



dated

Trent & Dove Housing Limited

and

[Service Provider]

TPC2005 (amended 2008) - ACA Standard Form of Contract Term Partnering Agreement (as amended)

for the Internal Refurbishment Programme 2026-2031 for properties in East Staffordshire, South Derbyshire and North West Leicestershire

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TPC 2005 (amended 2008)

ACA STANDARD FORM OF CONTRACT FOR TERM PARTNERING

TERM PARTNERING AGREEMENT (AS AMENDED)

A PARTNERING CONTRACT is made as a deed the day of 2025

IN RELATION TO the programme of design, supply and installation / replacement of internal components including kitchens, bathrooms, various aids and adaptations, including level access showers, over bath showers, external ramp systems, handrails and associated building works, also known as the Internal Refurbishment Programme 2026-2031 (the "**Term Programme**") at sites (each a "**Site**") in East Staffordshire, South Derbyshire and North West Leicestershire (the "**Contract Area**") as each described in the Partnering Documents

BETWEEN the Client, the Client Representative, the Service Provider and any other Partnering Team members

WHO AGREE working in mutual cooperation to fulfil their agreed roles and responsibilities and apply their agreed expertise in relation to the Term Programme, in accordance with and subject to the Partnering Documents, and that subject to amendment in accordance with the Partnering Terms:

Reference in Partnering Terms

Clause 1.1 The roles, expertise and responsibilities of the Client and the Service Provider are further described in the Term Brief and the Term Proposals and the Service Provider shall be paid in accordance with the Partnering Terms and the Price Framework.

Clauses 1.1 and 1.9 The Partnering Team shall include the following Consultants and/or Specialists whose roles, expertise and responsibilities are or shall be further described in the Term Brief and the Term Proposals and their respective Consultant Services Schedules or Specialist Contracts and who shall be paid in accordance with their respective Consultant Payment Terms or Specialist Payment Terms:

Not applicable

Clause 1.3 The Partnering Documents shall comprise:

- this Term Partnering Agreement together with schedules 1 to 4 (inclusive), appendices 1 to 12 inclusive and the Partnering Terms;
- the Term Brief comprising the Invitation to Tender as set out at Part 1 of Appendix 11;
- the Partnering Timetable;
- the Consultant Services Schedule and Consultant Payment Terms for the Client Representative (if appropriate) and any other Consultant Partnering Team

**Reference in
Partnering Terms**

members;

- the Term Proposals as set out at Part 2 of Appendix 11;
- the Price Framework as set out at Part 3 of Appendix 11;
- any Joining Agreement and any Consultant Services Schedule and Consultant Payment Terms or Specialist Contract and Specialist Payment Terms incorporated in such Joining Agreement;
- any Orders;
- the Risk Register;
- the KPIs and Targets;

and any additional and amended Partnering Documents developed in accordance with the Partnering Terms.

Clause 1.6

The Core Group shall comprise:

- the following persons appointed by the Client:
 - the Head of Operations;
 - the Partnering Advisor; and
 - the Head of Asset Strategy, Planning and Delivery;
- Kevin Donohoe, the Head of Asset Strategy, Planning and Delivery at the Client shall be appointed as the Client Representative; and
- [TBC by the Service Provider] appointed by the Service Provider.

Clause 1.11

The Interested Parties and their involvement in the Term Programme shall comprise:

- the Client's Operations Committee;
- any residents' groups;
- East Staffordshire Borough Council; and
- other members as agreed by the Core Group.

The Client at their discretion can request the above stated Interested Parties to attend a Core Group meeting.

Clause 2.1

Additional objectives of the Partnering Team members shall comprise:

As set out in the Term Brief at clause 1.5.

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Clause 2.2 The following Partnering Team members shall implement the following Processes:

As set out in the Term Brief and KPIs

Clause 3.1 The authority of the Client Representative shall be subject to the following restrictions:

The Client Representative is Kevin Donohoe, Head of Asset Strategy, Planning and Delivery, or, if he ceases to be the Client Representative, such other person as the Client shall nominate.

For the purposes of administering Orders under this Contract, the Client Representative shall be entitled to delegate all and any of his functions to such person or persons as he may nominate by notice in writing to the Service Provider at any time. The Service Provider shall treat as Client Representative for all the purposes of an Order the person who issues that Order if such person was previously so nominated by the Client Representative and if that person's authority has not been revoked by further notice in writing to the Service Provider from the Client Representative.

Clause 3.5 The Partnering Adviser shall be:

Savills plc

Clause 4.1 The Principal Designer for the purposes of the CDM Regulations and the Competency Regulations shall be:

The Service Provider

Clause 5.6 Tender procedures for appointment of Specialists shall be:

In accordance with clause 5.6 of this Agreement.

Clause 6.1 Implementation of the Term Programme shall be subject to satisfaction of the following pre-conditions:

- 1 Completion of all activities required prior to commencement of the Term Programme as noted in the Partnering Timetable (including without limitation provision of evidence of all insurances required in accordance with clause 10);
- 2 Satisfaction by the Service Provider of the TUPE requirements as set out in Schedule 3;
- 3 the Service Provider shall procure the provision of a bond in the form of guarantee bond published by the Association of British Insurers with amendments as approved by the Client. Where the date of expiry of the performance bond falls before the end of the Term, the Service Provider shall, prior to expiry of the performance bond, deliver to the Client a replacement performance bond in the same terms, but with an expiry date of no less than a year from the date of the performance bond. Such process shall be repeated annually (or so often as is necessary) until the end of the Term;

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- 4 Development and finalisation by the Service Provider of the ESP and the method statement.

Clause 6.7

The Client may apply any or all of the following remedies for failure to undertake any Task or delay in any Task Completion:

For the avoidance of doubt:

- 1 failure to undertake any Task includes failure to comply with the obligation to rectify defects under clause 6.8;
- 2 the rights and remedies set out in this section are without prejudice to any rights and remedies the Client may have under statute, in tort, for breach of contract or otherwise.

For failure to undertake any Task:

- 1 The Client shall be entitled to recover:
 - 1.1 an amount equal to any compensation the Client pays a Resident in accordance with the Client's Resident compensation policies; and/or
 - 1.2 its own costs incurred;
as a result of the Service Provider's failure to undertake any Task;
- 2 Such effect as may be specified in the KPIs or other Partnering Documents which link incentives to attainment of KPIs or specific targets;
- 3 The Client may employ others to execute a Task or remedy any defects and all additional costs incurred as a result of doing so over and above the relevant Task Price may be deducted by the Client from any monies due or to become due to the Service Provider under the Partnering Contract or otherwise shall be recoverable from the Service Provider by the Client as a debt.

For delay in any Task Completion

- 1 The Client shall be entitled to recover:
 - 1.1 an amount equal to any compensation the Client pays a Resident in accordance with the Client's Resident compensation policies; and
 - 1.2 its own costs incurred which, in relation to void properties, shall be at a rate of £180 per week or part thereof;
as a result of delay in any Task Completion.
- 2 Such effect as may be specified in the KPIs or other Partnering Documents which link incentives to attainment of KPIs or specific targets.

**Reference in
Partnering Terms**

- Clause 6.8 The Defects Liability Period(s) shall be:
- The later of 12 months from the date of Task Completion or 12 months from the expiry of the Term.
- The time limit(s) for rectification of defects shall be:
- As set out in the Term Brief.
- Clause 6.9 The Partnering Team members' access to and possession of the Sites shall be subject to the following constraints, procedures and arrangements:
- Possession
- 1 Each Partnering Team member shall have access at all reasonable times to the relevant Site and to other places where activities in connection with the relevant Task are being carried out (which the Service Provider shall in turn arrange with any relevant Specialists), subject in all cases to reasonable prior notice and reasonable restrictions.
 - 2 In respect of each Task from the Task Date until Task Completion the Service Provider shall have non-exclusive possession under licence from the Client of the Site or such part or parts of the relevant Site as are specified in the relevant Order, subject to such constraints on possession and/or access as are specified in the Term Brief or the Order.
- Access
- As set out in the Access Protocol in the Term Brief.
- Clause 6.10 The Partnering Team members responsibility for the security, state and condition of the Sites shall be as follows:
- Security
- From the date that the Service Provider is given non-exclusive possession of a Site or part or parts of a Site or Sites the Service Provider shall be responsible for the security of that Site, part or parts of a Site or Sites save that in respect of works or services being undertaken in occupied Sites such responsibility shall be limited to providing reasonable security (on the basis that the Residents also act reasonably in security matters).
- State and condition of the Site(s)
- As set out in the Term Brief.
- Clause 7.2 Clause 7.2 does not apply.
- Clause 7.13 The Client is a "contractor" for the purposes of the Finance Act.

Reference in Partnering Terms

- Clause 7.17 The rate of interest on late payment shall be:
- Four percent (4%) above the bank rate for the Bank of England current at the date the payment becomes overdue.
- Clause 8.2 Clause 8.2 applies.
- Clause 8.4 The following risk sharing arrangements shall apply:
- As stated in the Risk Register.
- Clause 8.5 The Service Provider shall be entitled to claim the following additional amounts in respect of any matter described in clause 8.4:
- Reactive Task(s)
- The Service Provider shall not be entitled to claim any additional amounts in respect of any matter described in clause 8.4 of the Partnering Terms.
- Planned Task(s)
- 1 Subject to paragraph 2 below, where an event described in clauses 17.3.1(a), 17.3.1(b), 17.3.1(d), 17.3.1(f) or 17.3.1(k) to 17.3.1(n) inclusive gives rise to an extension of the Task Date/Time for Completion the Service Provider shall be entitled to a fair and reasonable adjustment to the relevant Task Price taking into account the Price Framework comprising:
 - 1.1 proportionate additional relevant Site Overheads (for those Site Overheads stated in the Price Framework to be time-based only (if any)); and
 - 1.2 where an event described above properly requires unavoidable additional work or expenditure, the cost of any such additional work or expenditure calculated wherever possible on the basis of the Price Framework provided that the Service Provider shall minimise the amount of any such additional work or expenditure and its cost and duration.
 - 2 Where an event described in clause 17.3.1(k) gives rise to an extension of the Task Date/Time for Completion in relation to a Planned Task in occupied Property(s) the Service Provider shall only be entitled to a fair and reasonable adjustment as set out in paragraph 1 above if the Service Provider has complied with the Planned Task Timetable.
- Clause 9.1 The following amended/restricted duties of care shall apply:
- 1 The Service Provider accepts full responsibility to the Client for the design, supply, construction and completion of the Term Programme in accordance with the Partnering Documents including the selection and standards of all materials, goods, equipment and workmanship forming part of the Term Programme and including any design and other work undertaken in relation to the Term Programme by any other Partnering Team member, but without prejudice to the

**Reference in
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duty of care of each Partnering Team member (other than the Client) to the Service Provider in respect of its contribution to the design, supply, construction and completion of the Term Programme.

- 2 All materials, goods and workmanship used in the execution of the Term Programme or any part of it shall be of such kinds and of such quality as are necessary to enable the Service Provider to comply with its obligations under this Partnering Contract and shall comply with any 'construction product requirement' as defined by the Building Safety Act.

Clause 9.2 The following collateral warranties shall be provided:

Specialists carrying out design on a substantial part of the Term Programme shall provide warranties in favour of the Client in the form set out in Appendix 8.

Clause 9.3 The following third party rights shall apply:

A New Service Provider shall be entitled to enforce the rights in paragraph 1.7 of Schedule 3.

Without limiting any other rights it may have the relevant Partnering Team member shall not have available to it by way of defence or set off against any claim brought by a New Service Provider those matters that would be available to the Partnering Team member by way of defence or set off against any claim brought by the Client.

The rights of a New Service Provider under this Partnering Contract shall be subject to the same conditions, limitations and exclusions as apply to the Client's rights under this Partnering Contract.

The appointment of a Partnering Team member may be terminated in accordance with the provisions of this Partnering Contract and the parties may agree to rescind this Partnering Contract or amend, vary or waive any terms of this Partnering Contract or settle any dispute or other matter arising out of or in connection with this Partnering Contract on such terms as they see fit without the consent of a New Service Provider.

Clause 10.1 The amounts of third party liability insurance of each Partnering Team member shall be:

Amount (£) (any one event)	Partnering Team member
Five million pounds (£5,000,000) for each and every claim	Service Provider

Such insurance shall be in respect of:

- 1 any liability, damage, loss, expense, cost, claim or proceedings in respect of personal injury to or death of any person arising out of or in connection with the performance of that Partnering Team member's activities in relation to any Task whether arising on or off Site;
- 2 any liability, damage, loss, expense, cost, claim or proceedings in respect of loss, injury or damage to any property (other than the relevant Task and any materials,

goods or equipment on Site) insofar as the same is due to any negligence, omission or default of the relevant Partnering Team member or any individual or organisation for whom it is responsible.

In addition to the requirements of clause 10.3 the Partnering Team members shall fulfil the obligations set out below in relation to the insurances referred to in this section and the insurances required by clause 10.2:

- 1 the insurer shall be a reputable company trading in the country in which the Sites are located;
- 2 the insuring party shall promptly pay all premiums and shall provide evidence of insurance cover, by way of copy policies or detailed certification, to the Client Representative upon request;
- 3 the Partnering Team members shall comply with all the terms of their respective insurance policies and shall follow all required claims procedures;
- 4 no Partnering Team member shall knowingly do anything to invalidate any insurance cover or fail to make a claim affecting a Task or a Site or any other Partnering Team member, and each Partnering Team member shall immediately notify the Client Representative in the event of any change of circumstances affecting any insurance cover;
- 5 in the event that any Partnering Team member is aware of a claim or potential claim affecting a Task or a Site or any other Partnering Team member, it shall immediately notify the Client Representative of such claim or potential claim and keep the Client Representative regularly informed as to the progress of such claim or potential claim.

Clause 10.2

The following Partnering Team members shall take out and maintain the following additional insurances:

Service Provider

- 1 Employer's liability insurance in the amount of five million pounds (£5,000,000) for each and every claim in respect of all customary risks throughout the duration of the Partnering Contract
- 2 Insurance for all work executed or in the course of execution for the purposes of a Task and all goods, materials and equipment on the Site or paid for pursuant to clause 7 from the date of the Order until Task Completion against fire, explosion, storm, tempest, flood, bursting or overflowing of water tanks, apparatus or pipes, earthquake, aircraft or other aerial devices or articles dropped from them, riot, civil commotion, theft, subsidence and heave. Such insurance shall be in the joint names of the Client and the Service Provider for the full reinstatement value of the Task plus 10% for professional fees; and
- 3 Professional indemnity insurance in the amount of two million pounds (£2,000,000)

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in respect of any negligence by the Service Provider or any individual or organisation for whom it is responsible (as regards professional indemnity insurance cover) in the design of any work, materials, goods or equipment forming part of or intended for any Task for each and every claim throughout the duration of the Partnering Contract and for a period of 12 years following Task Completion of the relevant Task.

Clause 11.2 The contractual responsibilities of the Partnering Team members in respect of TUPE and pensions shall be as follows:

As set out in Schedule 3.

Clause 12.2 The following rights of assignment shall apply:

The Client may assign, charge and/or transfer the benefit of the Partnering Contract in whole or in part to:

- a Group Company (as defined below) without the consent of the other Partnering Team members being required;
- any funder or purchaser of the whole or part or parts of the Client's interest in the Term Programme and/or to another social landlord with the consent of the other Partnering Team members (such consent not to be unreasonably withheld or delayed) being required.

No further assignment charge or transfer shall be made by any Partnering Team member without the prior written consent of the other Partnering Team members (not to be unreasonably withheld or delayed).

The Partnering Team members undertake not to contend that any person to whom the Partnering Contract may be assigned will be precluded from recovering under the Partnering Contract any loss resulting from any breach of the Partnering Contract either by reason that the person is an assignee and not an original party to the Partnering Contract or by reason that the Client or any intermediate owner of the Client's interest in the Site(s) shall escape loss resulting from such breach by reason of the disposal of its interest in the Site(s).

For the purpose of this section Group Company means any subsidiary company or holding company of the Client or another subsidiary or holding company of such company as subsidiary and holding company are defined in section 1159 Companies Act 2006.

Clause 13.1 Subject to clause 6.1 and clause 13.3, the Term shall commence on [TBC] and shall continue for a period of three (3) years extendable at the Client's option by two (2) further consecutive periods of one (1) year subject in all case to the remainder of clause 13 of this Partnering Contract.

Clause 13.2 Clause 13.2 applies and the Term shall be subject to review according to the performance of the Partnering Team members at the following intervals and by the following procedures:

The Service Provider - KPIs Review

- 1 The Core Group members shall continuously review the performance of the Service Provider against the KPIs during the Term.
- 2 The Client and the Client Representative shall assess the performance of the Service Provider by reference to the KPIs on a monthly basis, prior to each anniversary of commencement of the Term and such other periods following agreement between the Core Group members (each a **Review**). If as part of a Review the Service Provider is found to have failed to achieve all or any one of the KPIs the Client Representative shall, within ten (10) Working Days from the date of the relevant Review, issue to the Service Provider and the Client a report of the outcome of the Review notifying those failures in performance by the Service Provider.
- 3 Within ten (10) Working Days from the issue of a report by the Client Representative, the Service Provider shall submit to the Client and the Client Representative an action plan setting out (as a minimum) (i) a clear plan of action as to how the Service Provider intends to rectify the notified failures within a two (2) month period and (ii) proposed monitoring and reporting measures to assess the effectiveness of the remedial action taken.
- 4 The Client and the Client Representative shall consider such proposals and amend or clarify them as appropriate and the Client Representative shall issue the agreed finalised proposals as an action plan (an **Action Plan**) and the Service Provider shall implement the Action Plan forthwith.
- 5 In the event that the Service Provider does not submit an Action Plan for review when required, the Service Provider does not implement the Action Plan forthwith or the Action Plan is implemented but at the end of two (2) months from the date the Action Plan is issued by the Client Representative the Service Provider is still failing to achieve the relevant KPIs, the Client may in its sole discretion:
 - 5.1 terminate the appointment of the Service Provider on ten (10) Working Days prior written notice;
 - 5.2 shorten the Term by written notice with immediate effect;
 - 5.3 reduce the scope of works and services to be carried out by the Service Provider in relation to the Term Programme by written notice with immediate effect.
- 6 In the event the Client issues a notice in accordance with paragraphs 5.2 or 5.3 the Client:
 - 6.1 may choose not to issue Orders or may issue less Orders during the remainder of the Term and any guaranteed minimum value or number of Orders stated in the Term Brief shall no longer be applicable;
 - 6.2 shall be entitled to complete the Tasks no longer to be carried out by the Service Provider using others.
- 7 The rights and remedies set out in this section are without prejudice to any rights

Reference in Partnering Terms

and remedies the Client may have under this Partnering Contract, statute, in tort, for breach of contract or otherwise.

Clause 13.3 Clause 13.3 applies and those Partnering Team members entitled to serve notice of termination, and the period(s) of such notice, shall be as follows:

- 1 The Client shall be entitled to terminate the appointment of the Service Provider and all other Partnering Team members under the Partnering Contract by giving six (6) months prior written notice to the Service Provider and all other Partnering Team members.
- 2 The Service Provider shall be entitled to terminate its own appointment under this Partnering Contract at any time during the Term by giving twelve (12) months prior written notice to the Client and all other Partnering Team members.

Clause 14.1 Under the Problem-Solving Hierarchy each of the following individuals shall have a period of five (5) Working Days to agree a solution with the individuals stated opposite their respective names, failing which the notified difference or dispute shall be referred to the next named individuals (if any)

<u>Client</u>	<u>Service Provider</u>
1 [TBC]	[TBC]
2 [TBC]	[TBC]
3 [TBC]	[TBC]

Clause 14.3 The Conciliator shall be:

As appointed by the President or Vice-President of the Royal Institute of Chartered Surveyors.

Clause 14.4 The Adjudicator shall be:

As appointed by the President or Vice-President of the Royal Institute of Chartered Surveyors.

Clause 14.5 The applicable law and the courts with jurisdiction shall be those of: England and Wales

Clause 15 By reference to clause 15 the special terms set out in Schedule 1 shall amend or supplement the Partnering Terms.

Schedule 1

Special Terms

(See clause 15 of the Partnering Terms)

Part 1 - Amendments to Existing Partnering Terms

By reference to clause 15 the following amendments shall be made to the Partnering Terms:

Clause 4.1

Delete clause 4.1 and replace with:

"If any Task(s) are within the scope of the CDM Regulations and the Competency Regulations, then in respect of such Tasks(s) the Service Provider shall act as "principal contractor" and the Client shall appoint a Principal Designer as stated in the Term Partnering Agreement and all Partnering Team members shall carry out their duties and obligations under the CDM Regulations and the Competency Regulations. Where the Service Provider is not the Principal Designer, but is the "principal contractor" and the Principal Designer's appointment concludes before Task Completion, the Service Provider shall review, update and revise the health and safety file in accordance with regulations 12(8) to (1) of the CDM Regulations."

Clause 4.3

Add new clause 4.3 as follows:

"4.3 Each member of the Partnering Team warrants that it has the skills, knowledge, experience and organisational ability to fulfil the role or roles they are appointed to fulfil under the Partnering Contract with regard to the CDM Regulations."

Clause 5.8

Insert new clause 5.8:

"5.8 The Service Provider shall ensure that every Specialist Contract and any sub-contract pertaining to the Term Programme contains provisions requiring that payment due to the Specialist or to any subcontractor or supplier of the Specialist is made no later than thirty (30) days after receipt of a valid and undisputed invoice, unless the relevant Specialist Contract or subcontract requires the Service Provider or Specialist or subcontractor or supplier to make earlier payment."

Clause 6.2

In line 2 of clause 6.2 delete "based on the form set out in Appendix 6 and" and insert "and shall be a Reactive Order or Planned Order (as applicable) and shall contain the information stated in the Reactive Order or Planned Order (as applicable). In addition, each Order"

Clause 6.5

Renumber existing clause 6.5 as 6.5(i) and insert new clause 6.5(ii) as follows:

"The Service Provider shall be liable for, and shall indemnify the Client against, all liabilities, costs, expenses (including legal expenses on an indemnity basis), damages, losses, actions and claims for breach of statutory duty which may arise out of, or in consequence of, the performance or non-performance by the Service Provider of its obligations under this Partnering Contract, except to the extent the same is due to any act or neglect of the Client or the Client Representative or any authorised appointee of the Client or any statutory undertaker."

Clause 7

Delete clause 7 and insert:

7 "Prices and Payment"

- 7.1 Task Prices shall be calculated in accordance with the Price Framework and amounts due to Consultants shall be calculated in accordance with the relevant Consultant Payment Terms, subject in each case to adjustment in accordance with the Partnering Documents and addition of VAT (if applicable).
- 7.2 If stated in the Term Partnering Agreement that this clause 7.2 applies, the Service Provider's agreed Profit, Central Office Overheads and Site Overheads shall be identified in the Price Framework and Task Prices shall be calculated on an Open-book basis in accordance with the Price Framework.
- 7.3 Subject to any other payment arrangements set out in the Price Framework and the Consultant Payment Terms, applications for payment of amounts due shall be submitted to the Client and the Client Representative by the Service Provider and each Consultant at the end of each calendar month accompanied by the details stated in the Price Framework. Such applications shall state the sum the Service Provider or the Consultant considers to be due to it on the due date and the basis on which that sum is calculated. The due date for each application for payment shall be the date of receipt by the Client of the relevant application, submitted in accordance with this clause 7.3.
- 7.4 Within five (5) days from receipt of each application for payment made by the Service Provider in accordance with clause 7.3, the Client Representative shall issue to the Service Provider and the Client a notice specifying the sum the Client Representative considers to have been due on the due date, calculated in accordance with the Price Framework to establish the value of the works and/or services provided by the Service Provider less the total of all amounts previously paid under the Partnering Contract and adjusted to reflect any Incentives and any sums due pursuant to clauses 8.3, 8.4 or 8.5 and taking into account sums due pursuant to clause 7.15 and/or clause 7.17. Such notice shall also specify the basis on which that sum is calculated.
- 7.5 Within five (5) days from receipt of each application for payment made by a Consultant in accordance with clause 7.3, the Client shall issue to the relevant Consultant a notice specifying the sum the Client considers to have been due on the due date, calculated in accordance with the relevant Consultant Payment Terms to establish the value of the services provided by that Consultant less the total of all amounts previously paid under the Partnering Contract and adjusted to reflect any Incentives and taking into account any sums due pursuant to clause 7.15 and/or clause 7.17. Such notice shall also specify the basis on which that sum is calculated.

7.6 Subject to any revised periods stated in the Price Framework and the issue of a notice pursuant to clause 7.8, the Client shall pay to:

- (i) the Service Provider the sum stated in a notice issued pursuant to clause 7.4 within twenty (20) Working Days from the due date for payment in the same amount as such notice, and such date shall be the final date for payment;
- (ii) each Consultant the respective amount stated in the relevant notice issued pursuant to clause 7.5 within twenty (20) Working Days from the due date for payment in the same sum as such notice, and such date shall be the final date for payment.

7.7 If the Client Representative or the Client does not issue a notice in accordance with clause 7.4 or 7.5 respectively:

- (i) the Service Provider's or the relevant Consultant's application for payment under clause 7.3 shall be treated as the payment notice;
- (ii) subject to any notice issued in accordance with clause 7.8, the Client shall pay the amount stated as due in the application for payment by the final date for payment;

provided always that any provision in this Partnering Contract which would otherwise provide for a final date for payment of more than thirty (30) calendar days from the date on which the relevant sum is regarded as valid and undisputed for the purposes of the PA23 shall be of no effect.

7.8 Not later than two (2) Working Days before the final date for payment of any amount due, the payer may give notice to the payee pursuant to Section 111(3) of the HGCRA, specifying the sum that the payer considers to be due on the date the notice is served and the basis on which that sum is calculated. If a notice is issued under this clause 7.8:

- (i) the payer shall pay the amount stated in such notice by the final date for payment;
- (ii) the payee shall reissue any required VAT invoice to reflect the sum stated in the notice.

7.9 No notice, VAT invoice or payment shall:

- (i) prevent its later reconsideration and adjustment; or
- (ii) constitute or imply or be evidence of approval or acceptance of any part of any Task.

7.10 Amounts payable under the Partnering Contract shall be subject only to such fluctuation provisions, if any, as are stated in the Price Framework and Consultant Payment Terms.

7.11 The Service Provider shall pay to all Specialists the amounts to which they are entitled in accordance with their respective Specialist Payment Terms (with provision for interest equivalent to clause 7.17) and shall maintain full records of all amounts payable and paid to each Specialist.

- 7.12 Each Partnering Team member shall allow the Client Representative to visit its offices and to inspect its financial records in relation to the Term Programme at any time subject to reasonable notice.
- 7.13 Where the Client is a "contractor" for the purpose of the Finance Act, then not later than fifteen (15) Working Days prior to the Service Provider's first application for payment, and at any other time upon request, the Service Provider shall either provide the Client with evidence that the Service Provider is entitled to be paid without the statutory deduction referred to in the Finance Act or inform the Client that it is not entitled to be paid without such statutory deduction (and in the latter case the Service Provider shall immediately inform the Client if it subsequently becomes entitled to be paid without such statutory deduction) and the Client shall be entitled to receive from the Service Provider evidence supporting the Service Provider's stated entitlement to be paid without such statutory deduction.
- 7.14 The following procedures shall apply in relation to the Final Account:
- (i) Within forty (40) Working Days following the end of the Term, the Client Representative shall prepare and issue to the Client and the Service Provider a Final Account calculated in accordance with clause 7.4, for agreement between the Client and the Service Provider.
 - (ii) On or after eighty (80) Working Days from the end of the Term the Service Provider or the Client (as the case may be) shall make an application for payment which shall state the sum the Service Provider or the Client considers to be due to it, either calculated in accordance with clause 7.4 or as agreed, and the basis on which that sum is calculated. The due date for the Final Account shall be the date of receipt by the payer of the application pursuant to this clause 7.14(ii).
 - (iii) Within five (5) days of the due date the payer shall issue to the payee a notice stating the sum the payer considers to have been due on the due date, either calculated in accordance with clause 7.4 or as agreed, and the basis on which that sum is calculated. Subject to any notice issued in accordance with clause 7.8, the payer shall pay the amount stated as due in the notice issued pursuant to this clause 7.14(iii) by the final date for payment.
 - (iv) If the payer does not issue a notice in accordance with clause 7.14(iii) the payee's application under clause 7.14(ii) shall be treated as the payment notice. Subject to any notice issued in accordance with clause 7.8, the payer shall pay the amount stated as due in the application for payment by the final date for payment.
 - (v) The final date for payment for the Final Account shall be twenty (20) Working Days from the due date.
 - (vi) On agreement of the Final Account clause 7.9(i) shall not apply.
- 7.15 If the Client fails to make any payment due in accordance with this clause 7 by the stated final date for payment, and if such failure shall continue for seven (7) days after the Service Provider or a Consultant has given the Client written notice of its intention to suspend performance of any or all of its obligations and the grounds for such intended

suspension, then the Service Provider or such Consultant may suspend performance of any or all of its obligations under the Partnering Contract until payment is received in full. Where the Service Provider or a Consultant exercises such right of suspension it shall be entitled to a reasonable amount in respect of costs and expenses reasonably incurred by it as a result of the exercise of the right.

- 7.16 Any sum due to the Client from a Partnering Team member pursuant (other than pursuant to clause 7.14) which the Client does not deduct and/or withhold from sums due or to become due to the relevant Partnering Team member shall be due for payment on receipt of an application from the Client by the relevant Partnering Team member. In such application the Client shall specify the sum it considers to be due on the payment due date and the basis on which that sum is calculated. Within 5 days of the payment due date the relevant Partnering Team member shall issue a notice confirming the sum that it considers to have been due on the payment due date and the basis on which that sum is calculated. If the relevant Partnering Team member fails to serve such notice the Client's application shall be treated as the payment notice. The final date for payment for any such sum applied for by the Client shall be the later of twenty (20) Working Days from the payment due date and fifteen (15) Working Days from the date of receipt by the relevant Partnering Team member of any required VAT invoice from the Client in the same amount as the payment notice.
- 7.17 Any delay in a due payment beyond its final date for payment shall entitle the payee to be paid interest at the rate stated in the Term Partnering Agreement, and the Partnering Team members confirm that such interest is a substantial remedy for late payment in compliance with Section 9 of the Late Payment Act.
- 7.18 If VAT invoices are required by the Client:
- (i) the Service Provider or the Consultant (as applicable) shall within 4 days from the date of issue of the relevant payment notice pursuant to clause 7.4, 7.5 or clause 7.14(iii) deliver the required VAT invoice to the Client;
 - (ii) to the extent that the Service Provider or the Consultant does not comply with clause 7.18(i) the Consultant or the Service Provider hereby waives its right to interest pursuant to the Late Payment Act for the period up to and including the final date for payment.
- 7.19 The parties agree and confirm that the procedure for the payment of VAT (if any) by either party to the other shall be governed entirely and exclusively by the provisions of this clause 7.19 notwithstanding any other provision of this Partnering Contract.
- 7.19.1 Any consideration (whether monetary consideration or non-monetary consideration) paid or provided under or in connection with this Partnering Contract is to be treated as exclusive of any VAT. If the person making the Supplies (or the representative member of the VAT group of which it is a member) is required to account for VAT on any Supplies, the recipient of the Supplies shall pay (in addition to paying or providing any other consideration) an amount equal to the amount of that VAT upon the later of:
- (a) the time for payment or provision of the consideration; and

- (b) the receipt by the recipient of the Supplies of a VAT invoice in respect of that VAT.

7.19.2 The Client confirms that the requirements specified in article (8)(1)(b) of the VAT Order will be satisfied in respect of any Supplies and the parties consider that the Reverse Charge will not apply to the Supplies so that it is for the Service Provider to account for and pay VAT to HMRC.

7.19.3 Notwithstanding clause 7.19.2, where the Service Provider has accounted for VAT on Supplies (on the understanding that the Reverse Charge did not apply) but HMRC notifies the Client in writing that:

- (a) the Reverse Charge did apply in respect of those Supplies; and
- (b) notwithstanding that the Service Provider has accounted for VAT to HMRC in respect of those Supplies, the Client has to account for VAT under the Reverse Charge on those Supplies,

the Service Provider shall, within two (2) Working Days of receipt of a copy of such notice, issue a credit note to the Client in respect of those Supplies and at the same time pay to the Client the amount of VAT included in such credit note."

Clause 8.7

Insert new clause 8.7:

"Each Partnering Team member warrants to the Client that:

- (i) it has not and its current and former directors, officers and employees have not and shall not engage in any Corrupt Activity or any activity, practice or conduct which could or would place the Client in breach of section 7(1) Bribery Act;
- (ii) it has and shall maintain and implement adequate procedures designed to prevent the Partnering Team member, its current and former directors, officers and employees and any Associated Person from undertaking any Corrupt Activity and/or conduct that would give rise to an offence under section 7 Bribery Act;
- (iii) it shall include undertakings similar to those contained in this clause in any Specialist Contract;
- (iv) from time to time, at the reasonable request of the Client, it will confirm in writing that it has complied with its undertakings under clauses 8.7(i) to 8.7(iii) and will provide any information reasonably requested by the Client in support of such compliance;
- (v) it shall indemnify the Client against any losses, liabilities, damages, costs (including but not limited to legal fees) and expenses incurred by, or awarded against, the Client as a result of any breach of this clause by the Partnering Team member or any breach of provisions equivalent to this clause in any Specialist Contract."

Clause 12.3

Insert at the end of clause 12.3:

"For the purposes of this clause 12.3 all information (other than information which is already in the public domain) in any format, which is supplied by the Client to the Service Provider and relates to the provision of the Term Programme is provided on the basis that it is confidential."

Clause 12.4

Insert new clause 12.4:

"The Service Provider shall not without the written permission of the Client during or any time after the expiry of the Term Programme make use of or disclose to any person (except as may be required by law), the Partnering Documents or any information contained in the Partnering Documents, nor any data or information collected on behalf of the Client. Data or information collected on behalf of the Client shall become the property of the Client and must be used only for its intended purpose in connection with the Term Programme."

Clause 12.5

Insert new clause 12.5:

"12.5 The Service Provider shall not without the written permission of the Client refer to the Client in any publicity or advertising material or tenders to other organisations or disclose to any person involved in media or publicity organisation any information relating to the Term Programme. The Service Provider shall include undertakings similar to those contained in this clause 12.5 in any Specialist Contract."

Clause 13.5(a)

In line 4 after ";" insert "he has service of notice or any other action pursuant to section 72 TCEA;"

Clause 13.5(b)

In line 7 after ";" insert "or any step is taken by any person to enforce any rights under or pursuant to any security interest of any kind over any of its undertaking, property or assets;"

In line 10 after ";" insert "or any step is taken to initiate any rent recovery action pursuant to section 72 TCEA;"

Clause 13.5(c)

Renumber clause 13.5(c) as clause 13.5(d).

Clause 13.5(c)

Insert new clause 13.5(c) as follows:

"being a partnership, is dissolved, or has an administrator appointed (whether by the court or otherwise) or any step taken (whether in or out of court) for the appointment of an administrator or any notice given of an intention to appoint an administrator; or"

Clause 13.7

Delete clause 13.7 and insert:

"13.7 If:

- (i) a Partnering Team member breaches clause 8.7; or
- (ii) an Associated Person of a Partnering Team member (or anyone employed by or acting on behalf of the Associated Person) engages or has engaged in Corrupt Activity or any activity, practice or conduct which could or would place the Client in breach of section 7(1) Bribery Act; or
- (iii) the Client is a local authority and a Partnering Team member gives any payment or other reward, the receipt of which of which is an offence under section 117(2) of the Local Government Act,

the Client shall be entitled to terminate the appointment of that Partnering Team member by notice with immediate effect."

Clause 13.9

Delete clause 13.9 and insert:

"In the event of termination of any Partnering Team member's appointment (other than the Client's) by reason of its bankruptcy or insolvency under clause 13.5 or by the Client in accordance with clauses 13.6 or 13.7 or pursuant to clause/section 13.2 in the Term Partnering Agreement or 13.12, no further sum shall become due to that Partnering Team member and the Client may complete all Tasks using others in place of that Partnering Team member."

Clause 13.10

At start of clause delete "Termination" and insert "Subject to clauses 13.9 and 13.11 termination"

Clause 13.11

Insert new clause 13.11:

"In the event of a Partnering Team member suffering an event of insolvency as described in Section 113(2) to Section 113(5) of the HGCRA:

- (i) the payer need not pay any sum that has already become due to the payee insofar as the payer has given or gives a notice in accordance with clause 7.8;
- (ii) the payer need not pay any sum that has already become due to the payee if the event occurs after the date on which the notice in relation to that sum would have been served in accordance with clause 7.8."

Clause 13.12

Insert new clause 13.12:

"13.12.1 Where section 78 of the PA23 applies to this Partnering Contract, the Client shall be entitled to terminate the appointment of any Partnering Team member by notice with immediate effect where any of the grounds set out in:

- (i) the circumstances set out in section 78(2)(a) PA23 apply; or

- (ii) section 78(2)(b) of the PA23 apply; or
 - (iii) section 78(2)(c) of the PA23 apply provided that, before exercising its right to terminate that Partnering Team member's appointment pursuant to this clause 13.12.1, the Client shall give that Partnering Team member reasonable opportunity to terminate the employment of the excluded or excludable sub-contractor, and if necessary, find an alternative sub-contractor to which to sub-contract the relevant sub-contract works, and if that Partnering Team member does so to the Client's reasonable satisfaction the ground for termination pursuant to this clause 13.12.1(iii) shall no longer be applicable.
- 13.12.2 The Partnering Team members shall include in any sub-contract (and shall require inclusion in any sub-sub-contract) provisions to enable the Partnering Team member to terminate the sub-contractors' employment where clause 13.12.1(iii) applies."

Clause 13.13

Insert new clause 13.13:

"The Service Provider shall notify the Client immediately upon becoming aware at any time prior to Task Completion that it is an 'excluded supplier' or an 'excludable supplier' each within the meaning given to such term in section 57 of the PA23."

Clause 13.14

Insert new clause 13.14:

"13.14.1 Where section 78 of the PA23 applies to this Partnering Contract, the Partnering Team members shall include in any sub-contract it enters into suitable provisions to impose the requirements of section 73(1) of the PA23.

13.14.2 Where section 78 of the PA23 applies to this Partnering Contract, the Partnering Team members shall include in any sub-contract it enters into suitable provisions requiring the sub-contractor to provide any information reasonably required by the Client to enable it to fulfil its obligations under the PA23."

Clause 14.6

Insert new clause 14.6 as follows:

"Save in respect of any indemnity provision set out herein and without prejudice to any longer limitation period that may be prescribed under the Limitation Act, no Partnering Team member shall commence any action or proceedings against the other under this Partnering Contract after twelve (12) years from the date of termination of this Partnering Contract or the date on which the final Order is completed (whichever is the later), and any adjudicator's decision pursuant to clause 14.4 shall be finally binding on them unless any Partnering Team member has referred that dispute to legal proceedings, or has commenced any action or proceedings to recover any overpayment to which the decision has led, before that date."

Clause 14.7

Insert new clause 14.7 as follows:

"To the extent that a court issues a Building Liability Order against any 'associate' of the Client (as defined in s.131 of the Building Safety Act) each Partnering Team member (excluding the Client) shall indemnify such associate in respect of any loss, expense, claim or damage incurred by such associate to the extent such loss, expense, claim or damage is caused by the relevant Partnering Team member's breach of its obligations pursuant to this Partnering Contract. Each Partnering Team member agrees that any associate of the Client (as defined in this clause 14.7) shall be entitled to enforce for its benefit the provisions of this clause 14.7 pursuant to the Contracts (Rights of Third Parties) Act 1999."

Part 2 - Insertion of New Partnering Terms

By reference to clause 15 insert the following new clauses into the Partnering Terms:

16 Interpretation

Unless stated otherwise:

16.1 references to clauses are to clauses in the Partnering Terms;

16.2 references to schedules or appendices are to schedules and appendices to the Term Partnering Agreement;

16.3 references to paragraphs in a schedule are to paragraphs in that schedule.

17 Planned Task(s)

17.1 Satisfaction of Planned Task Pre-Conditions

Implementation of a Planned Task shall be subject to the Planned Task Pre-Conditions and the Partnering Team members shall use reasonable skill and care appropriate to their agreed roles, expertise and responsibilities as stated in the Partnering Documents to pursue diligently and satisfy the Planned Task Pre-Conditions and shall notify each other as soon as they are aware that the Planned Task Pre-Conditions have been satisfied.

17.2 Planned Task Timetable

The Service Provider shall update the Planned Task Timetable regularly to reflect any agreed adjustment pursuant to the Partnering Terms and shall circulate it to the other Partnering Team members. The receipt or use of any updated Planned Task Timetable shall not be evidence of any Partnering Team member's agreement to its contents.

17.3 Extensions of time for Planned Task(s)

17.3.1 In relation to Planned Task(s) only for the purpose of clause 8.4, the term "any matter" shall comprise the following events:

(a) a delay caused by a default or failure of the Client or any Consultant (except to the extent caused or contributed to by the Service Provider or any Specialist or other party for whom the Service Provider is responsible) beyond any agreed time limit stated in the Partnering Terms or the Task Timetable, **provided that** the Service Provider has given Early Warning to the Client in accordance with clause 1.8 not more than five (5) Working Days after expiry of the agreed time limit;

(b) discovery of an antiquity (namely any fossil, artefact or other object of historical interest or value which may be found on or beneath any Site, and these shall belong to and be handed over to the Client) after the date of the relevant Order, not indicated in or reasonably apparent from an inspection of the Site or the results of any Site surveys and investigations carried out by or provided to the Service Provider prior to the date of the Order;

- (c) delay in receipt of any of the third party consents listed in the relevant Order, **provided that** the Service Provider has taken all proper and timely steps to avoid or reduce such delay;
- (d) a change in any law or regulation of the country in which the Site are located after the date of the relevant Order and not reasonably foreseeable by the Service Provider;
- (e) weather conditions which the meteorological office records for the area nearest to the relevant Site indicate are exceptionally adverse for the time of year;
- (f) delay by a local authority or statutory body or utility in carrying out work pursuant to its statutory obligations in relation to the relevant Task, **provided that** the Service Provider has supplied all necessary information, placed all necessary orders and otherwise performed its obligations under the Partnering Contract in respect of such work as soon as reasonably practicable and so as not to delay or disrupt the local authority or statutory body or utility in relation to such work;
- (g) opening up for inspection or testing of any part of the relevant Task if such inspection or testing does not reveal anything not in accordance with the Partnering Documents, except where such opening up for inspection or testing was reasonable in view of similar non-compliance with the Partnering Documents having been discovered in another part of the relevant Task;
- (h) loss or damage occasioned by any one or more of the matters required to be insured pursuant to clause 10.2, where such insurance is required to be taken out by the Service Provider;
- (i) strike or other industrial action by employees of any party who is not a Partnering Team member;
- (j) exercise, after the date of the relevant Order, by the government of the country in which the relevant Site is located of any statutory power directly affecting implementation of that Task by restricting labour, materials, goods or equipment required for that Task;
- (k) subject to clause 6.9, failure by the Client to allow access to or possession of all or any part of the Site, to the extent that such access and possession are within the Client's control;
- (l) suspension by the Service Provider of performance of all or part of its obligations under the Partnering Contract in accordance with clause 7.14;
- (m) use or threat of terrorism affecting or reasonably likely to affect the relevant Task or any individuals engaged on that Task, or causing restricted access to or any restricted activities on the relevant Site;

- (n) breach of the Partnering Contract by the Client or any Consultant of which the Service Provider has given prior Early Warning; and
- (o) a Covid-19 Related Matter.

17.3.2 The occupation of Properties by Residents throughout a Planned Task shall not constitute "any matter" for the purposes of clause 8.4.

17.4 **Task completion for Planned Task**

17.4.1 When the Service Provider considers that a Planned Task is about to achieve Task Completion, it shall give the Client Representative not less than five (5) Working Days' notice (or such other period of notice as may be stated in the Task Brief), requesting the Client Representative to attend, inspect and test as provided for in the Task Brief. The Service Provider shall not request such attendance, inspection or testing at any time excluded in the Task Brief, or without handing over such documents and completing such pre-conditions and procedures as are specified in the Task Brief.

17.4.2 The Client Representative and other appropriate Partnering Team members shall attend, inspect and test as requested in accordance with clause 17.4.1 and, within two (2) Working Days following completion of such attendance, inspection and testing, the Client Representative shall issue a notice to the Client and the Service Provider either:

- (a) confirming that the Planned Task has achieved Task Completion; or
- (b) stating where any aspect of the Planned Task is not in accordance with the Partnering Documents, in which case the Service Provider shall rectify such non-compliance and again present the Planned Task in accordance with clause 17.4.1.

17.4.3 The Client and the Service Provider may agree the early attendance, inspection and testing for Task Completion of a part or parts of the Planned Task as provided for in the Task Brief and:

- (a) following a procedure equivalent to that described in clauses 17.4.1 and 17.4.2 the defects rectification arrangements described in clause 6.8 shall apply to that part of the Planned Task;
- (b) as from the relevant date the obligation of the Service Provider to maintain insurance pursuant to clause 10.2 shall terminate in respect of the relevant part only.

18 **Intellectual property**

18.1 Each Partnering Team member warrants to the others that no design or document that it prepares and nothing else that it contributes to the Term Programme shall infringe any Intellectual Property Rights, and undertakes to indemnify the other Partnering Team members in respect of any legal liability and related costs arising out of or in connection with any such infringement of any Intellectual Property Rights.

18.2 Each Partnering Team member shall retain Intellectual Property Rights in all designs and other documents that it prepares in relation to the Term Programme, and grants to the Client and the other Partnering Team members an irrevocable, non-exclusive, royalty-free licence to copy and use all such designs and documents for any purpose relating to completion of the Term Programme and (only in regard to the Client) the Operation of the Sites, in all cases with the right to transfer and sub-license such rights for the same purposes, and shall ensure that such licence shall have the support of such rights from third parties as are necessary to allow the grant of such licence.

18.3 No Partnering Team member shall be liable for the use of any design or document that it prepares for any purpose other than that for which it was agreed to be prepared as stated in, or reasonably inferred from, the Partnering Documents.

18.4 Subject to the Intellectual Property Rights described in clause 18.2, ownership in all the existing documents and other physical embodiments of designs relating to the Term Programme shall transfer from a Partnering Team member to the Client immediately prior to that Partnering Team member suffering an event as described in clause 13.5 or termination of its appointment as described in clause 13.6. In such circumstances that Partnering Team member shall hand over all such documents and designs to the Client immediately upon request.

19 **Damage to Task(s) and obligation to restore and/or repair**

Upon the occurrence of any event giving rise to a claim under the works insurance policy described in clause 10.2 the Service Provider shall without delay repair and restore the Task and replace any work, materials, goods and equipment damaged or destroyed, remove all debris from the Site and continue with the execution and completion of the Task. If and to the extent that such insurance is taken out by the Service Provider then no additional payment shall be due as a result. If and to the extent that such insurance is taken out by the Client, then such repair, restoration, replacement and removal shall be treated as a Change in accordance with clause 8.3.

20 **Supply chain**

20.1 Each proposed Specialist Contract shall:

20.1.1 be based on the ACA Standard Form of Specialist Contract for Term Partnering (STPC 2005 issued 2010) or such other form of contract approved by the Client;

20.1.2 be prepared by the Service Provider; and

20.1.3 not conflict with any of the Partnering Documents.

20.2 Any amendments to a Specialist Contract shall be subject to the approval of the Client prior to the contract documents being issued to any Specialist.

20.3 No discounts or other benefits shall be payable by any Specialist to the Service Provider for prompt payment or otherwise unless agreed pursuant to clause 2.6 or clause 7.

20.4 The Service Provider shall notify the Client of any payment or benefit offered or received by it in relation to the Term Programme or any Task other than pursuant to the Partnering

Documents or a Specialist Contract. Any such payment or benefit shall be subject to the Client's prior approval.

20.5 If:

20.5.1 the Client approves the prices proposed by the Service Provider as part of the Business Case for any proposed Direct Labour Package or Preferred Specialist; or

20.5.2 a Specialist is selected by tender in accordance with clause 5.6;

then the relevant prices shall be incorporated in the Price Framework or the relevant Task Price as appropriate.

20.6 The Service Provider shall participate in joint initiatives with the Client to establish supply chain framework agreements so as to secure:

20.6.1 improved prices;

20.6.2 improved warranties and other added value;

20.6.3 integrated briefs;

20.6.4 a consistent approach to ordering;

20.6.5 a clear methodology for surveys, manufacture, supplies, installation and other Specialist activities;

20.6.6 systems of joint performance review against agreed KPIs and Targets;

20.6.7 long term commitments subject to achievement of agreed KPIs and Targets;

20.6.8 terms and conditions that are reasonably acceptable to the Client and the Service Provider.

20.7 The Service Provider shall participate with the Client in the combination of such supply chain framework agreements with comparable arrangements established by other clients and their respective service providers and specialists.

20.8 The Service Provider's participation in the supply chain framework agreements referred to in clause 20.7 shall be subject to such supply chain framework agreements offering the Client value for money compared to the Service Provider's own supply chain arrangements for which purposes the Service Provider shall provide such information regarding its own supply chain arrangements as the Client may reasonably require and the Client shall treat such information as confidential information in accordance with clause 12.3.

21 **Data protection**

21.1 The Client and the Provider shall comply with the Data Protection Legislation and with the obligations further set out in Appendix 9.

22 **Employment and skills**

22.1 The Service Provider shall comply with and implement the ESP and Method Statement in accordance with the Employment and Skills Strategy.

22.2 The Service Provider shall nominate an individual to liaise with the Client Representative and provide the Client Representative with information as required to demonstrate the Service Provider's compliance with the ESP and the Method Statement.

22.3 The Client Representative shall provide to the Service Provider information it has available to enable the Service Provider to comply with and implement the ESP and Method Statement, including the details listed in the Employment and Skills Strategy.

22.4 The Service Provider shall provide to the Client Representative on a monthly basis, in accordance with the Partnering Timetable:

22.4.1 a report outlining the achievements during the previous month against the ESP and Method Statement and the employment and skills KPI and Targets contained in Appendix 3; and

22.4.2 details of the various employment and skills activities delivered in the month.

The Client Representative shall be responsible for monitoring the Service Provider's compliance with and implementation of the ESP and Method Statement, and such monitoring shall form part of the Client's assessment of the employment and skills KPI and Targets.

22.5 Any and all costs relating to compliance with and implementation of the ESP and Method Statement by the Service Provider are included in the Price Framework.

23 **Section 20**

In relation to the Term Programme and/or any Task, the Service Provider shall, when requested by the Client to do so, provide such information, co-operation and assistance as the Client may require and in sufficient time to enable the Client to fully comply with its obligations under section 20 Landlord and Tenant Act 1985 (as amended by section 151 Commonhold and Leasehold Reform Act 2002) in relation to consulting with tenants and recognised tenants associations on the carrying out of works and / or services for which contributions from such tenants may be reasonable under the terms of their leases with the Client.

24 **Employees**

24.1 Where it is agreed that the Service Provider may designate individuals to particular Tasks and/or other activities pursuant to the Partnering Contract and where designation of an individual to a particular Task or activity is reflected in the agreed calculation and method of payment under the Price Framework, then the Service Provider may not re-designate such individual to any other Tasks or activities affecting such agreed calculation and method of payment without the Client's prior consent, such consent being subject to agreement of the revised calculation and method of payment as a consequence of such re-designation.

24.2 If any individual employed by a Partnering Team member or for whom it is responsible disrupts or otherwise adversely affects the Term Programme then, after Consultation with the Core Group, the Client may require the exclusion of that individual from the Term Programme and the Sites and the relevant Partnering Team member shall engage a suitable replacement and notify the Core Group accordingly.

25 **Environmental risk and Hazardous Substances**

Each Partnering Team member shall use reasonable skill and care appropriate to its agreed role, expertise and responsibilities as stated in the Partnering Documents:

25.1 to implement the measures stated in the Partnering Documents to eliminate or render negligible the risk of harm to the Environment or migration of Hazardous Substances onto or from any Site; and

25.2 not to transport to, generate, store, use, treat, dispose of or install at any Site any Hazardous Substance and not to cause any release of Hazardous Substances into or contamination of the Environment, except in accordance with the Environmental Laws applicable at the time of implementing the relevant Task.

26 **Information Technology**

26.1 The Service Provider hereby warrants and undertakes to the Client on a continuing basis that:

26.1.1 it will access the IT System only for the purpose of providing, and only to the extent required to provide, the Term Programme;

26.1.2 the Service Provider's IT systems will operate and interface seamlessly with the IT System to the extent required for and in relation to the provision of the Term Programme;

26.1.3 it will provide, at no cost to the Client, all interfaces required to enable its IT systems to operate and interface seamlessly with the IT System;

26.1.4 it will not modify, alter or reconfigure the IT System or modify, alter, delete or overwrite any information or data stored on the IT system without the prior written consent of the Client (which shall not be unreasonably withheld or delayed);

26.1.5 it will not introduce any virus, trojan, malware, keylogger or other harmful software into the IT System and has checked all software and transfer media used for or in connection with the Term Programme (including but not limited to any software and transfer media used on or connected to the IT System) using the most recent and up-to-date virus checker;

26.1.6 it will not damage the IT System or the data stored on the IT system in any way and in particular through the introduction of harmful software as outlined in clause 26.1.5;

- 26.1.7 it will keep all data that it has access to pursuant to clause 26.1.1 confidential and will not disclose the same to any third party without the prior written consent of the Client or as required to provide the Term Programme;
- 26.1.8 it will comply at all times with the Data Protection Legislation in relation to the processing of the data referred to in clause 26.1.7 and, in particular (but without limitation), will not retain the data for longer than is necessary for provision of the Term Programme;
- 26.1.9 it will not create its own database(s) or any other intellectual property using the data referred to in clause 26.1.7;
- 26.1.10 it will access and use the IT System in accordance with any instructions and rules issued by the Client from time to time; and
- 26.1.11 its IT systems, whether alone or when used in conjunction with the IT System, do not and will not infringe the rights (including but not limited to intellectual property rights) of any third party;
- 26.1.12 it will notify the Client promptly and, in any event, within five (5) Working Days, if it becomes aware of any actual, potential or threatened breach of any of the warranties set out in this clause and will comply with all reasonable instructions of the Client in relation to the same as the Client may in its absolute discretion determine.
- 26.2 The Service Provider agrees to indemnify and keep indemnified the Client on a full indemnity basis from and against all losses, liabilities, costs, charges, expenses, actions, proceedings, claims and demands which the Client may suffer or incur arising out of any breach of the warranties set out in clause 26.1.
- 26.3 On expiry or termination of the Partnering Contract or termination of the Service Provider's appointment under the Partnering Contract for any reason, the Service Provider shall provide the Client, at no charge, with all reasonable assistance that the Client may require to migrate all data and information relating to or created or arising pursuant to its provision of the Term Programme that is stored upon the Service Provider's IT systems to the Client or such third party as the Client may in its absolute discretion nominate.
- 26.4 The Partnering Team members agree that no title to or right in any part of the IT System or the Service Provider's IT systems (whether tangible or intangible) shall pass from one party to the other unless explicitly agreed in writing by authorised representatives of the Client and the Service Provider or required pursuant to the terms of the Partnering Contract.
- 27 **Partnership**
- 27.1 If any Partnering Team member is a partnership such party acknowledges that being a partnership the rights obligations and liabilities of the partners in it under the Partnering Contract are joint and several.
- 27.2 The Partnering Contract and the liabilities of the Partnering Team members shall not automatically terminate upon the death, retirement or resignation of any one or more members of a partnership or upon the admission of any additional partner or partners.

28 **Claims**

28.1 Notwithstanding the Service Provider's obligations in clause 1.8 the Service Provider immediately upon becoming aware of any of the following or if appropriate the likelihood of any of the following shall notify the Client Representative of any:

- 28.1.1 accident involving an occupier, a member of the public, an employee of the Client on any Site within the Contract Area or an employee of any Partnering Team member or any Specialist which does not lead to death or serious personal injury;
- 28.1.2 damage caused by the Service Provider or any Specialist or any of their employees, servants or agents;
- 28.1.3 breach or anticipated breach of any relevant statutory provision by the Service Provider or any Specialist or any of their employees, servants or agents;
- 28.1.4 investigation, enquiry or adverse report or comment by the Health and Safety Executive or any successor or comparable agency in relation to the Service Provider or its provision of the Term Programme;
- 28.1.5 any legal proceedings notified to or commenced against it or likely to be notified to or commenced against it in relation to any event or occurrence within the Contract Area;
- 28.1.6 any enforcement action or anticipated enforcement action of whatever nature notified to or commenced against it;
- 28.1.7 any other matter which may in the Service Provider's opinion result in any claim of whatever nature against the Client or which might reasonably be expected to damage public confidence in the Client or adversely affect the Client's reputation.

28.2 If requested to do so by the Client Representative, the Service Provider shall provide the Client Representative with any relevant information in connection with any of the matters referred to in clause 28.1 or any legal inquiry, arbitration or court proceedings in which the Client may become involved or any relevant disciplinary hearing internal to the Client and shall give evidence in any such inquiry or proceedings or hearing.

28.3 The Client shall, if so requested by the Service Provider, provide the Service Provider with any relevant information in connection with any of the matters referred to in clause 28.1 for the purposes of any legal inquiry, arbitration or court proceedings in which the Service Provider may become involved.

28.4 The Service Provider shall:

- 28.4.1 expeditiously investigate all claims for damage or loss to a Resident's goods, chattels, possessions and personal property;
- 28.4.2 reimburse the Resident where the circumstances would indicate that such loss or damage may have been caused by the Service Provider, its operatives, Specialists, agents or representatives; and

28.4.3 indemnify the Client against any claim made against the Client for any such damage or loss that may have been caused by the Service Provider, its operatives, Specialists, agents or representatives.

28.5 Notwithstanding the Service Provider's obligations in clause 1.8 and/or clause 28.1 to 28.4 inclusive in the event of an incident which results in serious personal injury or death to any Resident and/or employee or agent of the Client and/or any employee of the Service Provider and/or any employee of a Specialist caused by a negligent act or omission of the Service Provider and/or any Specialist in performance of any Task:

28.5.1 the Service Provider shall within twenty four (24) hours of the occurrence of such an incident provide the Client with a written report setting out details of such incident, the party responsible for causing the incident and details of how such incident shall be remedied;

28.5.2 the Client may, in its absolute discretion, accept or reject any proposals submitted in accordance with clause 28.5.1;

28.5.3 if such report does not include proposals to terminate the appointment of or replace of the party responsible for causing the incident the Client may in its absolute discretion either (where the responsible party is the Service Provider) terminate the Service Provider's appointment under this Contract by 20 Working Days' notice or (where the responsible party is a Specialist) require that such Specialist's engagement is terminated and that a replacement Specialist is appointed within 20 Working Days of the occurrence of the incident.

28.5.4 In the event of termination of the Service Provider's engagement in accordance with clause 28.5.3 the provisions of clause 13.8 shall apply.

29 **Loss of profit etc.**

In the event that the Client:

29.1 terminates the Service Provider's appointment under this Partnering Contract; or

29.2 issues a notice to shorten the Term and/or reduce the scope of works and services to be carried out by the Service Provider in relation to the Term Programme; or

29.3 does not issue any Orders and/or issues less Orders (whether in terms of value and/or number) than stated in the Term Brief and/or does not issue more Orders (whether in terms of value and/or number) than stated in the Term Brief; or

29.4 omits work pursuant to paragraph 1.6 of schedule 2;

the Service Provider shall not have a claim against the Client (whether under contract, statute, in tort or otherwise) for any mobilisation costs if not already recovered and/or demobilisation costs and/or in respect of any actual or expected loss of profit, loss of revenue, loss of goodwill or loss of opportunity and/or any consequential or indirect loss other than payments for Tasks already completed in accordance with the Partnering Contract.

30 **Change of control**

30.1 The following defined term shall apply to this clause:

Change of Control – in relation to the Service Provider the Service Provider ceasing to be controlled (as defined by section 1124 Corporation Tax Act 2010) by the person(s) who controlled the Service Provider at the date of this Partnering Contract.

30.2 The Service Provider shall notify the Client as soon as reasonably practicable of any Change of Control or anticipated Change of Control.

30.3 If the Client reasonably believes that the Change of Control is likely to prejudice materially the business or the interests of the Client, the Client may within one month of the notification pursuant to clause 30.1 issue a notice objecting to a Change of Control on one or more of the following grounds:

30.3.1 the Service Provider will be owned or controlled by an entity domiciled in a country outside England and Wales;

30.3.2 the Service Provider's ability to perform the Term Programme will be materially affected;

30.3.3 it would be detrimental to the Client's obligations and functions as a public authority;

30.3.4 a conflict of interest would arise between the Service Provider and the Client.

30.4 The appointment of the Service Provider shall terminate on the date 3 months from the date of the notice issued by the Client pursuant to clause 30.3.

31 **Equal opportunities**

31.1 The Service Provider acknowledges that the Client has duties under section 149 Equality Act to have due regard to the need to eliminate discrimination, harassment and any other conduct prohibited by the Equality Act and to promote equality of opportunity and foster good relations between persons sharing a protected characteristic and those who do not share it. For the purposes of this duty (the **Equality Duty**) the protected characteristics are age; disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex and sexual orientation.

31.2 The Service Provider warrants that it will not and shall procure that its Specialists will not through their conduct or practices cause the Client to be in breach of any of the obligations placed upon the Client by section 149 Equality Act having due regard to any statutory code of practice issued in relation to that duty and will indemnify the Client for any loss, expense or damage incurred as a result of any breach of such obligations.

31.3 The Client may having regard to its statutory duties under the Equality Act and having due regard to any statutory code of practice issued in relation to those statutory duties make requests or issue instructions to the Service Provider (relating to the supply of information, monitoring and other matters) for the purposes of ensuring that the conduct or practices of the Service Provider and/or its Specialists will not result in the Client being in breach of its obligations under the Equality Act. The Service Provider agrees that it will and shall

procure that its Specialists will provide the Client with all information reasonably requested by the Client to allow it to monitor compliance with the obligations imposed by this clause 30.4.

31.4 Without prejudice to the generality of this clause 30.4 the Client may require the Service Provider to comply at no cost to the Client with the Client's policies relating to the Equality Duty (which shall be made available on request) or to have policies which have been approved by the Client and the Service Provider will and agrees that it shall procure that its Specialists comply with such requirements.

32 **Notification of defects in let properties**

32.1 The Service Provider shall notify the Client in writing of any defect in Properties which the Service Provider and/or their Specialists (their employees, agents or other persons employed or engaged by or on behalf of the Service Provider and/or their Specialists) in connection with the Term Programme) become aware of (or should acting reasonably have become aware of) whilst carrying out Tasks.

32.2 For the purposes of this clause 32 only 'defect' shall mean any state of affairs in a Property which might be harmful to the health and safety of the occupiers and/or any third party who may be present at the Property and/or cause damage to any property (whether real or personal) of the occupiers and/or any third party.

32.3 Any notice issued in accordance with clause 32.1 shall be issued as soon as reasonably practicable after the date on which the defect was noticed (or should have been noticed) and shall be marked for the attention of the Contract Manager, set out details of the Property, the defect, the location of the defect within the Property and identify the operative who noticed the defect and the date on which they did so.

33 **Handover**

33.1 Within three (3) months of termination or expiry of this Partnering Contract the Service Provider shall deliver to the Client all reports, schedules and other documents prepared by the Service Provider in connection with the Partnering Contract. Any information held on a computerised database shall be copied onto transportable computer storage as specified by the Client and delivered to the Client and promptly following such delivery by the Service Provider any copies held on computer storage medium by the Service Provider shall be erased.

33.2 No provision of this clause 33 shall operate to prevent the retention by the Service Provider of a copy of any document which the Service Provider is by operation of law, statute or any regulation required to retain.

33.3 The Service Provider shall co-operate fully with the Client during the handover leading to termination or expiry of the Partnering Contract. This co-operation shall extend to full access to all documents, reports, summaries and any other information provided as part of the Services.

33.4 Handover of responsibility for facilities made available to the Service Provider shall be the subject of a mutually agreed inventory between the parties to the Partnering Contract at the time of handover. The handover shall be arranged between the Client and the Service Provider so as to reduce to a minimum any interruption of the Term Programme. Any

special equipment purchased for use on the Partnering Contract which has been paid for by the Client shall remain the Client's property and shall be handed over to any New Service Provider at the request of the Client.

- 33.5 The Parties shall take all reasonable steps to ensure that the handover of operations to any New Service Provider causes the least possible disruption and that such handover is done in the shortest possible time.
- 33.6 The Service Provider shall use reasonable endeavours to co-operate with the Client to ensure that the transfer of the Term Programme, either back to the Client or to any New Service Provider is as smooth and trouble free as practicable and shall if requested by the Client continue to carry out Tasks on negotiated terms and charges pending such transfer and/or provide training to the Client's employees, or to the Client's nominated agent to the extent necessary to enable the Client or its nominated agent to continue to carry out the Tasks.
- 33.7 The Service Provider shall procure that the benefit of all manufacturer's warranties in respect of mechanical and electrical plant installed by the Service Provider within the Term Programme are assigned or otherwise transferred to the New Service Provider at termination or expiry of the Partnering Contract with full title guarantee.

34 **Modern Slavery Legislation**

34.1 The Service Provider undertakes to the Client that:

- 34.1.1 it has not and its current and former directors, officers and employees have not and shall not engage in activity which would amount to a breach of section 54 of the Modern Slavery Act 2015 (the **Modern Slavery Legislation**) or activity which would constitute an offence under the Modern Slavery Legislation if the conduct took place in the United Kingdom;
- 34.1.2 it has not and its current and former directors, officers and employees have not and shall not engage in any activity, practice or conduct which could or would place the Client in breach of the Modern Slavery Legislation or activity which would constitute an offence under the Modern Slavery Legislation if the conduct took place in the United Kingdom;
- 34.1.3 it has and shall maintain and implement:
- (a) procedures to ensure compliance with the Modern Slavery Legislation; and
 - (b) adequate procedures designed to prevent conduct that would give rise to an offence under the Modern Slavery Legislation;
- 34.1.4 it shall include undertakings similar to those contained in this clause 34 in any agreement it may enter into with any Specialists or any other sub-contractors and consultants appointed by the Service Provider and provisions similar to those contained in this clause 34;
- 34.1.5 from time to time, at the reasonable request of the Client, it will confirm in writing that it has complied with its undertakings under clause 34 and will

provide any information reasonably requested by the Client in support of such compliance.

- 34.2 The Service Provider shall maintain adequate records to assist in verifying its compliance with the provisions of this clause 34 and shall permit the Client and its third party representatives, immediately upon request to access and take copies of such records and to meet with the Service Provider's personnel to audit the Service Provider's compliance with its obligations under this clause 34.1. The Service Provider shall give all necessary assistance to the conduct of such audits.
- 34.3 Audit access by any third party representative of the Client in accordance with clause 34.2 shall be subject to such representative agreeing to be bound by confidentiality obligations equivalent to those in clause 12.3 in respect of the information obtained provided that all information obtained may be disclosed to the Client.
- 34.4 In the event of breach of clauses 34.1.1, 34.1.2 or 34.1.3 by the Service Provider and/or breach by any Specialist or any other sub-contractors and consultants appointed by the Service Provider of equivalent clauses required under clause 34.1.4 and/or if the Service Provider or any Specialists or any other sub-contractors and consultants appointed by the Service Provider is convicted of an offence under the Modern Slavery Legislation in relation to this Partnering Contract or any other agreement (whether or not the Client is a party to that agreement), the parties agree that the Client may at its sole discretion terminate:
- 34.4.1 The appointment of the Service Provider under the Partnering Contract and the provisions of clause 13 shall apply; and
- 34.4.2 (if applicable) any other agreement between the parties (whether in relation to the Term Programme or otherwise) and any such termination shall be deemed to be termination for Service Provider default.
- 34.5 The Service Provider further undertakes to the Client that:
- 34.5.1 If required by law to do so, it shall, for each and every financial year of the Service Provider, comply with its obligations under section 54 of the Modern Slavery Act by publishing a human trafficking statement made in accordance with section 54 of the Modern Slavery Act 2015 together with any guidance issued by the Secretary of State; and
- 34.5.2 It shall include an undertaking similar to that contained in this clause 34.5 in any agreement it may enter into with Partnering Teams.
- 34.6 In the event of breach of clauses 34.1.4, 34.1.5, 34.2, 34.5 and/or 34.7 the parties agree that the Client may by notice in writing to the Service Provider require that such breaches will be rectified within 7 days of receipt. If the Service Provider fails to rectify such breaches in accordance with the notice the Client may in its sole discretion terminate:
- 34.6.1 this Partnering Contract and the provisions of clause 13 shall apply; and
- 34.6.2 (if applicable) any other agreement between the parties (whether in relation to the Term Programme or otherwise) and any such termination shall be deemed to be termination for Service Provider default.

34.7 The Service Provider shall indemnify the Client against any losses, liabilities, damages, costs (including but not limited to legal fees) and expenses incurred by, or awarded against, the Client as a result of:

34.7.1 any breach of this clause 34 by the Service Provider or;

34.7.2 any breach of provisions equivalent to this clause 34 in any agreement with a Partnering Team.

34.7.3 any act or omission by any Specialists or any other sub-contractors and consultants appointed by the Service Provider which would have amounted to a breach of the relevant sub contract had the Service Provider complied with its undertaking set out in clause 34.1.4.

35 **COVID-19**

35.1 The Service Provider shall use its best endeavours to comply, and ensure compliance by the Specialist(s), employees, agents, and suppliers with:

35.1.1 the Construction Leadership Council's publication "Construction Sector – Site Operating Procedures: Protecting Your Workforce During Coronavirus (Covid-19)" version 7 dated 07 January 2021 (the **SOP**);

35.1.2 UK Government guidance on working safely during coronavirus (Covid-19) - Construction and other outdoor work;

35.1.3 any updates, amendments, supplementary guidance and recommendations relating to the above; and

35.1.4 any other public health measures, legislation or related guidance

in so far as is relevant to each Task, as published from time to time.

35.2 The Service Provider shall use its best endeavours to ensure that at all times in relation to the *Task*:

35.2.1 the necessary risk assessments as required by the SOP have been produced and shared with the workforce;

35.2.2 the poster required to be displayed at the Site as required by the SOP is being displayed; and

35.2.3 the Service Provider has in place appropriate procedures regarding all site inductions, health and safety briefings, tool box talks and similar practices required by the SOP or any other public health measures.

36 **Building Safety**

36.1 To the extent that the Building Safety Act applies to a *Task* or *Order* or any part of it, each Partnering Team member shall comply with this clause.

36.2 Without prejudice to the generality of clause 9.1 and insofar as relevant to the *Task* or *Order*, each Partnering Team member shall observe and comply with:

- 36.2.1 the provisions of the Building Safety Act in force as at the Base Date; and
- 36.2.2 the provisions of Appendix 10 to the extent relevant to clause 36.2.1 above.
- 36.3 Insofar as relevant to the Task or Order or any part of it, to the extent that any provision of the Building Safety Act comes into force after the Base Date, each Partnering Team member shall observe and comply with any such provision, together with any additional provision of Appendix 10 relevant thereto.
- 36.4 In respect of their compliance with this clause, the Partnering Team members (excluding the Client) shall not be entitled to a Change pursuant to clause 8.3 or an extension of time or any additional payment pursuant to clauses 8.4.

Schedule 2

Access to the Site(s)

(See clause 6.9 of the Partnering Terms and the Term Partnering Agreement)

1 Obtaining access to occupied Properties for Planned Work

1.1 Before carrying out Planned Work in an occupied Property, the Service Provider shall:

1.1.1 submit to the Resident of the relevant Property an introductory letter from itself and a leaflet supplied by the Client Representative from itself that outlines the nature of the Planned Work and informs the Resident that a visit will be made to the Property in the near future to survey the Property and discuss and agree the intended Planned Work;

1.1.2 submit a further letter to the Resident (to be agreed with the Client Representative):

(a) confirming the date (as stated in the Task Timetable) on which the Planned Work will commence in the relevant Property;

(b) advising the Resident of the programming of the Planned Work to be carried out;

(c) advising the Resident of the scope and nature of such Planned Work;

1.1.3 confirm to the Resident (during the normal Working Day) at least five (5) Working Days before commencement of the Planned Work (as stated in the Task Timetable) by means of a personal visit:

(a) the agreed date on which the Planned Work in the relevant Property will be undertaken;

(b) the steps the Resident is required to take to protect their belongings;

(c) the contact details of the Residential Liaison Officer for emergency contact.

1.2 If the Service Provider is unable to contact the Resident as required by paragraph 1.1.3 it shall visit the relevant Property during the evening between the hours of 6.00 pm and 8.00 pm on a weekday or between 9.00 am and 12.00 noon on Saturday on at least three (3) occasions (with at least 24 (twenty four) hours between each attempt). If the Service Provider has been unable to contact the Resident during the three (3) attempts referred to in this paragraph the following provisions shall apply:

1.2.1 the Service Provider shall advise the Client Representative immediately after the third abortive visit and the Client Representative will attempt contact the relevant Resident and confirm to the Resident the information referred to in paragraphs 1.1.3(a) to (c) inclusive;

1.2.2 if the Client Representative is able to contact the relevant Resident and confirm the information referred to in paragraph 1.1.3(a) to (c) inclusive the Service

Provider shall commence the carrying out of the Planned Works at the relevant Property on the agreed date for commencement;

- 1.2.3 if the Client Representative is unable to contact the relevant Resident the provisions of paragraph 1.6 shall apply.
- 1.3 If the Service Provider is refused access to a Property by a Resident on the agreed date for commencement of the Planned Works as notified to the Resident in accordance with paragraph 1.1.3 or 1.2.1 the Service Provider shall:
- 1.3.1 notify the Client, the Client Representative and the Resident in writing of such failure to gain access;
 - 1.3.2 attempt (at no additional cost to the Client) to gain access to the Property during the normal Working Day on a further two (2) occasions leaving at least 24 (twenty four) hours between each attempt.
- 1.4 In the event that an attempt to gain access in accordance with paragraph 1.3.2 is successful the Service Provider shall commence the carrying out of the Planned Works at no additional cost to the Client.
- 1.5 In the event that the Service Provider is not able to gain access to the Property following the attempts referred to in paragraph 1.3.2:
- 1.5.1 the Service Provider shall notify the Client, Client Representative and the Resident in writing of such failure to gain access;
 - 1.5.2 the Client may request that the Service Provider continue to attempt to gain access to that Property on a further three (3) occasions **provided that** the Service Provider shall be entitled to claim the reasonable additional costs incurred by the Service Provider in complying with such request;
 - 1.5.3 in the event that an attempt to gain access in accordance with paragraph 1.5.2 is successful the Service Provider shall commence the carrying out of the Planned Works;
 - 1.5.4 in the event that an attempt to gain access in accordance with paragraph 1.5.2 is not successful or if the Client decides not to request that the Service Provider continues to attempt to gain access to the relevant Property the provisions of paragraph 1.6 shall apply.
- 1.6 The Client may at any time:
- 1.6.1 exercise its right under clause 8 to omit all Work at the relevant Property from the scope of the Task and the parties agree that such omission shall constitute a Change under clause 8; or
 - 1.6.2 substitute an alternative Property for the Property to which access has not been obtained which substitution shall constitute a Change under clause 8. For the avoidance of doubt, such an alternative Property may not itself subsequently be substituted for a further alternative Property without the prior consent of the

Service Provider and in the absence of such consent the scope of the Planned Task and Task Price shall be amended to reflect the omitted Property.

- 1.7 Having omitted all work at a Property from the scope of the relevant Task in accordance with paragraph 1.6.1 or 1.6.2 the Client may at any time during the Contract Period require the Service Provider to include work at such Property at a later date and the parties agree that such requirement shall constitute a Change under clause 8.
- 1.8 The Client may defer non-exclusive possession of any Property in accordance with this schedule.
- 1.9 For the avoidance of doubt a delay event affecting work in any one or more Property (save for a Change instructed pursuant to clause 8) shall not entitle the Service Provider to claim any extension of time if such delay event does not delay the Task Date/Time for Completion.

2 **Resident liaison**

Where a Planned Task is being carried out in occupied Properties the Resident Liaison Officer shall and visit each Resident before commencement of a Planned Task and while the Planned Task is in progress to ensure that the work is being carried out in an acceptable manner, and shall carry out an inspection of completed Planned Task(s) in each Property on the day of completion and shall hand to the Resident a satisfaction survey form together with a postage paid envelope addressed to the Client Representative.

3 **Identification**

- 3.1 The Service Provider shall ensure that any operative, agent or representative who may require entry to any occupied Property for the purposes of the Partnering Contract:
 - 3.1.1 is provided with written and photographic identification and evidence of authority from the Service Provider for such entry; and
 - 3.1.2 shall, when seeking such entry produce such evidence for the occupier's inspection and in the event of failure to do so, shall accept this as a valid reason for refusal of entry.
- 3.2 The Service Provider shall also ensure compliance with this paragraph by all Specialists.
- 3.3 The provisions of this paragraph are subject to any policies of the Client set out or referred to in the Term Brief and in the event of any conflict the provisions set out or referred to in the Term Brief shall prevail.

4 **Complaints**

- 4.1 The Service Provider shall operate a complaints procedure in accordance with this paragraph and the complaints procedure set out in the Term Brief.
- 4.2 In the event of a complaint raised by a Resident directly with the Service Provider, the Service Provider shall:

- 4.2.1 notify the Client Representative of the complaint within two (2) Working Day of receipt of the same from a Resident;
 - 4.2.2 use its best endeavours to resolve the complaint to the satisfaction of the Resident and the Client within two (2) Working Days of receipt of a complaint from a Resident.
- 4.3 In the event of a complaint raised by a Resident via the Client Representative the:
- 4.3.1 Client Representative shall notify the Service Provider of the complaint within two (2) Working Days of receipt of the same from a Resident;
 - 4.3.2 Service Provider shall use its best endeavours to resolve the complaint to the satisfaction of the Resident and the Client within two (2) Working Days of notification of the complaint from the Client Representative.
- 4.4 In the event that the Service Provider is unable to resolve any complaint in accordance with paragraph 4.2 or 4.3 the:
- 4.4.1 Service Provider shall notify the Client Representative of all available information regarding the complaint;
 - 4.4.2 Client Representative shall convene a meeting between the Client, the Service Provider and Client Representative at no less than two (2) Working Days' notice (unless the Client, the Service Provider and Client Representative agree otherwise) and no more than ten (10) Working Days' notice, and the Client, the Service Provider and the Client Representative shall attend and make constructive proposals in seeking to achieve an agreed solution to the notified complaint.
- 4.5 The provisions of this paragraph are subject to any policies of the Client set out or referred to in the Term Brief and in the event of any conflict the provisions set out or referred to in the Term Brief shall prevail.

Schedule 3

TUPE Requirements

(See clause 11.2 of the Partnering Terms)

1 TUPE requirements

1.1 Relevant transfers

1.1.1 With effect from the Commencement Date the Transferring Employees shall be transferred from the Outgoing Service Provider to the Service Provider in accordance with the provisions of TUPE and such transfer shall constitute and have the effect of a Relevant Transfer.

1.1.2 Where the provider of the Term Programme or any part or parts of the Term Programme (save on termination of the Service Provider's appointment or expiry of the Term) changes pursuant to an act of the Service Provider or its Specialists the change in identity of such provider may constitute and have the effect of a Relevant Transfer. The Service Provider shall and shall procure that the new provider of the Term Programme or relevant part or parts of the Term Programme shall comply with all of its obligations under TUPE in respect of the Relevant Employees.

1.1.3 Where there is a change in the nature or scope of the Term Programme, such change may constitute and have the effect of a Relevant Transfer, in which event the Service Provider shall comply with all of its obligations under TUPE in respect of the Relevant Employees.

1.1.4 The termination of the Service Provider's employment whether in whole or part or expiry of the Term may have the effect of a Relevant Transfer, and in such circumstances the Service Provider shall comply with its obligations under paragraphs 1.6 and 1.7.

1.2 Responsibilities on commencement

1.2.1 The Client shall discharge all obligations and liabilities in respect of the Transferring Employees which were in its employment at the relevant time up to but not including the Commencement Date.

1.2.2 The Service Provider shall, with effect from and including the Commencement Date, assume and discharge all the obligations and liabilities in respect of the Transferring Employees.

1.3 Indemnities

1.3.1 The Client will indemnify the Service Provider and keep the Service Provider indemnified in full from and against all costs, claims, liabilities, expenses or demands (including all legal costs) whether direct or indirect arising from or related to the Client's acts or omissions relating to the Transferring Employees prior to the Commencement Date.

1.3.2 The Service Provider shall indemnify and keep the Client indemnified in full from and against all costs, claims, liabilities, expenses or demands (including all legal costs) whether direct, indirect or consequential awarded against or incurred or paid by the Client as a result of or in connection with any claims arising out of:

- (a) any act, fault or omission of the Service Provider or its Specialists in connection with the Transferring Employees; or
- (b) any step or measure that the Service Provider or its Specialists envisages in relation to employees affected by this Partnering Contract; or
- (c) the change of identity of the employer.

1.4 **Employees records**

Subject to the requirements of the Data Protection Legislation the Service Provider shall maintain current, accurate and adequate records of all:

1.4.1 employees or other persons who are or who are to be engaged in connection with the provision of the Term Programme. These records shall be kept at the appropriate location and shall include attendance records, records of grievances or other complaints made by or about employees or other persons engaged in connection with the provision of the Term Programme and records of all internal investigations, consultations, disciplinary proceedings and disciplinary sanctions and shall differentiate between those engaged as operatives and those exercising supervision. These records shall be open for inspection by the Authorised Officer at all reasonable times and a copy of these records shall be provided if so required;

1.4.2 work carried out in the provision of the Term Programme. These records shall be open for inspection by the Authorised Officer at all reasonable times.

1.5 **Admission to the Sites**

The Service Provider shall at least ten (10) Working Days before the date on which the Contractor first provides any of the Term Programme provide the Client with a written list of the names and addresses and any other information reasonably requested by the Client, of all employees or other persons other than the Transferring Employees who it expects may require admission to the Sites in connection with the performance of the Term Programme specifying the capacities in which those employees or other persons are concerned with the Term Programme and giving such other particulars as the Client may reasonably require. The Service Provider shall update this information as and when any such individuals are replaced or complemented by others, where reasonably practicable no less than two (2) Working Days before their inclusion.

1.6 **Termination**

1.6.1 During the period of 12 months preceding expiry of the Term or immediately after the Client or Service Provider has given notice to terminate the appointment of the Service Provider or where a Relevant Transfer may be

triggered by a change in the nature or scope of the Term Programme the Service Provider shall:

- (a) promptly, at the request of the Client, fully and accurately disclose to the Client all TUPE Information and permit the Client to use the TUPE Information to inform any prospective tenderer and/or New Service Provider about the anticipated Relevant Employees;
- (b) if, during the period between supplying the TUPE Information and the Relevant Transfer there is any material change in the information supplied or new information is discovered promptly disclose to the Client the updated information; and
- (c) use all reasonable endeavours to co-operate with any other reasonable request made by the Client or by any prospective tenderer and/or new Service Provider concerning the TUPE Information.

1.6.2 During the period of 6 months preceding expiry of the Term or following service of any notice to terminate the appointment of the Service Provider, the Service Provider shall not:

- (a) terminate the employment of any of the employees assigned to the carrying out of the Term Programme for any reason whatsoever save where termination is lawful;
- (b) alter or change in any way any terms and conditions of employment of any of the employees assigned to the carrying out of the Term Programme (whether with or without consent of the employees) other than changes agreed in the normal course of the Service Provider's business and in good faith or wage or salary awards which are in line with those offered generally for similar status individuals within the workforce of the Service Provider or as required by law;
- (c) recruit (except as a replacement for any employee whose employment is terminated and where the replacement is being recruited on terms which are not materially different from the terms of the employee being replaced) or assign any employee to carry out the Term Programme except with the Client's prior written consent; or
- (d) relocate or assign new duties to any of the employees carrying out the Term Programme without the prior written consent of the Client.

1.7 **Obligations on termination**

1.7.1 The Service Provider shall discharge all obligations and liabilities in respect of the Relevant Employees up to and including the Transfer Date.

1.7.2 The Service Provider warrants that reasonable care will be used in the preparation of the TUPE Information and that reasonable efforts will be taken to ensure that it will be complete (insofar as it is reasonable for the Client to require such information to be provided) and accurate in all respects as at the date the information is provided. The Service Provider shall indemnify and keep

indemnified the Client and any New Service Provider against any loss caused to the Client or any New Service Provider by any inaccuracy or incompleteness in such information or by any changes in the information which have not been communicated to the Client (whether relating to the number, identity or details of the Relevant Employees or otherwise) which occur prior to the Relevant Transfer Date.

- 1.7.3 The Service Provider shall indemnify and keep indemnified the Client and the New Service Provider in full from and against all costs, claims, liabilities, expenses or demands (including legal costs) whether direct, indirect or consequential, which the Client and/or any New Service Provider incurs arising from:
- (a) any act or omission of the Service Provider or any Specialist in relation to the Relevant Employees; or
 - (b) any claim by an employee or former employee of the Service Provider or any Specialist who is not a Relevant Employee; or
 - (c) any representations made by the Service Provider or by any Specialist in relation to employment by the Client and/or any New Service Provider.
- 1.7.4 The Client shall indemnify the Service Provider in full from and against all costs, claims, liabilities, expenses or demands (including legal costs) whether direct, indirect or consequential which the Service Provider incurs arising from any act or omission of the Client in relation to the Relevant Employees.
- 1.7.5 In the event that the Service Provider enters into any Specialist Contract in connection with this Term Partnering Contract, it shall impose obligations on its Specialists in the same terms as those imposed on it pursuant this paragraph 1.7 and clause 31 and shall procure that each Specialist complies with such terms. The Service Provider shall indemnify the Client and keep the Client indemnified in full from and against all direct, indirect or consequential liability, losses, damages, injury, claims, costs and expenses (including legal expenses) awarded against or incurred or paid by the Client as a result of or in connection with any failure on the part of the Specialists to comply with such terms.

Appendix 1

Definitions

In the Partnering Documents, the following words and expressions shall have the following meanings, whether used in the singular or the plural and whatever their gender:

Accountable Person – the individual performing the functions of the Accountable Person as defined in the Building Safety Act;

Associated Person – a person who performs services for or on behalf of a Partnering Team member;

Base Date – the date of this Partnering Contract;

Bribery Act – the Bribery Act 2010 and any re-enactments, amendments and relevant regulations;

Building Act – the Building Act 1984, including any re-enactments and amendments;

Building Control Applications – in respect of the planning, design, construction and completion of the Term Programme, the applications to be made and approvals to be received by the Client to and from the Building Safety Regulator and/or building control which are required by the Building Safety Act and which are necessary for the carrying out and completion of the Term Programme in accordance with the Building Safety Act;

Building Liability Order – a building liability order as defined in s.130 of the Building Safety Act 2022;

Building Safety Act – the Building Safety Act 2022 and any other associated legislation or regulations supplementing or implementing that Act (including for the avoidance of doubt the Building Act 1984), together with any guidance, regulations, codes of practice or directions issued by the Building Safety Regulator, the Health and Safety Executive, The Secretary of State for Levelling Up, Housing and Communities or any of their respective statutory successors carrying out a similar regulatory function;

Building Safety Regulator – the regulatory body established pursuant to Part 2 of the Building Safety Act 2022 who carries out regulatory functions under the Building Safety Act;

Business Case – a business case proposed by the Service Provider pursuant to clause 5.5, comprising prices and proposals seeking to justify Client approval of a Direct Labour Package or a Preferred Specialist without a tender;

CDM Regulations – the Construction (Design and Management) Regulations 2015 and any re-enactments and amendments;

Central Office Overheads – agreed central office overheads as distinct from Site Overheads and Profit;

Change – a change in all or any part of the Term Programme by way of addition, omission or variation of any kind;

Client – the party named in the Term Partnering Agreement to fulfil the role of Client as described in the Partnering Documents;

Client Representative – the party named in the Term Partnering Agreement to fulfil the role of Client Representative as described in the Partnering Documents, subject only to replacement in accordance with the Partnering Terms;

Commencement Date – means the date of the TUPE transfer from the outgoing provider for transferring employees;

Consensus – unanimous agreement following reasoned discussion;

Consultant – any party, including the Client Representative but not the Service Provider, providing to the Client services in relation to the Term Programme;

Consultant Payment Terms – a document forming part of the Partnering Contract describing the amounts payable by the Client to a Consultant and the terms of payment;

Consultant Services Schedule – a document forming part of the Partnering Contract describing the role, expertise and responsibilities of a Consultant;

Consultation – such consultation as shall be reasonable without delaying any Task and without delaying any necessary action of any Partnering Team member for the benefit of the Term Programme;

Contract Area – the area covered by the Term Programme and including the Sites;

Competency Regulations – the Building Regulations etc. (Amendment) (England) Regulations 2023;

Competency Requirements – that the Partnering Team members and any Specialist(s) (including the individuals employed or appointed by them to carry out works or services on each Task) have the skills, knowledge, experience, behaviours and capabilities required to properly and competently perform the functions of a Dutyholder in relation to a Task in accordance with the Competency Regulations, together with any further competency standards published from time to time by any authorised body, including without limitation, the British Standards Institution;

Core Group – the individuals identified in the Term Partnering Agreement as Core Group members, subject only in each case to changes in accordance with the Partnering Terms and so that references shall apply to each and all Core Group members;

Corrupt Activity – bribery or corruption or any similar activity including, without limitation, any activity, practice or conduct which would or could constitute an offence under sections 1, 2 or 6 Bribery Act if such practice or conduct had been carried out in the United Kingdom;

Covid-19 Related Event – any localised or widespread occurrence of an infectious disease caused by any pathogen, whether bacterial, viral, or any other biological or natural agent which results, directly or indirectly, from the strain of coronavirus known as coronavirus infectious disease 2019 (Covid-19) and/or the causative virus known as severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2), including any mutations of Covid-19 and/or SARS-CoV-2;

Covid-19 Related Matter – any of the following matters arising after the date of an Order from a Covid-19 Related Event:

- a) the implementation of mandatory public health measures by the UK government, or any local or national agency, authority, court, inspectorate, minister, ministry, regulator, official or public

or statutory person (save where such measures are occasioned by any act, omission or default of the Service Provider) which result in:

- i. the inability of the Service Provider to obtain sufficient labour or supervision required for such labour; or
 - ii. unavoidable site closure, restricted access or amended working methods;
- b) material shortages of plant or materials due to delays in their manufacture, importation or transportation

provided that the Service Provider proves that the Covid-19 Related Matter could not reasonably have been foreseen by either party or, in the case of the Service Provider, by any competent provider of services experienced in the carrying out of works and / or services of a similar size, scope, value, character and complexity to the Tasks, as at the date of the Order;

Data Protection Legislation – means all applicable data protection and privacy legislation in force from time to time in the UK including the retained EU law version of the General Data Protection Regulation ((EU) 2016/679) (UK GDPR); the Data Protection Act 2018 (DPA 2018) (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended and the guidance and codes of practice issued by the Information Commissioner;

Defects Liability Period – the period following Task Completion during which the Service Provider shall have responsibility for rectification of defects in accordance with clause 6.8;

Definitions – the definitions set out in this Appendix 1;

Direct Labour Package – any part of the Term Programme undertaken by the Service Provider using its own direct labour;

Dutyholder – the function of a dutyholder as prescribed the Competency Regulations;

Early Warning – early warning in accordance with the system described in clause 1.8;

Employment and Skills Strategy – the Client's Employment and Skills Strategy (as amended, varied, replaced and/or supplemented from time to time);

Environment – all and any of the following media being water, air (wherever situate) as well as humans and their property, plants, animals and eco-systems;

Environmental Laws – all or any applicable law including common law, statute, civil code, statutory guidance or by-law in each case which has as its purpose or effect the protection of the Environment;

ESP – the Employment and Skills Plan produced by the Service Provider and forming part of the Term Proposals to be complied with and implemented by the Service Provider in order to execute the Employment and Skills Strategy;

Equality Act – the Equality Act 2010 and any re-enactments, amendments and relevant regulations;

Final Account – the account produced by the Client Representative for agreement pursuant to clause 7.14, showing the final balance due between the Client and the Service Provider;

Finance Act – the Finance Act 2004 which governs the Construction Industry Scheme 2007 and any re-enactments, amendments and relevant regulations;

Hazardous Substances – any natural or artificial substance (whether in solid or liquid form or in the form of gas or vapour and whether alone or in combination with any substance) intrinsically capable of causing harm to man or any other living organism supported by the Environment or of damaging the Environment or public health and including but not limited to any controlled, hazardous, toxic or dangerous waste;

HGCRA – the Housing Grants Construction and Regeneration Act 1996 and any re-enactments, amendments and relevant regulations;

HMRC – HM Revenue & Customs;

Incentives – the incentives for improved performance by Partnering Team members set out in Appendix 3 Part 2 or otherwise recommended by the Core Group and approved by the Client in accordance with clause 2.6, including without limitation any agreed shared savings, shared added value, pain/gain shares, links between payment and achievement of KPI Targets, and performance-related benefits for employees;

Intellectual Property Rights – all intellectual property rights (including, without limitation, patents, trademarks, designs, design rights, copyright, inventions, trade secrets, know-how and confidential information) and all applications for protection of any of the same;

Interested Parties – any one or more organisations or groups of individuals, as referred to in clause 1.11, who are not Partnering Team members and who have an interest relating to the Term Programme;

IT System – the hardware and software used by the Client from time to time for the purposes of the Term Programme;

Joining Agreement – an agreement entered into pursuant to clause 1.9 of the Partnering Terms, based on the form set out in Appendix 2;

Joining Party – a party who enters into a Joining Agreement with the other Partnering Team members;

KPIs – the key performance indicators set out in Appendix 3 Part 1 or otherwise agreed by the Partnering Team members for measurement of their performance in relation to the Term Programme in accordance with clause 2.5 of the Partnering Terms;

Late Payment Act – the Late Payment of Commercial Debts (Interest) Act 1998 and any re-enactments, amendments and relevant regulations;

Limitation Act – the Limitation Act 1980 and any re-enactments and amendments thereto;

Local Government Act – the Local Government Act 1972 and any re-enactments, amendments and relevant regulations;

Method Statement – the method statement produced by the Service Provider and forming part of the Term Proposals which sets out in detail how the Service Provider shall implement the ESP;

New Service Provider – a service provider to undertake works similar to the Term Programme or part of the Term Programme, whether on appointment by the Service Provider, on termination of the appointment of the Service Provider under this Partnering Contract whether in part or in whole or expiry of the Term and, for the avoidance of doubt, can include the Client;

Operation – use, occupation, operation, maintenance, repair, alteration and demolition;

Order – a Planned Order or Reactive Order;

Outgoing Service Provider – a person with whom the Client has contracted for the carrying out of the Term Programme;

PA23 – the Procurement Act 2023;

Partnering Adviser – any partnering adviser named in the Term Partnering Agreement, subject only to replacement in accordance with the Partnering Terms;

Partnering Contract – the partnering contract created by and between the Partnering Team members;

Partnering Documents – the documents governing implementation of the Term Programme and each Task and the partnering relationships between the Partnering Team members, as described in the Term Partnering Agreement;

Partnering Team – the Partnering Team members who execute the Term Partnering Agreement or any Joining Agreement, subject only in each case to replacement in accordance with the Partnering Terms, and so that references shall apply to each and all Partnering Team members;

Partnering Terms – the terms and conditions set out in clauses 1 to 15 inclusive of the ACA Standard Form of Partnering Contract for Term Partnering 2005 (amended 2008) as amended and supplemented by the Special Terms;

Partnering Timetable – the timetable agreed at the first Core Group meeting in the form as set out in Appendix 4 governing the stated activities of the Partnering Team members in relation to the Term Programme;

Planned Order – an Order based on the form set out in Appendix 6 Part 2 instructing the Service Provider to undertake any one or more Planned Task(s);

Planned Task – a Task relating to works and/or services issued pursuant to a Planned Order;

Planned Task Brief – the brief provided by the Client in relation to a Planned Task which shall be in compliance with the Term Brief;

Planned Task Pre-Conditions – the pre-conditions detailed in a Planned Order;

Planned Task Timetable – a timetable for implementation of a Planned Task;

Planned Works – the works and/or services being provided to an individual Property or Properties forming part of a Planned Task;

Preferred Specialist – a Specialist proposed by the Service Provider in a Business Case;

Price Framework – the price framework for the Term Programme, stating the method of calculating and adjusting Task Prices and terms of payment;

Principal Accountable Person – the individual or organisation performing the functions of the Principal Accountable Person as defined in the Building Safety Act;

Principal Designer – any party named in the term Partnering Agreement to fulfil the role of "Principal Designer" as defined in the CDM Regulations, subject only to replacement in accordance with the Partnering Terms;

Problem-Solving Hierarchy – the arrangements for any difference or dispute to be referred to increasingly senior individuals as set out in the Term Partnering Agreement and referred to in clause 14.1 of the Partnering Terms;

Processes – any processes, mechanisms, procedures or protocols stated in the Term Partnering Agreement or otherwise agreed by the Partnering Team members which facilitate more efficient ordering, implementation and pricing of Tasks including without limitation Value Engineering, Value Management, training and employment initiatives and the improvement of information technology and other communications between Partnering Team members and Users;

Profit – agreed gain from the Term Programme as distinct from Central Office Overheads and Site Overheads;

Property – any unit of property at a Site at which work will be undertaken as part of the Term Programme and **Properties** may mean any one or more units;

Quality Management System – the quality management system for the Term Programme referred to in clause 6.6 and set out in the Term Brief;

Reactive Order – an Order based on the form set out at Appendix 6 Part 1 instructing the Service Provider to undertake any one or more Reactive Tasks;

Reactive Task – a Task relating to works and/or services issued pursuant to a Reactive Order comprising reactive maintenance repairs/out of hours works/works to void properties;

Relevant Employees – all those employees subject to a Relevant Transfer on a Relevant Transfer Date;

Relevant Transfer – a transfer to which TUPE applies;

Relevant Transfer Date – a date on which the provision of the Term Programme changes;

Resident – any occupier of a Property including tenants and shared ownership leasees, if applicable;

Resident Liaison Officer – a Resident liaison officer appointed by the Service Provider;

Reverse Charge – in relation to a supply, that under section 55A(6) of the Value Added Tax Act 1994 it is for the recipient, on the supplier's behalf, to account for and pay VAT on the supply and not for the supplier;

Risk Management – a structured approach to ensure that risks are identified at the inception of the Term Programme, that their potential impacts are allowed for and that where possible such risks or their impacts are minimised;

Risk Register – the risk register set out in Appendix 5 and agreed between the Partnering Team members, describing recognised risks and the agreed Risk Management actions of the Partnering Team members;

Service Provider – the party named in the Term Partnering Agreement to fulfil the role of Service Provider as described in the Partnering Documents, subject only to replacement in accordance with the Partnering Terms;

Site – each site at which any Task is to be undertaken;

Site Overheads – agreed Site-specific overheads as distinct from Central Office Overheads and Profit;

Special Terms – any terms agreed to amend or supplement the Partnering Terms pursuant to clause 15, as set out in Schedule 1;

Specialist – any party providing to the Service Provider works or services or supplies of goods, materials or equipment in relation to the Term Programme;

Specialist Contract – a document (other than the Partnering Documents) governing the appointment of a Specialist;

Specialist Payment Terms – a document forming part of a Specialist Contract describing the amounts payable by the Service Provider to a Specialist and the terms of payment;

Supply – a supply made for VAT purposes under or in connection with this Partnering Contract by the Service Provider and "Supplies" shall be construed accordingly;

Sustainability – measures intended to achieve reduced carbon emissions, reduced use of energy and of natural and manmade resources, improved waste management, improved employment and training opportunities, and any other measures intended to protect or improve the condition of the environment or the wellbeing of people;

Targets – the KPI targets set out in Appendix 3 Part 1 or otherwise agreed by the Partnering Team members;

Task – the works and/or services to be undertaken pursuant to an Order issued in accordance with the Partnering Documents;

Task Completion – completion of a Task in accordance with the Partnering Documents;

Task Date/Time for Completion – the agreed date and/or time by which a Task is to achieve Task Completion, calculated in accordance with the Partnering Documents;

Task Price – the agreed amount or amounts payable by the Client to the Service Provider for the performance of a Task, calculated in accordance with the Partnering Documents;

TCEA – the Tribunals Courts and Enforcement Act 2007 and all supplemental and related legislation and any re-enactments, amendments and relevant regulations;

Term – the period during which Orders may be issued pursuant to the Partnering Documents;

Term Brief – the brief provided by the Client in relation to the Term Programme;

Term Partnering Agreement – the term partnering agreement executed by the original Partnering Team members;

Term Programme – the works and/or services governed by the Partnering Contract, as described in the Partnering Documents;

Term Proposals – the proposals for achieving the Term Brief, as submitted by the Service Provider and approved by the Client;

Transfer Date – the date when a Relevant Transfer occurs;

Transferring Employees – all those employees whose employment transfers to the Service Provider or a Specialist by operation of TUPE on the Commencement Date;

TUPE – the Transfer of Undertakings (Protection of Employment) Regulations 2006 and any re-enactments and amendments;

TUPE Information – all information in respect of the employees assigned to the provision of the Term Programme under this Partnering Contract whether employed by the Service Provider or any Specialist which the Client and/or a prospective tenderer and/or a New Service Provider may reasonably require including but not limited to:

- salaries, bonuses, overtime pay, holiday pay, sick pay and other benefits;
- dates of birth;
- details of continuous service;
- hours of work;
- individual terms and conditions of employment;
- details of collective arrangements or other arrangements or understandings with any trade union, staff body or other representative body of such employees;
- disciplinary records;
- details of ongoing disciplinary or grievance matters;
- policies or other agreements or arrangements or understandings in respect of each of them and any variations agreed thereto;
- details of any enhanced or contractual redundancy entitlements;
- any other materially relevant information (including without limitation details of the hardware software and other equipment required to perform) relating to the provision of the Term Programme;

User – any person or party using any Site;

Value Engineering – a structured system for the review of the Term Programme and Tasks to identify options and scope for improvement, including reduced costs, improved implementation and improved functionality;

Value Management – a flexible but structured management approach aimed at achieving a solution that meets the Client's needs while achieving best value;

VAT – Value Added Tax at the current applicable rate;

VAT Order – the Value Added Tax (Section 55A) (Specified Services and Excepted Supplies) Order 2019 (SI 2019 No. 892);

Volume Supply Agreement – an agreement under which materials, goods or equipment are offered on preferential terms as to price, warranty, availability of parts, maintenance or otherwise;

Working Day – Monday to Friday inclusive but not including any public holiday.

Appendix 2

Form Of Joining Agreement

(See Clause 1.9 Of Partnering Terms)

THIS JOINING AGREEMENT is made [as a deed] the day _____ of _____ 20[]

IN RELATION TO [_____] ("the Term Programme") at Sites in [_____] (the "Contract Area").

BETWEEN the Joining Party named below and the other parties named below to a partnering contract dated [_____] relating to the Term Programme (the "Partnering Contract")

WHO AGREE that words and expressions in this Joining Agreement shall have the same meanings as in the Partnering Contract and that with effect from the date [of this Joining Agreement] [the Joining Party first performed any work in relation to the Term Programme] the Joining Party shall assume all the rights and obligations of a Partnering Team member [entitled to nominate a Core Group member] and shall become a party to the Partnering Contract for all purposes in the role of [_____] as further described in the documents annexed to this Joining Agreement comprising:

and that the Joining Party's amounts of third party liability insurance and any other agreed insurances [and Core Group member] and Problem-Solving Hierarchy individuals shall be as follows:

[Clause 1.6 Core Group member: [_____]

Clauses 10.1 and 10.2 **Third party liability** **Additional Insurances**

Clause 14.1 Problem-Solving Hierarchy:
(1) _____ (2) _____ (3) _____

[] (company number []) [of] [whose registered office is at] [] and of
fax number [] and e-mail address [] (the "Client")

Executed (but not delivered))
as a deed by [])
acting by:)

Director

Director/Secretary

Executed (but not delivered) as)
a deed by [])
affixing the common seal of)
[] in the presence of:)
)

Director

Director/Secretary

Executed (but not delivered))
as deed by [] acting)
by a director in the presence of:)

Director

Witness signature:

Name:

Address:

Occupation:

[] (company number []) [of] [whose registered address] is at [] and
of fax number [] and e-mail address [] (the "Service Provider")

Executed (but not delivered))
as a deed by [])
acting by:)

Director

Director/Secretary

Executed (but not delivered) as)
a deed by [])
affixing the common seal of)
[] in the presence of:)
)

Director

Director/Secretary

Executed (but not delivered))
as deed by [] acting)
by a director in the presence of:)

Director

Witness signature:

Name:

Address:

Occupation:

[] (company number []) [of] [whose registered address] is at [] and
of fax number [] and e-mail address [] (the "Joining Party")

Executed (but not delivered))
as a deed by [])
acting by:)

Director

Director/Secretary

Executed (but not delivered) as)
a deed by [])
affixing the common seal of)
[] in the presence of:)
)

Director

Director/Secretary

Executed (but not delivered))
as deed by [] acting)
by a director in the presence of:)

Director

Witness signature:

Name:

Address:

Occupation:

[] (company number []) [of] [whose registered address] is at [] and
of fax number [] and e-mail address [] (the "**Client Representative**")

Executed (but not delivered))
as a deed by [])
acting by:)

Director

Director/Secretary

Executed (but not delivered) as)
a deed by [])
affixing the common seal of)
[] in the presence of:)
)

Director

Director/Secretary

Executed (but not delivered))
as deed by [] acting)
by a director in the presence of:)

Director

Witness signature:

Name:

Address:

Occupation:

Appendix 3

Part 1 – KPIs and Targets

(See clause 2.5 of the Partnering Terms)

The KPIs and Targets are as set out in Annex 6 of Term Brief.

Part 2 – Incentives

(See clause 2.6 of the Partnering Terms)

The Incentives shall comprise:

As agreed at the first Core Group meeting.

Appendix 4

Form of Partnering Timetable

(See clause 2.3 of the Partnering Terms)

Description of Activity/Requirement	Clause of Partnering Terms (if relevant)	Partnering Team member(s) responsible for Activity	Period/Deadline for Activity	Additional Comments

Appendix 5

Form of Risk Register

(See clause 8.2 of the Partnering Terms)

Risk	Likelihood of Risk	Impact of Risk on Term Programme	Partnering Team member(s) responsible for Risk Management	Risk Management Action	Action Period/Deadline

Appendix 6

Forms of Order

Part 1 - Reactive Order Form

(See clause 6.2 of the Partnering Terms)

In accordance with and subject to the terms of a partnering contract dated [] (the **Partnering Contract**) made between the Client and the Service Provider named below and others in relation to [] (the **Term Programme**)

- 1 Words and expressions used in this Order shall have the same meanings as in the Partnering Contract.
- 2 The Service Provider shall commence, undertake and complete the following Reactive Task(s) comprising all or part of the Term Programme at the following Site(s) and by the following Task Date(s)/Time(s) for Completion in accordance with the Partnering Documents:
- 3 In consideration of performance of the stated Reactive Task(s), the Client shall pay the Service Provider the following Task Price(s) in accordance with the Partnering Documents:
- 4 The Principal Designer in connection with the Reactive Task(s) shall be:
- 5 The Interested Parties in connection with the Reactive Task(s) shall be:
- 6 The following additional Special Terms shall apply:

Signed by

Receipt confirmed by

for and on behalf of the **Client Representative**

for and on behalf of the **Service Provider**

Dated

Dated

Part 2 - Planned Order Form

(See clause 6.2 of the Partnering Terms)

In accordance with and subject to the terms of a partnering contract dated [] (the **Partnering Contract**) made between the Client and the Service Provider named below and others in relation to [] (the **Term Programme**)

- 1 Words and expressions used in this Order shall have the same meanings as in the Partnering Contract.
- 2 Subject to satisfactory completion of the Task Pre-Conditions the Service Provider shall commence, undertake and complete the following Planned Task(s) comprising all or part of the Term Programme at the following Site(s) and by the Task Date(s)/Time for Completion set out in the Planned Task Timetable (agreed between the Client and the Service Provider pursuant to this Order) and in accordance with the Partnering Documents, the Task Timetable and the Task Brief:
 - 3 In consideration of performance of the stated Planned Task(s), the Client shall pay the Service Provider the following Task Price(s) in accordance with the Partnering Documents:
 - 4 The Principal Designer in connection with the Planned Task(s) shall be:
 - 5 The Interested Parties in connection with the Planned Task(s) shall be:
 - 6 The Task Pre-Conditions are:
 - 6.1 Preparation of a Construction Phase Plan in accordance with the CDM Regulations;
 - 6.2 Agreement of the Task Date(s)/Time(s) for Completion and a Planned Task Timetable;
 - 6.3 Surveys and investigations (including consequent design adjustment):
 - 6.4 Third party consents (including consequent design adjustments):
 - 6.5 [Satisfaction on outstanding leaseholder consultation requirements:]

6.6 Risk management procedures (including further development of a Risk Register for the Planned Task(s)):

7 The following additional Special Terms shall apply:

Signed by

for and on behalf of the **Client Representative**

Dated

Receipt confirmed by

for and on behalf of the **Service Provider**

Dated

Appendix 7

Part 1 - Conciliation

(See clause 14.3 of the Partnering Terms)

- 1 The term the "Conciliator" shall mean the individual named in or pursuant to the Term Partnering Agreement or (if no individual is so named) an individual to be agreed between the Partnering Team members seeking conciliation, or failing agreement within ten (10) Working Days after one has given the other(s) a written request to concur in the appointment of a Conciliator, an individual to be appointed on the request of any of them by the President or Vice-President for the time being of The Association of Consultant Architects Limited ("ACA").
- 2 If, at any time before reference of a difference or dispute to adjudication or litigation in accordance with the Partnering Terms (or to arbitration if provided for in the Special Terms), the Partnering Team members in dispute agree to conciliation in respect of that difference or dispute, they shall apply jointly to the Conciliator who shall conduct the conciliation in accordance with the edition of the ACA Conciliation Procedure current at the date of the application.
- 3 Any written agreement signed by the Partnering Team members in dispute, which records the terms of any settlement reached during the conciliation, shall be final and binding upon them and they shall give effect to such settlement in accordance with its terms. If any of them fails to do so, then the other(s) shall be entitled to take legal proceedings to secure such compliance.

Part 2 - Adjudication

(See clause 14.4 of the Partnering Terms)

- 1 The term the "Adjudicator" shall mean the individual named in or pursuant to the Term Partnering Agreement or (if no individual is so named) such individual as shall be appointed from time to time in accordance with the edition of the Model Adjudication Procedure published by the Construction Industry Council current at the date of the relevant notice of adjudication (the "Model Adjudication Procedure").
- 2 Any Partnering Team member has the right to refer a difference or dispute for adjudication by giving notice at any time of its intention to do so. The notice shall be given and the adjudication shall be conducted under the Model Adjudication Procedure.
- 3 For the purposes of the Model Adjudication Procedure, the term "dispute" shall have the same meaning as "difference or dispute" in the Partnering Terms.
- 4 The Adjudicator shall be appointed and the dispute or difference referred to him/her within seven (7) days following the giving of a notice by any Partnering Team member requiring a dispute or difference to be so referred.
- 5 The Adjudicator shall reach his/her decision within twenty eight (28) days of the date of referral, or such longer period as is agreed by the Partnering Team members in dispute

after the dispute has been referred. The Adjudicator may extend the period of twenty eight (28) days by up to fourteen (14) days with the consent of the Partnering Team member who referred the dispute or difference.

- 6 The Adjudicator shall act impartially and may take the initiative in ascertaining the facts and the law.
- 7 The Adjudicator may correct his/her decision so as to remove a clerical or typographical error arising by accident or omission within five (5) days of communicating his/her decision to the Partnering Team members in dispute.
- 8 The Adjudicator's decision shall be binding until the dispute is finally determined by legal proceedings, by arbitration (if the Partnering Contract provides for arbitration or the Partnering Team members in dispute otherwise agree to arbitration) or by agreement.
- 9 The Adjudicator shall be required to give reasons for his or her decision, and clause 24 of the Model Adjudication Procedure shall be treated as amended accordingly.
- 10 Without prejudice to their rights under the Partnering Contract, the Partnering Team members in dispute shall comply with any decision of the Adjudicator. If any of them fails to do so, then the other(s) shall be entitled to take legal proceedings to secure such compliance pending final determination of the difference or dispute, and the term "summary enforcement" in clause 31 of the Model Adjudication Procedure shall be read accordingly.

Appendix 8

Collateral Warranty – Specialist Warranty to Client

Specialist warranty

dated []

Parties

- (1) [] (registration number []) [of] [whose registered office is at] [] (the **Client**)
- (2) [] (registration number []) [of] [whose registered office is at] [] (the **Specialist**)
- (3) [] (registration number []) [of] [whose registered office is at] [] (the **Service Provider**)

Introduction

- (A) The Client has entered into the Term Partnering Contract with the Service Provider for the carrying out of the Term Programme.
- (B) The Specialist carries on business as a firm of [] and has been appointed to provide [] in that capacity by the Service Provider under the Specialist Contract in connection with the Project.

Agreed terms

1 Interpretation and definitions

In this deed the following terms have the following meanings unless inconsistent with the context:

Event of Default means any event entitling the Client to treat the Term Partnering Contract as determined;

Intellectual Property Rights means all intellectual property rights (including without limitation, patents, trade marks, designs, design rights, copyright, inventions, trade secrets, know how and confidential information) and all applications for protection of any of the same;

Operation means use, occupation, operation, maintenance, repair, alteration and demolition;

Term Partnering Contract means the term partnering contract based on the ACA Standard Form of Contract for Term Partnering 2005 (amended 2008);

Term Programme means the works and/or services governed by the Term Partnering Contract as described in the Term Partnering Contract;

Term Programme Completion means the date of completion of the Term Programme pursuant to the Term Partnering Contract;

Site means [];

Specialist Contract means the specialist contract [based on the ACA Standard Form of Specialist Contract for Project Partnering 2000 (updated 2008)] dated [] entered into between the Service Provider and the Specialist;

Specialist Documents shall have the same meaning as in the Specialist Contract;

Specialist Works shall have the same meaning as in the Specialist Contract;

Working Day means Monday to Friday inclusive but not including any public holiday or annual holiday recognised by the Construction Industry Joint Council pursuant to the current working rule agreement or equivalent.

2 **Consideration**

In consideration of the payment of ten pounds (£10.00) by the Client to the Specialist (receipt of which the Specialist hereby acknowledges) the Specialist covenants with the Client as set out in this deed.

3 **Duty of care**

The Specialist hereby warrants to the Client in relation to the Specialist Works that it has:

- 3.1 complied with and will comply in all respects with the terms of the Specialist Contract; and
- 3.2 exercised and will continue to exercise all reasonable skill and care appropriate to its role, expertise and responsibilities as stated in the Specialist Contract.

4 **[Insurance**

- 4.1 The Specialist further warrants to the Client that it will take out [professional indemnity insurance for [] million pounds (£[]) in respect of any negligence by the Specialist or any individual or organisation for whom it is responsible in the design of any work, materials, goods or equipment forming part of or intended for the Specialist Works] [and] [product liability insurance for [] million pounds (£[]) in respect of any negligence by the Specialist or any individual or organisation for whom it is responsible in the design or production of any goods or equipment forming part of or intended for the Specialist Works and as to all other customary product liability risk] and shall maintain such insurance throughout the duration of the Term Programme and for a period of [12 (twelve)] years from Term Programme Completion unless such cover is no longer generally available in the market place on reasonable terms and at reasonable premiums.
- 4.2 The insurance referred to in clause 4.1 shall be with a reputable insurer trading in the country in which the Site is located.
- 4.3 If for any period the insurance referred to in clause 4.1 is not available on reasonable terms and/or at reasonable premiums the Specialist shall forthwith inform the Client and shall obtain in respect of such period such reduced level of [professional indemnity insurance] [and] [product liability insurance] as is available and as would be fair and reasonable in the circumstances for the Specialist to obtain.

4.4 The Specialist shall promptly pay all premiums and shall provide evidence of insurance cover, by way of copy policies or detailed certification, to the Client upon request.]

5 **Step-in rights**

5.1 The Specialist hereby covenants with the Client that if an Event of Default shall occur under the Term Partnering Contract at any time the Specialist will if so required by notice in writing given by the Client or its appointee in accordance with clause 5.5 accept the instructions of the Client or its appointee to the exclusion of the Service Provider in respect of the Specialist Works upon the terms and conditions of the Specialist Contract and the Service Provider acknowledges that the Specialist shall be entitled to rely on a notice given to the Specialist by the Client under clause 5.5 as conclusive evidence for the purposes of this deed of an Event of Default having occurred under the Term Partnering Contract.

5.2 The Specialist hereby covenants that it will not exercise nor seek to exercise any right or alleged right of determination of its appointment under the Specialist Contract or any right or alleged right to discontinue the performance of any of its obligations in relation to the Term Programme by reason of breach or default on the part of the Service Provider or otherwise without first giving to the Client prior written notice of its intention to do so specifying the grounds for such proposed determination or discontinuance. If the grounds are that fees which are due have not been paid by the final date for payment and no effective notice to withhold payment has been given such notice shall be not less than 5 Working Days otherwise such notice shall be not less than 20 Working Days.

5.3 Compliance by the Specialist with clause 5.2 shall not be treated as a waiver of any breach on the part of the Specialist giving rise to the right of determination nor otherwise prevent the Specialist from exercising its right after the expiration of the notice unless the right of determination shall have ceased pursuant to clause 5.4.

5.4 Following the service of any of the Specialist's notice pursuant to clause 5.2 the said rights of determination or discontinuance on the part of the Specialist shall cease if the Client and its appointee shall give notice to the Specialist in accordance with clause 5.5 prior to the expiration of the period of the Specialist's notice specified in clause 5.2.

5.5 Notice given by the Client under clause 5.1 and/or clause 5.4 shall:

5.5.1 specify the clause under which such notice is given; and

5.5.2 require the Specialist to continue its obligations under the Specialist Contract in relation to the Term Programme; and

5.5.3 acknowledge that the Client assumes all the obligations of the Service Provider under the Specialist Contract; and

5.5.4 undertake unconditionally to the Specialist to discharge all payments which may subsequently become due to the Specialist under the terms of the Specialist Contract; and

5.5.5 undertake unconditionally to the Specialist to pay to the Specialist any sums which have become properly due and payable to the Specialist under the Specialist Contract which are at the date of such notice unpaid provided that in

respect of all sums payable to the Specialist where value added tax is due payment will be made following receipt from the Specialist of a valid value added tax invoice addressed to the Client as the person to whom the supply was made.

5.6 In the event of the Client giving notice to the Specialist in accordance with clause 5.5 the Specialist Contract shall continue in full force and effect in all respects as if the Specialist Contract had been made between the Specialist and the Client to the exclusion of the Service Provider (but without prejudice to any rights of recovery as between the Client and the Service Provider) and the provisions of this clause shall apply notwithstanding any dispute or doubt as to the validity of such rights of determination or discontinuance.

5.7 The Service Provider confirms its agreement to the terms and conditions of this clause 5 and its concurrence with the arrangements made and contemplated by this clause 5.

6 **Copyright**

6.1 The Specialist shall retain Intellectual Property Rights in all designs and other documents that it prepares in relation to the Specialist Works and grants to the Client an irrevocable, non-exclusive royalty free licence to copy and use all such designs and documents for any purpose relating to completion of the Specialist Works and the Operation of the Sites together with the right to transfer and sub-license such rights for the same purposes and shall ensure that such licence shall have the support of such rights from third parties as are necessary to allow the grant of such licence.

6.2 The Specialist shall not be liable for the use of any design or document that it prepares for any purpose other than that for which it was agreed to be prepared as stated in, or reasonably inferred from, the Specialist Documents.

6.3 The Specialist warrants to the Client that no design or document that it prepares and nothing else it contributes to the Specialist Works shall infringe any Intellectual Property Rights and undertakes to indemnify the Client in respect of any legal liability and related costs arising out of or in connection with any such infringement of any Intellectual Property Rights.

7 **Provision of copy documentation and information**

The Specialist agrees on request to provide to the Client access to and copies of the documents (referred to in clause 6.1) **provided that** the Client shall reimburse to the Specialist the reasonable cost of producing such copies.

8 **Assignment**

The benefit of this deed may be assigned [twice] by way of absolute legal assignment without the consent of the Specialist or the Service Provider being required. No other assignment shall be permitted without the prior written consent of the Specialist and the Service Provider (such consent not to be unreasonably withheld or delayed).

9 **Agreement not to vary Specialist Contract**

The Specialist agrees with the Client not to vary the terms of the Specialist Contract in a manner that would prejudice the benefit of this deed without the prior consent of the Client (not to be unreasonably withheld).

10 **Limitations**

The Specialist shall owe no greater duty of care to the Client under this deed than it would have done if, in lieu of this deed, the Client had been named as client in place of the Service Provider in the Specialist Contract.

11 **Notices**

11.1 Any notice to be served under the terms of this deed shall be in writing and shall be deemed to be duly given if delivered in the case of a company to the parties registered office for the time being or in any other case to the parties principal place of business.

11.2 Notices shall be deemed to have been served or received in the case of:

11.2.1 personal delivery on the date of delivery;

11.2.2 pre-paid registered or recorded delivery mail on the second Working Day after the notice is posted;

11.2.3 facsimile transmission (transmitted before 4.00 pm on a Working Day) and confirmed by first class pre paid post on the date and time the facsimile is successfully transmitted as evidenced by the sender's facsimile transmission slip.

12 **Miscellaneous**

12.1 This deed shall in no way prejudice or affect any other rights or remedies of the Client against the Specialist whether in common law or otherwise in respect of the Specialist Works or other matters referred to in this deed.

12.2 Notwithstanding the completion of the Term Programme or any part of the Term Programme this deed shall continue to have effect.

13 **Contracts (Rights of Third Parties) Act 1999**

The parties hereby confirm that nothing in this deed shall confer on any person any right to enforce any term of this deed which that person would not have had but for the Contracts (Rights of Third Parties) Act 1999.

14 **Law**

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 the law of England and Wales and only the courts of England and Wales shall have jurisdiction under this deed.

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

Appendix 9

Data Protection

- 1 For the purposes of this Partnering Contract the terms Data Controller, Data Subject, Data Processor, Personal Data, Process and Processing shall have the meaning prescribed under the Data Protection Legislation. Data Subject's Rights means any rights of individuals under the Data Protection Legislation.
 - 2 For the avoidance of doubt the Processing to take place for the purposes of this Partnering Contract shall include the following types of Personal Data and categories of data subjects
 - 2.1 names of occupants;
 - 2.2 addresses; and
 - 2.3 contact details of occupants;
- the **Shared Personal Data**)
- 3 The Service Provider shall ensure that he shall at all times during the period of this Partnering Contract comply with the provisions and obligations imposed by the Data Protection Legislation and shall indemnify the Client and keep the Client indemnified against all actions, claims, demands, proceedings, damages, costs, charges and expenses (including reasonable legal expenses) whatsoever in respect of any breach of clause 21 which causes the Client to be in receipt of any actions, claims, demands, proceedings and/or incur any damages, costs, charges and/or expenses (including reasonable legal expenses).
 - 4 The Service Provider warrants and represents that he has obtained all necessary registrations, notifications and consents required by the Data Protection Legislation to Process the Shared Personal Data for the purposes of performing its obligations under this Partnering Contract.
 - 5 The Service Provider shall ensure that, to the extent that he and/or any of his employees, agents or officers receives, has access to and/or is required to store and Process Personal Data in connection with this Partnering Contract, he shall comply with the provisions and obligations imposed on him by the Data Protection Legislation.
 - 6 The Client shall:
 - 6.1 act in the capacity of Data Controller of Shared Personal Data Processed by the Service Provider in the performance of the Works; and
 - 6.2 be responsible to third parties for such data, including the individuals to whom the data relates.
 - 7 As Data Processor the Service Provider shall at all times in respect of the Shared Personal Data:
 - 7.1 not engage another Data Processor without prior written authorisation from the Client and ensuring compliance with any conditions attached to that consent and in the event that such consent is provided, ensure that any sub-Processor is bound by terms no less

onerous than this paragraph 7 and where the sub-Processor fails to fulfil its obligations, the Service Provider shall remain fully liable to the Client for the performance of those obligations;

- 7.2 process Shared Personal Data only to the extent and in such a manner as is necessary for the Works and/or the performance of the Service Provider's obligations under this Partnering Contract or as otherwise permitted by the Client in writing;
- 7.3 in the event that the Service Provider is under a legal obligation to process the Shared Personal Data outside of the terms of this Partnering Contract, he shall notify the Client of that legal requirement prior to processing unless the law prohibits this on important grounds of public interest;
- 7.4 implement appropriate technical and organisational measures to protect the Shared Personal Data against unauthorised or unlawful Processing and against accidental loss, destruction, damage, alteration or disclosure;
- 7.5 not cause or permit the Personal Data to be transferred outside the European Economic Area without the prior written consent of the Client, ensuring compliance with any conditions attached to that consent;
- 7.6 not disclose the Shared Personal Data to any third parties in any circumstances other than with the written consent of the Client or in compliance with a legal obligation, save that the Service Provider shall be entitled to disclose the Shared Personal Data to employees agents or officers to whom such disclosure is reasonably necessary in order for the Service Provider to perform his obligations under this Partnering Contract or to the extent required under a court order, subject always to compliance with paragraph 11 of this Appendix 9;
- 7.7 co-operate with the Client and ensure the Service Provider has appropriate technical and organisation measures in place to assist the Client to comply with any request exercising the Data Subject's Rights;
- 7.8 co-operate with the Client in respect of and contribute to any data protection impact assessments undertaken by the Client in relation to the processing of the Shared Personal Data pursuant to this Agreement; and
- 7.9 notify the Client within two (2) Business Days if he receives a request from a Data Subject to exercise the Data Subject's Rights or a complaint or request relating to the Client's obligations under the Data Protection Legislation and take no further steps in relation to the same until such time that he receives written instructions to do so from the Client.
- 8 Where the Client requests data from the Service Provider for the purpose of complying with the Data Subject's Rights, the Service Provider will retrieve the relevant data and provide a full copy of such to the Client as soon as is possible but in any event within three (3) Business Days of such a request being made.
- 9 The Client shall on giving reasonable notice to the Service Provider be entitled to request that the Service Provider provides evidence of his compliance with clause 21 and/or audit the procedures of the Service Provider (which shall include the right to enter the Service Provider's premises and/or view the Service Provider's systems) for the purposes of

ensuring compliance with clause 21 and the Data Protection Legislation and to take any reasonable steps to satisfy himself that the Service Provider is so complying.

- 10 The Service Provider shall at the Client's request from time to time prepare a report as to the Service Provider's technical and organisational procedures in place to protect the Shared Personal Data.
- 11 In respect of any employees, agents or officers of the Service Provider who are provided with access to Shared Personal Data for the purposes of this Partnering Contract, the Service Provider shall take such steps as regards to those persons which shall include but not be limited to:
 - 11.1 taking reasonable steps to ensure the reliability of such persons;
 - 11.2 ensuring such persons are informed of the confidential nature of the Shared Personal Data and are under an obligation of confidentiality in relation to the same;
 - 11.3 have undertaken training in the law relating to the handling of Personal Data; and
 - 11.4 are aware of their obligations and those of the Client and Service Provider under the Data Protection Legislation and this Partnering Contract.
- 12 In the event that the Service Provider becomes aware of any unauthorised or unlawful Processing, accidental alteration, loss, destruction or disclosure of, or damage or access to the Shared Personal Data the Service Provider shall:
 - 12.1 record the details of the suspected incident in a security incident log and undertake an initial investigation immediately into the suspected incident;
 - 12.2 promptly, and within no later than 24 hours of becoming aware of the event, give written notice to the Client with full details of such contravention and take no further steps in relation to the same until such time that he receives written instructions to do so from the Client;
 - 12.3 fully co-operate with the Client in the course of any investigation undertaken by the Client and any subsequent corrective actions arising therefrom, including any report to and investigation by the Information Commissioner's Office and/or notification to any affected individuals; and
 - 12.4 implement any measure necessary to restore the security and integrity of any compromised Personal Data.
- 13 The Service Provider shall co-operate and provide reasonable assistance with any proceedings or inquiry by the Client, an affected data subject and/or the Information Commissioner or other body authorised by statute which are concerned with the Data Protection Legislation in connection with Personal Data processed under this Partnering Contract.
- 14 The Service Provider shall on termination or expiry of this Partnering Contract or at such time that the Service Provider no longer requires access to the Shared Personal Data for the purposes of performing its obligations under this Partnering Contract and at the request of the Client either securely return to the Client or securely destroy the Shared Personal

Data Processed under this Partnering Contract (and all copies of such data) in the Service Provider's possession or other as directed by the Client.

- 15 The provisions of clause 21 shall apply during the continuance of the Partnering Contract and after its termination.

Appendix 10

Building Safety

1 General

- 1.1 This Appendix 10 shall only apply if and to the extent the Building Safety Act applies to the Task or Order or to any Site(s).
- 1.2 Where the Service Provider is appointed as the Principal Designer, any references to the Service Provider in this Appendix 10 shall also be references to the Principal Designer.

2 Competency Requirements

- 2.1 Each Partnering Team member warrants to the Client that it meets and shall continue to meet for the duration of this Partnering Contract the Competency Requirements.
- 2.2 The Service Provider shall include in each Specialist Contract entered into by the Service Provider a warranty equivalent to that set out in paragraph 2.1 of this Appendix 10. Each Partnering Team member shall include in any sub-contract or appointment entered into by that Partnering Team member a warranty equivalent to that set out in paragraph 2.1 of this Appendix 10.
- 2.3 The Client may at any point during the term of this Partnering Contract require each Partnering Team member to provide details and evidence of the professional qualifications of its employees and any other persons employed on or appointed to carry out works or services in relation to any Task or Order to ensure that the relevant Partnering Team member and any such persons comply and continue to meet the Competency Requirements, and each Partnering Team member agrees to provide all reasonable assistance to the Client or the Client Representative or other authorised representative of the Client as may be required from time to time to ensure compliance with this paragraph 2.3.
- 2.4 Each Partnering Team member shall notify the Client as soon as reasonably practicable when there is any change in the organisational status or performance or professional accreditation of its employees or any individual or organisation performing any works or services on or relating to a Task or Order that affects or could reasonably affect the ability of those persons or organisations to meet the Competency Requirements.
- 2.5 If the Client considers that any individual or organisation employed or appointed by the Service Provider or any Partnering Team member or Specialist does not meet the Competency Requirements then the Service Provider shall at the Client's direction replace or procure the replacement of such individual within a reasonable period at no cost to the Client and the Service Provider shall not be entitled to an extension of time in respect of any such direction from the Client and any such replacement shall be without prejudice to the Service Provider's responsibility for its Specialist.
- 2.6 The Service Provider shall not (and shall procure that any Specialist shall not) sub-contract any Dutyholder responsibilities to any third party.

3 Provision of assistance and compliance

- 3.1 Each of the Client and the other Partnering Team member undertake to the others that they shall comply with their respective obligations under the Building Safety Act as a Dutyholder and/or the Accountable Person and/or the Principal Accountable Person or otherwise, including without limitation the preparation of any construction control plan, fire emergency plans or building insurance certificate applications.
- 3.2 The Service Provider and each Partnering Team member (excluding the Client) shall be liable to the Client for any loss, expense, claim or damage incurred by the Client as a result of any act or omission of the Service Provider or the relevant Partnering Team member in breach of their respective obligations under the Building Safety Act.
- 3.3 Each Partnering Team member shall comply and cooperate with and provide all reasonable assistance to:
- 3.3.1 the Client (including in its role as the Accountable Person or Principal Accountable Person, as relevant); and;
 - 3.3.2 the Client Representative;
 - 3.3.3 the Accountable Person and/or the Principal Accountable Person for any relevant Site(s) comprising or related to the Task or Order (where these roles are undertaken by parties other than the Client);
 - 3.3.4 the Building Safety Regulator;
 - 3.3.5 any relevant building control authority;
 - 3.3.6 the Minister for Levelling Up, Housing and Communities;
- in respect of any matters falling within the scope of:
- (a) this Appendix 10;
 - (b) the Building Safety Act;
 - (c) any Dutyholder function carried out by the Client or any Partnering Team member or any Specialist or any other individual or organisation performing works or services in relation to the Term Programme.
- 3.4 The Service Provider and each Partnering Team member (excluding the Client) shall and shall procure that any Specialist or appointee under their control shall comply or cooperate with and provide all reasonable assistance to the Client to allow the Client to comply (as the case may be) with any requirements of the Building Safety Act to the extent that they apply to the Term Programme or any part of it.
- 3.5 Each Partnering Team member shall (and the Service Provider shall procure that any Specialist shall) provide all reasonable assistance and supply such information and documentation to the Client in a timely manner following any written request submitted by the Client as is reasonably required in relation to the Term Programme in order to satisfy the requirements of the Building Safety Act and/or the Building Safety Regulator.
- 3.6 The Service Provider shall:

- 3.6.1 comply with any Compliance Notice or any Urgent Action Notice (each as defined in the Building Safety Act) issued by the Building Safety Regulator and/or provide all reasonable assistance to the Client in complying with any such notice subject always to any right to appeal the Building Safety Regulator's decision; and
- 3.6.2 notify the Client if it becomes aware of anything that is or could be:
 - (a) a contravention of any Compliance Notice or Urgent Action Notice; or
 - (b) a contravention of the Building Safety Act;
 - (c) a contravention of the Building Safety Act where occupation or use of a Site or any part of the Term Programme without the contravention being remedied would be likely to present a risk of serious harm to people on or about a Site or the Term Programme.
- 3.7 In relation to the Service Provider's performance of its obligations under the Building Safety Act and this Appendix 10:
 - 3.7.1 no entitlement to a Change shall arise pursuant to clause 8.3; and
 - 3.7.2 the Service Provider shall not be entitled to any extension of time under clause 8.4 or otherwise; and
 - 3.7.3 the Service Provider shall not be entitled to any additional monies under clause clauses 8.4 or otherwise; and
 - 3.7.4 except to the extent caused by any breach or negligence of the Client or the Client Representative or any authorised appointee of the Client or any statutory undertaker.
- 4 **Provision of information**
 - 4.1 Each Partnering Team member shall share and supply all information and documents (including without limitation any notices, certificate, plans, drawings, specifications, orders, consents, demands, and documents relating to any Building Control Applications, construction control plans, and fire emergency plans) required by or in connection with the Building Safety Act (the **Building Safety Information**).
 - 4.2 All Building Safety Information required under paragraph 4.1 above shall be provided:
 - 4.2.1 in a digital format that:
 - (a) is reasonably accessible to the Client and the Client Representative; and
 - (b) complies with any requirements set out in the Term Brief; and
 - (c) complies with any formatting requirements specified by the Building Safety Regulator; and

- (d) where required utilises any information exchange facility prescribed by the Building Safety Regulator for the exchange of any relevant information and/or documents which is required to satisfy any matters or obligations owed under the Building Safety Act; and

4.2.2 within any applicable timescales or deadlines required by the Building Safety Act and in any event in a timely fashion.

4.3 Each Partnering Team member acknowledges and agrees that any documentation and/or information produced in connection with the Term Programme and falling within the scope of the Building Safety Act (including without limitation any Key Building Information as defined in the HRB Works Regulations) may be provided to and retained by the Building Safety Regulator and made available on a public register.

4.4 The Service Provider shall ensure that each Specialist and any other individual or organisation performing works or services in relation to the Term Programme or any part of it agree equivalent obligations to those set out in paragraphs 4.1 to 4.3 inclusive in any Specialist Contract and further ensure that each Specialist complies with its respective obligations.

5 **Inspection of the Project and opening up**

5.1 The Service Provider shall permit any persons carrying out functions connected with the Building Safety Act, including without limitation:

5.1.1 the Client; and

5.1.2 the Client Representative; and

5.1.3 the Accountable Person and/or the Principal Accountable Person (where these roles are undertaken by parties other than the Client); and

5.1.4 the Building Safety Regulator; and

5.1.5 any relevant building control authority,

to inspect and test the works comprising the Term Programme upon receipt of 24 hours prior written notice.

5.2 Where the covering up of any works comprising a Task or Order is conditional upon inspection or testing, or the receipt of any permission, consent or approval, by any party carrying out functions under the Building Safety Act, if the Service Provider covers up any such works prior to such inspection or testing, or prior to the receipt of any relevant permission, consent or approval, the Client may instruct the Service Provider to open up the relevant works to enable the relevant inspection or testing to be undertaken.

5.3 Notwithstanding any other provisions of this Partnering Contract, where the Client instructs the Service Provider to open up any works or services in the circumstances set out in paragraph 5.2 then the Service Provider shall not be entitled to any extension of time under this Partnering Contract and shall be obliged to make good the relevant works or services at its own cost.

5.4 The Service Provider shall procure that any Specialist agrees equivalent obligations to those set out in paragraph 5.2 in their respective Specialist Contract and shall ensure that they comply with those obligations.

6 **Termination**

In the event that the Service Provider or any Partnering Team member (excluding the Client) is at any time in material breach of any of its obligations set out in this Appendix 10 and they fail to remedy such breach within ten (10) Working Days from the date of notice from the Client specifying the relevant breach, after notifying the Core Group of such breach and failure to remedy (and allowing not less than a further ten (10) Working Days from the date of notification to receive and consider their recommendations), the Client may terminate the appointment of the Service Provider or relevant Partnering Team member under this Partnering Contract by further notice to the Service Provider with immediate effect and any such termination shall be treated in accordance with clause 13.6.

Appendix 11
Part 1 – Term Brief

Appendix 11
Part 2 – Term Proposals

Appendix 11

Part 3 – Price Framework

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

Trent & Dove Housing Limited a Community Benefit Society with registration number 30668R whose registered office is at Trinity Square, Horninglow Street, Burton upon Trent, Staffordshire, DE14 1BL and whose e-mail address is Kevin.Donohoe@trentanddove.org (the "**Client**" and "**Client Representative**")

EXECUTED AS A DEED by affixing the in the presence of:
COMMON SEAL of **TRENT & DOVE HOUSING LIMITED**

.....
Director

.....
Director

Common Seal

[] (company no: []) whose registered office is at [] and whose e-mail address is [] (the "**Service Provider**")

EXECUTED AS A DEED by

[]

acting by

[], a director and

.....
Director

[], a director

.....
Director