



## **NATIONAL FIRE CHIEFS COUNCIL ('NFCC')**

### **SCHEDULE 5**

### **CALL-OFF TERMS AND CONDITIONS OF CONTRACT**

**REF: NFCC-FMC-623**

**relating to the Provision of Decarbonisation  
Consultancy Services to the Bluelight  
Sector**

**Lot 1 (Complete Service Solutions) Pagabo  
Professional Services in Construction Framework  
Agreement**

**BETWEEN**

**NATIONAL FIRE CHIEFS COUNCIL LIMITED (1)  
("Client Organisation")**

**And**

**FAITHFUL+GOULD LIMITED (2)  
("Consultant")**

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**THIS CALL-OFF CONTRACT** is made the 30<sup>th</sup> June 2023

**BETWEEN**

- (1) **NATIONAL FIRE CHIEFS COUNCIL LIMITED**, of 71-75, Shelton Street, Covent Garden, London, United Kingdom, WC2H 9JQ, incorporated and registered in England and Wales with company number 3677186 ("**NFCC**") (the "**Client Organisation**"); and
- (2) **FAITHFUL+ GOULD LIMITED** which is a company incorporated in and in accordance with the laws of **England** (Company No. **02236832** whose registered office address is at **Woodcote Grove, Ashley Road, Epsom, Surrey, KT18 5BW** (the "**Consultant**").

**collectively referred to as the "Parties"**

**BACKGROUND**

- (A) The Education Alliance (Framework Contracting Authority) as represented by Added Value Portal Limited (t/a Pagabo) (company registered no 087873220) established a National Framework for Professional Services in Construction and Premises (the "Framework Agreement") (Framework Reference Number: AVP-TEA-2001). The Framework Agreement commenced on 12<sup>th</sup> April 2020 and it is due to expire on 11<sup>th</sup> April 2024.
- (B) The Consultant was appointed to the Framework on 12<sup>th</sup> April 2020.
- (C) On 15<sup>th</sup> November 2023, the Client Organisation, acting as the Contracting Authority in respect of this Call-off Contract, made the decision to commission the provision of national decarbonisation consultancy services (the "Services) to the Fire Sector and other Bluelight interested organisations under Lot 1 (Complete Service Solutions) of the Framework Agreement and the Consultant was notified of the same.
- (D) The Consultant was invited by the Client Organisation's Authorised Representative to submit a detailed document setting out its proposed operating model, project programme, resource allocation and Schedule of Rates (the "Consultant's Programme Proposal") for the purpose of delivering the required services.
- (E) The Client Organisation wishes to enter into a Call-off Contract (the "Contract") with the Consultant under which the Consultant shall deliver the Services to interested Bluelight organisations (hereafter referred to as "Additional Client Organisations") on an individual basis, in the form of Work Orders as set out in Schedule 1 (Scope of Services) of the Contract.
- (F) The Consultant has agreed to provide the Services upon the terms and conditions of this Contract.
- (G) Neither Party has been given, nor entered into this agreement in reliance on any arrangements, understandings, agreements, statements, guarantees, representations or warranties other than those expressly set out in this agreement.

**In consideration of the payment of £1.00 by the Client Organisation to the Consultant (receipt of which is hereby acknowledged):**

**IT IS HEREBY AGREED**

**1 DEFINITIONS AND PRELIMINARIES**

1.1 In this Contract the following words and expressions with capitalised initial letters shall have the following meanings:

**“Additional Client Organisation”** means any party issuing a Draft Work Order to the Consultant pursuant to this Contract;

**“Additional Client Organisation Data”** means:

- a) the data, materials, documentation, information, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which are:
  - i) made available to the Consultant by or on behalf of the Additional Client Organisation; and/or
  - ii) which the Consultant is required to generate, process, store or transmit pursuant to this Contract; or
- b) any Personal Data for which the Additional Client Organisation is the Data Controller;

**“Additional Client Organisation Related Party”** means an officer, agent, contractor, employee or sub-contractor (of any tier) of the Additional Client Organisation acting in the course of its office or employment or appointment (as appropriate) but excluding in each case the Consultant and any Consultant Related Parties;

**“Affiliate”** means in relation to a body corporate, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control with, that body corporate from time to time;

**“Applicable Law”** means any statute, law, order, regulation, by-law, statutory instrument, decision, judgment, rule, order, consent or delegated or subordinate legislation, or any modification or amendment of any of the foregoing having the force of law in England. References to "law of the contract" and "applicable law" shall be deemed to be references to "Applicable Law".

**“CDM Regulations”** means the Construction (Design and Management) Regulations 2015 and any Approved Code of Practice together with any guidance or requirements issued from time to time by the Health and Safety Executive, as all of the above may be amended, revised or supplemented from time to time.

**“Client Organisation Data”** means:

- a) the data, materials, documentation, information, drawings, diagrams, images or sounds (together with any database made up of any of these ) which are embodied in any electronic, magnetic, optical or tangible media, and which are:
  - i) made available to the Consultant by or on behalf of the Client Organisation; and/or
  - ii) which the Consultant is required to generate, process, store or transmit pursuant to this Contract; or
- b) any Personal Data for which the Client Organisation is the Controller;

**“Client Organisation Related Party”** means an officer, agent, contractor, employee or sub-contractor (of any tier) of the Client Organisation acting in the course of its office or employment or appointment (as appropriate) but excluding in each case the Consultant and any Consultant Related Parties;

**“Control”** means the possession by person, directly or indirectly, of the power to direct or cause the direction of the management and policies of the other person (whether through the ownership of voting shares, by contract or otherwise) and **“Controls”** and **“Controlled”** shall be interpreted accordingly;

**“Consultant Default”** means any one or more of the following:

- a) a breach by the Consultant of any of its obligations under this Contract which materially and adversely affects the performance of the Services in relation to the Contract, or an existing Work Order (as the case may be);
- b) a Persistent Breach occurs;
- c) a court makes an order that the Consultant or its Holding Company be wound up or a resolution for a voluntary winding-up of the Consultant or its Holding Company is passed;
- d) any receiver or receiver manager in respect of the Consultant or its Holding Company is appointed or possession is taken by or on behalf of any creditor of any property that is the subject of a charge;
- e) any voluntary arrangement is made for a composition of debts or a scheme of arrangement is approved under the Insolvency Act 1986 or the Companies Act 2006 in respect of the Consultant or its Holding Company;
- f) an administration order is made or an administrator is appointed in respect of the Consultant or its Holding Company;
- g) subject to an uninsurability event, a breach by the Consultant of its obligations to take out and maintain any of the Required Insurances; or
- h) a failure by the Consultant or a Consultant Related Party to comply with the provisions of clause 18 (Confidentiality);
- i) a failure by the Consultant or a Consultant Related Party to comply with the provisions of clause 19 (Data Protection);
- j) persistent use by the Consultant or a Consultant Related Party of unqualified or untrained staff in the performance of the Services except where the Client Organisation or, in respect of a specific Work Order, the Additional Client Organisation has given written consent to such use;
- k) the representation and warranty given by the Consultant pursuant to clause 6 (Consultant Warranties and Undertakings) being materially untrue or misleading;
- l) the Consultant or any Consultant Related Party (or anyone employed by or acting on behalf of any of them) or any of its or their agents or shareholders commits any Prohibited Act.

**“Consultant Related Party”** means:

- a) an officer, servant or agent of the Consultant, or any Affiliate of the Consultant and any officer, servant or agent of such a person;
- b) any Sub-Consultant or sub-consultant of the Consultant of any tier and any of their officers, servants or agents; and

- c) any person on or at any of the sites of the Additional Client Organisations at the express or implied invitation of the Consultant (other than an Additional Client Organisation Related Party);

**"Consultant's Programme Proposal"** means the submitted proposal made by the Consultant to the Client Organisation pursuant to the execution of this Contract;

**"Consultant's Work Order Proposal"** means the submitted proposal made by the Consultant to the Additional Client Organisation in response to a Draft Work Order;

**"Controller"** has the meaning given in GDPR;

**"Data Loss Event"** means any event that results, or may result, in unauthorised access to Personal Data held by the Consultant under this Contract, and/or actual or potential loss and/or destruction of Personal Data in breach of this Contract, including any Personal Data Breach;

**"Data Protection Legislation"** means:

- a) the GDPR, the LED and any applicable national implementing Laws as amended from time to time
- b) the DPA 2018 to the extent that it relates to processing of personal data and privacy;
- c) all Applicable Law about the processing of personal data and privacy;

**"Data Subject"** has the meaning given in the DPA;

**"Data Subject Request"** means a request made by a Data Subject in accordance with rights granted pursuant to the DPA to access his or her Personal Data;

**"Draft Work Order"** means a Work Order sent by the Additional Client Organisation to the Consultant in the form of Schedule 3 of the Contract;

**"Force Majeure Event"** means any event or occurrence which is outside the reasonable control of the Party concerned and which is not attributable to any act or failure to take preventative action by that Party, including fire; flood; violent storm; pestilence; explosion; malicious damage; armed conflict; acts of terrorism; nuclear, biological or chemical warfare; or any other disaster, natural or man-made, and a Future Health Emergency, but excluding:

- a) any industrial action occurring within the Consultant's or any sub-Consultant's organisation; or
- b) the failure by any sub-Consultant to perform its obligations under any sub-contract; or;
- c) any law or action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent.

**"Future Health Emergency"** means any virus being, or causing a disease being, confirmed, declared or designated as a pandemic or as a public health emergency of international concern by the World Health Organization and/or confirmed, declared or designated as an epidemic or similar by any authority with competent jurisdiction which prevents or adversely affects the delivery of the Services,

**"GDPR"** means the General Data Protection Regulation (EU) 2016/679;

**“Good Industry Practice”** means using standards, practices, methods and procedures as would be expected of an adequately resourced contracting organisation experienced in the provision of works similar in nature scale and complexity to the service with knowledge of the Consultant’s obligations under this contract.

**“Licence”** means any permit, consent, approval, authorisation, agreement, order, permission, certificate, waiver or licence which must be obtained from any person (including both private persons and public sector entities) in order to lawfully carry out and complete any works/ services and for any goods to be transported, imported or exported which relate to the provision of the services.

**“Losses”** means losses, liabilities, damages, costs and expenses (including legal fees on a solicitor/client basis) and disbursements and costs of investigation, litigation, settlement, judgment interest and penalties whether arising in contract, tort (including negligence), breach of statutory duty or otherwise;

**“Persistent Breach”** means:

- a) the Consultant has reached the Critical Performance Failure Threshold as defined within Schedule 1 (Scope of Services); and / or
- b) the Consultant has reached the Moderate Performance Failure Threshold as defined within Schedule 1 (Scope of Services); and / or
- c) the Consultant has reached the Low Performance Failure Threshold as defined within Schedule 1 (Scope of Services).

**“Personal Data”** has the meaning given in the GDPR;

**“Processor”** has the meaning given to it under the GDPR;

**“Programme”** means all deliverables, responsibilities and obligations assigned to the Consultant under this Contract and all Work Orders entered into pursuant to this Contract;

**“Programme Documents”** means all data, records, reports, documents, manuals, designs, drawings, plans, specifications and other works or materials of any nature in any form or medium (excluding proprietary software) generated by the Consultant and any Sub-Consultant in the course of providing the Services.

**“Prohibited Act** means:

- a) offering, giving or agreeing to give to any servant of the Client Organisation and/or the Additional Client Organisation any gift or consideration of any kind as an inducement or reward:
  - (i) for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this Contract or any other contract with the Client Organisation and/or the Additional Client Organisation; or
  - (ii) for showing or not showing favour or disfavour to any person in relation to this Contract or any other contract with the Client Organisation and/or the Additional Client Organisation;
- b) entering into this Contractor any other contract with the Client Organisation and/or the Additional Client Organisation in connection with which commission has been paid or has been agreed to be paid by the Contractor or on its behalf, or to its knowledge, unless before the relevant contract is entered into particulars of any such commission and of the terms and conditions of any such contract for



the payment thereof have been disclosed in writing to the Client Organisation and/or the Additional Client Organisation;

- c) committing any offence:
  - (i) under the Bribery Act 2010;
  - (ii) under Legislation creating offences in respect of fraudulent acts; or
  - (iii) at common law in respect of fraudulent acts in relation to this Contract or any other contract with the Client Organisation and/or the Additional Client Organisation; or
- d) defrauding or attempting to defraud or conspiring to defraud the Client Organisation and/or the Additional Client Organisation;

**“Project”** means all Services and deliverables required under a (Draft) Work Order entered into pursuant to this Contract;

**“Protective Measures”** appropriate technical and organisation measures which may include pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of such measures adopted by it;

**“Schedule of Rates”** means the rates set out in Schedule 4 of this Contract;

**“Services”** means the Services set out in Schedule 1 (Scope of Services) and commissioned via a Work Order together with such other services as may be incidental thereto reasonably to be expected of the Consultant as necessary or appropriate to secure the proper and timely completion of the Project;

**“Sub-Consultant”** means any subconsultant engaged by the Consultant to provide the Services.”

**“Termination Date”** means the date of early termination of this Contract or a Work Order entered into pursuant to this Contract in accordance with its terms;

**“Termination Notice”** means a notice of termination issued in accordance with this Contract;

**“Work Order”** means an approved Draft Work Order containing the Consultant’s Work Order Proposal for delivering the Services requested by the Additional Client Organisation under the Draft Work Order;

**“Working Day”** means any day other than a Saturday, Sunday or public holiday in England and Wales.

1.2 In this Contract, unless the context otherwise requires:

- 1.2.1 the singular includes the plural and vice versa;
- 1.2.2 reference to a gender includes the other gender and the neuter;
- 1.2.3 references to any clause, sub-clause, paragraph, schedule, recital or annex is, except where expressly stated to the contrary, a reference to such clause, sub-clause, paragraph, schedule, recital or annex of and to this Contract;

- 1.2.4 save where otherwise provided in this Contract, any reference to this Contract or to any other document shall include any permitted variation, amendment, novation or supplement to such document;
- 1.2.5 the words “**including**”, “**other**”, “**in particular**”, “**for example**” and similar words shall not limit the generality of the preceding words and shall be construed as if they were immediately followed by the words “without limitation”;
- 1.2.6 references to “**writing**” include typing, printing, lithography, photography, display on a screen, electronic and facsimile transmission and other modes of representing or reproducing words in a visible form, and expressions referring to writing shall be construed accordingly;
- 1.2.7 the headings are for ease of reference only and shall not affect the interpretation or construction of this Contract;
- 1.2.8 references to a person include an individual, company, body corporate, corporation, unincorporated association, firm, partnership or other legal entity or Central Government Body;
- 1.2.9 references to a statute, statutory provision or subordinated legislation is a reference to it as it is in force from time to time, taking account of any amendment, extension, or re-enactment and includes any statute, statutory provision or subordinate legislation which it amends or re-enacts;
- 1.2.10 references to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established;
- 1.2.11 references to a party shall include that party's legal and personal representatives, successors or permitted assigns.
- 1.2.12 any reference to a party's consent or approval being required is to consent or approval in writing, which must be obtained before the relevant action is taken or event occurs;
- 1.2.13 unless otherwise provided, references to Clauses and Schedules are references to the clauses and schedules of this Contract and references in any Schedule to Paragraphs, Parts and Annexes are, unless otherwise provided, references to the paragraphs, parts and annexes of the Schedule or the Part of the Schedule in which the references appear;
- 1.2.14 any obligation in this Contract on a person not to do something includes an obligation not to agree or allow that thing to be done;
- 1.2.15 subject to any express provisions of this Contract to the contrary, the obligations of either Party are to be performed at that Party's own cost and expense;
- 1.3 Where a standard, policy or document is referred to in this Contract by reference to a hyperlink, then if the hyperlink is changed or no longer provides access to the relevant standard, policy or document, the Consultant shall notify the Client Organisation and the Parties shall update this Contract with a reference to the replacement hyperlink.
- 1.4 Unless this Contract expressly provides otherwise, a reference to the Programme is to the whole and any part of it.
- 1.5 Where this Contract requires an act to be done within a specified period after or from a specified date, the period begins immediately after that date.

- 1.6 The Schedules form part of this Contract.
- 1.7 All Work Orders entered into between the Consultant and any one Additional Client Organisation shall form part of this Contract and governed by the provisions set out herein.
- 1.8 In entering into this Contract, the Client Organisation is acting as part of the Crown.
- 1.9 For the avoidance of doubt, the Consultant's obligations, warranties and representations as set out in the Framework Agreement shall be incorporated into this Contract and the Consultant shall be required to discharge such obligations, warranties and representations as if these were its obligations, warranties and representations to the Client Organisation under this Contract.

1.10 **Precedence of Documentation**

In the event of any inconsistency between the Framework Agreement and the provisions of the body of this Contract, the Framework Agreement shall take precedence. In the event of any inconsistency between the provisions of the body of this Contract and Schedule 1 (Scope of Services), Schedule 1 shall take precedence. In the event of any inconsistency between the provisions of the body of this Contract and all other Schedules (except for Schedule 1), the provisions of the body of this Contract shall take precedence.

1.11 **Responsibility for Related Parties**

Subject to the provisions of this Contract, the Consultant shall be responsible as against the Client Organisation and any Additional Client Organisations for the acts and omissions of any Consultant Related Parties as if they were the acts and omissions of the Consultant and the Client Organisation shall be responsible as against the Consultant for the acts and omissions of any Client Organisation Related Parties as if they were the acts and omissions of the Client Organisation, except for the acts and omissions of any Additional Client Organisations which shall be deemed the acts and omissions of such Additional Client Organisations. The Consultant shall, as between itself and the Client Organisation, be responsible for the selection of and pricing by any Consultant related party.

1.12 **Approval**

Neither the giving of any approval, consent, examination, acknowledgement, knowledge of the terms of any agreement or document nor the review of any document or course of action by or on behalf of the Client Organisation, nor the failure of the same, shall unless otherwise expressly stated in this Contract, relieve the Consultant of any of its obligations under the Programme or of any duty which it may have hereunder to ensure the correctness, accuracy or suitability of the matter or thing which is the subject of the approval, consent, examination, acknowledgement or knowledge.

1.13 **Succession**

References to a public organisation (other than the Client Organisation) shall be deemed to include a reference to any successor to such public organisation or any organisation or entity which has taken over either or both the functions and responsibilities of such public organisation. References to other persons (other than the Authority) shall include their successors and assignees.

**2 TERM**

This Contract shall become effective on the date of this Call-Off Contract (the "**Start Date**") and shall continue in full force and effect for a term of two (2) years from the Start Date (the "**Initial Contract Term**"). This Contract may be extended in writing up to a further period of one (1) years at the Client Organisation's sole discretion. The Client

Organisation will have given three (3) months' notice prior to the expiry of the Initial Contract Term of its intention to extend the contract duration.

### **3 THE PARTIES' REPRESENTATIVES**

- 3.1 The Consultant's Representative shall be Daniel Jermin, being a senior member of the Consultant's organisation, to direct and control the overall performance by the Consultant of his obligations under this Contract and any Work Order(s) issued pursuant to this Contract. The Consultant's Representative shall have full authority to act on behalf of the Consultant for all purposes of this Contract.
- 3.2 Except as previously notified in writing before such act by the Consultant to the Client Organisation, the Client Organisation and the Client Organisation's Representative shall be entitled to treat any act of the Consultant's Representative in connection with this Contract as being expressly authorised by the Consultant and the Client Organisation and the Client Organisation's Representative shall not be required to determine whether any express authority has in fact been given.
- 3.3 The Consultant may by notice to the Client Organisation's Representative, change the Consultant's Representative. Where the Consultant wishes to do so, it shall by written notice to the Client Organisation propose a substitute for approval, taking account of the need for liaison and continuity in respect of the Contract. Such appointment shall be subject to the approval of the Client Organisation (not to be unreasonably withheld or delayed).
- 3.4 The Consultant shall, provided the same remains within his employment, not remove the person named in clause 3.1 or any person agreed by the Client Organisation pursuant to this clause 3.4 without the prior written approval of the Client Organisation, which approval shall not be unreasonably withheld or delayed, and, if such approval is given, the Consultant shall be responsible for replacing such person with a person who shall have been previously approved in writing (such approval not to be unreasonably withheld) by the Client Organisation, and save in emergency, there shall be a handover period between the person being removed and his replacement.
- 3.5 The Consultant shall change the person named in clause 3.1 at the request of the Client Organisation subject to the Consultant providing fair and reasonable grounds for such change to the Consultant and allowing the Consultant such time to effect the required change as may be reasonable in the circumstances of the case.
- 3.6 The Client Organisation may specify, and from time to time re-specify, the employee(s) and/or other representative(s) of the Client Organisation to whom the Consultant shall primarily report, and from whom the Consultant shall take instructions, under or in connection with this Contract.
- 3.7 The Client Organisation's Representative shall be the Facilities Management and Construction National Category Lead for the UK Fire Sector or such other person appointed by the Client Organisation pursuant to this clause. The Client Organisation's Representative shall exercise the functions and powers of the Client Organisation in which are identified in this Contract as functions or powers to be carried out by the Client Organisation's Representative. The Client Organisation's Representative shall also exercise such other functions and powers of the Client Organisation under this Contract as may be notified to the Consultant from time to time.
- 3.8 The Client Organisation's Representative shall be entitled at any time, by notice to the Consultant, to authorise any other person to exercise the functions and powers of the Client Organisation delegated to him pursuant to clause 3.5, either generally or specifically. Any act of any such person shall, for the purposes of this Contract, constitute an act of the Client Organisation's Representative and all references to the "Client Organisation's Representative" in this Contract (apart from this clause) shall be taken as references to such person so far as they concern matters within the scope of such person's authority.

- 3.9 The Client Organisation may by notice to the Consultant change the Client Organisation's Representative. The Client Organisation shall (as far as practicable) consult with the Consultant prior to the appointment of any replacement for the Client Organisation's Representative, taking account of the need for liaison and continuity in respect of the Contract. Such change shall have effect on the date specified in the written notice (which date shall, other than in the case of emergency, be such date as will not cause material inconvenience to the Consultant in the execution of its obligations under this Contract).
- 3.10 During any period when no Client Organisation Representative has been appointed (or when the Client Organisation's Representative is unable through illness, incapacity or any other reason whatsoever to carry out or exercise their functions under this Contract) the Client Organisation shall carry out the functions which would otherwise be performed by the Client Organisation's Representative, save where:
- (a) Notified in writing by the Client Organisation before such act or instruction, the Consultant and Consultant's Representative shall be entitled to treat any act or instruction of the Client Organisation's Representative which is authorised by this Contract as being expressly authorised by the Client Organisation and the Consultant and the Consultant's Representative shall not be required to determine whether authority has in fact been given; or
  - (b) Notified in writing by the Client Organisation before such act or instruction, the Consultant and Consultant's Representative shall not be entitled to treat any act or instruction of the Client Organisation's Representative or any other officer, employee or other person engaged by the Client Organisation which is not authorised by this Contract as being authorised by the Client Organisation and shall be required to determine by notice to the Client Organisation whether an express authority has in fact been given.
- 3.11 At any time the Client Organisation may appoint more than one Client Organisation's Representative and the Consultant may appoint more than one Consultant's Representative provided in each case the appointer provides written confirmation to the Consultant or Client Organisation as appropriate of the extent of its Representative's authority.

#### **4 CONSULTANT'S PERSONNEL**

- 4.1 The Consultant shall at all relevant times ensure that there is an adequate number of Consultant personnel to provide the Service and that the Consultant personnel:
- (a) have appropriate qualifications, training and expertise and demonstrate suitable competence in carrying out the duties for which they are engaged,
  - (b) shall comply with such policies and security requirements as are notified to the Consultant from time to time, and
  - (c) have satisfied such background and security checks as the Client Organisation may require from time to time.
- 4.2 The Consultant shall maintain up-to-date and adequate personnel records in relation to the Consultant personnel and shall provide to the Client Organisation such information or documents as the Client Organisation may request from time-to-time to demonstrate that the Consultant personnel satisfy the provisions in clause 4.1.
- 4.3 The Client Organisation reserves the right to require the Consultant to remove from the provision of the Services any Consultant personnel if the Client Organisation considers that it is not in the interests of the Client Organisation for such Consultant personnel to be engaged in the provision of the Services. The Consultant will promptly comply with any requirement by the Client Organisation to remove such Consultant personnel from the provision of the service (at no additional cost to the Client Organisation).

4.4 The Client Organisation shall have the right to refuse access to any Additional Client Organisation site to any Consultant personnel who in the opinion of the Client Organisation and/or the relevant Additional Client Organisation is not a fit and proper person to have access to the site. The Client Organisation shall notify the Consultant as soon as reasonably practicable if it refuses access to any site to any Consultant personnel specifying the reasons for such refusal.

## **5 CLIENT AND ADDITIONAL CLIENT ORGANISATION WARRANTIES**

### **5.1 No Warranty by Client / Additional Client Organisation**

Subject to clause 5.3 (Fraudulent Statements), the Client Organisation and the Additional Client Organisation do not give any warranty or undertaking as to the relevance, completeness, accuracy or fitness for any purpose of any of the Client Organisation Data and the Additional Client Organisation Data.

### **5.2 No Liability to Consultant**

Subject to clause 5.3 (Fraudulent Statements), neither the Client Organisation nor the Additional Client Organisation nor any of their agents or employees shall be liable to the Consultant in contract, tort (including negligence or breach of statutory duty), statute or otherwise as a result of:

- (a) any inaccuracy, omission, unfitness for any purpose or inadequacy of any kind whatsoever in the Client Organisation Data and the Additional Client Organisation Data; or
- (b) any failure to make available to the Consultant any materials, documents, drawings, plans or other information relating to the Services.

### **5.3 Fraudulent Statements**

Nothing in this clause 5 (Client Organisation / Additional Client Organisation Warranties) shall exclude any liability which the Client Organisation, the Additional Client Organisation or any of their agents or employees would otherwise have to the Consultant in respect of any statements made fraudulently prior to the date of this Contract.

### **5.4 Rights and Remedies**

The provisions of this clause 5 are without prejudice to the Consultant's express rights and remedies under or pursuant to this Contract.

### **5.5 No Relief**

Subject to clause 5.3 (Fraudulent Statements), the Consultant shall not in any way be relieved from any obligation under this Contract nor shall it be entitled to claim against the Client Organisation and the Additional Client Organisation on grounds that any information, whether obtained from the Client Organisation and the Additional Client Organisation or otherwise (including information made available by the Client Organisation and the Additional Client Organisation), is incorrect or insufficient and shall make its own enquiries as to the accuracy and adequacy of that information.

## **6 CONSULTANT WARRANTIES AND UNDERTAKINGS**

6.1 The Consultant warrants and represents to the Client Organisation that on the date of this Contract:

- 6.1.1 it is properly constituted and incorporated under the laws of England and Wales and has the corporate power to own its assets and to carry on its business as it is now being conducted;

- 6.1.2 it has the corporate power to enter into and to exercise its rights and perform its obligations under the Contract;
  - 6.1.3 all action necessary on the part of the Consultant to authorise the execution of and the performance of its obligations under the Contract has been taken or, in the case of any Work Orders entered into after the date of this Contract, will be taken before such execution;
  - 6.1.4 the obligations expressed to be assumed by the Consultant under the Contract are, or in the case of any Work Orders entered into after the date of this Contract will be, legal, valid, binding and enforceable to the extent permitted by law and each Work Order is or will be in the proper form for enforcement in England;
- 6.2 the execution, delivery and performance by it of this Contract does not contravene any provision of:
- 6.2.1 any existing Legislation either in force, or enacted but not yet in force binding on the Consultant;
  - 6.2.2 the Memorandum and Articles of Association of the Consultant;
  - 6.2.3 any order or decree of any court or arbitrator which is binding on the Consultant; or
  - 6.2.4 any obligation which is binding upon the Consultant or upon any of its assets or revenues;
- 6.3 no claim is presently being assessed and no litigation, arbitration or administrative proceedings are presently in progress or, to the best of the knowledge of the Consultant, pending or threatened against it or any of its assets which will or might have a material adverse effect on the ability of the Consultant to perform its obligations under this Contract;
- 6.4 it is not the subject of any other obligation, compliance with which will or is likely to have a material adverse effect on the ability of the Contractor to perform its obligations under this Contract;
- 6.5 no proceedings or other steps have been taken and not discharged (nor, to the best of the knowledge of the Consultant, threatened) for its winding-up or dissolution or for the appointment of a receiver, administrative receiver, administrator, liquidator, trustee or similar officer in relation to any of its assets or revenues;
- and the Client Organisation relies upon such warranties and representations.
- 6.6 The Consultant undertakes with the Client Organisation that for so long as this Contract remains in full force:
- 8.2.1 it will upon becoming aware that any litigation, arbitration, administrative or adjudication or mediation proceedings before or of any court, arbitrator or any other relevant authority may be threatened or pending and immediately after the commencement thereof (or within twenty (20) Working Days of becoming aware the same may be threatened or pending or with twenty (20) Working Days after the commencement thereof where the litigation or arbitration or administrative or adjudication or mediation proceedings is against a sub-Consultant) give the Client Organisation notice of such litigation, arbitration, administrative or adjudication or mediation proceedings which would adversely affect, to an extent which is material in the context of the Services, the Consultant's ability to perform its obligations under this Contract;

- 8.2.1 it will not without the prior written consent of the Client Organisation (and whether by a single transaction or by a series of transactions whether related or not) sell, transfer, lend or otherwise dispose of (other than by way of security) the whole or any part of its business or assets which would materially affect the ability of the Consultant to perform its obligations under this Contract;
- 8.2.1 it shall not change or cease its business or start any other business which is materially different from that to be carried on by it under this Contract.
- 6.7 The Consultant warrants and undertakes that it has not and shall not specify nor authorise, cause or allow to be used to provide the Services any material which does not comply with the terms of this Contract or is known to or is reasonably believed to pose a hazard to the health of any person or to the environment or which, at the time of specification or use in the Services is generally accepted as causing Environmental Harm or being deleterious (“Prohibited Materials”).
- 6.8 The Consultant shall immediately notify the Client Organisation if it suspects or becomes aware of any proposed or actual use within or in connection with the Services of any of the Prohibited Materials.
- 6.9 **Status of Warranties**
- All warranties, representations, undertakings, indemnities and other obligations made, given or undertaken by the Consultant in this Contract are cumulative and none shall be given a limited construction by reference to any other.
- 7 STANDARD OF PERFORMANCE**
- 7.1 The Consultant will at all times ensure that the Services in respect of this Contract, and each and every Work Order entered into pursuant to this Contract, comply with and meet all the requirements of this Contract, Schedule 1 (Scope of Services), Schedule 2 (Consultant Programme Proposal) the Consultant’s Work Order Proposal, Good Industry Practice, necessary consents, guidance and all applicable Client Organisation and Additional Client Organisations’ Policies and legislation with effect from the Start Date for this Contract.
- 7.2 The Consultant shall ensure, and shall procure that any Consultant Related Party shall ensure, that the Services are carried out in compliance with the Equality Act 2010 Requirements.
- 7.3 The Consultant’s obligation in carrying out and completing the Services is to exercise and continue to exercise all the reasonable skill, care and diligence to be expected of a properly qualified and competent consultant who is experienced in preparing services of a similar size, scope, nature and complexity to the Services.
- 7.4 The Consultant will at all times ensure that the Services are performed by appropriately qualified and trained personnel.
- 8 PERFORMANCE MONITORING**
- 8.1 **Consultant Monitoring**
- The Consultant shall monitor its performance in the delivery of the Services in accordance with the provisions of Schedule 1 (Scope of Services).
- 8.2 **Client Organisation Monitoring**
- 8.2.1 The Client Organisation may elect to undertake its own performance monitoring at any stage during the contract term for any purpose, including in order to ensure that the Services are being provided in accordance with this



Contract. The Consultant will use its reasonable endeavors to assist the Client Organisation in such an exercise. The Client Organisation shall be entitled to notify the Consultant of the outcome of the performance monitoring exercise, and the Consultant shall have due regard to the Client Organisation's comments in relation to the future provision of the Services.

8.3 Without prejudice to the Client Organisation's rights under clause 12 (Termination) and to any other express rights under this Contract, where the Consultant has been found to:

8.3.1 be fraudulent in the submission of performance monitoring reports or claims for payment under the Payment and Invoicing provisions set out within Schedule 3 (Work Order Template) of this Contract; or

8.3.2 have submitted at least two (2) erroneous monitoring reports, within a three (3) month period; or

8.3.3 where there has been a failure to meet the Client Satisfaction Survey percentage performance target

the Client Organisation may by notice to the Consultant increase the level of its monitoring of the Consultant, and/or (at the Client Organisation's sole discretion), of the Consultant's monitoring of its own performance of its obligations under the Contract in respect of the Services (either in part or in whole) the subject of such fraudulent or erroneous reporting until such time as the Consultant shall have demonstrated to the reasonable satisfaction of the Client Organisation that it will perform (and is capable of performing) its obligations under this Contract.

8.4 For the purposes of clause 8.3, the Client Organisation acknowledges that if the Consultant has otherwise failed to have demonstrated to the reasonable satisfaction of the Client Organisation as required by clause 8.3 but:

(a) if the Consultant has removed the person or persons responsible for the fraudulent reporting; or

(b) (under clause 8.3.2), if in the three (3) month period following the Client Organisation notice (if it has not already been established) there have been no further erroneous reports of any kind,

this shall be regarded as sufficient demonstration that the Consultant will perform and is capable of performing its obligations.

8.5 If the Client Organisation issues a notice under clause 8.3, the Consultant shall bear its own costs and indemnify and keep the Client Organisation indemnified at all times from and against all reasonable costs and expenses incurred by or on behalf of the Client Organisation in relation to such increased level of monitoring.

## **9 FEE**

No fee shall be payable by the Client Organisation to the Consultant in relation to any obligations or duties on the part of and to be performed by the Consultant under this Contract.

## **10 ASSIGNMENT**

10.1 The Consultant shall not sub-contract, assign, underlet, charge, sell, bargain or otherwise deal in any way with the benefit of this Contract in whole or in part except with the prior written consent of the Client Organisation.

- 10.2 The Client Organisation may twice assign, novate or otherwise transfer or sub-contract, any benefit or obligation of this Contract in whole or in part at any time, without the consent of the Consultant.
- 10.3 Where the Client Organisation novates part of this Contract pursuant to clause 10.2 above, then there is deemed to be a new contract created between the Consultant and such party to whom the novation is made to on substantially the same terms as this Contract.
- 10.4 The Consultant shall not contend that any person to whom the benefit of the Contract is assigned under clause 10.2 may not recover any sum under the Contract because that person is an assignee and not a named party to the Contract.

## **11 ADDITIONAL CLIENT ORGANISATION WORK ORDERS**

- 11.1 The Client Organisation and the Consultant agree that the Additional Client Organisation/s are under no obligation to the Consultant to issue a specific number or value of Works Orders during the term of this Contract.
- 11.2 Whenever during the term of this Contract, an Additional Client Organisation wishes the Consultant to provide Services in relation to a Project, the Additional Client Organisation shall issue to the Consultant a Draft Work Order in relation to that Project together with a request for the Consultant to submit a Consultant's Work Order Proposal. The Consultant's Work Order Proposal shall contain the following information:
- (a) confirmation from the Consultant that it has the resources to perform the Services in accordance with the information set out in the Draft Work Order;
  - (b) confirmation that the Consultant has no conflict of interest in relation to the Project;
  - (c) its proposed fee (the "Work Order Price") for undertaking the Services in the form required under Schedule 3 (Work Order Template) of this Contract;
  - (d) the proposed Work Order Start Date for each Milestone and the proposed Work Order Completion Date; and
  - (e) the identity of the personnel that the Consultant proposes to use to carry out the Services and a description of their respective roles, including CVs for each of them.
- 11.3 The Consultant shall respond to such a request by the Additional Client Organisation within ten (10) Working Days of receipt of such request. The Consultant's Work Order Proposal shall remain open for acceptance by the Additional Client Organisation for a period of not less than two (2) months from the date that the Additional Client Organisation and Consultant complete their negotiations.
- 11.4 The Consultant shall notify the Additional Client Organisation within seven (7) Working Days of receipt of the request for a Consultant's Work Order Proposal if it does not have the capacity to undertake the Services set out in the Draft Work Order. In such circumstances, neither the Additional Client Organisation nor the Consultant shall have any further obligation to each other in respect of that Draft Work Order and the Additional Client Organisation shall be entitled to appoint another consultant to undertake such services without any cost to the Consultant provided always that the Consultant has complied with its obligation to notify the Additional Client Organisation under this clause 11.4.
- 11.5 A legal commitment shall only be formed between the Additional Client Organisation and the Consultant in respect of any Services referred to in a Draft Work Order when a Works Order is issued by the Additional Client Organisation and agreed covering such Services and the relevant Work Order has been signed by the Additional Client Organisation and

the Consultant and a countersigned copy has been returned to the Additional Client Organisation.

- 11.6 Any Work Order issued by the Additional Client Organisation to the Consultant and accepted by the Consultant in accordance with clause 11.5 shall be governed by the terms of the Contract and in each such case the relevant Work Order and this Contract shall govern the mutual rights, obligations, duties and liabilities of the Additional Client Organisation and the Consultant in relation to the Services to be provided by the Consultant under the Work Order.

## **12 TERMINATION**

### **12.1 Voluntary Termination by the Client Organisation**

12.1.1 The Client Organisation may terminate this Contract at any time on or before the Expiry Date by complying with its obligations under clause 12.1.2 (Voluntary Termination by the Authority).

12.1.2 If the Client Organisation wishes to terminate this Contract under this clause 12.1 (Voluntary Termination by the Client Organisation), it must give a Termination Notice to the Consultant stating:

- (a) that the Client Organisation is terminating this Contract under this clause 12.1 (Voluntary Termination by the Client Organisation);
- (b) that this Contract will terminate on the date specified in the notice, which must be a minimum of twenty (20) Working Days after the date of receipt of the notice; and
- (c) that no such termination by the Client Organisation shall affect any Work Orders in existence between an Additional Client Organisation and the Consultant pursuant to clause 11 of this Contract.

12.1.3 This Contract will terminate on the date specified in the Termination Notice referred to in clause 12.1.2 (Voluntary Termination by the Client Organisation).

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

12.2.1 Subject to clause 28.3 (Collateral Warranties), the Consultant may, by issuing a Termination Notice to the Additional Client Organisation, terminate:

- (a) A Work Order if the Additional Client Organisation fails to pay an undisputed sum due to the Consultant under such Work Order which in aggregate exceeds an amount equivalent to two (2) Milestone Payments and such amount remains outstanding forty (40) Working Days after the receipt by the Additional Client Organisation of a notice of non-payment from the Consultant; or
- (b) any Services pursuant to this Contract that are materially impacted by a Force Majeure Event that endures for a continuous period of more than ninety (90) days,

and such Work Order or Services shall then terminate on the date specified in the Termination Notice (which shall not be less than twenty (20) Working Days from the date of the issue of the Termination Notice) unless, in respect of clause 12.2.1(a), the Additional Client Organisation rectifies the Additional Client Organisation Default within ten (10) Working Days of receipt of the Termination Notice.

### **12.3 Termination on Consultant Default**

12.3.1 Subject to clause 12.4 (Rectification), the Client Organisation shall be entitled to terminate this Contract by notice in writing to the Consultant if a Consultant Default has occurred.

12.3.2 On termination the Client Organisation may request Additional Client Organisations with existing Work Orders to terminate such Work Orders with immediate effect, depending on the severity of the Default (such assessment to be made at the Client Organisation's sole discretion).

#### 12.4 Rectification

12.4.1 If a Consultant Default has occurred and the Client Organisation wishes to terminate this Contract, it must serve a Termination Notice on the Consultant.

12.4.2 The Termination Notice must specify:

- (a) the type and nature of Consultant Default that has occurred, giving reasonable details; and
- (b) that in the case of any Consultant Default falling within the limbs (a) and (g) of the definition of Consultant Default this Contract will terminate on the day falling forty (40) Working Days after the date the Consultant receives the Termination Notice, unless:
  - (i) in the case of a breach under limb (a) of the definition of Consultant Default the Consultant puts forward an acceptable rectification programme within ten (10) Working Days after the date the Consultant receives the Termination Notice (and implements such programme in accordance with its terms and rectifies the Consultant Default in accordance with the programme); or
  - (ii) in the case of any Consultant Default falling within limbs (a) and (g) of the definition of Consultant Default the Consultant rectifies the Consultant Default within twenty (20) Working Days after the date the Consultant receives the Termination Notice; or
- (c) that in the case of any other Consultant Default (not being limbs (a) and (g)), this Contract will terminate on the date falling forty (40) Working Days after the date the Consultant receives the Termination Notice.

12.4.3 If the Consultant either rectifies the Consultant Default within the time period specified in the Termination Notice, or implements the rectification programme, if applicable, in accordance with its terms, the Termination Notice will be deemed to be revoked and this Contract will continue.

12.4.4 If either in the case of a Consultant Default within limb (a) of the definition of that term where no acceptable rectification programme has been put forward pursuant to clause (b)(i) or in the case of a Consultant Default falling within limb (g) of the definition of Consultant Default, the Consultant fails to rectify the Consultant Default within the time period specified in the Termination Notice, the Client Organisation may give notice stating that this Contract will terminate on the date falling five (5) Working Days after the date of receipt of such notice.

12.4.5 If the Consultant fails to implement any rectification programme in accordance with its terms, this Contract will terminate on the date falling five (5) Working Days after the date of notification by the Client Organisation to the Consultant of such failure to implement the rectification programme in accordance with its terms.

## 12.5 Expiry

- 12.5.1 The Contract shall terminate automatically on expiry of the Term unless it shall have been terminated earlier in accordance with the provisions of the Contract. The Consultant shall not be entitled to any compensation on expiry of the Term.

## 13 CONSEQUENCES OF TERMINATION

- 13.1 Neither the Consultant nor any sub-Consultant shall be entitled to any compensation on termination of this Contract pursuant to clause 12.1 (Voluntary Termination by the Client Organisation).
- 13.2 If a Termination Notice is issued by the Consultant pursuant to clause 12.2 (Termination by the Consultant) or a Termination Notice is issued by the Client Organisation pursuant to clause 12.3 (Termination on Consultant Default) the only payments that the Additional Client Organisation shall be required to make as a result of such termination (whether by way of compensation or otherwise) are payments in respect of unpaid Milestone Payments for Services received up until the Termination Date.
- 13.3 For the avoidance of doubt, neither the Consultant nor any sub-Consultant shall be entitled to any compensation by the Client Organisation pursuant to clause 12.2 (Termination by the Consultant).

## 14 CHANGE

- 14.1 This Contract shall constitute the entire agreement between the Parties and supersedes any other prior or contemporaneous agreement or communication on the subject matter hereof (except to the extent that either party seeks to exclude fraudulent misrepresentations or fraud).
- 14.2 No amendment or changes to the Contract (including but not limited to any existing Work Order) shall be binding on the Client Organisation and/or the Additional Client Organisation and the Consultant unless in writing signed by:
- (a) the Client Organisation and the Consultant for all matters in respect of the Contract save for an existing Work Order; and
  - (b) the Additional Client Organisation and the Consultant in respect of an existing Work Order.

### 14.3 Client Organisation Change

- 14.3.1 Subject to clause 14.3.2, the Client Organisation shall be entitled to propose a Change in accordance with the procedures set out in Schedule 5 (Change Procedure).
- 14.3.2 The Client Organisation shall not propose a Change which:
- (i) infringes any Law; or
  - (ii) attempts to vary or inadvertently varies an existing Work Order, without the prior written consent of the relevant Additional Client Organisation; or
  - (iii) in the Client Organisation's discretion, following consultation with the Consultant, would materially and adversely affect the Consultant's ability to deliver the Services.
- 14.3.3 This Contract is subject to continual review and as part of this process the Client Organisation reserves the right to review the scope of Services

required. Should the need for part or parts of the Services no longer exist, either by the demand being transferred to another body or due to a decision made by the Client Organisation at its discretion to discontinue supplying such demand, then the Client Organisation reserves the right to withdraw those Services from the Contract by giving a thirty (30) day written notice. The Client Organisation shall not be liable for any additional costs attributed to the withdrawal of those Services.

14.3.4 A review of the scope of Services and/or a discontinuation of part or parts of the Services pursuant to clause 14.3.3 shall not affect the delivery of Work Orders in existence.

#### 14.4 **Additional Client Organisation Change**

14.4.1 The Additional Client Organisation shall be entitled to propose a Change to an existing Work Order in accordance with the procedures set out in Schedule 5 (Change Procedure).

#### 14.5 **Consultant Change**

14.5.1 Where the Consultant wishes to introduce a Change in respect of this Contract or an existing Work Order, it must comply with the procedures set out in Schedule 5 (Change Procedure).

14.5.2 The Client Organisation shall not reject a Change proposed by the Consultant which is required in order to conform to any Applicable Law.

#### 14.6 **Change in Law**

14.6.1 The Consultant shall neither be relieved of its obligations to supply the Services in accordance with the terms and conditions of this Contract nor be entitled to an increase in a Work Order Price as the result of:

- (i) a General Change in Law; or
- (ii) a Specific Change in Law where the effect of that Specific Change in Law on the Services is reasonably foreseeable at the Start Date.

14.6.2 If a Specific Change in Law occurs or will occur during the Term (other than as referred to in clause 14.6.1); the Consultant shall:

- (a) notify the Client Organisation as soon as reasonably practicable of the likely effects of that change, including:
  - (i) whether any Change is required to the Services, the Schedule of Rates or this Contract; and
  - (ii) whether any relief from compliance with the Consultant's obligations is required, including any obligation to Achieve a Milestone in respect of a Work Order and/or to meet the Target Performance Levels; and
- (b) provide the Client Organisation with evidence:
  - (i) that the Consultant has minimised any increase in a Work Order Price or maximised any reduction in a Work Order Price; and
  - (ii) as to how the Specific Change in Law has affected the Schedule of Rates set out in Schedule 4 for the provision of the Services.

14.6.3 Any variation in the Schedule of Rates, a Work Order Price or relief from the Consultant's obligations resulting from a Specific Change in Law (other than

as referred to in clause 14.6.1) shall be implemented in accordance with Schedule 5 (Change Procedure).

## 15 RESOLUTION OF DISPUTES

15.1 The Client Organisation and the Consultant shall use their best endeavours, in accordance with Good Industry Practice, to resolve by agreement any dispute arising between them and shall negotiate in good faith at all times.

15.2 In order to resolve a dispute, the Parties shall use the following procedure:-

- (a) there shall be a meeting between representatives of both Parties within ten (10) Working Days of the dispute having arisen, or such other period as may be agreed between the Parties;
- (b) if the dispute remains unresolved after the meeting referred to in sub clause 15.2(a) then a further meeting involving senior representatives of the Parties shall be held within a further ten (10) Working Days of the first meeting, or such other period as agreed between the Parties;
- (c) if the dispute is still not resolved after the meeting referred to in sub clause 15.2(b) then the Parties shall attempt to settle it through independent mediation in accordance with the Centre for Dispute Resolution (**CEDR**) Model Mediation Procedure, as soon as reasonably practicable after the meeting. The mediator shall be agreed between the Parties, or in default of agreement, the mediator shall be appointed by CEDR;
- (d) if the dispute remains unresolved after the mediation, then either Party may commence proceedings in accordance with clause 15.3.

### 15.3 Arbitration

- (a) If the dispute remains unresolved after the mediation, then either Party shall refer it to arbitration in accordance with the Rules of the London Court of International Arbitration (**LCIA**), provided that to the extent that this clause conflicts with the LCIA Rules, then this clause shall prevail.
- (b) The arbitration shall be conducted by a sole arbitrator to be agreed between the Parties, or in default of agreement appointed by the President of the LCIA or any person to whom the President has from time to time delegated his power to make appointments.
- (c) The seat of the arbitration shall be in England.
- (d) The language of the arbitration shall be English.
- (e) The arbitrator shall not have the power (such powers being reserved to any court of competent jurisdiction):-
  - (i) to rule on his own substantive jurisdiction pursuant to the Arbitration Act 1996 s. 30; or
  - (ii) to order a Party (on an interim basis) to do or refrain from doing anything, to order specific performance or to order rectification pursuant to the Arbitration Act 1996 s 48(5).
- (f) The arbitrator shall not have the power to award compound interest pursuant to the Arbitration Act 1996 s.49 except in the case of fraud or breach of fiduciary duty.
- (g) The Parties agree that the powers of the arbitrator shall include:-

- (i) the power under the Arbitration Act 1996 s 35(2) to order consolidation of proceedings and concurrent hearings; and
    - (ii) the power under the Arbitration Act 1996 s 39 to order on a provisional basis any relief which he would have the power to grant in a final award.
  - (h) The arbitrator's decision shall be in writing and shall state his reasons for their decision. The decision of the arbitrator shall be final and binding on both Parties and shall carry interest from the date of the award until the date of payment at the rate applicable to a judgment of the English court at the date of the award. The costs of the arbitration will be in the discretion of the arbitrator.
    - (i) All documents and proceedings in any arbitration pursuant to this clause 15.3 shall be confidential and all hearings shall be held in private, save to the extent necessary to enforce any award, to take confidential professional advice thereon or in connection therewith, or to comply with any requirement of any lawful authority. No public statement shall be made with regard to any arbitral proceedings save to the extent agreed between the Parties.
- 15.4 Subject to the above, the Parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).
- 15.5 Unless the Client Organisation determines or suspends the operation of this Contract, the Consultant shall be obliged to continue to perform its obligation under this Contract during the course of any Court proceedings.

## **16 INTERFACE PROVISIONS**

- 16.1 The Consultant shall:
- (a) provide the Client Organisation and/or anyone nominated by the Client Organisation from time to time (at the Client Organisation's reasonable request) with any calculations, details, drawings, manuals, specifications, layouts, programme related documentation and other documents and information relating to the services and performance of the Consultant's obligations under this contract as the Client Organisation, and/or anyone nominated by the Client Organisation may require from time to time, in such format as may be specified in the Scope, or in such format as may be required by the same from time to time (acting reasonably);
  - (b) cooperate and liaise with the Client Organisation, the Client Organisation Related Parties, the Additional Client Organisations, the Additional Client Organisation Related Parties and/or any other person or party that the Client Organisation may identify to the Consultant from time to time in relation to the Services and/or any of the Work Orders generated pursuant to this Contract in relation to the coordination, integration and interface between (a) the design, programmes, works to be performed by such others and (b) the services and the Consultant's performance of its obligations under this Contract. The Consultant shall comply with all reasonable instructions issued by the Client Organisation in respect of the coordination, integration and interface of the Services and the Consultant's performance of its obligations under this Contract;
  - (c) use all reasonable endeavours to ensure that no delay, interruption or interference is caused by the Consultant to the Client Organisation, the Client Organisation Related Parties, the Additional Client Organisations, the Additional Client Organisation Related Parties and/or any other person or party that the Client Organisation may identify to the Consultant from time to time in relation to



the Services and/or any of the Work Orders generated pursuant to this Contract and performance of the Consultant's obligations under this Contract;

- (d) report to the Client Organisation and anyone nominated by the Client Organisation from time to time at such intervals as identified in Schedule 1 (Scope of Services), or at such intervals as the Client Organisation may reasonably require in relation to the services and the Consultant's performance of its obligations under this Contract;
- (e) co-operate with the Client Organisation, the Client Organisation Related Parties, the Additional Client Organisations, the Additional Client Organisation Related Parties and/or any other person or party that the Client Organisation may identify to the Consultant from time to time to ensure the co-ordination of health and safety and environmental matters and shall undertake such measures and provide such reports as the Client Organisation may reasonably request from time to time;
- (g) for the avoidance of doubt comply with its obligations under this clause 16 at its own cost."

## **17 FREEDOM OF INFORMATION**

### **Definitions:**

"EIR" means the Environmental Information Regulations 2004.

"FOIA Information" has the meaning given to under section 84 of the FOIA.

"FOIA" means the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner in relation to such legislation.

"Request for Information" means a request for information under the FOIA or EIR or any other request for information received from a member of the public.

- 17.1 The Consultant understands and acknowledges that the Client Organisation is subject to the requirements of the FOIA and EIR. The Consultant shall assist and co-operate with the Client Organisation to enable the Client Organisation to respond to any Request for Information which relates to the Services.
- 17.2 The Consultant shall and shall procure that any sub-Consultant shall (i) transfer to the Client Organisation any Request for Information as soon as reasonably practicable after receipt and in any event within three (3) days of receiving a Request for Information and (ii) provide all necessary assistance as reasonably requested by the Client Organisation to enable the Client Organisation to respond to a Request for Information as soon as practicable after receipt and in any event within twenty (20) days.
- 17.3 The Client Organisation shall be responsible for determining in its absolute discretion whether any information is to be disclosed in response to a Request for Information.
- 17.4 The Consultant understands and acknowledges that the Client Organisation is under no obligation to consult with it prior to responding to any Request for Information relating to the services but will take reasonable steps, where appropriate, to give the Consultant advanced notice, or failing that, draw the disclosure to the Consultant's attention after such disclosure.
- 17.5 The Consultant shall not respond directly to a Request for Information unless expressly authorised to do so by the Client Organisation.

17.6 The Consultant shall ensure that all FOIA Information is retained for the agreed information periods as set out below and shall permit the Client Organisation to inspect such records as requested from time to time:

17.6.1 In relation to this Contract and all Work Orders generated pursuant to this Contract, six (6) years following expiry or earlier termination of this Contract.

17.7 The provision of this clause 17 shall survive the termination or expiry of this contract.

## **18 CONFIDENTIALITY**

18.1 The Consultant shall take all reasonable steps, by instruction, display of notices or other appropriate means, to be agreed periodically with the Client Organisation, to ensure that all staff employed on any work and/or services in connection with this Contract have notice that these provisions apply to them and will continue to apply to them:

18.1.1 after the completion of all Services delivered under the final Work Order generated pursuant to this Contract or after the expiry or termination of this Contract, whichever is earlier; and

18.1.2 after termination of their employment.

18.2 The Consultant shall not disclose this contract, or any provision thereof or any Client Organisation Data, any Additional Client Organisation Data or any other information or documentation provided under or pursuant to the same to any person other than a person engaged in connection with this Contract or to any insurer and only then to such extent as may be necessary for the performance of this Contract, except with the written consent of the Client Organisation. Such disclosure shall be made in confidence and shall be limited to disclosure necessary for the purposes of this Contract.

18.3 The Consultant shall not make use of this contract, or any information issue or furnished by or on behalf of the Client Organisation otherwise than for the purposes of this contract, except with the written consent of the Client Organisation.

18.4 Where the Consultant, in carrying out his obligations under this Contract, is provided with information from or by the Client Organisation or by a third party on behalf of the Client Organisation, the Consultant shall not disclose or make use of any such information otherwise than for the purpose for which it was provided, unless the Consultant has sought and obtained the consent of the Client Organisation.

18.5 Notwithstanding any of the provisions of this clause, nothing herein shall prevent disclosure of information:

18.5.1 by either party to its employees, officers, representatives, contractors, sub-contractors or advisers who need to know such information for the purposes of carrying out the party's obligations under this Contract. Each party shall ensure that its employees, officers, representatives, contractors, sub-contractors or advisers to whom it discloses the other party's confidential information comply with this clause 18; or

18.5.2 when such disclosure is a requirement of law placed upon the party making the disclosure, including any requirements for disclosure under the FOIA, Code of Practice on Access to Government Information or the EIR pursuant to clause 17 (Freedom of Information); or

18.5.3 relating to the outcome of the procurement process for this Contract as may be required to be published in Contracts Finder or elsewhere provided that this is in accordance with the requirements of United Kingdom Government policy on the disclosure of information relating to public sector contracts; or

- 18.5.4 by or on the part of the Client Organisation to any other department, office or agency of the Crown, or to any person engaged by the Client Organisation in connection with this contract.
- 18.6 The Consultant shall ensure that all staff, whether employed by it, or by a sub-Consultant, or self-employed, are under an obligation of confidence owed not only to the Consultant but also the Client Organisation not to disclose any information acquired during the course of their employment otherwise than in the proper discharge of their duties or as authorised by the Client Organisation.
- 18.7 Notwithstanding any other term of this Contract, this clause 18 shall survive the expiry or, if earlier, termination of this contract for a period of six (6) years.

## **19 DATA PROTECTION**

19.1 The Parties acknowledge that for the purposes of the Data Protection Legislation, the nature of the activity carried out by each of them in relation to their respective obligations under this Contract will determine the status of each Party under the Data Protection Legislation. A Party may act as:

- (a) "Controller" (where the other Party acts as the "Processor");
- (b) "Processor" (where the other Party acts as the "Controller");

the Parties acknowledge that, for the purpose of this Contract the Client Organisation will be the Controller and the Consultant will be a Processor.

- 19.2 The Processor will only process to the extent it is authorised to do so by the Controller.
- 19.3 The Processor shall notify the Controller immediately if it considers that any of the Controller's instructions infringe the Data Protection Legislation.
- 19.4 The Processor shall provide all reasonable assistance to the Controller in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Controller, include:
- (a) a systematic description of the envisaged processing operations and the purpose of the processing;
  - (b) an assessment of the necessity and proportionality of the processing operations in relation to the Services;
  - (c) an assessment of the risks to the rights and freedoms of Data Subjects; and
  - (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 19.5 The Processor shall, in relation to any Personal Data processed in connection with its obligations under this Agreement:
- (a) process that Personal Data only as directed by the Controller, unless the Processor is required to do otherwise by Law. If it is so required the Processor shall promptly notify the Controller before processing the Personal Data unless prohibited by Law;
  - (b) ensure that it has in place Protective Measures, including in the case of the Controller the measures set out in clause 20 (Client Organisation / Additional Client Organisation Data), which the Controller may reasonably reject (but failure to reject shall not amount to approval by the Controller of the adequacy of the Protective Measures) having taken account of the:
    - (i) nature of the data to be protected;

- (ii) harm that might result from a Data Loss Event;
  - (iii) state of technological development; and
  - (iv) cost of implementing any measures;
- (c) ensure that :
- (i) the Processor Personnel do not process Personal Data except as directed by the Controller;
  - (ii) it takes all reasonable steps to ensure the reliability and integrity of any Processor Personnel who have access to the Personal Data and ensure that they:
    - (A) are aware of and comply with the Processor's duties under this clause, clauses 18 (Confidentiality) and 20 (Client Organisation / Additional Client Organisation Data);
    - (B) are subject to appropriate confidentiality undertakings with the Processor or any Sub-processor;
    - (C) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Controller or as otherwise permitted by this Contract; and
    - (D) have undergone adequate training in the use, care, protection and handling of Personal Data;
  - (iii) not transfer Personal Data outside of the United Kingdom unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:
    - (A) the Controller or the Processor has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or DPA 2018 Section 75) as determined by the Controller;
    - (B) the Data Subject has enforceable rights and effective legal remedies;
    - (C) the Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Controller in meeting its obligations); and
    - (D) the Processor complies with any reasonable instructions notified to it in advance by the Controller with respect to the processing of the Personal Data; and
    - (E) at the written direction of the Controller, delete or return Personal Data (and any copies of it) to the Controller on termination of the Contract unless the Processor is required by Law to retain the Personal Data.

19.6 Subject to clause 19.7, the Processor shall notify the Controller immediately if it:

- (a) receives a Data Subject Request (or purported Data Subject Request);

- (b) receives a request to rectify, block or erase any Personal Data;
  - (c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
  - (d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Contract;
  - (e) receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
  - (f) becomes aware of a Data Loss Event.
- 19.7 The Processor's obligation to notify under clause 19.6 shall include the provision of further information to the Controller in phases, as details become available.
- 19.8 Taking into account the nature of the processing, the Processor shall provide the Controller with reasonable assistance in relation to either Party's obligations under Data Protection Legislation and any complaint, communication or request made under clause 17.6 (and insofar as possible within the timescales reasonably required by the Controller) including by promptly providing:
- (a) the Controller with full details and copies of the complaint, communication or request;
  - (b) such assistance as is reasonably requested by the Controller to enable it to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;
  - (c) the Controller, at its request, with any Personal Data it holds in relation to a Data Subject;
  - (d) assistance as requested by the Controller following any Data Loss Event; and/or
  - (e) assistance as requested by the Controller with respect to any request from the Information Commissioner's Office, or any consultation by the Controller with the Information Commissioner's Office.
- 19.9 The Processor shall maintain complete and accurate records and information to demonstrate its compliance with this Clause. This requirement does not apply where the Processor employs fewer than 250 staff, unless:
- (a) the Controller determines that the processing is not occasional;
  - (b) the Controller determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; or
  - (c) the Controller determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 19.10 The Processor shall allow for audits of its Data Processing activity by the Controller or the Controller's designated auditor.
- 19.11 The Parties shall designate a Data Protection Officer if required by the Data Protection Legislation.
- 19.12 The Consultant shall indemnify and keep indemnified the Client Organisation (or where relevant the Additional Client Organisation) in respect of all Data Protection losses (which shall be categorised as direct loss) suffered or incurred by, awarded against or agreed to

be paid by, the Client Organisation (or where relevant the Additional Client Organisation) arising from or in connection with:

- (a) any breach by the Consultant of any of its obligations under this clause; or
- (b) the Consultant (or any person acting on its behalf) acting outside or contrary to the lawful instructions of the Client Organisation (or where relevant the Additional Client Organisation) in respect of the processing of Personal Data.

19.13 Clause 19.12 is intended to apply to the allocation of liability for Data Protection Losses as between the Parties, including with respect to compensation to Data Subjects, notwithstanding any provisions under Data Protection Laws to the contrary, except:

- (a) to the extent not permitted by Applicable Law (including Data Protection Laws); and
- (b) that it does not affect the liability of either party to any Data Subject.

19.14 Before allowing any sub-processor to process any Personal Data related to this Contract, the Processor must:

- (a) notify the Controller in writing of the intended sub-processor and processing;
- (b) obtain the written consent of the Controller;
- (c) enter into a written agreement with the sub-processor which give effect to the terms set out in this clause 19 such that they apply to the sub-processor; and
- (d) provide the Controller with such information regarding the sub-processor as the Controller may reasonably require.

19.15 The Processor shall remain fully liable for all acts or omissions of any of its sub-processors.

19.16 The Client Organisation may, at any time on not less than thirty (30) Working Days' notice, revise this Clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Contract).

19.17 The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Client Organisation may on not less than thirty (30) Working Days' notice to the Consultant amend this Contract to ensure that it complies with any guidance issued by the Information Commissioner's Office.

## 20 **CLIENT ORGANISATION / ADDITIONAL CLIENT ORGANISATION DATA**

20.1 The Consultant shall not delete or remove any proprietary notices contained within or relating to the Client Organisation Data and the Additional Client Organisation Data.

20.2 The Consultant shall not store, copy, disclose, or use the Client Organisation Data and the Additional Client Organisation Data except as necessary for the performance by the Consultant of its obligations under this Contract or as otherwise expressly authorised in writing by the Client Organisation or the Additional Client Organisation (as relevant).

20.3 To the extent that Client Organisation Data and/or Additional Client Organisation Data is held and/or processed by the Consultant, the Consultant (and any Consultant Related Party) shall preserve the integrity of such Client Organisation Data and the Additional Client Organisation Data and prevent the corruption or loss of Client Organisation Data and the Additional Client Organisation Data at all times that the relevant Client Organisation Data and the Additional Client Organisation Data is under its control or the control of any Consultant Related Party.

- 20.4 The Consultant shall ensure that any system on which the Consultant holds any Client Organisation Data and/or Additional Client Organisation Data, is a secure system protected by up to date antivirus software at all times.

## **21 INTELLECTUAL PROPERTY RIGHTS**

- 21.1 The Consultant grants to the Client Organisation, with immediate effect, an irrevocable, non-exclusive, royalty-free licence to copy and make full use of the Programme Documents for any purpose relating to the provision of the Services.
- 21.2 The Client Organisation's licence carries the right to grant sub-licences for the purposes of the Contract and is transferable to third parties without the consent of the Consultant and shall survive the termination (for any reason) of the Contract.
- 21.3 The Consultant shall obtain from any sub-Consultants equivalent rights in favour of the Client Organisation over the material prepared by the sub-Consultants for the purposes of the Contract.
- 21.4 The Consultant is not liable for use of the Contract Documents for any purpose other than that for which they were prepared or provided.
- 21.5 The Consultant shall make available to the Client Organisation all such documents created by the Consultant or any sub-Consultant in relation to this Contract for use by the Client Organisation and the Additional Client Organisation for the purposes of the Services to carry out a Work Order or any statutory or other duty pursuant to this Contract.
- 21.6 The Consultant warrants that the Client Organisation's exercise of any such Intellectual Property Rights shall not infringe the Intellectual Property Rights of any third parties and the Consultant shall indemnify the Client Organisation against any claims, damages, losses, costs or expenses suffered by the Client Organisation (or its assignees or licensees) as a result of the Client Organisation's exercise of such Intellectual Property Rights or for which the Client Organisation is otherwise liable arising out of or in connection with any infringement of any Intellectual Property Rights of any third party caused by or arising out of performing any statutory duty or for any purpose connected with construction, alteration or demolition of the works to which the services relate and for other purposes stated in Schedule 1 (Scope of Services) of this Contract.
- 21.7 The Consultant has the right to use Client Organisation Data and Additional Client Organisation Data only for the purposes of satisfying its obligations under this Contract for the purposes of the Services. The Consultant may make this right available to Consultant Related Parties for the same purpose. Upon Termination or Expiry, the Consultant shall return all Client Organisation Data to the Client Organisation and all Additional Client Organisation Data to the relevant Additional Client Organisation.
- 21.8 Where any Contract Documents created by the Consultant or any sub-Consultants are held electronically or in other machine readable format, the Consultant provides a licence for and supplies any software necessary to enable the Client Organisation and the Client Organisation's Representative to access and use the Contract Documents for the purpose of performing any statutory duty or carrying out any function in relation to the works to which the Services relate either before or after Termination or Expiry of this Contract.
- 21.9 The Client Organisation and the Consultant do anything necessary to confirm the terms of any assignment of Intellectual Property Rights or license to use the Contract Documents for the purposes of this Contract.
- 21.10 As contemplated by the Copyright, Designs and Patents Act 1988, to the extent the Consultant or any sub-Consultant is the author of Contract Documents which comprise Intellectual Property Rights, the Consultant waives and shall ensure that the sub-Consultant waives its rights against the Client Organisation, the Client Organisation's

assignees and licensees to the extent that the exercise of such rights would prevent or impede the Client Organisation's exercise of the Intellectual Property Rights.

## **22 HEALTH AND SAFETY**

22.1 The Consultant shall at all times retain a person to be responsible for the health and safety matters as required by the Health and Safety at Work Act 1974 and all other applicable laws pertaining to health and safety of employees and other affected persons, and notify the relevant details of such person to the Client Organisation.

22.2 The Consultant shall:

- (a) conduct the Services so as to eliminate or minimise so far as is reasonably practicable any health and safety risks to members of the public, the Client Organisation and the Client Organisation Related Parties, the Additional Client Organisation and the Additional Client Organisation Related Parties, the Consultant and the Consultant Related Parties; and
- (b) accept full responsibility for all aspects of health and safety while performing the Services.

22.3 The Consultant shall throughout the Term conduct regular reviews and audits of their Health and Safety Policy and will notify the Client Organisation in writing of any required changes to the same.

22.4 The Consultant shall procure that it and any Consultant Related Parties at all times take such precautions as are appropriate in accordance with Good Industry Practice to protect the health and safety of all persons employed in the provision of the Services.

## **23 AUDIT ACCESS**

The Consultant shall provide to the Client Organisation's Representative access to all records, monitoring reports, Work Order information, documents and the like in the possession of, or available to, the Consultant and to this end the Consultant shall use all reasonable endeavours to procure that all such items in the possession of the Consultant or any Consultant Related Party shall be available to it and the Consultant shall (and shall procure that the Consultant Related Parties shall) include appropriate terms in contracts with all sub-Consultants to this effect as may be reasonably requested by the Client Organisation's Representative for any purpose in connection with this Contract.

## **24 CDM REGULATIONS**

24.1 The Consultant hereby confirms and agrees that in relation to the preparation of any design in relation to any of the services for which it is responsible under this contract:

- (a) it shall (and shall ensure that all Consultant Related Parties who undertake any responsibility in relation to the preparation, development and completion of such design or any part thereof shall) carry out and fulfil in all respects the duties of a designer under the CDM Regulations;
- (b) he has or shall be deemed to have made all due allowance in the programming, planning and pricing of the works for compliance with this clause.

24.2 The Consultant warrants and undertakes that it is competent for the purposes of the CDM Regulations and that it has allocated and will continue to allocate adequate resources to comply with the duties and obligations imposed on it by the CDM Regulations.



## **25 LIABILITY AND INDEMNITIES**

### **Limitation on Liability**

- 25.1 Save for liability for death, fraud or personal injury which shall be unlimited,
- 25.2.1 the Consultant's aggregate liability arising under or in connection with a Work Order in tort for breach of statutory duty or otherwise shall not exceed one hundred and twenty-five per cent (125%) of the Work Order Price; and
- 25.2.2 The Consultant shall have no liability to the Employer in respect of any economic indirect or consequential loss or damage or liability including without limitation loss of profit or production or revenue."

## **26 REQUIRED INSURANCES**

- 26.1 Without prejudice to its obligations to the Client Organisation under this Contract, including its indemnity and liability obligations, the Consultant shall until the Completion Date of the last Work Order entered into under this Contract take out and maintain, or procure the taking out and maintenance of the insurances as set out below and any other insurances as may be required by applicable Law (together the "Required Insurances"). The Consultant shall ensure that each of the Required Insurances is effective no later than the date on which the relevant risk commences:
- 26.1.1 Public liability insurance with a limit of indemnity of not less than five million pounds (£5,000,000) in relation to any one claim or series of claims;
- 26.1.2 Employer liability insurance with a limit of indemnity of not less than five million pounds (£5,000,000) or in accordance with any legal requirement for the time being in force, if higher, in relation to any one claim or series of claims; and
- 26.1.3 Professional indemnity insurance with a limit of indemnity of not less than one million pounds (£1,000,000) in relation to any one claim and in the aggregate for each Work Order entered into under this Contract and shall ensure that all Consultant Related Parties involved in the provision of the Services hold and maintain appropriate cover.
- 26.2 The Required Insurances shall be maintained in accordance with Good Industry Practice and (so far as is reasonably practicable) on terms no less favourable than those generally available to a prudent contractor in respect of risks insured in the international insurance market from time to time.
- 26.3 The Required Insurances shall be taken out and maintained with insurers who are:
- 26.3.1 of good financial standing;
- 26.3.2 appropriately regulated;
- 26.3.3 regulated by the applicable regulatory body and is in good standing with that regulator; and
- 26.3.4 except in the case of any Required Insurances provided by an Affiliate of the Consultant, of good repute in the international insurance market.
- 26.4 The Consultant shall ensure that the Public Liability Insurance contains an indemnity to principals clause under which the Client Organisation and the Additional Client Organisation shall be indemnified in respect of claims made against the Client Organisation and/or the Additional Client Organisation in respect of death or bodily injury or third party property damage arising out of or in connection with the Contract and for which the Consultant is legally liable.

- 26.5 The Consultant shall not take any action or fail to take any action or (insofar as is reasonably within its power) permit anything to occur in relation to it which would entitle any insurer to refuse to pay any claim under any of the Required Insurances.
- 26.6 Where the Consultant has failed to purchase any of the Required Insurances or maintain any of the Required Insurances in full force and effect, the Client Organisation may elect (but shall not be obliged) following written notice to the Consultant to purchase the relevant Required Insurances, and the Client Organisation shall be entitled to recover the reasonable premium and other reasonable costs incurred in connection therewith as a debt due from the Consultant.
- 26.7 The Consultant shall upon the Start Date and within fifteen (15) Working Days after the renewal or replacement of each of the Required Insurances, provide evidence, in a form satisfactory to the Client Organisation, that the Required Insurances are in force and effect and meet in full the requirements of this clause 24 (Required Insurances). Receipt of such evidence by the Client Organisation shall not in itself constitute acceptance by the Client Organisation or relieve the Consultant of any of its liabilities and obligations under this Contract.
- 26.8 Subject to clause 26.9, the Consultant shall notify the Client Organisation in writing at least five (5) Working Days prior to the cancellation, suspension, termination or non-renewal of any of the Required Insurances.
- 26.9 Without prejudice to the Consultant's obligations under clause 26.7, clause 26.8 shall not apply where the termination of any Required Insurances occurs purely as a result of a change of insurer in respect of any of the Required Insurances required to be taken out and maintained in accordance with this clause 26 (Required Insurances).
- 26.10 The Consultant shall promptly notify to insurers any matter arising from, or in relation to, the Services and/or this Contract or which it may be entitled to claim under any of the Required Insurances. In the event that the Client Organisation and/or the Additional Client Organisation receives a claim relating to or arising out of the Services and/or this Contract, the Consultant shall co-operate with the Client Organisation and/or the Additional Client Organisation and assist it in dealing with such claims at its own expense including without limitation providing information and documentation in a timely manner.
- 26.11 The Consultant shall maintain a register of all claims under the Required Insurances in connection with this Contract and shall allow the Client Organisation to review such register at any time.
- 26.12 Where any Required Insurance requires payment of a premium, the Consultant shall be liable for and shall promptly pay such premium.
- 26.13 Where any Required Insurance is subject to an excess or deductible below which the indemnity from insurers is excluded, the Consultant shall be liable for such excess or deductible. The Consultant shall not be entitled to recover from the Client Organisation and/or the Additional Client Organisation any sum paid by way of excess or deductible under the Required Insurances.

## **27 ASSISTANCE**

- 27.1 The Consultant shall give the Client Organisation or the Additional Client Organisation such reasonable assistance as the Client Organisation or the Additional Client Organisation may require in dealing with any claims made against the Client Organisation or the Additional Client Organisation by any other consultant or any other party engaged on the Programme or the provision of Services in respect of a Project) except for any proceedings that are subject to dispute resolution proceedings under this Contract. Such assistance shall include, without limitation, the provision of information and documentation.

- 27.2 To the extent that the provision of such assistance requires the Consultant to provide information or documentation which has not already been generated by the Consultant in the usual course of business in carrying out the contract, the Client Organisation or the Additional Client Organisation shall reimburse the Consultant for any costs reasonably incurred by the Consultant in providing such assistance. In addition, the Consultant shall make available its personnel to provide witness evidence and the Client Organisation or the Additional Client Organisation shall reimburse the Consultant's reasonable costs of so doing.

## **28 COLLATERAL WARRANTY AGREEMENTS**

- 28.1 Within fourteen (14) days of a request from the Client Organisation or an Additional Client Organisation, the Consultant shall execute and deliver a deed of collateral warranty in favour of any Funder and/or Investor whom the Client Organisation or an Additional Client Organisation may notify to the Consultant from time to time, in the form appended to this Contract. In addition to the requirement to provide any deed or deeds of collateral warranty pursuant to this clause, the Consultant shall, within fourteen (14) days of a request from the Client Organisation or an Additional Client Organisation execute and deliver a direct agreement in favour of any Funder and/or Investor in such form as such Funder and/or Investor may reasonably require.

- 28.2 Within twenty (20) days of the appointment of any sub-Consultant (or in the case of a Beneficiary which is not the Client Organisation or an Additional Client Organisation within 2 days of a notice from the Client Organisation or an Additional Client Organisation), the Consultant shall procure that the relevant sub-Consultant executes and delivers a deed of collateral warranty in favour of (as relevant) the Client Organisation or an Additional Client Organisation and/or any Funder and/ or Investor, or any other Beneficiary whom the Client Organisation or an Additional Client Organisation may notify to the Consultant from time to time, in the form appended to this Contract. In addition to the requirement to provide any deed or deeds of collateral warranty pursuant to this clause, the Consultant shall, within twenty (20) days of a request from the Client Organisation or an Additional Client Organisation procure that any sub-Consultant executes and delivers a direct agreement in favour of any Funder and/ or Investor, in such form as such Funder and/ or Investor may reasonably require.

- 28.3 In the event of any failure by the Consultant to provide any collateral warranty or direct agreement as required by this Contract, the Client Organisation or an Additional Client Organisation may deduct and withhold all sums due to the Consultant. Such monies may be withheld until such time as the relevant collateral warranty is provided to the Employer and notwithstanding the carrying out of or the completion of the Services.

## **29 NO BREACH**

- 29.1 The Consultant shall not be held to be failing to comply with its obligations under this Contract to the extent that such failure to comply is as a result of the Client Organisation's breach of its obligations hereunder.
- 29.2 The Consultant shall not be held to be failing to comply with its obligations under a Work Order to the extent that such failure to comply is as a result of the Additional Client Organisation's breach of its obligations hereunder.

## **30 NO AGENCY**

### **30.1 No Partnership or Employment**

Nothing in this Contract shall be construed as creating a partnership or as a contract of employment between the Client Organisation and the Consultant.

### **30.2 Power to Bind**

Save as expressly provided otherwise in this Contract, the Consultant shall not be, or be deemed to be, an agent of the Client Organisation and the Consultant shall not hold itself out as having authority or power to bind the Client Organisation in any way.

### 30.3 Deemed Knowledge

Without limitation to its actual knowledge, the Consultant shall for all purposes of this Contract, be deemed to have such knowledge in respect of the Services delivered pursuant to this Contract as is held (or ought reasonably to be held) by any Consultant Related Party.

## 31 NOTICES

31.1 Any notices sent under this Contract must be in writing.

31.2 Notices may be served under this Contract in accordance with the manner and the respective deemed time and proof of service set out below::

Manner of Delivery	Deemed time of service	Proof of service
Email	9.00am on the first Working Day after sending	Dispatched as a pdf attachment to an e-mail to the correct e-mail address without any error message.
Personal delivery	On delivery, provided delivery is between 9.00am and 5.00pm on a Working Day. Otherwise, delivery will occur at 9.00am on the next Working Day.	Properly addressed and delivered as evidenced by signature of a delivery receipt
Prepaid, Royal Mail Signed For™ 1 <sup>st</sup> Class or other prepaid, next working day service providing proof of delivery.	At the time recorded by the delivery service, provided that delivery is between 9.00am and 5.00pm on a Working Day. Otherwise, delivery will occur at 9.00am on the same Working Day (if delivery before 9.00am) or on the next Working Day if after 5.00pm).	Properly addressed prepaid and delivered as evidenced by signature of a delivery receipt

31.3 Notices shall be sent to the Representatives set out below or at such other duly appointed delegate as the relevant Party may give notice to the other Party for the purpose of service of notices under this Contract:

	Client Organisation's Representative	Consultant's Representative
<b>Contact</b>	Elli Nikolaou (NFCC FM & Construction National Category Lead)	Daniel Jermin (Programme Lead)
<b>Address</b>	Kent Fire and Rescue Service, Head Quarters, The Godlands, Straw Mill Hill, Tovil, Maidstone Service, ME15 6XB	2 Capital Quarter, Floor 2, Tyndall Street, Cardiff. CF10 4BZ
<b>Email</b>	Elli.Nikolaou@nfcc.org.uk	daniel.jermin@fgould.com

## **32 THIRD PARTY RIGHTS**

The Contract is enforceable by the original parties to it and by their successors in title and permitted assignees. Any person who is not a party to this agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Contract. This does not affect any right or remedy of the third party which exists or is available apart from the Contracts (Rights of Third Parties) Act 1999.

## **33 SEVERABILITY**

If any term, condition or provision of this Contract shall be held to be invalid, unlawful or unenforceable to any extent, such term, condition or provision shall not affect the validity, legality and enforceability of the other provisions of or any other documents referred to in this Contract.

## **34 WAIVER**

### **34.1 Waiver to be Written**

No term or provision of this Contract shall be considered as waived by any Party unless a waiver is given in writing by that Party.

### **34.2 Extent of Waiver**

No waiver under clause 34.1 (Waiver to be Written) shall be a waiver of a past or future default or breach, nor shall it amend, delete or add to the terms, conditions or provisions of this Contract unless (and then only to the extent) expressly stated in that waiver.

## **35 PUBLICITY AND BRANDING**

35.1 The Consultant shall not by itself, its employees or agents, and shall procure that its Consultant Related Parties shall not communicate with representatives of the press, television, radio, social media platforms or any other means of communication (including web-based) on any matter concerning this Contract or any of the Additional Client Organisations' Work Orders without the prior written approval of the Client Organisation.

35.2 The Consultant shall not use the Client Organisation's name or brand in any promotion or marketing or announcement of Work Orders entered into with Additional Client Organisations without the prior written consent of the Client Organisation, which shall not be unreasonably withheld or delayed.

35.3 Notwithstanding the above, where the Consultant has developed, in conjunction with the Client Organisation, new functionality or processes it will acknowledge the Client Organisation's role in such development subject always to the Client Organisation approving the wording.

35.4 Each Party acknowledges to the other that nothing in this Contract either expressly or by implication constitutes an endorsement of any products or services of the other Party (including the Services) and each Party agrees not to conduct itself in such a way as to imply or express any such approval or endorsement.

## **36 GOVERNING LAW AND JURISDICTION**

The Contract shall be governed by and construed in all respects in the accordance with the laws of England and Wales. Subject to clause 15 (Resolution of Disputes), the English Courts shall have exclusive jurisdiction to settle any disputes (including non-contractual disputes) which may arise out of or in connection with this Contract.

**37 ENTIRE AGREEMENT**

Except where expressly provided in this Contract, this Contract constitutes the entire agreement between the Parties in connection with the Services and supersedes all prior representations, communications, negotiations and understandings concerning the subject matter of this Contract.

This Contract was executed on the date first above written.

**SIGNED on behalf of the NATIONAL FIRE CHIEFS COUNCIL LIMITED (the Client Organisation)**



Signature: .....

Name: ...Susannah Hancock..... (BLOCK CAPITALS)

Position: ...NFCC Chief Operating Officer.....

**SIGNED on behalf of FAITHFUL+GOULD LIMITED (the Consultant)**



Signature: .....

Name: .....CHRIS HAINES.....(BLOCK CAPITALS)

Position: ...DIRECTOR.....

## SCHEDULE 1 – SCOPE OF SERVICES

(Provided as a separate document)

FINAL

## SCHEDULE 2 – THE CONSULTANT’S PROGRAMME PROPOSAL

(Provided as a separate document)

FINAL



### SCHEDULE 3 – WORK ORDER TEMPLATE

THIS WORK ORDER is made on the                      day of                      202[●]

#### BETWEEN

- (1) **[INSERT NAME]** (the "Additional Client Organisation"); and
- (2) **FAITHFUL+ GOULD LIMITED** incorporated and registered in England and Wales with company number **02236832** whose registered office is at **Woodcote Grove, Ashley Road, Epsom, Surrey, KT18 5BW** (the "Consultant").

together referred to hereunder as the "Parties".

#### WHEREAS

- (A) This Work Order is made pursuant to the Contract between the Client Organisation and the Consultant dated **[Insert date]**;
- (B) The Consultant has agreed to provide the Services in accordance with the Contract and the terms and conditions set out in this Work Order;
- (C) When entering into a Work Order, the Parties shall observe the process set out in clause 11 (Additional Client Organisation Work Orders) of the Contract;
- (D) The total value of all Work Order Milestone Payments shall be referred to as "Work Order Price"; and
- (E) A Work Order shall be deemed approved on the date that signature has been obtained by both Parties.

#### IT IS HEREBY AGREED:

##### 1 PROJECT NAME

The Project name is **[insert details]**.

##### 2 PROJECT DESCRIPTION

The Project involves **[insert details]**.

##### 3 LOCATION OF THE SITE

The Project is located at **[insert details]**.

##### 4 SERVICES

The Services required to be delivered are **[insert details]**.

##### 5 SITES

The Services are to be delivered at the following sites:

**[insert site name, site type (operational / non-operational) and full address]**.

##### 6 DESIRED PROJECT START DATE

**[Insert details]**

7 PROJECT TARGET COMPLETION DATE

[Insert details]

8 PROJECT TEAM – THE ADDITIONAL CLIENT ORGANISATION’S CONSULTANTS, SPECIALISTS AND OTHER ADDITIONAL CLIENT ORGANISATION RELATED PARTIES

The Additional Client Organisation has appointed the following parties in connection with the Project:

[insert details]

**Project Team:** The Additional Client Organisation’s Project Team includes the following entities and individuals:

[insert details]

The Consultant shall liaise with these entities during the course of the Project in accordance with the relevant provisions of the Contract.

9 INVOICES

[insert Additional Client Organisation’s email addresses for sending invoices]

10 CONSULTANT’S PERSONNEL

The Services to be performed pursuant to this Work Order shall be carried out by the following Consultant’s personnel:

Name Role

[Insert name] [Insert role]

[Insert name] [Insert role]

The Consultant’s Representative is [Insert name] [Insert job title] [Insert contact details]

11 ADDITIONAL CLIENT ORGANISATION’S REPRESENTATIVE

The Additional Client Organisation’s Representative is: [Insert name] [Insert job title] [Insert contact details]

12 CONFIRMATION OF PROFESSIONAL INDEMNITY INSURANCE LEVEL

This Work Order shall be subject to a Professional Indemnity Insurance level of £[Insert Sum]m for **any one claim and in the aggregate** in accordance with the provisions set out in clause 26 (Required Insurances) of the main body of the Contract.

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13 CONSULTANT’S WORK ORDER PROPOSAL AND COSTED MILESTONE IMPLEMENTATION PLAN

[Consultant to insert upon receipt of the Draft Work Order]

The Consultant’s Work Order Proposal shall set out **as a minimum**:

1. The detailed methodology for delivering the requested Services, the detailed Implementation Plan (which identifies all Work Order Milestones and their individual anticipated start and end date), as well as the resource allocation (including use of Sub-Consultants) for delivering the requested Services;

2. Comprehensive information evidencing the Consultant's capacity and ability to deliver the requested Services by the Project Target Completion Date;
  3. Comprehensive list of Additional Client Organisation Data that the Consultant shall require and the date by which such Data will need to be provided in order to provide the requested Services with the view of achieving the Target Completion Date, including but not limited to access to Additional Client Organisation sites.
    - a) ***The Consultant is advised that they shall (and shall ensure that any Consultant Related Party) comply with the Additional Client Organisation's corporate security policies and that the Additional Client Organisation reserves the right to request that the Consultant and (any Consultant Related Party involved in the provision of the Services pursuant to this Work Order) sign a Non-Disclosure Agreement.***
    - b) ***Where the Additional Client Organisation fails to provide the Consultant with the requested Additional Client Organisation Data and/or such Data contains erroneous information, the Consultant shall be relieved from its obligations to deliver the Services by the Project Completion Date and the Parties shall meet to agree a revised Project Target Completion Date.***
    - c) ***Where the Consultant fails to meet any one of the agreed Work Order Milestone Dates due to an act, negligence or omission of the Additional Client Organisation or any of the Additional Client Organisation Related Parties, the Consultant shall be relieved from its obligations to deliver the Services by the relevant Milestone Date and the Parties shall meet to agree a revised Work Order Implementation Plan.***
    - d) ***A Unique Reference Number attached to the specific Work Order Proposal.***
  4. A detailed cost plan (the 'Work Order Price') which particularises the Consultant's fee (in accordance with Schedule 4 – Schedule of Rates) for each activity proposed to be delivered under each and every Work Order Milestone; and

***N.B Additional Client Organisations are advised that they will not have the ability to 'pick and choose' which proposed activities they wish to include in the final Work Order and which ones to exclude as this would invalidate or substantially alter risk and liability considerations***
  5. The proposed Quality Plan which will be used by the Consultant (and regularly monitored by the Additional Client Organisation) to ensure that all aspects of the requested Services are the subject of quality management systems and are consistent with BS EN ISO 9001 or any equivalent standard which is generally recognised as having replaced it; and
- 

## 14 PAYMENT AND INVOICING REQUIREMENTS

- 14.1 In consideration of the Consultant carrying out its obligations under this Work Order pursuant to the Contract, upon completion of each Milestone delivered in accordance with the Consultant's Work Order Proposal and upon receipt of a valid and undisputed invoice, the Additional Client Organisation shall pay the Consultant such Milestone Payment within thirty (30) days from the date of the invoice. For the avoidance of doubt, submitted invoices which do not quote (or quote incorrectly) the Purchase Order number provided by the Additional Client Organisation will be deemed as invalid and payment will not be processed.
- 14.2 If the Additional Client Organisation fails to pay any undisputed Milestone Payments properly invoiced under this Schedule 3, the Consultant shall have the right to charge interest on the overdue amount

at the applicable rate under the Late Payment of Commercial Debts (Interest) Act 1998, accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment.

**VAT**

- 14.3 The Milestone Payments are stated exclusive of VAT, which shall be added at the prevailing rate as applicable and paid by the Additional Client Organisation following delivery of a valid VAT invoice.
- 14.4 The Consultant shall indemnify the Additional Client Organisation on a continuing basis against any liability, including any interest, penalties or costs incurred, that is levied, demanded or assessed on the Additional Client Organisation at any time in respect of the Consultant's failure to account for or to pay any VAT relating to payments made to the Consultant under this Work Order. Any amounts due under this paragraph 12.4 shall be paid in cleared funds by the Consultant to the Additional Client Organisation not less than five (5) Working Days before the date upon which the tax or other liability is payable by the Additional Client Organisation.

**SIGNED on behalf of [INSERT NAME] (the Additional Client Organisation)**

Signature: .....

Name: ..... (BLOCK CAPITALS)

Position: .....

**SIGNED on behalf of FAITHFUL+GOULD LIMITED (the Consultant)**

Signature: .....

Name: .....(BLOCK CAPITALS)

Position: .....

## SCHEDULE 4 – SCHEDULE OF RATES

(Provided as a separate document)

FINAL

## SCHEDULE 5 – CHANGE PROCEDURE

### 1 DEFINITIONS

In this Schedule, the following definitions shall apply:

**“Additional Client Organisation Change Manager”** means the person appointed to that position by the Additional Client Organisation from time to time and notified in writing to the Consultant;

**“Client Organisation Change Manager”** means the person appointed to that position by the Client Organisation from time to time and notified in writing to the Consultant or, if no person is notified, the Client Organisation’s Representative;

**“Consultant Change Manager”** means the person appointed to that position by the Consultant from time to time and notified in writing to the Client Organisation (for a Contract Change Request) and to the Additional Client Organisation (for a Work Order Change Request) or, if no person is notified, the Consultant’s Representative;

**“Contract Change Request”** means a written request for a Contract Change which shall be substantially in the form of 0A;

**“Change Communication”** means any Change Request, Impact Assessment, Change Authorisation Note or other communication sent or required to be sent pursuant to this Schedule;

**“Fast-track Change”** means any Contract Change or Work Order Change which the Parties agree to expedite in accordance with paragraph 8;

**“Impact Assessment”** means an assessment of a Contract Change Request or a Work Order Change Request in accordance with paragraph 5;

**“Impact Assessment Estimate”** has the meaning given in paragraph 4.3;

**“Parties”** means the Client Organisation and the Consultant in respect of Contract Change only and the Additional Client Organisation and the Consultant in respect of Work Order Change only;

**“Receiving Party”** means the Party which receives a proposed Contract Change Request or a Work Order Change Request;;

**“Work Order Change Request”** means a written request for a Work Order Change which shall be substantially in the form of 0B;

### 2 GENERAL PRINCIPLES OF CHANGE PROCEDURE

2.1 This Schedule sets out the procedure for dealing with Changes.

2.2 Operational Changes may only take effect as Contract Change Requests and shall be processed in accordance with paragraph 9. If either Party is in doubt about whether a change falls within the definition of an Operational Change, then it must be processed as a Contract Change.

2.3 The Parties shall deal with Contract Change and Work Order Change as follows:

2.3.1 either Party may request a Contract Change or a Work Order Change which they shall initiate by issuing a Change Request in accordance with paragraph 4;

2.3.2 unless this Contract otherwise requires, the Consultant shall assess and document the potential impact of a proposed Contract Change or Work Order Change in accordance with paragraph 5 before the Contract Change or Work Order Change can be either approved or implemented;

- 2.3.3 the Client Organisation (for a Contract Change) and the Additional Client Organisation (for a Work Order Change) shall have the right to request amendments to a Change Request, approve it or reject it in the manner set out in paragraph 6;
- 2.3.4 the Consultant shall have the right to reject a Change Request solely in the manner set out in paragraph 7;
- 2.3.5 save as otherwise provided in this Contract, no proposed Contract Change or Work Order Change shall be implemented by the Consultant until a Change Authorisation Note has been signed and issued by the Client Organisation (for a Contract Change) or by the Additional Client Organisation (for a Work Order Change) in accordance with paragraph 6.2; and
- 2.3.6 where a proposed Work Order Change is a Fast-track Change, it shall be processed in accordance with paragraph 8.
- 2.4 Until a Change Authorisation Note has been signed and issued by the Client Organisation (for a Contract Change) or by the Additional Client Organisation (for a Work Order Change) in accordance with paragraph 6.2, then:
- 2.4.1 unless the Client Organisation or the Additional Client Organisation, as relevant to the Change, expressly agrees (or requires) otherwise in writing, the Consultant shall continue to supply the Services in accordance with the existing terms of this Contract as if the proposed Contract Change did not apply or in accordance with the existing terms of the Work Order as if the proposed Work Order Change did not apply; and
- 2.4.2 any discussions, negotiations or other communications which may take place between the Client Organisation and the Consultant in connection with any proposed Contract Change or between the Additional Client Organisation and the Consultant in connection with any proposed Work Order Change, including the submission of any Change Communications, shall be without prejudice to each Party's other rights under this Contract.
- 2.5 The Consultant shall:
- 2.5.1 within ten (10) Working Days of the Client Organisation's signature or the Additional Client Organisation's signature (as applicable) and issue of a Change Authorisation Note, deliver to the Client Organisation a copy of this Contract updated to reflect all Contract Changes agreed in the relevant Change Authorisation Note, or deliver to the Additional Client Organisation a copy of the Work Order updated to reflect all Work Order Changes and annotated with a reference to the Change Authorisation Note pursuant to which the relevant Contract Changes or Work Order Changes were agreed; and
- 2.5.2 thereafter provide to the Client Organisation such further copies of the updated Contract as the Client Organisation may from time to time request, or provide the Additional Client Organisation such further copies of the updated Work Order as the Additional Client Organisation may from time to time request.

### **3 COSTS**

- 3.1 Subject to paragraph 3.4:
- 3.1.1 the costs of preparing each Change Request shall be borne by the Party making the Change Request; and
- 3.1.2 the costs incurred by the Consultant in undertaking an Impact Assessment shall be borne by the Party making the Change Request provided that the Client Organisation or the Additional Client Organisation (whichever is relevant to the Change) shall not be required to pay any such costs if:

- (a) the Consultant is able to undertake the Impact Assessment by using resources already deployed in the provision of the Services; or
- (b) such costs exceed those in the accepted Impact Assessment Estimate.

3.2 The cost of any Contract Change shall be a nominal consideration of one pound (£1.00), whereas the cost of any Work Order Changes shall be calculated and charged in accordance with the payment provisions set out in Schedule 3 (Work Order Template) and the rates set out in Schedule 4 (Schedule of Rates) as amended in accordance with the provisions therein and the terms of the Framework Agreement.

3.3 The Consultant shall be entitled to increase the Work Order Price only if it can demonstrate in the Impact Assessment that the proposed Work Order Change requires additional resources and, in any event, any change to the Work Order Price resulting from a Work Order Change (whether the change will cause an increase or a decrease in the Work Order Price) will be strictly proportionate to the increase or decrease in the level of resources required for the provision of the Services as amended by the Work Order Change.

3.4 Both Parties' costs incurred in respect of any use of this Change Procedure as a result of any error or Default by the Consultant shall be paid for by the Consultant.

#### **4 CHANGE REQUEST**

4.1 Either Party may issue a Change Request to the other Party at any time during the Term. A Change Request shall be substantially in the form of Annex 1A or Annex 1B (whichever is relevant to the Change), and state whether the Party issuing the Change Request considers the proposed Work Order Change to be a Fast-track Change.

4.2 If the Consultant issues the Change Request, then it shall also provide an Impact Assessment to the Client Organisation or the Additional Client Organisation (whichever is relevant to the Change) as soon as is reasonably practicable but in any event within ten (10) Working Days of the date of issuing the Change Request.

4.3 If the Client Organisation or the Additional Client Organisation issues the Change Request, then the Consultant shall provide as soon as reasonably practical and in any event within ten (10) working days of the date of receiving the Change Request an estimate ("**Impact Assessment Estimate**") of the cost of preparing an Impact Assessment and the timetable for preparing it. The timetable shall provide for the completed Impact Assessment to be received by the Client Organisation or the Additional Client Organisation (as relevant to the Change) within ten (10) Working days of acceptance of the Impact Assessment Estimate or within any longer time period agreed by the Client Organisation or the Additional Client Organisation (whichever is relevant to the Change).

4.4 If the Client Organisation or the Additional Client Organisation (whichever is relevant to the Change) accepts an Impact Assessment Estimate then following receipt of notice of such acceptance the Consultant shall provide the completed Impact Assessment to the Client Organisation or the Additional Client Organisation as soon as is reasonably practicable and in any event within the period agreed in the Impact Assessment Estimate. If the Consultant requires any clarification in relation to the Change Request before it can deliver the Impact Assessment, then it shall promptly make a request for clarification to the Client Organisation or the Additional Client Organisation and provided that sufficient information is received by the Client Organisation or the Additional Client Organisation to fully understand:

4.4.1 The nature of the request for clarification; and

4.4.2 The reasonable justification for the request;

the time period to complete the Impact Assessment shall be extended by the time taken by the Authority to provide that clarification. The Client Organisation or the Additional Client Organisation shall respond to the request for clarification as soon as is reasonably practicable.



## 5 IMPACT ASSESSMENT

- 5.1 Each Impact Assessment shall be completed in good faith and shall include:
- 5.1.1 details of the proposed Contract Change or Work Order Change including the reason for the Change; and
  - 5.1.2 details of the impact of the proposed Contract Change or Work Order Change on the Services and/or the Consultant's ability to meet its other obligations under this Contract and/or Work Order;
  - 5.1.3 any variation to the terms of this Contract or Work Order that will be required as a result of that impact, including changes to:
    - (a) the Scope of Services (Schedule 1), the Key Performance Indicators and/or the Target Performance Levels set out within Schedule 1;
    - (b) the Work Order Milestones, the Work Order Implementation Plan and any other timetable previously agreed by the Parties;
    - (c) other services provided by Sub-Consultants;
  - 5.1.4 a timetable for the implementation;
  - 5.1.5 details of how the proposed Contract Change or Work Order Change will ensure compliance with any applicable Change in Law;
  - 5.1.6 in respect of a Work Order Change:
    - (a) details of the cost of implementing the proposed Work Order Change;
    - (b) details of the ongoing costs required by the proposed Work Order Change when implemented, including any increase or decrease in the Work Order Price, any alteration in the resources and/or expenditure required by either Party and any alteration to the working practices of either Party; and
  - 5.1.7 such other information as the Client Organisation or the Additional Client Organisation (whichever is relevant to the Change) may reasonably request in (or in response to) the Change Request.
- 5.2 Subject to the provisions of paragraph 5.3, the Client Organisation or the Additional Client Organisation (whichever is relevant to the Change) shall review the Impact Assessment and respond to the Consultant in accordance with paragraph 6 within fifteen (15) Working Days of receiving the Impact Assessment, it.
- 5.3 If the Client Organisation or the Additional Client Organisation (whichever is relevant to the Change) is the Receiving Party and the Client Organisation or the Additional Client Organisation reasonably considers that it requires further information regarding the proposed Contract Change or Work Order Change so that it may properly evaluate the Change Request and the Impact Assessment, then within five (5) Working Days of receiving the Impact Assessment, it shall notify the Consultant of this fact and detail the further information that it requires. The Consultant shall then re-issue the relevant Impact Assessment to the Client Organisation or the Additional Client Organisation within ten (10) Working Days of receiving such notification. At the Client Organisation or the Additional Client Organisation's discretion, the Parties may repeat the process described in this paragraph 5.3 until the Client Organisation or the Additional Client Organisation is satisfied that it has sufficient information to properly evaluate the Change Request and Impact Assessment.
- 5.4 The calculation of costs for the purposes of paragraph 5.1.6 shall:

- 5.4.1 include estimated volumes of each type of resource to be engaged and the applicable rate card;
- 5.4.2 include full disclosure of any assumptions underlying such Impact Assessment;
- 5.4.3 include evidence of the cost of any assets required for the Change; and
- 5.4.4 include details of any new Sub-Consultants necessary to accomplish the Change.

## **6 CLIENT ORGANISATION'S AND ADDITIONAL CLIENT ORGANISATION'S RIGHT OF APPROVAL**

- 6.1 Within fifteen (15) Working Days of receiving the Impact Assessment from the Consultant or within ten (10) Working Days of receiving the further information that it may request pursuant to paragraph 5.3, the Client Organisation or the Additional Client Organisation (whichever is relevant to the Change) shall evaluate the Change Request and the Impact Assessment and shall do one of the following:
  - 6.1.1 approve the proposed Contract Change or Work Order, in which case the Parties shall follow the procedure set out in paragraph 6.2;
  - 6.1.2 in its absolute discretion reject the Contract Change or Work Order Change, in which case it shall notify the Consultant of the rejection. The Client Organisation or the Additional Client Organisation shall not reject any proposed Contract Change or any proposed Work Order Change to the extent that the Contract Change or the Work Order Change is necessary for the Consultant or the Services to comply with any Changes in Law. If the Client Organisation or the Additional Client Organisation does reject a Contract Change or a Work Order Change, then it shall explain its reasons in writing to the Consultant as soon as is reasonably practicable following such rejection; or
  - 6.1.3 in the event that it reasonably believes that a Change Request or Impact Assessment contains errors or omissions, require the Consultant to modify the relevant document accordingly, in which event the Consultant shall make such modifications within five (5) Working Days of such request. Subject to paragraph 5.3, on receiving the modified Change Request and/or Impact Assessment, the Client Organisation or the Additional Client Organisation shall approve or reject the proposed Contract Change within ten (10) Working Days.
- 6.2 If the Client Organisation or the Additional Client Organisation approves the proposed Contract Change or proposed Work Order Change pursuant to paragraph 6.1 and it has not been rejected by the Consultant in accordance with paragraph 7, then it shall inform the Consultant and the Consultant shall prepare two copies of a Change Authorisation Note which it shall sign and deliver to the Client Organisation or the Additional Client Organisation (whichever is relevant to the Change) for its signature. Following receipt by the Client Organisation or the Additional Client Organisation of the Change Authorisation Note, it shall sign both copies and return one copy to the Consultant. On the 'Client Organisation's or the Additional Client Organisation's signature the Change Authorisation Note shall constitute (or, where the Client Organisation or the Additional Client Organisation has agreed to or required the implementation of a Change prior to signature of a Change Authorisation Note, shall constitute confirmation of) a binding variation to this Contract or to the Work (as relevant).
- 6.3 If the Client Organisation or the Additional Client Organisation does not sign the Change Authorisation Note within ten (10) Working Days, then the Consultant shall have the right to notify the Client Organisation or the Additional Client Organisation and if the Client Organisation or the Additional Client Organisation does not sign the Change Authorisation Note within five (5) Working Days of such notification, then the Consultant may refer the matter to the procedure for resolving disputes pursuant to clause 15 (Resolution of Disputes).

## **7 CONSULTANT'S RIGHT OF APPROVAL**

Following an Impact Assessment, if:

7.1.1 the Consultant reasonably believes that any proposed Contract Change or Work Order Change which is requested by the Client Organisation or the Additional Client Organisation (whichever is relevant to the Change) would:

- (a) materially and adversely affect the risks to the health and safety of any person; and/or
- (b) require the Services to be performed in a way that infringes any Law; and/or

7.1.2 the Consultant demonstrates to the Client Organisation's or the Additional Client Organisation's (whichever is relevant to the Change) reasonable satisfaction that the proposed Contract Change is technically impossible to implement and that the Consultant does not have the technical capacity and flexibility required to implement the proposed Contract Change,

then the Consultant shall be entitled to reject the proposed Contract Change or Work Order Change and shall notify the Client Organisation or the Additional Client Organisation of its reasons for doing so within five (5) Working Days after the date on which it is obliged to deliver the Impact Assessment pursuant to paragraph 4.3.

## **8 FAST-TRACK CHANGES**

8.1 The Parties acknowledge that to ensure operational efficiency there may be circumstances where it is desirable to expedite the processes set out above.

8.2 If:

8.2.1 the total number of Contract Changes or Work Order Changes in relation to which this Fast-track Change procedure has been applied does not exceed four (4) in any twelve (12) month period; and

8.2.2 the proposed Contract Change or Work Order Change is not significant (as determined by the Client Organisation or the Additional Client Organisation (acting reasonably)),

then the Parties shall confirm to each other in writing that they shall use the process set out in paragraphs 4, 5, 6 and 7 but with reduced timescales, such that any period of fifteen (15) Working Days is reduced to five (5) Working Days, any period of ten (10) Working Days is reduced to two (2) Working Days and any period of five (5) Working Days is reduced to one (1) Working Day.

8.3 The Parties may agree in writing to revise the parameters set out in paragraph 8.2 from time to time or that the Fast-track Change procedure shall be used in relation to a particular Contract Change or Work Order Change notwithstanding that the total number of Contract Changes or Work Order Changes to which such procedure is applied will then exceed four (4) in a twelve (12) month period.

## **9 OPERATIONAL CHANGE PROCEDURE**

9.1 Any Operational Changes identified by the Consultant to improve operational efficiency of the Services may be implemented by the Consultant without following the Change Procedure for proposed Contract Changes and Work Order Changes provided they do not:

9.1.1 have an impact on the business of the Client Organisation or the Additional Client Organisation (whichever is relevant to the Change);

9.1.2 require a change to this Contract;

9.1.3 have a direct impact on use of the Services; or

9.1.4 involve the Client Organisation or the Additional Client Organisation in paying any additional costs.

- 9.2 The Client Organisation or the Additional Client Organisation may request an Operational Change by submitting a written request for Operational Change (“**RFOC**”) to the Consultant’s Representative.
- 9.3 The RFOC shall include the following details:
- 9.3.1 the proposed Operational Change; and
  - 9.3.2 the timescale for completion of the Operational Change.
- 9.4 The Consultant shall inform the Client Organisation or the Additional Client Organisation of any impact on the Services that may arise from the proposed Operational Change.
- 9.5 The Consultant shall complete the Operational Change by the timescale specified for completion of the Operational Change in the RFOC, and shall promptly notify the Client Organisation or the Additional Client Organisation (whichever is relevant to the Change) when the Operational Change is completed.

## **10 COMMUNICATIONS**

For any Change Communication to be valid under this Schedule, it must be sent to either the Client Organisation Change Manager or the Additional Client Organisation Change Manager (whichever is relevant to the Change) or the Consultant Change Manager, as applicable. The provisions of clause 31 (Notices) shall apply to a Change Communication as if it were a notice.

**ANNEX 1A – CONTRACT CHANGE REQUEST FORM**

CR NO.: <i>CR-CN-001</i>	TITLE:	TYPE OF CHANGE:
CONTRACT:	REQUIRED BY DATE:	
ACTION:	NAME:	DATE:
RAISED BY:		
AREA(S) IMPACTED ( <i>OPTIONAL FIELD</i> ):		
ASSIGNED FOR IMPACT ASSESSMENT BY:		
ASSIGNED FOR IMPACT ASSESSMENT TO:		
CONSULTANT REFERENCE NO.:		
FULL DESCRIPTION OF REQUESTED CONTRACT CHANGE (INCLUDING PROPOSED CHANGES TO THE WORDING OF THE CONTRACT):		
DETAILS OF ANY PROPOSED ALTERNATIVE SCENARIOS:		
REASONS FOR AND BENEFITS AND DISADVANTAGES OF REQUESTED CONTRACT CHANGE:		
SIGNATURE OF REQUESTING CHANGE OWNER:		
DATE OF REQUEST:		

**ANNEX 1B – WORK ORDER CHANGE REQUEST FORM**

CR NO.: <i>CR-WO-001</i>	TITLE:	TYPE OF CHANGE:
WORK ORDER REF:	REQUIRED BY DATE:	
ACTION:	NAME:	DATE:
RAISED BY:		
AREA(S) IMPACTED ( <i>OPTIONAL FIELD</i> ):		
ASSIGNED FOR IMPACT ASSESSMENT BY:		
ASSIGNED FOR IMPACT ASSESSMENT TO:		
CONSULTANT REFERENCE NO.:		
FULL DESCRIPTION OF REQUESTED CONTRACT CHANGE (INCLUDING PROPOSED CHANGES TO THE WORDING OF THE CONTRACT):		
DETAILS OF ANY PROPOSED ALTERNATIVE SCENARIOS:		
REASONS FOR AND BENEFITS AND DISADVANTAGES OF REQUESTED CONTRACT CHANGE:		
SIGNATURE OF REQUESTING CHANGE OWNER:		
DATE OF REQUEST:		

**- APPENDIX 2 - CHANGE AUTHORISATION NOTE**

CR NO.:	TITLE:	DATE RAISED:
CONTRACT:	TYPE OF CHANGE:	REQUIRED BY DATE:
[KEY MILESTONE DATE: <i>[if any]</i> ]		
DETAILED DESCRIPTION OF CONTRACT CHANGE FOR WHICH IMPACT ASSESSMENT IS BEING PREPARED AND WORDING OF RELATED CHANGES TO THE CONTRACT:		
PROPOSED ADJUSTMENT TO THE CHARGES RESULTING FROM THE CONTRACT CHANGE:		
DETAILS OF PROPOSED ONE-OFF ADDITIONAL CHARGES AND MEANS FOR DETERMINING THESE (E.G. FIXED PRICE BASIS):		
SIGNED ON BEHALF OF THE CLIENT/ADDITIONAL CLIENT ORGANISATION:		SIGNED ON BEHALF OF THE CONSULTANT:
Signature: _____		Signature: _____
Name: _____		Name: _____
Position: _____		Position: _____
Date: _____		Date: _____

**SCHEDULE 6 – CONSULTANT’S INSURANCES**

(Provided as separate documents)

CONFIDENTIAL



**SCHEDULE 7 – CONSULTANT’S DATA SECURITY POLICY**

(Provided as a separate document)

CONFIDENTIAL

**SCHEDULE 8 – COLLATERAL WARRANTIES AND NOVATION AGREEMENT**

**FINAL**

**COLLATERAL WARRANTY: CONSULTANT TO FUNDER /  
INVESTOR / TENANT / PURCHASER**

relating to  
the provision of **[DESCRIPTION OF SERVICES]** in connection  
with **[DESCRIPTION OF PROJECT]** at  
**[ADDRESS]**

**[CONSULTANT]** (1)  
("Consultant")

**[BENEFICIARY]** (2)  
("Beneficiary")

**NATIONAL FIRE CHIEFS COUNCIL LIMITED** ("Client Organisation") (3)

THIS DEED is made on [DATE]

## BETWEEN

- (1) [CONSULTANT] incorporated and registered in England and Wales with company number [COMPANY NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (“Consultant”); and
- (2) [BENEFICIARY] incorporated and registered in England and Wales with company number [COMPANY NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (“Beneficiary”) [and]
- (3) NATIONAL FIRE CHIEFS COUNCIL LIMITED, of 71-75, Shelton Street, Covent Garden, London, United Kingdom, WC2H 9JQ, incorporated and registered in England and Wales with company number 3677186 (the “Client Organisation”);

## BACKGROUND

- (A) The Client Organisation has engaged the Consultant to carry out the Services in relation to the Project.
- (B) The Beneficiary, as [funder][investor][tenant][purchaser], has an interest in the Project.
- (C) The Client Organisation requires the Consultant to enter into a collateral warranty in favour of the Beneficiary.
- (D) The Consultant has agreed to enter into this Deed with the Beneficiary [and the Client Organisation], for the benefit of the Beneficiary.

## AGREED TERMS

### 1 DEFINITIONS

1.1 In this Deed the following words shall have the following meanings:

“Appointment” means a Call-Off agreement in writing dated [DATE] between the Consultant and the Client Organisation.

“Business Day” means a day (other than a Saturday or Sunday) on which banks are open for business in London.

“CDM Regulations” means the Construction (Design and Management) Regulations 2015 (SI 2015/51) and any related Approved Code of Practice.

“Construction Products Regulations” means the Construction Products Regulations 2013 (SI 2013/1387), the Construction Products Regulation (305/2011/EU), the

Construction Products Regulations 1991 (SI 1991/1620) and the Construction Products Directive (89/109/EC).

**“Deed”** means this collateral warranty.

**“Funder”** means a person that has provided, or is to provide, finance in connection with:

- (a) the whole or any part of the Project or the completed Project; or
- (b) the site of the Project

whether that person acts on its own account, as agent for a syndicate of other parties or otherwise.

**“Material”** means all designs, drawings, models, plans, specifications, design details, photographs, brochures, reports, notes of meetings, CAD materials, calculations, schedules, programmes, bills of quantities, budgets and any other materials provided in connection with the Project and all updates, amendments, additions and revisions to them and any works, designs, or inventions incorporated or referred to in them for any purpose relating to the Project.

**“Party”** means a party to this Deed.

**“Permitted Uses”** means the design, construction, completion, reconstruction, modification, refurbishment, development, maintenance, facilities management, funding, disposal, letting, fitting-out, advertisement, decommissioning, demolition, reinstatement, extension, building information modelling and repair of the Property and the Project.

**“Prohibited Materials”** means materials, equipment, products or kits that are generally accepted, or generally suspected, in the construction industry at the relevant time as:

- (a) posing a threat to the health and safety of any person;
- (b) posing a threat to the structural stability, performance or physical integrity of the Project or any part or component of the Project;
- (c) reducing, or possibly reducing, the normal life expectancy of the Project or any part or component of the Project;
- (d) not being in accordance with any relevant British Standard, relevant code of practice, good building practice or any applicable agreement certificate issued by the British Board of Agreement; or
- (e) having been supplied or placed on the market in breach of the Construction Products Regulations.

**“Programme”** means the programme, as defined in the Appointment.

**“Project”** means [INSERT DESCRIPTION].

**“Property”** means [INSERT DESCRIPTION].

**“Required Standard”** means all the reasonable skill, care and diligence to be expected of a suitably qualified, competent and experienced member of the Consultant’s profession experienced in carrying out services such as the Services in respect of projects of similar size, scope, character and complexity as the Project.

**“Services”** means the services referred to in the Appointment, performed by or on behalf of the Consultant under the Appointment.

- 1.2 Clause headings shall not affect the interpretation of this Deed.
- 1.3 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and shall include successors, transferees and permitted assigns.
- 1.4 Unless the context otherwise requires:
  - (a) words in the singular shall include the plural and in the plural include the singular; and
  - (b) references to one gender shall include references to the other genders.
- 1.5 A reference to a statute or statutory provision:
  - (a) is a reference to it as amended, extended or re-enacted from time to time; and
  - (b) shall include all subordinate legislation made from time to time under that statute or statutory provision.
- 1.6 Any obligation on a Party not to do something includes an obligation not to agree for that thing to be done.
- 1.7 A reference to this Deed or to any other document referred to in this Deed is a reference to this Deed or such other document as varied or novated (in each case, other than in breach of the provisions of this Deed) from time to time.
- 1.8 References to Clauses are to the clauses of this Deed.
- 1.9 Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

## **2 COMPLY WITH THE APPOINTMENT**

- 2.1 The Consultant warrants to the Beneficiary that:
  - (a) it has complied, and shall continue to comply, with its obligations under the Appointment, including its obligations to;
  - (b) carry out and fulfil, in all respects, the duties of a designer [and principal designer] under the CDM Regulations;
  - (c) not, without the Client Organisation’s written consent, make any material change to the designs or specifications for the Project after they have been settled or approved; and
  - (d) act fairly and impartially when exercising its power to issue certificates and award extensions of time under any building contract relating to the Project.
- 2.2 it has exercised and shall continue to exercise the Required Standard:

- (a) when performing the Services;
- (b) to comply with (and ensure the completed Project complies with) any Act of Parliament and any instrument, rule or order made under any Act of Parliament;
- (c) to comply with (and ensure the completed Project complies with) any 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;
- (d) to perform the Services and prepare all Material for those elements of the Project for which the Consultant is responsible according to the Programme or, in the absence of a Programme, in sufficient time to facilitate the efficient progress of the Project;
- (e) to ensure that the Project complies with all planning agreements, permissions and conditions; and
- (f) has not and will not specify for use or use Prohibited Materials.]

2.3 In proceedings for breach of this Clause 2, the Consultant may:

- (a) rely on any limit of liability or other term of the Appointment; and
- (b) raise equivalent rights of defence as it would have had if the Beneficiary had been named as a joint Client Organisation, with the Client Organisation, under the Appointment (for this purpose not taking into account any set-off or counterclaim against the actual Client Organisation under the Appointment).

2.4 The Consultant's duties or liabilities under this Deed shall not be negated or diminished by any:

- (a) approval or inspection of:
  - (i) the Property; or
  - (ii) the Project; or
  - (iii) any designs or specifications for the Property or the Project; or
  - (iv) testing of any work, goods, materials, plant or equipment; or
  - (v) omission to approve, inspect or test,

by or on behalf of the Beneficiary or the Client Organisation.

2.5 This Deed shall not negate or diminish any other liability or obligation otherwise owed to the Beneficiary by the Consultant.

### **3 [STEP-IN RIGHTS: CONSULTANT MAY NOT TERMINATE OR DISCONTINUE**

**[Step in rights are only granted to a Funder or purchaser of the Client Organisation's whole interest in the Services]**

3.1 The Consultant shall not exercise, or seek to exercise, any right to:

- (a) terminate its employment under the Appointment; or
- (b) discontinue performance of the Services

for any reason (including any breach on the part of the Client Organisation) without giving the Beneficiary at least twenty (20) Business Days' written notice of its intention to do so. Any notice from the Consultant shall specify the grounds for the Consultant's proposed termination or discontinuance.

3.2 If the Appointment allows the Consultant a shorter notice period for the exercise of a right referred to in Clause 3.1, the notice period in the Appointment shall be extended to take account of the notice period required under Clause 3.1.

3.3 The Consultant's right to terminate its employment under the Appointment, or to discontinue performance of the Services, shall cease if, within the period referred to in Clause 3.1, the Beneficiary gives notice to the Consultant, copied to the Client Organisation:

- (a) requiring the Consultant not to terminate its employment or not to discontinue performance of the Services under the Appointment;
- (b) acknowledging that the Beneficiary (or its nominee) will assume all the Client Organisation's obligations under the Appointment; and
- (c) undertaking that the Beneficiary or its nominee will pay to the Consultant:
  - (i) any sums due and payable to the Consultant under the Appointment in future; and
  - (ii) any sums then due and payable to the Consultant under the Appointment that are unpaid.

3.4 If the Beneficiary (or its nominee) serves notice on the Consultant under Clause 3.3, then, from the date of service of the notice, the Appointment shall continue in full force and effect, as if it had been entered into between the Consultant and the Beneficiary (to the exclusion of the Client Organisation).

3.5 In complying with this Clause 3, the Consultant:

- (a) does not waive any breach of the Appointment or default under the Appointment by the Client Organisation; and
- (b) may exercise its right to terminate its employment under the Appointment, or discontinue performance of the Services, after the expiry of the notice period referred to in Clause 3.1, unless the Consultant's right to terminate or discontinue has ceased under Clause 3.3.

#### **4 STEP-IN RIGHTS: BENEFICIARY MAY STEP-IN**

4.1 Without affecting Clause 3.1, if the Beneficiary serves a notice on the Consultant, copied to the Client Organisation, that:

- (a) confirms that the Beneficiary wishes to step-in to the Appointment; and
- (b) complies with the requirements for a Beneficiary's notice under Clause 3.3,
- (c) then, from the date of service of the notice, the Appointment shall continue in full force and effect, as if it had been entered into between the Consultant and the Beneficiary (or its nominee), to the exclusion of the Client Organisation.



4.2 The Consultant shall assume that, between the Client Organisation and the Beneficiary, the Beneficiary may give a notice under Clause 4.1. The Consultant shall not enquire whether the Beneficiary may give that notice.

4.3 In complying with this Clause 4 the Consultant does not waive any breach of the Appointment or default under the Appointment by the Client Organisation.

## **5 STEP-IN RIGHTS: CONSULTANT'S POSITION AND CLIENT ORGANISATION'S CONSENT**

5.1 The Consultant shall not incur any liability to the Client Organisation by acting in accordance with Clause 3 or Clause 4.

5.2 The Client Organisation has entered into this Deed to confirm its consent to the agreement.

## **6 STEP-IN RIGHTS: BENEFICIARY'S GUARANTEE**

If a Beneficiary's notice under Clause 3 or Clause 4 refers to the Beneficiary's nominee, the Beneficiary shall be liable to the Consultant, as guarantor, for the payment of any sums due and payable from time to time to the Consultant from the Beneficiary's nominee.

## **7 NO INSTRUCTIONS TO CONSULTANT BY BENEFICIARY**

Unless the Beneficiary has stepped-in under Clause 3 or Clause 4, the Beneficiary may not give instructions to the Consultant under this Deed.

## **8 PRIORITY OF STEP-IN**

Where the Consultant has given rights in relation to the Appointment similar to those contained in this Deed to any other person then if both the Beneficiary and any such other person serve notice under Clause 3 or Clause 4, the notice served by the Beneficiary shall prevail.]

## **9 COPYRIGHT**

9.1 The Consultant grants to the Beneficiary, with immediate effect, an irrevocable, non-exclusive, non-terminable, royalty-free licence to copy and make full use of any Material prepared by, or on behalf of, the Consultant for any purpose relating to the Project and the Property, including any of the Permitted Uses.

9.2 This licence carries the right to grant sub-licences and is transferable to third parties without the consent of the Consultant.

9.3 The Consultant shall not be liable for use of the Material for any purpose other than that for which it was prepared and/or provided.

9.4 The Beneficiary may request a copy (or copies) of some or all of the Material from the Consultant. On the Beneficiary's payment of the Consultant's reasonable charges for providing the copy (or copies), the Consultant shall provide the copy (or copies) to the Beneficiary.

9.5 In respect of any Material prepared by, or on behalf of, the Consultant (and which is being used for the purposes for which it was provided) the Consultant shall indemnify the Beneficiary from and against all claims, proceedings, damages, costs and expenses which may be brought or made against the Beneficiary or to which the Beneficiary may be put by reason of any infringement of such Material (or the rights or titles therein) or by reason of such infringement having been held to have taken place.

## **10 PROFESSIONAL INDEMNITY INSURANCE**

10.1 The Consultant shall maintain professional indemnity insurance at the Consultant's cost for an amount of at least £[INSERT SUM]m in respect of any one claim and in the aggregate arising out of any one event for a period beginning on the date of this Deed and ending 12 years after the date of practical completion of the Project under the Appointment, provided that such insurance is available at commercially reasonable rates and terms. The Consultant shall maintain that professional indemnity insurance:

- (a) with reputable insurers lawfully carrying on insurance business in the UK;
- (b) on customary and usual terms and conditions prevailing for the time being in the insurance market; and
- (c) on terms that:
  - (i) do not require the Consultant to discharge any liability before being entitled to recover from the insurers; and
  - (ii) would not adversely affect the rights of any person to recover from the insurers under the Third Parties (Rights Against Insurers) Act 2010.

10.2 Any increased or additional premium required by insurers because of the Consultant's claims record or other acts, omissions, matters or things particular to the Consultant shall be deemed to be within commercially reasonable rates.

10.3 The Consultant shall not, without the Beneficiary's written consent, by any act or omission lose or affect the Consultant's right to make, or proceed with, that claim against the insurers.

10.4 The Consultant shall immediately inform the Beneficiary if the Consultant's required professional indemnity insurance ceases to be available at commercially reasonable rates, so that the Consultant and the Beneficiary can discuss how best to protect the respective positions of the Beneficiary and the Consultant regarding the Project and the Property, without that insurance.

10.5 The Consultant shall fully co-operate with any measures reasonably required by the Beneficiary, including:

- (a) completing any proposals for insurance and associated documents; or
- (b) maintaining insurance at rates above commercially reasonable rates, if the Beneficiary reimburses the Consultant for the net cost of that insurance above commercially reasonable rates.

10.6 Whenever the Beneficiary reasonably requests, the Consultant shall send the Beneficiary evidence that the Consultant's professional indemnity insurance is in force, including, if required by the Beneficiary, an original letter from the Consultant's insurers or brokers confirming:

- (a) the Consultant's then current professional indemnity insurance; and
- (b) that the premiums for that insurance have been paid in full at the date of that letter.]

## **11 LIABILITY PERIOD**

The Beneficiary may not commence any legal action against the Consultant under this Deed after 12 years from the date of practical completion of all of the Project.

## 12 ASSIGNMENT

- 12.1 The Consultant may not assign or transfer any rights under this Deed without the prior written consent of the Beneficiary.
- 12.2 The Beneficiary may assign the benefit of this Deed:
- (a) on two occasions to any person; and
  - (b) without counting as an assignment under Clause (a):
    - (i) by way of security to a Funder (including any reassignment on redemption of security); or
    - (ii) to and from a subsidiary or other associated companies within the same group of companies as the Beneficiary so long as that assignee company remains within the same group of companies as the Beneficiary.

## 13 NOTICES

- 13.1 Each notice to be given under this Deed shall be given in writing in English. [For the avoidance of doubt notice shall not be validly given by e-mail.]
- 13.2 Any notice to be given by one Party to another under this Deed shall (unless one Party has specified another address to the other Party, such address to take effect on 5 Business Days after receipt or deemed receipt of the notice specifying the other address) be given to that other Party at the address set out below:

- (a) Beneficiary:

[ADDRESS]

[CONTACT NUMBER]

[EMAIL ADDRESS]

ATTENTION: [CONTACT]

- (b) Consultant:

[ADDRESS]

[CONTACT NUMBER]

[EMAIL ADDRESS]

ATTENTION: [CONTACT]

- (c) Client Organisation:

[ADDRESS]

[CONTACT NUMBER]

[EMAIL ADDRESS]

ATTENTION: [CONTACT]

13.3 Any notice given by any Party shall be deemed to have been received:

- (a) if given by hand, at the time of day of actual delivery;
- (b) if posted, by 10am on the second Business Day following the Business Day on which it was despatched by first class recorded or special delivery mail postage prepaid;
- (c) if sent by courier on the date and at the time that the courier's delivery receipt is signed;
- (d) if sent by email, at the time of transmission; or
- (e) if sent by fax, at the time of transmission,

provided that a notice given in accordance with the above but received on a day which is not a Business Day or after normal business hours in the place of receipt shall be deemed to have been received on the next Business Day.

#### **14 THIRD PARTY RIGHTS**

A person who is not a Party to this Deed shall have no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms.

#### **15 GOVERNING LAW AND JURISDICTION**

15.1 This Deed, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by and construed in accordance with English law.

15.2 Any claim, dispute or difference arising under or in connection with this Deed shall be subject to the exclusive jurisdiction of the courts of England and Wales to which each of the Parties irrevocably agrees to submit.

This collateral warranty has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

**EXECUTED** as a **DEED** by **[NAME OF CONSULTANT]** acting by a director, in the presence of a witness:

**DIRECTOR**

Signature: .....

Name (in block capitals): .....

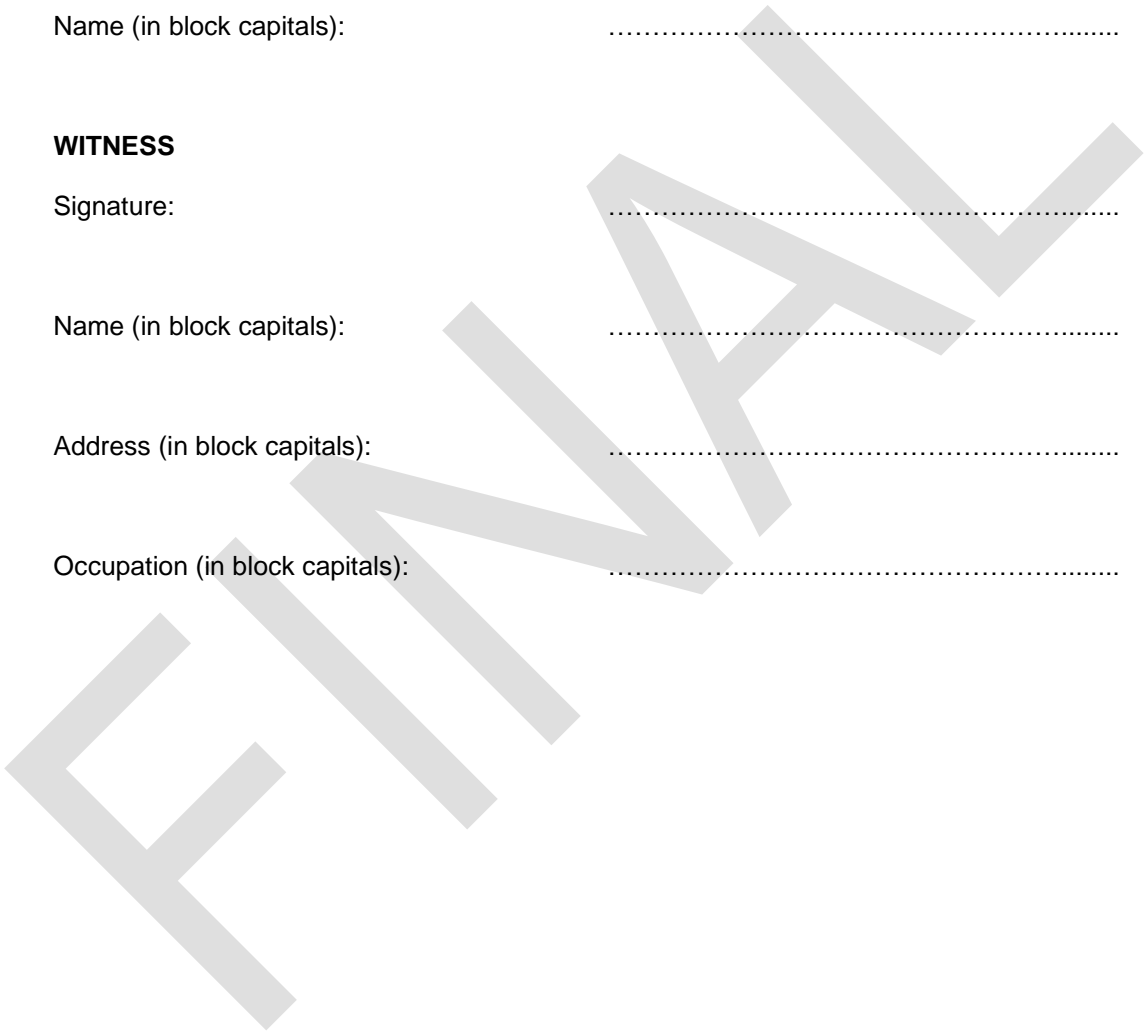
**WITNESS**

Signature: .....

Name (in block capitals): .....

Address (in block capitals): .....

Occupation (in block capitals): .....



**EXECUTED** as a **DEED** by **[NAME OF BENEFICIARY]** acting by a director, in the presence of a witness:

**DIRECTOR**

Signature: .....

Name (in block capitals): .....

**WITNESS**

Signature: .....

Name (in block capitals): .....

Address (in block capitals): .....

Occupation (in block capitals): .....

**EXECUTED** as a **DEED** by **NATIONAL FIRE CHIEFS COUNCIL LIMITED** acting by a director, in the presence of a witness:

**DIRECTOR**

Signature: .....

Name (in block capitals): .....

**WITNESS**

Signature: .....

Name (in block capitals): .....

Address (in block capitals): .....

Occupation (in block capitals): .....

**COLLATERAL WARRANTY: SUBCONSULTANT TO CLIENT ORGANISATION**

relating to  
the provision of **[DESCRIPTION OF SUBCONSULTANT SERVICES]** in connection with **[DESCRIPTION OF PROJECT]** at **[ADDRESS]**

**[SUBCONSULTANT]** (1)  
("Subconsultant")

**NATIONAL FIRE CHIEFS COUNCIL LIMITED** (2)  
("Beneficiary")

**[CONSULTANT]** (3)  
("Consultant")

THIS DEED is made on [DATE]

**BETWEEN**

- (1) [SUBCONSULTANT] incorporated and registered in England and Wales with company number [COMPANY NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] ("Subconsultant");
- (2) NATIONAL FIRE CHIEFS COUNCIL LIMITED, of 71-75, Shelton Street, Covent Garden, London, United Kingdom, WC2H 9JQ, incorporated and registered in England and Wales with company number 3677186 ("Beneficiary"); and
- [(3) CONSULTANT] incorporated and registered in England and Wales with company number [COMPANY NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] ("Consultant").

**BACKGROUND**

- (A) The Beneficiary has engaged Consultant to carry out the Services in relation to the Project.
- (B) The Consultant has engaged the Subconsultant to carry out the Subconsultant Services.
- (C) The Beneficiary, as Client Organisation, has an interest in the Subconsultant Services.
- (D) The Consultant requires the Subconsultant to enter into a collateral warranty in favour of the Beneficiary.
- (E) The Subconsultant has agreed to enter into this Deed with the Beneficiary and the Consultant, for the benefit of the Beneficiary.

**AGREED TERMS**

**1 DEFINITIONS**

1.1 In this Deed the following words shall have the following meanings:

"Appointment" means a Call-Off agreement in writing dated [DATE] between the Beneficiary and the Consultant.

"Business Day" means a day (other than a Saturday or Sunday) on which banks are open for business in London.

"Construction Products Regulations" means the Construction Products Regulations 2013 (SI 2013/1387), the Construction Products Regulation (305/2011/EU), the Construction Products Regulations 1991 (SI 1991/1620) and the Construction Products Directive (89/109/EC).



**"Deed"** means this collateral warranty.

**"Funder"** means a person that has provided, or is to provide, finance in connection with:

- (a) the whole or any part of the Project or the completed Project; or
- (b) the site of the Project

whether that person acts on its own account, as agent for a syndicate of other parties or otherwise.

**"Material"** means all designs, drawings, models, plans, specifications, design details, photographs, brochures, reports, notes of meetings, CAD materials, calculations, schedules, programmes, bills of quantities, budgets and any other materials provided in connection with the Project and all updates, amendments, additions and revisions to them and any works, designs, or inventions incorporated or referred to in them for any purpose relating to the Project.

**"Party"** means a party to this Deed.

**"Permitted Uses"** means the design, construction, completion, reconstruction, modification, refurbishment, development, maintenance, facilities management, funding, disposal, letting, fitting-out, advertisement, decommissioning, demolition, reinstatement, extension, building information modelling and repair of the Property and the Project.

**"Prohibited Materials"** means materials, equipment, products or kits that are generally accepted, or generally suspected, in the construction industry at the relevant time as:

- (a) posing a threat to the health and safety of any person;
- (b) posing a threat to the structural stability, performance or physical integrity of the Project or any part or component of the Project;
- (c) reducing, or possibly reducing, the normal life expectancy of the Project or any part or component of the Project;
- (d) not being in accordance with any relevant British Standard, relevant code of practice, good building practice or any applicable agreement certificate issued by the British Board of Agreement; or
- (e) having been supplied or placed on the market in breach of the Construction Products Regulations.

**"Programme"** means the programme, as defined in the Appointment.

**"Project"** means [INSERT DESCRIPTION].

**"Property"** means [INSERT DESCRIPTION].

**"Required Standard"** means all the reasonable skill, care and diligence to be expected of a suitably qualified competent and experienced member of the Subconsultant's

profession experienced in carrying out services such as the Subconsultant Services in respect of projects of similar size, scope, character and complexity as the Project.

**"Services"** means the services referred to in the Appointment, performed by or on behalf of the Consultant under the Appointment.

**"Subconsultant Appointment"** means an agreement in writing dated [DATE] between the Subconsultant and the Consultant.

**"Subconsultant Services"** means the services referred to in the Subconsultant Appointment, performed by or on behalf of the Subconsultant under the Subconsultant Appointment.

- 1.2 Clause headings shall not affect the interpretation of this Deed.
- 1.3 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and shall include successors, transferees and permitted assigns.
- 1.4 Unless the context otherwise requires:
- (a) words in the singular shall include the plural and in the plural include the singular; and
  - (b) references to one gender shall include references to the other genders.
- 1.5 A reference to a statute or statutory provision:
- (a) is a reference to it as amended, extended or re-enacted from time to time; and
  - (b) shall include all subordinate legislation made from time to time under that statute or statutory provision.
- 1.6 Any obligation on a Party not to do something includes an obligation not to agree for that thing to be done.
- 1.7 A reference to this Deed or to any other document referred to in this Deed is a reference to this Deed or such other document as varied or novated (in each case, other than in breach of the provisions of this Deed) from time to time.
- 1.8 References to Clauses are to the clauses of this Deed.
- 1.9 Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

## 2 COMPLY WITH THE SUBCONSULTANT APPOINTMENT

- 2.1 The Subconsultant warrants to the Beneficiary that:
- (a) it has complied, and shall continue to comply, with its obligations under the Subconsultant Appointment, including its obligations to;
    - (i) carry out and fulfil, in all respects, the duties of a designer under the CDM Regulations; and

- (ii) not, without the Beneficiary's written consent, make any material change to the designs or specifications for the Project after they have been settled or approved.
- (b) it has exercised and shall continue to exercise the Required Standard:
- (i) when performing the Subconsultant Services; and
  - (ii) to comply with (and ensure the completed Project complies with) any Act of Parliament and any instrument, rule or order made under any Act of Parliament;
  - (iii) to comply with (and ensure the completed Project complies with) any 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;
  - (iv) to perform the Subconsultant Services and prepare all Material for those elements of the Project for which the Subconsultant is responsible according to the Programme or, in the absence of a Programme, in sufficient time to facilitate the efficient progress of the Project;
  - (v) to ensure that the Project complies with all planning agreements, permissions and conditions; and
- (c) has not and will not specify for use or use Prohibited Materials.]

2.2 In proceedings for breach of this Clause 2, the Subconsultant may:

- (a) rely on any limit of liability or other term of the Subconsultant Appointment; and
- (b) raise equivalent rights of defence as it would have had if the Beneficiary had been named as a joint Client Organisation, with the Consultant, under the Subconsultant Appointment (for this purpose not taking into account any set-off or counterclaim against the actual Client Organisation under the Subconsultant Appointment).

2.3 The Subconsultant's duties or liabilities under this Deed shall not be negated or diminished by any:

- (a) approval or inspection of:
  - (i) the Property; or
  - (ii) the Project; or
  - (iii) any designs or specifications for the Property or the Subconsultant Services; or
- (b) testing of any work, goods, materials, plant or equipment; or
- (c) omission to approve, inspect or test,

by or on behalf of the Beneficiary or the Consultant.

2.4 This Deed shall not negate or diminish any other liability or obligation otherwise owed to the Beneficiary by the Subconsultant.

### 3 **STEP-IN RIGHTS: SUBCONSULTANT MAY NOT TERMINATE OR DISCONTINUE**

3.1 The Subconsultant shall not exercise, or seek to exercise, any right to:

- (a) terminate its employment under the Subconsultant Appointment; or
- (b) discontinue performance of the Subconsultant Services,

for any reason (including any breach on the part of the Consultant) without giving the Beneficiary at least twenty (20) Business Days' written notice of its intention to do so. Any notice from the Subconsultant shall specify the grounds for the Subconsultant's proposed termination or discontinuance.

3.2 If the Subconsultant Appointment allows the Subconsultant a shorter notice period for the exercise of a right referred to in Clause 3.1, the notice period in the Subconsultant Appointment shall be extended to take account of the notice period required under Clause 3.1.

3.3 The Subconsultant's right to terminate its employment under the Subconsultant Appointment, or to discontinue performance of the Subconsultant Services, shall cease if, within the period referred to in Clause 3.1, the Beneficiary gives notice to the Subconsultant, copied to the Consultant:

- (a) requiring the Subconsultant not to terminate its employment or not to discontinue performance of the Subconsultant Services under the Subconsultant Appointment;
- (b) acknowledging that the Beneficiary (or its nominee) will assume all the Consultant's obligations under the Subconsultant Appointment; and
- (c) undertaking that the Beneficiary or its nominee will pay to the Subconsultant:
  - (i) any sums due and payable to the Subconsultant under the Subconsultant Appointment in future; and
  - (ii) any sums then due and payable to the Subconsultant under the Subconsultant Appointment that are unpaid.

3.4 If the Beneficiary (or its nominee) serves notice on the Subconsultant under Clause 3.3, then, from the date of service of the notice, the Subconsultant Appointment shall continue in full force and effect, as if it had been entered into between the Subconsultant and the Beneficiary (to the exclusion of the Consultant).

3.5 In complying with this Clause 3, the Subconsultant:

- (a) does not waive any breach of the Subconsultant Appointment or default under the Subconsultant Appointment by the Consultant; and
- (b) may exercise its right to terminate its employment under the Subconsultant Appointment, or discontinue performance of the Subconsultant Services, after the expiry of the notice period referred to in Clause 3.1, unless the Subconsultant's right to terminate or discontinue has ceased under Clause 3.3.

#### 4 **STEP-IN RIGHTS: BENEFICIARY MAY STEP-IN**

4.1 Without affecting Clause 3.1, if the Beneficiary serves a notice on the Subconsultant, copied to the Consultant, that:

- (a) confirms that the Beneficiary wishes to step-in to the Subconsultant Appointment; and
- (b) complies with the requirements for a Beneficiary's notice under Clause 3.3,

then, from the date of service of the notice, the Subconsultant Appointment shall continue in full force and effect, as if it had been entered into between the Subconsultant and the Beneficiary (or its nominee), to the exclusion of the Consultant.

4.2 The Subconsultant shall assume that, between the Consultant and the Beneficiary, the Beneficiary may give a notice under Clause 4.1. The Subconsultant shall not enquire whether the Beneficiary may give that notice.

4.3 In complying with this Clause 4 the Subconsultant does not waive any breach of the Subconsultant Appointment or default under the Subconsultant Appointment by the Consultant.

**5 STEP-IN RIGHTS: SUBCONSULTANT'S POSITION AND CONSULTANT'S CONSENT**

5.1 The Subconsultant shall not incur any liability to the Consultant by acting in accordance with Clause 3 or Clause 4.

5.2 The Consultant has entered into this Deed to confirm its consent to the agreement.

**6 STEP-IN RIGHTS: BENEFICIARY'S GUARANTEE**

If a Beneficiary's notice under Clause 3 or Clause 4 refers to the Beneficiary's nominee, the Beneficiary shall be liable to the Subconsultant, as guarantor, for the payment of any sums due and payable from time to time to the Subconsultant from the Beneficiary's nominee.

**7 NO INSTRUCTIONS TO SUBCONSULTANT BY BENEFICIARY**

Unless the Beneficiary has stepped-in under Clause 3 or Clause 4, the Beneficiary may not give instructions to the Subconsultant under this Deed.

**8 PRIORITY OF STEP-IN**

Where the Subconsultant has given rights in relation to the Subconsultant Appointment similar to those contained in this Deed to any other person then if both the Beneficiary and any such other person serve notice under Clause 3 or Clause 4, the notice served by the Beneficiary shall prevail.]

**9 COPYRIGHT**

9.1 The Subconsultant grants to the Beneficiary, with immediate effect, an irrevocable, non-exclusive, non-terminable, royalty-free licence to copy and make full use of any Material prepared by, or on behalf of, the Subconsultant for any purpose relating to the Project and the Property, including any of the Permitted Uses.

9.2 This licence carries the right to grant sub-licences and is transferable to third parties without the consent of the Subconsultant.

9.3 The Subconsultant shall not be liable for use of the Material for any purpose other than that for which it was prepared and/or provided.

9.4 The Beneficiary may request a copy (or copies) of some or all of the Material from the Subconsultant. On the Beneficiary's payment of the Subconsultant's reasonable charges for providing the copy (or copies), the Subconsultant shall provide the copy (or copies) to the Beneficiary.

9.5 In respect of any Material prepared by, or on behalf of, the Subconsultant (and which is being used for the purposes for which it was provided) the Subconsultant shall indemnify the Beneficiary from and against all claims, proceedings, damages, costs and expenses which may be brought or made against the Beneficiary or to which the Beneficiary may be put by reason of any infringement of such Material (or the rights or titles therein) or by reason of such infringement having been held to have taken place.

## 10 PROFESSIONAL INDEMNITY INSURANCE

10.1 The Subconsultant shall maintain professional indemnity insurance at the Subconsultant's cost for an amount of at least £[INSERT SUM]m in respect of any one claim and in the aggregate arising out of any one event [(and in respect of pollution and contamination an amount of at least £[INSERT SUM] in the annual aggregate and in respect of asbestos an amount of at least £[INSERT SUM] in the annual aggregate)] for a period beginning on the date of this Deed and ending 12 years after the date of practical completion of the Project, provided that such insurance is available at commercially reasonable rates. The Subconsultant shall maintain that professional indemnity insurance:

- (a) with reputable insurers lawfully carrying on insurance business in the UK;
- (b) on customary and usual terms and conditions prevailing for the time being in the insurance market; and
- (c) on terms that:
  - (i) do not require the Subconsultant to discharge any liability before being entitled to recover from the insurers; and
  - (ii) would not adversely affect the rights of any person to recover from the insurers under the Third Parties (Rights Against Insurers) Act 2010.

10.2 Any increased or additional premium required by insurers because of the Subconsultant's claims record or other acts, omissions, matters or things particular to the Subconsultant shall be deemed to be within commercially reasonable rates.

10.3 The Subconsultant shall not, without the Beneficiary's written consent, by any act or omission lose or affect the Subconsultant's right to make, or proceed with, that claim against the insurers.

10.4 The Subconsultant shall immediately inform the Beneficiary if the Subconsultant's required professional indemnity insurance ceases to be available at commercially reasonable rates, so that the Subconsultant and the Beneficiary can discuss how best to protect the respective positions of the Beneficiary and the Subconsultant regarding the Project and the Property, without that insurance.

10.5 The Subconsultant shall fully co-operate with any measures reasonably required by the Beneficiary, including:

- (a) completing any proposals for insurance and associated documents; or
- (b) maintaining insurance at rates above commercially reasonable rates, if the Beneficiary reimburses the Subconsultant for the net cost of that insurance above commercially reasonable rates.

10.6 Whenever the Beneficiary reasonably requests, the Subconsultant shall send the Beneficiary evidence that the Subconsultant's professional indemnity insurance is in force, including, if required by the Beneficiary, an original letter from the Subconsultant's insurers or brokers confirming:

- (a) the Subconsultant's then current professional indemnity insurance; and

- (b) that the premiums for that insurance have been paid in full at the date of that letter.

**11 LIABILITY PERIOD**

The Beneficiary may not commence any legal action against the Subconsultant under this Deed after 12 years from the date of practical completion of all of the Project.

**12 ASSIGNMENT**

12.1 The Subconsultant may not assign or transfer any rights under this Deed without the prior written consent of the Beneficiary.

12.2 The Beneficiary may assign the benefit of this Deed:

- (a) on two occasions to any person; and
- (b) without counting as an assignment under Clause 12.2(a):
  - (i) by way of security to a Funder (including any reassignment on redemption of security); or
  - (ii) to and from a subsidiary or other associated companies within the same group of companies as the Beneficiary so long as that assignee company remains within the same group of companies as the Beneficiary.

**13 NOTICES**

13.1 Each notice to be given under this Deed shall be given in writing in English. [For the avoidance of doubt notice shall not be validly given by e-mail.]

13.2 Any notice to be given by one Party to another under this Deed shall (unless one Party has specified another address to the other Party, such address to take effect on 5 Business Days after receipt or deemed receipt of the notice specifying the other address) be given to that other Party at the address set out below:

- (a) Beneficiary:
  - [ADDRESS]
  - [CONTACT NUMBER]
  - [EMAIL ADDRESS]
  - Attention: [CONTACT]

- (b) Subconsultant:
  - [ADDRESS]
  - [CONTACT NUMBER]
  - [EMAIL ADDRESS]
  - Attention: [CONTACT]

(c) Consultant:

[ADDRESS]

[CONTACT NUMBER]

[EMAIL ADDRESS]

Attention: [CONTACT]

13.3 Any notice given by any Party shall be deemed to have been received:

- (a) if given by hand, at the time of day of actual delivery;
- (b) if posted, by 10am on the second Business Day following the Business Day on which it was despatched by first class recorded or special delivery mail postage prepaid;
- (c) if sent by courier on the date and at the time that the courier's delivery receipt is signed;
- (d) if sent by email, at the time of transmission; or
- (e) if sent by fax, at the time of transmission,

provided that a notice given in accordance with the above but received on a day which is not a Business Day or after normal business hours in the place of receipt shall be deemed to have been received on the next Business Day.

#### 14 **THIRD PARTY RIGHTS**

A person who is not a Party to this Deed shall have no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms.

#### 15 **GOVERNING LAW AND JURISDICTION**

15.1 This Deed, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by and construed in accordance with English law.

15.2 Any claim, dispute or difference arising under or in connection with this Deed shall be subject to the exclusive jurisdiction of the courts of England and Wales to which each of the Parties irrevocably agrees to submit.



This collateral warranty has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

**EXECUTED** as a **DEED** by **[NAME OF SUBCONSULTANT]** acting by a director, in the presence of a witness:

**DIRECTOR**

Signature: .....

Name (in block capitals): .....

**WITNESS**

Signature: .....

Name (in block capitals): .....

Address (in block capitals): .....

Occupation (in block capitals): .....

**EXECUTED** as a **DEED** by **NATIONAL FIRE CHIEFS COUNCIL LIMITED** acting by a director, in the presence of a witness:

**DIRECTOR**

Signature: .....

Name (in block capitals): .....

**WITNESS**

Signature: .....

Name (in block capitals): .....

Address (in block capitals): .....

Occupation (in block capitals): .....

**EXECUTED** as a **DEED** by **[NAME OF CONSULTANT]** acting by a director, in the presence of a witness:

**DIRECTOR**

Signature: .....

Name (in block capitals): .....

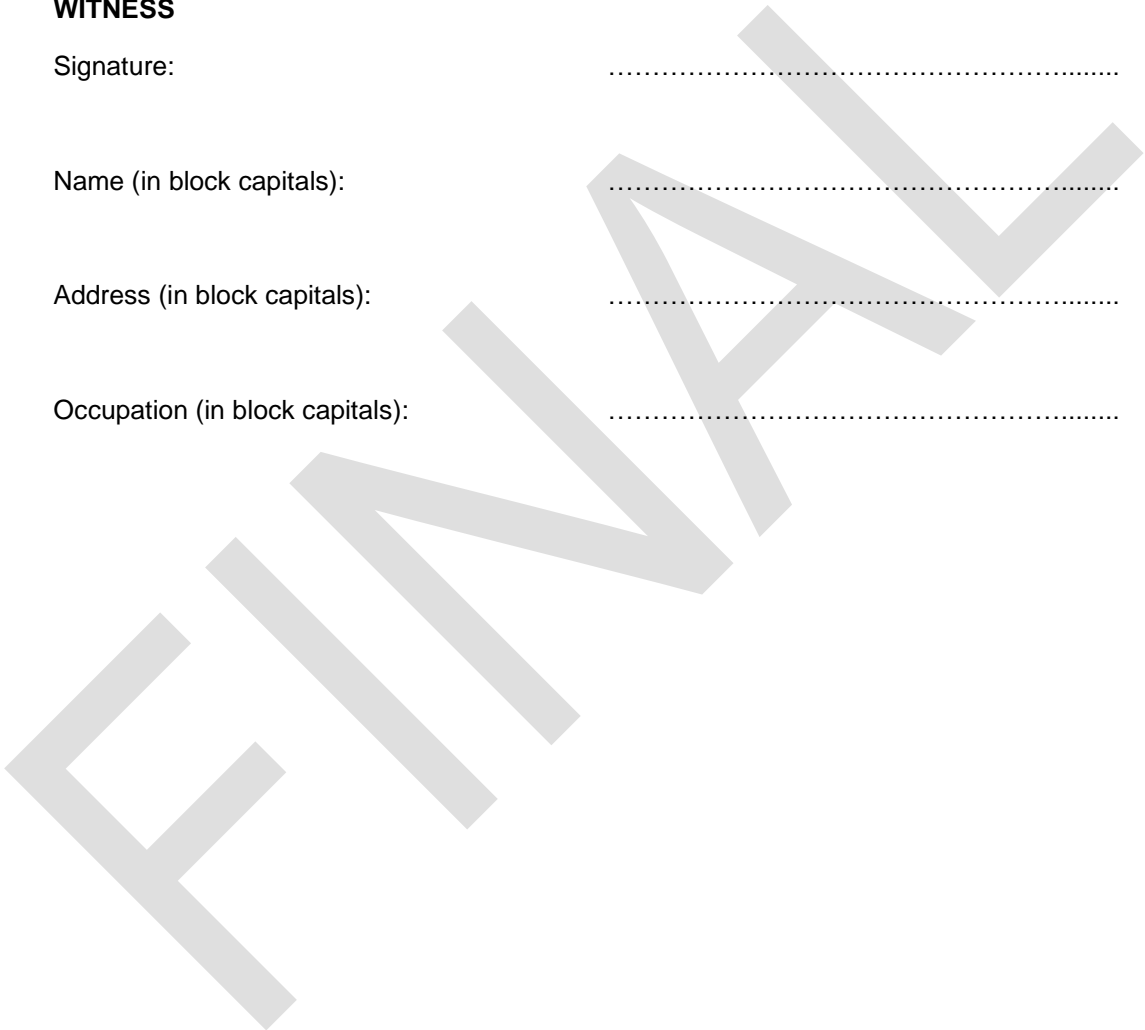
**WITNESS**

Signature: .....

Name (in block capitals): .....

Address (in block capitals): .....

Occupation (in block capitals): .....



**COLLATERAL WARRANTY: SUBCONSULTANT TO  
FUNDER/INVESTOR/PURCHASER/TENANT**

relating to  
the provision of **[DESCRIPTION OF SUBCONSULTANT  
SERVICES]** in connection with **[DESCRIPTION OF PROJECT]** at  
**[ADDRESS]**

**[SUBCONSULTANT]** (1)  
("Subconsultant")

**[BENEFICIARY]** (2)  
("Beneficiary")

**[CONSULTANT]** (3)  
("Consultant")

THIS DEED is made on [DATE]

## BETWEEN

- (1) [SUBCONSULTANT] incorporated and registered in England and Wales with company number [COMPANY NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] ("Subconsultant"); and
- (2) [BENEFICIARY] incorporated and registered in England and Wales with company number [COMPANY NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] ("Beneficiary"). [and]
- (3) [CONSULTANT] incorporated and registered in England and Wales with company number [COMPANY NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] ("Consultant").

## BACKGROUND

- (A) The Client Organisation has engaged the Consultant to carry out the Services in relation to the Project.
- (B) The Consultant has engaged the Subconsultant to carry out the Subconsultant Services.
- (C) The Beneficiary, as [funder][investor][tenant][purchaser], has an interest in the Subconsultant Services.
- (D) The Consultant requires the Subconsultant to enter into a collateral warranty in favour of the Beneficiary.
- (E) The Subconsultant has agreed to enter into this Deed with the Beneficiary and the Consultant, for the benefit of the Beneficiary.

## AGREED TERMS

### 1 DEFINITIONS

1.1 In this Deed the following words shall have the following meanings:

"Appointment" means a Call-Off agreement in writing dated [DATE] between the Client Organisation and the Consultant.

"Business Day" means a day (other than a Saturday or Sunday) on which banks are open for business in London.

"Construction Products Regulations" means the Construction Products Regulations 2013 (SI 2013/1387), the Construction Products Regulation (305/2011/EU), the

Construction Products Regulations 1991 (SI 1991/1620) and the Construction Products Directive (89/109/EC).

"**Deed**" means this collateral warranty.

"**Client Organisation**" means **NATIONAL FIRE CHIEFS COUNCIL LIMITED**

"**Funder**" means a person that has provided, or is to provide, finance in connection with:

- (a) the whole or any part of the Project or the completed Project; or
- (b) the site of the Project

whether that person acts on its own account, as agent for a syndicate of other parties or otherwise.

"**Investor**" means any third party with whom the Client Organisation may choose to form or create a co-investment model with in order to proceed with the Project.

"**Material**" means all designs, drawings, models, plans, specifications, design details, photographs, brochures, reports, notes of meetings, CAD materials, calculations, schedules, programmes, bills of quantities, budgets and any other materials provided in connection with the Project and all updates, amendments, additions and revisions to them and any works, designs, or inventions incorporated or referred to in them for any purpose relating to the Project.

"**Party**" means a party to this Deed.

"**Permitted Uses**" means the design, construction, completion, reconstruction, modification, refurbishment, development, maintenance, facilities management, funding, disposal, letting, fitting-out, advertisement, decommissioning, demolition, reinstatement, extension, building information modelling and repair of the Property and the Project.

"**Prohibited Materials**" means materials, equipment, products or kits that are generally accepted, or generally suspected, in the construction industry at the relevant time as:

- (a) posing a threat to the health and safety of any person;
- (b) posing a threat to the structural stability, performance or physical integrity of the Project or any part or component of the Project;
- (c) reducing, or possibly reducing, the normal life expectancy of the Project or any part or component of the Project;
- (d) not being in accordance with any relevant British Standard, relevant code of practice, good building practice or any applicable agreement certificate issued by the British Board of Agreement; or

- (e) having been supplied or placed on the market in breach of the Construction Products Regulations.

**"Programme"** means the programme, as defined in the Appointment.

**"Project"** means [INSERT DESCRIPTION].

**"Property"** means [INSERT DESCRIPTION].

**"Required Standard"** means all the reasonable skill, care and diligence to be expected of a suitably qualified competent and experienced member of the Subconsultant's profession experienced in carrying out services such as the Subconsultant Services in respect of projects of similar size, scope, character and complexity as the Project.

**"Services"** means the services referred to in the Appointment, performed by or on behalf of the Consultant under the Appointment.

**"Subconsultant Appointment"** means an agreement in writing dated [DATE] between the Subconsultant and the Consultant.

**"Subconsultant Services"** means the services referred to in the Subconsultant Appointment, performed by or on behalf of the Subconsultant under the Subconsultant Appointment.

- 1.2 Clause headings shall not affect the interpretation of this Deed.
- 1.3 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and shall include successors, transferees and permitted assigns.
- 1.4 Unless the context otherwise requires:
  - (a) words in the singular shall include the plural and in the plural include the singular; and
  - (b) references to one gender shall include references to the other genders.
- 1.5 A reference to a statute or statutory provision:
  - (a) is a reference to it as amended, extended or re-enacted from time to time; and
- 1.6 shall include all subordinate legislation made from time to time under that statute or statutory provision.
- 1.7 Any obligation on a Party not to do something includes an obligation not to agree for that thing to be done.

1.8 A reference to this Deed or to any other document referred to in this Deed is a reference to this Deed or such other document as varied or novated (in each case, other than in breach of the provisions of this Deed) from time to time.

1.9 References to Clauses are to the clauses of this Deed.

1.10 Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

## **2 COMPLY WITH THE SUBCONSULTANT APPOINTMENT**

2.1 The Subconsultant warrants to the Beneficiary that:

- (a) it has complied, and shall continue to comply, with its obligations under the Subconsultant Appointment, including its obligations to;
- (b) carry out and fulfil, in all respects, the duties of a designer under the CDM Regulations; and
- (c) not, without the Client Organisation's written consent, make any material change to the designs or specifications for the Project after they have been settled or approved.

2.2 it has exercised and shall continue to exercise the Required Standard:

- (a) when performing the Subconsultant Services; and
- (b) to comply with (and ensure the completed Project complies with) any Act of Parliament and any instrument, rule or order made under any Act of Parliament;
- (c) to comply with (and ensure the completed Project complies with) any 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;
- (d) to perform the Subconsultant Services and prepare all Material for those elements of the Project for which the Subconsultant is responsible according to the Programme or, in the absence of a Programme, in sufficient time to facilitate the efficient progress of the Project;
- (e) to ensure that the Project complies with all planning agreements, permissions and conditions; and
- (f) has not and will not specify for use or use Prohibited Materials.]

2.3 In proceedings for breach of this Clause 2, the Subconsultant may:

- (a) rely on any limit of liability or other term of the Subconsultant Appointment; and
- (b) raise equivalent rights of defence as it would have had if the Beneficiary had been named as a joint Client Organisation, with the Consultant, under the Subconsultant Appointment (for this purpose not taking into account any set-off or counterclaim against the actual Client Organisation under the Subconsultant Appointment).

2.4 The Subconsultant's duties or liabilities under this Deed shall not be negated or diminished by any:

- (a) approval or inspection of:
    - (i) the Property; or
    - (ii) the Project; or
    - (iii) any designs or specifications for the Property or the Subconsultant Services; or
  - (b) testing of any work, goods, materials, plant or equipment; or
  - (c) omission to approve, inspect or test,
- by or on behalf of the Beneficiary or the Consultant.

2.5 This Deed shall not negate or diminish any other liability or obligation otherwise owed to the Beneficiary by the Subconsultant.

### **3 STEP-IN RIGHTS: SUBCONSULTANT MAY NOT TERMINATE OR DISCONTINUE**

3.1 The Subconsultant shall not exercise, or seek to exercise, any right to:

- (a) terminate its employment under the Subconsultant Appointment; or
- (b) discontinue performance of the Subconsultant Services,

for any reason (including any breach on the part of the Consultant) without giving the Beneficiary at least twenty (20) Business Days' written notice of its intention to do so. Any notice from the Subconsultant shall specify the grounds for the Subconsultant's proposed termination or discontinuance.

3.2 If the Subconsultant Appointment allows the Subconsultant a shorter notice period for the exercise of a right referred to in Clause 3.1, the notice period in the Subconsultant Appointment shall be extended to take account of the notice period required under Clause 3.1.



3.3 The Subconsultant's right to terminate its employment under the Subconsultant Appointment, or to discontinue performance of the Subconsultant Services, shall cease if, within the period referred to in Clause 3.1, the Beneficiary gives notice to the Subconsultant, copied to the Consultant:

- (a) requiring the Subconsultant not to terminate its employment or not to discontinue performance of the Subconsultant Services under the Subconsultant Appointment;
- (b) acknowledging that the Beneficiary (or its nominee) will assume all the Consultant's obligations under the Subconsultant Appointment; and
- (c) undertaking that the Beneficiary or its nominee will pay to the Subconsultant:
  - (i) any sums due and payable to the Subconsultant under the Subconsultant Appointment in future; and
  - (ii) any sums then due and payable to the Subconsultant under the Subconsultant Appointment that are unpaid.

3.4 If the Beneficiary (or its nominee) serves notice on the Subconsultant under clause 3.3, then, from the date of service of the notice, the Subconsultant Appointment shall continue in full force and effect, as if it had been entered into between the Subconsultant and the Beneficiary (to the exclusion of the Consultant).

3.5 In complying with this Clause 3, the Subconsultant:

- (a) does not waive any breach of the Subconsultant Appointment or default under the Subconsultant Appointment by the Consultant; and
- (b) may exercise its right to terminate its employment under the Subconsultant Appointment, or discontinue performance of the Subconsultant Services, after the expiry of the notice period referred to in Clause 3.1, unless the Subconsultant's right to terminate or discontinue has ceased under Clause 3.3.

#### **4 STEP-IN RIGHTS: BENEFICIARY MAY STEP-IN**

4.1 Without affecting Clause 3.1, if the Beneficiary serves a notice on the Subconsultant, copied to the Consultant, that:

- (a) confirms that the Beneficiary wishes to step-in to the Subconsultant Appointment; and
- (b) complies with the requirements for a Beneficiary's notice under Clause 3.3,

then, from the date of service of the notice, the Subconsultant Appointment shall continue in full force and effect, as if it had been entered into between the Subconsultant and the Beneficiary (or its nominee), to the exclusion of the Consultant.

4.2 The Subconsultant shall assume that, between the Consultant and the Beneficiary, the Beneficiary may give a notice under Clause 4.1. The Subconsultant shall not enquire whether the Beneficiary may give that notice.

4.3 In complying with this Clause 4 the Subconsultant does not waive any breach of the Subconsultant Appointment or default under the Subconsultant Appointment by the Consultant.

**5 STEP-IN RIGHTS: SUBCONSULTANT'S POSITION AND CONSULTANT'S CONSENT**

5.1 The Subconsultant shall not incur any liability to the Consultant by acting in accordance with Clause 3 or Clause 4.

5.2 The Consultant has entered into this Deed to confirm its consent to the agreement.

**6 STEP-IN RIGHTS: BENEFICIARY'S GUARANTEE**

If a Beneficiary's notice under Clause 3 or Clause 4 refers to the Beneficiary's nominee, the Beneficiary shall be liable to the Subconsultant, as guarantor, for the payment of any sums due and payable from time to time to the Subconsultant from the Beneficiary's nominee.

**7 NO INSTRUCTIONS TO SUBCONSULTANT BY BENEFICIARY**

Unless the Beneficiary has stepped-in under Clause 3 or Clause 4, the Beneficiary may not give instructions to the Subconsultant under this Deed.

**8 PRIORITY OF STEP-IN**

Where the Subconsultant has given rights in relation to the Subconsultant Appointment similar to those contained in this Deed to any other person then if both the Beneficiary and any such other person serve notice under Clause 3 or Clause 4, the notice served by the Beneficiary shall prevail.]

**9 COPYRIGHT**

9.1 The Subconsultant grants to the Beneficiary, with immediate effect, an irrevocable, non-exclusive, non-terminable, royalty-free licence to copy and make full use of any Material prepared by, or on behalf of, the Subconsultant for any purpose relating to the Project and the Property, including any of the Permitted Uses.

- 9.2 This licence carries the right to grant sub-licences and is transferable to third parties without the consent of the Subconsultant.
- 9.3 The Subconsultant shall not be liable for use of the Material for any purpose other than that for which it was prepared and/or provided.
- 9.4 The Beneficiary may request a copy (or copies) of some or all of the Material from the Subconsultant. On the Beneficiary's payment of the Subconsultant's reasonable charges for providing the copy (or copies), the Subconsultant shall provide the copy (or copies) to the Beneficiary.
- 9.5 In respect of any Material prepared by, or on behalf of, the Subconsultant (and which is being used for the purposes for which it was provided) the Subconsultant shall indemnify the Beneficiary from and against all claims, proceedings, damages, costs and expenses which may be brought or made against the Beneficiary or to which the Beneficiary may be put by reason of any infringement of such Material (or the rights or titles therein) or by reason of such infringement having been held to have taken place.

## **10 PROFESSIONAL INDEMNITY INSURANCE**

- 10.1 The Subconsultant shall maintain professional indemnity insurance at the Subconsultant's cost for an amount of at least £[INSERT SUM]m in respect of any one claim and in the aggregate arising out of any one event [(and in respect of pollution and contamination an amount of at least £[INSERT SUM] in the annual aggregate and in respect of asbestos an amount of at least £[INSERT SUM] in the annual aggregate)] for a period beginning on the date of this Deed and ending 12 years after the date of practical completion of the Project, provided that such insurance is available at commercially reasonable rates. The Subconsultant shall maintain that professional indemnity insurance:
- (a) with reputable insurers lawfully carrying on insurance business in the UK;
  - (b) on customary and usual terms and conditions prevailing for the time being in the insurance market; and
  - (c) on terms that:
    - (i) do not require the Subconsultant to discharge any liability before being entitled to recover from the insurers; and
    - (ii) would not adversely affect the rights of any person to recover from the insurers under the Third Parties (Rights Against Insurers) Act 2010.

- 10.2 Any increased or additional premium required by insurers because of the Subconsultant's claims record or other acts, omissions, matters or things particular to the Subconsultant shall be deemed to be within commercially reasonable rates.
- 10.3 The Subconsultant shall not, without the Beneficiary's written consent, by any act or omission lose or affect the Subconsultant's right to make, or proceed with, that claim against the insurers.
- 10.4 The Subconsultant shall immediately inform the Beneficiary if the Subconsultant's required professional indemnity insurance ceases to be available at commercially reasonable rates, so that the Subconsultant and the Beneficiary can discuss how best to protect the respective positions of the Beneficiary and the Subconsultant regarding the Project and the Property, without that insurance.
- 10.5 The Subconsultant shall fully co-operate with any measures reasonably required by the Beneficiary, including:
- (a) completing any proposals for insurance and associated documents; or
  - (b) maintaining insurance at rates above commercially reasonable rates, if the Beneficiary reimburses the Subconsultant for the net cost of that insurance above commercially reasonable rates.
- 10.6 Whenever the Beneficiary reasonably requests, the Subconsultant shall send the Beneficiary evidence that the Subconsultant's professional indemnity insurance is in force, including, if required by the Beneficiary, an original letter from the Subconsultant's insurers or brokers confirming:
- (a) the Subconsultant's then current professional indemnity insurance; and
  - (b) that the premiums for that insurance have been paid in full at the date of that letter.

## **11 LIABILITY PERIOD**

The Beneficiary may not commence any legal action against the Subconsultant under this Deed after 12 years from the date of practical completion of all of the Project.

## **12 ASSIGNMENT**

12.1 The Subconsultant may not assign or transfer any rights under this Deed without the prior written consent of the Beneficiary.

12.2 The Beneficiary may assign the benefit of this Deed:

- (a) on two occasions to any person; and

- (b) without counting as an assignment under Clause 12.2(a):
  - (i) by way of security to a Funder (including any reassignment on redemption of security); or
  - (ii) to and from a subsidiary or other associated companies within the same group of companies as the Beneficiary so long as that assignee company remains within the same group of companies as the Beneficiary.

### 13 NOTICES

13.1 Each notice to be given under this Deed shall be given in writing in English. For the avoidance of doubt notice shall not be validly given by e-mail.

13.2 Any notice to be given by one Party to another under this Deed shall (unless one Party has specified another address to the other Party, such address to take effect on 5 Business Days after receipt or deemed receipt of the notice specifying the other address) be given to that other Party at the address set out below:

(a) Beneficiary:

[ADDRESS]

[TELEPHONE NUMBER]

[EMAIL ADDRESS]

Attention: [CONTACT]

(b) Subconsultant:

[ADDRESS]

[CONTACT NUMBER]

[EMAIL ADDRESS]

Attention: [CONTACT]

(c) Consultant:

[ADDRESS]

[CONTACT NUMBER]

[EMAIL ADDRESS]

Attention: [CONTACT]

13.3 Any notice given by any Party shall be deemed to have been received:

- (a) if given by hand, at the time of day of actual delivery;
- (b) if posted, by 10am on the second Business Day following the Business Day on which it was despatched by first class recorded or special delivery mail postage prepaid;
- (c) if sent by courier on the date and at the time that the courier's delivery receipt is signed;
- (d) if sent by email, at the time of transmission; or
- (e) if sent by fax, at the time of transmission,

provided that a notice given in accordance with the above but received on a day which is not a Business Day or after normal business hours in the place of receipt shall be deemed to have been received on the next Business Day.

#### **14 THIRD PARTY RIGHTS**

A person who is not a Party to this Deed shall have no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms.

#### **15 GOVERNING LAW AND JURISDICTION**

15.1 This Deed, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by and construed in accordance with English law.

15.2 Any claim, dispute or difference arising under or in connection with this Deed shall be subject to the exclusive jurisdiction of the courts of England and Wales to which each of the Parties irrevocably agrees to submit.

This collateral warranty has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

**EXECUTED** as a **DEED** by **[NAME OF SUBCONSULTANT]** acting by a director, in the presence of a witness:

**DIRECTOR**

Signature: .....

Name (in block capitals): .....

**WITNESS**

Signature: .....

Name (in block capitals): .....

Address (in block capitals): .....

Occupation (in block capitals): .....

**EXECUTED** as a **DEED** by **[NAME OF BENEFICIARY]** acting by a director, in the presence of a witness:

**DIRECTOR**

Signature: .....

Name (in block capitals): .....

**WITNESS**

Signature: .....

Name (in block capitals): .....

Address (in block capitals): .....

Occupation (in block capitals): .....

**EXECUTED** as a **DEED** by **[NAME OF CONSULTANT]** acting by a director, in the presence of a witness:

**DIRECTOR**

Signature: .....

Name (in block capitals): .....

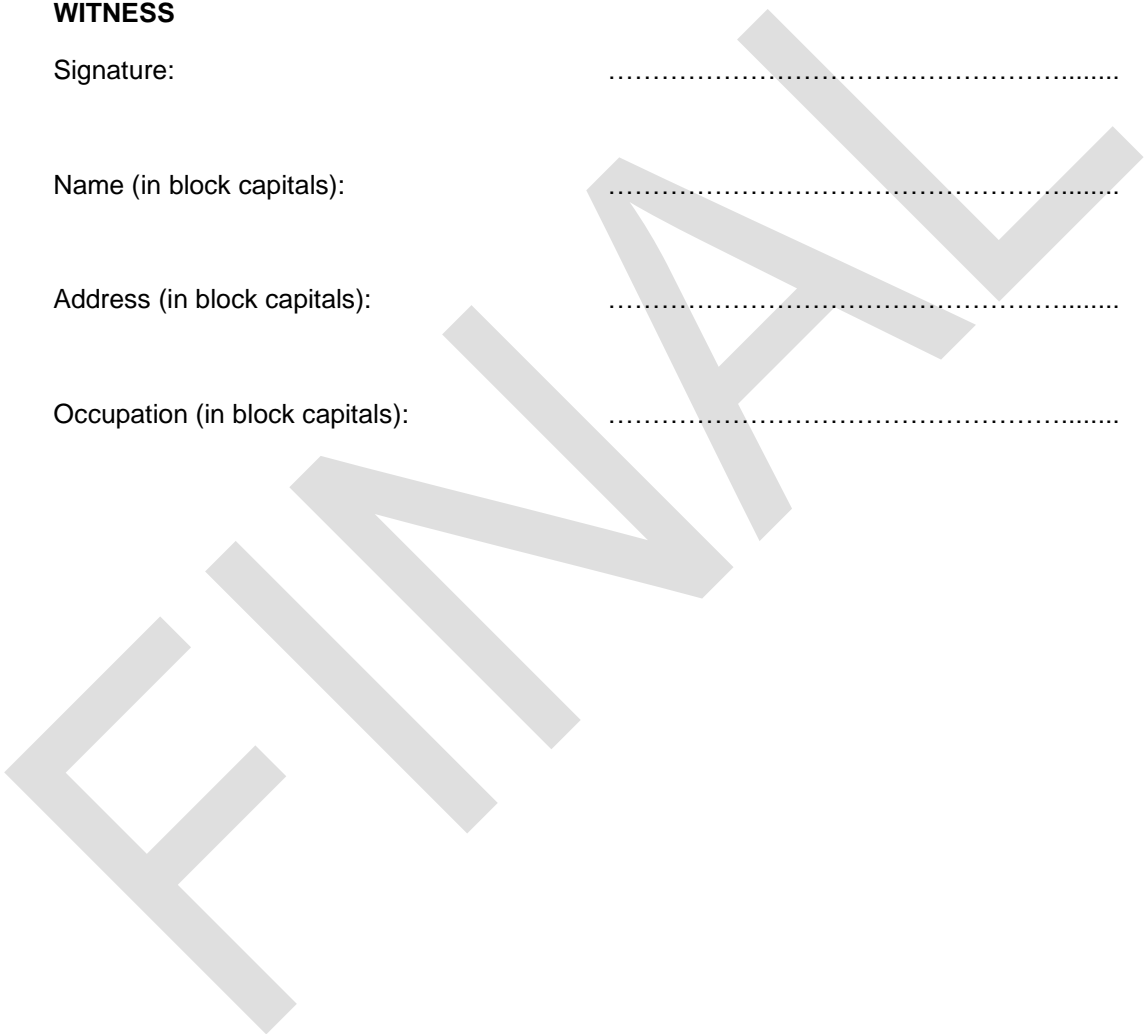
**WITNESS**

Signature: .....

Name (in block capitals): .....

Address (in block capitals): .....

Occupation (in block capitals): .....





**NOVATION AGREEMENT**  
relating to  
the provision of **[DESCRIPTION OF SERVICES]** in connection  
with **[DESCRIPTION OF PROJECT]** at  
**[ADDRESS]**

**NATIONAL FIRE CHIEFS COUNCIL LIMITED** (the (1)  
"Outgoing Party")

**[INCOMING PARTY]** (2)  
(the "Incoming Party")

**[CONTINUING PARTY]** (3)  
(the "Continuing Party")

THIS DEED is dated [DATE]

## PARTIES

- (1) **NATIONAL FIRE CHIEFS COUNCIL LIMITED**, of 71-75, Shelton Street, Covent Garden, London, United Kingdom, WC2H 9JQ, incorporated and registered in England and Wales with company number 3677186 ("**Outgoing Party**");
- (2) [FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] ("**Incoming Party**"); and
- (3) [FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] ("**Continuing Party**").

## BACKGROUND

- (A) The Outgoing Party appointed the Continuing Party pursuant to the Call-Off Agreement to perform the Services in relation to the Project.
- (B) The Parties have agreed to novate the Contract from the Outgoing Party and the Continuing Party to the Incoming Party and the Continuing Party on the terms of this Deed.
- (C) The Outgoing Party appointed the Incoming Party pursuant to the Construction Contract to carry out and complete the design and construction of the Project.

## AGREED TERMS

### 1 DEFINITIONS

- 1.1 In this Deed the following words shall have the following meanings:

**["Collateral Warranty"]** means an agreement in the form set out at Appendix 3.]

**"Call-Off Agreement"** means an agreement in writing dated [DATE] (as varied) between the Continuing Party and the Outgoing Party and novated to the Incoming Party under this Deed.

**"Construction Contract"** means an agreement in writing dated [DATE] (as varied) between the Incoming Party and the Outgoing Party.

**"Deed"** means this novation agreement.

**"Party"** means a party to this Deed.

"Project" means [INSERT DESCRIPTION].

"Required Standard" means all the reasonable skill, care and diligence to be expected of a suitably qualified competent and experienced member of the Continuing Party's profession experienced in carrying out services such as the Services in respect of projects of similar size, scope, character and complexity as the Project.

"Services" means the services performed by or on behalf of the Continuing Party pursuant to the Call-Off Agreement.

- 1.2 Clause headings shall not affect the interpretation of this Deed.
- 1.3 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and shall include successors, transferees and permitted assigns.
- 1.4 Unless the context otherwise requires, words in the singular shall include the plural and in the plural include the singular.
- 1.5 A reference to a statute or statutory provision:
  - (a) is a reference to it as amended, extended or re-enacted from time to time; and
  - (b) shall include all subordinate legislation made from time to time under that statute or statutory provision.
  - (c) Any obligation on a Party not to do something includes an obligation not to agree that thing to be done.
- 1.6 A reference to this Deed or to any other document referred to in this Deed is a reference to this Deed or such other document as varied or novated (in each case, other than in breach of the provisions of this Deed) from time to time.
- 1.7 References to Clauses are to the clauses of this Deed.
- 1.8 Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

## 2 NOVATION OF CALL-OFF AGREEMENT

This Deed novates the Call-Off Agreement from the Outgoing Party and the Continuing Party, to the Incoming Party and the Continuing Party.

### **3 RELEASE OF CONTINUING PARTY**

Subject to Clause 12, the Continuing Party shall no longer owe any duty or obligation to the Outgoing Party in respect of the Call-Off Agreement.

### **4 RELEASE OF OUTGOING PARTY**

The Outgoing Party shall no longer owe any duty or obligation to the Continuing Party in respect of the Call-Off Agreement.

### **5 BINDING OF CONTINUING PARTY TO INCOMING PARTY**

5.1 The Continuing Party binds itself to the Incoming Party under the Call-Off Agreement as if the Incoming Party was, and always had been, named in the Call-Off Agreement in place of the Outgoing Party.

5.2 The Continuing Party undertakes and warrants to the Incoming Party that it has carried out, and will carry out, its duties and obligations under the Call-Off Agreement. In performing its services under the Call-Off Agreement, the Continuing Party has exercised, and will continue to exercise, the Required Standard (as defined in the Call-Off Agreement).

5.3 The Incoming Party shall not be prevented from recovering any losses incurred by the Incoming Party that result from any breach of this Clause 5 because:

- (a) the acts or omissions causing that breach occurred before this Deed took effect;  
or
- (b) the Outgoing Party will not incur, has not or would not have incurred those losses or would not have incurred them to the same extent.

### **6 BINDING OF INCOMING PARTY TO CONTINUING PARTY**

The Incoming Party binds itself to the Continuing Party under the Call-Off Agreement as if the Incoming Party was, and always had been, named in the Call-Off Agreement in place of the Outgoing Party.

### **7 VESTING OF REMEDIES IN INCOMING PARTY**

All rights of action and remedies vested in the Outgoing Party against the Continuing Party in respect of the Call-Off Agreement shall vest in the Incoming Party from the date of this Deed.

**8 VESTING OF REMEDIES AGAINST INCOMING PARTY**

All rights of action and remedies vested in the Continuing party against the Outgoing Party in respect of the Call-Off Agreement shall lie against the Incoming Party from the date of this Deed.

**9 FEES AND DISBURSEMENTS**

The Continuing Party acknowledges that all fees, disbursements and expenses due to the Continuing Party under the Call-Off Agreement to the date of this Deed have been paid in full.

**10 [AMENDMENT OF CALL-OFF AGREEMENT**

The Continuing Party and the Incoming Party agree that upon the Parties entering into this Deed the terms of the Call-Off Agreement shall be deemed varied in accordance with Appendix 1.]

**11 [AFFIRMATION OF CALL-OFF AGREEMENT**

Subject to the terms of this Deed, the Call-Off Agreement shall remain in full force and effect.]

**12 COLLATERAL WARRANTIES AND THIRD PARTY RIGHTS**

12.1 Nothing in this Deed shall affect any collateral warranty given, or to be given, by the Continuing Party to the Outgoing Party (or to any third party) in respect of the Project. Nothing in this Deed shall affect any third party rights in favour of the Outgoing Party (or in favour of any third party) under the Call-Off Agreement.

12.2 The Continuing Party shall, upon the date of this Deed, execute as a deed and deliver to the Outgoing Party a Collateral Warranty in favour of the Outgoing Party in relation to the obligations of the Continuing Party under the Call-Off Agreement.

**13 THIRD PARTY RIGHTS**

13.1 Subject to Clause 13.2, a person who is not a Party to this Deed shall have no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms.

13.2 A third party given a collateral warranty by the Continuing Party may enforce the benefit of Clause 12. A third party benefiting from third party rights under the Call-Off Agreement may enforce the benefit of Clause 12.

## **14 GOVERNING LAW AND INTERPRETATION**

- 14.1 This Deed, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by and construed in accordance with English law.
- 14.2 Notwithstanding any other provision of this Deed either Party may refer a dispute arising under this Deed to adjudication at any time in accordance with the Technology and Construction Solicitors' Association adjudication rules, current at the date the relevant dispute is referred to adjudication which are deemed to be incorporated by reference into this Clause.
- 14.3 Subject to Clause 14.2, any claim, dispute or difference arising under or in connection with this Deed or its subject matter or formation (including not-contractual disputes or claims) shall be subject to the exclusive jurisdiction of the courts of England and Wales to which each of the Parties irrevocably agrees to submit.

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.