

DATED _____ 20

[CONSULTANT] (1)

and

**HOMES AND COMMUNITIES AGENCY (trading
as
Homes England)** (2)

FRAMEWORK APPOINTMENT OF CONSULTANT
Relating to Strategic Research and Economic Analysis
Professional Services Framework

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THIS CONTRACT is made the _____ day of _____ 20____

BETWEEN:

- (1) [_____] [of] [(Company Number [_____]) [whose registered address is at [_____] (**Consultant**); and
- (2) **HOMES AND COMMUNITIES AGENCY (trading as Homes England)** having its principal place of business at One Friargate, Coventry, CV1 2GN (**Homes England**).

WHEREAS:

- A Homes England wishes to establish a framework (“Framework”) of consultants for the Consultancy Period in relation to strategic research and economic analysis professional services so that Homes England may from time to time entirely at its discretion call upon the consultants on the Framework to provide the Services.
- B The Consultant has tendered for the Framework.
- C Pursuant to that process, Homes England wishes to appoint the Consultant onto the Framework on the terms and conditions set out in this Contract, which the Consultant hereby accepts.

NOW IT IS HEREBY AGREED as follows:

1 DEFINITIONS AND INTERPRETATIONS

- 1.1 For the purposes of this Contract, unless the context requires otherwise, the following words and phrases shall have the following meanings:-

Area means the area or areas set out in Part 2 of Schedule 5 or as otherwise notified to the Consultant by Homes England;

Collateral Warranty means the collateral warranty in the form set out in Schedule 11;

Commencement Date means the date specified in Part 1 of Schedule 5 or, where no date is specified, the date of this Contract, the date on and from which the Consultant is appointed to provide Services in accordance with the provisions of this Contract or such other date as may be subsequently agreed between the parties in writing;

Confidential Information means information:

- (i) which is not in the public domain and which incorporates information as to Homes England's or the Consultant's business and affairs, commercial or strategic planning, intentions, modus operandi, finances;
- (ii) disclosed by Homes England or the Consultant to the other or which Homes England or the Consultant receives from any third party at the election of, or for the benefit of, the other;
- (iii) all documents, advice data, proposals, projects, plans and specifications which are created by the Consultant in the course of the Consultant's performance of the Contract or at the direction of Homes England;

Consultancy Period means the period set out in Part 1 of Schedule 5, subject to extension in accordance with Clause 3 or such other period as ends on the date of termination of this Contract;

Consultant Nominated Officer means the official of the Consultant identified in Part 3 to Schedule 5 or such other person employed in such capacity, from time to time appointed by the Consultant to act on its behalf for the purpose of managing the Contract;

Consultant's Background IPR means:

- (i) Intellectual Property Rights owned by the Consultant or its third party licensors before the Commencement Date including those subsisting in the Consultant's documents, reports, development tools, program components or standard code used in computer programming or in physical or electronic media; but excluding any Intellectual Property Rights created in performance of previous contracts with Homes England,
- (ii) Intellectual Property Rights created or developed by or on behalf of the Consultant independently of the Contract.

Consultant's Fees means the fees payable to the Consultant by Homes England under the Contract and calculated in accordance with the provisions of Schedule 2;

Consultant Personnel means all employees, agents, consultants and contractors of the Consultant and/or of any subcontractor engaged in the performance of its obligations under this Contract;

Consultant's Response to the ITT means the Consultant's financial and quality submissions, dated [REDACTED], to Homes England's invitation to tender;

Data Protection Legislation means (i) unless and until the General Data Protection Regulation (EU) 2016/679) (the **GDPR**) is no longer directly applicable in the UK, the GDPR, the Law Enforcement Directive (Directive (EU) 2016/680) and any national implementing Laws, as amended or updated from time to time (ii) the Data Protection Act 2018 to the extent that it relates to processing of personal data and privacy and any successor legislation to the GDPR and (iii) all applicable Law relating to the processing of personal data and privacy;

Deputy Designated Person means the person nominated by the Consultant and approved by Homes England in accordance with Clause 9;

Designated Person means the person nominated by the Consultant and approved by Homes England in accordance with Clause 9;

EIR means the Environmental 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;

EIR Exception means any applicable exception to the EIR;

Exempted Information means any Information that is designated as falling or potentially falling within the FOIA Exemptions or EIR Exceptions;

Expert means:

- (a) (where a dispute or difference hereunder is on a point of law or legal drafting) a Queen's Counsel practising in the area of law from which is most relevant to the point of law or legal drafting at question (as applicable) being such Counsel as

may be appointed by the Parties (acting unanimously) or, failing agreement, such Counsel as shall be appointed at the request of either or both of the Parties by or on behalf of the President for the time being (or the next most senior available officer) of the Law Society; or

- (b) (where a matter concerns a financial dispute or difference) a qualified accountant from the Institute of Chartered Accountants in England and Wales may be jointly appointed by the Parties (acting unanimously) or, failing agreement, such accountant as shall be appointed at the request of either or both of the Parties by or on behalf of the President of the ICAEW or CIPFA; or
- (c) (in the case of any other matter) such expert as shall be appointed by agreement in writing between the Parties, such experience to be in relation to dealing with disputes of a kind of those which may be referred to him or her hereunder,

and “failing agreement” shall for these purposes mean failing any such joint appointment by the Parties of an Expert within 5 Business Days of notice by one Parties to the other that the dispute or difference is to be referred to an Expert

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;

FOIA Exemption means any applicable exemption to FOIA;

Framework Members means the consultants appointed to the Framework;

Guarantee means the duly executed guarantee in the form reasonably required by Homes England provided by the Guarantor (and each one of them separately, as the case may be), to Homes England in respect of the Consultant’s obligations hereunder;

Guarantor means [] (company number []) whose registered office is at [] [and separately [] (company number []) of [] as may be applicable pursuant to Clause 11 (Guarantee)

Homes England 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 Consultant by or on behalf of Homes England; or
 - (B) which the Consultant is required to generate, process, store or transmit pursuant to this Contract; or
- (ii) any Personal Data (as defined in the Data Protection Legislation) for which Homes England is the Data Controller;

Homes England's Financial Framework means the financial memorandum or guidance relating to Homes England from time to time in force;

Homes England's Instruction Database means Homes England’s electronic instruction system (known as the Transaction Management System), or such other system as Homes England may establish, to provide instructions to its consultants;

Homes England's IT Policy Statement means the information technology and communication procedures of Homes England included at Schedule 12 or such other policy document as may be issued from time to time and notified by Homes England to the Consultant;

Homes England Property means all property of Homes England 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 Homes England or relate to its business or affairs issued to or otherwise in the Consultant's custody;

Incumbent Consultant means such other consultant who may, at or prior to the Commencement Date, be or have been engaged in the provision of services to Homes England, similar or the same as the Services to be provided by the Consultant under this Contract;

Information means in relation to:

- (i) FOIA, the meaning given under section 84 of the FOIA and which is held by Homes England 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 Homes England at the time of receipt of an RFI;

Insolvency Event means in relation to the Guarantor (or any of them, as the case may be) any of the following:

- (i) the passing of a resolution for the Guarantor's winding up (other than for the purpose and followed by a solvent reconstruction or amalgamation) or summoning a meeting to pass any such resolution; or
- (ii) the Guarantor having a petition for winding up order presented against it or a winding up order made against it by the Court; or
- (iii) the filing of a notice of intention to appoint an administrator and/or the filing of a notice of appointment of an administrator or the making of an application for an administration order and/or the making of an administration order against the Guarantor by the Court; or
- (iv) the Guarantor making a proposal for or becoming the subject of a voluntary arrangement as defined in the Insolvency Act 1986;
- (v) the Guarantor entering into any other arrangements with its creditors, or substantially all of them; or
- (vi) the Guarantor being unable to pay its debts for the purposes of Section 123 of the Insolvency Act 1986; or
- (vii) judgement being entered against the Guarantor which is the subject of enforcement proceedings by a creditor including but not limited to distress, a warrant of execution or any other enforcement process being taken against the Guarantor's assets.

Instructing Officer means an officer of Homes England appointed by Homes England to act on its behalf for the purpose of managing an Instruction or such other officer as Homes England shall direct;

Instruction means an instruction issued by Homes England using Homes England's Instruction Database and provided to the Consultant pursuant to and in accordance with Clause 2 of this Contract;

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;

Key Personnel means the persons listed in Schedule 4;

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;

Loss or Damage means any damage or destruction caused to property of, or otherwise suffered by, Homes England (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 Homes England;

Modern Slavery Policy means Homes England's modern slavery policy displayed on its website and updated and amended from time to time;

month means calendar month;

Nominated Officer means the official of Homes England identified in Part 3 to Schedule 5 or such other person employed in such capacity, from time to time appointed by Homes England to act on its behalf for the purpose of managing the Contract;

Premises means the premises from time to time occupied, owned or leased by Homes England;

Project Tendering Procedure means the tendering procedure required by Homes England from time to time for individual projects. The tendering procedure is that outlined in Schedule 7 or such other procedure from time to time prescribed by Homes England and notified to the Consultant.

Programme means a programme or timetable or extended programme or timetable, if any, prepared by Homes England and agreed by the parties to this Contract which regulates or specifies the period or periods for the provision of the Services or any part of them, for the performance of any activities ancillary to the provision of the Services or for the preparation and submission of reports in connection with the provision of the Services;

Public Sector Bodies means the public sector bodies listed in Schedule 14 (which shall include their respective successors);

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 Homes England and its activities;

Regulatory Body 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 Contract or any other affairs of Homes England and "Regulatory Body" shall be construed accordingly;

Request for Information/RFI shall have the meaning set out in FOIA or any request for information under EIR, or any request for information under EIR which may relate to an Instruction, the Contract of any business activities of Homes England,

Relevant Body means:

- (a) where a dispute or difference is on a point of law or legal drafting, the President for the time being (or the next most senior available officer) of the Law Society; or
- (b) where a matter concerns a financial dispute or difference, the President of the ICAEW or CIPFA;

Retail Price Index means the Index shown in Table 18.3 "General Index of Retail Prices" in the column headed "All Items" in the Monthly Digest of statistics published by the Office of National Statistics;

Services means the services to be provided by the Consultant in accordance with this Contract, (including but not limited to those set out in Schedule 3, any extension of variation of those Services and any other Services that Homes England may from time to time request);

Special Conditions means the special conditions (if any) applying to the provision of Services under this Contract set out in Schedule 10;

SSIP means the Safety Schemes in Procurement;

- 1.2 Unless the context requires otherwise, words importing the singular shall include the plural and vice versa, and the masculine gender shall include the feminine and neuter and vice versa.
- 1.3 References to Recitals, Clauses and Schedules are, unless otherwise stated, references to recitals to, clauses of and schedules to this Contract.
- 1.4 Any reference to a "person" shall as the context may require be construed as a reference to any individual, firm, company, body corporate, corporation, trust, government department, state, agency or any association or partnership (whether or not having a separate legal entity).
- 1.5 The expressions "Homes England" and "Consultant" shall include their respective successors and permitted assigns, any person to whom Homes England shall novate this Contract and any person to whom the Consultant shall sub-contract in accordance with Clause 33 of this Contract.
- 1.6 The headings and the use of bold type in this Contract are inserted for convenience only and shall not affect the construction or interpretation of this Contract.
- 1.7 The Schedules form part of this Contract and shall be interpreted and construed as though set out in the main body of this Contract.
- 1.8 Any reference in this Contract to the Consultant's negligence or breach of contract, default or omission in relation to the Consultant's contractual duties shall be construed as including

a reference to a breach of contract, default or omission in relation to the Consultant's contractual duties or the negligence of anyone for whom the Consultant is vicariously liable or anyone for whom the Consultant is responsible or anyone engaged by the Consultant to assist in the provision of the Services whether the Consultant is vicariously liable or not.

- 1.9 References to any Act of Parliament or statutory provision shall be deemed to include any treaty, statute, statutory instrument, directive, bye-law, instrument, order or regulation deriving authority therefrom or any other like legislation or document and any amendment, modification or re-enactment thereof.
- 1.10 Where the Consultant is a partnership (other than a limited liability partnership), then each partner shall be jointly and severally liable under this Contract and each Instruction. The term "Consultant" shall be deemed to include any additional partner or partners who may be admitted into the partnership of the Consultant during the currency of this Contract. This Contract shall not automatically terminate upon the death, retirement or reorganisation of one or more members of such partnership.
- 1.11 The Services the Consultant provides pursuant to an Instruction shall be governed by and construed in accordance with this Contract, irrespective of whether or not the Instruction specifically refers to this Contract.
- 1.12 In this Contract, references to the Contract shall also include, where appropriate, any Instruction.

2 APPOINTMENT AND GENERAL OBLIGATIONS OF THE CONSULTANT

- 2.1 The Consultant hereby agrees to provide the Services to Homes England in the Area for the duration of the Consultancy Period upon and subject to the terms and conditions of this Contract.
- 2.2 The scope of the Services set out in Schedule 3 may be extended or varied at any time by Homes England, by notice in writing served upon the Consultant, to the extent that Homes England considers such extension or variation to be necessary. In addition to the Services set out in Schedule 3 (as extended or varied), the Consultant shall provide such other services as Homes England may from time to time reasonably request.
- 2.3 Homes England may from time to time, in relation to a particular project, request the Consultant to provide certain information and/or documentation in accordance with the Project Tendering Procedure. If, following the Project Tendering Procedure, Homes England wishes to instruct the Consultant in relation to that particular project, Homes England will issue an Instruction to the Consultant.
- 2.4 All Instructions will be issued to the Consultant by Homes England in accordance with Schedule 6 or otherwise as from time to time prescribed by Homes England and notified to the Consultant and where applicable such Instruction will be accompanied by a Programme.
- 2.5 Subject to Clause 5 (Conflicts) the Consultant shall comply with any reasonable Instruction from time to time issued by Homes England relating to the provision of the Services.
- 2.6 The Consultant shall identify any deficiencies in the Instruction or information received by it from Homes England of which it is or becomes aware, and shall notify the Instructing Officer in writing of such deficiencies and seek such clarification and additional information from the Instructing Officer (or such other officer as Homes England may from time to time direct) as the Consultant may require to enable it to provide the Services to which the Instruction relates.

- 2.7 The Consultant shall not provide any Services to Homes England, unless it is in receipt of an Instruction and the Consultant's Fees included within that Instruction have been approved in accordance with Schedule 6. Any Services undertaken by the Consultant in advance of an Instruction and approval of the Consultant's Fees is undertaken at the Consultant's own risk. For the avoidance of doubt, no payments shall be made for any Services supplied by the Consultant for which no Instruction has been given by Homes England in accordance with this Contract.
- 2.8 The Consultant shall comply with and shall provide the Services in accordance with and subject to all policies, regulations, procedures and guidelines which may from time to time be issued by Homes England and notified to the Consultant including, without limitation, Homes England's Financial Framework and so far as is reasonably practicable Homes England's IT Policy Statement.
- 2.9 The Consultant shall have proper regard to Homes England's statutory objects, any Act of Parliament applicable to Homes England and any other obligations imposed upon Homes England in or by any contract, agreement or arrangement of which the Consultant has notice and shall provide the Services in such manner and at such times exercising the skill and care and diligence required by Clause 6.1 so as to ensure that no act, omission or default of the Consultant in relation thereto shall knowingly constitute, cause or contribute to any breach by Homes England of any such obligations.
- 2.10 The Consultant shall co-operate with and provide such information and assistance as any other consultant employed by Homes England may reasonably require for the proper and timely performance of the services being provided by such other consultant. The Consultant shall request from such other consultant any information and assistance as the Consultant may reasonably require in connection with the provision by it of the Services and Homes England will, if necessary, confirm to such other consultant that such information and assistance may be provided to the Consultant.
- 2.11 The Consultant shall at all times exercise due care and propriety when dealing with third parties in connection with the Contract and shall ensure that no commitments are entered into without Homes England's written consent.
- 2.12 The Consultant acknowledges and accepts that:-
- a) Homes England may appoint more than one consultant in respect of the Services;
 - b) Homes England gives no guarantee or warranty as to the amount of work, if any, and the consequent fee income, if any, which the Consultant may expect under the Contract; and
 - c) the Consultant shall have no claim at law or otherwise against Homes England if Homes England elects not to Instruct the Consultant to carry out any of the Services, or if Homes England appoints any other person to undertake work or services that the Consultant may be qualified to perform.
- 2.13 The Consultant acknowledges and accepts that:-
- a) any or all of the Public Sector Bodies may wish to (but shall have no obligation to) utilise Homes England's Strategic Research and Economic Analysis Professional Services Framework and draw down Services from the Consultant by issuing an instruction to the Consultant in accordance with Schedule 6 provided that Homes England and the relevant Public Sector Body have first entered in to an agreement by which Homes England allows the Public Sector Body to use Homes England's Strategic

Research and Economic Analysis Professional Services Framework (the "Access Agreement");

- b) any such appointment will be made on the same terms as this Contract (as amended from time to time) which shall be incorporated by reference in the relevant Public Sector Body's instruction; and
 - c) when such instruction is signed as accepted by the Consultant the terms of this Contract in so far as they relate to the provision of the Services shall be deemed to apply to such appointment and all references to Homes England in this Contract shall be interpreted as references to the relevant Public Sector Body for the purposes of its application to the appointment of the Consultant for the provision of the Services by the Consultant to the relevant Public Sector Body with any changes to be mutually agreed between the Consultant and the interested Public Sector Body except that:
 - (i) references to the Project Tendering Procedure shall be to the relevant Public Sector Body's project tendering procedure and Schedule 7 shall be deemed replaced with the same;
 - (ii) all references to Homes England's policies and officers shall be to the relevant Public Sector Body's equivalent policies and officers; and
 - (iii) all instructions to be issued by the relevant Public Sector Body shall be issued in accordance with Clause 1.2 of Schedule 6 and Clause 1.1 of Schedule 6 shall not apply to the relevant Public Sector Body .
- 2.14 In the event that a Public Sector Body issues an instruction to the Consultant in accordance with Clause 2.13 and Schedule 6 the Consultant shall notify Homes England and Homes England shall require the Public Sector Body to enter in to an Access Agreement (if it has not already done so) before the Consultant agrees to provide the Services to the Public Sector Body in accordance with Clause 2.13
- 2.15 The Consultant acknowledges that where Homes England is working in partnership with other Public Sector Bodies or investing significantly in a project, circumstances may arise where Homes England and a Public Sector Body or bodies may wish to jointly draw down services from Homes England's Strategic Research and Economic Analysis Professional Services Panel and that such appointment would be based on the existing terms of this Contract and that the Consultant so appointed may be required to provide a Collateral Warranty to Homes England's partner Public Sector Body in respect of any work instructed pursuant to this clause 2.14. In circumstances where Homes England and one or more Public Sector Bodies wish to jointly draw down Services, an Instruction will be provided by Homes England.
- 2.16 In the event that any Public Sector Body issues an instruction to the Consultant in accordance with clause 2.13, the Consultant shall perform all of its obligations under this Contract owed to Homes England under this Contract as though it had entered into this Contract with the Public Sector Body in place of Homes England.
- 2.17 In the event that Homes England issues an Instruction to the Consultant in accordance with clause 2.15, the Consultant shall perform all of its obligations owed to Homes England under this Contract as though it had entered into this Contract directly with Homes England and the relevant Public Sector Body or Public Sector Bodies.
- 2.18 At the request of Homes England from time to time, whether before or after the completion of Services it has provided pursuant to an Instruction, the Consultant shall

execute as deeds and deliver to Homes England within seven days of any such request any or all of the following:

- a) one or more deeds of warranty in the form set out in Schedule 11 with such amendments as Homes England may reasonably require in favour of a party or parties:
 - (i) providing or intending to provide finance for a Homes England project or a part thereof;
 - (ii) taking or intending to take a lease or underlease of Homes England land and/or property 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 Homes England land and/or property or a part thereof and/or any person providing or intending to provide finance to any such purchaser.
- b) a deed of warranty in the form set out in Schedule 11 in favour of Homes England with such amendments as Homes England may reasonably require.

2.19 If the Consultant fails to comply with its obligations under paragraphs 2.18 then the Consultant hereby appoints Homes England as the true and lawful attorney for and in the name of and on behalf of the Consultant pursuant to paragraphs 2.18 and to execute and perfect any such deed, and the Consultant hereby agrees to ratify and confirm whatsoever Homes England shall do or purport to do by virtue of this Power of Attorney and declares the power hereby granted to be irrevocable pursuant to section 4 of the Powers of Attorney Act 1971. Homes England shall immediately copy to the Consultant any deed which it executes and perfects on behalf of the Consultant under this paragraph 2.19.

2.20 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 Contract, the Consultant hereby consents for Homes England to publish the Contract 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.

2.21 Homes England shall be responsible for determining in its absolute discretion whether any of the content of the Contract is exempt from disclosure in accordance with the provisions of the FOIA either :

- a) following consultation with the Consultant and having taken (or not taken, as the case may be) its views into account; or
- b) without consulting the Consultant.

2.22 The Consultant shall at all times consult fully with Homes England and keep Homes England properly informed of all matters arising in relation to the Services. In addition, as and when requested by Homes England so to do, the Consultant shall liaise with, and provide all such information as Homes England may reasonably require and which is within the Consultant's possession or control to any other person notified to the Consultant by Homes England.

2.23 The Consultant shall give an early warning by notifying Homes England as soon as it becomes aware of any matter which could;

- a) Increase the Consultant's Fees (including but not limited to where additional instructions are issued by Homes England).
- b) Delay completion of the Services.
- c) Change the Programme.
- d) Impair the usefulness of the Services to Homes England or affect the work of Homes England, an Agency's contractor or another consultant.

3 TRANSITIONAL PROVISIONS

- 3.1 The Incumbent Consultant, if any, will, if instructed by Homes England, be responsible for completing the provision of services in relation to which it has been instructed by Homes England prior to the Commencement Date.
- 3.2 Unless otherwise directed by Homes England, following expiry of the Consultancy Period, the Consultant shall diligently complete the provision of Services, in accordance with the terms of this Contract, which it has been instructed by Homes England to provide prior to expiry of the Consultancy Period.

4 PERFORMANCE

- 4.1 The Consultant shall in providing the Services comply with the Special Conditions (if any).
- 4.2 During the Consultancy Period, Homes England shall, upon giving reasonable notice to the Consultant, be entitled to inspect and examine any of the work being performed as part of the provision of the Services at any reasonable time at the Consultant's premises, Homes England's premises or at such other location as Homes England reasonably requires. The Consultant shall make available all facilities as Homes England may reasonably require in connection with such inspection and examination.
- 4.3 The Consultant shall deliver all interim and draft reports and the final reports either in accordance with any Programme, this Contract or as otherwise notified by Homes England, on or before such reasonable date or dates as the Instructing Officer or Homes England officer responsible for Instructions relating to Services shall specify.
- 4.4 The Consultant shall perform all of the Services provided to Homes England in accordance with the requirements of this Contract and in compliance with all applicable Law

5 CONFLICTS OF INTEREST

- 5.1 During the Consultancy Period, the Consultant shall not provide Services to any third party in connection with a project in conflict with the business of Homes England without the prior written approval of Homes England.
- 5.2 In relation to each Instruction, the Consultant will take all reasonable steps to identify whether or not a conflict of interest arises or is likely to arise between the Consultant, Homes England and a third party or parties in relation to such Instruction. If a conflict does or may arise, the Consultant must forthwith notify Homes England of such potential or actual conflict and propose a means by which the conflict can be avoided or minimised.
- 5.3 If a potential or actual conflict is not resolved to the satisfaction of Homes England, and the prior approval of Homes England pursuant to Clause 5.1 is refused, the Consultant shall, if so directed by Homes England, cease to provide the Services in relation to which it has been instructed.

- 5.4 In the event that the Consultant does cease to provide Services pursuant to this Clause 5, the Consultant shall be liable for the additional cost to Homes England (if any) of having to engage an alternative consultant.

6 DUTY OF CARE

- 6.1 The Consultant shall provide the Services and duties hereunder in a proper and efficient manner with reasonable skill, care and diligence and in accordance with the terms and conditions of the Contract and in particular in accordance with any Instruction and where applicable the Programme.
- 6.2 The Consultant shall act at all times in good faith and in the best interests of Homes England in connection with the provision of the Services and this Contract.
- 6.3 The Consultant shall ensure that work done in connection with the provision of the Services is carried out by suitably qualified and/or competent members of the Consultant's staff experienced in work of a similar size, scope and complexity to that instructed by Homes England, under proper management and supervision by the Designated Person.

7 RELIANCE ON THE CONSULTANT'S SKILL AND CARE

- 7.1 The Consultant acknowledges and accepts that Homes England is reliant upon the Consultant's reasonable professional skill, care and judgement and will ensure that all works in respect of which the Consultant is instructed by Homes England pursuant hereto are properly, adequately and safely carried out in accordance with Homes England's requirements.
- 7.2 Where, in the performance of the Services, the Consultant seeks or is obliged to seek Homes England's approval or agreement to any matter or thing, the giving or confirming of the same by Homes England shall not in any way derogate from the duty of care owed to Homes England by the Consultant pursuant to this Contract or otherwise and shall not diminish any obligation upon the Consultant's part in respect thereof.
- 7.3 This Contract shall not negate or diminish any duty or obligation owed to Homes England by the Consultant in equity, at common law or pursuant to statute or European law.

8 NOMINATED OFFICER

The Consultant shall in the first instance direct all communications with Homes England to the Nominated Officer who shall have full authority to act on behalf of Homes England for all purposes in connection with the Contract unless otherwise notified to the Consultant by Homes England in writing save that in respect of Instructions the Consultant shall in the first instance direct all communications with Homes England to the Instructing Officer (except where such communication conflicts with the existing terms of this Contract).

9 DESIGNATED PERSON

- 9.1 The Consultant shall nominate, for Homes England's approval, two senior individuals in its employment as the Designated Person and Deputy Designated Person to direct, control and manage the overall provision of the Services by the Consultant.
- 9.2 The Designated Person (and if they shall be unavailable, the Deputy Designated Person) shall receive and act on any instructions or directions given by Homes England and shall be responsible for maintaining direct and regular contact with Homes England.
- 9.3 The Consultant shall not replace the Designated Person and/or the Deputy Designated Person without prior consultation with and written consent from Homes England.

- 9.4 Homes England may at any time request the removal and replacement of the Designated Person and/or the Deputy Designated Person in which event the Consultant shall remove the Designated Person and/or the Deputy Designated Person (as the case may be) and nominate a replacement for Homes England's approval in accordance with Clause 9.1.
- 9.5 The Designated Person and the Deputy Designated Person shall each have full authority to act on behalf of the Consultant for all purposes in connection with this Contract and Homes England shall be entitled to rely on such authority for all purposes.

10 PERSONNEL: GENERAL MATTERS

- 10.1 The Consultant shall use the Key Personnel to provide the Services.
- 10.2 The Consultant shall be responsible for ensuring that all staff who are or may at any time undertake work in relation to the Contract have the appropriate qualifications and/or experience and are properly supervised.
- 10.3 The Consultant shall not, without the prior written approval of Homes England, appoint any additional person to provide the Services, or appoint any person in place of any of the Key Personnel, the Designated Person or the Deputy Designated Person.
- 10.4 If requested by Homes England, the Consultant shall procure that Key Personnel attend transaction review meetings at no cost to Homes England during the term of the Contract and upon its conclusion.
- 10.5 The Consultant shall not, and shall take all reasonable steps to procure that no employee, servant or agent of the Consultant engaged in the provision of the Services shall, unlawfully discriminate within the meaning and scope of the provisions of the Sex Discrimination Act 1975, the Equality Act 2010 or the Human Rights Act 1998.
- 10.6 The Consultant shall indemnify Homes England against all claims and proceedings, and all costs and expenses incurred in connection therewith, made or brought against Homes England by any person in respect of loss, damage or distress caused to that person by the disclosure, loss or destruction by the Consultant, its employees, servants or agents, of any "Personal Data" as defined in the Data Protection Legislation save where Homes England has authorised such disclosure or destruction.
- 10.7 Homes England shall have the right, after discussion with the Designated Person, to require the removal of any person engaged in the performance of the Contract if, in the opinion of Homes England, that person's conduct or performance is or has been unsatisfactory. The Consultant will replace such person promptly with a person who shall previously have been approved in writing by Homes England.
- 10.8 The Consultant 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 Homes England or its representatives whilst on the Premises.

11 GUARANTEE.

- 11.1 The Consultant shall procure that, from the date of this Agreement and for such period as the Consultant has liability to Homes England under this Agreement, and/or any Instruction, Homes England is the beneficiary of a Guarantee in respect of the Consultant's obligations under this Agreement and any Instruction which Homes England makes to the Consultant.
- 11.2 The Consultant shall promptly notify Homes England in writing of an Insolvency Event in relation to the Guarantor (or any one of them as the case may be).

- 11.3 In the event that the Consultant notifies Homes England pursuant to Clause 11.2 above or Homes England is otherwise made aware of any such changes or Insolvency Event during the Consultancy Period, the Consultant shall be obliged to provide within 14 days, at its own cost, such alternative security as Homes England may require.
- 11.4 It shall be a condition precedent to Homes England giving any Instruction that the Consultant procures and maintains the Guarantee pursuant to Clause 11.1 or such alternative security as Homes England may require pursuant to Clause 11.3

12 VESTING OF MATERIAL, COPYRIGHT AND PUBLICATION OF RESULTS

- 12.1 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 Consultant or its employees, sub-contractors and sub-consultants in performance of the Contract shall vest in Homes England; save that the Consultant may retain a file copy of such records or data as may be required by the Consultant as evidence or otherwise in connection with any legal or regulatory requirements or recommendations by its professional body or insurers.
- 12.2 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 Consultant 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 Consultant shall provide Homes England 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 Consultant and forthwith provide Homes England with written confirmation of completion of such deletion and removal.
- 12.3 By way of confirmation and perfection of legal title, the Consultant agrees to assign, or procure the assignment, to Homes England for the sum of £1 all Intellectual Property Rights created or developed pursuant to the Contract including any created or developed by sub-contractors or sub-consultants commissioned to carry out the Services or any part thereof and shall take such steps and provide such assistance as Homes England may reasonably require in defence or protection of the Intellectual Property Rights.
- 12.4 Save as otherwise agreed in the Special Conditions and except where it is necessary in connection with the proper provision of the Services by the Consultant, the Consultant shall not, without the written consent of Homes England, reproduce any material mentioned in Clause 12.1 or do any other act in respect of such material which is restricted by Homes England's Intellectual Property Rights therein.
- 12.5 The Consultant shall indemnify Homes England in respect of any Loss or Damage Homes England may incur in the event that any Intellectual Property Rights assigned by this Clause 12 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 11 infringes the rights of such third party.
- 12.6 Notwithstanding the remainder of this Clause 12, the Consultant's Background IPR shall at all times belong to the Consultant or its third party licensors. The Consultant hereby grants to Homes England an irrevocable transferable, non-exclusive world-wide royalty-free licence to use any Consultant's Background Intellectual Property that is provided to Homes England or used by the Consultant as part of its provision of Services under this Agreement.

13 DUTY OF CONFIDENTIALITY

- 13.1 Each Party recognises that under this Contract it may receive Confidential Information belonging to the other.
- 13.2 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 Homes England or the Services arising or coming to its attention in the course of providing the Services to Homes England 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 Contract.
- 13.3 The obligations of confidence referred to in Clause 13.2 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 Contract 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 Contract 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.
- 13.4 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 Contract; 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 or EIR and the Consultant acknowledges that any lists or schedules provided by it outlining Confidential Information are of indicative value only and Homes England 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.
- 13.5 The Consultant shall ensure that all Confidential Information obtained from Homes England under or in connection with this Contract:-
- a) is given only to such of its employees, professional advisors or consultants engaged to advise it in connection with this Contract as is strictly necessary for the

performance of this Contract and only to the extent necessary for the performance of this Contract;

- b) is treated as confidential and not disclosed (without Homes England's prior written approval) or used by any such staff or professional advisors or consultants otherwise than for the purposes of this Contract;
- c) where it is considered necessary in the opinion of Homes England the Consultant shall ensure that such staff, professional advisors or consultants sign a confidentiality undertaking before commencing work in connection with this Contract.

13.6 Nothing in this Clause 13 shall prevent Homes England:-

- a) disclosing any Confidential Information for the purpose of:-
 - (i) the examination and certification of Homes England'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 Homes England has used its resources; or
- b) disclosing any Confidential Information obtained from the Consultant:-
 - (i) to any other department, office or agency of the Crown; or
 - (ii) to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;
 - (iii) on a confidential basis to a proposed successor body in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under this Contract,
 - (iv) to any person engaged in providing any services to Homes England for any purpose relating to or ancillary to this Contract or any person conducting a Government review;
- c) provided that in disclosing information under Clause 13.6 b) (i), (ii), (iii) or (iv) Homes England 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.

13.7 During the Consultancy Period and at anytime after termination of the Consultant's appointment under this Contract, (other than with the prior written permission of Homes England's General Counsel) the Consultant shall not:

- a) publish any statement, orally or in writing, relating to Homes England which might damage Homes England's reputation or that of any of its officers or employees;
- b) make any communication to the press or any journalist or broadcaster touching or concerning the Contract or the performance of it by either party without the prior written approval of the Nominated Officer save where such disclosure is in the public interest.

13.8 Nothing in this Clause 13 shall prevent either Party from using any techniques, ideas or know-how gained during the performance of the Contract 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.

14 HOMES ENGLAND DATA

- 14.1 The Consultant shall not delete or remove any proprietary notices contained within or relating to Homes England Data.
- 14.2 The Consultant shall not store, copy, disclose, or use Homes England Data except as necessary for the performance by the Consultant of its obligations under this Contract or as otherwise expressly authorised in writing by Homes England.
- 14.3 To the extent that Homes England Data is held and/or processed by the Consultant, the Consultant shall supply that Homes England Data to Homes England as requested by Homes England in the format specified from time to time.
- 14.4 The Consultant shall take responsibility for preserving the integrity of Homes England Data and preventing the corruption or loss of Homes England Data.
- 14.5 The Consultant shall perform secure back-ups of all Homes England Data and shall ensure that up-to-date back-ups are stored off-site. The Consultant shall ensure that such back-ups are available to Homes England at all times upon request.
- 14.6 The Consultant shall ensure that any system on which the Consultant holds any Homes England Data, including back-up data, is a secure system that complies with the Security Policy.
- 14.7 If at any time the Consultant suspects or has reason to believe that Homes England Data has or may become corrupted, lost or sufficiently degraded in any way for any reason, then the Consultant shall notify Homes England immediately and inform Homes England of the remedial action the Consultant proposes to take.

15 PROVISION OF INFORMATION

- 15.1 Homes England shall make available free of charge such information in its possession as the Consultant may reasonably require for the proper performance of its duties under the Contract.
- 15.2 The Consultant shall not be responsible for any delay in the provision of the Services to the extent that the same results from any failure or delay by Homes England to supply information in compliance with Clause 15.1.

16 INSURANCE

- 16.1 The Consultant shall take out and maintain policies of insurance as are set out in Schedule 1 and where an Instruction requires a higher level of insurance than that specified in Schedule 1, take out and maintain policies of insurance as required by the Instructing Officer. The Consultant agrees to maintain such insurance at all times until 12 years after expiry of the Consultancy Period (or, if later, 12 years after the date upon which the Consultant completes the provision of Services pursuant to an Instruction), provided that such insurance continues to be available at commercially reasonable rates and upon commercially reasonable terms which it would not be imprudent for the Consultant to accept having regard (inter alia) to the premium charged, the terms proposed and the duties undertaken by the Consultant in relation to any task or works in respect of which the Consultant is instructed pursuant hereto.

- 16.2 The Consultant shall, if required by Homes England, produce to it documentary proof that insurance satisfying the requirements of Clause 16.1 is being maintained by it.
- 16.3 If the Consultant becomes in default of its obligations to insure or continue to insure as set out in this Clause 16, the Consultant shall pay or allow to Homes England on demand any sum of money reasonably expended by Homes England to effect insurance against any risk or amount in respect of which the default shall have occurred and Homes England may deduct such sum (or part thereof) from any sums due or to become due to the Consultant under this Contract.
- 16.4 The Consultant warrants to Homes England that prior to the execution of this Contract it has (if required by the terms of its insurance) made full disclosure to its insurers of the existence and contents of this Contract, 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 Consultant that the cover required under this Contract is, or may be, declined.
- 16.5 Any insurance required to be taken out by the Consultant under this Contract shall not include any condition which may adversely affect the rights of Homes England to proceed directly against the insurers pursuant to and in the circumstances contemplated by the Third Parties (Rights Against Insurers) Act 2010. The Consultant shall not compromise, settle or waive any claim which it may have under any insurance policy taken out in accordance with this Contract, in respect of any liability which the Consultant may incur under this Contract, which may in any way prejudice the ability of Homes England to recover the full amount of any claim Homes England may be lawfully entitled to.
- 16.6 For the avoidance of doubt, it is agreed that nothing in this Clause 16 shall relieve the Consultant from any of his obligations and liabilities under the Contract.

17 SAFETY SCHEMES IN PROCUREMENT (SSIP)

- 17.1 Except as set out in clause 17.3, the Consultant shall remain registered and compliant with a pre-qualification scheme which is a member of SSIP at all times during the Consultancy Period.
- 17.2 The Consultant shall, if required by Homes England, produce to it documentary evidence that registration with a SSIP approved scheme is being maintained by it.
- 17.3 Where the Consultant is not a member of SSIP and does not become a member of SSIP during the Consultancy Period, it shall maintain the arrangements set out in section 8.7 of the Form B2 (Suitability Assessment) of the Consultant's Response to ITT at all times during the Consultancy Period.
- 17.4 For the avoidance of doubt, it is agreed that nothing in this Clause 17 shall relieve the Consultant from any of his obligations and liabilities under this Contract.

18 MODERN SLAVERY

- 18.1 The Consultant shall:
- a) comply with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force including but not limited to the Modern Slavery Act 2015; and
 - b) comply with the Modern Slavery Policy; and

- c) not engage in any activity, practice or conduct that would constitute an offence under Sections 1, 2 or 4 of the Modern Slavery Act 2015 if such activity, practice or conduct were carried out in the UK.

18.2 The Consultant represents, warrants and undertakes that it conducts its business in a manner that is consistent with the Modern Slavery Policy.

18.3 Without prejudice to the general application of clauses 18.1 and 18.2 above, if in the course of providing the Services the Consultant becomes aware of, or has any concerns that, a person or persons may be being held in slavery or servitude or are otherwise being required to perform forced or compulsory labour, it shall immediately report such concerns to Homes England's Head of Financial Crime Compliance.

19 INDEMNITY

The Consultant shall indemnify and hold harmless Homes England against any liability which Homes England may incur to any person whatsoever and against any claims, demands, costs and/or expenses sustained, incurred or payable by Homes England to the extent that the same arises by reason of any breach of this Contract or an Instruction or any tortious act or omission on the Consultant's part (and/or any third party to whom the Consultant has subcontracted the performance of the Consultant's obligations or part thereof) in the performance of the Consultant's obligations under and in connection with this Contract and any Instruction.

20 LIABILITY OF HOMES ENGLAND

20.1 Subject to clause 20.2, Homes England shall not be liable to the Consultant or Public Sector Bodies in respect of:

- a) any breach of this contract by the Consultant and/or a Public Sector Body;
- b) any failure, act or omission by Homes England in relation to this contract or the project tendering procedure;
- c) any representation, statement or tortious act or omission, or negligence, arising under or in connection with this contract;
- 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.

20.2 Nothing in this contract limits or excludes the liability of Homes England for:

- a) death or personal injury resulting from its negligence;

- b) any damage or liability incurred as a result of fraud or fraudulent misrepresentation by Homes England.

21 LOSS OR DAMAGE

- 21.1 If in connection with the provision of Services and/or the Consultant's appointment under the Contract, any Loss or Damage arises or the Consultant 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 Consultant, the Consultant shall as soon as is reasonably practicable notify Homes England of the actual or likely Loss or Damage and, unless Homes England 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 Consultant shall not be paid for any work undertaken by it or on its behalf in making good such Loss or Damage.
- 21.2 If the Consultant is unable to make good any Loss or Damage in accordance with Clause 21.1 to the reasonable satisfaction of Homes England, who shall have absolute discretion, the Consultant shall indemnify and keep indemnified Homes England from and against all Loss or Damage it may suffer, or incur, including remedying the same.
- 21.3 No liability shall attach to the Consultant pursuant to Clause 21.1 and/or Clause 21.2 to the extent that:
 - a) the Loss or Damage would not have arisen but for the neglect or default by Homes England, or any other consultant or agent appointed by Homes England from whom Homes England is able to recover in full in respect of such Loss or Damage;
 - b) the circumstances giving rise to the Loss or Damage are outside the reasonable control of, and not reasonably foreseeable by, the Consultant;
 - c) the Loss or Damage is fully mitigated by Homes England.
- 21.4 Clause 21.3 shall not operate so as to limit the Consultant's liability in connection with Loss or Damage relating to personal injury to or the death of any persons caused or contributed to by the Consultant, its employees, agents or servants or any sub-contractors or sub-consultants engaged by the Consultant and/or any of their employees, servants or agents.
- 21.5 Homes England shall forthwith notify the Consultant of any claim made or threatened, or proceedings brought, against it in respect of any Loss or Damage for which the Consultant may be liable under this Clause 21.
- 21.6 No action or proceedings under or arising out of or in connection with this Contract whether in contract or in tort, negligence, for breach of statutory duty or otherwise shall be commenced against the Consultant after the expiry of 12 years after the completion of the Services or such earlier dates as may be prescribed by law.

22 REMEDIES AND WAIVERS

- 22.1 No delay or omission on the part of Homes England in exercising any right, power or remedy provided by law or under this Contract or any other documents referred to in it shall prejudice the rights, powers or remedies of any party contained in this Contract or operate as a waiver of any of the same.
- 22.2 A waiver by Homes England of a breach of or default under any of the terms of this Contract, 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 Contract and shall not prevent Homes England 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 Homes England. Unless otherwise expressly stated, any waiver shall be effective only in the particular instance and only for the purpose for which it is given.

- 22.3 The single or partial exercise of any right, power or remedy provided by law or under this Contract shall not preclude or impair any other or further exercise thereof or the exercise of any other right, power or remedy.
- 22.4 The rights, powers and remedies provided in this Contract are cumulative and are in addition to and without prejudice to any rights or remedies provided by law.

23 TERMINATION AND SUSPENSION OF THE CONTRACT

- 23.1 Without prejudice to any rights and remedies which Homes England may possess whether by virtue of the terms of this Contract and/or at law or otherwise Homes England may, by notice in writing, at any time, notify the Consultant of a failure to perform, or of its election to suspend, postpone or cancel any work being carried out by the Consultant pursuant to the Contract either as a whole or in relation to any individual task or matter (including for the avoidance of doubt any Instruction) in respect of which the Consultant may have been instructed.
- 23.2 Where the Consultant has been notified in accordance with Clause 23.1 of its failure to perform, Homes England may, without prejudice to any other remedy it may have:-
- a) request from the Consultant that, at the Consultant's own expense and as specified by Homes England, it reschedules and carries out the work in a manner satisfactory to Homes England, which may include rectifying work done or repeating the provision of any of the Services within such period as Homes England may specify by such written notice; or
 - b) withhold or reduce payments to the Consultant, as Homes England shall deem appropriate in each particular case.
- 23.3 If the provision of Services is suspended, postponed or cancelled in accordance with Clause 23.1 for longer than 6 months, the Consultant may request in writing that the provision of those Services by it be resumed and, unless written instructions to resume are given by Homes England to the Consultant within 28 days after such request, the employment of the Consultant in relation to the suspended, postponed or cancelled Services shall determine upon expiry of such 28 day period.
- 23.4 Without prejudice to any other right it may have to terminate this Contract and/or any Instruction, Homes England may at any time, and without giving reasons, serve written notice on the Consultant of its intention to terminate the Contract and/or any Instruction, and the Contract and/or any Instruction shall be terminated with immediate effect upon service of such notice.
- 23.5 Subject to the provisions of Clause 23.1 the Consultant may, upon giving reasonable notice to Homes England serve written notice on Homes England of its intention to terminate the Contract and the Contract shall, upon expiry of such notice be terminated.

24 CONSEQUENCES OF TERMINATION

- 24.1 In the event that this Contract and/or any Instruction is terminated, or that the provision of Services by the Consultant is suspended, postponed or cancelled by Homes England, the following provisions shall apply:

- a) the Consultant shall take immediate steps to bring an end to the Services concerned or, as Homes England may direct, complete the Services concerned in an orderly manner, but with all reasonable speed and economy and shall within such period from the date of such termination, suspension, postponement or cancellation as Homes England shall specify deliver to Homes England all Homes England Property in its possession or under its control or any material in respect of which the Intellectual Property Rights are vested in a form usable by Homes England together with all correspondence and documentation in the possession or control of the Consultant relating to the Services. The Consultant hereby relinquishes any lien on such material to which it may be entitled;
- b) any sum or amount due or accruing from the Consultant to Homes England may be set off against any sum or amount due or accruing from Homes England to the Consultant as Homes England in its absolute discretion considers reasonable and appropriate in the circumstances;
- c) the Consultant shall submit an invoice to Homes England within 28 days of such termination, suspension, postponement or cancellation setting out its bona fide assessment of its fees up to and including the date of termination, suspension, postponement or cancellation together with a narrative. Such fees may include, at the discretion of Homes England, all reasonable costs necessarily and properly incurred by the Consultant in relation to the orderly cessation of the provision of the Services;
- d) Homes England may make all arrangements which are in its view necessary to procure the orderly completion of the Services including entering into similar contractual arrangements to those set out in this Contract with a third party;
- e) where the Contract has been terminated by reason of failure to perform as specified in Clause 21.1 and the total costs reasonably and properly incurred by Homes England by reason of such arrangements exceed the amount that would have been payable to the Consultant for the completion of the Services which the Consultant had been instructed to provide the excess shall be recoverable from the Consultant and may be set off against any amount withheld by Homes England under clause 24.1(b) or otherwise;
- f) Homes England shall pay the Consultant's invoice in accordance with Clause 25 and Schedule 2. In the event that the suspended, postponed or cancelled Services are resumed Homes England's payment pursuant hereto shall be regarded as payment on account of the Consultant's fees payable in respect of the resumed Services.

24.2 Save as expressly set out in this Contract, the Consultant shall not be entitled to any compensation or loss and/or expense, loss of profit or damages whatsoever for suspension, postponement or cancellation of the Services or termination of the Contract and/or any Instruction.

24.3 The provisions of this Contract 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.

25 REMUNERATION

25.1 Homes England shall pay the Consultant's Fees in consideration for the complete and satisfactory provision of the Services.

25.2 The Consultant's Fees shall be determined and shall be payable in accordance with Schedule 2. The Consultant shall comply with Schedule 2 and acknowledges that invoices

in respect of individual Instructions will only be processed for payment by Homes England where:

- a) There exists a current Instruction on the Instruction Database;
- b) A purchase order has been raised via the Instruction Database;
- c) The current Instruction is quoted on the invoice; and
- d) Homes England has been invoiced in accordance with Part 5 of Schedule 2.

26 CORRUPTION

- 26.1 The Consultant 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 the Contract or any other contract to which Homes England is a party.
- 26.2 In the event of a breach of Clause 26.1, or the Consultant or any person employed by it or acting on its behalf (with or without its knowledge), committing any offence under the Bribery Act 2010 in relation to the Contract or any other contract to which Homes England is party, Homes England shall be entitled to recover from the Consultant the amount or value of any gift or consideration received, or paid or procured by the Consultant, its employees, representatives or on its behalf.
- 26.3 The Consultant shall not conspire with any person to do any of the acts mentioned in this Clause 26.

27 ANTI-MONEY LAUNDERING

- 27.1 The Consultant will comply with any anti-money laundering legislation relevant to its business or the Services including but not limited to the Proceeds of Crime Act 2002, the Terrorism Act 2000 and the Money Laundering Regulations 2007.
- 27.2 In the event that the Consultant remits monies to Homes England, the Consultant will endeavour to ensure that monies are transferred from an account held with a UK or EU authorised credit institution. In any event, the Consultant 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.
- 27.3 The Consultant will respond to any request from Homes England as to the source of any monies received by Homes England and will assist Homes England in any investigations as to potential money laundering, whether on request from Homes England or any relevant law enforcement agency.
- 27.4 The Consultant will indemnify Homes England in respect of any loss to Homes England resulting, directly or indirectly, from the Consultant's failure to comply with this Clause 27.

28 ANTI-BRIBERY

- 28.1 The Consultant shall:
 - a) comply with all applicable laws, statutes, regulations, and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 (**Requirements**);

- b) not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;
 - c) comply with Homes England's Ethical, Anti-bribery and Anti-corruption Policies a copy of which is available here: <http://www.gov.uk/government/collections/ethical-policies>, in each case as Homes England or the relevant industry body may update from time to time (**Relevant Policies**).
 - d) have and shall maintain in place throughout the term of this Contract its own policies and procedures, including but not limited to adequate procedures under the Bribery Act 2010, to ensure compliance with the Requirements, the Relevant Policies and clause 28.1(b), and will enforce them where appropriate;
 - e) immediately report to Homes England's Chief Risk Officer any request or demand for any undue financial or other advantage of any kind received by the Consultant in connection with the performance of this agreement;
 - f) if required by Homes England, produce a written certificate to it signed by an officer of the Consultant, confirming compliance with this clause 28 by the Consultant and all persons associated with it under clause 28.2. The Consultant shall provide such supporting evidence of compliance as Homes England may reasonably request.
- 28.2 The Consultant shall ensure that any person associated with the Consultant who is performing services in connection with this Contract does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on the Consultant in this clause 28 (**Relevant Terms**). The Consultant shall be responsible for the observance and performance by such persons of the Relevant Terms, and shall be directly liable to Homes England for any breach by such persons of any of the Relevant Terms.
- 28.3 Breach of this clause 28 shall entitle Homes England, forthwith and without any liability to the Consultant, to terminate this Contract.
- 28.4 For the purpose of this clause 28, the meaning of adequate procedures and foreign public official and whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act), sections 6(5) and 6(6) of that Act and section 8 of that Act respectively. For the purposes of this clause 28 a person associated with the Consultant includes but is not limited to any subcontractor of the Consultant.

29 DISPUTE RESOLUTION

29.1 All disputes and differences arising out of or in connection with this Contract including in relation to any non-contractual obligation (a **Dispute**) shall be resolved pursuant to the terms of this clause 29.

29.2 Negotiation

- a) In the event that a party considers that a Dispute exists, such party shall serve a notice upon the other party (a **Notice of Dispute**) giving brief details of the Dispute and in the first instance the Consultant Nominated Officer and Agency Nominated Officer (**Nominated Officers**) shall use their reasonable endeavours to resolve such Dispute amicably and in good faith and in accordance with this clause 29.2.
- b) If there has been no resolution of the dispute within 30 days of the referral to Nominated Officers, the Dispute shall be referred to chief executive of the Consultant and the chief executive officer of Homes England (together, the **Chief Executives**).
- c) The Chief Executives shall meet within ten (10) Working Days (or such other longer period not exceeding twenty (20) Working Days as the parties may agree) of such referral to attempt to resolve the Dispute. Any unanimous resolution of the Chief Executives shall be recorded in writing and signed by them and shall be final and binding unless the parties agree otherwise.

29.3 Referral to Expert

- a) If there has been no resolution of the dispute within twenty (20) days of the referral to Chief Executives either Party may give to the other written notice referring the dispute to a suitably qualified independent Expert for determination in accordance with this clause.
- b) The Expert shall be required to prepare a written decision and give notice (including a copy) of the decision to the Parties within a maximum of three months of the matter being referred to the Expert.
- c) If the Expert dies or becomes unwilling or incapable of acting, or does not deliver the decision within the time required by this clause then:
 - (i) either Party may apply to the Relevant Body to discharge the Expert and to appoint a replacement Expert with the required expertise; and
 - (ii) this clause shall apply in relation to the new Expert as if he were the first Expert appointed.
- d) All matters under this clause must be conducted, and the Expert's decision shall be written, in the English language.
- e) The Parties shall be entitled to make submissions to the Expert (including oral submissions) and shall provide (or procure the provision to) the Expert with such assistance and documents as the Expert reasonably requires for the purpose of reaching a decision.
- f) To the extent not provided for by this clause, the Expert may in his reasonable discretion determine such other procedures to assist with the conduct of the determination as he

considers just or appropriate, including (to the extent he considers necessary) instructing professional advisers to assist him in reaching his determination.

- g) Each Party shall (with reasonable promptness) supply each other with all information and give each other access to all documentation and personnel as the other Party reasonably requires to make a submission under this clause.
- h) The Expert shall act as an expert and not as an arbitrator. The Expert shall determine the matter in dispute (which may include any issue involving the interpretation of any provision of this Contract, his jurisdiction to determine the matters and issues referred to him or his terms of reference). The Expert's written decision on the matters referred to him shall be final and binding on the parties in the absence of manifest error or fraud.
- i) Each Party shall bear its own costs in relation to the reference to the Expert. The Expert's fees and any costs properly incurred by him in arriving at his determination (including any fees and costs of any advisers appointed by the Expert) shall be borne by the Parties equally or in such other proportions as the Expert shall direct.

29.4 Submission to courts

- a) Notwithstanding the foregoing, at any time Homes England, at its sole discretion, may choose to submit any Dispute before the courts of the exclusive jurisdiction of the courts of England and Wales. If a process pursuant to either clause 29.2 and/or 29.3 has been initiated, at the time that Homes England chooses to submit the matter to the courts of England and Wales, then it is agreed that such process is to be immediately discontinued without any binding determination being made. Each party hereby irrevocably submits to the exclusive jurisdiction of the courts of England and Wales.

30 SERVICE OF NOTICES

- 30.1 Any notice or other communication to be made or given under this Contract shall be in writing and may be delivered by hand, or prepaid first class post.
- 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.
- 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 Contract, subject to 30.5, are as set out in Part 3 of Schedule 5.
- 30.5 Either party may notify the other party to this Contract 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 purposes of this Clause 30, "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.

31 ACCOUNTS, DOCUMENTS ETC

- 31.1 During the Consultancy Period and for a period of 2 years after the date of expiry of the Consultancy Period or termination of the Contract, if requested by Homes England, the Consultant shall at its own cost retain at premises approved by Homes England such accounts, documents (including working documents) and records as Homes England or the Nominated Officer may request.
- 31.2 Upon written request by Homes England, the Consultant shall as soon as practicable provide to Homes England any document mentioned in Clause 31.1.

32 ASSIGNMENT

- 32.1 The Consultant shall not, without the prior written consent of Homes England, assign, delegate, charge or transfer any right or obligation under the Contract, to any other person.
- 32.2 Homes England may assign, delegate, charge or transfer any right or obligation under the Contract to any successor body with the consent of the Consultant save in respect of a statutory transfer where such consent will not be required.

33 SUB-CONTRACTORS AND SPECIALIST ADVICE

- 33.1 Save as otherwise agreed or specified in the Special Conditions (if any) the Consultant shall not, without the prior written consent of the Nominated Officer (or as otherwise expressly stated in the Special Conditions) sub-contract, whether in whole or in part, to any person its obligation to provide the Services to Homes England or otherwise delegate any of its obligations under the Contract.
- 33.2 Any sub-contracts entered into, subject to Clause 33.1, must be in writing and in a form prescribed by or otherwise approved in advance by Homes England. All such contracts should, so far as practicable and appropriate, be in a form similar to the form of this Contract and any sub-contractor appointed thereunder will, in the event that Homes England so elects, be required to enter into a direct contractual relationship with Homes England in a form required by Homes England and to owe it a duty of care. The Consultant shall ensure that any Intellectual Property Rights designed, created, developed or made by any sub-contractor shall vest in and belong to Homes England.
- 33.3 The Consultant will not obtain Counsel's or other legal opinion or otherwise engage the services of Counsel or other legal specialists on behalf of Homes England without the prior written authority of the person appointed from time to time as General Counsel of Homes England and the Nominated Officer.
- 33.4 If, subject to the provisions of this Clause 33, the Consultant engages the services of another person to provide a report to the Consultant and/or Homes England, the Consultant will, if required by Homes England, procure that the person providing such report enters into a direct contractual relationship with any third party intending to rely on the contents of such report (in a form required by Homes England or the third party as appropriate), thereby affording such third party a duty of care and enabling it to rely upon the contents of such report.
- 33.5 Save as otherwise agreed in Schedule 2, fees payable under sub-contracts shall be paid by the Consultant and provided for in the invoice to be submitted to Homes England in accordance with Clause 25.
- 33.6 In relation to any sub-contracting pursuant to Clause 33.1:

- a) the Consultant shall be responsible to Homes England in law or otherwise for all such sub-contracted work and such sub-contracting shall not modify, diminish, reduce or in any other way affect the liability and/or obligations of the Consultant under this Contract and/or at law or otherwise;
- b) the Consultant's Fees shall not be increased by any amounts payable by the Consultant to its sub-contractors;
- c) the Consultant shall be liable to Homes England for the tortious acts and omissions of the person performing any sub-contracted work; and
- d) the Consultant shall procure appropriate warranties from the person performing any sub-contracted work (in a form required by Homes England).
- e) The Consultant shall include in its contracts with its direct subcontractors and suppliers anti slavery and human trafficking provisions that are at least as onerous as those set out in clauses 18.1 and 18.2 and require that each of its direct subcontractors and suppliers comply with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force including but not limited to the Modern Slavery Act 2015.

34 FRAMEWORK MANAGEMENT

The Consultant shall comply with the provisions of Schedule 15.

35 NOVATION

At the request of Homes England from time to time, whether before or after the completion of the Services, the Consultant shall execute as deeds and deliver to Homes England within seven days of any such request a deed of novation in relation to this Contract or a particular Instruction in the form set out in Schedule 9 with such amendments as Homes England may reasonably require in favour of a third party.

36 JOINT AND SEVERAL LIABILITY

Where the Consultant is a joint venture consisting of two or more persons who have each entered into this Contract with Homes England each such person is jointly and severally liable to Homes England in respect of any act, omission or default arising under this Contract (and/or any Instruction) by any person to that joint venture and, for the avoidance of doubt, any reference to the "Consultant", "parties" or "party" (when applicable to the Consultant) shall refer to the parties forming the joint venture both jointly and severally and any breach of this Contract (and/or any Instruction) by any one of such parties shall entitle Homes England to exercise any right, remedy or power (whether under this Contract (any Instruction) and/or under applicable law) against any or all parties forming the "Consultant".

37 LIMIT OF LIABILITY

37.1 Notwithstanding any other term of this contract the total liability of the Consultant to Homes England under or in connection with this contract whether in contract, tort, for breach of statutory duty or otherwise shall be limited to £5,000,000 (five million pounds), for each and every claim save that the Consultant's liability shall be unlimited in respect of:

- a) Death or personal injury caused by its negligence, or that of its employees, agents or sub-contractors (as applicable);

- b) Fraud or fraudulent misrepresentation by it or its employees;
- c) Breach of any obligation as to title implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982;
- d) Any liability to the extent it cannot be limited or excluded by Law;
- e) The Consultant's liabilities in respect of the indemnities in Clause 12.5 (Vesting of Material, Copyright and Publication of Results), Clause 39.6 (Status and Tax Liabilities) and Clause 10.6 and paragraph 2.17 of Schedule 8 (Personal Data); and
- f) Intentional, maliciously negligent or wilfully negligent actions or omissions of the Consultant, its employees, agents or sub-contractors (as applicable).

37.2 For the avoidance of doubt, the parties acknowledge and agree that the Consultant's liability as set out in this clause 37 also applies to any individual Instruction from Homes England (and any instruction from a Public Sector Body pursuant to clause 2.13), unless the Consultant's liability has been specifically and differently provided for in such Instruction (or instruction from a Public Sector Body as the case may be) PROVIDED THAT liability for the matters set out in clause 37.1 for which liability is unlimited, shall remain unlimited.

38 AUTHORITY

- 38.1 The Consultant shall have no authority to act on Homes England's behalf in relation to any of the following matters without the prior written consent of Homes England:
- a) the making of any alteration to or omission from the design of a project approved or agreed by Homes England;
 - b) save in an emergency the issuing of any instruction, giving of any approval or doing of any other thing which would or might increase the cost of a project or which would or might delay completion of a project;
 - c) entering into any agreement, or agreeing any amendment to the terms of any contract which Homes England enters into in connection with a project or the waiver, abandonment or settlement of any right, remedy or claim which Homes England may have against any party.

39 STATUS AND TAX LIABILITIES

- 39.1 The parties agree that this Contract is not intended to create an employment relationship between Homes England and the Consultant, or any officer or employee of the Consultant.
- 39.2 The Consultant shall not assume the role as an office holder of Homes England.
- 39.3 Where the Consultant is an individual:
- a) it is the intention of the parties that the Consultant shall have the status of a self-employed person and shall not be entitled to any pension, bonus or other fringe benefits from Homes England. It is agreed that the Consultant shall be responsible for all

income tax liabilities and National Insurance or similar contributions in respect of the Consultant's Fees; and

- b) on execution of the Contract, and thereafter upon request by Homes England, the Consultant shall provide Homes England with such documentary evidence as Homes England may require of the Consultant's self-employed status; such evidence to include the Unique Tax Payer Reference Number and any such other written evidence as satisfies or is requested by Homes England or its tax inspector, in respect of tax, National Insurance contributions and/or employment status.

39.4 Where the Consultant is not an individual:

- a) the Consultant shall be responsible for making appropriate PAYE deductions for tax and National Insurance contributions from the remuneration the Consultant pays to (i) its employees or (ii) any person in respect of whom the Consultant is required to make such deductions pursuant to Chapter 10 Income Tax (Earnings and Pensions) Act 2003.

- b) on execution of this Contract, and thereafter upon request by Homes England, the Consultant shall provide Homes England with such documentary evidence as Homes England may require in connection with tax, National Insurance contributions and/or employment status.

39.5 The Consultant confirms that Homes England may supply any information which it receives under this clause 39 to the Commissioners of Her Majesty's Revenue & Customs for the purpose of the collection and management of revenue for which they are responsible

39.6 The Consultant agrees to indemnify and keep indemnified Homes England in respect of any claims that may be made by the relevant authorities against Homes England in respect of income tax or National Insurance or similar contributions relating to the Services.

40 WARRANTIES

40.1 The Consultant warrants, represents and undertakes for the duration of the Consultancy Period that:

- a) it has and will continue to hold all necessary (if any) regulatory approvals from the Regulatory Bodies necessary to perform the Consultant's obligations under this Contract;
- b) as at the Commencement Date all statements and representations in the Consultant's Response to the ITT are to the best of its knowledge, information and belief, true and accurate and that it will advise Homes England of any fact, matter or circumstance of which it may become aware which would render any such statement or representation to be false or misleading;
- c) it shall at all times comply with Law in carrying out its obligations under this Contract.

41 THIRD PARTY RIGHTS

For the purposes of the Contracts (Rights of Third Parties) Act 1999 Homes England and the Consultant do not intend to confer, and nothing in this Contract shall be construed as conferring, on a third party a benefit or a right to enforce a term of this Agreement except that a Public Sector Body utilising the Strategic Research and Economic Analysis

Professional Services Framework in accordance with this Contract shall have the benefit of being able to enforce its rights under this Contract against the Consultant

42 GENERAL

- 42.1 The Consultant shall comply with the provisions of Schedule 8 and Schedule 10.
- 42.2 This Contract and the other documents referred to herein constitute the entire agreement between the parties relating to the Services to be provided by the Consultant and supersede any previous agreements or arrangements and undertakings between the parties in respect of the provision of Services by the Consultant. The Consultant acknowledges that in entering into this Contract it has not relied on any representation, warranty or undertaking save as set out in this Contract 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.
- 42.3 All additions, amendments and/or variations to this Contract must be annexed to this Contract and be in writing and shall only be binding if signed or initialled by the duly authorised representatives of Homes England and of the Consultant.
- 42.4 Nothing in this Contract shall create or be deemed to create any agency or partnership between the parties.
- 42.5 If any provision of this Contract is held by any court or other competent authority to be void or unenforceable in whole or in part, the other provisions of this Contract and the remainder of the affected provisions shall continue to be valid.
- 42.6 The Consultant is required to comply with any reasonable Programme and/or deadlines provided to it in writing by Homes England from time to time, provided that Homes England agrees that it may, at the reasonable request of the Consultant, from time to time extend the period(s) and/or the date(s) included in any Programme by giving written notice to the Consultant whereupon time shall again be of the essence in relation to the revised Instruction.
- 42.7 The Consultant shall have due regard in the performance of the Services to Homes England's budget requirements for each project and/or Instruction. If the Consultant becomes aware of any circumstances which may cause those budget requirements to be exceeded, the Consultant shall inform Homes England without delay.
- 42.8 The Consultant shall execute and deliver all such instruments and other documents and shall take all such actions as Homes England may from time to time reasonably require in order to give full effect to the provisions of this Contract.
- 42.9 Save as otherwise agreed in the Special Conditions neither party to the Contract shall be liable for any breach of its obligations under the Contract resulting from causes beyond its reasonable control including, but not limited to, fires, labour disputes (of its own or other employees), insurrection, war, invasion, act of foreign enemies or hostilities (whether war to be declared or not), civil war, rebellion, revolution, riots, delays in transportation, inability to obtain supplies or regulations of any civil or military authority.
- 42.10 If a default due to a force majeure event (as specified in Clause 42.9) shall continue for more than four weeks then the party not in default shall be entitled to terminate the Contract and/or any existing Instruction issued under this Contract. Neither party shall have any liability to the other in respect of the termination of the Contract and/or any Instruction as a result of such an event.

42.11 Homes England and the Consultant shall act as stated in this Contract and in a spirit of mutual trust and co-operation.

43 CHOICE OF LAW AND JURISDICTION

This Contract shall be governed and construed in all respects in accordance with the laws of England and the parties agree to submit to the exclusive jurisdiction of the English courts

Signed for and on behalf of)
HOMES AND COMMUNITIES AGENCY)
in the presence of)

Authorised Signatory

.....

SIGNED for and on behalf of)
[xxxxxxxx])
in the presence of:)

Witness Signature

Name

Address

Occupation

SCHEDULE 1

INSURANCE

In accordance with Clause 16 of this Contract, the Consultant shall take out and maintain the following insurances upon the following terms and conditions:

1. INSURANCE

1.1 Insurance for a sum of not less than:-

£5m (five million pounds) Professional Indemnity

(A) £10m (ten million pounds) Public Liability

£10m (ten million pounds) Employer Liability

in respect of each and every claim.

For the avoidance of doubt, the Insurances specified above shall be required in respect of individual Instructions by Homes England (or instructions by Public Sector Bodies pursuant to clause 2.13) unless different requirements are specified in such Instruction (or in such instruction from a Public Sector Body as the case may be).

SCHEDULE 2

CONSULTANT'S FEES

PART 1 – GENERAL PROVISIONS

1. The basis for calculation of the Consultant's Fees shall be as set out in Part 2 of this Schedule 2.
2. For the avoidance of doubt and except where otherwise provided in this Contract, the amount payable to the Consultant for the provision of the Services shall be inclusive of all costs of staff and materials and all other expenses whatsoever and howsoever incurred by the Consultant in discharging its obligations under the Contract.
3. Homes England reserves the right to request that the Consultant provides fixed fee rates for work not included or referred to as fixed fee work in Part 3 of this Schedule 2 but which involves the use of standard-form Homes England documents which may from time to time be made available by Homes England for use by the Consultant.
4. Without prejudice to any other provision of this Schedule, the Consultant shall submit its invoice in accordance with Part 5 of this Schedule 2 to this Contract.
5. Homes England shall use its reasonable endeavours to pay the Consultant within 30 days of the receipt of a satisfactory invoice, provided that Homes England has issued an electronic Instruction and it is satisfied that the Services for which the invoice relates have been performed fully, and the fees in respect of such invoice have been properly determined, in accordance with the Contract.
6. The Consultant's Fees are exclusive of Value Added Tax (VAT) and Homes England shall pay to the Consultant the amount of any VAT chargeable in respect of such fees at the rate and in the manner prescribed by law.
7. Wherever under the Contract any sum of money is recoverable from, or payable by, the Consultant, that sum may be deducted from any sum then due, or which at any later time may become due, to the Consultant under the Contract or under any other contract with Homes England.
8. Subject to the prior approval of the Instructing Officer or such other officer as Homes England shall direct, the Consultant shall be entitled to reimbursement of the expenses and disbursements set out in Part 4 of this Schedule 2.
9. The Consultant shall not be entitled to any payment in respect of time (including travelling time) spent on reviewing the general management of matters undertaken by the Consultant, the progress of work and the review of procedures, charging rates, working practices or other similar tasks.
10. Where any incomplete project or activity pursuant to an Instruction is revived or a further project or activity is negotiated with an alternative party and existing work is capable of being incorporated into the new project or activity then an allowance will be made in favour of Homes England in respect of such work. Such allowance will be equal to the fee paid for the incomplete work or such lesser sum as may be agreed between Homes England and the Consultant.
11. The hourly charge out rate set out in Part 3 of Schedule 2 and any expenses or disbursements set out in Part 4 of Schedule 2 shall be reviewed annually by Homes England and will be increased at the absolute discretion of Homes England having regard to the annual Retail Price Index.

PART 2 – BASIS OF CALCULATION

12. Fees payable shall be paid at the rates set out in the Consultant's Response to the ITT.
13. The method of calculation of the Consultant's Fees (time charge, fixed fee, or other) shall comply with the Consultant's Response to the ITT and shall be as set out in the Instruction.
14. The timing of any payment to the Consultant (monthly, interim, final account or other) shall be as set out in the Invoicing Procedure contained in Part 5 to this Schedule 2 or such other policy as Homes England may issue from time to time.
15. In respect of any Instruction for time charge work, as defined in the Consultant's Response to the ITT, before commencing work the Consultant must provide Homes England with a fee estimate including:
 - (a) a ceiling cost for such work;
 - (b) the hourly rate/rates applicable to such work; and
 - (c) the estimated number of hours.
16. Any increase in the fee estimate provided in paragraph 15 above, must be agreed in advance of incurring any such additional cost with Homes England Nominated Officer and the Instructing Officer.
17. Notwithstanding the provisions of this Part 2 to Schedule 2, all time charge work in excess of 20 hours and/or Instructions with Consultancy Fees in excess of £50,000 will require the prior approval of the Homes England Nominated Officer.

PART 3 – CONSULTANT’S RESPONSE TO THE ITT

(The completed tender form including all the fee rates should be included here.)

PART 4 - EXPENSES AND DISBURSEMENTS

18. Subject to the prior approval of the Instructing Officer or such other officer as Homes England shall direct, the Consultant shall be entitled to reimbursement of the following expenses and disbursements:
 - (a) printing, or reproduction of, drawings, plans, maps, photographs or other such documents;
 - (b) bulk photocopying (where the number of pages copied exceeds 200);
 - (c) courier or other extraordinary delivery costs;
 - (d) car travel at the rate of 40 pence per mile for the first 10,000; 25 pence per mile thereafter;
 - (e) air, sea or rail fares at economy or second class rates; and
 - (f) other extraordinary expenses or disbursements as may be pre-authorised in writing by Homes England.
19. Subject to this Part 4 of this Schedule 2, the Consultant shall not be entitled to claim payment for travelling time in attending Homes England's offices, or other locations during the Consultancy Period.
20. The Consultant shall not be entitled to claim travelling expenses in attending its own or Homes England's offices. However, where Homes England deems it necessary for the Consultant to attend meetings at a location other than Homes England's offices or the Consultant's offices, the Consultant will be entitled to claim travelling expenses on an agreed basis.

PART 5 – INVOICING PROCEDURE

1. GENERAL

- 1.1 The basis for calculation of the Consultant's Fees shall be as set out in the Contract.
- 1.2 The Consultant will provide within an Instruction, details of the Consultant's Fee to be charged or provide a fixed fee or fee estimate in respect of each Instruction received in accordance with the Contract.
- 1.3 The Consultant shall not provide any Services to Homes England, unless it is in receipt of an Instruction and the Consultant's Fees has been approved in accordance with Schedule 6. Any Services undertaken by the Consultant in advance of an Instruction and approval of the Consultant's Fees is undertaken at the Consultant's own risk. For the avoidance of doubt, no payments shall be made for any Services supplied by the Consultant for which no Instruction or no approval to the Consultant's Fees has been given by Homes England in accordance with this Contract.
- 1.4 Any anticipated costs incurred in excess of agreed tender rates must be agreed with Homes England's Nominated Officer and the Instructing Officer before commencing the additional work. A separate Instruction may, at Homes England's discretion, be required for the additional work being undertaken.

2. INVOICES

- 2.1 All invoices will be submitted by the Consultant to Homes England in accordance with the Invoicing Procedure set out in this Schedule 2 Part 5 or such other policy as Homes England may issue from time to time.
- 2.2 All invoices will be submitted electronically to Creditors@homesengland.gov.uk detailing the following information:
 - (a) the Instruction number;
 - (b) the current Instructing Officer;
 - (c) the matter or address of the Instruction;
 - (d) the amount plus any VAT;
 - (e) disbursements;
 - (f) the period to which invoice relates; and
 - (g) the purchase order number;
- 2.3 In respect of Instructions charged by way of hourly rates, unless otherwise agreed, the Consultant shall also provide with its invoice the following:
 - (a) evidence of expenses incurred;
 - (b) time sheets; and
 - (c) such other records and documents as Homes England may reasonably require which would enable Homes England to verify the information and the amounts referred to in that invoice in such detail and form as Homes England shall notify to the Consultant.

- 2.4 For all Instructions where the Consultant's Fee is based on an hourly rate in accordance with Schedule 2 to this Contract, invoices will be paid for by monthly interim or final account following completion of the relevant transaction and submission of an appropriate invoice.
- 2.5 For all Instructions where the Consultant's Fee is a fixed fee in accordance with Schedule 2 to this Contract, it will be paid for by final account following completion of the relevant transaction and submission of an appropriate invoice (save where instructed otherwise by Homes England).
- 2.6 Notwithstanding paragraph 2.5 above, abortive fees will be permitted in accordance with Part 3 to Schedule 2 and will be paid by final account following receipt of a valid invoice.
- 2.7 The Consultant, in respect of those matters on which monthly billing is allowed, will only submit one invoice per month per Instruction.
- 2.8 In the absence of an Instruction relating to the matter to which the invoice relates, Homes England will return such invoice without processing for payment until an appropriate Instruction has been issued and the costs for that transaction are approved.
- 2.9 Homes England may during the currency of contract require all invoices raised by the Consultant in respect of the services to be issued electronically.

SCHEDULE 3

THE SERVICES

To provide a broad range of expert strategic and economic technical support and associated research and analysis specific to the housing sector and Homes England's Mission and Objectives as set out in the Strategic Plan.

1. Strategic Economic Advice and Modelling
2. Economic Appraisal and associated research and analysis
3. Impact Assessment and Evaluation
4. General Services

1. Strategic Economic Advice and Modelling

To provide strategic economic advice and economic modelling to inform and support corporate priorities specific to the housing sector.

This component involves:

- Strategic research and economic advice underpinning strategy development.
- Strategic economic analysis underpinning business development activity aligned to our Mission and Objectives.
- Strategic economic modelling and translation of the macro-economic context to new opportunities and impacts across the organisation.
- Economic modelling to support business planning, including stress testing and scenarios at organisational level.
- Strategic primary research to improve the evidence underpinning the costs and benefits of housing including productivity benefits of existing and new markets within the housing sector, consumption benefits and externalities relating to the provision of housing.
- Fund level economic models (using financial inputs) from site data and other sources of evidence to inform new fund business cases and fiscal event submissions to Ministry of Housing, Communities and Local Government (MHCLG)/HMT.
- Organisational level modelling of the total economic impact of Homes England.
- Developing economic models to capture the benefits of Homes England's interventions based on land use change (development appraisals, Red Book Valuations) and including all monetised external impacts.

2. Economic Appraisal and associated research and analysis

For these purposes, Economic Appraisal is the 'before the event' economic assessment of project, strategy or programme objectives.

This component involves the following:

- Undertake Economic Appraisal as part of project development compliant with HM Treasury (HMT) Five Cases methodology covering Strategic, Economic, Commercial, Financial and Management cases that are required for decision making. Help to shape, inform and evidence how and why we are intervening as the optimal approach compared to alternatives and how this is aligned to Homes England's Strategic Plan.

- Co-ordinate the five cases, working with other disciplines, to produce a coherent full business case as per agreed Homes England Full Business Case structure. The economic case monetises as many costs and benefits (as current evidence allows) across shortlisted options to arrive at a BCR for each option. This also includes a weighting and scoring on non-monetised benefits to inform decision making.
- Develop an economic case that diagnoses a rationale for intervention by setting out market failure(s) or equity arguments.
- Take a lead on development, articulation and analyses of options, aligned with the strategic case and informed by the commercial case and to weigh up all of the costs and benefits of each option before a decision is made.
- Use an appraisal methodology that conforms to guidance from HMT's 'Green Book' and Department for Communities and Local Government's Appraisal Guidance.
- Review and account for displacement effects in the relevant property market area.
- Demonstrate the benefits of additional housing supply brought forward by Homes England interventions, and the best way to do this, and also overall outcomes in terms of wider benefits of economic and housing growth, sustainability and place-making.
- Deliver appraisal of options including the best way to intervene in a place along a hierarchy of intervention. This may account for loan options, grant, and acquisition. and the optimal delivery model for the preferred option.
- Familiarity with the concept of residual land valuations; a key step in estimating land value uplift effects, including the ability to apply/challenge differing commercial assumptions applied across different options.
- Sensitivity analysis, switching values and scenario analysis, as necessary to test the resilience of the preferred option when key variables are changed, such as house prices and construction costs. This is likely to require worst case and best-case scenarios.
- Ability to respond to any changes in approach resulting from HMT Green Book Review.

3. Impact Assessment & Evaluation

This component involves:

- Providing a broad range of expertise in assessing the impact of Homes England's interventions at project, portfolio and agency level.
- Being an expert in evaluation techniques, including key principles, and both qualitative and quantitative evaluation methodologies.
- Providing evaluation services to assess how successful or otherwise an intervention has been in achieving its objectives.
- Setting out what lessons can be learnt for future projects, programmes or policies.
- Aligning within and adding value to Homes England's nascent evaluation programme, to ensure that all of its activity receives appropriate evaluation and consistency, while also preventing duplication.

4. General Services

4.1 Management of team

- Manage sub-consultants and other consultants appointed directly by the client where instructed.
- Directly employ and manage relevant third-party companies as required to undertake the discharge of any of this service.
- Provide a single point of contact to report to the client.
- Adhere to all policies of Homes England and any issued ways of working and protocols. Respond to any queries issued.
- Build on and inform standardised templates, developed jointly with other members of the consultancy team.

4.2 Stakeholder Management

- Liaise, negotiate and work collaboratively with statutory and other stakeholders.

4.3 Research Studies

- Research studies are likely to align closely to Homes England's Mission and Strategic Objectives, and any emerging government priorities, as well as key economic research questions e.g. in relation to improved understanding of the housing market, and the economic costs and benefits from intervening in it, to inform corporate priorities and utilised in economic appraisal and evaluation.
- Research, advise and present impacts of emerging legislation and best practice guidance.
- Providing lessons learned, best practice and market intelligence.
- Advise, prepare, organise and submit desk top studies and reports.
- Preparation presentation material both on hard copy and electronically.
- Assist the client with the preparation of good practice guidance and research and help the client in the promotion of this material.

4.4 Policy and Strategy Advice and Reports

- Monitor and reporting on existing and emerging government policy, innovation, research and practice in relation to all aspects of housing, regeneration and development.
- Monitor and advise the client on Government legislation relating to the specific areas of services delivered.

4.5 Training

- Development of and provision of training for Homes England Staff and stakeholders.

4.6 Staffing

- Provision of secondees to Homes England on a temporary basis in line with IR35.

SCHEDULE 4

KEY PERSONNEL

(a list of key personnel should be included here)

SCHEDULE 5

Part 1

CONSULTANCY PERIOD

The period of 4 years from [] or such shorter period as may be determined by Homes England in accordance with this Contract.

Part 2

The Area shall be National

Part 3

Name of Party for Notification

Address

Homes England:

Homes England

Catherine Steel

One Friargate, Coventry, CV1 2GN

The Consultant:

SCHEDULE 6

INSTRUCTIONS PROCEDURES

3. INSTRUCTIONS

Instructions by HOMES ENGLAND

- a) All Instructions from Homes England will be issued using Homes England's Instructions Database which may be modified, enhanced, added to or replaced during the Consultancy Period of this Contract.
- b) The Consultant will receive the Instructions via Homes England's extranet and the Designated Person or the Deputy Designated Person will be responsible for allocating that Instruction to one of the Key Personnel.
- c) All Instructions require Consultant's Fees to be approved via the Instructions Database. Following approval by Homes England (which will be electronically notified to the Consultant), a purchase order will be automatically raised by the Instructions Database.
- d) The Key Personnel will accept each Instruction as per the Instructions Database Manual which is available on Homes England's extranet.
- e) Invoices in respect of individual instructions will only be processed for payment by Homes England where:
 - (i) there exists a current Instruction on the Instructions Database;
 - (ii) the current Instruction and purchase order is quoted on the invoice; and
 - (iii) invoiced in accordance with Schedule 2
- f) The Consultant will create a transaction correspondence file on receipt of every Instruction. Plans relating to the Instruction will be sent pre-paid first class post along with any relevant archived files.
- g) The Consultant will be responsible for ensuring that all Key Personnel are provided with their own log-in names and passwords and that log-in names and passwords are erased when Key Personnel no longer provide the Services.

1.2 Instructions by other bodies pursuant to Clause 2.13 of the Contract.

- (a) Instructions from other bodies pursuant to Clause 2.13 of the Contract shall be in the form set out below or such other form as may be agreed between the Consultant and Public Sector Bodies.

Note These documents are provided for information only. Homes England makes no warranties, representations or undertakings about any of the content contained in these documents (including, without limitation, any as to the quality, accuracy, completeness or fitness for any particular purpose of such content). Homes England will not be liable for any loss arising out of or in connection with the use of these documents in negligence, tort, by statute or otherwise and you are advised to seek independent legal advice before utilising the documents.

STRATEGIC RESEARCH AND ECONOMIC ANALYSIS PROFESSIONAL SERVICES FRAMEWORK

APPOINTMENT OF CONSULTANT

INSTRUCTION

Date	[]	[Name of other Public Sector Body] Reference Number	[] To be quoted on all correspondence relating to this Instruction
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The Consultant entered into a contract dated [] with Homes England whereby it was appointed as a consultant on the Strategic Research and Economic Analysis Professional Services Framework (the "Framework Contract").

[Name **other public sector body**] is a Public Sector Body under the Framework Contract.

The Public Sector Body and the Consultant acknowledge and agree that this document is to be treated as an "Instruction" from the Public Sector Body under and for the purposes of the Framework Contract.

The Consultant agrees to supply to the Public Sector Body the Services specified below on and subject to the terms and conditions of this Instruction and the Framework Contract.

Unless otherwise defined in this Instruction, terms used in this Instruction shall have the meaning given to them in the Framework Contract.

The Employer
<p>[Name other public sector body] is the Public Sector Body.</p> <p>In so far as they relate to the appointment of the Consultant to provide the Services all references to Homes England in the Framework Contract shall also be deemed to be references to the Public Sector Body for the purposes of the Instructions and the Framework Contract.</p>

PUBLIC SECTOR BODY DETAILS

Public Sector Body	[]
Public Sector Body's Address	[]
Invoice Address	[]
Contact:	Name: [] Address: [] Phone: [] e-mail: []

CONSULTANT DETAILS

Consultant	[] ("Consultant")
Consultant's Address	[]

Contact:	Name:	[]
	Address:	[]
	Phone:	[]
	e-mail:	[]

1. INSTRUCTION PERIOD

(1.1) Commencement Date

This Instruction shall commence on: [insert]

(1.2) Instruction Period

[insert]

2. SERVICES REQUIREMENTS

The following Services shall be provided:

[To be inserted from the brief or the Consultant response to the Public Sector Body's brief]

3. DELIVERABLES

The following outcomes will be delivered:

[To be inserted from the brief or the Consultant response to the Public Sector Body's brief]

4. RESOURCES

(4.1) Staff of the Consultant to be involved in the provision of the Services

The following people will deliver the Services:

[Name] [Title] [Role]

[To be inserted from Consultant response to the Public Sector Body's brief]

(4.2) Resource Schedule

A resource schedule is attached

[Resource Plan to be attached from Consultant response to the Public Sector Body's brief]

(4.2) Sub-contractors to be involved in the provision of the Services

[To be inserted from Consultant response to the Public Sector Body's brief]

(See clause [33] of the Framework Contract)

5. PROGRAMME

The Services will be delivered in accordance with the programme attached

[Programme/Project Plan to be attached from Consultant response to the Public Sector Body's brief]

6. FEE

(6.1) LUMP SUM FIXED

[Cost Schedule to be attached from Consultant response to the Public Sector Body's brief. This will relate to the specific work items set out in the Public Sector Body's brief]

(6.2) FEE PROPOSAL

[Day rates to be inserted from the Consultant response to the Public Sector Body's brief. This will be the agreed Framework Contract rates unless discounted rates are offered and will be used for all of the works instructed or works instructed in addition to those covered in the Lump Sum Fee]

(6.2) FEE PROPOSAL

[percentage fees to be inserted from the Consultant response to the Public Sector Body's brief. This will be the agreed Framework Contract percentage fees unless discounted rates are offered]

7. INSURANCE AND LIABILITY

Insurance requirements and Consultant liability levels in relation to this instruction shall be as set out in the Framework Contract unless different requirements are specified below:

Limit of Liability

The Consultant's total liability to the Public Sector Body for all matters arising under or in connection with this instruction, other than the unlimited matters referred to in clause [37] of the Framework Contract, is limited to [£] [for each and every claim] [in the aggregate]

Please seek legal and insurance advice on the appropriate limitation of liability – the limitation amount should be commensurate with the scale and value of the project for which the services are carried out.

Insurance

Insurance for a sum of not less than:-

[£Xm (X million pounds)] Professional Indemnity

[£Xm (X million pounds)] Public Liability

[£Xm (X million pounds)] Employer Liability

in respect of each and every claim.

save in respect of claims relating to contamination, pollution, date recognition and asbestos, which with respect to Professional Indemnity shall be limited to £X million in aggregate

Please seek insurance advice on the appropriate levels of insurance required for the instruction.

8. INVOICING AND PAYMENT

Invoices in respect of the Instruction will only be processed for payment where:

- (a) they are for the current Instruction;
- (b) the [***name of party responsible for payment of the Consultant's invoice***]'s name and Reference Number are quoted on the invoice;
- (c) invoiced in accordance with Schedule 2 of the Framework Contract; and
- (d) the invoice is addressed to [***name of party responsible for payment of the Consultant's invoice***]

Payment will be made to the Consultant by [***name of party responsible for payment of the Consultant's invoice***].

BY SIGNING AND RETURNING THIS INSTRUCTION THE CONSULTANT AGREES it is entering into a legally binding contract for the Consultant's appointment (the "Consultant Appointment Contract") with the Public Sector Body to provide the Services. The Consultant Appointment Contract incorporates and is subject to all of the terms and conditions contained in the Framework Contract as may be varied and/or amended by the other provisions of this Instruction. If there is any inconsistency between any of the provisions of this Instruction and the provisions of the Framework Contract, the provisions of this Instruction shall prevail).

The Consultant and the Public Sector Body hereby acknowledge and agree that they have read this Instruction and the Framework Contract and by signing below agree to be bound by the terms of this Consultant Appointment Contract from the date appearing at the start of this Instruction.

For and on behalf of the Consultant:

Name and Title	
----------------	--

Signature	

For and on behalf of the Public Sector Body:

Name and Title	
Signature	

SCHEDULE 7

PROJECT TENDERING PROCEDURE

The further competition process is linked to the estimated value of the individual appointment.

Estimated value below £10,000

The lowest value appointments, those below £10,000, do not require a further competition and appointments can be made directly (a direct award). Direct awards will require the submission of a proposal by the Framework Member to Homes England. The submission will not be via the Pro-Contract system.

The proposal may include the following:

- Brief statement on how commission would be undertaken.
- Proposed staff
- Timescale
- Provision of a lump sum fixed fee or other fee proposal based on the Consultant's tendered fee rates included in the Framework Member's Response to the ITT (depending on the particular circumstances)

Homes England reserves the right to adopt a further competition involving 3 Framework Members where the estimated value is less certain, potential for extensions exist (increasing the value) or for other considerations.

Estimated value between £10,000 and the EU services threshold

Appointments estimated between £10,000 and the EU services threshold will involve further competition. Here the further competition will involve a minimum of three Framework Members via a single stage. Homes England will invite the Framework Members to submit proposals which may include the following:

- Brief statement on how commission would be undertaken.
- Proposed staff together with a resource schedule
- Timescale
- Other project specific information
- Provision of a lump sum fixed fee or fee proposal based on the Framework Member's tendered fee rates included in the Framework Member's Response to the framework ITT (depending on the particular circumstances)

The further competition will be via the ProContract system.

The tender response may be evaluated as follows:

Evaluation Criteria	Weighting
Technical Merit of Proposal	20%
Understanding of project requirements	10%
Staff and other Resources	10%
Management and Communication	5%
Programme	5%
Price	50%
	100%

The weightings in red are indicative and can be changed as necessary

Homes England reserves the right to adopt a further competition involving all Framework Members where the estimated value is less certain, potential for extensions exist (increasing the value) or for other considerations.

Estimated value above the EU services threshold

Appointments above the EU services threshold will involve further competition. Here the further competition will involve all capable Framework Members via a three stage process. The further competition will be via the ProContract system.

Expression of Interest

The first stage of the process will be Expression of Interest. Homes England will provide all capable Framework Members with an outline of the appointment and indicative timescale for the further competition and award. Framework Members will be required to express their interest.

Homes England reserves the right to exclude this stage and issue all capable firms with a Sifting Brief, where the appointment is more urgent.

Sifting Brief

The second stage will involve all Framework Members who expressed an interest. The aim of this stage is reduce the number of Framework Members to a shortlist who will be invited to Tender.

The sifting brief is a quality only and does not consider price. Homes England will invite the Framework Members to submit proposals which may include the following:

- demonstration of specific available resource and
- demonstration of specific experience or capability that is directly relevant to the specific commission.
- Confirmation of other specific factors relevant to the commission (as required)

The sifting brief response may be evaluated as follows:

Evaluation Criteria	Weighting
General understanding of project requirements with reference to experience of similar project	40%
Staff and other Resources	30%
Other specific factor (s) relevant to the commission (as required)	30%
	100%

The weightings in red are indicative and can be changed as necessary

The scoring of each Framework Member's sifting brief response will be turned into a ranking. Homes England will generally seek to shortlist 5 Framework Members for the Tender stage. This may however be higher or lower depending on the level of interest and the strength of sifting brief responses (including where it is difficult to distinguish between the capability and resources of Framework Members more may be invited to tender.

Any Framework Member not invited to Tender will be provided with their scores and feedback to explain this decision.

Homes England reserves the right to exclude the Sifting Brief stage where approximately 5 Framework Members have expressed an interest and proceed with the invitation to Tender.

Tender

The third stage will involve the shortlisted Framework Members being invited to respond to a detailed tender or brief. This may include the following information:

- Proposal to describe how the commission would be undertaken, an outline of the approach, an assessment of the commission being offered.
- Staff proposed together with a resource schedule
- Proposals for management of the commission
- Programme
- Provision of a lump sum fixed or fee proposal based on the Framework Member's tendered fee rates included in the Framework Member's Response to the ITT (depending on the particular circumstances)

The tender response will be evaluated on the basis of quality and price. The framework quality/price ratio of 70/30 can be adopted for further competitions, however the quality/price ratio can be between 80/20 and 20/80. The ratio for each Further Competition will be identified in the invitation to Tender.

The tender response may be evaluated as follows:

Evaluation Criteria	Weighting
Technical Merit of Proposal	20%
Understanding of project requirements	10%
Staff and other Resources	10%
Management and Communication	5%
Programme	5%
Price	50%
	100%

The weightings in red are indicative and can be changed as necessary

The highest scoring Framework Member will be successful. Award decisions will be subject to the standstill period with unsuccessful Framework Members will be provided with their scores and feedback to explain the decision in accordance with standstill period.

Homes England reserves the right to exclude the Expression of Interest and Sifting Brief stages and issue all Framework Members with the invitation to Tender where the appointment is considered very urgent.

EU services threshold

The EU services threshold (as defined in pounds sterling) is not controlled by Homes England. The Cabinet Office notifies public bodies to the new threshold every two years. The next change is due in January 2020. As this is post the United Kingdom's departure from the European Union it is unclear what impact this will have. During the term of the Framework it may be necessary to update the EU services threshold or replace this with an equivalent or replacement value.

Where a change to the EU services threshold is necessary Homes England will inform all Framework Members.

Competition threshold

Homes England reserves the right to amend (increase or decrease) the £10,000 threshold noted above. In the event that the amount is reduced the requirement to invite 3 Framework Members will commence from this new lower amount.

Where a change to competition threshold is necessary Homes England will inform all Framework Members. Such changes will not apply to competitions which have commenced but have not been awarded.

SCHEDULE 8

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

1 COMPUTER SYSTEMS

- 1.1 The Consultant warrants to Homes England that all computer systems to be used by the Consultant in and about the performance of its obligations under the Contract will protect data being or to be transferred between the parties, that the Consultant 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 Homes England.
- 1.2 The Consultant warrants to Homes England that all computer systems which will be used by the Consultant in and about the performance of its obligations under the Contract are, and shall remain for the duration of the Consultancy Period, compatible with Homes England'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 Consultant shall ensure, so far as it is reasonably practicable to do so, that it adheres to Homes England's IT Policy Statement as issued from time to time and notified by Homes England to the Consultant.

DATA PROTECTION OBLIGATIONS

- 2.1 For the purposes of this Schedule the following words and expressions shall have the following meaning:

"Data Controller" "Data Processor", "Data Subject", "Personal Data", "Personal Data Breach", "Data Protection Officer" and "Process" shall have the meanings ascribed to them in the Data Protection Legislation as amended or re-enacted from time to time.

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

Data Protection Impact Assessment means an assessment by the Data Controller of the impact of the envisaged processing on the protection of Personal Data;

Data Protection Legislation means (i) unless and until the General Data Protection Regulation (EU) 2016/679) (the **GDPR**) is no longer directly applicable in the UK, the GDPR, the Law Enforcement Directive (*Directive (EU) 2016/680*) and any national implementing Law, as amended or updated from time to time (ii) the Data Protection Act 2018 to the extent that it relates to processing of personal data and privacy and any successor legislation to the GDPR and (iii) all applicable Law relating to the processing of personal data and privacy;

Data Subject Request means a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data

Joint Controllers means where two or more Data Controllers jointly determine the purposes and means of processing

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;

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

Sub-processor means any third Party appointed to process Personal Data on behalf of the Consultant related to this Contract.

- 2.2 This Clause 2 applies where the Consultant is Processing Personal Data on behalf of Homes England and shall be of no effect where the Consultant is acting as a Data Controller (including as Joint Controllers) under Data Protection Legislation, and for the avoidance of doubt nothing in this Clause 2 shall operate so as to prevent or prohibit the Consultant in complying with its own obligations as a Data Controller under the Data Protection Legislation to the extent such obligations arise in respect of the Personal Data, the parties hereby acknowledging that in their respective roles as Data Controllers, each party is independently required to comply with any lawful request to exercise a data subject right under the Data Protection Legislation.
- 2.3 Homes England and the Consultant acknowledge that for the purposes of the Data Protection Legislation, Homes England is the Data Controller and the Consultant is the Data Processor. The only processing that the Consultant is authorised to undertake on behalf of Homes England is detailed in Schedule 13 and may not be determined by the Consultant.
- 2.4 The Consultant shall provide all reasonable assistance to Homes England in the preparation of any Data Protection Impact Assessment prior to commencing any Processing. Such assistance may, at the discretion of Homes England, include:
 - 2.4.1 a systematic description of the envisaged processing operations and the purpose of the processing;
 - 2.4.2 an assessment of the necessity and proportionality of the processing operations in relation to the Services;
 - 2.4.3 an assessment of the risks to the rights and freedoms of Data Subjects; and
 - 2.4.4 the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 2.5 The Consultant warrants and represents that it has obtained all necessary registrations, notifications and consents required by the Data Protection Legislation to process Personal Data for the purposes of performing its obligations under this Contract.
- 2.6 The Consultant undertakes that to the extent that the Consultant and/or any of its employees receives, has access to and/or is required to process Personal Data on behalf of Homes England ("**Homes England's Personal Data**") for the purpose of

providing the Services, it will at all times comply with the provisions of the Data Protection Legislation.

2.7 The Consultant shall not perform its obligations under this Contract in such a way as to cause Homes England to breach any of its applicable obligations under the Data Protection Legislation. The Consultant shall notify Homes England immediately if it considers that any of Homes England's instructions infringe the Data Protection Legislation.

2.8 For the purposes of this Contract, where the Consultant is Processing Homes England's Personal Data on behalf of Homes England, it shall:

2.8.1 at all material times have in place and maintain Protective Measures which are appropriate to protect against a Data Loss Event, which Homes England may reasonably reject (but failure to reject shall not amount to approval by Homes England of the adequacy of the Protective Measures) having taken into account the:

- (i) nature of the data to be protected;
- (ii) harm that might result from a Data Loss Event;
- (iii) state of technological development; and
- (iv) cost of implementing any measures

For the avoidance of doubt, this includes the obligation to comply with any records management, operational and/or information security policies operated by Homes England, when providing the Services on Homes England's premises and/or accessing their manual and/or automated information systems;

2.8.2 only process Personal Data in accordance with Schedule 13 unless the Consultant is required to do otherwise by Law or any Regulatory Body. Where the Consultant is relying on such requirements as the basis for processing Personal Data, the Consultant shall promptly notify Homes England of this before performing the Processing unless such requirements prohibit the Consultant from so notifying Homes England;

2.8.3 not engage a Sub-processor without:

- (a) prior written authorisation from Homes England and ensuring compliance with any conditions attached to that consent;
- (b) including obligations which give effect to the terms of this Clause 2, in a written agreement with any Sub-processor engaged by the Consultant to provide the Services to Homes England;
- (c) Provide Homes England with such information regarding the Sub-processor as Homes England may reasonably require.

For the avoidance of doubt, the Consultant shall remain fully liable for all acts or omissions of any Sub-processor.

- 2.8.4 allow Homes England (and or its designated auditors) to audit the Consultant's compliance with the requirements of this Clause 2 on reasonable notice and/or, at Homes England's request, provide Homes England with evidence of the Consultant's compliance with the obligations within this Clause 2.
- 2.9 The Consultant undertakes not to disclose or transfer any of Homes England's Personal Data to any third party without the prior written consent of Homes England save that the Consultant shall be entitled to disclose Homes England's Personal Data to Consultant Personnel to whom such disclosure is reasonably necessary in order for the Consultant to carry out the Services, or to the extent required under a court order subject always to compliance with Clause 2.10.
- 2.10 In respect of the Consultant Personnel, the Consultant shall:
- 2.10.1 take reasonable steps to ensure the reliability and integrity of any Consultant Personnel who have access to the Personal Data;
 - 2.10.2 ensure that all Consultant Personnel required to access the Personal Data are informed of the confidential nature of the Personal Data, have provided a confidentiality undertaking to the Consultant or Sub-processor in relation to the same and comply with the obligations set out in this Clause 2;
 - 2.10.3 ensure that none of Consultant Personnel publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by Homes England or as otherwise permitted by this Contract;
 - 2.10.4 ensure that the Consultant Personnel have undertaken adequate training in the law relating to the use, care, protection and handling of Personal Data and are aware of their obligations and those of the Consultant under the Data Protection Legislation and this Contract;
 - 2.10.5 ensure that the Consultant Personnel do not process Personal Data except in accordance with this Contract (and in particular Schedule 13)
- 2.11 The Consultant shall:
- 2.11.1 provide a written description of the technical and organisational methods employed by the Consultant for processing Personal Data (within the timescales required by Homes England); and
 - 2.11.2 not Process Personal Data outside the European Economic Area without the prior written consent of Homes England and, where Homes England consents to a transfer, to ensure:
 - (a) the Consultant has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or the Law Enforcement Directive (*Directive (EU) 2016/680*) Article 37) as determined by Homes England;
 - (b) the Data Subject has enforceable rights and effective legal remedies in relation to such Personal Data;
 - (c) the Consultant complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal

Data that is transferred (or, if it is not so bound, uses its best endeavours to assist Homes England in meeting its obligations); and

- (d) it complies with any reasonable instructions notified to it by Homes England in relation to the Processing of the Personal Data.

2.12 The Consultant agrees to use all reasonable efforts to assist Homes England to comply with such obligations as are imposed on Homes England by the Data Protection Legislation. For the avoidance of doubt, the Consultant shall:

2.12.1 co-operate with Homes England to ensure and demonstrate that the Consultant has appropriate technical and organisational measures in place to assist Homes England to comply with any Data Subject Request ;

2.12.2 notify Homes England immediately if it:

- (a) receives:
 - (i) a Data Subject Request (or purported Data Subject Request);
 - (ii) a request to rectify, block or erase any Personal Data;
 - (iii) any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Contract;
 - (iv) any other complaint, communication or request relating to Homes England's obligations under the Data Protection Legislation;
 - (v) a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law;
- (b) if they become aware of a Data Loss Event;

and take no further steps in relation to the same until such time that it receives written instructions to do so from Homes England. The Consultant's obligation to notify under this clause shall include the provision of further information to Homes England in phases, as details become available;

2.13 Taking into account the nature of the processing, the Consultant shall provide Homes England with full assistance in relation to either the Consultant's or Homes England's obligations under Data Protection Legislation and any complaint, communication or request made pursuant to clause 2.12 (and in so far as possible within the timescales reasonably required by Homes England) including by promptly providing Homes England:

2.13.1 with full details and copies of the complaint, communication or request;

2.13.2 with such assistance as is reasonably requested to enable Homes England to comply with a Data Subject Request within the relevant timescales set out in the Data Protection Legislation;

2.13.3 at its request, with any Personal Data it holds in relation to a Data Subject

- 2.13.4 with such assistance as requested by Homes England:
- (a) following any Data Loss Event;
 - (b) with respect to any request from the Information Commissioner's Office, or any consultation by Homes England with the Information Commissioner's Office.
- 2.14 If the Consultant becomes aware of any unauthorised or unlawful Processing, accidental alteration, loss, destruction or disclosure of, or damage or access to Homes England's Personal Data, or any other Data Loss Event, the Consultant shall:
- 2.14.1 record the details of the suspected incident in a security incident log and undertake an initial investigation immediately into the suspected incident;
 - 2.14.2 notify Homes England of the suspected incident and the findings of the Consultant's initial investigation without undue delay after becoming aware of that event, and in any event within 24 hours of becoming so aware. The Consultant shall take no further steps in relation to the same until such time that it receives written instructions to do so from Homes England.
 - 2.14.3 fully co-operate with Homes England in the course of any investigation undertaken by Homes England and any subsequent corrective actions arising therefrom, including any report to and investigation by the Information Commissioner's Office and /or notification to any affected Data Subjects; and
 - 2.14.4 implement any measure necessary to restore the security and integrity of any compromised Personal Data.
- 2.15 The Consultant shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Consultant employs fewer than 250 staff, unless Homes England determines that the processing:
- 2.15.1 is not occasional;
 - 2.15.2 includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and
 - 2.15.3 is likely to result in a risk to the rights and freedoms of Data Subjects.
- 2.16 The Consultant shall indemnify Homes England against all claims and proceedings and all liability, losses, costs and expenses incurred in connection therewith by Homes England as a result of the Consultant's destruction of and/or damage to or unlawful Processing of any of Homes England's Personal Data processed by the Consultant, Consultant Personnel or a Sub-processor, or any breach of or other failure to comply with the obligations in the Data Protection Legislation and/or this Clause 2 by the Consultant, Consultant Personnel or a Sub-processor.
- 2.17 The Consultant shall appoint and identify an individual within its organisation authorised to respond to enquiries from Homes England concerning the Consultant's Processing of Homes England's Personal Data and will deal with all enquiries from Homes England relating to such Personal Data promptly and in any event within the timescales set out in this Contract.

- 2.18 The Consultant undertakes to act upon the written instructions from Homes England in relation to the secure deletion or return of Homes England's Personal Data at the termination or expiry of this Contract or such time that the Consultant no longer requires access to Homes England's Personal Data for the purposes of performing its obligations under this Contract, in so far as the Consultant is able to take into account its own data retention requirements and, unless the Consultant is required by Law to retain the Personal Data.
- 2.19 Homes England may, at any time on not less than 30 working days' notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Agreement).
- 2.20 The Consultant and Homes England agree to take account of any guidance issued by the Information Commissioner's Office. Homes England may on not less than 30 working days' notice to the Consultant amend this agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.

3 FREEDOM OF INFORMATION

- 3.1 The Consultant acknowledges that Homes England is subject to legal duties which may require the release of information under FOIA and/or EIR and that Homes England may be under an obligation to provide Information subject to a Request for Information.
- 3.2 Homes England shall be responsible for determining in its absolute discretion whether:-
- (a) any Information is Exempted Information or remains Exempted Information; or
 - (b) any Information is to be disclosed in response to a Request for Information;
- and in no event shall the Consultant respond directly to a Request for Information to which Homes England is required to respond to, except to confirm receipt of the Request for Information and that the Request for Information has been passed to Homes England.
- 3.3 Subject to clause 3.4 below, the Consultant acknowledges that Homes England may be obliged under FOIA or EIR to disclose Information:-
- (a) without consulting the Consultant; or
 - (b) following consultation with the Consultant and having taken (or not taken, as the case may be) its views into account.
- 3.4 Without in any way limiting Clauses 3.2 and 3.3, in the event that Homes England receives a Request for Information, Homes England will, where appropriate, as soon as reasonably practicable notify the Consultant.
- 3.5 The Consultant will assist and co-operate with Homes England as requested by Homes England to enable Homes England 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:

- (a) transfer any Request for Information received by the Consultant to Homes England as soon as practicable after receipt and in any event within two Working Days of receiving a request for information;
 - (b) provide all such assistance as may be required from time to time by Homes England to enable Homes England to comply with its obligations to disclose Information.
- 3.6 Nothing in this Contract will prevent Homes England 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. HOMES ENGLAND PROPERTY

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

5. STORAGE AND MAINTENANCE OF THE RECORDS

- 5.1 The Records (including any additions made thereto during the Consultancy Period) are and shall remain Homes England Property. The Consultant shall have no lien or other rights in respect of the Records.
- 5.2 The Consultant shall request such Records as it requires for the purposes of carrying out work in accordance with Homes England's Instructions and will hold them to the order of Homes England and shall return the Records (including any additions made thereto during the Consultancy Period) to Homes England on demand at any time, and in any event at the end of the Consultancy Period.
- 5.3 The Consultant shall keep the Records in a safe and secure place at the Consultant's premises.
- 5.4 The Consultant 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 Consultant is involved and Homes England's title to property or other assets in the Area.
- 5.5 The Consultant shall, if required, allow Homes England or any person acting on its authority access, at any time, to the Consultant's premises for the purpose of inspecting or removing the Records. The Consultant shall provide Homes England with such copies of the Records as may reasonably be required.
- 5.6 The Consultant shall return the Records to Homes England at the end of the Consultancy Period and/or on demand at any time.

SCHEDULE 9

DEED OF NOVATION

DATED _____ 20[]

[EMPLOYER] (1)

[CONSULTANT] (2)

[SUCCESSOR] (3)

DEED OF NOVATION

RE []

DEED OF NOVATION

THIS DEED is made and delivered the _____ day of _____ 200[]

BETWEEN:

- (1) [], of [], together with its successors and its permitted assigns ("**Employer**"),
- (2) [] whose registered office is at [], ("**Consultant**"), and
- (3) [] whose registered office is at [], ("**Successor**")

RECITALS

- A. By an agreement or understanding made or dated [] ("Appointment") between the Employer and the Consultant, the Consultant undertook to carry out work and services in relation to the [] at [] ("Project")
- B. The parties to this deed have agreed that the Appointment will be novated from the Employer and Consultant to the Successor and Consultant, in accordance with the terms set out below

THE PARTIES agree as follows:

1. The Appointment is hereby novated from the Employer and Consultant to the Successor and Consultant. Without derogating from the generality of the foregoing, the following provisions of this deed shall have affect:
- 1.2 The Successor agrees to perform the Appointment in place of the Employer and to be bound by it in every way as if it had been an original party to it.
- 1.3 The Consultant hereby releases and discharges the Employer from all duties, liability, claims and demands whatsoever in respect of the Appointment and accepts the liability of the Successor in place of the Employer as from the date of the Appointment (or from the date on which the Consultant first commenced work in relation to the Project, which ever is the earlier) and agrees and undertakes to each of the Employer and the Successor to be bound by and perform the terms of the Appointment in every way as if the Successor had been originally named in it in place of the Employer.
- 1.4 The Consultant warrants to the Employer that it has, and will hereafter, duly perform the Appointment.
- 1.5 The Consultant represents and warrants to the Successor that in relation to its obligations arising under the Appointment prior to the date of this deed the Consultant has duly performed them in accordance with the terms of the Appointment. Further, the Consultant acknowledges and undertakes that the Successor shall be entitled to rely upon the Consultant's due performance of its said obligations, and that the Consultant further acknowledges that the Successor may in fact have so relied upon the Consultant's due performance.
- 1.6 The Consultant undertakes to the Successor that it shall be liable for the costs, losses and damages of the Successor as a result of the breach of the Appointment by the Consultant whether that breach occurred prior to or after the date of this deed, and irrespective of whether or not the Consultant's obligation under the Appointment was performed, or ought to have been performed, for the Employer.
- 1.7 All performance and satisfaction of the terms and conditions of the Appointment by the Employer prior to the date of this deed shall be deemed to be attributable to the Successor.

This deed shall be governed and construed in all respects in accordance with the laws of England and the parties agree to submit to the exclusive jurisdiction of the English courts

IN WITNESS whereof the parties have executed and delivered this deed the day and year first before written.

THE CORPORATE SEAL of)
[)
)
] hereto affixed is)
authenticated by:-)

.....
Authorised Signatory

.....
Authorised Signatory

EXECUTED as a deed by [CONSULTANT])
by affixing its seal in the presence of:-)

.....
Director

.....
Director/Company Secretary

EXECUTED as a deed by [SUCCESSOR])
by affixing its seal in the presence of:-)

.....
Director

.....
Director/Company Secretary

SCHEDULE 10

SPECIAL CONDITIONS

In addition to the provisions, warranties and obligations set out elsewhere in the Contract relating to the Consultant, the following provisions shall also apply:

1 REVIEW PROCEDURES

- 1.1 The Designated Person, the Deputy Designated Person or if such persons are unavailable at least one senior member of the Key Personnel shall, at least once every six months and at such other times as Homes England or the Consultant thinks appropriate, attend meetings with Homes England to review matters such as work in progress, working practices and general management issues ("**Regular Review Meetings**").
- 1.2 In addition to the obligation to attend Regular Review Meetings, the Consultant shall meet with the appropriate Homes England personnel on a regular basis to discuss the progress of Instructions.

SCHEDULE 11

COLLATERAL WARRANTY

DATED _____ 20[]

(1)

(2)

DEED OF WARRANTY

FROM CONSULTANT

RE

beneficial owner grants) with full title guarantee an irrevocable, royalty-free, non-exclusive licence in perpetuity to use and to reproduce any physical documents and the media upon which the same is recorded, including without limitation all drawings, reports, specifications, calculations or other similar documents (“**Intellectual Property**”) utilised by or prepared or provided by or on behalf of the Consultant in connection with the Project for any purpose related to the Project. The licence hereby granted shall include the right for the Beneficiary to grant sub-licences on like terms, and shall be transferable to third parties **PROVIDED** that the Consultant shall not have any liability for any use by the Beneficiary or anyone else of any of the Intellectual Property for any purpose other than that for which the same were prepared by or on behalf of the Consultant.

- 2.2 Where there are rights vested in the Consultant by virtue of Chapter IV (Moral Rights) of Part I of the Copyright Designs and Patents Act 1988 the Consultant hereby irrevocably waives any such rights in relation to the Project and the Intellectual Property, and shall obtain a written waiver from any of the Consultant’s agents or employees who may have or obtain any such rights.
- 2.3 The Consultant hereby undertakes that upon payment of its reasonable copying charges to provide the Beneficiary with copies of all the Intellectual Property from time to time required by the Beneficiary.

3. INSURANCE

- 3.1 Without prejudice to the Consultant 's obligations under this Deed or otherwise at law, the Consultant undertakes and warrants that to the extent it has not already done so it will forthwith procure at its own cost professional indemnity insurance for a sum not less than £[] in respect of each and every claim (except in respect of any claim for pollution or contamination where the cover shall be in the aggregate) to cover the Consultant 's obligations arising from or relating to the Appointment and this Deed.
- 3.2 The insurance required hereunder is to be with a reputable and authorised insurance company carrying on insurance business in the United Kingdom, not to be subject to any unusual terms or excesses having regard to the cover which is available in the insurance market to competent consultants of the same discipline as the Consultant with a good claims record.
- 3.3 The Consultant further undertakes and warrants that the insurance cover required hereunder will be maintained from the date of this Deed for a period of twelve years from the certificate of practical completion (or equivalent certificate), and for such period as it may have any liability to the Beneficiary (howsoever arising) under the Framework Contract, or if there is no Framework Contract at the date of completion of the Services, then 12 years from the date of completion or abandonment of the Services, and for so long as cover remains available in the market at commercially reasonable rates to competent consultants with a good claims record of the same profession as the Consultant.
- 3.4 The Consultant shall produce to the Beneficiary, whenever requested and without delay such documentary evidence as the Beneficiary may reasonably require and such other satisfactory evidence that the insurance required is in force, and in any event notify the Beneficiary forthwith upon its inability to obtain cover, or the cancellation of the insurance, or its inability to renew the insurance.

- 3.5 In the event that the Consultant's insurer makes payment to the Consultant in respect of a claim by or on account of the Beneficiary the Consultant shall:
- (a) pay forthwith upon receipt, and without set-off or deduction, any money received from such insurance to the Beneficiary, and in any event; and
 - (b) receive and hold any such money from such insurance on trust for the Beneficiary.

4 ASSIGNMENT

- 4.1 This Deed or any part or any benefit or interest under it may, without the consent of the Consultant, be assigned by the Beneficiary on no more than three occasions.
- 4.2 The Consultant cannot assign this Deed or any part or any benefit or interest under it.

5 GENERAL

- 5.1 The Consultant shall in relation to clauses 1.1 and 1.2 of this Deed, have no greater liability to the Beneficiary than if the Beneficiary were named as a co-employer under the Appointment, but for which purposes any counterclaim or set-off by the Consultant shall be disregarded.
- 5.2 No action or proceedings for any breach of this Deed shall be commenced against the Consultant after the expiry of 12 years from the date of the practical completion or equivalent of the Project.
- 5.3 In proceedings for breach of clause 1, the Consultant may:
- (a) rely on any limit of liability or other term of the Appointment (subject to any exclusions specified therein); and
 - (b) raise equivalent rights of defence as it would have had if the Beneficiary were named as a co-employer under the Appointment (for this purpose not taking into account any set-off or counterclaim against the actual employer under the Appointment).

6. SEPARATE OBLIGATIONS

- 6.1 This Deed shall have effect notwithstanding any dispute, including as to fees, or the failure (howsoever arising) of any other person to enter into a similar Deed with the Beneficiary and/or the Employer and/or the Consultant.

7. NOTICE

Any notice given hereunder shall be made in writing and shall be sent by pre-paid first class post, registered post, recorded delivery or delivered by hand addressed to the Beneficiary or the Consultant (as the case may be) at the address or place of business referred to herein or such other address or place of business last notified in writing by the Beneficiary or the Consultant (as the case may be) to the other.

8. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

For the purposes of the Contracts (Rights of Third Parties) Act 1999 the Beneficiary and the Consultant 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.

9. GOVERNING LAW AND JURISDICTION

This Deed is governed by English law, and the parties submit to the non-exclusive jurisdiction of the English courts.

10. INTERPRETATION

10.1 In this Deed:

- (a) Reference to "Beneficiary", "Employer" and "Consultant" includes their successors in title and assigns.
- (b) Headings are for reference only and are not to be used for the interpretation of this Deed.
- (c) Nothing shall give rise to any liability by the Beneficiary to the Consultant.
- (d) Reference to a "person" includes any company, individual, firm, corporation, board, partnership, authority or other body.
- (e) If the Consultant is at any time more than one person any reference to the Consultant shall include each such person (and where the Consultant is a partnership each and all its partners) and any covenants and other obligations expressed or implied shall be deemed to be joint and several covenants and obligations of each such person (and in the case of a partnership joint and several covenants and obligations of each and all its partners).
- (f) Words importing one gender shall include any other gender and words importing the singular shall include the plural and vice versa.

IN WITNESS whereof the parties have executed this document as a Deed on the date shown on the first page.

EXECUTED (but not delivered)
 until the date hereof) **AS A DEED**)
 by [])
 acting by:)

.....
 Director

.....
Director/Company Secretary

OR

EXECUTED (but not delivered)
until the date hereof) **AS A DEED**)
by [])
acting by:)

.....
Director

.....
Director/Company Secretary

EXECUTED (but not delivered until)
the date hereof) **AS A DEED** by)
[] acting by:)

.....
Director

.....
Director/Company Secretary

SCHEDULE 12

IT POLICY STATEMENT

For the purpose of this policy, 'third parties' includes any individual or company (including individuals working with the company) to whom access to Homes England's information systems, or information assets, has been granted.

IT IS THE POLICY OF HOMES ENGLAND THAT THIRD PARTIES, WHO ARE GRANTED ACCESS TO AGENCY INFORMATION ASSETS, IN ANY FORM, WILL:

1. Protect information provided or made available to them by Homes England, from unauthorised access;
2. Ensure the confidentiality of information provided, or made available to them, unless such documents or other materials, data or other information are public knowledge at the time when they are so provided;
3. Ensure the continued integrity of information provided or made available to them; (Safeguarding the accuracy and completeness of information by protecting against unauthorised modification)
4. Adhere to Regulatory and Legislative requirements, including, but not limited to: Data Protection Legislation , Computer Misuse Act 1990, Regulation of Investigatory Powers Act 2000, and Freedom of Information Act 2000;
5. Ensure that all of its employees who have access to Homes England's information assets will have signed a confidentiality document in an agreed format, and are made aware of the requirements of this policy;
6. Report all breaches or weaknesses of information security, actual or suspected, to HCA's Information Security Officer (ISO) for investigation. Where required, the ISO will escalate these internally, and where appropriate, to other relevant third parties;
7. Be aware that monitoring tools will be utilised to monitor all network activity on a regular basis, and independent third parties will be engaged to carry out ethical hacking attacks on a regular basis to ensure the effectiveness of Homes England's security implementation against attack
8. Ensure that any access to Homes England's information systems is protected with a strong password, and that user access credentials will be held securely, and will not be shared, or disclosed to unauthorised persons
9. Notify HCA's IT Service Desk (01908 353604) in a timely manner, where an employee, or other user, with access to Homes England's IT systems, leaves the Consultant's employment, or no longer requires system access, so that such access can be revoked in a timely manner

It is the responsibility of all third parties, where they have been granted access to Agency information assets, whether electronically, or by other means, to adhere to the policy.

Failure to comply with this Policy may be deemed as a breach of this Contract.

SCHEDULE 13

Processing, Personal Data and Data Subjects

1. The contact details of Homes England's Data Protection Officer are Ben Daley DPO@homesengland.gov.uk telephone 020 7393 2068
1. The contact details of the Consultant's Data Protection Officer are [REDACTED] (*please insert*)
3. The Consultant shall comply with any further written instructions with respect to processing by Homes England.
4. Any such further instructions shall be incorporated into this Schedule.

Description	Details
Identity of the Controller and Processor	The parties acknowledge that for the purposes of the Data Protection Legislation, Homes England is the Controller and the Consultant is the Processor, in accordance with paragraph 2.2 of Schedule 8 of this Contract.
Subject matter of the processing	All processing undertaken (if any) in connection with the provision of the Services.
Duration of the processing	The Consultancy Period
Nature and purposes of the processing	Any operation such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means, for purposes arising in connection with the provision of the Services.
Type of Personal Data	Names, addresses, dates of birth, NI numbers, telephone numbers, email addresses, pay, images, and any other personal data processed in connection with the provision of the Services.
Categories of Data Subject	Customers of Homes England and persons it has entered into, or proposes to enter into, legal arrangements with, staff (including volunteers, agents, and temporary workers), suppliers, students/pupils, members of the public.
Plan for return and destruction of the data	In accordance with clause 2.18 of Schedule 8.

once the processing is complete UNLESS requirement under union or member state law to preserve that type of data	
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SCHEDULE 14

PUBLIC SECTOR BODIES

1. Any of the following Potential Users, and any of their successors:
 - (a) Ministerial government departments;
 - (b) Non ministerial government departments;
 - (c) Executive agencies of government and other subsidiary bodies
 - (d) Non-Departmental Public Bodies (NDPBs), including advisory NDPBs, executive NDPBs, and tribunal NDPBs;
 - (e) All non-Crown Status Government Companies wholly or partly owned by Central Government Departments and their subsidiaries
Assembly Sponsored Public Bodies (ASPBs);
 - (f) Police forces;
 - (g) Fire and rescue services;
 - (h) Ambulance services;
 - (i) Maritime and coastguard agency services;
 - (j) NHS bodies;
 - (k) Educational bodies or establishments including state schools (nursery schools, primary schools, middle or high schools, secondary schools, special schools), academies, colleges, Pupil Referral Unit (PRU), further education colleges and universities;
 - (l) Hospices;
 - (m) National Parks;
 - (n) Housing associations, including registered social landlords;
 - (o) Third sector and charities;
 - (p) Citizens advice bodies;
 - (q) Councils, including county councils, district councils, county borough councils, community councils, London borough councils, unitary councils, metropolitan councils, parish councils;
 - (r) Other Public Bodies and Public corporations and their subsidiary bodies sponsored by Central Government Departments which are not covered by named categories in this Attachment 1
Authorised Customer list;
 - (s) Public financial bodies or institutions;
 - (t) Public pension funds;
 - (u) Central banks; and
 - (v) Civil service bodies, including public sector buying organisations.
 - (w) All new bodies created which fall within the criteria
2. Those listed and maintained by the Government on their website at <https://www.gov.uk/government/organisations> or any replacement web-link.
3. Those listed and maintained by the Office of National Statistics (ONS) at <https://www.ons.gov.uk/economy/nationalaccounts/uksectoraccounts/datasets/publicsectorclassificationguide> or any replacement web-link.
4. Those set out in the definition of "Contracting Authority" in regulation 2(1) of the Public Contracts Regulations 2015 (PCR), namely:
 - (a) the State, regional or local authorities. This covers parliament, central government, regional government and local government;
 - (b) associations formed by one or more regional or local authorities;
 - (c) bodies governed by public law, as defined under regulation 2(1) of PCR, including any subsidiary and sponsoring department of such bodies. A body which operates in normal market conditions, aims to make a profit, and bears the losses resulting from the exercise of its activity shall not be considered as being a 'body governed by public law' since the needs in the general interest, that it has been set up to meet or been given the task of meeting, can be deemed to have an industrial or commercial character;

- (d) associations formed by one or more bodies governed by public law, including any (applicable) joint venture or corporation; and
- (e) central government authorities, as defined under regulation 2(1) of PCR, and listed in Schedule 1 PCR

Central Government Departments, Local Government and Public Corporations that can be accessed at the Public Sector Classification Guide:

<https://www.ons.gov.uk/economy/nationalaccounts/uksectoraccounts/datasets/publicsectorclassificationguide>

Local Authorities (England)

<https://www.gov.uk/find-local-council>

<https://local-authority-eng.register.gov.uk/records>

NDPBs

<https://www.gov.uk/government/organisations>

National Parks Authorities

<http://www.nationalparks.gov.uk/>

Educational Establishments in England, maintained by the Department for Children, Schools and Families including Schools, Universities and Colleges but not Independent Schools

<http://www.education.gov.uk/edubase/home.xhtml>

Police Forces in the United Kingdom

<https://www.police.uk/contact/force-websites/>

Police Forces and Special Police Forces in the United Kingdom, and/or Police and Crime Commissioners (as defined by the Police Reform and Social Responsibility Act 2011) and/or the Police Authorities (as defined in the Police Act 1964, Police Act 1996, Serious Organised Crime and Police Act 2005, Police and Justice Act 2006, Police, Public Order and Criminal Justice (Scotland) Act 2006), and other relevant legislation for the constituent parts of the United Kingdom, for their respective rights and interests

Fire and Rescue Services in the United Kingdom

<http://www.fireservice.co.uk/information/ukfrs>

NHS Bodies England

<http://www.nhs.uk/ServiceDirectories/Pages/AcuteTrustListing.aspx>

<http://www.nhs.uk/ServiceDirectories/Pages/CCGListing.aspx>

<http://www.nhs.uk/ServiceDirectories/Pages/MentalHealthTrustListing.aspx>

<http://www.nhs.uk/ServiceDirectories/Pages/CareTrustListing.aspx>

<http://www.nhs.uk/ServiceDirectories/Pages/AreaTeamListing.aspx>

<http://www.nhs.uk/ServiceDirectories/Pages/SpecialHealthAuthorityListing.aspx>

<http://www.nhs.uk/ServiceDirectories/Pages/OtherListing.aspx>

Hospices in the UK

<http://www.helpthehospices.org.uk/about-hospice-care/find-a-hospice/uk-hospice-and-palliative-care-services>

Registered Providers of Social Housing (Housing Associations)

<https://www.gov.uk/government/publications/current-registered-providers-of-social-housing>

Third Sector and Charities in the United Kingdom

<http://www.charitycommission.gov.uk/find-charities/>

<http://www.oscr.org.uk/search-charity-register/>

<https://www.charitycommissionni.org.uk/ShowCharity/RegisterOfCharities/RegisterHomePage.aspx>

Any charities registered in the United Kingdom

Citizens Advice in the United Kingdom

<http://www.citizensadvice.org.uk/index/getadvice.htm>

www.cas.org.uk

<http://www.citizensadvice.co.uk/>

Local Enterprise Partnerships (LEP's)

[https://www.gov.uk/government/policies/local-enterprise-partnerships-leps-and-enterprise-zones?page=2,](https://www.gov.uk/government/policies/local-enterprise-partnerships-leps-and-enterprise-zones?page=2)

Combined Authorities established under Section 103 of the Local Democracy Economic Development and Construction Act 2009, <http://www.local.gov.uk/devolution/map>

other Public Bodies, Public Corporations and their subsidiary bodies sponsored by Central Government Departments which are not covered by the above categories; Any successor bodies to any of the above;

Other

Post Office Ltd

Post Office

Manchester Airport Group

SCHEDULE 15

FRAMEWORK MANAGEMENT

1 Use of the Framework by Homes England

- 1.1 The Framework will be managed by the Homes England's Land Team, which is based in Coventry. However individual Instructions will be the responsibility of the Instructing Officer.

2 Financial Evaluation

- 2.1 Up to date financial records will be maintained on all Framework Members. If insufficient information is available in the public domain Homes England's Customer Due Diligence team may be in touch to request additional information in order to get comfort of continued good standing.
- 2.2 In respect of a consortium information will be required for each consortium member.

3 Use of the Framework by Public Sector Bodies

- 3.1 The Framework has been procured so that Public Sector Bodies can make use of the Framework. Where Public Sector Bodies wish to access the Framework, an Access Agreement will be put in place between Homes England and the Public Sector Body concerned. The Public Sector Body will be responsible for procuring work through the Framework via mini tender. Homes England will not be party to that mini tender nor any individual commissions and will have no liability for work procured through the Framework. On the signing of an Access Agreement by a Public Sector Body, Homes England will make guidance available so that it can use the Framework compliantly.
- 3.2 The main conditions which other Public Sector Bodies will need to satisfy in order to have access to the Framework include:
- (a) Acceptance of the Framework as selected by Homes England and the limitation in accessing Services from the Framework in accordance with the appointment by Homes England;
 - (b) The Public Sector Body takes full responsibility for the mini-competition, selection, appointment, management and payment of the Consultant.
 - (c) Should disputes arise between the Public Sector Body and the Framework Member, Homes England will not formally be involved unless the Public Sector Body concerned feels that the issue has a fundamental impact on the Framework Member's ability or capacity to continue to provide services to Homes England and the Public Sector Body;
 - (d) Homes England reserves the right to close the Framework to Public Sector Bodies should usage by such bodies compromise the Framework's ability to provide services to Homes England.
- 3.3 Framework Members will be required to provide feedback to Homes England detailing any work procured through the Framework by Public Sector Bodies. This feedback should be provided to the Nominated Officer or his/her representative every 3 months. The feedback should be provided for each Instruction the Framework Member was awarded, and should include:
- (a) a short description of the Services procured;

(b) the name of the other Public Sector Body and the instructing officer;

(c) the value/cost of the bid.

3.4 Failure to provide the information requested will render the Framework Member inactive until the Nominated officer has received the requested information

4 Framework Management meetings

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

4.2 In order to manage the ongoing Framework arrangements it is proposed that the Nominated Officer or his/her representative will then arrange a meeting with Framework 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 Homes England and Framework Members can work together better. This will include identifying ways in which Homes England can act as a better client as well as defining how the Framework Members can better enable Homes England to meet its objectives. The meetings are intended to enable sharing of information between Homes England and Framework Members and between Framework Members.

4.3 Framework 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 Framework Members with the necessary understanding of Homes England, its procedures and expectations Framework Members will be required to attend an initial Framework meeting where Framework management and other processes will be explained. Failure to attend the initial meeting may affect the Framework Member's ability to tender for individual Instructions.

6 Framework Member performance

6.1 Once the Framework is in place, Homes England will operate a system of feedback on performance of Framework Members. Instructing officers will be requested to give feedback on the performance of Framework Members every 3 months, with Framework Members being able to view such feedback (if any) on their own performance.

7 Key Personnel

7.1 Framework members are asked to provide details of the Key Personnel they nominate to manage their membership of the framework. Key Personnel are detailed in Schedule 4. Key Personnel should have sufficient time to manage the contract effectively but should be of sufficient seniority to be able to speak on behalf of their company.

7.2 Key Personnel should be familiar with all work that is procured through the Framework and should act as the key point of contact for Homes England staff or staff from other public bodies procuring through the framework.

- 7.3 In the event that Homes England staff or members of staff from other Public bodies report poor performance by a Framework member in completion of services procured through the Framework the Key Personnel are to act as first point of escalation and should actively seek to resolve the issue.
- 7.4 In the event of poor performance by Homes England staff, for example unclear briefing, Key Personnel are responsible for raising the issue with the Homes England Instructing Officer initially and actively seeking to work with them to resolve the issue. If the issue cannot be resolved key Personnel should then raise the issue with the Homes England Nominated Officer who will work actively with the Consultant's Nominated Officer and Instructing officer to resolve the issue.

8 Disclosure of information on suspected or confirmed fraudulent activities

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

