevant exemptions which may exist under the Legislation to such information. If, following consultation with the Consultant, SoSE discloses any such information, it shall ensure that any disclaimer which the Consultant has included or may subsequently wish to include in such information is reproduced in full in any copies disclosed.
- 33.6 The Consultant acknowledges and agrees that SoSE is bound by the Data Handling Procedures in Government (published June 2008 and as may be amended from time to time) in relation to the Cabinet Office mandatory requirements for the adoption of CCS model contract clauses and provisions relation to security and information assurance in contracts. Under this, both Parties agree to the incorporation of and shall comply with the information assurance/security provisions of the *CCS's Model Services Agreement 2014* as may be amended from time to time (the "CCS Terms"), in particular the following:



- 33.6.1 clause 3 (warranties);
- 33.6.2 clauses 14.1 and 14.2 (Supplier Personnel);
- 33.6.3 clause 15 (Supply Chain Rights and Protections);
- 33.6.4 clauses 20.1 to 20.8 (Authority data);
- 33.6.5 clauses 20.9 to 20.15 (Security requirements);
- 33.6.6 clause 21 (Confidentiality);
- 33.6.7 clause 22 (Transparency and Freedom of Information);
- 33.6.8 clause 23 (Protection of Personal data); and
- 33.6.9 Schedule 2.4 (Security requirements and plan).

33.7 For the avoidance of doubt, in the event of any inconsistency between the information assurance/security terms of this Agreement and the relevant parts of the CCS Terms incorporated into this Agreement, the terms of the CCS Terms referred to in clause 33 shall prevail.

#### **34 SEVERANCE**

- 34.1 Any clause or provision of this Agreement which is held to be illegal or unenforceable (in whole or in part) under any enactment or rule of law shall no longer form part of this Agreement.
- 34.2 In the event that a clause or provision (or part of a clause or part of a provision) is excluded under clause 34.1 the validity and enforceability of the remainder of this Agreement shall not be affected.

#### **35 SURVIVAL OF CERTAIN CLAUSES**

- 35.1 Any provisions of this Agreement which expressly or by their nature extend beyond the expiry or termination of the arrangements set out in this Agreement, along with the clauses expressly set out below, will survive such expiration or termination:
  - 35.1.1 clause 2 (Definitions and Interpretations);
  - 35.1.2 clause 26 (Termination and Suspension);
  - 35.1.3 clause 27 (Problem Solving and Dispute Avoidance or Resolution);
  - 35.1.4 clause 28 (Notices);
  - 35.1.5 clause 30 (Applicable Law);

- 35.1.6 clause 31 (Rights of Third Parties);
- 35.1.7 clause 32 (Corrupt Gifts and Payment of Commission);
- 35.1.8 clause 33 (Confidentiality); and
- 35.1.9 clause 35 (Survival of Certain Clauses).

## **36 ENTIRE UNDERSTANDING**

- 36.1 This Agreement constitutes the entire agreement between the Parties and supersedes any prior agreement or arrangements in respect of its subject matter and neither Party has entered into this Agreement in reliance upon, and it shall have no remedy in respect of, any representation or statement (whether made by the other Party or any other person) which is not expressly set out in this Agreement.
- 36.2 Nothing in this clause 36 shall be interpreted or construed as limiting or excluding the liability of either Party for fraud or fraudulent misrepresentation.

## **37. DISCLOSURE AND BARRING SERVICE**

- 37.1 The Consultant shall procure that in respect of all potential staff or persons performing any of the Services (each an "Identified Employee") before an Identified Employee attends any Sites or premises at which the Services are to be performed:
  - 37.1.1 each Identified Employee is questioned as to whether he or she has any Convictions or Asbos; and
  - 37.1.2 the results are obtained of a check of the most extensive available kind made with the Disclosure and Barring Service in respect of each Identified Employee; and
  - 37.1.3 the results of such check are promptly notified in writing to the SoSE and the Customer
- 37.2 The Consultant shall procure that no person to whom the SoSE reasonably objects to being engaged in the provision of the Services as a consequence of information obtained under clause 37.1 shall be engaged in the provision of the Services.

## **SCHEDULE 1- FEE**

## **SCHEDULE 2 – SERVICES**

**SCHEDULE 3 – NOT USED**

## **SCHEDULE 4 – KEY PERSONNEL**

## **SCHEDULE 5 – SITE REQUIREMENTS**

### **1 Access to Site by appointment only and hours of working**

Access to the Site will be in accordance with the Site Programme.

It may be necessary to carry out some parts of Services outside normal school hours. The Consultant shall be deemed to have allowed for this in its Fee. No extra for overtime working will be payable.

### **2 Explanation for CDC visit**

The Consultant shall maintain any necessary confidentiality of the Customer and an appropriate explanation for the CDC visit must be agreed in advance with the Customer.

### **3 Discovery of deleterious materials or urgent repairs**

If, during the course of the CDC, deleterious materials or repairs that require urgent attention or further investigation are discovered, the Consultant is required to notify the Customer in writing within 48 hours of discovery.

### **4 Consultant to inform himself fully**

The Consultant shall be deemed to have examined the Site, plant, specification and schedules. No claims whatsoever will be entertained on these matters due to lack of knowledge that could reasonably be ascertained.

### **5 Electricity and water**

The Consultant shall be entitled to use such supplies of electricity and water as may be available on Site for the purpose of carrying out the Services and shall, at his own expense, provide any apparatus necessary for such use.

### **6 Defects**

Any defects arising as a result of the Services carried out by the Consultant shall be rectified by the Consultant forthwith.

### **7 Compliance with regulations, standards and approved codes of practice**

All work undertaken as part of the Services shall comply with the Health and Safety at Work Act 1974, and any associated regulations, codes of practice and guidance.

### **8 Existing Services**

The Consultant shall arrange with the Customer's Representative when work likely to interrupt existing services shall be carried out. At least 5 working day's notice is required before any service may be isolated.

## **9 Fire precautions**

The Consultant shall take all reasonable precautions to avoid the outbreak of fire. Smoking is only permitted in designated areas. A 'No Smoking' policy is operated in ALL OTHER AREAS (including plant rooms, lift motor rooms etc) and the Consultant's personnel are required to conform with all 'No Smoking' rules in all areas of the Site or adjoining/surrounding premises. Fire escape routes shall be kept unobstructed at all times.

## **10 Control of noise and nuisance**

The Consultant shall take all necessary measures to minimise noise and all other nuisance to the occupiers or users of adjacent and adjoining buildings and shall comply with all directions of the Customer's Representative in this respect.

## **11 Temporary suspension of the CDC**

For operational reasons the Customer reserves the right to require the Consultant to temporarily suspend any activity which interferes with the running of the adjoining/surrounding premises. Any such suspension will be ordered by the Customer's Representative or named person in writing if necessary. Permission to start work again will be given by the same authority. The period of suspension and details of the work delayed shall be recorded and a record handed to the Customer's Representative for endorsement.

## **12 Making good**

The Consultant shall ensure that all building components, finishes, services and the like opened up for inspection, moved or otherwise disturbed are made good to the original standard and to the reasonable satisfaction of the Customer's Representative.

## **13 Security and identification**

The Consultant shall provide his staff with a form of identification that is acceptable to the Customer and which staff shall display on their clothing at all times when they are on the Customer's premises (including the Site).



## SCHEDULE 6 – KEY PERFORMANCE INDICATORS

1. KPIs will be reviewed monthly and formally acted on quarterly after the first six months. Following the first five months, updated forecast work allocations for the next six months will be made. These will then be updated quarterly to respond to the performance against KPIs in the preceding quarter.
2. Surveying Organisations will be expected to work through their allocated schools in a logical and transparent way. They should not prioritise schools which attract higher fees.
3. Work will initially be allocated based on an equal split (i.e. 25% each for four SOs).
4. If more than one of the KPIs above is missed then for each of the KPIs which are not achieved this 25% share will be reduced by 0.5% (i.e. to 24.5%) and shared equally between those SOs which achieved 5 or more of the KPIs in the previous quarter.
5. A Surveying Organisation cannot refuse to accept additional work allocated to them in this way. If no organisation achieves five or more of the KPIs in a quarter then allocations will remain the same.
6. If more than one of the KPIs is not achieved by a Surveying Organisation then the Surveying Organisation must present a plan to the EFA to respond and improve over the next quarter.
7. The EFA reserves the right to review this process, the required performance levels and the level of work reduction and re-allocation as the programme develops to respond to the real levels of performance encountered and its need to drive high quality, reliable and consistent data.

| KPI Category | KPI Measure                                                                                                                       | Reporting Output Programme Level                                                              | Reporting Output- Project Level                                                       | KPI Measurement Methodology |
|--------------|-----------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------|-----------------------------|
| Pace         | <ul style="list-style-type: none"> <li>▪ Reports submitted after SO assessment within 10 working days of site visit in</li> </ul> | a) To feed into monthly programme reports to the DfE<br>b) To identify programme slippage and | a) To feed into monthly surveyors' project reports<br>b) To identify project slippage | IT Solution System Reports  |

|         |                                                                                                                                                                                                                                                                                                                                                 |                                                                                                                                                                  |                                                                                                                                                         |                            |
|---------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------|
|         | <p>previous 3 months, minimum performance required 75%</p> <ul style="list-style-type: none"> <li>▪ Reports submitted after SO assessment within 15 working days of site visit in previous 3 months. Minimum performance required 95%</li> <li>▪ audits queries responded to within 5 working days, minimum performance required 95%</li> </ul> | enable corrective measures to be actioned                                                                                                                        | <p>and enable corrective measures to be actioned</p> <p>c) To provide region by region analysis for use in the continuous improvement sessions</p>      |                            |
| Quality | <p>Accepted by TSM at first pass (aggregate total in previous 3 months) minimum performance required 85%</p> <p>Accepted by TSM after one round of clarification/return for response (aggregate total in previous 3 months), minimum performance required 95%</p> <p>Accepted by TSM</p>                                                        | <p>a) To feed into monthly programme reports to the DfE</p> <p>b) To identify surveying/recording inaccuracies and enable corrective measures to be actioned</p> | <p>a) To feed into monthly surveyors' project reports</p> <p>b) To provide region by region analysis for use in the continuous improvement sessions</p> | IT solution system reports |

|                       |                                                                                                                                                                                                                                                |                                                                                                                                                                                                                      |                                                                                                                                                                                                                                                                                                                       |                                                                                                                                                                                                                                                                                                                                                                                                |
|-----------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                       | after two rounds of clarification/return for response (aggregate total in previous 3 months) minimum performance required 95%                                                                                                                  |                                                                                                                                                                                                                      |                                                                                                                                                                                                                                                                                                                       |                                                                                                                                                                                                                                                                                                                                                                                                |
| Customer Satisfaction | <ul style="list-style-type: none"> <li>Overall satisfaction with the surveys nationally</li> </ul> <p><b>Note:</b> This would be a 'mean' average score of all the individual questions contained within the customer satisfaction survey.</p> | <p>a) To feed into monthly programme reports to the DfE</p> <p>b) To measure the overall level of customer satisfaction across the programme and on a region by region basis, reported on a month by month basis</p> | <p>a) To feed into monthly surveyors' project reports</p> <p>b) To identify the level of customer satisfaction within a project region</p> <p>c) To benchmark the performance of surveying firms across each region</p> <p>d) To provide data to drive through continuous improvement and share best practice/les</p> | <p>IT Solution System Reports</p> <p><b>Note:</b> Schools to complete questionnaire in the System.</p> <p>Example questions scores out of 5;</p> <ul style="list-style-type: none"> <li>- Punctuality- arrival on time</li> <li>- Attention to security issues while on site</li> <li>- Courteousness of survey personnel</li> <li>- Effectiveness of providing feedback on H&amp;S</li> </ul> |

|  |  |  |                                                                                     |                                                                   |
|--|--|--|-------------------------------------------------------------------------------------|-------------------------------------------------------------------|
|  |  |  | <p>sons learnt through the continuous improvement group sessions with surveyors</p> | <p>issues identified during the surveys ( verbal and written)</p> |
|--|--|--|-------------------------------------------------------------------------------------|-------------------------------------------------------------------|

## **SCHEDULE 7 – IT HARDWARE REQUIREMENTS**

Provide hardware which operates android/iOS/Windows which can capture necessary data, including images at an acceptable level of detail.

**SCHEDULE 8 – NOT USED**

## **SCHEDULE 9 – MEETINGS**

## **SCHEDULE 10 – SURVEYING ORGANISATIONS**

The following organisations are the four successful Surveying Organisation (SOs) that will be providing the services for the CDC Programme:

1. Aecom Limited,
2. Faithful+Gould Limited,
3. Capita Property and Infrastructure Limited, and
4. Rider Levett Bucknall UK Limited.



## **SCHEDULE 11 – METHOD STATEMENT**

**In WITNESS** of which this document is executed as a Deed and is delivered on the date first before written.

**THE CORPORATE SEAL** of the **SECRETARY OF STATE FOR EDUCATION** herewith affixed is authenticated by:-

.....  
Authorised by the Secretary of State

.....  
Full name (BLOCK CAPITALS)

.....  
Position/title

**EXECUTED AS A DEED** by **RIDER LEVETT BUCKNALL UK LIMITED** acting by a director and its secretary/two directors

.....  
Director

.....  
Director / Secretary