



2020

(1) PROCURE PARTNERSHIPS FRAMEWORK LTD

and

(2) [CONTRACTOR]

**PROFESSIONAL SERVICES
APPROVED SUPPLIER AGREEMENT**

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This Agreement is made on

Between

- (1) **Procure Partnerships Framework Ltd** (registration number 11108998) whose registered office is at First Floor Edward Pavillion, Royal Albert Dock, Liverpool, L3 4AF (**'the Agent'**);
- (2) **[Contractor]** (registration number []) whose registered office is at [] (**'Contractor'**);

(together the "Parties" and individually a "Party")

Whereas

- (A) Procure Partnerships Framework Ltd sought expressions of interest from economic operators for the provision of services to public sector bodies under an Approved Supplier Agreement.
- (B) A tender process was undertaken that evaluated responses on both quality and cost.
- (C) On the basis of the Tender, Procure Partnerships Framework Ltd selected the Contractor to enter into a Approved Supplier Agreement.
- (D) The Parties acknowledge that this Agreement does not provide any form of guarantee of work and that no client has given a commitment to use the Contractor; accordingly these arrangements are speculative in nature.

1. Definitions and interpretation

1.1 In this Agreement, unless the context otherwise requires, the following expressions shall have the following meanings:

Access Agreement	the agreement between Procure Partnerships Framework Ltd and a potential Client, execution of which is required before a Client may call off Services under this Agreement;
Agreed Scope	sets out Contractor activities and the costs of these as agreed by the Contractor and the Client;
Agreement	this agreement, including its Schedules;
Call Off Contract	A individual project being procured through the Approved Supplier Agreement
Client	an organisation which is not a contracting authority and which may wish to enter into a contract with the Contractor on the terms agreed pursuant to the Approved Supplier Agreement
Commencement Date	the date of execution of this Agreement;
Confidential Information	any information designated as confidential by the Party disclosing that information at the time of its disclosure, or which is clearly confidential in its nature;
Consents	all permissions, consents, approvals, certificates, permits, licences, statutory agreements and authorisations required by Law and all necessary consents and agreements from any third parties (including, without limitation, any planning permission), needed to carry out the Services in accordance with this Agreement and each Delivery Contract;
Control or Controlled	as defined in section 1124 of the Corporation Tax Act 2010 and the expression change in control shall be construed accordingly;
Contract Data	contract data relating to specific Projects which shall be incorporated in the Delivery Contract;
Contractor's Fee	the Contractor's Fee as defined in Schedule 5;
Convictions	other than in relation to minor road traffic offences, any previous pending prosecutions, convictions, cautions and binding-over orders (including any spent convictions as contemplated by section 1(1) of The Rehabilitation of Offenders

	Act 1974 by virtue of the exemptions specified in Part II of schedule 1 of the Rehabilitation of Offenders Act 1974 (Exemptions) Order 1975 (SI 1975/1023) or any replacement or amendment to that Order);
Delivery Contract	a contract between a Contractor and a Client formed once that contract has been executed by a Client and the Contractor in one of the forms set out in Schedule 3 with any required project specific amendments necessitated by the detail of any individual project;
Design Services	design and related services undertaken by the Contractor during the Pre-Construction Stage and before the Delivery Contract for the main construction services is executed;
Disclosure and Barring Service	the service established pursuant to the Protection of Freedoms Act 2012;
Enabling Works	construction works of a minor nature undertaken during the Pre-Construction Stage and prior to the main construction project commencing on Site (where Enabling Works are not mobilisation for the main Construction project and the main Construction project does not follow consecutively to the Enabling Works);
End User	the ultimate user of the building;
Environmental Information Regulations	the Environmental Information Regulations 2004;
Financial Year	a period of 12 months beginning on the Commencement Date or anniversary of that date;
FOIA	the Freedom of Information Act 2000 and any subordinate legislation (as defined in section 84 of the Freedom of Information Act 2000) made under the Freedom of Information Act 2000 from time to time together with any guidance and/or codes of practice issued by the Information Commissioner in relation to that Act;
Force Majeure	<p>the occurrence after the Commencement Date of:</p> <ul style="list-style-type: none"> (a) war, civil war, armed conflict or terrorism; or (b) nuclear, chemical or biological contamination unless in any case the Party claiming the benefit of relief is the source or cause of the contamination; or (c) pressure waves caused by devices travelling at supersonic speeds; <p>which directly causes either Party to be unable to comply with all or a material part of its obligations under this Agreement;</p>

Good Industry Practice	using standards, practices, methods and procedures conforming to the Law and exercising that degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled, competent, appropriately qualified and suitably experienced person engaged in a similar type of undertaking under the same or similar circumstances from time to time;
Holding Company	has the meaning given in section 1159 of the Companies Act 2006; in the case of a limited liability partnership which is a subsidiary of a company or another limited liability partnership, section 1159 of the Companies Act 2006 shall be amended so that: (a) references in sub sections 1159(1)(a) and (c) to voting rights are to the members' rights to vote on all or substantially all matters which are decided by a vote of the members of the limited liability partnership; and (b) the reference in section 1159(1)(b) to the right to appoint or remove a majority of its board of directors is to the right to appoint or remove members holding a majority of the voting rights;
Indices	relating to all and any indices that Procure Partnerships Framework Ltd may refer to in determining adjustment of prices on an annual basis
Insolvency Event	<p>any of the following:</p> <ul style="list-style-type: none"> (a) any arrangement or composition with or for the benefit of creditors which does not involve a continuation of the Contractor's business in the same or substantially the same form (including any voluntary arrangement as defined in the Insolvency Act 1986) being entered into by or in relation to the person in question; any commencement of negotiations or making of a proposal for any of the same; (b) a supervisor, receiver, administrator, administrative receiver or other encumbrancer taking possession or being appointed over or any distress, execution or other process being levied or enforced (and not being discharged within five (5) Business Days) upon the whole or part of the assets of the Contractor; an application being made to court for any of these; (c) the Contractor ceasing to carry on business; (d) a petition being filed, a notice given, a resolution being passed or an order being made for the administration or the winding-up, bankruptcy or dissolution of the Contractor; (e) the Contractor suspending or threatening to suspend payment of its debts as they fall due or admitting inability to pay its debts with the meaning of section 123 of the Insolvency Act 1986; (f) Procure Partnerships Framework's reasonable anticipation that any one or more of the above is likely to occur in relation to the Contractor in the

	near future;
Insurances	as the context requires, all or any of the insurances required to be maintained by the Contractor pursuant to this Agreement;
Intellectual Property	any and all intellectual property rights of any nature anywhere in the world whether registered, registerable or otherwise, including all trademarks, service marks, patents, designs, utility models, applications for any of the foregoing, copyrights, the <i>sui generis</i> rights of extraction relating to databases, trade secrets and other confidential information or know-how;
Law	<p>(a) any Act of Parliament;</p> <p>(b) any subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978;</p> <p>(c) any exercise of the Royal Prerogative; and</p> <p>(d) any enforceable community right within the meaning of section 2 of the European Communities Act 1972;</p> <p>in each case in force in the United Kingdom;</p>
Performance Indicators	the Performance Indicators set out in Schedule 4;
Personal Data	has the meaning set out in section 1(1) of the Data Protection Act 1998;
Prices	the prices for Services calculated in accordance with Schedule 5;
Project	an agreed project to be carried out by a Contractor for a Client in accordance with and pursuant to a Delivery Contract;
Quarter	a three (3) month period beginning on 1st January, 1st April, 1st July or 1st October;
Request for Information	any actual or purported request for information under the FOIA or the Environmental Information Regulations;
Procure Partnerships Approved Supplier Agreement Fee	the fee charged to the Contractor by Procure Partnerships for the management of this Agreement
Services	those services set out in Schedule 1 and which are carried out by a Contractor for a Client in accordance with and pursuant to a Delivery Contract; Procure Partnerships Framework Ltd in their absolute discretion shall determine whether Services requested by a Client fall under this definition of Services;

Site	any site where any Services are being or are to be carried out;
Subcontractor	a subcontractor of the Contractor which is engaged to provide the Services;
Subsidiary	has the meaning set out in Section 1159 of the Companies Act 2006; in the case of a limited liability partnership which is a subsidiary of a company or another limited liability partnership, section 1159 of the Companies Act 2006 shall be amended so that: (a) references in sub sections 1159(1)(a) and (c) to voting rights are to the members' rights to vote on all or substantially all matters which are decided by a vote of the members of the limited liability partnership; and (b) the reference in section 1159(1)(b) to the right to appoint or remove a majority of its board of directors is to the right to appoint or remove members holding a majority of the voting rights;
Term	the period from the Commencement Date until the date of termination of this Agreement;
Value for Money	providing the Services in such a way that achieves a balance between quality and costs to meet Client and End User needs;
VAT	value added tax at the rate prevailing at the time of the relevant supply charged in accordance with the provisions of the Value Added Tax Act 1994;

1.2 As used in this Agreement:

- (a) the masculine includes the feminine and the neuter;
- (b) the singular includes the plural and vice versa; and
- (c) the words “include”, “includes” and “including” are to be construed as if they were immediately followed by the words “without limitation”.

1.3 A reference to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent statute, enactment, order, regulation or instrument or as contained in any subsequent re-enactment of it.

1.4 Headings are included in this Agreement for ease of reference only and shall not affect the interpretation or construction of this Agreement.

1.5 References to “Clauses” and “Schedules” are, unless otherwise provided or the context so necessitates, references to the clauses of and schedules to this Agreement. References to “Paragraphs” are, unless otherwise provided, references to paragraphs of the schedule in which the references are made.

1.6 Reference to any English legal term for any action, remedy, method of judicial proceedings, legal document, legal status, court official or any legal concept or thing shall in respect of any jurisdiction other than England be deemed to include what most nearly approximates in that jurisdiction to the English legal term.

1.7 Terms or expressions contained in this Agreement which are capitalised but which do not have an

interpretation in Clause 1.1 shall be interpreted in accordance with the common interpretation within the relevant market sector/industry where appropriate. Otherwise they shall be interpreted in accordance with the dictionary meaning.

- 1.8 No rule of construction applies to the disadvantage of a Party because that Party was responsible for the preparation of this Agreement or any part of it.

2. Purpose and conduct of the Parties

2.1 The principal purposes of this Agreement are to:

- (a) establish a partnering relationship between the Parties and other consultants to complete Projects on behalf of Clients pursuant to Delivery Contracts;
- (b) ensure that the Client, Procure Partnerships, the Contractor and other consultants shall act in a spirit of partnership;
- (c) set in place business and cultural processes to enable Procure Partnerships and the Contractor to establish and agree mechanisms which achieve continuous improvements in time, quality and costs;
- (d) commit to the achievement of continuous, measurable and measured improvement by agreeing quantitative and qualitative targets which:
 - (i) are specific;
 - (ii) are challenging;
 - (iii) add value; and
 - (iv) are sustainable;
- (e) measure and review contractual performance against those targets

3. Commencement, duration and termination of this Agreement

3.1 *The term of the Agreement*

This Agreement shall commence on the Commencement Date and shall terminate on the fourth anniversary of that date or earlier in accordance with the provisions of this (provided always that this shall not prevent the continuity of any works or services:

- (f) pursuant to a Delivery Contract previously entered into; and
- (g) where a Delivery Contract is entered into no later than 3 months after the termination of this Agreement).

3.2 *No compensation for the Contractor on termination*

The Contractor shall not be entitled to any compensation on termination of this Agreement.

3.3 *Provisions surviving termination*

3.3.1 Notwithstanding the termination of this Agreement, such termination shall be without prejudice to any accrued rights and obligations under this Agreement as at the date of termination.

4 Call Off Contract Process

- 4.1 A Call Off Contract is awarded to a Contractor using one of methods detailed below. The Client selects the method to be used, Contractors are notified of the method of assessment to be used for each mini competition for a Call Off Contract including the weightings and other criteria where the Client selects these for a call off.
- a) *Further Competition – Single Supplier:* A number of ASA suppliers submit bids for the award of a Call off Contract by means of a partial price and quality competition. In this instance clients appoint one supplier form one lot after running a further competition.
 - b) *Further Competition – Multi-Disciplinary Team:* Clients invite bids from the Project Management or Architectural Design lots to build a multi-disciplinary team. The supplier must build that team from the suppliers who are on the Procure Partnerships (Professional Services) Approved Supplier Agreement within their region. Bids for the award of a Call off Contract are then invited by means of a partial price and quality competition.
 - c) *Direct Award – Single Supplier:* A Approved Supplier is selected directly by a client without reopening competition. Clients that select this route will review initial tender responses along with the supplier's hourly rates and not to be exceeded project fee percentages. Client own internal procedures rules will consider the best value approach to appoint a supplier via Direct Award. In this instance clients appoint one supplier form one lot.
 - d) *Direct Award – Multi-Disciplinary Team:* An Approved Supplier is selected by a client directly from the Project Management or Architectural Design along with their multi-disciplinary team without reopening competition. Clients that select this route will review initial tender responses along with the supplier's hourly rates and not to be exceeded project fee percentages. Client own internal procedures rules will consider the best value approach to appoint a supplier via Direct Award.

5 The Services to be provided by the Contractor to Clients

Services to be provided by the Contractor

- 5.1 The Contractor shall provide the Services on the terms of this Agreement and the relevant Delivery Contract(s) as and when required by Clients in the Defined Area.
- 5.2 The Contractor shall at all times during the Term maintain the organisational and technical ability and capacity to provide the Services in accordance with this Agreement and Delivery Contracts as the Services may be required from time to time by Clients.
- 5.3 The Contractor shall enter into a Delivery Contract with each Client that so requests, in accordance with the provisions of this Agreement.
- 5.4 The Contractor shall provide to each Client such information as is required to be provided in the Delivery Contract together with such other information requested by a Client.

- 5.5 The Contractor shall not be required to enter any Delivery Contract with any Client unless it is satisfied that the potential client has the financial means and appropriate covenant strength to comply with its obligations under any Delivery Contract or has otherwise provided sufficient security to the Contractor.
- 5.6 No Delivery Contract shall be entered in to after termination of this Agreement.

Standard of provision of the Services

- 5.7 The Contractor shall ensure that the Services are at all times performed:
- a) in accordance with Good Industry Practice;
 - b) in accordance with all relevant Law and codes of practice (including, where applicable, all government, local government, NHS and other public sector circulars, guidance, official requests or requirements for the time being in force, but only to the extent that the same are published and publicly available or the existence and contents of them have been notified to the Contractor by a Client);
 - c) in accordance with all Consents;
 - d) in a manner which is not likely to cause damage to property or to injure people; and
 - e) in a manner consistent with Procure Partnerships or a Client (as the case may be) discharging its statutory duties and/or other functions undertaken by it to the extent these have been made known to the Contractor.

Payments due under this Agreement

- 5.8 Unless specifically stated in this Agreement, the Contractor shall comply with all its obligations under this Agreement at its own cost and expense and shall not be entitled to reimbursement from Procure Partnerships.

6 Rights and obligations in relation to Delivery Contracts

- 6.1 The Client may at any time decline to enter into a Delivery Contract and nothing in this Agreement shall oblige any Client to do so.
- 6.2 The Contractor acknowledges that each Client is independently responsible for the award of Delivery Contracts and that Procure Partnerships is not responsible or accountable for and shall have no liability whatsoever (whether in contract, tort, negligence or otherwise) in relation to:-
- a) the conduct of Clients in relation to: (a) this Agreement; and/or (b) the awarding or non-award of Delivery Contracts; or
 - b) the performance or non-performance of any Delivery Contract between the Contractor and Clients entered into pursuant to this Agreement.
- 6.3 A binding Delivery Contract for the provision of Services by the Contractor to a Client shall be created by the execution of a Delivery Contract by both those parties in accordance with this Clause 6 and shall incorporate by reference the applicable provisions of the relevant Model Delivery Contracts.
- 6.4 The Contractor shall use its best endeavours to ensure that it enters into a Delivery Contract before it provides any Services.

- 6.5 The Contractor shall ensure that each Delivery Contract shall be in the relevant form and :
- a) includes the Contract Data;
 - b) sets out any Optional Clauses the Client and the Contractor agree should be included in the Delivery Contract;
 - c) sets out the price payable under a Delivery Contract
 - d) does not purport to exclude or vary any of the terms and conditions of the relevant Model Delivery Contracts contrary to this Agreement without the agreement of Procure Partnerships.

Form of Model Delivery Contract

- 6.6 Services provided by the Contractor to Clients shall (unless otherwise directed by Procure Partnerships) be based on the terms of either;
- a) NEC Pre-construction Services Agreement
 - b) NEC Professional Services Contract
 - c) JCT Pre-construction Services Agreement
 - d) JCT Consultancy Agreement
 - e) RICS Standard Form of Consultant Appointment
 - f) CIOB Standard Form of Consultant Appointment
 - g) Contacting Authority's Own Appointment Documents

- 6.7 The Client shall advise the Contractor of any amendments that are at the Clients discretion on issue of the Delivery Contract or within a reasonable period of time of a formal request by the Contractor.

Pricing of Delivery Contracts

- 6.8 The Contractor shall ensure that Services are priced and paid for by Clients in accordance with the provisions of the Delivery Contract and this Agreement.
- 6.9 Prices shall be determined in line with Schedule 5.

Cost Analysis

7 Payments and Price Increases

Procure Partnerships Approved Supplier Agreement Fee

- 7.1 Procure Partnerships Approved Supplier Agreement Fee is defined as the charge made by Procure Partnerships to the Authority accessing this Agreement for each individual Call Off Contract that is paid to Procure Partnerships by the successful Contractor for each individual call off contract. Total payment is as per the below;

- | | | |
|----|--------------------------------|-----------------|
| a) | Project Management | £250 (plus VAT) |
| b) | Quantity Surveying | £250 (plus VAT) |
| c) | Architectural Design | £250 (plus VAT) |
| d) | Landscape Architectural Design | £100 (plus VAT) |

e)	Structural Engineering	£175 (plus VAT)
f)	Civil and Highway Engineering	£175 (plus VAT)
g)	MEP Design	£250 (plus VAT)
h)	Building Surveying	£100 (plus VAT)
i)	Principal Designer*	£50 (plus VAT)
j)	Fire Engineering	£50 (plus VAT)
k)	Sustainability and Environmental	£50 (plus VAT)

Payments are to be made upon appointment to a call off contract.

7.2 If the Contractor fails to pay the Procure Partnerships Approved Supplier Agreement Fee in line with clause 8.1, the Contractor will be suspended from consideration for all subsequent Procure Partnerships Call Off Contracts until they pay the Procure Partnerships Approved Supplier Agreement Fee to Procure Partnerships. Procure Partnerships will also commence legal proceedings against the Contractor to obtain monies due.

7.3 The Contractor is also required to pay an initial subscription fee of £500 (plus VAT) for each lot they are awarded a place upon across the Procure Partnerships (Professional Services) Approved Supplier Agreement. Successful suppliers are required to pay the Approved Supplier Agreement Subscription Fee within 10 days from the notification of award date. The initial subscription fee is a single payment and does not repeat annually.

Pricing Increases and Decreases

7.4 The Contractor's Project Fee Percentages submitted as part of this Approved Supplier Agreement bid will be used as the basis of individual project call offs. At project call off stage contractors will be permitted to deviate positively or negatively away from their tendered RIBA value banded fee percentages by up to 25%.

7.5 The Contractor's staff rates will be subject to an inflationary uplift on the two year anniversary of this agreement (in line with BCIS indices). Inflationary uplifts will be calculated by the Procure Partnerships at this time.

8 Annual Review

8.1 The Parties shall hold a formal annual review of the operation of this Agreement and the Contractor's performance. This shall include:

- a) performance against the Performance Indicators;
- b) any under performance by the Contractor, including any identified from the performance and compliance audits;

- c) the Contractor's health and safety record; and
- d) demonstration by the Contractor of Value for Money by reference to the provision of Services during that year compared to the provision of services of a similar nature, complexity, specification and size completed by other providers.

8.2 The Contractor shall provide such information as Procure Partnerships requires in the context of each annual review, including details of any prosecution for a breach of health and safety legislation or any prohibition notices or any improvement notices issued by either the Health and Safety Executive or any other public or statutory body at any time during the previous 12 month period in the UK.

8.3 The Contractor shall comply with all Procure Partnerships requirements in relation to any findings made by Procure Partnerships in the context of the annual review.

9 Performance Measures and Reporting

Performance Measures

9.1 The Contractor shall provide the information detailed within Schedule 4 to Procure Partnerships in relation to Contractor's performance of the Performance Indicators as Procure Partnerships requests and within the timescales that Procure Partnerships requests.

9.2 The contractor is to complete a Project Initiation Form for each scheme appointed to under this Agreement.

10 Underperformance by the Contractor

10.1 If the Contractor :

- a) fails to meet the minimum required standard of performance of Performance Indicators
- b) has been prosecuted for breach of health and safety legislation and/or has been issued with a prohibition notice or an improvement notice; or
- c) fails to notify Procure Partnerships of the fees due in accordance with Clause 8 and/or fails to pay the Procure Partnerships fees in accordance with Clause 8 and/or provides inaccurate or incomplete information required by Clause 8;

Procure Partnerships may, without limiting its other rights and remedies, require the Contractor to attend a meeting within such timescale as Procure Partnerships notifies the Contractor to agree a rectification plan. In the case of breaches of obligations which are not capable of remedy or prosecution the rectification plan means a plan for mitigating or otherwise dealing with the consequences of the breach or prosecution. If the Contractor does not attend that meeting or the Parties cannot agree a rectification plan at that meeting, Procure Partnerships may require the Contractor to comply with the rectification plan notified to the Contractor by Procure Partnerships within the timescales set out in that rectification plan (such plan and timescales notified to the Contractor by Procure Partnerships to be ones which could realistically be achieved by a competent contractor exercising its best endeavours).

10.2 If at the end of the rectification period agreed in the rectification plan the Contractor has not resolved the underperformance to Procure Partnerships Satisfaction Procure Partnerships may in its absolute discretion

notify the Contractor of the amount of damages due in accordance with the calculations below :

- a) failure to pay the Procure Partnerships Approved Supplier Agreement Fee in accordance with Clause 8.1; interest on the amount which is overdue at 3% per year above the base rate in force from time to time of the Bank of England;

10.3 The Parties acknowledge that the damages payable are without limitation to Procure Partnerships right to terminate this Agreement and equate to a reasonable pre-estimate of the likely losses sustained by Procure Partnerships as a result of the relevant breaches by the Contractor.

10.4 If the Contractor fails to comply with the rectification plan in accordance with its terms, Procure Partnerships may, in its absolute discretion, treat such failure as an Event of Default.

11 Events of Default and Termination

11.1 An Event of Default by the Contractor means any of the following events or circumstances:

- (a) termination of any Delivery Contract by reason of abandonment of the works or services or other material breach of the Contractor's obligations under a Delivery Contract;
- (b) the Contractor committing a material breach of its obligations under this Agreement which is not capable of remedy;
- (c) the Contractor failing to meet its Performance Indicators;
- (d) the Contractor ceasing to provide or procure the provision of all or a substantial part of the Services in accordance with this Agreement;
- (e) the Contractor declining to provide Services to a Client unless Procure Partnerships determines in its reasonable discretion, that the Contractor has an objectively justifiable reason in relation to that particular client for so declining; and/or the Contractor not proposing terms to a Client which are objectively justifiable and/or are not proposed in good faith, in either case in Procure Partnership's reasonable opinion;
- (f) the Contractor or any person who has powers of representation or control are convicted of any of the offences set out in Regulation 57(1) of the Public Contracts Regulations 2015; or
- (g) an Insolvency Event occurs in relation to the Contractor; or
- (h) there is a change in Control of the Contractor which Procure Partnerships are unwilling to grant consent to; or

11.2 Without prejudice to its other rights or remedies, if the Contractor has committed an Event of Default, Procure Partnerships may suspend the Contractor for a defined time and on such terms as Procure Partnerships requires and/or require the Contractor to carry out one or further rectification plans and Procure Partnerships may terminate this Agreement on written notice if the Contractor fails to comply with any or all of these within the defined time and terms for such rectification.

12 Consequences of Termination

12.1 Notwithstanding the service of a notice to terminate this Agreement, the Contractor shall continue to fulfil its Procure Partnerships Approved Supplier Agreement

obligations under this Agreement until the date of expiry or termination of this Agreement or such other date as required by Procure Partnerships.

- 12.2 Termination of this Agreement shall not cause any Delivery Contract to terminate automatically nor affect its validity in any way. All Delivery Contracts shall remain in force unless and until they are terminated or expire in accordance with their own terms.
- 12.3 Within ten (10) Business Days of the date of termination of this Agreement, the Contractor shall destroy or delete any data and Confidential Information belonging to Procure Partnerships in the Contractor's possession, power or control, together with all training manuals and other related documentation, and any other information and all copies owned by Procure Partnerships.
- 12.4 Any provision of this Agreement which by its terms is to be performed or observed notwithstanding termination (or which is expressed to survive termination) shall survive the termination of this Agreement.

13 Employment issues

- 13.1 If, subsequent to the commencement of this Agreement, the identity of the provider of the Services (or any part of the Services), changes (whether as a result of termination of this Agreement, or part, or otherwise) resulting in a transfer of the Services in whole or in part (Service Transfer) and if a Service Transfer is a relevant transfer for the purposes of the Employment Regulations then Procure Partnerships or a Replacement Supplier would inherit liabilities in respect of transferring employees. In these circumstances, Clause 14.2 shall apply. All other sub-Clauses of Clause 14 shall apply to all Service Transfers, whether or not the Employment Regulations apply.

- 14.2 The Contractor shall, subject to compliance with the Data Protection Act 1998:

- (a) within 20 days of the earliest of:
 - (i) receipt of a notification from Procure Partnerships of a Service Transfer or intended Service Transfer;
 - (ii) receipt of the giving of notice of early termination of this Agreement or any part of it; or
 - (iii) the date which is 12 months before the expiry of the Term;

and, in any event, on receipt of a written request of Procure Partnerships at any time, it shall provide the Contractor's provisional list of transferring employees and such staffing information as Procure Partnerships requires to Procure Partnerships or, at the direction of Procure Partnerships, to a replacement supplier and it shall provide an updated staff list when reasonably requested by Procure Partnerships or any replacement supplier;

- (b) at least 14 days before the Service Transfer date, the Contractor shall prepare and provide to Procure Partnerships and/or, at the direction of Procure Partnerships, to the replacement supplier, the Contractor's final staff list, which shall be complete and accurate in all material respects. The Contractor's final staff list shall identify which of the Contractor's personnel named are transferring employees;
- (c) Procure Partnerships may use and disclose the Contractor's staff lists and staffing information for informing any tenderer for any services which are substantially the same type of services (or any

part thereof) as the Services; and

- (d) on reasonable request by Procure Partnerships the Contractor shall provide Procure Partnerships or at the request of Procure Partnerships, the replacement supplier, with access (on reasonable notice and during normal working hours) to such employment records (and provide copies) as Procure Partnerships reasonably requests.

14.3 The Contractor warrants that the Contractor's staff lists and the staffing information will be true and accurate in all material respects

14.4 From the date of the earliest event referred to in Clause 14.2, the Contractor shall not without the prior written consent of Procure Partnerships, assign any person to the provision of the Services (or the relevant part) which is the subject of a Service Transfer who is not listed in the Contractor's provisional staff list and shall not without the prior written consent of Procure Partnerships (such consent not to be unreasonably withheld or delayed):

- (a) increase the total number of employees listed on the Contractor's provisional staff list save for fulfilling assignments and Projects previously scheduled and agreed with Procure Partnerships;
- (b) make, propose or permit any changes to the terms and conditions of employment of any employees listed on the Contractor's provisional staff list;
- (c) increase the proportion of working time spent on the Services (or the relevant part) by any of the Contractor's personnel save for fulfilling assignments and Projects previously scheduled and agreed with Procure Partnerships;
- (d) introduce any new contractual or customary practice concerning the making of any lump sum payment on the termination of employment of any employees listed on the Contractor's provisional staff list; and
- (e) replace any of the Contractor's personnel listed on the Contractor's provisional staff list or deploy any other person to perform the Services (or the relevant part) or increase the number of employees or terminate or give notice to terminate the employment or contracts of any persons on the Contractor's provisional staff list.

The Contractor shall promptly notify Procure Partnerships or, at the direction of Procure Partnerships, the replacement supplier of any notice to terminate employment received from any persons listed on the Contractor's provisional staff list, regardless of when such notice takes effect.

14.5 At least 14 days before the expected Service Transfer date, the Contractor shall provide to Procure Partnerships or any replacement supplier, in respect of each person (subject to compliance with the Data Protection Act) on the Contractor's Final Staff List who is a transferring employee, their:

- (a) pay slip data for the most recent month;
- (b) cumulative pay for tax and pension purposes;
- (c) cumulative tax paid;
- (d) tax code;
- (e) voluntary deductions from pay; and

- (f) bank or building society account details for payroll purposes.

14.6 In connection with a relevant transfer to which the Employment Regulations apply, the Contractor shall perform and discharge all its obligations in respect of all the transferring employees and their representatives for its own account up to and including the Service Transfer date. The Contractor shall indemnify Procure Partnerships and any replacement supplier in full for and against all claims, costs, expenses or liabilities whatsoever and howsoever arising, incurred or suffered by Procure Partnerships or any replacement supplier including without limitation all legal expenses and other professional fees (together with any VAT thereon) in relation to:

- (a) the Contractor's failure to perform and discharge any such obligation;
- (b) any act or omission by the Contractor on or before the Service Transfer date or any other matter, event or circumstance occurring before the Service Transfer date;
- (c) all and any claims in respect of all emoluments and outgoings in relation to the Transferring Employees (including without limitation all wages, bonuses, PAYE, National Insurance contributions, pension contributions and otherwise) payable in respect of any period, whether before, on or after the Service Transfer date;
- (d) any claim arising out of the provision of, or proposal by the Contractor to offer any change to any benefit, term or condition or working condition of any Transferring Employee, whether before, on or after the Service Transfer date;
- (e) any claim made by or in respect of any person employed or formerly employed by the Contractor, whether a transferring employee or otherwise, for which it is alleged Procure Partnerships or any replacement supplier may be liable by virtue of this agreement and/or the Employment Regulations, whether such liability arises before, on or after the Service Transfer Date;
- (f) any act or omission of the Contractor in relation to its obligations under Regulation 11 of the Employment Regulations, or in respect of an award of compensation under Regulation 12 of the Employment Regulations except to the extent that the liability arises from Procure Partnerships or replacement supplier's failure to comply with Regulation 11 of the Employment Regulations; and
- (g) any statement communicated to or action done by the Contractor or in respect of any transferring employee regarding the Service Transfer which has not been agreed in advance with Procure Partnerships in writing.

14.7 The Contractor shall indemnify Procure Partnerships and any replacement supplier in respect of any claims arising from any act or omission of the Contractor in relation to any other Contractor's personnel who is not a transferring employee during any period whether before, on or after the Service Transfer date.

14.8 The Parties shall co-operate to ensure that any requirement to inform and consult employee representatives in relation to any relevant transfer as a consequence of a Service Transfer will be fulfilled.

14.9 The Contracts (Rights of Third Parties) Act 1999 shall apply to this Clause 14 to the extent necessary to ensure that any replacement supplier shall have the right to enforce the obligations owed to, and indemnities given to, the replacement supplier by the Contractor or Procure Partnerships to the Contractor in its own right pursuant to Section 1(1) of the Contracts (Rights of Third Parties) Act 1999.

14.10 The Parties may by agreement rescind or vary this Clause 14 without the consent of any other person who

has the right to enforce the terms of this Clause 14 notwithstanding that such rescission or variation may extinguish or alter that person's entitlement under that right.

14 Procure Partnership's Limitation of Liability

- 15.1 This Clause 15 sets out the entire financial liability of Procure Partnerships (including any liability for the acts or omissions of its employees, agents, consultants and sub-consultants) to the Contractor in respect of:
- a) any breach of this Agreement;
 - b) any failure, act or omissions by Procure Partnerships in relation to the process relating to Delivery Contracts;
 - c) any representation, statement or tortious act or omission (including negligence) arising under or in connection with this Agreement.
- 14.2 All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from this Agreement.
- 14.3 Nothing in this Agreement limits or excludes the liability of Procure Partnerships:
- a) for death or personal injury resulting from Procure Partnership's negligence; or
 - b) for any damage or liability incurred by the Contractor as a result of fraud or fraudulent misrepresentation by Procure Partnerships.
- 14.4 Subject to Clause 15.3 and to the extent permitted by law, Procure Partnerships shall not be liable for:
- a) loss of profits; or
 - b) loss of business; or
 - c) depletion of goodwill and/or similar losses; or
 - d) loss of anticipated savings; or
 - e) loss of contract; or
 - f) indirect loss; or
 - g) consequential loss.
- 14.5 Procure Partnership's entire liability in a Financial Year to the Contractor in respect of breaches of this Agreement, any failure, act or omissions by Procure Partnerships in relation to the Delivery Contract process and representations, statements or tortuous acts or omissions (including negligence) arising under or in connection with this Agreement in that Financial Year shall be limited to the lesser of £50,000 or the Procure Partnerships Fee paid by the Contractor to Procure Partnerships in that Financial Year.
- 14.6 Each of Procure Partnerships and the Contractor shall at all times take all reasonable steps to minimise and mitigate any loss for which the relevant Party is entitled to bring a claim against the other Party pursuant to this Agreement and take all reasonable steps to minimise and mitigate any effects or circumstances and/or events adversely affecting the performance of their obligations under this Agreement which would otherwise entitle that Party to relief and/or to claim compensation under it.

15 Records and open book accounting

15.1 General

The Contractor shall (and shall ensure that each Subcontractor shall) at all times:

- a) maintain a full and accurate record of particulars of the costs of performing the Services both under this Agreement and any Delivery Contract;
- b) maintain a full and accurate record of time spent on the delivery of the Services under each Delivery Contract;
- c) keep books of account in accordance with best accountancy practice with respect to this Agreement and each Delivery Contract showing in detail:
 - (iv) administrative overheads;
 - (v) payments to Subcontractors;
 - (vi) capital and revenue expenditure; and
 - (vii) such other items as Procure Partnerships and/or a Client may reasonably require from time to time to conduct costs audits for verification of cost expenditure or estimated expenditure, for the purpose of this Agreement or a Delivery Contract;
 - (viii) maintain a full record of all incidents relating to health, safety and security which occur in the delivery of the Services;
- d) upon request by Procure Partnerships or a Client, provide a written summary of any of the matters and/or other details which the Contractor is required to record in this Clause 16.1 in such form and detail as Procure Partnerships or the Client (as the case may be) may reasonably require to enable Procure Partnerships or the Client to monitor the performance by the Contractor of its obligations under this Agreement and any Delivery Contract.

15.2 Accounts

The Contractor shall provide a copy of its management accounts if requested by Procure Partnerships for the Financial Year when requested by Procure Partnerships and at other times when requested by Procure Partnerships as a result of disposals, re-organisations, mergers or acquisitions, and shall provide a copy of their annual audited accounts within one month of audit.

15.3 Audit/inspection

The Contractor shall permit (and shall procure that each of its Subcontractors shall permit) all records referred to in Clause 19.1 together with all records, data and other information in whatever format relating to this Agreement and/or any Delivery Contract to be examined and copied from time to time by Procure Partnership's and/or a Client's auditor and their representatives and other representatives of Procure Partnerships and/or a Client who reasonably require access to the same.

15.4 Performance and Compliance audits

- a) Procure Partnerships may from time to time itself undertake, or commission an independent, reputable organisation (experienced in the inspection and audit of building construction works

service standards and costs audit), to audit the obligations within this Agreement, individual Delivery Contracts called off under this Agreement and the Contractor's performance under these.

- b) Procure Partnerships shall notify the Contractor as to which Delivery Contracts and Services are to be audited and (if not Procure Partnerships) the name of the organisation selected by Procure Partnerships to carry out the audit(s).
- c) The Contractor shall co-operate fully with the auditor, which shall carry out a full open book audit of the Services' overall cost, quality, compliance, satisfaction and review of performance data including Client and End-User feedback, and (if not Procure Partnerships) provide its report(s) to Procure Partnerships.

15.5 *Retention*

The records referred to in Clauses 16.1 and 16.2 shall be retained for a period of at least 12 years after the Contractor's obligations under this Agreement and/or a Delivery Contract (if later) have come to an end.

15.6 *Confidentiality*

All information referred to in this Clause 16 is subject to the obligations set out in Clause 26 (*Confidentiality*).

16 Convictions

16.1 Unless otherwise agreed, the Contractor shall procure that, in respect of all potential staff or persons performing any of the Services (under this Agreement or a Delivery Contract), whether an employee of the Contractor or any Subcontractor (each a Named Employee), before a Named Employee begins to attend any Sites to perform any obligations under this Agreement or Delivery Contract:

- a) each Named Employee is questioned as to whether he or she has any Convictions; and
- b) the results are obtained of a check of the most extensive available kind made with the Disclosure and Barring Service in respect of each Named Employee; and
- c) save to the extent prohibited by law, a copy of the results of such check are notified to the Client or the Procure Partnerships Representative, as appropriate.

16.2 The Contractor shall procure that no person who discloses any Convictions, or who is found to have any Convictions following the results of a Disclosure and Barring Service check is employed without Procure Partnership's or the Client's (as appropriate) prior written consent (such consent not to be unreasonably withheld or delayed).

16.3 Save to the extent prohibited by law, the Contractor shall procure that Procure Partnerships or the Client (as appropriate) is informed if any member of staff of the Contractor (or any employee of a Subcontractor) involved in the provision of the Services who, subsequent to his/her commencement of employment as a member of staff, receives a Conviction or whose previous Convictions become known to the Contractor.

16.4 Without limiting the previous provisions, where Client notifies the Contractor that the Contractor will be working in a "regulated" activity with vulnerable groups, as defined by the Safeguarding Vulnerable Groups Act 2006, the Contractor shall comply with the Client's requirements to the extent relevant to the delivery of the Services to the Client. This may include, without limitation, obtaining an enhanced Disclosure and Barring Service disclosure, including a barred list check.

17 Insurance provisions

17.1 *The insurances*

- a) The Contractor shall procure at its own cost that the insurances set out in Schedule 2 are taken out and maintained upon customary and usual terms and conditions prevailing for the time being in the insurance market, and from a provider authorised to write (by the relevant UK regulatory authority) such insurance business in the United Kingdom. The insurances shall not include any term or condition to the effect that the Contractor must discharge any liability before being entitled to recover from the insurers, or any other term or condition which might adversely affect the rights of any person to recover from the insurers pursuant to the Third Parties (Rights Against Insurers) Act 2010.
- b) Any increased or additional premium required by insurers by reason of the Contractor's own claims record or other acts, omissions, matters or things particular to the Contractor shall be deemed to be within commercially reasonable rates.
- c) The Contractor shall inform Procure Partnerships as soon as practicable if it considers that such insurance ceases to be available at commercially reasonable rates or terms and Procure Partnerships may, at its sole discretion, discuss alternative options.
- d) The obligations in this Clause shall be separate from and in addition to any obligations required by a Client pursuant to a Delivery Contract.

17.2 *Acts or omissions of the Contractor*

The Contractor shall not take any action or fail to take any reasonable action or (in so far as it is reasonably within its power) permit or allow others to take or fail to take any action (including failure to disclose any fact) as a result of which any of the Insurances may be rendered void, voidable, unenforceable or suspended or impaired in whole or in part or which may otherwise render any sum paid out under any relevant policy repayable in whole or in part.

17.3 *Evidence of the Insurances*

The Contractor shall supply, on request, to Procure Partnerships and, on request, to a Client:

- (a) copies of all insurance policies (including all documents evidencing any amendments, extensions or variations to all such policies) or a letter from the Contractor's insurance broker confirming that such insurances are in place; and
- (b) evidence that the premiums payable under the Insurances have been paid and that the Insurances are in full force and effect.

17.4 *Acceptance and compliance*

- (a) Neither failure to comply nor full compliance with the insurance provisions of this Agreement shall relieve the Contractor of any other liabilities or obligations under this Agreement.
- (b) The Contractor shall take all reasonable steps to mitigate the effects of any risks or claims covered by this Clause (including without limitation minimising the amount of any costs and expenses which might result).

18 Warranties and undertakings

The Contractor warrants and represents that:

- 18.1 it has full capacity and authority and all necessary consents (including, where its procedures so require, the consent of its Holding Company) to enter into and to perform this Agreement and that this Agreement is executed by duly authorised officers;
- 18.2 as at the Commencement Date and on each anniversary, all information contained in its Tender for the Services remains true, accurate, and not misleading in any material respect save as may have been specifically disclosed in writing to Procure Partnerships before the execution of this Agreement or, as the case may be, before each anniversary;
- 18.3 in respect of itself and each of its Affiliates, in the three (3) years prior to the date of this Agreement and continuing throughout the Term:
 - a) it has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts;
 - b) it has been in full compliance with all applicable securities laws and regulations in the jurisdiction in which it is established; and
 - c) it has not performed any act or omission with respect to its financial accounting or reporting which could have an adverse effect on the Contractor's position as a continuing business concern or its ability to fulfil its obligations under this Agreement.

The Contractor shall :

- 18.4 perform this Agreement in compliance with all applicable Law;
- 18.5 provide the Services through appropriately experienced, qualified and trained personnel, using all due skill, care and diligence;
- 18.6 discharge its obligations under this Agreement with all due skill, care and diligence including Good Industry Practice and in accordance with its own established internal procedures;
- 18.7 own or obtain and continue to own and maintain all Intellectual Property Rights that are necessary for the performance of this Agreement and the provision of Services to and use by Clients;
- 18.8 take all reasonable steps, in accordance with Good Industry Practice, to prevent the introduction, creation or propagation of any disruptive element (including any virus, worm and/or Trojan Horse) into systems, data, software or Confidential Information (held in electronic form) owned by or under the control of, or used by, Clients;
- 18.9 take all reasonable measures to avoid any and all data loss and data corruption during the provision of the Services in accordance with Good Industry Practice;
- 18.10 take all reasonable measures to avoid the failure or reduced performance (in whole or in part) of the Services;
- 18.11 ensure that all legal, commercial and financial information provided by it to Procure Partnerships and/or the Client is complete and accurate.

19 Assignment and sub-contracting

- 19.1 This Agreement shall be binding on, and shall inure to the benefit of, each of the Contractor and Procure Partnerships and its successors and permitted transferees and assignees.
- 19.2 This Agreement is personal to the Contractor. The Contractor shall not assign, novate or otherwise dispose of this Agreement or any part of it (pursuant to corporate restructuring, business sale or otherwise) without the prior consent in writing of Procure Partnerships, subject to such other conditions as he shall think fit. This Clause shall not affect any right to subcontract pursuant to any Delivery Contract.
- 19.3 Procure Partnerships may assign, novate or otherwise dispose of its rights and obligations under this Agreement or any part thereof to a Contracting Authority who is a current (at the time of assignment) shareholder of Procure Partnerships or to any Associated Company.
- 19.4 Subject to the other provisions of this Clause 20, any change in the legal status of Procure Partnerships such that it ceases to be a Contracting Authority shall not affect the validity of this Agreement. In such circumstances, this Agreement shall subject to the written consent of the Contractor bind and inure to the benefit of any successor body to Procure Partnerships.
- 19.5 Save where the Contractor has specifically identified its sub-contractors in its Tender and the same were specifically identified in their response to the Notice, the Contractor shall obtain Procure Partnership's prior written consent before using sub-contractors for the provision of the Services.
- 19.6 Where the Contractor has specifically identified its sub-contractors in its Tender and the same were specifically identified in their response to the Notice and the Contractor wholly or substantially sub-contracts the Services to their identified sub-contractor then the provisions in this Agreement relating to sub-contractors shall apply to the next tier of sub-contractors.

20 General assistance and cooperation*General assistance and co-operation and undertakings*

- 21.1 Each Party shall co-operate in good faith with the other to facilitate the proper performance of this Agreement and shall:
- (a) use all reasonable endeavours to avoid unnecessary disputes and claims against the other Party;
 - (b) not interfere with the rights of the other Party and its servants, agents, representatives, contractors or sub-contractors (of any tier) on its behalf in performing its obligations under this Agreement nor in any other way hinder or prevent such other Party or its servants, agents, representatives, contractors or sub-contractors (of any tier) on its behalf from performing those obligations; and
 - (c) assist the other Party (and its servants, agents, representatives, or Subcontractors (of any tier)) in performing those obligations so far as is reasonably practicable.
- 21.2 Nothing in Clause 21.1 shall:
- (a) interfere with the right of each Party to arrange its affairs in whatever manner it considers fit in order to perform its obligations under this Agreement in the manner in which it considers to be the most effective and efficient;

- (b) oblige either Party to incur any additional cost or expense or suffer any loss of profit in excess of that required by its proper performance of its obligations under this Agreement;
- (c) relieve a Party from any obligation under any indemnity contained in this Agreement or from any obligation to pay any debt due or payable under such documents; or

21.3 fetter the discretion of Procure Partnerships or any Client in fulfilling its statutory functions.

Provision of information

Without limiting the Contractor's obligation to provide information pursuant to other terms of this Agreement, a Party (the Providing Party) shall supply to the other Party (the Requesting Party) such information as may from time to time be reasonably required by the Requesting Party in relation to the performance of the Requesting Party's obligations under this Agreement and which is within the Providing Party's care and control, subject to compliance by the Requesting Party with the provisions of Clause 26 (*Confidentiality*) and save to the extent that the Providing Party is restricted by Law or by any binding confidentiality obligation or undertaking from supplying such information.

21 Governing Law and Dispute resolution

- 21.1 This Agreement shall be governed by and construed in accordance with the laws of England and Wales.
- 22.2 The courts of England and Wales shall have exclusive jurisdiction to hear and settle any disputes which may arise in connection with this Agreement.
- 22.3 Each Party shall adopt a systematic approach to dispute resolution which recognises the purposes of this Agreement contained in Clause 2 and which:
 - 22.3.1 seeks solutions without apportioning blame;
 - 22.3.2 is based on mutually beneficial outcomes;
 - 22.3.3 treats the Contractor, Procure Partnerships and any Client (as the case may be) as equal parties in the dispute resolution process;
 - 22.3.4 contains a mutual acceptance that adversarial attitudes waste time and money; and
 - 22.3.5 relies on more and better discussion with less paperwork and more constructive correspondence.
- 22.4 If there is disagreement or dispute between the Parties in connection with this Agreement (a Dispute), the Parties shall use all reasonable endeavours to resolve the matter on an amicable basis. If a Party serves formal written notice on the other Party that a Dispute has arisen and the Parties are unable to resolve the Dispute within a period of 15 Business Days from the service of such notice, then the Dispute shall be referred to the respective Chief Executives or Managing Directors or Senior or Managing Partner (as the case may be) (or their nominees) of each Party who shall attempt to resolve the dispute within the next following 15 Business Days.
- 22.5 if the respective senior executives of the Parties are for any reason unable to resolve the Dispute within 15 Business Days, the Parties shall attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed by the Parties, the mediator shall be nominated by CEDR Solve. To initiate the mediation, a Party shall serve notice in writing (ADR notice) to the other Party requesting

a mediation and shall send a copy of the ADR notice to CEDR Solve. The Parties shall procure that the mediation starts no later than 15 Business Days after the date of the ADR notice. Unless otherwise agreed by the Parties, the place of mediation shall be nominated by the mediator.

- 22.6 Neither Party may commence any court proceedings in relation to a Dispute until both the procedure in Clause 25.5 is completed and until 10 days after the appointment of a mediator, provided that the right to issue proceedings is not prejudiced by a delay.

23 Statutory Requirements

- 23.1 The Contractor shall, if requested, notify Procure Partnerships of all statutory provisions and approved safety standards applicable to the Services and their provision and shall be responsible for obtaining all licences, consents or permits required for the performance of this Agreement and each Delivery Contract.
- 23.2 Without limitation, the Contractor shall take all measures necessary to comply with the requirements of the Health and Safety at Work etc. Act 1974 and all Law and codes of practice relating to health and safety, which may apply in the performance of this Agreement and each Delivery Contract.
- 23.3 The Contractor shall comply with all applicable environmental Law in relation to the Services. Additionally, where a Client requires that Services are carried out in accordance with its own environmental policies which are notified in writing to the Contractor before the execution of a Delivery Contract, the Contractor shall use all reasonable endeavours to provide the Services in accordance with any those policies. The Contractor shall promptly provide all such information regarding the environmental impact of the Services as may reasonably be requested by Procure Partnerships or a Client.
- 23.4 The Contractor shall meet all reasonable requests by Clients for information evidencing compliance with the provisions of this Clause 23 by the Contractor.
- 23.5 The Contractor shall not victimise, harass or unlawfully discriminate either directly or indirectly because of or related to race, colour, ethnic or national origin, disability, matters arising from disability, sex or sexual orientation, pregnancy or maternity, gender reassignment, marital or civil partnership status, religion or belief, age, fixed term or part time status, trade union or non-trade union status and, without limitation, the Contractor shall not victimise, harass or unlawfully discriminate within the meaning of the Equality Act 2010 and shall not breach any equality clause or non-discrimination rule under the Equality Act 2010 nor breach the Protection of Harassment Act 1997; the Part-Time Workers (Prevention of Less Favourable Treatment) Regulations 2000; the Fixed-Term Employees (Prevention of Less Favourable Treatment) Regulations 2002 or other relevant Law.
- 23.6 The Contractor shall ensure that all its employees are registered, where appropriate, pursuant to the Construction Skills Certification Scheme (or any replacement scheme).
- 23.7 The Contractor shall ensure that it and all its employees comply with such other codes of conduct or schemes as Procure Partnerships shall require from time to time.
- 23.8 The Contractor shall take all reasonable steps to secure the observance of the provisions of this Clause 23 by any Sub-Contractor.

24 Competition Law, Corrupt Gifts and Payments**24.1 The Contractor shall :**

- 24.1.1 comply with all applicable laws, statutes, regulations and codes relating to fraud, anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 and Section 117 of the Local Government Act 1972 (Relevant Requirements);
- 24.1.2 comply with Procure Partnership's and, where required, each Client's ethics, anti-bribery and anti-corruption policies (Relevant Policies);
- 24.1.3 have and shall maintain in place throughout the term of this agreement its own policies and procedures, including adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements and the Relevant Policies and shall enforce them where appropriate;
- 24.1.4 promptly report to Procure Partnerships any request or demand for any undue financial or other advantage of any kind made or received by the Contractor in connection with the performance of this Agreement and each Delivery Contract;
- 24.1.5 within 2 months of the date of this Agreement, and annually thereafter, certify to Procure Partnerships in writing, compliance with this Clause 24.1 by the Contractor and all persons associated with it. The Contractor shall provide such supporting evidence of compliance as Procure Partnerships may reasonably request;
- 24.1.6 ensure that any person associated with the Contractor who is performing services in connection with this Agreement does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on the Contractor in this Clause 24.1 (Relevant Terms). The Contractor shall be responsible for the observance and performance by such persons of the Relevant Terms, and shall be directly liable to Procure Partnerships and each Client for any breach by such persons of any of the Relevant Terms;
- 24.1.7 For the purpose of this Clause 24.1, the meaning of adequate procedures and whether a person is associated with another person shall be determined in accordance with Section 7(2) of the Bribery Act 2010 (and any guidance issued under Section 9 of that Act), Sections 6(5) and 6(6) of that Act and Section 8 of that Act respectively and for the purposes of this Clause 24.1, a person associated with the Contractor includes any Subcontractor;
- 24.1.8 not act in a manner, in relation to the performance of this Agreement or any Delivery Contract, which Procure Partnerships reasonably considers to be inconsistent with the relevant UK Construction Industry Competition Law Code of Conduct (the current version of which is set out as Schedule 6) or in breach of Chapters I and/or II of the Competition Act 1998 and/or the Treaty on the Functioning of the European Union or any other competition Law provision or is otherwise anti-competitive.

24.2 Any breach of Clause 24 by the Contractor or by anyone employed by it or acting on its behalf (whether with or without the knowledge of the Contractor) in relation to this Agreement or any Delivery Contract shall entitle Procure Partnerships to terminate this Agreement.

24.3 Any dispute, difference or question arising in respect of the interpretation of this Clause 24, the right of Procure Partnerships to terminate this Agreement shall be decided by Procure Partnerships acting

reasonably, whose decision, in the absence of manifest error, shall be final and conclusive.

25 Non Exclusivity

25.1 Procure Partnerships :

25.1.1 may at any time enter into separate contracts and/or arrangements with separate contractors for the provision of any or all services the same as or similar to the Services;

25.1.2 does not make any representation or warranty to the Contractor in respect of any Client nor give any kind or guarantee or undertaking nor have any obligation to make any payment whatsoever in relation to the obligations of a Client under any this Agreement, a Delivery Contract or for any other reason, other than where Procure Partnerships is itself the Client and enters into any Delivery Contract as principal; and

25.1.3 is not an agent of any Client unless expressly agreed by Procure Partnerships in writing.

25.2 No guarantee or representation shall be deemed to have been made by Procure Partnerships in respect of the total quantities or values of the Services to be ordered by any or all Clients. Further, the Contractor acknowledges and agrees that it has not entered into this Agreement on the basis of any such guarantee or representation.

25.3 Nothing in this Agreement shall create an exclusive relationship between the Contractor and Procure Partnerships or any Client for the provision of services.

26 Confidentiality and Freedom of Information

26.1 A Party (the Recipient) receiving Confidential Information from the other Party (which, in the case of the Contractor, includes any information received from a Client) (the Discloser) shall keep such Confidential Information secret and strictly confidential and shall not disclose it to any third party without the Discloser's prior written consent, provided that the Recipient shall not be prevented from using any general knowledge, experience or skills which were in its possession prior to the commencement of this Agreement. The Contractor shall only use Confidential Information which is disclosed to it in order to comply with its obligations under this Agreement and/or for the performance of a Delivery Contract.

26.2 The provisions of Clause 26.1 shall not apply to any Confidential Information which:-

26.2.1 is in or enters the public domain other than by breach of this Agreement or other act or omission of the Recipient;

26.2.2 is obtained from a third party who is lawfully authorised to disclose such information;

26.2.3 is required to be disclosed to ensure the compliance of Procure Partnerships and/or a Client with the FOIA or the Environmental Information Regulations;

26.2.4 the Recipient is required to disclose by judicial, administrative, governmental or regulatory process in connection with any action, suit, proceedings or claim or otherwise by Law;

26.2.5 (provided that the information is subject to an equivalent confidentiality undertaking enforceable by the Discloser) the Recipient discloses to its professional advisors or insurers.

- 26.3 Where the Contractor considers that any information relating to it or in its possession should not be available for disclosure under the FOIA or the Environmental Information Regulations, it shall:
- 26.3.1 identify it specifically; and
 - 26.3.2 explain the grounds for exemption from disclosure and the time period applicable to that sensitivity.
- 26.4 Notwithstanding Clause 26.3, all decisions regarding disclosure of information following a Request For Information will be made at the sole discretion of Procure Partnerships or the Client, as the case may be. The Contractor acknowledges that, even where the Contractor has indicated that information is commercially sensitive, Procure Partnerships or the Client may be required to disclose it under Law, with or without consulting the Contractor and neither Procure Partnerships nor any Client shall be required to consult the Contractor prior to disclosure.
- 26.5 The Contractor shall transfer to Procure Partnerships and any relevant Client any Request for Information it receives, as soon as practicable after receipt and in any event within 5 Business Days of receipt. The Contractor shall not respond directly to a Request for Information unless expressly authorised to do so by Procure Partnerships or the Client.
- 26.6 Where Procure Partnerships or a Client is managing a Request For Information, the Contractor shall provide all reasonable assistance to Procure Partnerships and the Client and shall respond, together with copies of any documentation requested, within 5 Business Days of any request for assistance.

27 Publicity and Marketing

- 27.1 The Contractor shall not make any press announcements or externally focused communications in respect of this Agreement without Procure Partnership's written consent prior to information being released/published. The Contractor shall send to Procure Partnership's details of any proposed press announcements or externally focused communications. The Contractor shall procure that its employees, servants, agents and Subcontractors comply with the provisions of this Clause 27.
- 27.2 The Contractor shall not do anything which may damage the reputation of Procure Partnerships and/or any Client or bring Procure Partnerships and/or any Client into disrepute.
- 27.3 Procure Partnerships may publicise this Agreement, the Services provided under it.
- 27.4 Each Party may provide to the other Party a form of logo and/or trade mark which the other Party may use in accordance with the other provisions of this Clause 27. Nothing in this Agreement shall grant to a Party any rights of ownership or use of such logo and/or trade mark save as specifically set out in this Agreement.
- 27.5 Without limiting the other provisions of this Clause 27, the Contractor shall adhere to Procure Partnership's brand guidelines and messaging guide provided to the Contractor from time to time when referring to Procure Partnerships, either internally or externally.
- 27.6 The Contractor shall use its best endeavours to market this Agreement and the arrangements in accordance with Procure Partnership's requirements and shall, without limitation, comply with Procure Partnership's marketing and publicity protocols in relation to this Agreement, the arrangement and the Services. This shall include marketing and publicity through social media.

28 Order of precedence of documents

Inconsistencies between any contract documents enforceable as between the Parties shall, unless otherwise set out in this Agreement, be resolved in the following order of precedence:

- (a) the main body of this Agreement; followed by
- (b) the schedules to this Agreement.

29 Miscellaneous*Intellectual Property*

29.1 Without prejudice to any provisions in relation to Intellectual Property Rights set out in a Delivery Contract which may grant a Client greater rights, the Contractor hereby irrevocably licenses on the non-exclusive terms set out in Clause 29.1(b) to Procure Partnerships or, as the case may be, a Client to use all rights it may have to use any IPR Data that might reasonably be required by Procure Partnerships or a Client for the purposes of:

- (a) Procure Partnerships or a Client carrying out its duties or utilising its rights under this Agreement or a Delivery Contract and/or any statutory functions, rights and/or obligations which Procure Partnerships or a Client may have;
- (b) following termination or expiry of this Agreement and/or a Delivery Contract for whatever reason, the design or construction of a building, the operation, maintenance or improvement of any building and/or the carrying out of operations the same as, or similar to, that envisaged by a Delivery Contract;

and in this clause "use" shall include the acts of copying, modifying, adapting and translating the material in question and/or incorporating them with other materials and the term "the right to use" shall be construed accordingly.

The Contractor:

29.2 shall grant to Procure Partnerships and/or the Client(s) in question free of charge an irrevocable, non-exclusive and transferable licence (carrying the right to grant sub-licences) to use the Intellectual Property Rights which are or become vested in the Contractor; and

29.3 The Contractor shall use all reasonable endeavours to ensure that any Intellectual Property Rights created, brought into existence or acquired during the term of this Agreement and which may be required for the performance of this Agreement and/or a Delivery Contract vest, and remain vested throughout the term of this Agreement, in the Contractor to the extent required to enable the Contractor to comply with its obligations under this Clause 29.

29.4 Where a claim or proceeding is made or brought against Procure Partnerships and/or a Client which arises out of the infringement of any rights in or to any Intellectual Property or because the use of any materials, plant, machinery or equipment in connection with this Agreement and/or Delivery Contract infringes any rights in or to any Intellectual Property of a third party then, unless such infringement has arisen out of the use of any Intellectual Property by or on behalf of Procure Partnerships and/or a Client otherwise than in accordance with the terms of this Agreement and/or a Delivery Contract, the Contractor shall indemnify and hold harmless each of Procure Partnerships and the Client at all times from and against all such claims and

proceedings.

- 29.5 The Contractor acknowledges that it shall have no rights whatsoever to any Procure Partnerships or Client Intellectual Property, whether created specifically in the course of providing Services or otherwise. Where Procure Partnerships creates any Intellectual Property rights, whether at the request of a Client or the Contractor or otherwise, all rights to those Intellectual Property Rights shall, unless otherwise agreed in writing, vest in Procure Partnerships and any use of them by the Contractor shall be subject to a separate agreement.

Personal Data

- 29.6 The Contractor shall not disclose or allow access to any Personal Data provided by Procure Partnerships or acquired by the Contractor during the performance of this Agreement other than in confidence to a person employed or engaged by the Contractor and their legal or financial advisers and only so far as is necessary for the purpose of the performance of this Agreement and/or any Delivery Contract and/or to the extent required by Law.
- 29.7 The Contractor shall only undertake processing of Personal Data required for the purpose of the performance of this Agreement and/or any Delivery Contract and shall only process Personal Data in accordance with Procure Partnership's or a Client's written instructions. The Contractor shall not transfer Personal Data to any country outside the European Economic Area.
- 29.8 The Contractor shall effect and maintains technical and organisational measures to prevent unauthorised or unlawful processing of Personal Data and accidental loss or destruction of, or damage to, Personal Data, including taking reasonable steps to ensure the reliability of staff having access to the Personal Data.
- 29.9 To the extent that a further written agreement is required to deal with the Parties' respective obligations under the Data Protection Act 1998 (the DPA) including obligations in relation to the Contractor's status as Procure Partnership's data processor under the DPA (for example, the Contractor agreeing to act on Procure Partnership's instructions and to follow the security obligations as placed on Procure Partnerships under the DPA), the Contractor shall enter into an appropriate agreement on such terms as Procure Partnerships reasonably requires.

Force Majeure

- 29.10 A Party shall be relieved from liability under this Agreement to the extent that by reason of an event of Force Majeure it is unable to perform its obligations under this Agreement.
- 29.11 Neither the Contractor nor Procure Partnerships shall be entitled to any compensation or other payment by reason of the occurrence of an event of Force Majeure.

Notices

- 29.12 All notices under this Agreement shall be in writing and all certificates, notices or written instructions to be given under the terms of this Agreement shall be served by sending the same by first class post or by hand, leaving the same at:

If to the Contractor: [insert address]

If to Procure Partnerships

Limited:

Frist Floor Edward Pavillion

Royal Albert Dock

Liverpool

L3 4AF

29.13 Either Party shall notify the relevant email address to the other and may change its nominated address by prior notice to the other Party.

29.14 Notices given by post shall be effective upon the earlier of (i) actual receipt, and (ii) five (5) Business Days after mailing. Notices delivered by hand shall be effective upon delivery. Notice given by email shall be effective when the sender receives a delivery receipt.

Amendments

29.15 This Agreement may not be varied except by an agreement in writing signed by duly authorised representatives of each Party.

Waiver

29.16 Any relaxation, forbearance, indulgence or delay (together indulgence) of a Party in exercising any right shall not be construed as a waiver of the right and shall not affect the ability of that Party subsequently to exercise that right or to pursue any remedy, nor shall any indulgence constitute a waiver of any other right (whether against that Party or any other person).

No agency

29.17 Nothing in this Agreement shall be construed as creating a partnership between Procure Partnerships and the Contractor.

29.18 Save as expressly provided otherwise in this Agreement, the Contractor shall not be, or be deemed to be, an agent of Procure Partnerships and the Contractor shall not hold itself out as having authority or power to bind Procure Partnerships in any way.

Entire agreement

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

Severability

29.20 If any provision or part provision of this Agreement shall be declared invalid, unenforceable or illegal by the courts of any jurisdiction to which it is subject, such provision or part provision may be severed and such

invalidity, unenforceability or illegality shall not prejudice or affect the validity, enforceability or legality of the remaining provisions or part provision of this Agreement.

Counterparts

- 29.21 This Agreement may be executed in one or more counterparts. Any single counterpart or a set of counterparts executed, in either case, by the Parties shall constitute a full original of this Agreement for all purposes.

Costs and expenses

- 29.22 Each Party shall be responsible for paying its own costs and expenses incurred in connection with the negotiation, preparation and execution of this Agreement.

Rights of Third Parties

- 29.23 This Agreement shall not create any rights that shall be enforceable by anyone other than Procure Partnerships and/or the Contractor.
- 29.24 The rights of the Parties to terminate, rescind or agree any variation, waiver or settlement under this Agreement are not subject to the consent of any other person.

Whistle blowing

- 29.25 The Contractor shall ensure that staff engaged by the Contractor in connection with any of the Services (including sub-Contractor staff where appropriate) are aware of the requirements of the Public Interest Disclosure Act 1998, any whistle blowing policy that the Contractor may have and the arrangements to be followed in the event of any staff having any concerns and wishing to make a disclosure pursuant to the Act.

Mitigation

- 29.26 Each of Procure Partnerships and the Contractor shall take all reasonable steps to minimise and mitigate any loss for which the relevant Party is entitled to bring a claim against the other Party pursuant to this Agreement and shall take all reasonable steps to minimise and mitigate any effects or circumstances and/or events adversely affecting the performance of their obligations under this Agreement which would otherwise entitle that Party to relief under this Agreement.

Further assurance

- 29.27 Each Party shall do all things and execute all further documents necessary to give full effect to this Agreement.

This document 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 for and on behalf of)
PROCURE PARTNERSHIPS)
 by)

.....
 Officer

R BLACKHURST
Full name (BLOCK CAPITALS)

Director
Position/title

Executed as a deed for and on behalf of
[CONTRACTOR]
by

)
)
)
.....
Director

[NAME]
Full name (BLOCK CAPITALS)

[Position]
Position/titl

SCHEDULE 1
INSURANCE

	Insurance against	Minimum amount of cover
1.	Liability of the Contractor for claims made against him arising out of his failure to use the skill and care normally used by professionals providing services similar to the Services, namely professional indemnity insurance.	£2,000,000 on an “each and every claim basis”
2.	Liability for death of or bodily injury to a person (not an employee of the Contractor) or loss of or damage to property resulting from an action or failure to take action by the Contractor.	£5,000,000 on an “each and every claim basis”
3.	Liability for death of or bodily injury to employees of the Contractor arising out of and in the course of their employment in connection with this Agreement.	The greater of the amount required by the applicable law and £5,000,000 on an “each and every claim basis”

SCHEDULE 2
MODEL DELIVERY CONTRACTS

- a) NEC Pre-construction Services Agreement
- b) NEC Professional Services Contract
- c) JCT Pre-construction Services Agreement
- d) JCT Consultancy Agreement
- e) RICS Standard Form of Consultant Appointment
- f) CIOB Standard Form of Consultant Appointment
- g) Contracting Authority's Own Appointment Documents
- h) RIBA Standard Professional Services Contract 2018 Architectural Services

SCHEDULE 3

PERFORMANCE MANAGEMENT

1. Key Performance Indicators (KPIs)

- 1.1 The KPIs are for the delivery of each Project Delivery Contract on the basis that the Contractor and each Client will work as an integrated team to deliver the Project(s). Any measure of the performance will be based upon Project KPIs together with bespoke KPIs related to the ASA as a whole.
- 1.2 Procure Partnerships Approved Supplier Agreement KPIs include;
 - (a) Cost Management
 - (b) Time management
 - (c) Client satisfaction (service)
 - (d) Client satisfaction (product)
 - (e) Social Sustainability
- 1.4 All Project KPIs will ensure slippages in performance are identified sufficiently early so that action can be taken to rectify prior performance.
- 1.5 It is the responsibility of the Contractor to collect, collate and report on the KPI data to Procure Partnerships in the required format and the Contractor shall ensure that any KPIs relying on data to be provided by the Client are followed up as soon as the appropriate deadline has passed. Any KPI data not supplied within one month of passing the deadline (or such shorter period stated against each individual KPI) will be regarded as a fail in terms of Quarterly reporting and score a fail, even if the data is subsequently provided.
- 1.6 The Contractor shall provide all KPI data electronically through the 'Procure Partnerships Portal' web based programme used by Procure Partnerships to record performance information. The system will require the Contractor to record data live on a monthly basis (Monthly Project Monitoring) and will provide summary reports in a pdf format. The system and the reports generated will be accessible by Procure Partnerships, the Contractor and Clients.
- 1.8 The Contractor will be given a single licence by in conjunction with Procure Partnerships to upload their data; if additional licences are required these shall be paid by the Contractor and are deemed included within the Contractors Fee.
- 1.9 Procure Partnerships will undertake regular random audits of the data.

2. Client Satisfaction

- 2.1 Client satisfaction will be judged from the point of view of the Client with reference as necessary to the End User.
- 2.2 Procure Partnerships have set 10 client satisfaction questions for each of the below criteria that will form the basis of the respective KPIs Approved Supplier Agreement wide:-
 - Client satisfaction – product
 - Client satisfaction – service
- 2.3 Copies of the completed Client Satisfaction forms shall be retained by the Contractor for audit by Procure Partnerships with the results being uploaded by the Contractor to the Procure Partnerships Portal.

3. Benchmarking of KPIs

- 3.1 Benchmarking of KPIs will be undertaken against all Procure Partnerships Projects with the Approved Supplier Agreement wide average for each KPI being published via the Procure Partnerships Framework website.

SCHEDULE 4

CONTRACTOR'S FEE

Part A - Contractor's Project Fee Percentages

Table 1: Contractor's Project Fee Percentages

INSERT BID RETURN DOCUMENT (BRD)>

The Contractor's Project Fee Percentages submitted as part of this Approved Supplier Agreement bid will be used as the basis of individual project call offs. At project call off stage contractors's will be permitted to deviate positively or negatively away from their tendered RIBA value bended fee percentages by up to 25%.

Part B - Staff Rates

Table 2: Contractor’s Hourly Rates

<INSERT FRAMEWORK BID RETURN DOCUMENT (BRD)>

Contractor’s staff rates for fixed for a two year period. Rates will be subject to an inflationary uplift two years after the date this agreement was executed (in line with published BCIS indices).

SCHEDULE 5

UK CONSTRUCTION INDUSTRY COMPETITION LAW CODE OF CONDUCT

1. The UK construction industry is committed to compliance with UK and EU competition law.
2. The industry understands that the purpose of competition law is to preserve free, fair and efficient competition for the benefit of all companies operating in the industry and their clients.
3. The industry agrees at all times to commit to ensuring the highest standards of competition law compliance within the sector by adhering in all of its business practices to the principle of fair competition and to ensure that construction companies do not engage in conduct which is anti-competitive.
4. Construction companies must:
 - 4.1 not restrain competition amongst themselves through agreements, arrangements or understandings that restrict competition;
 - 4.2 bid for contracts and tenders independently from and without any agreement or arrangement with their competitors;
 - 4.3 not exchange competitively sensitive information or engage in discussions that may lead to the co-ordination of competitive behaviour and, in particular, must not share information about current or future pricing intentions for tenders, or any element that might affect prices or pricing practices, including the exchange of cover prices.
5. Construction companies understand that co-operation with a competitor is justified only under the exceptions permitted by the competition rules or where they have been expressly required to enter into such arrangements by the client, for example, certain joint ventures, in which case such arrangements will be fully disclosed to the client.
6. The industry understands that each individual construction company is responsible for its own compliance with competition law and that the consequences of breaching competition law are severe including possible penalties, director disqualification, criminal sanctions and damages actions.
 - 6.1 Construction companies will therefore endeavour to:
 - 6.1.1 ensure that competition law compliance will be achieved through implementing effective competition compliance policies and guidelines throughout their businesses; and
 - 6.1.2 promote an understanding of and compliance with competition law throughout their supply chains,