

DATED _____ 2013

HOMES AND COMMUNITIES (1)
AGENCY

and

[DELIVERY PARTNER] (2)

THE DELIVERY PARTNER PANEL
FRAMEWORK
relating to [INSERT REGIONAL LOT]

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Attachments:

1. HCA Building Lease
2. Development Agreement
3. Collateral Warranties
4. Novation Agreement

THIS AGREEMENT IS MADE AS A DEED AND IS DELIVERED ON

BETWEEN

- (1) **HOMES AND COMMUNITIES AGENCY** having its principal place of business at Central Business Exchange, 406-412 Midsummer Boulevard, Central Milton Keynes, MK9 2EA (the "**Agency**"); and
- (2) [**DELIVERY PARTNER**] [of] [(Company Number [●])] [whose registered office is at] [●] (the "**Delivery Partner**")

INTRODUCTION

- A The Agency wishes to establish a Panel of delivery partners for the Delivery Period.
- B The Delivery Partner has tendered for the Panel.
- C Pursuant to that process, the Agency wishes to appoint the Delivery Partner onto the Panel on the terms and conditions set out in this Deed, which the Delivery Partner hereby accepts.
- D The Agency may from time to time entirely at its discretion call upon the delivery partners on the Panel to provide the Works. If the Agency wishes to instruct the Delivery Partner for an individual Project in accordance with this Deed, the Delivery Partner and the Agency shall enter into a Project Agreement for that individual Project.
- E The Delivery Partner accepts and acknowledges that Other Bodies may wish to draw down Works from the Panel.

THE PARTIES agree as follows:

1 DEFINITIONS AND INTERPRETATION

- 1.1 In this Deed the following words and expressions have the following meanings unless the context otherwise requires:
 - (a) "Access Agreement" means the written form of agreement entered into by the Other Body with the Agency by which the Agency allows them access to draw down from the Panel in accordance with this Deed in such form as the Agency shall require from time to time;
 - (b) "Agency Data" means:-
 - (i) the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which are:

- (a) supplied to the Delivery Partner by or on behalf of the Agency; or
 - (b) which the Delivery Partner is required to generate, process, store or transmit pursuant to this Deed; or
- (ii) any Personal Data for which the Agency is the Data Controller;
- (c) "Agency's Financial Memorandum" means the financial memorandum or guidance relating to the Agency from time to time in force;
 - (d) "Agency's IT and Communication Procedures" means the information technology and communication procedures of the Agency from time to time in force;
 - (e) "Agency Property" means all property of the Agency including without limitation, all Records, keys, security passes, credit cards, equipment, documents, papers, magnetic discs, tapes or other software storage media, film, videos and photographs which belong to the Agency or relate to its business or affairs issued to or otherwise in the Deliver Partner's custody;
 - (f) "Business Day" means any day which is not a Saturday, a Sunday or a public holiday in the place at or to which the notice is left or sent;
 - (g) "Confidential Information" means all commercial or strategic planning, intentions, modus operandi, finances, proposals, projects, plans and specifications, confidential designs, drawings, data, specifications, manufacturing processes, testing procedures and all other technical, business and similar information relating to the Delivery Partner's or the Agency's business and affairs, its customers, employees and suppliers or otherwise relating to (or which are created in the course of) the Works including all readable data, logic, logic designs, flowcharts, source or object codes, listings, test data, test routines, diagnostic programs, software programs or other material including, but not limited to the Delivery Partner's confidential information listed from time to time in Schedule 10 (Exempted Information) to this Deed;¹
 - (h) "Deed" means the terms and conditions of this deed and the Schedules annexed and or referred to in it, and includes the Introduction;
 - (i) "Delivery Partner Personnel" means all employees, agents, Delivery Partners and contractors of the Delivery Partner and/or of any Sub-contractors;
 - (j) "Delivery Period" means the period set out in Schedule 1, or such other period as ends on the date of termination of this Deed;

¹ This definition will need to be amended to ensure it covers all information the Delivery Partner (as the Agency) are seeking to protect and accurately describes the relevant information which is being disclosed pursuant to the Agreement.

- (k) "Deputy Designated Person" means the relevant person named in Schedule 13 or such other person appointed in that capacity in accordance with Clause 7;
- (l) "Designated Person" means the relevant person named in Schedule 13 or such other person appointed in that capacity in accordance with Clause 7;
- (m) "Development Agreement" means the form of development agreement Project Agreement set out in Schedule 4 (Template Project Agreements);
- (n) "documents" means all documents, plans, drawings, reports, programs, specifications, bills of quantities, calculations and other similar documents or any other form of record brought into being or received by the Delivery Partner (or on its behalf);
- (o) "DPA" means the Data Protection Act 1998;
- (p) EIR" means the Environmental Information Regulations 2004, and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner in relation to such legislation;
- (q) "EIR Exception" means any applicable exemption to EIR;
- (r) "Exempted Information" means any Information that is designated as falling or potentially falling within the FOIA Exemptions or the EIR Exceptions.
- (s) "FOIA" means the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner in relation to such legislation;
- (t) "FOIA Authority/Authorities" means a public authority as defined by FOIA and/or EIR;
- (u) "FOIA Exemption" means any applicable exemption to FOIA;
- (v) "HCA Building Lease" means the form of building lease Project Agreement set out in Schedule 4 (Template Project Agreements)
- (w) "Information" means in relation to:
 - (i) FOIA, the meaning given under section 84 of the FOIA and which is held by the Agency at the time of receipt of an RFI; or
 - (ii) EIR, has the meaning given under the definition of "environmental information" in section 2 of EIR and which is held by the Agency at the time of receipt of an RFI;
- (x) "Instruction Procedure" means the procedure outlined in Schedule 5 or such other procedure from time to time prescribed by the Agency and notified to the Delivery Partner;

- (y) "Intellectual Property Rights" shall include without limitation all rights to, and any interests in, any patents, designs, trade marks, copyright, know-how, trade secrets and any other proprietary rights or forms of intellectual property (protectable by registration or not) in respect of any technology, concept, idea, data, program or other software (including source and object codes), specification, plan, drawing, schedule, minutes, correspondence, scheme, formula, programme, design, system, process logo, mark, style, or other matter or thing, existing or conceived, used, developed or produced by any person;
- (z) "JCT Design and Build Contract" means the form of design and build Project Agreement set out in Schedule 4 (Template Project Agreements);
- (aa) "law" means any applicable law, statute, bye-law, regulation, order, regulatory policy, guidance or industry code, rule of court or directives or requirements of any Regulatory Body, delegated or subordinate legislation or notice of any Regulatory Body;
- (bb) "legislation" includes a statute (be it public, local, personal, or private), Orders in Council, orders, rules, regulations, schemes, warrants, bylaws, directives, or codes of practice, Act of Parliament, statutory provision, any legislation of the European Union or its organs or any other like document;
- (cc) "Loss or Damage" means any damage or destruction caused to property of, or otherwise suffered by, the Agency (including any loss of profits or loss of use resulting from such damage or destruction) and any other loss, direct or indirect, charge, cost, expense, liability or increased liability howsoever arising suffered or incurred by the Agency;
- (dd) "month" means calendar month;
- (ee) "Nominated Officer" means the official of the Agency or other person employed in such capacity, from time to time appointed by the Agency to act on its behalf;
- (ff) "Other Bodies" or "Other Body" means any organisation or organisations (as appropriate) who may wish to draw down Works from the Panel who have entered into the Access Agreement as listed in Schedule 14 to this Deed;
- (gg) "Panel" means the panel of delivery partners established by the Agency for the Regional Lot in which the Delivery Partner has been appointed;
- (hh) "Panel Member" or "Panel Members" means a member or members (as appropriate) of the Panel;
- (ii) "Personal Data" means personal data as defined in the DPA;
- (jj) "Process/Processed/Processing" has the meaning ascribed to the term in Section 1, Part 1 of the DPA;
- (kk) "Programme" means a programme or timetable or extended programme or timetable, if any, prepared by the Agency and agreed by the parties to this

Deed which regulates or specifies the period or periods for the provision of the Works or any part of them, for the performance of any activities ancillary to the provision of the Works or for the preparation and submission of reports in connection with the provision of the Works;

- (ll) "Project" means each separate project/development being or intended to be undertaken by the Agency (if any) and details of which will be set out in the Project Agreement;
- (mm) "Project Agreement" means any agreement in writing between the Agency and the Delivery Partner in relation to a Project entered into in accordance with Schedule 5;
- (nn) "Project Specific Invitation to Tender" means the invitation to tender in relation to each specific Project in accordance with Schedule 6;
- (oo) "Project Specific Prequalification Statement" means a statement providing information on the criteria as set out in Schedule 6 or such other criteria as the Agency shall prescribe from time to time and notified to the Delivery Partner;
- (pp) "Project Specific Tender" means the tender produced by a Panel Member in relation to each specific Project in accordance with Schedule 6;
- (qq) "Project Tendering Procedure" means the tendering procedure required by the Agency from time to time for individual projects. The tendering procedure is that outlined in Schedule 6 or such other procedure from time to time prescribed by the Agency and notified to the Delivery Partner;
- (rr) "Records" means all deeds, records, plans, drawings, specifications, reports, calculations and technical documentation together with related correspondence, files, electronically stored data and other papers relating to the Agency and its activities;
- (ss) "Regional Lot" means the area or areas set out in Schedule 1 and Appendix 1A or as otherwise notified to the Delivery Partner by the Agency;
- (tt) "Regulatory Bodies" means those government departments and regulatory, statutory and other entities, committees and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in this Deed or any other affairs of the Agency and "Regulatory Body" shall be construed accordingly;
- (uu) "Request for Information/RFI" shall have the meaning set out in FOIA or any request for information under EIR which may relate to the Project/Site, this Deed, or any activities or business of the Agency;
- (vv) "Works" means the works and/or services (or any part thereof) set out in Schedule 2 together with such works and/or services as are ancillary to them, as they apply to each Project. Where the context so permits, Works shall also

include any extended or varied works and/or services or any other works and/or services requested by the Agency in accordance with this Deed;

(ww) "Site" means the site or sites the subject of a Project, and any part thereof;

(xx) "VAT" means the tax levied under the Value Added Tax Act 1994, and any reference to VAT shall include any tax of a similar nature substituted for or in addition to it and shall include any directives and regulations adopted by the Council of the European Communities which relate to value added tax.

1.2 In this Deed:

- (a) Words importing the singular only shall also include the plural and vice versa and words importing a gender include every gender;
- (b) References to Recitals, Clauses and Schedules are, unless otherwise stated, references to recitals to, Clauses of and Schedules to this Deed;
- (c) A reference to legislation includes that legislation as from time to time amended, modified, substituted or re-enacted;
- (d) Each Project Agreement shall be read and construed as a separate and independent contract, subject to the terms of this Deed;
- (e) Headings and subheadings are for ease of reference only and shall not affect the interpretation or construction of this Deed;
- (f) The expressions "Agency" and "Delivery Partner" shall include their respective successors and permitted assigns and any person to whom the Agency shall novate this Deed;
- (g) Any reference in this Deed to the Delivery Partner's negligence or breach of contract, default or omission in relation to the Delivery Partner's contractual duties shall be construed as including a reference to a breach of contract, default or omission in relation to the Delivery Partner's contractual duties or the negligence of anyone for whom the Delivery Partner is vicariously liable or anyone for whom the Delivery Partner is responsible or anyone engaged by the Delivery Partner to assist in the provision of the Works whether the Delivery Partner is vicariously liable or not;
- (h) Nothing in this Deed shall give rise to a partnership between the Agency and the Delivery Partner;
- (i) In the event of a conflict or ambiguity between:
 - (i) Clause 1 to 34.1 of this Deed and the Schedules, the Clauses of this Deed shall prevail;
 - (ii) the Schedules, then the order of precedence shall be in the order the Schedules appear in this Deed;

- (iii) this Deed and any Project Agreement, the Project Agreement shall prevail;
- (j) In this Deed, any reference to the Deed shall also include, where appropriate, any Project Agreement;
- (k) Any reference to a "person" shall as the context may require be construed as a reference to any individual, a natural person, partnership (including a limited liability partnership), firm, company, body corporate, corporation, association, trust, state or an agency of a state, government or government department or agency, municipal or local or regional authority, public authority, and any other entity whether incorporated or not and whether or not having a separate legal personality;
- (l) A reference to a person doing something knowingly include references to him doing it in the circumstances where he ought reasonably to know;
- (m) A document (including this Deed, a Schedule, a document referred to in a Schedule or the Project Agreement) is a reference to that document as supplemented, amended or varied from time to time;
- (n) Reference to the word "include", "includes" "including" or in particular are to be construed without limitations.

2 APPOINTMENT

- 2.1 It is intended that, subject to Clauses 2.3 and 2.4 the Agency and the Delivery Partner will from time to time enter into Project Agreements for the provision of the Works in accordance and subject to the provisions of this Deed.

It is a requirement for participation on the Panel that the Development Partner continues to comply in all material respects with the criteria for selection to tender and for appointment to the panel which was set out in the pre qualification questionnaire issued with the contract notice published in the Official Journal of the Economic Union under reference 2012/S 64 – 103639.

- 2.2 Each Project Agreement shall:

- (a) be in substantially in the form set out in Schedule 4 (Template Project Agreements) with such amendments as may be required by the Agency as determined through the Project Tendering Procedure;
- (b) constitute a contractual arrangement between the parties to the Project Agreement that is separate from and independent of this Deed.

- 2.3 Nothing in this Deed shall operate as to create or imply:

- (a) any restriction or prohibition that might prevent the Agency from dealing with the Delivery Partner's competitors or other third parties who supply works or services which are similar to or compete with the Works or any of them;

- (b) any commitment of the part of the Agency to appoint the Delivery Partner as its supplier, to purchase Works exclusively from the Delivery Partner or to purchase a committed or guaranteed level of Works from the Delivery Partner
- (c) any obligation to award a Project Agreement following a Project Tendering Procedure

accordingly the Agency is free to purchase services which the Delivery Partner is capable of supplying from a third party of its choice.

- 2.4 The Delivery Partner acknowledges and accepts that the Agency may appoint more than one delivery partner in respect of the Works and the Agency gives no guarantee or warranty as to the amount of work, if any, and the consequent income, if any, which the Delivery Partner may expect under this Deed. The Delivery Partner shall have no claim at law or otherwise against the Agency if the Agency elects not to instruct the Delivery Partner to carry out any of the Works, or if the Agency appoints any other person to undertake work and/or services or services that the Delivery Partner may be qualified to perform.
- 2.5 The Delivery Partner shall act at all times in good faith, in the best interests of the Agency and in accordance with the reasonable instructions of the Agency in connection with the provision of the Works and this Deed.
- 2.6 The Delivery Partner shall at all times exercise due care and propriety when dealing with third parties in connection with this Deed and any Project Agreement.

Other Bodies

- 2.7 The Delivery Partner acknowledges and accepts that Other Bodies may wish to draw down services from the Agency's delivery partners under the Panel. In such case, the relevant Other Body shall be responsible for instructing and managing the Delivery Partner in accordance with this Deed and the Agency shall (subject to Clause 13.3) have no responsibility or liability for such a relationship or otherwise.
- 2.8 The Delivery Partner shall only enter into arrangements under this Deed and the Panel with Other Bodies where it has been notified in writing by the Agency that the Other Body has entered into an Access Agreement with the Agency.
- 2.9 The Agency may at any time suspend any Other Body from entering into further Project Tendering Procedures and/or Project Agreements under this Deed and the Panel. The Agency will notify the Delivery Partner in writing of such suspension and any Project Tendering Procedure and/or Project Agreement made with the Other Body after the date of notification will not be made pursuant to the terms of this Panel or this Deed and it will be the responsibility of the Other Body and the Delivery Partner to agree the terms of contract between them and the compliance with any procurement laws or regulations.
- 2.10 Where an Other Body has entered into an Access Agreement which has been notified to the Delivery Partner then the Delivery Partner shall perform and adhere to the provisions of this Deed in relation to that Other Body as if the Other Body had been named in place of the Agency under this Deed and as if all references to the Agency

were a reference to that Other Body for and in connection with the purpose of Clause 3 (Call- Off Procedure) and any further provisions necessary to give effect to the purpose of that Clause.

3 CALL-OFF PROCEDURE

- 3.1 The Agency will select a Delivery Partner for an individual project in accordance with the Project Tendering Procedure. The Delivery Partner will provide the Agency with such information and/or documentation as the Agency requests, from time to time, as part of the Project Tendering Procedure.
- 3.2 Following the Project Tendering Procedure, if the Agency is considering instructing the Delivery Partner in relation to a particular project, the Agency and the Delivery Partner will follow the Instruction Procedure.

4 OBLIGATION TO CONSULT WITH THE AGENCY ETC

- 4.1 The Delivery Partner shall at all times consult fully with the Agency and keep the Agency properly informed of all matters arising in relation to the Works. In addition, as and when requested by the Agency to do so, the Delivery Partner shall liaise with, and provide all such information, documentation and assistance as the Agency may reasonably require and which is within the Delivery Partner's possession or control to any other person notified to the Delivery Partner by the Agency.

5 MEETINGS, INSPECTION AND DOCUMENTS

- 5.1 The Delivery Partner shall attend such site, design, progress, briefing and other meetings to which it receives reasonable notice.
- 5.2 During the Delivery Period, the Agency (and anyone authorised by the Agency) shall, upon giving reasonable notice to the Delivery Partner, be entitled to inspect and examine any of the work and/or services being performed as part of the provision of the Works at any reasonable time at the Delivery Partner's premises, the Agency's premises or at such other location as the Agency reasonably requires. The Delivery Partner shall make available all facilities as the Agency may reasonably require in connection with such inspection and examination.
- 5.3 During the Delivery Period and for a period of 6 years after the date of expiry of the Delivery Period, completion of the Works or termination of this Deed (whichever is the later), if requested by the Agency, the Delivery Partner shall at its own cost retain at premises approved by the Agency such accounts, documents (including working documents) and records as the Agency or the Nominated Officer may request.

6 NOMINATED OFFICER

- 6.1 The Delivery Partner shall in the first instance direct all communications with the Agency to the Nominated Officer who shall have full authority to act on behalf of the Agency for all purposes in connection with this Deed unless otherwise notified to the Delivery Partner by the Agency in writing.

7 DESIGNATED PERSON

- 7.1 The Designated Person and Deputy Designated Person shall direct, control and manage the overall provision of the Works by the Delivery Partner.
- 7.2 The Designated Person (and if they shall be unavailable, the Deputy Designated Person) shall receive and act on any instructions or directions given by the Agency and shall be responsible for maintaining direct and regular contact with the Agency.
- 7.3 The Delivery Partner shall not replace the Designated Person and/or the Deputy Designated Person without prior consultation with and written consent from the Agency.
- 7.4 The Agency may at any time request the removal and replacement of the Designated Person and/or the Deputy Designated Person in which event the Delivery Partner shall remove the Designated Person and/or the Deputy Designated Person (as the case may be) and nominate a replacement for the Agency's approval in accordance with Clause 7.1.
- 7.5 The Designated Person and the Deputy Designated Person shall each have full authority to act on behalf of the Delivery Partner for all purposes in connection with this Deed and the Agency shall be entitled to rely on such authority for all purposes.
- 7.6 The Delivery Partner shall nominate only competent and suitably qualified personnel to act on its behalf in the performance of the Works.

8 PERSONNEL: GENERAL MATTERS

- 8.1 The Delivery Partner shall be responsible for ensuring that all staff who are or may at any time undertake work and/or services in relation to this Deed have the appropriate qualifications and/or experience and are properly supervised.
- 8.2 The Delivery Partner will:
- (a) maintain a documented equal opportunities policy and the Delivery Partner will promptly supply a copy of that policy to the Agency on request;
 - (b) not treat one group of people less favourably than others because of their colour, race, nationality, ethnic origin, gender, sexual orientation, disability, age or religion in relation to decisions to recruit, train or promote staff. Also, the Delivery Partner will take all reasonable steps to ensure that all agents and subcontractors that the Delivery Partner engages in the performance of this Deed do not unlawfully discriminate and comply with provisions equivalent to those set out in this Clause 8.2.
- 8.3 The Agency shall have the right, after discussion with the Designated Person, to require the removal of any person engaged in the performance of the Works if, in the opinion of the Agency, that person's conduct or performance is or has been unsatisfactory. The Delivery Partner will replace such person promptly with a person who shall previously have been approved in writing by the Agency.

- 8.4 The Delivery Partner shall ensure that its employees and anyone for whom it is vicariously liable or otherwise engages comply with any fire, safety and security guidelines and/or other instructions issued by the Agency or its representatives.

9 PANEL MANAGEMENT

- 9.1 The Delivery Partner shall comply with the provisions of Schedule 11.

10 INSURANCE

- 10.1 The Delivery Partner shall take out and maintain policies of insurance as are set out in Schedule 3 and shall otherwise comply with the provisions of Schedule 3. The policies of insurance set out in Schedule 3 are a minimum level only and maybe subject to higher level or additional insurance provisions requested within each individual Project Agreement.

- 10.2 For the avoidance of doubt, it is agreed that nothing in this Clause 10 or Schedule 3 shall relieve the Delivery Partner from any of his obligations and liabilities under this Deed.

11 GUARANTEE

- 11.1 This Clause 11 shall not apply. The Delivery Partner shall not be required to provide a parent company guarantee.

12 LOSS OR DAMAGE

- 12.1 If in connection with the provision of Works and/or the Delivery Partner's appointment under this Deed (and/or any Project Agreement), any Loss or Damage arises or the Delivery Partner becomes aware that any Loss or Damage has arisen, or is likely to arise, as a result of the negligence, breach of statutory or contractual duty, omission or default of or by the Delivery Partner, the Delivery Partner shall as soon as is reasonably practicable notify the Agency of the actual or likely Loss or Damage and, unless the Agency otherwise directs, use all reasonable endeavours at its own expense to prevent, limit and (to the extent it is able) make good such Loss or Damage. For the avoidance of doubt, the Delivery Partner shall not be paid for any work and/or services undertaken by it or on its behalf in making good such Loss or Damage.

- 12.2 If the Delivery Partner is unable to make good any Loss or Damage in accordance with Clause 12.1 to the reasonable satisfaction of the Agency, who shall have absolute discretion, the Delivery Partner shall indemnify and keep indemnified the Agency from and against all Loss or Damage it may suffer, or incur, including remedying the same.

- 12.3 The Agency shall as soon as reasonable notify the Delivery Partner of any claim made or threatened, or proceedings brought, against it in respect of any Loss or Damage for which the Delivery Partner may be liable under this Clause 12.

13 INDEMNITY AND EXCLUSION OF LIABILITY

- 13.1 The Delivery Partner shall indemnify and hold harmless the Agency against any liability which the Agency may incur to any person whatsoever and against any claims, demands, costs and/or expenses sustained, incurred or payable by the Agency to the extent that the same arises by reason of any breach of this Deed (or a Project Agreement) or any tortious act or omission on the Delivery Partner's part (and/or any third party to whom the Delivery Partner has subcontracted the performance of the Delivery Partner's obligations or part thereof) in the performance of the Delivery Partner's obligations under and in connection with this Deed (and any Project Agreement).
- 13.2 Subject to Clause 13.3 the Agency shall not be liable to the Development Partner or Other Body in respect of:
- (a) any breach of this Deed;
 - (b) any failure, act or omission by the Agency in relation to this Deed or the Project Tendering Procedure;
 - (c) any representation, statement or tortuous act or omission, negligence, arising under or in connection with this Deed;
 - (d) loss of profits;
 - (e) loss of business;
 - (f) depletion of goodwill or similar losses;
 - (g) loss of anticipated savings;
 - (h) loss of contract;
 - (i) misrepresentation.
- 13.3 Nothing in this Deed limits or excludes the liability of the Agency:
- (a) for death or personal injury resulting from its negligence;
 - (b) for any damage or liability incurred as a result of fraud or fraudulent misrepresentation by the Agency.

14 JOINT AND SEVERAL LIABILITY

- 14.1 Where the Delivery Partner is a joint venture consisting of two or more persons who have each entered into this Deed with the Agency each such person is jointly and severally liable to the Agency in respect of any act, omission or default arising under this Deed (and/or any Project Agreement) by any person to that joint venture and, for the avoidance of doubt, any reference to the "Delivery Partner", "parties" or "party" (when applicable to the Delivery Partner) shall refer to the parties forming the joint venture both jointly and severally and any breach of this Deed (and/or any Project

Agreement) by any one of such parties shall entitle the Agency to exercise any right, remedy or power (whether under this Deed (any Project Agreement) and/or under applicable law) against any or all parties forming the “Delivery Partner”.

15 VESTING OF MATERIAL, COPYRIGHT AND PUBLICATION OF RESULTS

- 15.1 All legal and equitable interest in any physical documents and the media upon which the same is recorded and all Intellectual Property Rights therein created by the Delivery Partner or its employees, sub-contractors and sub-Delivery Partners in performance of this Deed shall vest in the Agency; save that the Delivery Partner may retain a file copy of such records or data as may be required by the Delivery Partner as evidence or otherwise in connection with any legal or regulatory requirements or recommendations by its professional body or insurers.
- 15.2 In the event of information, data, designs, concepts, drawings, plans, inventions, sketches, specifications, concepts or records being recorded or maintained on any electronic or magnetic, optical or other machine readable medium, including but not limited to the hard disc drives of computing systems, the Delivery Partner shall upon demand deliver up all such machine readable medium together with any copies thereof. If the same shall form a fixed and irremovable part of a larger system, the Delivery Partner shall provide the Agency with a copy of all data and material so recorded and shall, upon written request to do so, delete and remove all records and data so held by the Delivery Partner and forthwith provide the Agency with written confirmation of completion of such deletion and removal.
- 15.3 By way of confirmation and perfection of legal title, the Delivery Partner agrees to assign, or procure the assignment, to the Agency for the sum of £1 all Intellectual Property Rights created or developed pursuant to this Deed including any created or developed by sub-contractors or sub-Delivery Partners commissioned to carry out the Works or any part thereof, and shall take such steps and provide such assistance as the Agency may reasonably require in defence or protection of the Intellectual Property Rights.
- 15.4 Except where it is necessary in connection with the proper provision of the Works by the Delivery Partner, the Delivery Partner shall not, without the written consent of the Agency, reproduce any material mentioned in Clause 15.1 or do any other act in respect of such material which is restricted by the Agency's Intellectual Property Rights therein.
- 15.5 The Delivery Partner shall indemnify the Agency in respect of any Loss or Damage the Agency may incur in the event that any Intellectual Property Rights assigned by this Clause 15 are found to be invalid or impaired in any way or in the event of any claim by any third party that the exercise of the rights assigned by this Clause 15 infringes the rights of such third party.

16 ASSIGNMENT

- 16.1 The Agency shall be fully entitled to assign or transfer all or any of its rights under this Deed at any time without the consent of the Delivery Partner.

16.2 The Delivery Partner shall not assign, or transfer any right or obligation under this Deed.

17 SUB-CONTRACTORS AND SPECIALIST ADVICE

17.1 Save as provided in any Project Agreement, the Delivery Partner shall not, without the prior written consent of the Nominated Officer (or such other person identified in any Project Agreement), sub-contract, whether in whole or in part, to any person its obligation to provide the Works (including any obligation to provide design, consulting or like services) to the Agency or otherwise delegate any of its obligations. However, if in relation to a specific Project, the Agency's consent is not required in certain circumstances, this will be set out in the Project Agreement.

17.2 Any sub-contracts entered into, subject to Clause 17.1, must be in writing and in a form prescribed by or otherwise approved in advance by the Agency or as provided in any Project Agreement. The Delivery Partner shall ensure that any Intellectual Property Rights designed, created, developed or made by any sub-contractor shall vest in and belong to the Agency and that the Delivery Partner's obligations under this Deed and/or any Project Agreement are appropriately reflected in any such sub-contracts.

17.3 The Delivery Partner will not obtain Counsel's or other legal opinion or otherwise engage the services of Counsel or other legal specialists on behalf of the Agency without the prior written authority of the person appointed from time to time as the Head of the Legal Works Department of the Agency and the Nominated Officer.

17.4 In relation to any sub-contracting pursuant to Clause 17.1:

- (a) the Delivery Partner shall be responsible to the Agency in law or otherwise for all such sub-contracted work and/or services and such sub-contracting shall not modify, diminish, reduce or in any other way affect the liability and/or obligations of the Delivery Partner under this Deed and/or any Project Agreement and/or at law or otherwise;
- (b) the Delivery Partner's remuneration shall not be increased by any amounts payable by the Delivery Partner to its sub-contractors; and
- (c) the Delivery Partner shall be liable to the Agency for the tortious acts and omissions of the person performing any sub-contracted work and/or services.

18 COLLATERAL WARRANTIES

18.1 At the request of the Agency from time to time, whether before or after the completion of the Works, the Delivery Partner shall in connection with any Project Agreement, execute as deeds and deliver to the Agency within seven days of any such request (or any other time period provided in the Project Agreement):

- (a) one or more deeds of warranty in the form set out in Schedule 7 with such amendments as the Agency may reasonably require (but which do not prejudice the Delivery Partner and are of a formal or technical nature) in favour of a party or parties:

- (i) providing or intending to provide finance for a Project or a part thereof;
 - (ii) taking or intending to take a lease or underlease of the premises comprising a Project or a part thereof and/or any person providing or intending to provide finance to any such lessee or under lessee;
 - (iii) purchasing or intending to purchase the Site and/or the premises comprising a Project or a part thereof and/or any person providing or intending to provide finance to any such purchaser;
 - (iv) with an interest in the Project and/or the Site or a part thereof;
- (b) in the event the Agency or its successor assigns or novates this Deed (or a Project Agreement) a deed of warranty in the form set out in Schedule 7 with such amendments as the Agency may reasonably require (but which do not prejudice the Delivery Partner and are of a formal or technical nature) in favour of the Agency.

18.2 At the request of the Agency from time to time, whether before or after the completion of the Works, the Delivery Partner shall in connection with any Project Agreement, procure that any person performing any sub-contracted work and/or services pursuant to Clause 17 shall execute as deeds and deliver to the Agency within 7 days of any such request (or any other time period provided in the Project Agreement) any or all of the following:

- (a) one or more deeds of warranty in the form set out in Schedule 7 with such amendments as the Agency may reasonably require (but which do not prejudice the Delivery Partner and are of a formal or technical nature) in favour of a party or parties:
 - (i) providing or intending to provide finance for a Project or a part thereof;
 - (ii) taking or intending to take a lease or underlease of the premises comprising a Project or a part thereof and/or any person providing or intending to provide finance to any such lessee or under lessee;
 - (iii) purchasing or intending to purchase the Site and/or the premises comprising a Project or a part thereof and/or any person providing or intending to provide finance to any such purchaser;
 - (iv) with an interest in the Project and/or the Site or a part thereof;
- (b) a deed of warranty in the form set out in Schedule 7 with such amendments as the Agency may reasonably require (but which do not prejudice the Delivery Partner and are of a formal or technical nature) in favour of the Agency.

19 NOVATION

- 19.1 At the request of the Agency from time to time, whether before or after the completion of the Works, the Delivery Partner shall execute as deeds and deliver to the Agency within seven days of any such request a deed of novation in the form set out in Schedule 8 in relation to this Deed (or a particular Project Agreement) with such amendments as the Agency may reasonably require in favour of a third party.
- 19.2 The Delivery Partner shall not novate or transfer any right or obligation under this Deed without the consent of the Agency.

20 TERMINATION AND SUSPENSION

- 20.1 In addition to the Agency's rights set out in this Clause 20, the Agency may suspend the Delivery Partner (for such period as the Agency deems reasonable) where the Agency has grounds to investigate any fraudulent activity. If the fraudulent activity is confirmed, the Agency will have the right to remove the Delivery Partner from the Panel and/or terminate this Deed. The Agency will also have the right to investigate suspected cases of fraud within the Panel if instructed to do so by Other Bodies using the Panel.
- 20.2 Without prejudice to any other right it may have to terminate this Deed (and/or any Project Agreement), the Agency may at any time, and without giving reasons, serve written notice on the Delivery Partner of its intention to terminate this Deed and this Deed shall be terminated with immediate effect upon service of such notice.
- 20.3 Where this Deed is terminated, any Project Agreement shall continue in full force and effect unless the Project Agreement is also terminated in accordance with the terms of the Project Agreement.

21 CONSEQUENCES OF TERMINATION

- 21.1 Save as expressly set out in this Deed, the Delivery Partner shall not be entitled to any compensation or loss, expense, loss of profit or damages whatsoever for suspension, postponement or cancellation of the Works or termination of this Deed.
- 21.2 The provisions of this Deed shall continue to bind each party insofar as and for as long as may be necessary to give effect to their respective rights and obligations hereunder.

22 REMUNERATION

- 22.1 The Agency shall make no payments to the Delivery Partner under this Deed.
- 22.2 The Agency shall only make payments (if any) due to the Delivery Partner in accordance with, pursuant to and under the Project Agreement.

23 CONFLICTS OF INTEREST

- 23.1 In relation to each Project Agreement, the Delivery Partner will take all reasonable steps to identify whether or not a conflict of interest arises or is likely to arise between

the Delivery Partner, the Agency and a third party or parties in relation to such Project Agreement. If a conflict does or may arise, the Delivery Partner must forthwith notify the Agency of such potential or actual conflict and propose a means by which the conflict can be avoided or minimised.

- 23.2 If a potential or actual conflict is not resolved to the satisfaction of the Agency, the Delivery Partner shall, if so directed by the Agency, cease to provide the Works in relation to which it has been instructed.
- 23.3 In the event that the Delivery Partner does cease to provide Works pursuant to this Clause 23, the Delivery Partner shall be liable for the additional cost to the Agency (if any) of having to engage an alternative delivery partner.

24 DUTY OF CONFIDENTIALITY

- 24.1 Each Party recognises that under this Deed it may receive Confidential Information belonging to the other.
- 24.2 Each Party agrees to treat all Confidential Information belonging to the other as confidential and not to disclose such Confidential Information or any other confidential information relating to the Agency or the Works arising or coming to its attention in the course of providing the Works to the Agency to any third party without the prior written consent of the other Party and agrees not to use such Confidential Information for any purpose other than that for which it is supplied under this Deed.
- 24.3 The obligations of confidence referred to in Clause 24.2 shall not apply to any Confidential Information which:
 - (a) is in, or which comes into, the public domain otherwise than by reason of a breach of this Deed or of any other duty of confidentiality relating to that information; or
 - (b) is obtained from a third party without that third party being under an obligation (express or implied) to keep the information confidential; or
 - (c) is lawfully in the possession of the other Party before the date of this Deed and in respect of which that Party is not under an existing obligation of confidentiality; or
 - (d) is independently developed without access to the Confidential Information of the other Party.
- 24.4 Each Party will be permitted to disclose Confidential Information to the extent that it is required to do so:
 - (a) to enable the disclosing party to perform its obligations under this Deed; or
 - (b) by any applicable law or by a court, arbitral or administrative tribunal in the course of proceedings before it including without limitation any requirement for disclosure under FOIA, EIR or the Code of Practice on

Access to Government Information and the Delivery Partner acknowledges that any lists or schedules provided by it outlining Confidential Information are of indicative value only and the Agency may nevertheless be obliged to disclose such confidential information ; or

- (c) by any regulatory body (including any investment exchange) acting in the course of proceedings before it or acting in the course of its duties; or
- (d) in order to give proper instructions to any professional adviser of that Party who also has an obligation to keep any such Confidential Information confidential.

24.5 The Delivery Partner shall ensure that all Confidential Information obtained from the Agency under or in connection with this Deed:-

- (a) is given only to such of its employees, professional advisors or Delivery Partners engaged to advise it in connection with this Deed as is strictly necessary for the performance of this Deed and only to the extent necessary for the performance of this Deed;
- (b) is treated as confidential and not disclosed (without the Agency's prior written approval) or used by any such staff or professional advisors or Delivery Partners otherwise than for the purposes of this Deed;
- (c) where it is considered necessary in the opinion of the Agency the Delivery Partner shall ensure that such staff, professional advisors or Delivery Partners sign a confidentiality undertaking before commencing work in connection with this Deed.

24.6 Nothing in this Clause 24 shall prevent the Agency:-

- (a) disclosing any Confidential Information for the purpose of:-
 - (i) the examination and certification of the Agency's accounts; or
 - (ii) any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Agency has used its resources; or
- (b) disclosing any Confidential Information obtained from the Delivery Partner:-
 - (i) to any other department, office or agency of the Crown; or
 - (ii) to any person engaged in providing any services to the Agency for any purpose relating to or ancillary to this Deed or any person conducting an Office of Government Commerce gateway review;
- (c) provided that in disclosing information under Clause 24.6(a) or (b) the Agency discloses only the information which is necessary for the purpose concerned and requires that the information is treated in confidence and that a confidentiality undertaking is given where appropriate.

- 24.7 Nothing in this Clause 24 shall prevent either Party from using any techniques, ideas or know-how gained during the performance of the Deed in the course of its normal business, to the extent that this does not result in a disclosure of Confidential Information or an infringement of Intellectual Property Rights.
- 24.8 The obligations in this Clause 24 will survive the expiry or termination of this Deed for a period of []² years or, in respect of any particular item of Confidential Information, until such earlier time as that item of Confidential Information reaches the public domain otherwise than by reason of a breach of this Deed or of any other duty of confidentiality relating to that information.

24A TRANSPARENCY

- 24A.1 The parties acknowledge that, except for any information which is exempt from disclosure in accordance with the FOIA, and notwithstanding any other term of this Deed, the Delivery Partner hereby consents for the Agency to publish the Deed to the general public in its entirety (but with any information, which is exempt from disclosure in accordance with the provisions of the FOIA, redacted), including from time to time agreed changes to the contract.
- 24A.2 The Agency shall be responsible for determining in its absolute discretion whether any of the content of the Deed is exempt from disclosure in accordance with the provisions of the FOIA either :
- (a) following consultation with the Delivery Partner and having taken (or not taken, as the case may be) its views into account; or
 - (b) without consulting the Delivery Partner.
- 24A.3 The Delivery Partner shall assist and cooperate with the Agency to enable the Agency to publish this Deed.

25 COMPLIANCE WITH AGENCY POLICIES, STATUTORY OBJECTS AND OTHER AGREEMENTS

- 25.1 The Delivery Partner shall comply with and shall provide the Works in accordance with and subject to all policies, regulations, procedures and guidelines which may from time to time be issued by the Agency and notified to the Delivery Partner including, without limitation, the Agency's Financial Memorandum and so far as is reasonably practicable Agency's IT and Communication Procedures.
- 25.2 The Delivery Partner shall have proper regard to the Agency's statutory objects and any legislation applicable to the Agency and shall provide the Works in such manner and at such times so as to ensure that no act, omission or default of the Delivery Partner in relation thereto shall knowingly constitute, cause or contribute to any breach by the Agency of any such statutory objects or legislation.

² This clause should consider whether the confidential information applies only during the negotiation period of the transaction. This would be the Agency's preference.

25.3 The Delivery Partner may be supplied with copies of any agreements now or hereafter made between the Agency and third parties concerning the Project. Subject to the Delivery Partner receiving in good time copies of such agreements (or of such parts of the same as shall be material) the Delivery Partner shall thereafter so perform its duties under this Deed so as not by any action or omission to cause or contribute towards a breach of the duties and obligations of the Agency under such agreements.

26 HEALTH, WELFARE AND SAFETY

26.1 The Delivery Partner will promptly notify the Agency of any health and safety hazards which may arise in connection with the performance of the Project.

26.2 If any incident giving rise to injury, or potentially likely to have caused injury, to any person or property occurring in the performance of the Project, the Delivery Partner will notify the incident to the Agency as soon as possible by way of a detailed written report.

26.3 The Delivery Partner will, so far as reasonably practicable and relevant to the provision of the Project, conserve energy, water and other resources, reduce waste and noise pollution and phase out the use of ozone depleting substances and minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment.

26.4 The Delivery Partner in pursuance of its obligations under this Deed complies at all times with the provisions of the Health & Safety at Work etc Act 1974 ("HS Act") and in particular the Construction (Design and Management) Regulations 2007 and any amendments thereto ("CDM Regulations") and the Site Waste Management Plans Regulations 2008 and any amendments thereto ("SWMP Regulations"), and insofar as they touch upon or concern the Delivery Partner's obligations under this Deed (but without prejudice to the generality of the foregoing):

- (a) where the Delivery Partner is also the principal contractor under the CDM Regulations and/or the SWMP Regulations, the Delivery Partner complies with the obligations of the principal contractor under those regulations;
- (b) where the Delivery Partner is also a "designer" as defined under the CDM Regulations, the Delivery Partner complies with the obligations of a "designer" under those regulations;
- (c) co-operates fully with the CDM Co-ordinator and the principal contractor (if it is not either or both of those people) under the CDM Regulations and the SWMP Regulations;
- (d) ensures that it allocates adequate resources to enable the Delivery Partner to comply with its obligations in this Deed, the CDM Regulations and the SWMP Regulations;
- (e) co-operates with all other persons involved in the Project as "designers" to consider the prevention of risks and protection of persons who may be exposed to risks,

and the Delivery Partner does not by an act or omission do anything that would cause the Agency to breach or be prosecuted under the HS Act, and/or the CDM Regulations and/or the SWMP Regulations.

- 26.5 The Delivery Partner shall at all times have due regard to the protection and safety of members of the public and their property, adjoining owners and occupiers and their property, visitors to the Project and their property, and compliance with the requirements of the Health and Safety Executive, the HS Act and all rules codes and regulations made thereunder (including the CDM Regulations) and all other legislation and laws relating to the health and safety of workers, and to the undertaking of construction works.

27 CORRUPTION

- 27.1 The Delivery Partner undertakes that neither it nor its employees, servants, advisers or agents shall receive or agree to receive from any person, or offer or agree to give to, or procure for, any person, any gift or consideration of any kind, as an inducement or reward for doing or forbearing to do or having done or forborne to do any action in relation to the obtaining or the execution of this Deed or any other contract to which the Agency is a party.

- 27.2 In the event of a breach of Clause 27.1, or the Delivery Partner or any person employed by it or acting on its behalf (with or without its knowledge), committing any offence under the Prevention of Corruption Act 1906 or the Prevention of Corruption Act 1916 in relation to this Deed or any other contract to which the Agency is party, the Agency shall be entitled to recover from the Delivery Partner the amount or value of any gift or consideration received, or paid or procured by the Delivery Partner, its employees, representatives or on its behalf.

- 27.3 The Delivery Partner shall not conspire with any person to do any of the acts mentioned in this Clause 27.

28 ANTI-MONEY LAUNDERING

- 28.1 The Delivery Partner will comply with any anti-money laundering legislation relevant to its business or the Works including but not limited to the Proceeds of Crime Act 2002, the Terrorism Act 2000 and the Money Laundering Regulations 2007.

- 28.2 In the event that the Delivery Partner remits monies to the Agency, the Delivery Partner will endeavour to ensure that monies are transferred from an account held with a United Kingdom or European Union authorised credit institution. In any event, the Delivery Partner will satisfy itself as to the source of the funds being remitted, and, in particular, that it does not suspect the funds to represent the proceeds of crime.

- 28.3 The Delivery Partner will respond to any request from the Agency as to the source of any monies received by the Agency and will assist the Agency in any investigations as to potential money laundering, whether on request from the Agency or any relevant law enforcement agency.

28.4 The Delivery Partner will indemnify the Agency in respect of any loss to the Agency resulting, directly or indirectly, from the Delivery Partner's failure to comply with this Clause 28.

29 REMEDIES AND WAIVERS

29.1 No delay or omission on the part of the Agency in exercising any right, power or remedy provided by law or under this Deed or any other documents referred to in it shall prejudice the rights, powers or remedies of any party contained in this Deed or operate as a waiver of any of the same.

29.2 Where, in the performance of the Works, the Delivery Partner seeks or is obliged to seek the Agency's approval or agreement to any matter or thing, the giving or confirming of the same or the omission to give or confirm the same by the Agency shall not in any way derogate from the duty or liability to the Agency by the Delivery Partner pursuant to or in connection with this Deed or otherwise and shall not diminish any obligation upon the Delivery Partner's part in respect thereof.

29.3 A waiver by the Agency of a breach of or default under any of the terms of this Deed, whether by conduct or otherwise, shall not constitute a waiver of any other previous or subsequent breach or default, shall not affect the other terms of this Deed and shall not prevent the Agency from subsequently requiring compliance with the waived obligation. Any such waiver must be in writing and may be given subject to any conditions thought fit by the Agency. Unless otherwise expressly stated, any waiver shall be effective only in the particular instance and only for the purpose for which it is given.

29.4 The single or partial exercise of any right, power or remedy provided by law or under this Deed shall not preclude or impair any other or further exercise thereof or the exercise of any other right, power or remedy.

29.5 The rights, powers and remedies provided in this Deed are cumulative and are in addition to and without prejudice to any rights or remedies provided by law.

30 SERVICE OF NOTICES

30.1 Any notice or other communication to be made or given under this Deed shall be in writing and may be delivered by hand, prepaid first class post or email.

30.2 Any such notice or other communication shall be addressed as provided in Clause 30.4, and if so addressed, shall be deemed to have been duly given or made as follows:

- (a) if delivered by hand, on the first Business Day following delivery;
- (b) if sent by prepaid first class post, on the second Business Day after posting if the address of the recipient is in the country of despatch, otherwise on the seventh Business Day after posting
- (c) if given or made by email, at the time of transmission.

provided that, where in the case of delivery by hand or email such delivery or transmission occurs either after 4.00pm on a Business Day or on a day other than a Business Day service shall be deemed to occur at 9.00am on the next following Business Day.

- 30.3 In proving service, it shall be sufficient to prove that the envelope containing the notice or other communication was properly addressed and delivered either by hand to that address or into the custody of the postal authorities as a prepaid first class post letter.
- 30.4 The relevant addressee and address of each party for the purposes of this Deed, subject to Clause 30.5, are as set out in Schedule 12.
- 30.5 Either party may notify the other party to this Deed of a change to its name, relevant addressee or address provided that such notification shall be in accordance with this Clause 30.
- 30.6 For the avoidance of doubt, where proceedings to which the Civil Procedure Rules apply have been issued, the provisions of the Civil Procedure Rules must be complied with in respect of the service of documents in connection with those proceedings and service by email is not accepted for those purposes.

31 STATUS AND TAX LIABILITIES

- 31.1 Where the Delivery Partner is an individual:
 - (a) it is the intention of the parties that the Delivery Partner shall have the status of a self-employed person and shall not be entitled to any pension, bonus or other fringe benefits from the Agency. It is agreed that the Delivery Partner shall be responsible for all income tax liabilities and National Insurance or similar contributions in respect of the Delivery Partner's remuneration; and
 - (b) on execution of this Deed, the Delivery Partner shall provide the Agency with documentary evidence of the Delivery Partner's self-employed status; such evidence to include the Schedule D number and any such other written evidence as satisfies or is requested by the Agency's tax inspector.
- 31.2 Where the Delivery Partner is not an individual the Delivery Partner shall be responsible for making appropriate PAYE deductions for tax and National Insurance contributions from the remuneration the Delivery Partner pays to its employees.
- 31.3 The Delivery Partner agrees to indemnify and keep indemnified the Agency in respect of any claims that may be made by the relevant authorities against the Agency in respect of income tax or National Insurance or similar contributions relating to the Works.

32 COMPUTER SYSTEMS ETC

- 32.1 The Delivery Partner shall comply with the provisions of Schedule 9.

33 GENERAL

- 33.1 This Deed and the other documents referred to herein constitute the entire agreement between the parties relating to the Works to be provided by the Delivery Partner and supersede any previous agreements or arrangements and undertakings between the parties in respect of the provision of Works by the Delivery Partner. The Delivery Partner acknowledges that in entering into this Deed it has not relied on any representation, warranty or undertaking save as set out in this Deed and the other documents referred to herein. Neither party shall have any claim in misrepresentation against the other save in respect of any representation, warranty or undertaking made fraudulently by the other party.
- 33.2 All additions, amendments and/or variations to this Deed must be annexed to this Deed and be in writing and shall only be binding if signed or initialled by the duly authorised representatives of the Agency and of the Delivery Partner.
- 33.3 If any provision of this Deed is held by any court or other competent authority to be void or unenforceable in whole or in part, the other provisions of this Deed and the remainder of the affected provisions shall continue to be valid.
- 33.4 The Delivery Partner shall execute and deliver all such instruments and other documents and shall take all such actions as the Agency may from time to time reasonably require in order to give full effect to the provisions of this Deed.

34 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

- 34.1 For the purposes of the Contracts (Rights of Third Parties) Act 1999 the Agency and the Delivery Partner do not intend to confer, and nothing in this Deed shall be construed as conferring, on a third party a benefit or a right to enforce a term of this Deed except that an Other Body who has entered into an Access Agreement with the Agency that has been notified to the Delivery Partner shall have the benefit of being able to enforce its rights under the terms of this Deed against the Delivery Partner.

35 JURISDICTION AND GOVERNING LAW

- 35.1 This Deed shall be governed by and construed and interpreted in accordance with English law, and the parties submit to the non-exclusive jurisdiction of the English courts.
- 35.2 Where pursuant to this Deed, or Part II of the Housing Grants, Construction and Regeneration Act 1996 (as amended from time to time) a dispute or difference is referred to adjudication, that adjudication shall be governed by and conducted in accordance with the Adjudication Rules of the Technology and Construction Solicitors Association, which are incorporated herein by reference. The decision of the adjudicator shall be binding on the parties until the dispute or difference is finally determined by an English court or a judge thereof.

IN WITNESS WHEREOF the parties have executed and delivered this agreement as a deed on the day and year first before written.

The COMMON SEAL of)
HOMES AND COMMUNITIES)
AGENCY was hereunto affixed)
in the presence of)

..... (Authorised Signatory)

[NOTE

Where the Delivery Partner is a partnership each partner to execute]

SIGNED as a deed by)
[NAME OF PARTNER])
in the presence of:)

Witness Signature

Name

Address

Occupation

[NOTE

The words to apply to each Partner]

[NOTE

Alternatively where the Delivery Partner is a limited liability company - under this form, a company seal is not required.]

EXECUTED as a deed by
[DELIVERY PARTNER] LIMITED acting by:

Director

Signature :

Name :

**Director/Company
Secretary**

Signature :

Name :

[NOTE

Alternatively where the Delivery Partner is a limited liability partnership]

EXECUTED as a deed by
[DELIVERY PARTNER] LLP

.....
[Signature of Member]
Member

.....
[Signature of Member]
Member

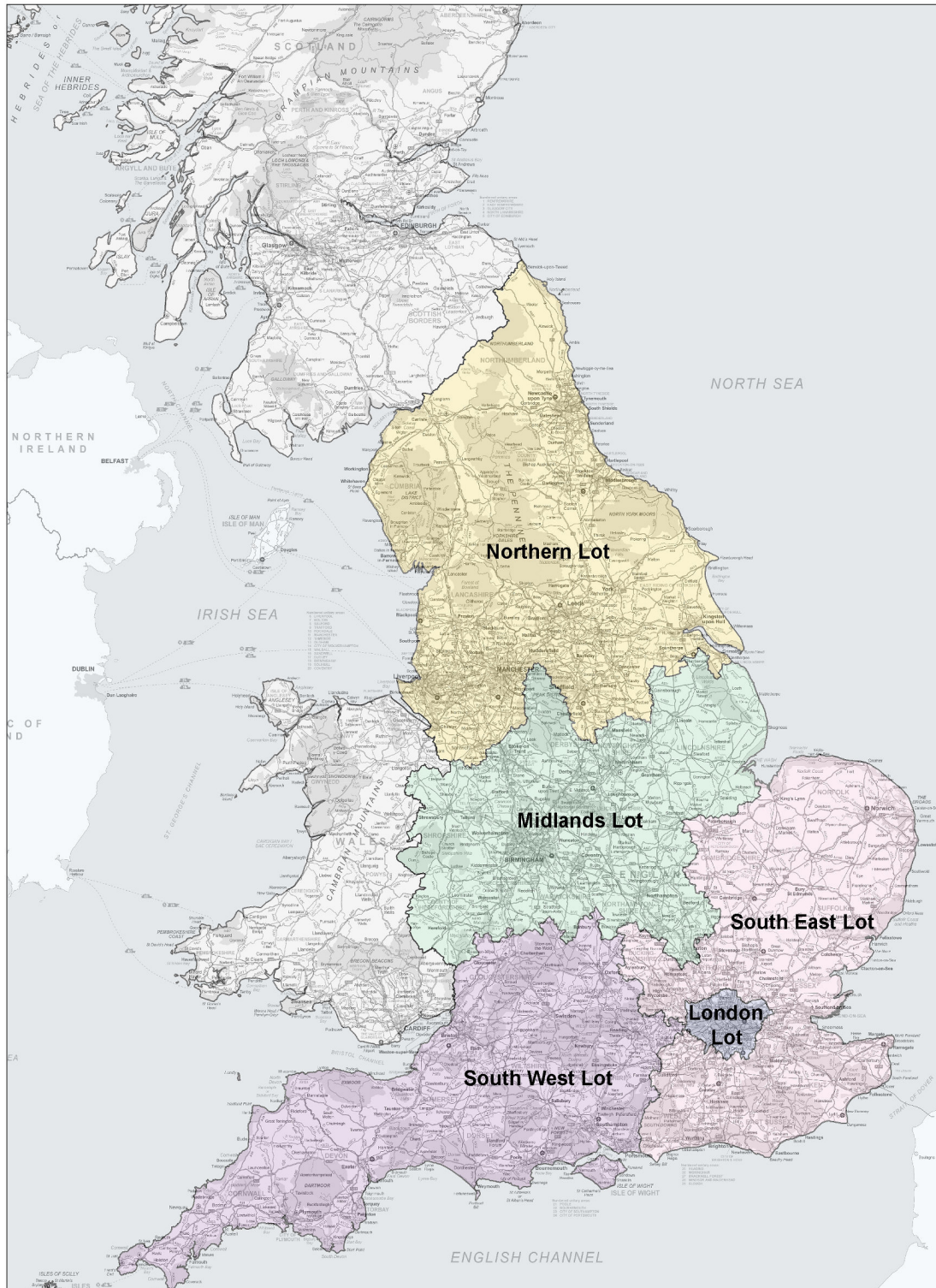
SCHEDULE 1
DELIVERY PERIOD AND GEOGRAPHICAL LOT

1. The period of 4 years from XXXX or such other period as may be determined by the Agency in accordance with this Deed.

2. The Geographical Lots shall be the:
 - northern Lot (North East, North West and Yorkshire / Humberside); and
 - the central Lot (East and West Midlands); and
 - the southern eastern Lot (East and South excluding London)
 - the south west Lot (South West)

such Lots being identified on the map appended at Appendix 1A.

APPENDIX 1A GEOGRAPHICAL LOT MAP



SCHEDULE 2 WORKS

1 General Areas of Responsibility

1.1 The Development of homes, to include all activities necessary to deliver completed homes including but not limited to :-

- raising of development finance,
- obtaining planning permission,
- supply chain management,
- design and construction of houses,
- provision of affordable housing in association with a registered provider, design and construction of infrastructure to support housing,
- sales and marketing of houses,
- aftercare and maintenance.

1.2 Specifically the following types of development are included:-

- Development and disposal of sites for residential use
- Development and disposal of mixed-use housing-led sites. Mixed-use elements to include community facilities, retail or commercial development ancillary to and in support of housing
- Refurbishment / retrofit of existing houses, residential buildings, empty homes and associated buildings
- Refurbishment, restoration, conversion of heritage or other buildings for residential use
- Demolition, site remediation and enabling works to prepare sites for residential or mixed-use development
- Design and construction of homes
- Development of Extracare accommodation
- Self-build enabling as part of a larger development
- Maintenance and site management

SCHEDULE 3 INSURANCE

- 1** Without prejudice to the Delivery Partner's obligations under this Deed or a Project Agreement or otherwise at law and in accordance with Clause 10 of this Deed, the Delivery Partner shall take out and maintain the insurances and upon the terms and conditions set out below.

- 2** The Delivery Partner undertakes and warrants that to the extent that it has not already done so³ it will forthwith procure at its own cost the following insurances to cover the Delivery Partner's obligations arising from or relating to this Deed and each Project Agreement:
 - 2.1 Employer's Liability Insurance in respect of the Delivery Partner's employees for a sum not less than £10 million (ten million pounds);

 - 2.3 Public Liability Insurance in respect of death or injury to persons and of loss or damage to property for a sum not less than £10million (ten million pounds); and

 - 2.3 Contractors All Risk insurance where required for any Project Agreement.

- 3** The insurances required under paragraph 2 above:
 - 3.1 are to be in respect of each and every claim; and

 - 3.2 are to be with a reputable and authorised insurance company carrying on insurance business in the United Kingdom.

 - 3.3 Shall not include any condition which may adversely affect the rights of the Agency to proceed directly against the insurers pursuant to and in the circumstances contemplated by the Third Parties (Rights Against Insurers) Act 1930. The Delivery Partner shall not compromise, settle or waive any claim which it may have in respect of any liability which the Delivery Partner may incur under this Deed or a Project Agreement which may in any way prejudice the ability of the Agency to recover the full amount of any claim the Agency may be lawfully entitled to. Provided that nothing in this Deed shall preclude the Delivery Partner's insurers from taking over (in the name of the Delivery Partner) the defence of any claim made by the Agency under this Deed or a Project Agreement and (in that capacity) from conducting and settling the same as they see fit.

- 4** The insurance required under paragraph 2.1 above:
 - 4.1 is not to be subject to any unusual terms or excesses having regard to the cover which is available in the insurance market to competent organisations carrying out the same or similar works and/or services as the Delivery Partner with a good claims record; and

³ Bidders need to have the EI and PI already in place

- 4.2 is to be maintained by the Delivery Partner at all times from the date of this Deed until the later of the expiry of the Delivery Period or a period of twelve years from the completion of the Works (or if the Works are not completed from the abandonment of the Works) and for so long as cover remains available in the market at commercially reasonable rates to competent organisations carrying out the same or similar works and/or services as the Delivery Partner with a good claims record.
- 5** The insurances required under paragraphs 2.2 and 2.3 above shall be maintained for the Delivery Period or for the period required by the relevant Project Agreement, whichever is the later.
- 6** The insurance required under paragraph 2.4 above shall be maintained for the Delivery Period or for the period required by the relevant Project Agreement, whichever is the later.
- 7** The Delivery Partner undertakes and warrants to the employer that prior to the execution of this Deed and each Project Agreement it has (if required by the terms of its insurance) made full disclosure to its insurers of the contents of this Deed and/or any Project Agreement, and as may otherwise be required to fulfil its obligations of good faith and full and frank disclosure to its insurers, and they have not advised the Delivery Partner that the cover required under this Deed and each Project Agreement is, or may be, declined.
- 8** The Delivery Partner shall produce to the Agency whenever requested and without delay (and in any event at least once in any twelve month period) such documentary evidence as the Agency may reasonably require and such other satisfactory evidence that the insurance required is in force, and in any event notify the Agency forthwith upon its inability to obtain cover, or the cancellation of the insurance, or its inability to renew the insurance.
- 9** In the event that that Delivery Partner fails to provide such documentary evidence required by paragraph 8 above the Delivery Partner will be made an inactive Panel Member until such time as the documentary evidence is provided.
- 10** In the event that the Delivery Partner's insurer makes payment to the Delivery Partner in respect of a claim by or on account of the Agency the Delivery Partner shall;
- 10.1 pay forthwith upon receipt, and without set-off or deduction, any money received from such insurance to the Agency, and in any event; and
- 10.2 receive and hold any such money from such insurance on trust for the Agency.
- 11** Should the Delivery Partner be in breach of any of its obligations under this Deed, without prejudice to any of its other rights, the Agency may itself insure against any risk with respect to which the breach shall have occurred and may deduct a sum or sums equivalent to the amount paid or payable in respect of premiums from any monies due or to become due to the Delivery Partner under this Deed or recover them from the Delivery Partner as a debt.

SCHEDULE 4
TEMPLATE PROJECT AGREEMENTS

1 HCA Building Lease

The HCA Building Lease as amended from time to time by the HCA which at the date of this Deed is in the form attached to this Deed at Attachment 1

2 Development Agreement

The Development Agreement as amended from time to time by the HCA which at the date of this Deed is in the form attached to this Deed at Attachment 2

3 JCT Design and Build Contract

The Joint Contracts Tribunal Design and Build Contract (2011) including the Public Sector Supplement

SCHEDULE 5
INSTRUCTION PROCEDURE

1 Instructions by the Agency

- 1.1 Following the Project Tendering Procedure if the Agency is considering instructing the Delivery Partner in relation to a particular Project then this will consist of the execution of the specific Project Agreement.
- 1.2 Execution of the specific Project Agreement
- (a) A Project Agreement will be negotiated and agreed for each individual Project as part of the Project Tendering Procedure.
 - (b) The form of the Project Agreement will vary depending on the nature of the specific Project and the Works to be carried out for that Project.
 - (c) Without limiting the generality of the above, the form of the Project Agreement may include (but not be limited to):
 - (i) HCA's Building Lease
 - (ii) Development Agreement
 - (iii) JCT Design and Build Contract
 - (d) Subject to the above, the Project Agreement shall be executed by the Agency and Delivery Partner.

2 Instructions by Other Bodies pursuant to Clause 2.7 of this Deed

- 2.1 If Other Bodies decide to instruct the Delivery Partner pursuant to Clause 2.7 of this Deed the contract for that instruction shall be in substantially the same form as set out in paragraph 1 above with the Project Agreement executed between the Other Bodies and the Delivery Partner subject to the terms of this Deed.

SCHEDULE 6
PROJECT TENDERING PROCEDURE

1 Mini competition system

- 1.1 The operation of the Panel will include a Project Tendering Procedure as an integral step between being a Panel Member and being appointed or commissioned for a specific Project. The Agency intends to introduce an electronic tendering system and the Delivery Partner will be required to use this system once introduced.
- 1.2 All capable and available Panel Members will be offered an opportunity to submit an Expression of Interest in project opportunities offered through the panel.
- 1.3 If they are interested in bidding they may be asked to respond to a Project Specific Prequalification Statement ("Sifting Brief"), generally this will include provision of information on the criteria detailed below and is designed to identify those most capable of tendering:
 - Their availability and capacity to undertake the Project
 - A short statement detailing their initial approach
 - Their understanding of local issues
 - Other issues specific to the Project
- 1.4 Sifting Brief responses will be evaluated to select the Panel Members who will be invited to tender. Evaluation criteria and weighting will be defined to suit the needs of the individual project.
- 1.5 In the event that less than 5 panel Members express an interest in bidding the Agency may choose not to undertake a sifting brief.
- 1.6 Those who have not been shortlisted and invited to tender will receive a notification of exclusion letter detailing the following:
 - Sifting Brief Evaluation Criteria
 - Their scores
 - Reasons for their scores
 - Number of successful Sifting Brief submissions
 - Total Number of Sifting Brief submissions received
 - Lowest successful score
 - Highest successful score
 - Contact details to request further information
- 1.7 Following evaluation of the Sifting Brief responses, between 3 and 5 Panel Members will be asked to provide a full Project Specific Tender, although in some circumstances the Agency reserves the right to offer the opportunity to bid to the whole Panel. Panel Members will be told how many are bidding for each Project Specific Tender to enable them to make a decision as to whether they wish to bid.

- 1.8 The Project Specific Invitation to Tender will be specific to the Project concerned and will vary from Project to Project. Full details will be provided at Project Specific Invitation to Tender stage.
- 1.9 The Project Specific Invitation to Tender and the Project Specific Tender will be used to agree the details of the scope of the Works required.

2 Project Specific Financial Appraisal

- 2.9 Financial Appraisal will be undertaken of bidders on a Project specific basis. The following information will be required from the bidders:
- (a) Project appraisal;
 - (b) Project cash flow; and
 - (c) evidence of funding.
 - (d) if deemed necessary additional financial information, i.e. management accounts
 - (e) any other information that the Business Appraisal team deems necessary for it to undertake and complete the Project specific review

If bidders are deemed to have insufficient financial capacity to undertake the project they will be unable to tender.

- 2.2 Insurances may also be checked on a Project specific basis for example Contractors All Risks Insurance will be sought on a project specific basis, additional insurances may be required in some cases.
- 2.3 Following evaluation of the Project Specific Tender, unsuccessful bidders will be sent a letter notifying them of the following:
- The name of the successful bidder
 - The standstill period end date
 - Award Criteria and sub-criteria (if applicable)
 - Their scores
 - Reasons for their scores
 - Successful bidders scores
 - Narrative to explain why the successful bidder scored higher marks including characteristics and relative advantages of the winning tender compared to their tender subject to any known confidentially/ IPR obligations)
 - Contact details to request further information

If no challenges arise within the standstill period, the contract will be awarded to the successful bidder.

3 Construction Works

3.1 In the case of construction works the Project Specific Tender will be evaluated on the following basis:

Evaluation	Weighting ITT	Project Specific Tender Weighting range
Quality		
Quality and Employer's requirements, Design approach	15%	10-25%
Project management & resources Programme Approach to gaining planning Construction approach and technical proposal Risk assessment Health & safety	35%	20-45%
Total Quality	50%	30-70%
Price Construction Costs	50%	30-70%
Total score	100%	100%

3.2 The assessment method to be used for each individual Project will be made clear as part of the Project Tendering Procedure.

3.3 Weighting of evaluation criteria may be varied to suit the nature of the individual project. The exact weighting of the evaluation criteria and subcriteria to be used will be detailed within the Project Specific Invitation to tender.

3.4 Financial evaluation at Project Specific Tender stage will focus on Build Costs. Any significant difference between the information provided in Schedule XX (DAT) and within the Project Specific Tender will need to be justified and understood.

4 Development

4.1 In the case of development works the Project Specific Tender will be evaluated on the following basis: -

Evaluation	Weighting	Project Specific Tender weighting range
Quality		
Quality and Employer's requirements Design approach	15%	10-25%
Project management & resources Programme Approach to gaining planning Construction approach and technical proposal Risk assessment Health & safety	35%	20-45%
Total Quality	50%	30-70%
Financial Offer	50%	30-70%
Sales Values Construction Costs Land Value Overheads and profit		
Total score	100%	100%

- 4.2 The assessment method to be used for each individual Project will be defined as part of the Project Tendering Procedure.
- 4.3 Weighting of evaluation criteria may be varied to suit the nature of the individual project. The exact weighting of the evaluation criteria and subcriteria to be used will be detailed within the Project Specific Invitation to tender.
- 4.4 Financial evaluation at Project Specific Tender stage will focus on the land value and overheads and profit. Build costs and sales values included within a Project Specific Tender will be reviewed with reference to information included in Schedule XX (DAT) Any significant difference in the costs, values provided within the Project Specific Tender will need to be justified and understood.

5 Transferability between Regional Lots

- 5.1 The Agency has established the Panel with Panel Members on the basis that Projects within a certain Geographical Lot will be put before the Panel Members for that Geographical Lot. There are however a number of limited circumstances where the

Agency reserves the right to put opportunities before Panel Members of another Geographical Lot either instead of or in addition to the Lot where the site is located. These limited circumstances are as follows:

- (b) Where the Project Tendering Procedure fails to identify a viable award decision;
- (c) Where the response to the mini-competition process results in interest from less than three Panel Members;
- (c) Where the Agency considers its exposure to Panel Members within the Geographical Lot to be too high or where insufficient capacity exists within the Geographical Lot;
- (d) To protect the Agency from risk of fraud.

Where a site fall on or near a boundary between two Geographical Lots

SCHEDULE 6A

TENDERED RATES

Attach completed DAT Model Summary Sheet here from ITT Case Study

SCHEDULE 7
DRAFT FORMS OF COLLATERAL WARRANTIES

The Collateral Warranty as amended from time to time by the HCA which at the date of this Deed is in the form attached to this Deed at Attachment 3

**SCHEDULE 8
DEED OF NOVATION**

The Deed of Novation as amended from time to time by the HCA which at the date of this Deed is in the form attached to this Deed at Attachment 4

SCHEDULE 9
COMPUTER SYSTEMS, DATA PROTECTION OBLIGATIONS, FREEDOM OF INFORMATION, AGENCY PROPERTY, STORAGE AND MAINTENANCE OF RECORDS

1 COMPUTER SYSTEMS

- 1.1 The Delivery Partner warrants to the Agency that all computer systems to be used by the Delivery Partner in and about the performance of its obligations under this Deed and/or the Project Agreement will protect data being or to be transferred between the parties, that the Delivery Partner will use industry recognised and regularly updated virus checking software, will use all reasonable endeavours not to transfer virus infected data, has a responsible firewall policy and such is communicated regularly to the Agency.
- 1.2 The Delivery Partner warrants to the Agency that all computer systems which will be used by the Delivery Partner in and about the performance of its obligations under this Deed are, and shall remain for the duration of the Delivery Partner Period, compatible with the Agency's systems to such a degree as reasonably required to fully and effectively transfer data and comply with recognised industry standards in this regard.
- 1.3 The Delivery Partner shall ensure, so far as it is reasonably practicable to do so, that it adheres to the Agency's IT and Communication Procedures and IT Policy Statement as issued from time to time and notified by the Agency to the Delivery Partner.

2. DATA PROTECTION OBLIGATIONS

- 2.1 For the purposes of this Schedule "**Personal Data**", "**Data Processor**", "**Data Subject**", "**Data Controller**" and "**Process**" shall have the meanings ascribed to them in the Data Protection Act 1998 (the "DPA") as amended or re-enacted from time to time.
- 2.2 The Delivery Partner warrants and represents that it has obtained all necessary registrations, notifications and consents required by the DPA to process Personal Data for the purposes of performing its obligations under this Deed and/or the Project Agreement.
- 2.3 The Delivery Partner undertakes that to the extent that the Delivery Partner and/or any of its employees receives, has access to and/or is required to process Personal Data on behalf of the Agency ("the Agency's Personal Data") for the purpose of providing the Works, it will at all times comply with the provisions of the DPA for the time being in force, including without limitation the Data Protection Principles set out in Schedule 1 of the DPA. In particular, the Delivery Partner agrees to comply with the requirements and obligations imposed on the Data Controller in the Seventh Data Protection Principle set out in the DPA namely:
 - 2.3.1 the Delivery Partner shall at all material times have in place and maintain appropriate technical and organisational security measures designed to safeguard against accidental or unlawful destruction, accidental loss,

alteration, unauthorised or unlawful disclosure of or access to the Agency's Personal Data and any person it authorises to have access to any the Agency's Personal Data will respect and maintain the confidentiality and security of the Agency's Personal Data. This includes the obligation to comply with any records management, operational and/or information security policies operated by the Agency, when providing the Works on the Agency's premises and/or accessing their manual and/or automated information systems. These measures shall be appropriate to the harm which might result from any unauthorised Processing, accidental loss, destruction or damage to the Personal Data which is to be protected;

- 2.3.2 the Delivery Partner shall only process Personal Data for and on behalf of the Agency for the purpose of performing the Works in accordance with this Deed, or as is required by law or any Regulatory Body, and where necessary only on written instructions from the Agency to ensure compliance with the DPA;
 - 2.3.3 the Delivery Partner shall allow the Agency to audit the Delivery Partner's compliance with the requirements of this Schedule on reasonable notice and/or, at the Agency's request, provide the Agency with evidence of the Delivery Partner's compliance with the obligations within this Schedule.
- 2.4 The Delivery Partner undertakes not to disclose or transfer any of the Agency's Personal Data to any third party without the prior written consent of the Agency save that without prejudice to paragraph 2.3 for this Schedule the Delivery Partner shall be entitled to disclose the Agency's Personal Data to employees to whom such disclosure is reasonably necessary in order for the Delivery Partner to carry out the Works, or to the extent required under a court order.
- 2.5 The Delivery Partner shall:
- 2.5.1 take reasonable steps to ensure the reliability of any Delivery Partner Personnel who have access to the Personal Data;
 - 2.5.2 ensure that all Delivery Partner Personnel required to access the Personal Data are informed of the confidential nature of the Personal Data and comply with the obligations set out in this Schedule;
 - 2.5.3 ensure that none of Delivery Partner Personnel publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Agency;
 - 2.5.4 provide a written description of the technical and organisational methods employed by the Delivery Partner for processing Personal Data (within the timescales required by the Agency); and
 - 2.5.5 not Process Personal Data outside the European Economic Area without the prior written consent of the Agency and, where the Agency consents to a transfer, to comply with:

- (a) the obligations of a Data Controller under the Eighth Data Protection Principle set out in Schedule 1 of the Data Protection Act 1998 by providing an adequate level of protection to any Personal Data that is transferred; and
 - (b) any reasonable instructions notified to it by the Agency.
- 2.6 The Delivery Partner agrees to use all reasonable efforts to assist the Agency to comply with such obligations as are imposed on the Agency by the DPA. For the avoidance of doubt, this includes the obligation to:
 - 2.6.1 provide to the Agency such access as may be reasonably required from time to time to all Personal Data stored or processed in the provision of the Works under this Deed and/or the Project Agreement in order to enable the Agency to meet its obligations to respond to access requests from Data Subjects under the DPA;
 - 2.6.2 provide the Agency with reasonable assistance in complying with any request for information served on the Agency under Section 7 of the DPA;
 - 2.6.3 notify the Agency (within five Working Days) about the receipt of any such request received by the Delivery Partner under Section 7 of the DPA or complaint or request relating to the Agency's obligations under the DPA and not disclose or release any information (including the Agency's Personal Data) in response to such a request or complaint without first consulting with the Agency, where the information sought relates to the Agency, its employees, agents and/or its business operations;
 - 2.6.4 provide the Agency with full co-operation and assistance in relation to any complaint of request made, including by:
 - (a) providing the Agency with full details of the complaint or request;
 - (b) complying with a data access request within the relevant timescales set out in the DPA and in accordance with the Agency's instructions;
 - (c) providing the Agency with any Personal Data it holds in relation to a Data Subject (within the timescales required by the Agency); and
 - (d) providing the Agency with any information requested by the Agency;
- 2.7 The Delivery Partner shall comply at all times with the DPA and shall not perform its obligations under this Deed in such a way as to cause the Agency to breach any of its applicable obligations under the DPA.
- 2.8 The Delivery Partner shall indemnify the Agency against all claims and proceedings and all liability, losses, costs and expenses incurred in connection therewith by the Agency as a result of the Delivery Partner's destruction of and/or damage to any of the Agency's Personal Data processed by the Delivery Partner, its employees, agents, or any breach of or other failure to comply with the obligations in the DPA and/or this Schedule by the Delivery Partner, its employees, agents or sub-contractors.

- 2.9 The Delivery Partner shall appoint and identify an individual within its organisation authorised to respond to enquiries from the Agency concerning the Delivery Partner's Processing of the Agency's Personal Data and will deal with all enquiries from the Agency relating to such Personal Data promptly, including those from the Information Commissioner and will to the extent reasonably necessary co-operate with and assist in ensuring compliance with any Data Subject rights of data access, correction, blocking, suppression or deletion relating to the Agency's Personal Data and in the defence or management of any enforcement action or assessment by the Information Commissioner or any other competent authority in relation thereto.
- 2.10 The Delivery Partner undertakes to include obligations no less onerous than those set out in this Schedule, in all contractual arrangements with agents engaged by the Delivery Partner to provide the Works to the Agency.

3 FREEDOM OF INFORMATION

- 3.1 The Delivery Partner acknowledges that the Agency any Other Body are FOIA Authorities and subject to legal duties which may require the release of information under FOIA and/or EIR and that the FOIA Authorities may be under an obligation to provide Information subject to a Request for Information.
- 3.2 The FOIA Authority in receipt of or to receive the Request for Information ("Relevant FOIA Authority") shall be responsible for determining in its absolute discretion whether:-
- 3.2.1 any Information is Exempted Information or remains Exempted Information; or
 - 3.2.2 any Information is to be disclosed in response to a Request for Information;
- and in no event shall the Delivery Partner respond directly to a Request for Information to which the Relevant FOIA Authority is required to respond to, except to confirm receipt of the Request for Information and that the Request for Information has been passed to the Relevant FOIA Authority.
- 3.3 Subject to paragraph 3.4 below, the Delivery Partner acknowledges that the Relevant FOIA Authority may be obliged under FOIA or EIR to disclose Information:-
- 3.3.1 without consulting the Delivery Partner; or
 - 3.3.2 following consultation with the Delivery Partner and having taken (or not taken, as the case may be) its views into account.
- 3.4 Without in any way limiting paragraphs 3.2 and 3.3, in the event that the Relevant FOIA Authority receives a Request for Information, the Relevant FOIA Authority will, where appropriate, as soon as reasonably practicable notify the Delivery Partner.
- 3.5 The Delivery Partner will assist and co-operate with the Relevant FOIA Authority as requested by the Relevant FOIA Authority to enable the Relevant FOIA Authority to comply with its obligations to disclose Information under FOIA and EIR within the prescribed periods for compliance and in particular without limitation will (and shall procure that its agents and sub-contractors will), at their own cost:

- 3.5.1 transfer any Request for Information received by the Delivery Partner to the Relevant FOIA Authority as soon as practicable after receipt and in any event within two Business Days of receiving a Request for Information;
 - 3.5.2 provide all such assistance as may be required from time to time by the Relevant FOIA Authority to enable the Relevant FOIA Authority to comply with its obligations to disclose Information;
 - 3.5.3 provide the Relevant FOIA Authority with any Information already in its possession or power in such form that the Relevant FOIA Authority requires within five Business Days (or such other period as the Relevant FOIA Authority may specify) of the Relevant FOIA Authority requesting that Information;
- 3.6 Nothing in this Deed will prevent the Relevant FOIA Authority from complying with any valid order, decision, enforcement or practice recommendation notice issued to it by the Information Commissioner under FOIA and / or EIR in relation to any Exempted Information.

4 AGENCY PROPERTY

- 4.1 Neither the Delivery Partner, nor any other person, shall have a lien or other rights over any Agency Property, and the Delivery Partner shall take all such steps as may be reasonably necessary to ensure that the Agency's title in the Agency Property and the existence of any such lien or other right, are brought to the notice of any other person dealing with the Agency Property.
- 4.2 Upon the Agency's written request and in any event upon termination of this Deed and/or the Project Agreement, the Delivery Partner will immediately deliver up to the Agency or the Nominated Officer, at the expense and risk of the Delivery Partner, all Agency Property, and the Delivery Partner will not, without the prior written consent of the Agency, retain any copies thereof.

5 STORAGE AND MAINTENANCE OF THE RECORDS

- 5.1 The Records (including any additions made thereto during the Delivery Period) are and shall remain Agency Property. The Delivery Partner shall have no lien or other rights in respect of the Records.
- 5.2 The Delivery Partner shall request such Records as it requires for the purposes of carrying out work and/or services in accordance with this Deed and will hold them to the order of the Agency and shall return the Records (including any additions made thereto during the Delivery Period) to the Agency on demand at any time, and in any event at the end of the Delivery Period.
- 5.3 The Delivery Partner shall keep the Records in a safe and secure place at the Delivery Partner's premises.
- 5.4 The Delivery Partner shall maintain and up-date the Records to ensure that the Records properly reflect at any given time the current state of Programmes or projects on which the Delivery Partner is involved and the Agency's title to property or other assets in the Regional Lot.

- 5.5 The Delivery Partner shall, if required, allow the Agency or any person acting on its authority access, at any time, to the Delivery Partner's premises for the purpose of inspecting or removing the Records. The Delivery Partner shall provide the Agency with such copies of the Records as may reasonably be required.
- 5.6 The Delivery Partner shall return the Records to the Agency at the end of the Delivery Period and/or on demand at any time.

**SCHEDULE 10
EXEMPTED INFORMATION**

**SCHEDULE 11
PANEL MANAGEMENT**

1 Use of the Panel by the Agency

- 1.1 This Deed will be managed by the Agency's Provider Management Team which is based in Milton Keynes. However individual Projects and Project Agreements will be the responsibility of the relevant regional or corporate team within the Agency or other public body

2 Financial Evaluation

- 2.1 Up to date financial records will be maintained on all panel members. If insufficient information is available in the public domain the Agency's Business Appraisal team may be in touch to request additional information in order to get comfort of continued good standing.
- 2.2 In respect of joint ventures the above will relate to all joint venture members.

3 Use of the Panel by Other Bodies

- 3.1 The Panel has been procured so that Other Bodies can make use of the Panel. The Agency holds a list of current Panel users and detail of all the public sector bodies that are able to use the Panel are included in Schedule 14. Where Other Bodies wish to access the Panel, an Access Agreement will be put in place between the Agency and the Other Body concerned. The Other Body will be responsible for procuring work through the Panel via mini tender using the procedure set out in Schedule 6. The Agency will not be party to that min tender nor any individual commissions and will have no liability for work procured through the Panel. On the signing of an Access Agreement by an Other Body, the Agency will make guidance available so that it can use the Panel compliantly.
- 3.2 The main conditions which Other Bodies will need to satisfy in order to have access to the Panel include:
- (a) Acceptance of the Panel as selected by the Agency and the limitation in accessing Works from Panel Members in accordance with the appointment by the Agency
 - (b) The Other Body takes full responsibility for the mini-competition, selection, appointment, management and payment of the Panel Member.
 - (c) Should disputes arise between the Other Body and the Panel Member, the Agency will not formally be involved unless the Other Body concerned feels that the issue has a fundamental impact on the Panel Member's ability or capacity to continue to provide services to the Agency and the Other Body;

- (d) The Agency reserves the right to close the Panel to Other Bodies should usage by such bodies compromise the Panel's ability to provide services to the Agency.

3.3 Panel Members will be required to provide feedback to the Agency detailing any work procured through the Panel by Other Bodies. This feedback should be provided to the Nominated Officer or his/her representative every 6 months. The feedback should be provided for each Project the Panel Member was asked to bid for and should include:

- (a) a short description of the Works procured;
- (b) the name of the Other Body and the instructing officer;
- (a) whether or not the Panel Member submitted a Project Specific Tender;
- (b) whether or not the Panel Member's bid was successful;
- (c) the value/cost of the successful bid; and
- (d) comments or feedback on the process.

4 Panel Management meetings

4.1 Once the Panel has been formed the Nominated Officer or his/her representative will convene an initial meeting where Panel management mechanisms and other process will be explained.

4.2 In order to manage the ongoing Panel arrangements it is proposed that the Nominated Officer or his/her representative will then arrange a meeting with Panel Members on an annual basis to review workload, progress partnering initiatives, share learning and information and action any matters arising. The key aim of these meetings will be to identify ways in which the Agency and Panel Members can work together better. This will include identifying ways in which the Agency can act as a better client as well as defining how the Panel Members can better enable the Agency to meet the Agency's objectives. The meetings are intended to enable sharing of information between the Agency and Panel Members and between Panel Members.

4.3 Panel Members will also be offered the opportunity of an annual individual meeting with the Nominated Officer or his/her representative or more frequently if the need arises.

5 Induction and Training

5.1 In order to provide Panel Members with the necessary understanding of the Agency, its procedures and expectations Panel Members will be required to attend an initial Panel meeting where Panel management and other processes will be explained. Failure to attend the initial meeting may affect the Panel Member's ability to tender for individual Projects.

6 Panel member performance

- 6.1 Once the Panel is in place, the Agency will operate a system of feedback on performance of Panel Members. Instructing officers will be requested to give feedback on the performance of Panel Members every 3 months, with Panel Members being able to view such feedback (if any) on their own performance.
- 6.2 In addition, Panel Members have made statements in their tenders on their approach to being an effective panel member. These statements are included in the contract with each Panel Member (at Part B, C and D below).
- 6.3 The Agency will require the Panel Member to report annually on the progress it is making against their Part B, C and D statements and the Agency may request regular meetings with a Panel Member to review this.
- 6.4 The Agency wants to ensure that good practice in effective panel operations is promoted to all Panel Members. Therefore practice developed from the Part B, C and D statements may be communicated to other Panel Members.
- 6.5 The Agency will work with Panel Members to develop a number of key performance indicators (KPIs) during the lifetime of the Panel. These will be used to demonstrate Panel effectiveness and also in the review of individual Panel Member performance. For example, the Agency wishes to collect data on the use of small and medium size enterprises (SMEs) as sub-contractors. The Panel Member tender statements will have proposed KPIs and these will be included in the Part C statements. Panel Members will be expected to collect and report on these.
- 6.6 One of the aims of the Panel is to increase the speed and efficiency of housing delivery and the Agency will work with Panel Members to help achieve this. Panel Members will have made statements on how these barriers could be overcome and these will be included in the Part D statements.
- 6.7 HCA will work with Panel Members to decide which of these housing delivery actions should be taken forward and will work with Panel Members to implement them.

7 Disclosure of information on suspected or confirmed fraudulent activities

- 7.1 The Panel Member is required to provide information to the Agency on any suspected or confirmed fraudulent activity connected in any way with any works or services procured through the Panel. This information should be provided in a timely manner.
- 7.2 In addition, Panel Members will have made statements (see Part B below) in their tenders on their approach to being an effective panel member. These statements will be included in the contract with each Panel Member (at Part B below).
- 7.3 The Agency will require the Panel Member to report annually on the progress it is making against their Part B statements and the Agency may request a meeting with a Panel Member to review this.
- 7.4 The Agency wants to ensure that good practice in effective panel operations is promoted to all Panel Members. Therefore practice developed from the Part B statements may be communicated to other Panel Members.

- 7.5 The Agency will adopt and develop a number of key performance indicators (KPIs) during the lifetime of the Panel. These will be used to demonstrate Panel effectiveness and also in the review of individual Panel Member performance. For example, the Agency wishes to collect data on the use of small and medium size enterprises (SMEs) as sub-contractors. The Panel Member tender statements will have proposed KPIs and these will be included in the Part B statements. Panel Members will be expected to collect and report on these.
- 7.6 One of the aims of the Panel is to increase the speed and efficiency of housing delivery and the Agency will work with Panel Members to help achieve this. Panel Members will have made statements on how these barriers could be overcome and these will be included in the Part B statements.
- 7.7 HCA will work with Panel Members to decide which of these housing delivery actions should be taken forward and will work with Panel Members to implement them.

8 Disclosure of information on suspected or confirmed fraudulent activities

- 8.1 The Panel Member is required to provide information to the Agency on any suspected or confirmed fraudulent activity connected in any way with any works or services procured through the Panel. This information should be provided in a timely manner.

SCHEDULE 11

PART B

PANEL MEMBER ROLE

Information from Panel Member's response to Appendix B of their Tender Response to be included in this section.

- Panel Members proposals for gathering lessons learned and providing feedback to the HCA to enable improvement of operation of DPP2.
- Panels Members proposals for promoting DPP2 to other public sector bodies.
- Panel Members proposals for sharing knowledge and learning within their own organization to ensure compliant, consistent and efficient use of DPP2.

SCHEDULE 11

PART C

COLLECTION OF KEY PERFORMANCE INDICATORS (KPIs)

Information from Panel Member's response to Appendix C of their Tender Response to be included in this section.

SCHEDULE 11

PART D

IMPROVING HOUSING DELIVERY

Information from Panel Member's response to Appendix C of their Tender Response to be included in this section.

**SCHEDULE 12
SERVICE OF NOTICES**

**Name of Party for Notification
Address**

AGENCY:

Deborah Vogwell

Homes and Communities Agency
Central Business Exchange II
414-428 Midsummer Boulevard
Central Milton Keynes
MK9 2EA

Email Contact and Address:

DELIVERY PARTNER:

SCHEDULE 13
DESIGNATED PERSON AND DEPUTY DESIGNATED PERSON

DESIGNATED PERSON: []

DEPUTY DESIGNATED PERSON: []

SCHEDULE 14 OTHER BODIES

Organisation	Web link
Central Government Departments, their agencies and non-departmental public bodies	http://www.direct.gov.uk/en/D11/Directories/A-ZOfCentralGovernment/index.htm
Defence Infrastructure Organisation	http://www.mod.uk/defenceinternet/microsite/dio/
Oil & Pipeline Agency	No web site - go through Defence Infrastructure Organisation
British Waterways	http://www.britishwaterways.co.uk/home
Department for Environment, Food and Rural Affairs	http://www.defra.gov.uk/
Environment Agency	http://www.environment-agency.gov.uk/
Natural England	http://www.naturalengland.org.uk/
Department for Transport	http://www.dft.gov.uk/
Highways Agency	http://www.highways.gov.uk/
London & Continental Railways Ltd	http://www.lcrhq.co.uk/
British Rail Board (Residuary)	http://www.brbr.co.uk/
Network Rail	http://www.networkrail.co.uk/
DVLA	http://www.dft.gov.uk/dvla/
VOSA	http://www.dft.gov.uk/vosa/
Highspeed 2	http://www.hs2.org.uk/abouths2ltd
Home Office	http://www.homeoffice.gov.uk/
Department for Culture Media and Sport	http://www.culture.gov.uk/
Judicial System (Ministry of Justice)	http://www.justice.gov.uk/
DEFRA	http://www.defra.gov.uk/
DCLG	http://www.communities.gov.uk/corporate/
The Crown Estate	http://www.thecrownestate.co.uk/

Department of Education	http://www.education.gov.uk/
Olympic Delivery Authority	http://www.london2012.com/about-us/the-people-delivering-the-games/the-olympic-delivery-authority/
Department of Energy and Climate Change (including Coal Authority)	http://www.decc.gov.uk/
Nuclear Decommissioning Authority	http://www.nda.gov.uk/
NDA Properties Ltd	
Business Innovation and Skills	http://www.bis.gov.uk/
Land Registry	http://www.landregistry.gov.uk/
Local Authorities	http://www.direct.gov.uk/en/D11/Directories/Localcouncils/AToZOfLocalCouncils/DG_A-Z_LG
A Minister of the Crown	http://www.parliament.uk/mps-lords-and-offices/government-and-opposition/1/her-majestys-government/
Royal Mail	http://www.royalmail.com/
English Heritage	http://www.english-heritage.org.uk/
Community Land Trusts	http://www.dft.gov.uk/
Olympic Park Legacy Company	http://www.legacycompany.co.uk/
GLA Group	http://www.london.gov.uk/who-runs-london/greater-london-authority/gla-functional-bodies
Department for Health Arms Length Bodies	http://www.dh.gov.uk/en/Aboutus/OrganisationsthatworkwithDH/Armslengthbodies/index.htm
NHS Property Services Ltd	
Special Health Authorities	http://www.nhs.uk/ServiceDirectories/Pages/SpecialHealthAuthorityListing.aspx
Strategic Health Authorities	http://www.nhs.uk/ServiceDirectories/Pages/StrategicHealthAuthorityListing.aspx
Primary Care Trusts	http://www.nhs.uk/ServiceDirectories/Pages/PrimaryCareTrustListing.aspx
Mental Health Trusts	http://www.nhs.uk/ServiceDirectories/Pages/MentalHealthTrustListing.aspx
Care Trusts	http://www.nhs.uk/ServiceDirectories/Pages/AmbulanceTrustListing.aspx
NHS Foundations Trusts	http://www.monitor-nhsft.gov.uk/home/about-nhs-foundation-trusts/nhs-

	foundation-trust-directory
Ambulance	http://www.nhs.uk/ServiceDirectories/Pages/AmbulanceTrustListing.aspx
Extracare Providers	http://www.housingcare.org/elderly-uk-assisted-living-extra-care-housing.aspx
NHS Hospital Trusts	http://www.nhs.uk/servicedirectories/Pages/ServiceSearch.aspx
Community Health Councils	http://www.nhs.uk/servicedirectories/Pages/ServiceSearch.aspx
Local Health Boards	http://www.nhs.uk/servicedirectories/Pages/ServiceSearch.aspx
General Practitioners	http://www.gmc-uk.org/doctors/register/LRMP.asp
Acute Trust (NHS)	http://www.nhs.uk/ServiceDirectories/Pages/AcuteTrustListing.aspx
ALMOS	http://www.almos.org.uk/member_list
Fire Authority	http://www.fireservice.co.uk/information/ukfrs
Education Establishments	http://www.education.gov.uk/edubase/search
BBC	http://www.bbc.co.uk/
	http://www.online.police.uk/forces.htm
	http://www.apa.police.uk/your-police-authority/contact-information
Police Authorities	http://www.apa.police.uk/transition-to-pccs
Ministry of Defence	http://www.mod.uk/DefenceInternet/Home/
Registered Providers / Housing Associations	http://www.tenantservicesauthority.org/server/show/nav.14538
Almshouses	http://www.almshouses.org/
A local asset backed vehicle or asset investment vehicle between a body listed and a private sector partner"	
Local Development Agencies	
LEPS	http://www.communities.gov.uk/localgovernment/local/localenterprisepartnerships/summaries/
National Parks	http://www.nationalparks.gov.uk/