

- 1.4 a reference to any statutory provisions, shall include, unless the context otherwise requires, any statutory provisions superseding or re-enacting those statutory provisions and, any reference to a specific statutory provision shall include a reference to any statutory provision superseding or re-enacting that statutory provision;
- 1.5 a reference to clauses or schedules, shall, be a reference to a clause or a schedule to this Agreement and, references to a sub-clause shall be a reference to a sub-clause of the clause in which the reference appears;
- 1.6 the headings and sub-headings in this Agreement are for ease of reference only and shall not be taken into account in its construction or interpretation;
- 1.7 the following words and expressions have the meanings set out below:
 - 1.7.1 '**Call Off**' means the arrangements for a package of work in relation to the Project and which is to be provided under the terms of the Framework, including all the processes prior to the award of a contract and any contract subsequently awarded;
 - 1.7.2 '**Confidentiality Agreement**' means a confidentiality agreement of the same date as this Agreement and made between (1) the Council and (2) the Partnership Client;
 - 1.7.3 the '**Framework**' means the XXXX [] area Construction Contractors Framework that runs for a period of four years from [insert date]; and
 - 1.7.4 the '**Project**' means the project referred to in **Background clauses (3) and (4)**.

2 Statutory powers

- 2 This Agreement is completed pursuant to the powers of the Council and the Partnership Client arising pursuant to the Local Authorities (Goods and Services) Act 1970, the Local Government Act 2000, the Local Government Act 2003 and all other enabling powers.

3 The Partnership Client's undertakings

- 3.1 In consideration of the Council allowing the Partnership Client to use the Framework and providing any services described in **clause 4**, the Partnership Client undertakes and agrees with the Council as provided in **clause 3.2**.
- 3.2 The Partnership Client undertakes and agrees with the Council as follows:
 - 3.2.1 the Partnership Client shall only access the Framework to secure the delivery of the Projects;

- 3.2.2 any Call Off by the Partnership Client shall be procured in accordance with the terms and conditions of the Framework. This includes the selection process and the conditions of contract that apply to the individual Call Off. There will be no substantive change to the terms and conditions applied to the Framework;
- 3.2.3 in awarding a Call Off and managing the Project, the Partnership Client shall not act in any way that is discriminatory, improper or has the effect of distorting competition;
- 3.2.4 the Partnership Client shall be the employer and shall be responsible for the day to day management of the Project [in relation to each Call Off the Partnership Client makes under this Agreement];
- 3.2.5 any Call Off by the Partnership Client must use the NEC3 suite of contracts;
- 3.2.6 the Partnership Client will provide to the Council such information as the Council requires in respect of the performance of the contractor appointed under any particular Call Off so as to enable the Council to maintain its records relating to the contractor's performance;
- 3.2.7 the Partnership Client must document all dealings with the contractor to ensure a clear and precise audit trail;
- 3.2.8 the Partnership Client shall save harmless and indemnify the Council from and against any and all loss, damage, liability, claims, actions and costs whatsoever arising out of or in connection with this Agreement, the use by Partnership Client of the Framework or any Call Off or use by the Partnership Client of information provided by the Council; and
- 3.2.9 the Partnership Client shall pay the Council's costs arising from Partnership Client's use of the Framework and any other services provided pursuant to this Agreement at the following rates or such other charge as ERYC may from time to time impose in substitution thereof:
- 3.2.9.1 [insert cost for using the framework]; and
- 3.2.9.2 [insert charge out rates for any other services or cover any other services in a separate agreement. We need to monitor and make sure that any other services that are to be provided do not infringe the Public Contracts Regulations 2006. This will also be an issue for the Partnership Client.]

4 The Council's obligations

- 4.1 In consideration of the Partnership Client paying the costs set out in this Agreement [together with its actual costs of providing any other services described in **clause 3**], the Council undertakes and agrees with the Partnership Client as provided in **clause 4.2**.
- 4.2 The Council undertakes and agrees with Partnership Client as follows:
- 4.2.1 the Council will keep timesheets to evidence all charges made pursuant to the terms of this Agreement and submit these with the monthly invoice referred to in **clause [insert details]**;
 - 4.2.2 the Council will provide advice to the Partnership Client on the procurement, quality competition and tender award of a Call Off under the terms of the Framework. The details of the advice to be provided are set out in **Schedule 1**;
 - 4.2.3 [the Council will provide advice on project management in relation to any Call Off under the terms of the Framework; and
 - 4.2.4 the Council will provide any other advice and assistance in relation to a Call Off under the Framework as agreed between the parties.]

5 Agreements and declarations

The parties to this Agreement agree and declare as follows:

- 5.1 The consent to use the Framework is at the sole discretion of the Council which may be withdrawn at any time. The availability of the contractor's resources may, inter alia, be a factor in withdrawing any such consent but, any decision by the Council to withdraw consent is not limited solely to the contractor's resources. For the avoidance of doubt, the decision is at the sole discretion of the Council.
- 5.2 The Partnership Client has satisfied itself and will continue to satisfy itself regarding all aspects of the Framework including but not limited to:
- 5.2.1 the adequacy of the Framework for the Partnership's purposes;
 - 5.2.2 compliance of the Framework with the EU procurement directives, the Public Contracts Regulations 2006, any other statutory or regulatory provision and the Partnership Client's own procurement arrangements and requirements.
 - 5.2.3 the Call Off process including the selection and the appointment of the contractor;

- 5.2.4 all aspects of the contract documentation and any other documentation, including any documentation issued or made available by the Council; and
- 5.2.5 the legal and financial status, technical capability and capacity, health and safety record, equal opportunities standards, records and systems and insurances of the contractor.
- 5.3 This Agreement does not impose any contractual obligation or liability on the Council and no warranty is given or implied that the Framework meets the requirements of the Partnership Client.
- 5.4 The Council has supplied to the Partnership Client with full details of the selection process that must be followed in the selection of a contractor and the award of a Call Off.
- 5.5 There is no obligation on the part of the Partnership Client to proceed with the award of a Call Off under the terms of this Agreement. It can withdraw at any time but in doing so it will be responsible for paying to the Council and, if appropriate, the contractor, any fees, costs or expenses incurred by them up to the point of withdrawal by the Partnership Client.
- 5.6 Any costs due to the Council pursuant to this Agreement if not paid by the Partnership Client on the due date, shall be a debt recoverable by action and shall bear interest at 3% above the base lending rate of the Council's bank from the due date until the date of payment (but excluding that date).
- 5.7 This Agreement will survive the termination of the Framework for a period of 6 years.

6 Severability

In the event that any provision of this Agreement is held to be invalid, illegal or unenforceable for any reason by any Court of competent jurisdiction, then such provision shall be severed from this Agreement and the remainder of it shall continue in full force and effect as if it had been executed without that invalid illegal or unenforceable provision **PROVIDED THAT** where such invalidity or illegality is so fundamental to the performance of this Agreement as to prevent that performance then the parties shall immediately commence negotiations in good faith to remedy such invalidity.

7 Notices

Any notice required to be served under this Agreement shall be in writing and shall be given or made by personal delivery or first class recorded delivery post and shall be addressed as follows:

Party	Address	Attention of
the Council	[insert address]	[insert contact details]
the Partnership Client	[insert address]	[insert contact details]

and if so addressed shall be deemed to have been duly delivered and given if sent by personal delivery upon the date of delivery to the address and if sent by recorded delivery three (3) working days after being posted.

8 Entire understanding and waiver

- 8.1 This Agreement and the Confidentiality Agreement constitute the entire understanding and agreements relating to access to the Framework and, save as expressly referred to or incorporated by reference, supersede all prior negotiation submissions or understandings.
- 8.2 No forbearance indulgence waiver or relaxation by any party shown to the other in respect of its obligations under this Agreement shall in any way affect, restrict or diminish the rights and powers of that party or operate or be deemed a waiver of any breach of this Agreement.
- 8.3 No waiver of any of the provisions of this Agreement shall operate as such nor be effective unless it is expressly stated to be a waiver and communicated in writing to the other party.

9 No partnership

The parties agree that the arrangement within this Agreement does not create a legal partnership but constitutes the basis upon which the Partnership Client shall be allowed access to the Framework.

10 Contracts (Rights of Third Parties) Act 1999

The parties agree that nothing in this Agreement shall confer any benefit on any person who is not a Party to this Agreement whether under the Contracts (Rights of Third Parties) Act 1999 or otherwise.

11 Law

This Agreement is governed by English Law and the parties submit to the exclusive jurisdiction of the English Courts.

IN WITNESS whereof this Agreement is executed by the parties as a deed the day and year first before written

Draft
SAMPLE
Development

SCHEDULE 1

The advice to be provided by the Council under the terms of this Agreement

[insert details of what the Partnership Client is entitled to when it pays for access to the Framework]

Draft
SAMP
Development

THE COMMON SEAL of [insert name])
Council was hereunto affixed in the)
presence of:)

THE COMMON SEAL of [insert name of)
the Partnership Client] was hereunto)
affixed in the presence of:)

.....(Authorised Officer)

Name:

Position:

Draft
SAMP Development

- 1.4 a reference to any statutory provisions, shall include, unless the context otherwise requires, any statutory provisions superseding or re-enacting those statutory provisions and, any reference to a specific statutory provision shall include a reference to any statutory provision superseding or re-enacting that statutory provision;
- 1.5 a reference to clauses or schedules, shall, be a reference to a clause or a schedule to this Agreement and, references to a sub-clause shall be a reference to a sub-clause of the clause in which the reference appears;
- 1.6 the headings and sub-headings in this Agreement are for ease of reference only and shall not be taken into account in its construction or interpretation;
- 1.7 the following words and expressions have the meanings set out below:
- 1.7.1 **'Call Off'** means the arrangements for a package of work in relation to the Project and which is to be provided under the terms of the Framework, including all the processes prior to the award of a contract and any contract subsequently awarded.
- 1.7.2 **'Confidential Information'** means:
- 1.7.2.1 all data, information, drawings, specifications, documents and other data or information that the Council, a consultant or a contractor may have imparted or, may from time to time impart, to the Partnership Client relating to the Council's business, the Framework, any Call Off or otherwise and including any technical specifications and contractual information; and
- 1.7.2.2 all data, information, drawings, specifications, documents and other data or information that the Partnership Client may have imparted or, may from time to time impart, to the Council, a consultant or a contractor relating to the Partnership Client's business, the Framework any Call Off or otherwise and including any technical specifications and contractual information.
- 1.7.3 **'Contractor'** means a contractor appointed to the Framework by the Council.
- 1.7.4 the **'Framework'** means the XXXX [] area Construction Contractors Framework that runs for a period of four years from [insert date].
- 1.7.5 the **'Project'** means the project referred to in **Background clauses (3) and (4)**.

2 The parties undertakings

The parties to this Agreement, undertake and mutually agree with each other that they:

- 2.1 will receive and hold any Confidential Information in the strictest confidence whether the same came into the respective party's possession before or after the date of this Agreement and, will use their best endeavours to take all security precautions necessary to ensure the safekeeping of any Confidential Information and to prevent its unauthorised disclosure to third parties;
- 2.2 shall use such Confidential Information and all other data solely for the purposes of the Framework and the Call Off and that it shall not at any time during or any time after the completion expiry or termination of the Framework or the Call Off, use the Confidential Information for the respective party's own purposes or disclose the same whether directly or indirectly to any third party without the prior written consent of the other party;
- 2.3 shall not themselves or through any employees, servant, agent, contractor, sub-contractor or subsidiary sell or otherwise deal in any Confidential Information;
- 2.4 shall only make copies of any Confidential Information as strictly necessary for the operation of the Framework and the Call Off and, shall not copy or store the Confidential Information electronically outside of the respective party's usual place of business;
- 2.5 shall ensure that their respective employees, servants, agents, contractors, sub-contractors and subsidiaries are only given access to any Confidential Information on a need to know basis for the purposes of dealing with the Framework and the Call Off and that those employees, servants, agents, contractors, sub-contractors and subsidiaries are informed of the confidential nature of the Confidential Information and are contractually bound to safeguard the Confidential Information;
- 2.6 shall maintain the safe custody of all Confidential Information and return it in the same condition as it was when first forwarded, save for any modification that may be required to ensure that it can be used on or in the party's systems and the party receiving the Confidential Information shall be liable for any loss or deterioration of it (save for normal wear); and
- 2.7 shall, except as provided by **clause 2.6**, ensure that any such Confidential Information held in electronic form whilst in their possession shall maintain its integrity and the respective party shall prevent any corruption or loss of the same.

3 Matters in the Public Domain

3.1 Nothing in this Agreement shall apply to any information that is:

3.1.1 in the public domain or public knowledge when received by the respective party;

3.1.2 lawfully known to the respective party prior to its disclosure by the other party;

3.1.3 lawfully made available to the respective party by a third party without breach of any confidentiality obligation; or

3.1.4 is required to be disclosed by a Court order or at the direction of the Information Commissioner.

4 Ownership of Confidential Information

The parties acknowledge that they may be or have been required to take Confidential Information belonging to the other party or supply Confidential Information to the other party for a number of reasons and they acknowledge that such Confidential Information is and shall remain the property of the other party which shall retain all copyright and any other intellectual property rights in such Confidential Information.

5 Return of Confidential information

Upon request or, in the event of any breach of the terms of this Agreement, the parties shall immediately return, all Confidential Information in their possession belonging to the other party and, destroy any copies, notes or extracts of it so that no Confidential Information is retained save to the extent that it may be necessary for either party to retain copies in their files for their own internal quality management procedures.

6 Indemnities

6.1 The Partnership Client fully indemnifies the Council against all and any loss, damage, costs and or expenses that the Council sustains as a result of any breach of this Agreement by the Partnership Client and/or it's employees, servants, agents, contractors, sub-contractors or subsidiaries.

6.2 The Council fully indemnifies the Partnership Client against all and any loss, damage, costs and or expenses that the Partnership Client sustains as a result of any breach of this Agreement by the Council and/ or it's employees, servants, agents, contractors, sub-contractors or subsidiaries.

7 Supplementary

7.1 This Agreement will survive the termination of the Framework for a period of 6 years.

7.2 The obligations set out in this Agreement shall remain binding upon the parties regardless of the existence of any copies of the Confidential Information held or retained by any party.

8 Law

This Agreement is governed by English Law and the parties submit to the exclusive jurisdiction of the English Courts.

IN WITNESS whereof this Agreement is executed by the parties as a deed the day and year first before written

THE COMMON SEAL of [insert name])
Council was hereunto affixed in the)
presence of:)

THE COMMON SEAL of [insert name of)
Partnership Client] was hereunto affixed)
in the presence of:)

.....(Authorised Officer)

Name:

Position:

THE COMMON SEAL of XXXX was)
affixed in the presence of:)
)

THE COMMON SEAL of XXXX was)
hereunto affixed in the presence of:)
)

THE COMMON SEAL of XXXX was)
hereunto affixed in the presence of:)
)

THE COMMON SEAL of XXXX was)
hereunto affixed in the presence of:)
)

Draft For Development