

Private & Confidential

Dated **2019**

SANCTUARY HOUSING ASSOCIATION (1)

AND

[SUPPLIER] (2)

**DYNAMIC PURCHASING SYSTEM
AGREEMENT**

for the provision of

BUILDING TRADES CONTRACTORS



CONTENTS

DYNAMIC PURCHASING SYSTEM AGREEMENT FOR THE PROVISION OF BUILDING TRADES CONTRACTORS – FORMATION OF AGREEMENT	1
KEY PROVISIONS OF THE DPS AGREEMENT	3
Application of the Key Provisions	3
Access to the DPS	3
Contract Managers and Addresses for Notices	3
Management Levels for Dispute Resolution	4
Insurance	4
Performance Bond and/or Guarantee	4
Administration of the DPS by Constructionline4	
GENERAL TERMS AND CONDITIONS OF THE DPS AGREEMENT	5
1. DEFINITIONS AND INTERPRETATION	4
2. DURATION OF THIS DPS AGREEMENT	9
3. OBJECTIVES	9
4. SCOPE OF THIS DPS AGREEMENT	9
5. SUPPLIER'S APPOINTMENT	9
6. NON-EXCLUSIVITY	10
7. WARRANTIES AND REPRESENTATIONS	10
8. PREVENTION OF BRIBERY AND CORRUPTION	11
9. CONFLICTS OF INTEREST	13
10. STATUTORY REQUIREMENTS	13
11. EQUAL OPPORTUNITIES	13
12. SOCIAL RESPONSIBILITY	13
13. CONFIDENTIALITY	14
14. DATA PROTECTION, FREEDOM OF INFORMATION AND ENVIRONMENTAL INFORMATION	15
15. PUBLICITY	16
16. SUPPLIER'S STAFF	17
17. TUPE	17
18. TRANSFER AND SUB-CONTRACTING	17
19. LIABILITY	18
20. INSURANCE	18
21. RECORDS AND AUDIT ACCESS	19
22. CALL-OFF FROM THE DPS AND FORMATION OF CALL-OFF CONTRACT	19
23. PRICES FOR WORKS	20
24. CALL-OFF CONTRACT PERFORMANCE	20
25. COMMUNICATION, DPS KPIS AND CONTINUOUS IMPROVEMENT	20
26. TERMINATION	21

27.	SUSPENSION OF THE SUPPLIER'S APPOINTMENT	22
28.	CONSEQUENCES OF TERMINATION AND EXPIRY	23
29.	FORCE MAJEURE	23
30.	VARIATIONS TO THIS AGREEMENT	23
31.	REVIEW OF DPS AND THIS AGREEMENT	23
32.	NOTICES	24
33.	RIGHTS OF THIRD PARTIES	24
34.	SEVERABILITY.....	24
35.	WAIVER	24
36.	MODERN SLAVERY.....	24
37.	ENTIRE AGREEMENT	25
38.	CUMULATIVE REMEDIES	26
39.	COMPLAINTS HANDLING AND RESOLUTION.....	26
40.	DISPUTE RESOLUTION	26
41.	LAW AND JURISDICTION.....	26
	SCHEDULE 1 CALL-OFF TERMS AND CONDITIONS	28
	SCHEDULE 2 CALL-OFF PROCEDURES.....	29
	SCHEDULE 3 DPS KPIS	30
	SCHEDULE 4 – DYNAMIC PURCHASING SYSTEM VARIATION PROCEDURE.....	41
1.	INTRODUCTION.....	41
2.	PROCEDURE FOR PROPOSING A VARIATION	41
3.	OBJECTIONS TO A VARIATION	41
4.	VARIATIONS WHICH ARE NOT PERMITTED.....	41
	SCHEDULE 5 FORM OF PERFORMANCE BOND	42
	SCHEDULE 6 FORM OF PARENT COMPANY GUARANTEE	47
	SCHEDULE 7 THIRD PARTY RIGHTS	53

DYNAMIC PURCHASING SYSTEM AGREEMENT FOR THE PROVISION OF BUILDING TRADES CONTRACTORS – FORMATION OF AGREEMENT

Sanctuary (which expression shall include its successors in title and any party to whom this Agreement is assigned or novated)	SANCTUARY HOUSING ASSOCIATION , a registered society as defined in section 1 of the Co-operative and Community Benefit Societies Act 2014 (registered number 19059R) of Sanctuary House, Chamber Court, Castle Street, Worcester, WR1 3ZQ
The Supplier	[●] [(Company No. [●])] whose [registered] office is at [●]
Commencement Date	[]
Type of Services	Dynamic Purchasing System for Building Trades Contractors

This Dynamic Purchasing System Agreement (the "**Agreement**", the "**DPS Agreement**") relates to the Dynamic Purchasing System for Building Trades Contractors established by Sanctuary (the "**DPS**"), and is made between Sanctuary and the Supplier, effective from the date set out above, subject to the terms set out in the key provisions, general terms and conditions, the schedules herein ("**Key Provisions**", "**General Terms and Conditions**", and "**Schedules**"). In consideration of the mutual covenants and assurances given herein, Sanctuary and the Supplier undertake to comply with the provisions of the Key Provisions, General Terms and Conditions, and Schedules in the performance of this Agreement.

Signed by SANCTUARY HOUSING ASSOCIATION

acting by:

Name:	.....	Signature:	.....
Position:	.....	Date:	.....

Signed by [SUPPLIER]

acting by:

Name:	.....	Signature:	.....
Position:	.....	Date:	.....

KEY PROVISIONS OF THE DPS AGREEMENT

1. Application of the Key Provisions

- 1.1. The Key Provisions set out in Clauses 1 to 8 below shall apply to this DPS Agreement.

2. DPS Term

- 2.1. The DPS is expected to run for a period of 10 years, from 1 April 2018 to 31 March 2028.

3. Access to the DPS

- 3.1. Any Group Company of Sanctuary, including without limitation Sanctuary Affordable Housing Limited, may unilaterally exercise the rights of Sanctuary under this Agreement without Sanctuary's consent or approval and, for the avoidance of doubt only, shall be entitled to enforce the rights of Sanctuary under any Call-Off Contract and references to "Sanctuary" in this Agreement and any Call-Off Contract shall be interpreted accordingly.

4. Contract Managers and Addresses for Notices

- 4.1. The Contract Managers at the commencement of this DPS Agreement are:

- for Sanctuary:

[name and job title]

[tel. and email]

- for the Supplier:

[name and job title]

[tel. and email]

- 4.2. Notices served pursuant to this DPS Agreement are to be delivered to:

- for Sanctuary:

[job title]

[address]

[tel. and email]

- for the Supplier:

[job title]

[address]

[tel. and email]

5. Management Levels for Dispute Resolution

5.1. The management levels at which a dispute will be dealt with are as follows:

Level	Sanctuary Representative	Supplier Representative
1	[job title]	[job title]
2	[job title]	[job title]

6. Insurance

6.1. The Supplier shall put in place and maintain in force the insurances set out in the Contract Particulars that form part of the Call-Off Contract to the extent that such insurances are additional to and/or separate from the insurance requirements set out in Clause 20.

7. Performance Bond and/or Guarantee

7.1. The Supplier shall enter into a Performance Bond and/or procure a Guarantee in respect of the Works as set out in the Contract Particulars that form part of the Call-Off Contract.

8. Administration of the DPS by Constructionline

8.1. Sanctuary will work in association with Constructionline to manage, develop and maintain the DPS for Sanctuary's Building Trades Contractor Categories.

8.2. Constructionline will provide DPS management solution services, encompassing management, compliance and monitoring of the following:

- Supplier on-boarding to DPS – Constructionline will host a landing page for Sanctuary solely related to the DPS;
- Supplier engagement support - Constructionline will host Supplier engagement events;
- Supplier assessment verification – Constructionline will pre-qualify applicants to the DPS;
- Supplier due diligence – Constructionline will regularly review the notation and general standing of all the Approved Suppliers on the DPS;
- Compliance with Regulation 34 of the Public Contracts Regulations 2015, including the Timescales for Setting Up and Vetting;
- Provision of a Searchable list of approved suppliers bespoke to DPS requirements;
- Supply chain compliance monitoring.

8.3. Sanctuary will remain responsible for the following matters:

- OJEU Notice/Prior Information Notice (PIN);
- Call for Competition / Tendering Process - Call-off Contracts;
- Completion of Call-off Contracts and issue of POs.

GENERAL TERMS AND CONDITIONS OF THE DPS AGREEMENT

BACKGROUND

- (A) Sanctuary placed a contract notice [number] on [date] in the Official Journal of the European Union seeking Requests to Participate from suppliers for the provision of Building Trades Contractors to Sanctuary under a Dynamic Purchasing System ("**DPS**").
- (B) The Supplier submitted a Request to Participate in response to the contract notice.
- (C) On the basis of the Supplier's Request to Participate, Sanctuary is admitting the Supplier onto the DPS so that it can provide the required Works to Sanctuary on a call-off basis.
- (D) The Supplier has indicated in its Request to Participate that it will comply with the relevant legislation, codes of conduct and regulations governing the provision of the DPS for Building Trades Contractors (including, without limitation, the Call-Off Procedures).
- (E) The Supplier represents that it has the necessary capabilities, resources, competent personnel and experience to carry out such Works and is willing to do so on the terms and conditions set out in this Agreement. The Supplier has further represented in its Request to Participate that it will comply with the relevant Legislation, Codes of Conduct and the Regulations governing the provision of the Works.
- (F) This Agreement sets out the award and ordering procedure for the Works, and the obligations of the Supplier during and after the term of this Agreement where these are not stated in the Call-Off Contract or the Call-Off Procedures.
- (G) It is the Parties' intention that there will be no obligation for Sanctuary to award any Call-Off Contracts to the Supplier under the DPS during its term (the "**DPS Term**").
- (H) Sanctuary may replace the Call-Off Terms and Conditions set out in Schedule 1 and the Call-off Procedures set out in Schedule 2 with an alternative form of Call-Off Contract or Procedures at its discretion.

THE PARTIES HEREBY AGREE as follows:

1. DEFINITIONS AND INTERPRETATION

- 1.1 Unless the context otherwise requires, the following words and expressions shall have the following meanings:

Agreement	means this Agreement including the Schedules and all Appendices;
Approval	means the prior written approval of Sanctuary;
Audit	means an audit carried out pursuant to Clause 21;
Auditor	means the organisation (including without limitation its authorised representatives) appointed by Sanctuary to carry out Audits in connection with this Agreement;
Call-Off Contract	a contract for Works formed by the operation of Clause 22;
Call-Off Procedures	means (a) the rules governing the operation of Call-off Contracts, attached at Schedule 2 and/or (b) such terms and conditions in respect of the Works as may be specified by Sanctuary in an Invitation to Tender;
Call-Off Terms and Conditions	means (a) the terms and conditions for the carrying out of the Works, attached at Schedule 1 and/or (b) such terms and

	conditions in respect of the Works as may be specified by Sanctuary in an Invitation to Tender;
Code of Conduct	means any statement and description of required behaviours, responsibilities, and actions expected of persons and organisations in an industry relevant to the Works, or who are of members of a professional body relevant to the Works, made available and/or published by a relevant industry body or regulator;
Commercially Sensitive Information	means any Confidential Information which is provided in writing by either Party to the other and designated as Commercially Sensitive Information;
Complaint	means any informal complaint raised by Sanctuary in relation to the operation by the Supplier of this Agreement, including without limitation performance of the Works;
Confidential Information	<p>means:</p> <ul style="list-style-type: none"> (a) any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information which would or would be likely to prejudice the commercial interests of any person, trade secrets, Intellectual Property Rights, know-how of either Party and all personal data and sensitive data within the meaning of the DPA; and (b) the Commercially Sensitive Information; <p>and does not mean any information which:</p> <ul style="list-style-type: none"> (i) was public knowledge at the time of disclosure (otherwise than by breach of this Agreement) (ii) was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party; (iii) is received from a third party (who lawfully acquired it) without restriction as to its disclosure; or (iv) is independently developed without access to the Confidential Information;
Constructionline	means the organisation responsible for (i) maintaining the register of the same name for pre-qualified contractors and consultants used by the UK construction industry, and (ii) operating the DPS;
Contract Standard	means the standard consistent with the requirements of the Invitation to Tender (ITT) or where no criteria are stated in the ITT then with the reasonable requirements Sanctuary as agreed by the Supplier;
Contracting Authority	means a contracting authority as defined in Section 2 (Definitions) of the Public Contracts Regulations 2015;
Controller	shall, from the Commencement Date until 24 May 2018 have the meaning of Data Controller as set out in section 1(1) of the Data Protection Act 1998, and from 25 May 2018 shall have the meaning given to it in the General Data Protection Regulation ((EU) 2016/679);
Cyber Essentials Scheme Certificate	means certification by an appropriate certification body in respect of the Supplier's compliance with the relevant requirements of the Cyber Essential Scheme Assurance

	Framework as published by HM Government;
Data	shall mean the Personal Data and Special Personal Data;
Data Protection Laws	the Data Protection Act 2018 incorporating the regulations on the protection of natural persons with regard to the processing of personal data and on the free movement of such data known as the General Data Protection Regulation ((EU) 2016/679 (the “GDPR”)), and any re-enactments, amendments and relevant regulations connected with the same;
Default	means any breach of the obligations of the relevant Party (including but not limited to fundamental breach or breach of a fundamental term) or any other default, act, omission, negligence or negligent statement of the relevant Party or its staff in connection with or in relation to the subject-matter of this Agreement and any Call-Off Contract and in respect of which such Party is liable to the other;
DPS KPIs	the strategic key performance indicators set out in Schedule 3;
DPS Term	has the meaning given to it in Clause 2.1 of the Key Provisions;
Early Warning	early warning in accordance with the system described in Clause 25.4;
Employment Liabilities	without limitation any costs, claims demands or expenses (including reasonable legal and other professional expenses), losses, damages, compensation and other liabilities (including any incurred as a result of an indemnity or warranty given or to be given by Sanctuary or its subcontractors);
Fraud	means any offence under Laws creating offences in respect of fraudulent acts or at common law in respect of fraudulent acts in relation to this Agreement or defrauding or attempting to defraud or conspiring to defraud Sanctuary;
Group Company	any entity’s direct or indirect holding company and its direct or indirect subsidiaries (within the meaning of s1159 Companies Act 2006) and any associated trust or trust body;
Invitation to Participate	means an invitation issued by Sanctuary to potential suppliers of Works to join the DPS so that such suppliers can be considered for the award of Call-Off Contracts;
Invitation to Tender	means an invitation issued by Sanctuary to suppliers on the DPS to tender for a Call-Off Contract for Works;
Law	means: <ul style="list-style-type: none"> (a) any applicable statute or proclamation or any delegated or subordinate legislation; (b) any enforceable community right within the meaning of section 2(1) European Communities Act 1972; (c) any applicable guidance, direction or determination with which the Parties are bound to comply to the extent that the same are published and publicly available; and (d) any applicable judgement of a relevant court of law which is a binding precedent in England and Wales;
Key Provisions	the key provisions relating to this DPS Agreement set put at the start of this Agreement;
Modern Slavery Documents	Sanctuary’s anti-slavery and human trafficking statement or policy (if applicable) as updated by Sanctuary and notified to the Supplier from time to time;

MSA Offence	has the meaning set out in Clause 36.1.1;
New Supplier	any third party which will supply services or activities following a relevant Termination Date which are the same or similar to any or all of the Works where the transfer of those services or activities amounts to (or is alleged to amount to) a relevant transfer (as provided for by TUPE);
Nominating Body	the President or the Vice President for the time being of the Chartered Institute of Arbitrators (or, if different, in respect of a Call-Off Contract the nominating body stated in the relevant Call-Off Contract);
Other Contracting Authority	means, a Contracting Authority other than Sanctuary;
Parent Company	means any company which is the ultimate Holding Company of the Supplier and which is either responsible directly or indirectly for the business activities of the Supplier or which is engaged in the same or similar business to the Supplier. The term " Holding Company " shall have the meaning ascribed by Section 736 of the Companies Act 1985 or any statutory re-enactment or amendment thereto;
Parties	together Sanctuary and the Supplier;
Personal Data	shall, from the Commencement Date until 24 May 2018 have the meaning set out in section 1(1) of the Data Protection Act 1998, and from 25 May 2018 shall have the meaning given to it in the General Data Protection Regulation (EU) 2016/679;
Pricing Schedule	the prices for the provision of Works submitted with the Supplier's tender or Call-Off Contract;
Processing	shall, from the Commencement Date until 24 May 2018 have the meaning set out in section 1(1) of the Data Protection Act 1998, and from 25 May 2018 shall have the meaning given to it in the Regulation (EU) 2016/679;
Programme	means a programme of construction works being undertaken by Sanctuary of which the Works form part;
Prohibited Act	means to directly or indirectly offer, promise or give any person working for or engaged by Sanctuary or Constructionline a financial or other advantage to (a) induce that person to perform improperly a relevant function or activity; or (b) reward that person for improper performance of a relevant function or activity;
Regulations	means the Public Contracts Regulations 2015;
Request to Participate	means a request to join the DPS as a potential supplier of Works to Sanctuary made in response to an Invitation to Participate;
Sanctuary	means Sanctuary Housing Association or Sanctuary Affordable Housing Limited, or other Group Company as may be notified to the Supplier from time to time;
Selection Questionnaire	means the standard-form document that complies with the requirements of regulation 59 of the Regulation and is used to select suitable suppliers of the Works;
Special Personal Data	shall, from the Commencement Date until 24 May 2018 have the meaning of Sensitive Personal Data as set out in section 2 of the Data Protection Act 1998, and from 25 May 2018 shall mean the special categories of Personal Data as set out at Article 9(1) of

	the Regulation (EU) 2016/679;
Subcontractor	any direct or indirect subcontractor of the Supplier providing all or part of the Works;
Supplier Employee	any person employed or engaged (or formerly employed or engaged) by the Supplier or any of its Subcontractors in the provision of the Works in connection with this Agreement;
Tender Documents	means all those documents issued by Sanctuary to suppliers on the DPS for the purposes of tendering for Works, including without limitation Invitations to Tender;
Tender List	means the list of potential suppliers of Works derived from the DPS through the application of filters that reflect the requirements comprised in the Works;
Tender Response	means the Supplier's response to an Invitation to Tender, pursuant to which the Supplier wishes to be considered to provide Works under a Call-Off Contract;
Termination Date	the relevant date or dates of the termination of the provision of all or any of the Works by the Supplier and/or Subcontractor under this Agreement and/or any Contract;
TUPE	the Transfer of Undertakings (Protection of Employment) Regulations 2006;
Works	any works required by Sanctuary pursuant to this DPS Agreement;
Working Days	Monday to Friday inclusive but not including any declared public holiday.

1.2 The interpretation and construction of this Agreement shall all be subject to the following provisions:

- 1.2.1 words importing the singular meaning include where the context so admits the plural meaning and vice versa;
- 1.2.2 words importing the masculine include the feminine and the neuter;
- 1.2.3 the words "include", "includes" and "including" are to be construed as if they were immediately followed by the words "without limitation";
- 1.2.4 references to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;
- 1.2.5 references to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted;
- 1.2.6 headings are included in this Agreement for ease of reference only and shall not affect the interpretation or construction of this Agreement;
- 1.2.7 references in this Agreement to any Clause or Sub-Clause or Schedule without further designation shall be construed as a reference to the Clause or Sub-Clause or Schedule to this Agreement so numbered;
- 1.2.8 references in this Agreement to any paragraph or sub-paragraph without further designation shall be construed as a reference to the paragraph or sub-paragraph of the relevant Schedule to this Agreement so numbered;
- 1.2.9 reference to a Clause is a reference to the whole of that clause unless stated otherwise; and

- 1.2.10 The Supplier shall perform all Call-Off Contracts entered into with Sanctuary in accordance with:
- (a) the requirements of this Agreement; and
 - (b) the terms and conditions of the Call-Off Contract.
 - (c) the relevant Law and Codes of Conduct governing the delivery of Works.
- 1.2.11 In the event of, and only to the extent of, any conflict or inconsistency between the terms and conditions of this Agreement and the terms and conditions of the Call-Off Contract, such conflict or inconsistency shall be resolved according to the following order of priority:
- (a) the Law;
 - (b) the Call-Off Contract (excluding the Supplier's Tender Response);
 - (c) any other document referred to in the clauses of the Call-Off Contract;
 - (d) the Supplier's Tender Response);
 - (e) the terms of this Agreement;
 - (f) the Schedules to this Agreement (excluding the Supplier's Request to Participate); and
 - (g) the Supplier's Request to Participate.

2. DURATION OF THIS DPS AGREEMENT

- 2.1 Subject to earlier termination pursuant to Clause 26, this Agreement shall commence on the Commencement Date and shall continue for the DPS Term. The Parties acknowledge that Sanctuary may (at its sole discretion) issue Call-Off Contracts to the Supplier which extend beyond the DPS Term.
- 2.2 The Term of this Agreement (and the DPS Term) may be reduced or extended as advertised via a Corrigendum issued through OJEU. This Agreement shall remain in effect for the validity of the DPS.

3. OBJECTIVES

The Parties shall establish, develop and implement their relationship in accordance with this Agreement and each Call-Off Contract, with the objectives of achieving for the mutual benefit of each Party:

- (a) a shared commitment to objectives that benefit residents;
- (b) dedication to agreed common goals and an understanding of each other's expectations and values;
- (c) stimulation of best practice and innovation; and
- (d) measurable continuous improvement (including continuous improvement in the quality of the Works) by reference to the DPS KPIs where applicable.

4. SCOPE OF THIS DPS AGREEMENT

This Agreement governs the relationship between Sanctuary and the Supplier in respect of the provision of the Works by the Supplier to Sanctuary.

5. SUPPLIER'S APPOINTMENT

Sanctuary hereby admits the Supplier to the DPS as a potential supplier of Works (if applicable) and the Supplier shall be eligible to be considered for the award of Call-Off Contracts for such Works by Sanctuary during the DPS Term.

6. NON-EXCLUSIVITY

The Supplier acknowledges that, in entering into this Agreement, no form of exclusivity or volume guarantee has been granted by Sanctuary for Works to the Supplier and that Sanctuary is at all times entitled to enter into other contracts and agreements with other contractors for the provision of any or all Works, which are the same as or similar to the Works being provided further to this Agreement.

7. WARRANTIES AND REPRESENTATIONS

7.1 The Supplier warrants and represents to Sanctuary that:

- 7.1.1 it has full capacity and authority and all necessary consents (including, where its procedures so require, the consent of its Parent Company) to enter into and to perform its obligations under this Agreement;
- 7.1.2 it acknowledges that it will not be able to bid for any further competitions under the DPS following the issue of any Invitation to Tender if it has not signed and returned this Agreement;
- 7.1.3 all obligations of the Supplier pursuant to this Agreement and under any Call-Off Contract shall be performed by appropriately experienced, certified, qualified and trained Staff with all due skill, care and diligence;
- 7.1.4 it will ensure that the Supplier and all Staff, agents, sub-contractors, self-employed staff or personnel employed by the Supplier in connection with the Works will comply with the relevant Law and Codes of Conduct governing the delivery of Works.
- 7.1.5 the Supplier is not in default in the payment of any due and payable taxes or in the filing, registration or recording of any document or under any legal or statutory obligation or requirement which default might have a material adverse effect on its business, assets or financial condition or its ability to observe or perform its obligations under this Agreement and under any Call-Off Contract.
- 7.1.6 the Supplier shall discharge its obligations under this Agreement and under any Call-Off Contract with all due skill, care and diligence including but not limited to the good industry practice and (without limiting the generality of this Clause) in accordance with its own established internal procedures;
- 7.1.7 this Agreement is executed by a duly authorised representative of the Supplier;
- 7.1.8 in entering into this Agreement or any Call-Off Contract it has not committed any Fraud;
- 7.1.9 as at the Commencement Date, all information, statements and representations contained in the Request to Participate and/or completed Selection Questionnaire (including statements made in relation to the categories referred to in regulation 57 of the Regulations) for the Works are true, accurate, and not misleading save as may have been specifically disclosed in writing to Sanctuary (via Constructionline) prior to the execution of this Agreement and it will promptly advise Sanctuary of any fact, matter or circumstance of which it may become aware which would render any such information, statement or representation to be false or misleading;
- 7.1.10 it has not entered into any agreement with any other person with the aim of preventing tenders being made or as to the fixing or adjusting of the amount of any tender or the conditions on which any tender is made in respect of this Agreement or any Call-Off Contract;
- 7.1.11 it has not caused or induced any person to enter such agreement referred to in Clause 7.1.8 above;
- 7.1.12 it has not offered or agreed to pay or give any sum of money, inducement or valuable consideration directly or indirectly to any person for doing or having done or causing or having caused to be done any act or omission in relation to any other tender or proposed tender for Works under the Agreement;

- 7.1.13 it has not committed any offence under the Prevention of Corruption Acts 1889 to 1916 or the Bribery Act 2010;
- 7.1.14 no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets which will or might affect its ability to perform its obligations under this Agreement and any Call-Off Contract which may be entered into with Sanctuary;
- 7.1.15 it is not subject to any contractual obligation, compliance with which is likely to have an effect on its ability to perform its obligations under this Agreement and any Call-Off Contract which may be entered into with Sanctuary;
- 7.1.16 no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Supplier or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Supplier's assets or revenue; and
- 7.1.17 throughout the term of this Agreement and for the three (3) years prior to the date of this Agreement (or, if the Supplier has not been trading or in existence for three (3) years, for the duration of the Supplier's trading life):
 - (a) it has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts;
 - (b) it has been in full compliance with all applicable securities, laws and regulations in the jurisdiction in which it is established; and
 - (c) it has not performed any act or omission with respect to its financial accounting or reporting which could have an adverse effect on the Supplier's position as an ongoing business concern or its ability to fulfil its obligations under this Agreement.
- 7.1.18 The Supplier shall perform the Works in a conscientious and timely manner in accordance with the Contract Standard.
- 7.1.19 The Supplier shall notify Sanctuary's Contract Manager immediately of any circumstances relating to the Supplier and/or Sanctuary concerning the Works of which the Supplier is aware or anticipates which may justify Sanctuary and/or Constructionline taking action to protect its interests (including its reputation and standing).

8. PREVENTION OF BRIBERY AND CORRUPTION

8.1 The Supplier:

- 8.1.1 has not, will not, and will procure that its staff (and any sub-contractor or self-employed staff) have not committed and will not commit a Prohibited Act in connection with this Agreement;
- 8.1.2 has not given and will not give any fee or reward to any person which it is an offence under Section 117(2) of the Local Government Act 1972 to receive;
- 8.1.3 warrants represents and undertakes that it is not aware of any financial or other advantage being given to any person working for or engaged by Sanctuary or that an agreement has been reached to that effect in connection with the securing or execution of this Agreement, or any other Agreement with Sanctuary, excluding any arrangements of which full details have been disclosed in writing to Sanctuary prior to the execution of this Agreement.

- 8.2 The Supplier will upon request provide Sanctuary with all reasonable assistance to enable Sanctuary to perform any activity required for the purposes of complying with the Bribery Act, as may be required of Sanctuary by any relevant government or agency in any relevant jurisdiction.

Should Sanctuary request such assistance Sanctuary shall pay the reasonable expenses of the Supplier arising as a result.

- 8.3 The Supplier will provide to Sanctuary certification, in writing and signed by an officer of the Supplier, of the compliance with this Clause 8 by:
- 8.3.1 the Supplier; and
 - 8.3.2 all persons associated with the Supplier; and
 - 8.3.3 any other persons who are supplying Works in connection with this Agreement.
- 8.4 Certification will be provided to Sanctuary (via Constructionline) within 15 working days of the Commencement Date and annually thereafter for the Term. The Supplier will provide any evidence of compliance as may reasonably be requested by Sanctuary.
- 8.5 The Supplier will have in place an anti-bribery policy for the purpose of preventing any of its staff from committing any Prohibited Act. Such policy shall be disclosed to Sanctuary (via Constructionline) and enforced by the Supplier where appropriate.
- 8.6 Should the Supplier become aware of or suspect any breach of Clause 8.1 it will notify Sanctuary (via Constructionline) immediately.
- 8.7 Following notification under Clause 8.6 the Supplier will respond promptly and fully to the enquiries of Sanctuary, cooperate with any investigation undertaken by Sanctuary and allow Sanctuary to audit any books, records and other relevant documentation. The Supplier's obligations under this Clause 8.7 shall survive the expiry or termination of this Agreement for a further period of 6 years.
- 8.8 Sanctuary may recover in full from the Supplier and the Supplier shall indemnify Sanctuary in full from and against any other loss sustained by Sanctuary in consequence of any breach of this Clause 8, whether or not this Agreement has been terminated.
- 8.9 Sanctuary may terminate this Agreement and any Call-Off Contract immediately upon serving written notice if the Supplier, its staff, any sub-contractor or self-employed staff whether or not acting with the Supplier's knowledge, breaches Clause 8.1. Before exercising its right of termination under this Clause 8.9 Sanctuary will give all due consideration to other action beside termination unless the Prohibited Act is committed by:
- 8.9.1 the Supplier or a senior officer of the Supplier; or
 - 8.9.2 a member of staff, Subcontractor or agent who is not acting independently of the Supplier. The expression 'not acting independently of' (when used in relation to the Supplier, Subcontractor or Agent) means and shall be construed as acting:
 - (a) with the authority of; or
 - (b) with the actual knowledge; of any one or more of the Supplier's or Subcontractor's or agent's (as applicable) directors (or partners); or
 - (c) in circumstances where any one or more of the directors (or partners) of the Supplier or Subcontractor (as applicable) ought reasonably to have had knowledge.
- 8.10 Any notice of termination by Sanctuary under Clause 8.9 must specify:
- 8.10.1 the nature of the Prohibited Act;
 - 8.10.2 the identity of the person whom Sanctuary believes has committed the Prohibited Act; and
 - 8.10.3 the date on which this Agreement will terminate.
- 8.11 In the event of any breach of Clause 8.1 Sanctuary is entitled to recover from the Supplier the value of any gift, consideration or commission.
- 8.12 Notwithstanding Clause 40 (Dispute Resolution) any dispute relating to:
- 8.12.1 the interpretation of this Clause 8 or

- 8.12.2 the amount or value of any gift, consideration, commission or other financial advantage shall be determined by Sanctuary and its decision shall be final and conclusive.

8.13 Termination under Clause 8.9 will:

- 8.13.1 be without prejudice to any right or remedy which has already accrued or subsequently accrues to Sanctuary under this Agreement.
- 8.13.2 prohibit the Supplier from claiming any damages for early termination; and
- 8.13.3 allow Sanctuary to recover from the Supplier the amount of any loss suffered by Sanctuary resulting from the termination; or
- 8.13.4 entitle Sanctuary to be indemnified by the Supplier for any additional costs losses, damages or expenses incurred in re-procuring and obtaining the Works from another party.

9. **CONFLICTS OF INTEREST**

- 9.1 The Supplier shall take appropriate steps to ensure that neither the Supplier nor any member of its staff is placed in a position where (in the reasonable opinion of Sanctuary) there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier or the member of staff and the duties owed to Sanctuary under the provisions of this Agreement or any Call-Off Contract.
- 9.2 The Supplier shall promptly notify and provide full particulars to Sanctuary if such conflict as referred to in Clause 9.1 above arises or is reasonably foreseeable to arise.
- 9.3 Sanctuary reserves the right to terminate this DPS immediately by giving notice in writing to the Supplier and/or to take such other steps it deems necessary where, in the reasonable opinion of Sanctuary, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier and the duties owed to Sanctuary under the provisions of this Agreement or any Call-Off Contract. The action of Sanctuary pursuant to this Clause shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to Sanctuary.
- 9.4 This Clause shall apply during the Term.

10. **STATUTORY REQUIREMENTS**

- 10.1 The Supplier shall be responsible for obtaining all licences, authorisations, consents or permits required in relation to the performance of this Agreement and any Call-Off Contract.

11. **EQUAL OPPORTUNITIES**

- 11.1 The Supplier shall without any additional cost to Sanctuary maintain procedures to ensure equality of opportunity and treatment to all persons, and shall be required, on Sanctuary's request, to deposit with Sanctuary a copy of the Supplier's equal opportunities policy.

12. **SOCIAL RESPONSIBILITY**

- 12.1 The Supplier shall and shall ensure that any of its servants, employees, agents or sub-contractors employed in the execution of this Agreement perform its obligations under this Agreement (including those in relation to the Works) in accordance with:
 - 12.1.1 all applicable equality Law (whether in relation to race, sex, gender reassignment, age, disability, sexual orientation, religion or belief, pregnancy, maternity or otherwise); and
 - 12.1.2 Sanctuary's equality and diversity policy as provided to the Supplier from time to time; and

- 12.1.3 any other requirements and instructions which Sanctuary reasonably imposes in connection with any equality obligations imposed on Sanctuary at any time under the applicable equality law; and
 - 12.1.4 take all necessary steps, and inform Sanctuary of the steps taken, to prevent unlawful discrimination designated as such by any court, tribunal, or the Equality and Human Rights Commission or (any successor organisation).
- 12.2 The Supplier shall, at all times, be responsible for and take all such precautions as are necessary to protect the health and safety of all employees, volunteers, service users and any other persons involved in, or receiving Works from, the performance of the Agreement or any Call-Off Contract and shall comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other Law relating to the health and safety of persons and any amendment or re-enactment thereof.
- 12.3 The Supplier must ensure that all employees of the Supplier involved in the supply of the Works are eligible to work in the UK.
- 12.4 Sanctuary shall be entitled at its expense to inspect such books, accounts and records belonging to the Supplier as are necessary to demonstrate compliance with Clause 21.
- 12.5 The cost to the Supplier of complying with this Clause 12 shall be included in the prices.
- 13. CONFIDENTIALITY**
- 13.1 Except to the extent set out in this clause or where disclosure is expressly permitted elsewhere in this Agreement, each Party shall:
 - 13.1.1 treat the other Party's Confidential Information as confidential and safeguard it accordingly; and
 - 13.1.2 not disclose the other Party's Confidential Information to any other person without the owner's prior written consent.
- 13.2 This Clause 13 shall not apply to the extent that:
 - 13.2.1 such disclosure is a requirement of Law placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA or the Environmental Information Regulations;
 - 13.2.2 such information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
 - 13.2.3 such information was obtained from a third party without obligation of confidentiality;
 - 13.2.4 such information was already in the public domain at the time of disclosure otherwise than by a breach of this Agreement; or
 - 13.2.5 it is independently developed without access to the other party's Confidential Information.
- 13.3 The Supplier may only disclose Sanctuary's Confidential Information to its staff (being relevant employees, consultants, agents or persons otherwise engaged by the Supplier) who are directly involved in the provision of the Works and who need to know the information, and shall ensure that such staff are aware of and shall comply with these obligations as to confidentiality.
- 13.4 The Supplier shall not, and shall procure that its staff do not, use any of Sanctuary's Confidential Information received otherwise than for the purposes of this Agreement.
- 13.5 Nothing in this Agreement shall prevent Sanctuary and/or Constructionline from disclosing the Supplier's Confidential Information:
 - 13.5.1 to any Crown Body or any relevant Contracting Authority. All Crown Bodies or Contracting Authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Crown Bodies or other Contracting Authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Crown Body or any Contracting Authority;

- 13.5.2 to any consultant, supplier, or other person engaged by Sanctuary or any person conducting a gateway review;
 - 13.5.3 for the purpose of the examination and certification of Sanctuary's accounts;
 - 13.5.4 for any examination pursuant to Section 6(1) of the National Audit Act 1983 or the Audit Commission Act 1998 of the economy, efficiency and effectiveness with which Sanctuary has used its resources.
- 13.6 Nothing in this Clause 13 shall prevent either Party from using any techniques, ideas or know-how gained during the performance of the Agreement in the course of its normal business to the extent that this use does not result in a disclosure of the other Party's Confidential Information or an infringement of Intellectual Property Rights
- 13.7 The Supplier shall not without the prior written consent of Sanctuary divulge the existence of this Agreement or any Call-Off Contract, or disclose any information relating to or contained in this Agreement to any person who is not engaged in the performance of this Agreement.
- 13.8 In the event that the Supplier fails to comply with this Clause 13, Sanctuary reserves the right to terminate the Agreement by notice in writing with immediate effect.
- 13.9 The provisions of this Clause 13 shall apply notwithstanding termination of the Agreement.
- 14. DATA PROTECTION, FREEDOM OF INFORMATION AND ENVIRONMENTAL INFORMATION**
- 14.1 To the extent that such Laws apply to this DPS Agreement and/or any Call-Off Contract, the Supplier shall (and shall procure that all of its staff and Subcontractors and/or agents shall) comply with all notification requirements and timelines for response in relation to the Data Protection Laws, the Freedom of Information Act 2000 and the Environmental Information Regulations 2004 and all Parties will duly observe all of their obligations under this legislation in connection with this Agreement. The Supplier shall provide all assistance and co-operation to Sanctuary as reasonably requested by Sanctuary and as further provided in this Clause 14.
- 14.2 The Parties acknowledge that, in relation to certain Processing of Data, the Supplier may be a Controller and the Supplier agrees, in relation to Data for which it is a Controller, to comply with its obligations under the Data Protection Laws.
- 14.3 To the extent that Sanctuary is Controller and the Supplier is Processing Data on Sanctuary's behalf, the Supplier shall:
- 14.3.1 use, and shall ensure that its staff use, the Personal Data only on Sanctuary's instructions to perform its obligations under this Agreement and any Call-Off Contract;
 - 14.3.2 keep, and shall ensure that its staff keep, the Personal Data confidential and provide appropriate technical and organisational measures against unauthorised or unlawful processing, accidental loss or destruction of or damage to the Personal Data; not process Personal Data outside of the UK without Sanctuary's prior written consent;
 - 14.3.3 take all reasonable steps to ensure the training of its staff in the use, care and protection of Personal Data and the reliability of any of its staff who have access to Personal Data, which is processed in connection with this Agreement or any Call-Off Contract;
 - 14.3.4 at all times perform its obligations under this Agreement and any Call-Off Contract in such a manner as not to cause the Sanctuary and/or any Group Company to be in breach of the Data Protection Laws and provide reasonable assistance to Sanctuary in complying with its obligations under the Data Protection Laws.
- 14.4 The Supplier confirms that strict security measures and precautions are in place to protect the integrity and confidentiality of information at all times, including, where relevant, in accordance with current UK Data Protection Laws, and any relevant European Union data protection regulation or directive from time to time. The Supplier shall before entering into any Call-Off Contract ensure that it holds a valid Cyber Essentials Scheme Certificate or equivalent and shall produce evidence of such certification on demand by Sanctuary.

- 14.5 The Supplier shall use all reasonable endeavours to assist Sanctuary to comply with its obligations under the Environmental Information Regulations 2004 (the "**2004 Regulations**") including and without limitation where necessary to provide Sanctuary with reasonable assistance in complying with any request for information served on Sanctuary relating to the Works.
- 14.6 Insofar as the Freedom of Information Act 2000 (the "**2000 Act**") and/or the 2004 Regulations apply to the Supplier and/or to Sanctuary, the Supplier shall comply with, and assist Sanctuary in its compliance with, the 2000 Act and/or the 2004 Regulations and any associated Law and codes of practice.
- 14.7 Where the 2000 Act and/or 2004 Regulations apply to the Supplier, and the Supplier receives a request to disclose information to a third party under the 2000 Act and/or the 2004 Regulations, which relates to Sanctuary and/or this Agreement, the Supplier shall:
- 14.7.1 inform Sanctuary about the request for information and the nature of the information being sought as soon as reasonably possible;
 - 14.7.2 consider and apply all lawful exemptions and/or exceptions provided under the 2000 Act and/or 2004 Regulations to withhold information sought in terms of the request for information;
 - 14.7.3 consult with Sanctuary prior to the disclosure of any such information; and
 - 14.7.4 keep Sanctuary informed about the Supplier's progress in dealing with any request for information and where requested by Sanctuary, provide Sanctuary with copies of any correspondence and documents relating to the request for information.
- 14.8 Where the 2000 Act does not apply to the Supplier and the Supplier receives a request to disclose information to a third party under the 2000 Act and/or 2004 Regulations, which relates to Sanctuary and/or this Agreement, the Supplier shall:
- 14.8.1 as soon as is practically possible, and in any event within no more than two (2) Working Days, deliver to Sanctuary the original request for information; and
 - 14.8.2 assist Sanctuary in responding to the request for information in accordance with Clause 14.8.1.
- 14.9 All records referred to in this Clause 14 must be available for inspection at any time and from time to time by Sanctuary.
- 14.10 The Supplier acknowledges that Sanctuary may be subject to governmental codes of practice or guidance relating to a transparency agenda, including the policy of publishing contracts and all other documents relating to public procurement activity. Accordingly and notwithstanding any other provision of this Agreement, the Supplier hereby gives its consent for Sanctuary to publish this Agreement in its entirety (but with any information which is exempt from disclosure in accordance with the provisions of the 2000 Act and/or 2004 Regulations redacted), including from time to time agreed changes to this Agreement. In relation thereto Sanctuary may consult with the Supplier to inform its decision regarding any exemptions but Sanctuary shall have the final decision in its absolute discretion. The Supplier shall assist and cooperate with Sanctuary to enable Sanctuary to publish this Agreement or any other documents relating to the public procurement activity from which this Agreement resulted in accordance with the aforementioned governmental transparency agenda.
15. **PUBLICITY**
- 15.1 Unless otherwise directed by Sanctuary, the Supplier shall not make any press announcements or publicise this Agreement in any way without Sanctuary's prior written consent.
- 15.2 Sanctuary shall be entitled to publicise this Agreement in accordance with any legal obligation upon Sanctuary, including any examination of this Agreement by the Auditor.

16. SUPPLIER'S STAFF

- 16.1 The Supplier shall select, employ, train, furnish and deploy in and about the performance of the Agreement and each Call-Off Contract only such persons as are appropriately certified, skilled and experienced in the delivery of the relevant type(s) of Works.
- 16.2 The Supplier shall, and shall procure that its Subcontractors, staff and agents shall, comply with all reasonable requirements of Sanctuary.
- 16.3 The Supplier shall use reasonable endeavours to ensure that its Subcontractors are subject to the provisions of Clauses 16.1 and 16.2.
- 16.4 The Supplier, its agents, and Subcontractors shall employ sufficient staff to ensure that the Works named in the Invitation to Tender document are provided at all times and in accordance with the Agreement and the relevant Call-Off Contract. Without prejudice to the generality of this obligation, it shall be the duty of the Supplier to ensure that a sufficient reserve of staff is available to supply the Works in accordance with this Agreement and the Call-Off Contract during staff holidays or absence through sickness or any other cause.

17. TUPE

- 17.1 It is not anticipated by either party that TUPE will apply on any Termination Date. The Supplier represents, warrants and undertakes to Sanctuary that no Supplier Employee will be assigned to the Works to the extent that his or her employment or any Employment Liabilities in respect of his or her employment will or is likely to transfer to Sanctuary or a New Supplier under TUPE in respect of a relevant Termination Date.
- 17.2 The Supplier shall be responsible for and shall indemnify Sanctuary and/or a New Supplier, as the case may be, in respect of any Employment Liabilities Sanctuary and/or the New Supplier may incur in relation to any Supplier Employee arising from the transfer or alleged transfer of their employment (or any Employment Liabilities in respect of their employment) to Sanctuary or a New Supplier pursuant to TUPE in respect of a relevant Termination Date including, without limitation, any Employment Liabilities relating to the dismissal of a Supplier Employee by the Supplier, a Subcontractor, Sanctuary or a New Supplier, as the case may be.
- 17.3 Any New Supplier is entitled to enforce the provisions of this Clause 17 pursuant to Section 1 of the Contracts (Rights of Third Parties) Act 1999 provided that the parties to this Agreement may vary or terminate this Agreement by agreement between them without requiring the consent of any such third party and need not comply with Section 2(1) of the Contracts (Rights of Third Parties) Act 1999.

18. TRANSFER AND SUB-CONTRACTING

- 18.1 This Agreement is personal to the Supplier and the Supplier shall not assign, novate or otherwise dispose of this Agreement or any part thereof without the previous consent in writing of Sanctuary. The Supplier shall not be entitled to sub-contract any of its rights or obligations under this Agreement without the express prior written consent of Sanctuary (such consent not to be reasonably withheld or delayed).
- 18.2 Sanctuary shall be entitled to:-
 - 18.2.1 assign, novate or otherwise dispose of its rights and obligations under this Agreement or any part thereof to any Other Contracting Authority; or
 - 18.2.2 novate this Agreement to any other body (including any private sector body) which substantially performs any of the functions that previously had been performed by Sanctuary;

provided that such assignment, novation or disposals shall not increase the burden of the Supplier's obligations under this Agreement.

19. **LIABILITY**

19.1 Neither Party excludes or limits its liability for:-

- 19.1.1 death or personal injury caused by its negligence, or that of its staff (being all persons employed or engaged by the Supplier or any Subcontractor, including without limitation agency, casual or seconded personnel);
- 19.1.2 fraud or fraudulent misrepresentation by it or its staff; or
- 19.1.3 breach of any obligations as to title implied by Section 2 of the Supply of Goods and Services Act 1982.

19.2 Subject to Clause 19.1 each Party's total aggregate liability in connection with this Agreement in each twelve (12) Month period during the Term (whether in contract, tort including negligence, breach of statutory duty or howsoever arising) shall be limited to 125% of the annual contract price paid by Sanctuary under the Call-Off Contract for provision of the Works. For the avoidance of doubt, the Parties acknowledge and agree that this Clause 19.2 shall not limit either Party's liability under any Call-Off Contract and that each Party's liability in relation to a Call-Off Contract shall be as set out in the Call-Off Contract.

20. **SUBJECT TO CLAUSE 19.2 ABOVE, THE SUPPLIER SHALL INDEMNIFY AND KEEP INDEMNIFIED SANCTUARY IN FULL FROM AND AGAINST ALL CLAIMS, PROCEEDINGS, ACTIONS, DAMAGES, LEGAL COSTS, EXPENSES AND ANY OTHER LIABILITIES WHATSOEVER ARISING OUT OF, IN RESPECT OF OR IN CONNECTION WITH THIS AGREEMENT INCLUDING IN RESPECT OF ANY DEATH OR PERSONAL INJURY, LOSS OF OR DAMAGE TO PROPERTY, FINANCIAL LOSS ARISING FROM ANY ADVICE GIVEN OR OMITTED TO BE GIVEN BY THE SUPPLIER, FINANCIAL LOSS ARISING FROM PROVISION AND THE QUALITY OR INSTALLATION OF ANY WORKS OR ANY OTHER LOSS WHICH IS CAUSED DIRECTLY OR INDIRECTLY BY ANY ACT OR OMISSION OF THE SUPPLIER. THIS CLAUSE SHALL NOT APPLY TO THE EXTENT THAT THE SUPPLIER IS ABLE TO DEMONSTRATE THAT SUCH DEATH OR PERSONAL INJURY, OR LOSS OR DAMAGE WAS NOT CAUSED OR CONTRIBUTED TO BY ITS NEGLIGENCE OR DEFAULT, OR THE NEGLIGENCE OR DEFAULT OF ITS STAFF, OR BY ANY CIRCUMSTANCES WITHIN ITS OR THEIR CONTROL.INSURANCE**

20.1 The Supplier shall effect and maintain policies of insurance to provide a level of cover sufficient for all risks which may be incurred by the Supplier under this Agreement including death or personal injury, or loss of or damage to property.

20.2 The Supplier shall effect and maintain the following insurances for the duration of the Agreement in relation to the performance of the Agreement and/or the Works, at all times in such amounts as are adequate to cover all risks in the performance of this Agreement and any Call-Off Contract in place from time to time, and as further set out in the Call-Off Contract:-

- 20.2.1 public liability insurance;
- 20.2.2 employer's liability insurance; and
- 20.2.3 professional indemnity insurance (and as required by law or best industry practice).

20.3 Any excess or deductibles under such insurance (referred to in Clause 20.1 and Clause 20.2 above) shall be the sole and exclusive responsibility of the Supplier.

20.4 The terms of any insurance or the amount of cover shall not relieve the Supplier of any liabilities arising under this Agreement or any Call-Off Contract.

20.5 The Supplier shall produce to Sanctuary, on request, copies of all insurance policies referred to in this Clause or a broker's verification of insurance to demonstrate that the appropriate cover is in

place, together with receipts or other evidence of payment of the latest premiums due under those policies.

20.6 If, for whatever reason, the Supplier fails to give effect to and maintain the insurances required by this Agreement or the Call-Off Contract then Sanctuary may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Supplier.

20.7 The Supplier shall maintain the insurances referred to in Clauses 20.1 and Clause 20.2 above for a minimum of six (6) years following the expiration or earlier termination of this Agreement.

21. RECORDS AND AUDIT ACCESS

21.1 The Supplier shall keep and maintain full and accurate records and accounts of the operation of this Agreement including the Works provided under it, the Call-off Contracts entered into with Sanctuary, and the amounts paid by Sanctuary until the latest of:

21.1.1 the expiry of a period of twelve (12) months following termination or expiry of the Agreement; or

21.1.2 the expiry of a period of twelve (12) months following the date on which the Supplier ceases to provide Works under any Call-off Contract.

21.2 The Supplier shall afford Sanctuary and/or the Auditor access to such records and accounts as may be required from time to time.

21.3 The Supplier shall provide such records and accounts (together with copies of the Supplier's published accounts) during the DPS Term and for a period of six (6) years after expiry of the DPS Term to Sanctuary and the Auditor.

21.4 Sanctuary shall use reasonable endeavours to ensure that the conduct of each Audit does not unreasonably disrupt the Supplier or delay the provision of the Works pursuant to the Call-Off Contracts, save insofar as the Supplier accepts and acknowledges that control over the conduct of Audits carried out by the Auditor is outside of the control of Sanctuary.

21.5 Subject to Sanctuary's rights of confidentiality, the Supplier shall on demand provide the Auditor with all reasonable co-operation and assistance in relation to each Audit, including:

21.5.1 all information requested by the Auditor within the scope of the Audit;

21.5.2 reasonable access to sites controlled by the Supplier and to equipment used in the provision of the Works; and

21.5.3 access to its staff.

21.6 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Clause 21, unless the Audit reveals a Material Default by the Supplier in which case the Supplier shall reimburse Sanctuary for reasonable costs incurred in relation to the Audit.

22. CALL-OFF FROM THE DPS AND FORMATION OF CALL-OFF CONTRACT

22.1 Subject always to the Tender Documents, the steps in calling off from the DPS are as follows:

22.1.1 Sanctuary shall invite all suppliers admitted to the DPS and identified on a Tender List to submit a Tender Response to an Invitation to Tender for Works relevant to suppliers on the Tender List.

22.1.2 The Invitation to Tender will set out Sanctuary's detailed requirements and further information, including the deadline by which the Tender Response must be submitted. Such detailed requirements and further information may include without limitation:

(a) the evaluation matrix;

(b) the requirements for the performance of the Works;

(c) the form of Call-Off Contract, amendments and particulars;

(d) details of the relevant Programme and

(e) health and safety information.

22.1.3 All Tender Responses received within the Invitation to Tender deadline will be evaluated in accordance with the Invitation to Tender documentation on the basis of the Most Economically Advantageous Tender.

22.1.4 Once the evaluation is complete the preferred supplier(s) will be selected and all suppliers will be notified of the award decision and provided with feedback relating to their submission.

22.1.5 For some complex Tenders, Sanctuary will implement a voluntary standstill period of 10 days.

22.2 A contract award notice will be sent to OJEU. Following notification of contract award, the preferred supplier(s) shall enter a new Call-Off Contract with Sanctuary for the provision of the relevant Works. A Call-Off Contract shall be formed on execution by both the Supplier and Sanctuary of the Call-Off Contract as a deed.

22.3 The Supplier acknowledges and agrees that Sanctuary is responsible for the conduct of its awards in respect of Call-Off Contracts under this Agreement and that Constructionline is not responsible or accountable for and shall have no liability whatsoever in relation to the performance or non-performance of (including payments due under) any Call-Off Contracts between the Supplier and Sanctuary entered into pursuant to the Agreement.

23. PRICES FOR WORKS

23.1 The prices offered by the Supplier for Works tendered pursuant to the procedure set out in Clause 22 shall be the prices set out in the Supplier's Tender Response for the relevant Works. The prices offered by the Supplier will be fixed for the agreed time within the Invitation to Tender documentation.

23.2 Under no circumstances shall the Supplier change any submitted pricing without first seeking approval of Sanctuary.

23.3 Unless otherwise expressly stated in the Call-Off Contract the prices shall cover all the Supplier's obligations under the Call-Off Contract and everything necessary for the provision of the Works under the Invitation to Tender documentation.

23.4 Unless otherwise expressly stated in the Invitation to Tender or the Call-Off Contract, no claim by the Supplier will be allowed for any addition to the prices on the grounds of any matter relating to any document forming part of the Invitation to Tender or the Call-Off Contract, or any ambiguity or discrepancy therein about which an experienced Supplier could have satisfied himself by reference to Sanctuary via Constructionline or by any other appropriate means.

24. CALL-OFF CONTRACT PERFORMANCE

24.1 The Supplier shall perform all Call-Contracts entered into with Sanctuary in accordance with:-

24.1.1 the terms and conditions of the DPS Agreement.; and

24.1.2 the terms and conditions of the Call-Off Contract.

24.2 In the event of, and only to the extent of, any conflict between the terms and conditions of the Agreement and the terms and conditions of the Call-Off Contract, the precedence list in Clause 1.2.11 will be applicable.

25. COMMUNICATION, DPS KPIS AND CONTINUOUS IMPROVEMENT

25.1 Each Call-Off Contract may include targets as may be based on the objectives set out in Clause 3 of this DPS Agreement and any DPS KPIs, set by Sanctuary and agreed by the Supplier.

25.2 The Parties shall meet regularly to review the progress of any Works that have been instructed, the implementation of each Call-Off Contract and, as applicable, progress against the DPS KPIs and any specific Call-Off Contract targets.

25.3 The Supplier shall provide a monthly written report to Sanctuary (in a form to be approved by Sanctuary), including such information on an open-book basis as may be reasonably necessary, to

demonstrate its progress under each Call-Off Contract including progress against the DPS KPIs (as applicable), any specific contractual targets, capacity and other relevant business factors, problems, potential disputes and proposed solutions. The Parties shall consider and seek to agree the measures necessary to remedy, where applicable, any failure to achieve any of the DPS KPIs and/or any adjustments to the DPS KPIs necessary to reflect continuous improvement.

- 25.4 The Parties shall operate an Early Warning system, the details of which shall be further set out in the Call-off Contract, whereby each Party shall notify the other Party as soon as it is aware of any matter adversely affecting or threatening any Works that have been instructed or that Party's performance under this Agreement and any Call-Off Contract (including, without limitation, non-compliance with the relevant DPS KPIs), and shall include in such notification proposals for avoiding or remedying such matter. The Parties shall meet within five (5) Working Days from the date of any such notification to discuss the problem, unless the Parties agree an alternative course of action.
- 25.5 The Supplier shall investigate and submit proposals simultaneously to Sanctuary in respect of any matter relevant to the objectives described in Clause 3 of the DPS Agreement including economies of scale and in respect of other potential for further co-operation between the Parties for the benefit of any Call-Off Contract and the relevant Programme as a whole.
- 25.6 The performance of the Supplier shall be kept under regular review by Sanctuary by reference to the agreed targets and any applicable DPS KPIs prior to award of any Call-Contract further to Clause 22 of this Agreement.

26. TERMINATION

Termination on Default

- 26.1 Sanctuary may terminate this Agreement by serving written notice on the Supplier with effect from the date specified in such notice where:
 - 26.1.1 the Supplier are using staff that are not experienced, certified, qualified and trained in the delivery of these types of Works;
 - 26.1.2 the Supplier and its staff, agents, sub-contractors, or personnel employed or engaged by the Supplier in connection with the Works have failed to comply with the relevant Legislation and Codes of Conduct governing the provision of Works.

Termination on Default – Non-material Default

- 26.2 Where the Supplier's Default in respect of this Agreement is non-material to the provision of the Works, Sanctuary shall be entitled to issue the Supplier with an **"Improvement Notice"**. Such Improvement Notice shall state the nature of the Default and give the Supplier a minimum of ten (10) working days to remedy it.
- 26.3 If the Supplier commits three (3) non-material Defaults in a twelve (12) month rolling period this will be classed as a material Default and this Agreement may be terminated in accordance with Clause 26.4.3.

Termination on Default – Material Default

- 26.4 Where the Supplier's Default in respect of this Agreement is material to the provision of the Works, and/or is a fundamental breach of the provisions of this Agreement and:
 - 26.4.1 the Supplier has not remedied such Default to the satisfaction of Sanctuary within twenty (20) Working Days, or such other period as may be specified by Sanctuary, after issue of a written notice specifying Default and requesting it to be remedied; or
 - 26.4.2 the Default is not, in the reasonable opinion of Sanctuary, capable of remedy; or
 - 26.4.3 if the Supplier has committed three (3) or more non-material Defaults within a twelve (12) month rolling period.
 - 26.4.4 where Sanctuary terminates a Call-Off Contract awarded to the Supplier under this Agreement as a consequence of Default by the Supplier;

- 26.4.5 where any Works are subject to testing by an independent testing house/organisation or an independent testing engineer, and the testing certifies/states that the Works do not meet the minimum required standards/specification;

this Agreement, and any Call-Off Contracts may be terminated at no cost and without any liability to Sanctuary or Constructionline.

Termination on financial standing

- 26.5 Sanctuary may terminate this Agreement by serving notice on the Supplier in writing with effect from the date specified in such notice where (in the reasonable opinion of Sanctuary), there is or seems likely to occur a material detrimental change in the financial standing and/or the credit rating of the Supplier which adversely impacts on the Supplier's ability to supply Works under this Agreement. This may be checked throughout the life of the DPS.
- 26.6 The Supplier shall if requested by Sanctuary provide its latest financial accounts.
- 26.7 Sanctuary may, in order to ascertain or track any material detrimental change of the financial standing of the Supplier, use an external credit rating agency. Any credit reference obtained by Constructionline or Sanctuary be clarified with the Supplier before any reasonable decision is made in respect of the Supplier's financial standing.

Termination on insolvency and change of control

- 26.8 Sanctuary may terminate this Agreement with immediate effect by notice in writing where the Supplier is a company and in respect of the Supplier if any event listed in Regulation 57 of the Public Contracts Regulations 2015 occurs or seems likely to occur
- 26.9 The Supplier shall notify Sanctuary immediately if the Supplier undergoes a change of control within the meaning of Section 416 of the Income and Corporation Taxes Act 1988 ("Change of Control"). Sanctuary may terminate this Agreement by giving notice in writing to the Supplier with immediate effect within six (6) Months of:
- 26.9.1 being notified that a Change of Control has occurred; or
 - 26.9.2 where no notification has been made, the date that Sanctuary becomes aware of the Change of Control,
 - 26.9.3 but shall not be permitted to terminate where an Approval was granted prior to the Change of Control.

Termination by Sanctuary

- 26.10 Sanctuary shall have the right to terminate this Agreement and/or the Dynamic Purchasing System, or to terminate the provision of any part of this Agreement at any time by giving three months' written notice to the Supplier. The Parties acknowledge that if Sanctuary exercises its rights under this Clause, it shall exercise its equivalent rights under all agreements with Suppliers admitted to the Dynamic Purchasing System.

27. SUSPENSION OF THE SUPPLIER'S APPOINTMENT

- 27.1 Without prejudice to Sanctuary's rights to terminate this Agreement under Clause 26 above, if a right to terminate this Agreement arises in accordance with these terms and conditions, Sanctuary may suspend the Supplier's appointment to supply Works to it by giving notice in writing to the Supplier. If Sanctuary provides notice to the Supplier in accordance with this Clause 27, the Supplier's appointment shall be suspended for the period set out in the notice or such other period notified to the Supplier by Sanctuary in writing from time to time.
- 27.2 Should Sanctuary request product or installation testing in connection with the Works for any reason whatsoever the Supplier will be suspended from the DPS (at no cost to Sanctuary) whilst this testing takes place and will not be allowed to tender until completion of the testing. Any Call-Off Contracts already placed during this period shall be put on hold pending the outcome of the testing.

28. CONSEQUENCES OF TERMINATION AND EXPIRY

- 28.1 Notwithstanding the service of a notice to terminate or suspend this Agreement, the Supplier shall continue to fulfil its obligations under the Agreement until the date of expiry or termination of the Agreement or such other date as required under this Clause 28.
- 28.2 Suspension, termination or expiry of this Agreement and/or the Dynamic Purchasing System shall not cause any Call-Off Contracts to terminate automatically. For the avoidance of doubt, all Call-Off Contracts shall remain in force unless and until they are terminated or expire in accordance with their own terms.
- 28.3 Within thirty (30) Working Days of the date of termination or expiry of this Agreement and/or the Dynamic Purchasing System, the Supplier shall return to Sanctuary any data and Confidential Information belonging to Sanctuary in the Supplier's possession, power or control, either in its then current format or in a format nominated by Sanctuary, together with all training manuals and other related documentation, and any other information and all copies thereof owned by Sanctuary, save that it may keep one copy of any such data or information for a period of up to twelve (12) Months to comply with its obligations under this Agreement, or such period as is necessary for such compliance.
- 28.4 Sanctuary shall be entitled to require access to data or information arising from the provision of the Works from the Supplier until the latest of:
- 28.4.1 the expiry of a period of twelve (12) Months following termination or expiry of this Agreement; or
 - 28.4.2 the expiry of a period of three (3) Months following the date on which the Supplier ceases to provide Works under any Call-Off Contract.
- 28.5 Termination or expiry of this Agreement and/or the Dynamic Purchasing System shall be without prejudice to any rights, remedies or obligations of either Party accrued under this Agreement prior to termination or expiry.
- 28.6 The provisions of Clauses 7, 8, 10, 14, 19, 20, 24, 25, 28, 30, 34, 35, 41 shall survive the termination or expiry of this Agreement, together with any other provision which is either expressed to or by implication is intended to survive termination.

29. FORCE MAJEURE

- 29.1 Neither party shall be in breach of this Agreement for any delay in or failure to perform its obligations under this Agreement resulting from strike, lockout (other than strike or lockout which is limited to the Supplier's personnel), war, civil commotion, cessation or serious interruption of communication or power supplies, exceptional adverse weather conditions, fire. The parties shall immediately notify each other stating the likely length of disruption and the steps being taken to minimise the disruption. Sanctuary will notify the Supplier within 30 days whether it requires the provision of the Works to be recommenced, varied or cancelled (without further liability on either party).

30. VARIATIONS TO THIS AGREEMENT

- 30.1 Any variations to this Agreement must be made only in accordance with the Variation Procedure set out in Schedule 4.

31. REVIEW OF DPS AND THIS AGREEMENT

- 31.1 The operation of the Dynamic Purchasing System and this Agreement shall be reviewed annually, and, subject always to the Regulations, may be varied to ensure the optimum operation of the DPS for both Sanctuary and its suppliers.

32. **NOTICES**

- 32.1 Except as otherwise expressly provided by this Agreement, no notice or other communication from one Party to the other shall have any validity under the Agreement unless it is made in writing by or on behalf of the Party sending such notice or communication.
- 32.2 Any notice or other communication which is to be given by either Party to the other shall be given by letter (sent by hand, post, registered post or by the recorded delivery service), or by electronic mail. Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given two (2) Working Days after the day on which the letter was posted, or four (4) hours, in the case of electronic mail or sooner where the other Party acknowledges receipt of such letter or item of electronic mail.
- 32.3 For the purposes of Clause 32 the address of each Party shall be as set out in the Key Provisions.
- 32.4 Either Party may change its address for service by serving a notice in accordance with this Clause 32.

33. **RIGHTS OF THIRD PARTIES**

- 33.1 Save as provided in Schedule 7 the rights specified in this Agreement for the benefit of Sanctuary (including where any provision of this Agreement is also stated to apply to a Call-off Contract), a person who is not party to this Agreement ("**Third Party**") has no right to enforce any term of this Agreement but this does not affect any right or remedy of any person which exists or is available otherwise than pursuant to the Rights of Third Parties Act 1999. If the Parties rescind this Agreement or vary any of its terms in accordance with the relevant provisions of this Agreement, such rescission or variation will not require the consent of any Third Party.

34. **SEVERABILITY**

- 34.1 If any provision of this Agreement is held invalid, illegal or unenforceable for any reason, such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if the Agreement had been executed with the invalid provision eliminated.
- 34.2 In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of the Agreement, Sanctuary and the Supplier shall immediately commence good faith negotiations to remedy such invalidity.

35. **WAIVER**

- 35.1 The failure of either Party to insist upon strict performance of any provision of this Agreement, or the failure of either Party to exercise, or any delay in exercising, any right or remedy shall not constitute a waiver of that right or remedy and shall not cause a diminution of the obligations established by this Agreement.
- 35.2 No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with Clause 32 (Notices).
- 35.3 A waiver of any right or remedy arising from a breach of this Agreement shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of the Agreement.

36. **MODERN SLAVERY**

- 36.1 The Supplier undertakes, warrants and represents that:
- 36.1.1 neither the Supplier nor any of its officers, employees, agents or subcontractors has:
- (i) committed an offence under the Modern Slavery Act 2015 (a "**MSA Offence**"); or
 - (ii) been notified that it is subject to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015; or
 - (iii) is aware if any circumstances within its supply chain that could give rise to an

investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015;

- 36.1.2 it shall comply with the Modern Slavery Act 2015 and the Modern Slavery Documents;
 - 36.1.3 its responses to any modern slavery and human trafficking due diligence questions or enquiries raised by Sanctuary are complete and accurate; and
 - 36.1.4 it shall notify Sanctuary immediately in writing if it becomes aware or has reason to believe that it, or any of its officers, employees, agents or subcontractors have, breached or potentially breached any of the Supplier's obligations under this Clause 36. Such notice to set out full details of the circumstances concerning the breach or potential breach of the Supplier's obligations.
- 36.2 The Supplier shall during the term of this Agreement and for the period of 6 years thereafter maintain such records relating to the Works provided to Sanctuary under this Agreement as may be necessary to trace the supply chain of such Works and to enable Sanctuary to determine the Supplier's compliance with the Modern Slavery Documents.
- 36.3 Sanctuary (or a third party acting on its behalf) shall have the right from time to time at its own cost to conduct an audit of the Supplier's operations, facilities and working conditions and its quality, environmental, ethical and health and safety procedures and systems to ensure that the Supplier has the appropriate facilities, procedures, systems and personnel appropriate to and as may be required for the Supplier to perform the Works in accordance with this agreement and the Modern Slavery Policy and for that purpose shall be entitled to have access to the Supplier's premises and to any premises of the Supplier's subcontractors or agents where the Works are being performed during normal working hours on giving reasonable notice to the Supplier.
- 36.4 The Supplier shall, at its own cost, perform appropriate remediation actions to address any issues or failures identified by an audit carried out pursuant to Clause 36.2, within such timescales as are agreed with Sanctuary. The nature of the remediation action to be taken is at the discretion of the Supplier, but such action must address the relevant findings of the audit.
- 36.5 Not used.
- 36.6 The Supplier shall prepare and deliver to Sanctuary each year throughout the term, an annual slavery and human trafficking report setting out the steps it has taken to ensure that slavery and human trafficking is not taking place in any of its supply chains or in any part of its business.
- 36.7 If Sanctuary consents to the Supplier subcontracting its obligations, the Supplier shall ensure it has the ability to audit its subcontractor to ensure compliance with the Modern Slavery Documents.
- 36.8 The Supplier shall conduct a programme of regular training for its officers, employees, agents, subcontractors and other members of its supply chain to ensure compliance with the Modern Slavery Documents.
- 36.9 The Supplier shall keep a record of all training offered and completed by its officers, employees, agents, subcontractors and other members of its supply chain to ensure compliance with the Modern Slavery Documents and shall make a copy of such records available to Sanctuary on request.
- 36.10 Any breach of this Clause 36 by the Supplier shall be deemed a material breach of the agreement and shall entitle Sanctuary to terminate this Agreement in accordance with Clause 26.4.
- 37. ENTIRE AGREEMENT**
- 37.1 This Agreement constitutes the entire agreement and understanding between the Parties in respect of the matters dealt with in it and supersedes, cancels or nullifies any previous agreement between the Parties in relation to such matters.
- 37.2 Each of the Parties acknowledges and agrees that in entering into this Agreement it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or undertaking (whether negligently or innocently made) other than as expressly set out in this Agreement. The only remedy available to either Party of such statements, representation, warranty or understanding shall be for breach of contract under the terms of this Agreement.

37.3 Nothing in this Clause 37 shall operate to exclude Fraud or fraudulent misrepresentation.

38. CUMULATIVE REMEDIES

38.1 Except as otherwise expressly provided by this Agreement, all remedies available to either Party for breach of this Agreement are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

39. COMPLAINTS HANDLING AND RESOLUTION

39.1 Without prejudice to any rights and remedies that a complainant may have at Law, including under this Agreement or a Call-Off Contract, and without prejudice to any obligation of the Supplier to take remedial action under the provisions of this Agreement or a Call-Off Contract, the Supplier shall use its best endeavours to resolve a Complaint within ten (10) Working Days and in so doing, shall deal with the Complaint fully, expeditiously and fairly.

40. DISPUTE RESOLUTION

40.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with this Agreement within twenty (20) Working Days of either Party notifying the other of the dispute and such efforts shall involve the escalation of the dispute to those persons identified in the Key Provisions.

40.2 If the dispute cannot be resolved by the Parties pursuant to Clause 40.1 it shall be referred to a director or the executive director of the respective Parties for resolution.

40.3 Nothing in this dispute resolution procedure shall prevent the Parties from seeking from any court of competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.

40.4 If the dispute cannot be resolved by the Parties pursuant to Clause 40.2 the Parties shall refer it to mediation pursuant to the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure unless:

40.4.1 Sanctuary considers that the dispute is not suitable for resolution by mediation; or

40.4.2 the Supplier does not agree to mediation.

40.5 The obligations of the Parties under this Agreement shall not be suspended, cease or be delayed by the reference of a dispute to mediation and the Supplier and its employees, personnel and associates shall comply fully with the requirements of this Agreement at all times.

41. LAW AND JURISDICTION

41.1 Subject to the provisions of Clause 40, Sanctuary and the Supplier accept the exclusive jurisdiction of the English courts and agree that this Agreement be governed by and construed according to English Law.

IN WITNESS WHEREOF this Agreement has been executed as a **DEED** by the following parties and delivered on the date stated above

Intentionally blank

SCHEDULE 1

Call-Off Terms and Conditions

To be provided on an ad-hoc basis depending on the requirements of the Call-Off Contract.

SCHEDULE 2

Call-off Procedures

SCHEDULE 3

DPS KPIs

SANCTUARY GROUP

DEVELOPMENT KPI HANDBOOK

KPI 1	Employment and Skills Requirements
Purpose	To embed a community benefits approach to delivering employment and training through investment
Definitions	<p>The number of employment and skills opportunities delivered by the contractor and supply chain in relation to skills area number:</p> <ol style="list-style-type: none"> 1. Work placements 2. Job creation 2a Apprentice creations 3. Careers information advice and guidance 4. Training weeks spent on the project 4a Apprentices on site 5. Qualifying the workforce 6. Training plans 7. Local labour 8. Case studies <p>The number of person weeks of employment and training provided by the supply chain and the percentage of employees recruited within the local authority area This will be split between</p> <ul style="list-style-type: none"> • KPI 1a – person weeks of new entrant trainee employment per £1m of construction value • KPI 1b – person weeks of unwaged work experience per £1m of construction value • KPI 1c – percentage of new entrant trainees working towards NVQ level 2 • KPI 1d – percentage of employees recruited within the local authority area
Method	<p>Report populated by the contractor recording details of each outcome. Definitions and Evidence required as detailed in the Summary of the Employment and Skills Areas</p> <ol style="list-style-type: none"> 1. Work Placement : one work placement of 5 days represents one outcome 2. Job Creation : New Entrants – one person completing one month of employment represents one outcome 2a Apprentice Creation – one person represents one outcome 3. Careers information advice and guidance – one event represents one outcome 4. Training weeks on Site – one week = 5 working days. Applies to new entrants undertaking apprenticeships/traineeships/technical or higher level qualifications 4a Apprentices on site – one person represents one outcome 5. Qualifying the Workforce – qualifications achieved. Short duration training certification. 6. Training Plans – one new or renewed company training plan 7. Local Labour – %age of local compared to all workforce on the project 8. Case Study – one case study represents one outcome <p>For each site use reports generated by the contractor using the TR&T Can Do toolkit</p> <p>Total person weeks of new entrant trainee employment</p> <p>KPI 1a performance = $\frac{\text{Total person weeks of new entrant trainee employment}}{\text{Certified value of construction works in pounds}} \times 1,000,000$</p> <p>Total person weeks of unwaged work experience</p> <p>KPI 1b performance = $\frac{\text{Total person weeks of unwaged work experience}}{\text{Certified value of construction works in pounds}} \times 1,000,000$</p> <p>working towards NVQ 2</p> <p>ees</p>

www.sanctuary-group.co.uk



SANCTUARY GROUP

DEVELOPMENT KPI HANDBOOK

	$\text{KPI 1d performance} = \frac{\text{Number of employees recruited within the local authority area}}{\text{Total number of employees on site}} \times 100$
--	--

contact

www.sanctuary-group.co.uk



SANCTUARY GROUP

DEVELOPMENT KPI HANDBOOK

Examples	<p>At (date)</p> <p>65 weeks of training weeks have been delivered against a target of 90</p> <p>$65 / 90 * 100 = 72\%$</p> <p>3 Existing apprentices have been on site out of a total target of 5</p> <p>$3 / 5 * 100 = 60\%$</p> <p>At the end of June 2012, £2.25m of construction work has been completed and 15 new entrant trainees have been on site for 12 weeks out of a total workforce of 40. Also 4 students have completed 2 weeks of work experience. Twelve of the new entrant trainees are working towards NVQ level 2</p> <p>KPI 1a performance = $\frac{15 \times 12}{2,250,000} \times 1,000,000 = 80 \text{ weeks}$</p> <p>KPI 1b performance = $\frac{4 \times 2}{2,250,000} \times 1,000,000 = 3.6 \text{ weeks}$</p> <p>KPI 1c performance(%) = $\frac{12}{15} \times 100 = 80\%$</p>		
Measurement	Monthly		
Target		Target	Upper quartile performance
	KPI 1	100%	
Target Source	Contractor		
Reporting tool	Employment and Skills Plan and Tracker		


contact

www.sanctuary-group.co.uk



SANCTUARY GROUP

DEVELOPMENT KPI HANDBOOK

KPI 2	Cost												
Purpose	To determine the ability of the contractor to deliver cost benchmarks												
Definitions	The gross certified value of works compared to the project cash flow forecast												
Method	<p>A Sigmoid Curve will be used to forecast the project cash flow where cumulative value is plotted on the Y axis against time on the X axis</p> <p>KPI 2 performance(%) = $\frac{\text{Actual gross certified value of works in pounds}}{\text{Forecast cumulative cash flow in pounds}} \times 100$</p> 												
Examples	<p>At the end of June 2012, £2.25m of construction work has been certified for payment against a cash flow forecast of £2.4m</p> <p>KPI 2 performance (%) = $\frac{2,250,000}{2,400,000} \times 100 = 93.75\%$</p>												
Measurement	Monthly												
Target	<table><tr><td></td><td>Target</td><td>Upper quartile performance</td></tr><tr><td>KPI 2</td><td>100%</td><td>95 – 105%</td></tr><tr><td></td><td></td><td></td></tr><tr><td></td><td></td><td></td></tr></table>		Target	Upper quartile performance	KPI 2	100%	95 – 105%						
	Target	Upper quartile performance											
KPI 2	100%	95 – 105%											
Target Source	Employers Agent												
Reporting tool	Business Objects												

contact

www.sanctuary-group.co.uk



SANCTUARY GROUP

DEVELOPMENT KPI HANDBOOK

KPI 3	Time		
Purpose	To determine the ability of the contractor to deliver to programmed dates		
Definitions	<p>To achieve programmed dates for starts on site, phased completions, practical completions and making good defects as compared with the overall project programmes</p> <p>This will be split between</p> <p>KPI 3a – starts on site, sectional and practical completions</p> <p>KPI 3b – making good defects</p>		
Method	<p>The total number of dates for all of the sites in the respective programmes weighted at 40% for starts and 60% for completions</p> <p>SOS = Number of sites started on time SHC = Number of sectional completions on time PC = Number of Practical completions on time MGD = Number of sites where defects have been made good on time</p> <p>KPI 3a performance = $\frac{(SOS \times 40 / 100) + (SHC \times 60/100) + (PC \times 60/100)}{\text{Number of programmed } \{(SOS \times 40/100) + ((SHC + PC) \times 60/100)\} \text{ events}} \times 100$</p> <p>KPI 3b performance = $\frac{MGD}{\text{Number of programmed MGD}} \times 100$</p>		
Examples	<p>At the end of June 2013, 11 sites have been started and 3 have reached Practical Completion against a programme of 11 starts and 4 completions</p> <p>KPI 3a performance = $\frac{(11 \times 40/100) + (3 \times 60/100)}{(11 \times 40/100) + (4 \times 60/100)} \times 100 = 91.2\%$</p>		
Measurement	Monthly		
Target		Target	Upper quartile performance
	KPI 3a	100%	95 – 105%
	KPI 3b	100%	100%
Target Source	Employers Agent		
Reporting tool	EA programme monitor		

contact

www.sanctuary-group.co.uk



SANCTUARY GROUP

DEVELOPMENT KPI HANDBOOK

KPI 4	Health & Safety									
Purpose	To monitor on site compliance with Health and Safety regulations									
Definitions	The number of compliant and / or non compliant Health and Safety issues based upon an independent site audit. This will be split between KPI 4a – performance during year 1 KPI 4b – performance after year 1									
Method	<p>A standard monthly audit will be carried out by an independent inspector making an unannounced site visit. The overall score for each audit will be as follows:</p> <p>Scoring:</p> <p>RED: Less than 70%- - improvement required and calls for an action plan and goes to the Sanctuary PM.</p> <p>AMBER: Less than 80% - improvement required. All items closed out by the auditor and site manager.</p> <p>GREEN: 80% to 89% - industry norm achieved.</p> <p>BLUE: 90% or more - exceeds industry norm / best practice demonstrated.</p> <p>The audit consists of 20 sections and 100 questions and broadly covers the requirements of CDM 2015 and HSG 150 Health & Safety in Construction. Each Question on the audit is scored as follows:</p> <table><tr><td>Severity 0: Safety Critical (-10%)</td></tr><tr><td>Severity 1: Serious Concerns (- 5%)</td></tr><tr><td>Severity 2: Improvement Required (- 1%)</td></tr><tr><td>Severity 3: Industry Norm Achieved (+0.85%)</td></tr><tr><td>Severity 4: Exceeds Industry Norm (+2%)</td></tr><tr><td>Severity 5: Best Practice Demonstrated (+5%)</td></tr><tr><td>N/A: Not applicable (+0.85%)</td></tr></table>			Severity 0: Safety Critical (-10%)	Severity 1: Serious Concerns (- 5%)	Severity 2: Improvement Required (- 1%)	Severity 3: Industry Norm Achieved (+0.85%)	Severity 4: Exceeds Industry Norm (+2%)	Severity 5: Best Practice Demonstrated (+5%)	N/A: Not applicable (+0.85%)
Severity 0: Safety Critical (-10%)										
Severity 1: Serious Concerns (- 5%)										
Severity 2: Improvement Required (- 1%)										
Severity 3: Industry Norm Achieved (+0.85%)										
Severity 4: Exceeds Industry Norm (+2%)										
Severity 5: Best Practice Demonstrated (+5%)										
N/A: Not applicable (+0.85%)										
Examples	<p>Please refer to the attached documents:</p> <ul style="list-style-type: none">- Typical health & safety audit- Monthly audit performance steering wheel- Comparative league table <p>Each contractor will be rated as follows:</p> <p>BLUE – best practice demonstrated average score 90% or greater</p> <p>GREEN – industry standard achieved for a score between 80 and 89%</p> <p>AMBER– less than 80% improvement required</p> <p>RED – immediate action plan and improvement required average of less than 70%.</p>									
Measurement	<p>The audits are conducted using state of the art hand held devices allowing the immediate issue of the audit report to the project team from site. A monthly steering wheel will be produced for each contractor along with a league table to compare their health & safety performance.</p> <p>Best practice and what good looks like will be discussed and developed in conjunction with the principal contractors and project team as a whole.</p>									
Target		Target	Upper quartile performance							
	KPI 4a	90%	80%							
	KPI 4b	90%	85%							
Target Source	Independent inspector									
Responsible	H&S monitoring tool									
		www.sanctuary-group.co.uk								



SANCTUARY GROUP

DEVELOPMENT KPI HANDBOOK

KPI 5		Quality	
Purpose		To achieve required quality standards throughout the construction process	
Definitions		The number of defects at interim inspection stages, commissioning and handover	
Method		<p>Stage inspections will be carried out by the Clerk of Works or delegated authority and defects will be recorded and reported. The stages to be monitored are listed in the Examples section</p> <p>KPI 5a – stage completion inspections</p> <p>KPI 5b – commissioning</p> <p>KPI 5c – handover</p> <p>KPI 5d – end of defects liability</p> <p>KPI 5e – NHBC 2 year inspection</p>	
Examples		<p>General needs (2 storey) housing</p> <p>Substructure</p> <p>Weather tight</p> <p>1st fix</p> <p>2nd fix</p> <p>Handover</p> <p>External works</p>	<p>Other development</p> <p>Substructure</p> <p>1st lift superstructure</p> <p>2nd lift</p> <p>3rd lift</p> <p>Weather tight</p> <p>1st fix</p> <p>2nd fix</p> <p>Commissioning and handover</p> <p>External works</p>
Measurement		Monthly	
Target		Target	Upper quartile performance
		KPI 5a	< 6 defects
		KPI 5b	< 10 defects
		KPI 5c	Zero defects
		KPI 5d	2 defects per unit
		KPI 5e	2 defects per unit

contact

www.sanctuary-group.co.uk



SANCTUARY GROUP

DEVELOPMENT KPI HANDBOOK

KPI 6	Considerate Constructors		
Purpose	To record performance against the Considerate Constructor scheme		
Definitions	<ul style="list-style-type: none"> The aggregate score achieved across considerate constructor visits across the construction period. 		
Method	$\text{KPI 6 performance (\%)} = \frac{\text{Aggregate score of considerate constructor visits}}{\text{Score of 35}} \times 100$		
Examples	<p>During the construction period, 2 visits by considerate constructors took place. The aggregate score was 38 (40+36/2).</p> $\text{KPI 6 performance} = \frac{38}{35} \times 100 = 109\%$		
Measurement	Completion		
Target		Target	Upper quartile performance
	KPI	35	
Target Source	Contractor		
Reporting tool	Considerate Constructor Reports		

contact

www.sanctuary-group.co.uk



SANCTUARY GROUP

DEVELOPMENT KPI HANDBOOK

KPI 7	Local Labour		
Purpose	To monitor the ability of the contractor to utilise local sub-contractors.		
Definitions	The percentage of sub-contractors taken from within a 20 mile radius of the construction site.		
Method	<p>The sub-contractor register will be populated during the project and reviewed at monthly meetings</p> <p>KPI 7 performance (%) = $\frac{\text{number of sub-contractor whose office is based within 20 miles of the construction sites}}{\text{Total number of sub-contractors employed}} \times 100$</p>		
Examples	<p>At the end of June 2016 the sub-contractor register has recorded 37 sub-contractors. 11 sub-contractors were recorded from within 20 miles of the site.</p> <p>KPI 7 performance = $\frac{11}{37} \times 100 = 30\%$</p>		
Measurement			
Target		Target	Upper quartile performance
	KPI 7	50%	
Target Source	Contractor report		
Reporting tool	Contractor report		

contact

www.sanctuary-group.co.uk



SANCTUARY GROUP

DEVELOPMENT KPI HANDBOOK

KPI 8		Community Benefit Initiatives	
Purpose		To provide resources for initiatives that create opportunities for communities	
Definitions		<p>The value of resources that are provided by the contractor for investment in Community Benefit Schemes that are nominated by the Employer</p> <p>Staff and labour time will be valued at £25 per hour excluding VAT Materials and plant / equipment will be valued at net invoiced cost excluding VAT</p>	
Method		<p>For the entire project programme the community benefit investment will be monitored against the proposed level of investment that the contractor has committed to in the tender submission. This will be aggregated across all sites</p> $\text{KPI 8 performance(\%)} = \frac{\text{Actual value of resources provided} \times 1,000,000}{\text{Tendered commitment per £1 million} \times \text{Aggregate certified value of works}} \times 100$	
Examples		<p>At the end of June 2012, the aggregate value of works is £2 million (excluding VAT) and the contractor has provided evidence of £4800 of investment in nominated community benefit initiatives. This is made up of £800 invoiced for plant and equipment, £1000 invoiced for materials and 120 hours of staff and labour resources.</p> <p>In the tender submitted by the contractor there was a commitment to invest resources to the value of £2500 per million pounds value of work certified</p> $\text{KPI 8 performance (\%)} = \frac{4,800 \times 1,000,000}{2,500 \times 2,000,000} \times 100 = 96\%$	
Measurement			
Target		Target	
		KPI 8	100%
Target Source		Contractor	
Reporting tool		Employment Skills Plan and Tracker	

contact

www.sanctuary-group.co.uk



SCHEDULE 4

Dynamic Purchasing System Variation Procedure

1. Introduction

- 1.1 This Schedule 4 details the scope of the variations permitted and the process to be followed where Sanctuary proposes a variation to the Agreement.
- 1.2 Sanctuary may propose a variation to the Agreement under this Schedule 4 only where the variation does not amount to a material change in the Agreement.

2. Procedure for proposing a Variation

- 2.1 Except where paragraph 4 applies, Sanctuary may propose a variation using the procedure contained in this paragraph 2.
- 2.2 In order to propose a variation, Sanctuary shall serve each Supplier on the Dynamic Purchasing System with written notice of the proposal to vary the Agreement ("Notice of Variation").
- 2.3 The Notice of Variation shall contain details of the proposed variation providing sufficient information to allow each Supplier to assess the variation.
- 2.4 Upon receipt of the Notice of Variation, each Supplier has 10 days to respond in writing with any objections to the variation.
- 2.5 Where Sanctuary does not receive any written objections to the variation within the timescales detailed in paragraph 2.4, Sanctuary may then serve each Supplier with a written agreement detailing the variation to be signed and returned by each Supplier within 10 days of receipt.
- 2.6 Upon receipt of a signed agreement from each Supplier, Sanctuary shall notify all Suppliers in writing of the commencement date of the variation.

3. Objections to a Variation

- 3.1 In the event that Sanctuary receives one or more written objections to a variation, Sanctuary may:
 - 3.1.1 withdraw the proposed variation; or
 - 3.1.2 propose an amendment to the variation.

4. Variations which are not permitted

- 4.1 In addition to the provisions contained in paragraph 1.2, Sanctuary may not propose any variation which:-
 - 4.1.1 may prevent one or more of the Suppliers from performing its obligations under the Agreement; or
 - 4.1.2 is in contravention of any law.

SCHEDULE 5

Form of Performance Bond

THIS PERFORMANCE BOND is made as a deed the [] day of []

BETWEEN:

[] (Company Number []) of [] ("the Surety") of the first part;

[] (Company Number []) of [] ("the Supplier") of the second part; and

[SANCTUARY HOUSING ASSOCIATION], a registered society as defined in section 1 of the Co-operative and Community Benefit Societies Act 2014 (registered number [19059R]) of Sanctuary House, Chamber Court, Castle Street, Worcester, WR1 3ZQ ("the Employer") of the third part.

WHEREAS:

The Employer and the Supplier have entered into a contract dated the [] ("the Contract") for the carrying out of works of [] at [] ("the Works").

NOW IN CONSIDERATION OF THE PAYMENT OF ONE POUND (£1) BY THE EMPLOYER TO THE SURETY AND THE CONTRACTOR (RECEIPT OF WHICH THE SURETY AND THE CONTRACTOR HEREBY ACKNOWLEDGE) IT IS HEREBY AGREED AS FOLLOWS:

1. In this Bond the following words and expressions shall save where the context otherwise requires be deemed to have the following meanings:

"the Sum" means the sum of [] (£[])

"the Expiry Date" means the date 90 days after the issue of the [Notice of Completion of Making Good Defects/ Practical Completion Statement] [] in respect of the whole of the Works under the Contract

"Net Losses" means the gross losses sustained by the Employer as a result of the Event of Default and the debts interest and costs payable by the Supplier to the Employer pursuant to and in accordance with the provisions of or by reference to the Call-Off Contract and less any entitlement to payment of a liquidated sum which has accrued to the Supplier on or before the date on which such gross losses have been ascertained and established in accordance with clause 4.

"Event of Default" means any failure by the Supplier to fulfil its obligations under or in connection with the Call-Off Contract (an automatic or an Employer's determination of the Supplier's employment under the Call-Off Contract being deemed to be such a failure) or to pay any debt, damages, interest or costs which became due from the Supplier to the Employer under or in connection with the Call-Off Contract

2. If an Event of Default shall occur, the Surety and the Supplier jointly and severally undertake as principal obligors subject to clause 5 to pay to the Employer a sum equivalent to the Net Losses sustained by the Employer by reason thereof as soon as the amount of such Net Losses has been ascertained and established pursuant to clause 4.
3. If an Event of Default shall occur, the Employer may at any time before the Expiry Date give notice in writing to the Supplier and the Surety specifying the nature of the Event of Default and making a claim under the terms of this Bond, notwithstanding that the Net Losses

sustained by the Employer by reason thereof shall not yet have been ascertained and established.

4. The gross losses sustained by the Employer by reason of an Event of Default (which where applicable shall include the fees of a quantity surveyor appointed in accordance with clause 4.3) shall be ascertained and established by:
 - 4.1 a statement signed by the Employer certifying the nature of the Event of Default and the losses sustained by the Employer by reason thereof and countersigned by the Supplier acknowledging the default; or
 - 4.2 the terms of a judgment of a Court of competent jurisdiction or an award of an arbitrator duly appointed in accordance with the terms of the Contract; or
 - 4.3 subject to the Employer submitting to the Surety evidence of the appointment of a trustee in bankruptcy or a liquidator or a provisional liquidator or an administrative receiver or an LPA Receiver or an administrator of the assets or undertaking of the Supplier or a nominee or supervisor of a company voluntary arrangement or any other insolvency practitioner, the written determination of a quantity surveyor who shall be agreed between the Employer and the Surety or in default of agreement within 28 days of the Employer submitting such evidence shall be appointed by the President for the time being of the Royal Institution of Chartered Surveyors and who shall act as expert and not as arbitrator.
5. The maximum aggregate liability of the Surety under this Bond shall not exceed the Sum but subject to such limitation and to clause 11 the liability of the Guarantor shall be co-extensive with the liability of the Supplier under the Contract.
6. The occurrence of any one or more of the following shall not in any way release the Surety from its obligations hereunder:
 - 6.1 any alteration to the nature or extent of the Works;
 - 6.2 any amendment, novation, extension, restatement, waiver or supplement to the Call-Off Contract or any other document or security (however fundamental and whether or not more onerous) or any instruction change or variation made pursuant to the Call-Off Contract or any document supplemental thereto;
 - 6.3 any allowance of time, forbearance, indulgence, waiver or other concession granted to the Supplier under the Call-Off Contract or any other compromise or settlement of any dispute between the Employer and the Supplier (but so that the Employer shall not pursue against the Surety a remedy contrary to the terms of any such compromise or settlement insofar as the Supplier shall have complied with such terms);
 - 6.4 the insolvency, dissolution, liquidation, amalgamation, reconstruction or reorganisation of the Supplier or its liquidation or receivership or any legal limitation or incapacity relating to the Supplier;
 - 6.5 any invalidity of the obligations of the Supplier under the Call-Off Contract any security held from the Supplier or the avoidance or termination of the Contract;
 - 6.6 any dispute between the Employer and the Supplier under or in relation to the Call-Off Contract;

- 6.7 anything that the Employer or the Supplier may do or omit or neglect to do in connection with the Call-Off Contract which but for this provision may operate to exonerate or discharge the Guarantor or otherwise reduce or extinguish its liability under this Guarantee.
7. The Surety's obligation and liability under this Bond shall continue notwithstanding any disclaimer of the Call-Off Contract by a liquidator or administrator appointed to the Supplier and the Call-Off Contract shall for the purposes of this Bond be deemed to continue notwithstanding any such disclaimer.
8. The Surety shall be released and discharged from its obligations under this Bond on the Expiry Date save in respect of any claims notified to the Surety under clause 3 prior to such date.
9. Until such time as the Employer has recovered all amounts due to it under this Bond the Surety shall not without the prior written consent of the Employer in respect of any payment made or liability under this Bond claim rank or vote as a creditor in the liquidation of the Supplier in competition with the Employer or enforce any security over the assets of the Supplier in respect of any such payment or liability in competition with the Employer but this clause 9 shall not limit or restrict the exercise or enforcement by the Guarantor of its rights against any other persons. If the Guarantor recovers any sums in breach of this clause 9, the Guarantor shall hold such sums on trust to pay to the Employer any sums due from the Supplier to the Employer under or in connection with the Contract.
10. The Employer may give different notices to the Guarantor on different occasions each requiring the Guarantor to pay the sum referred to in Clause 1, but the Guarantor shall not be obliged to pay to the Employer more than the Sum in aggregate.
11. The Employer shall not be obliged to pursue any means of recourse against the Supplier before being entitled to enforce this Deed against the Guarantor and the Employer shall be at liberty to compromise release waive or neglect any security as it sees fit without impairment of its rights under this Deed.
12. This Bond is governed by English law and in the event of any dispute or difference arising out of or in connection with this Bond the parties hereto hereby submit to the non-exclusive jurisdiction of the Courts of England and Wales.
13. The Employer may without the consent of the Surety assign or charge the benefit of this Bond to any person providing funding for the Works or to whom the Employer lawfully assigns or charges the benefit of the Call-Off Contract. This Bond shall not be otherwise assignable without the Surety's consent (such consent not to be unreasonably withheld or delayed). The Surety shall not contend that any person to whom the benefit of this Bond is assigned under this clause 13 may not recover any sum under this Bond because that person is an assignee and not a named party to this Bond.
14. Any notice to be given under this Bond shall be in writing and shall be deemed to be given properly if it is delivered by hand, or sent by special delivery or recorded delivery to the address of the relevant party set out above (or such other address as that party may have nominated for service). If the notice is sent by special delivery or recorded delivery, it shall be deemed to be received two working days after the day it was posted. If the notice is delivered by hand, it shall be deemed to be received on the day it is delivered.
15. Notwithstanding any other provision of this Bond nothing in this Bond confers or purports to confer any right to enforce any of its terms on any person who is not a party to it where that right would not exist but for the Contracts (Rights of Third Parties) Act 1999.

IN WITNESS WHEREOF the Supplier and the Surety have executed this bond as a deed and delivered the same on the day and year first above written

EXECUTED as a DEED by
[SURETY] acting by (or
where the Common Seal
of **[SURETY]** was hereunto
affixed, in the presence of):

Director
Signature
.....
Print Name

Director/Secretary
Signature
.....
Print Name

EXECUTED as a DEED by
[CONTRACTOR] acting by (or
where the Common Seal
of **[CONTRACTOR]** was hereunto
affixed, in the presence of):

Director
Signature
.....
Print Name

Director/Secretary
Signature
.....
Print Name

EXECUTED as a DEED by affixing)
the common seal of)
[SANCTUARY HOUSING ASSOCIATION])
in the presence of:)

Authorised Signatory
Signature
.....
Print Name

Authorised Signatory
Signature
.....
Print Name

SCHEDULE 6

Form of Parent Company Guarantee

THIS DEED OF GUARANTEE is made the [] day of []

BETWEEN:

[] (Company Number []) whose registered office is at [] (hereinafter called the "**Guarantor**") of the one part; and

[**SANCTUARY HOUSING ASSOCIATION**], a registered society as defined in section 1 of the Co-operative and Community Benefit Societies Act 2014 (registered number [19059R]) of Sanctuary House, Chamber Court, Castle Street, Worcester, WR1 3ZQ (hereinafter called the "**Beneficiary**" which expression shall include its successors and assigns) of the other part

WHEREAS:

- (A) The Beneficiary has entered into a contract dated [] (hereinafter called "**the Contract**") with [] (hereinafter called "**the Supplier**") for the carrying out of works at [] ("**the Works**")
- (B) The Guarantor has agreed to guarantee the due performance of the Contract in the manner hereinafter appearing.

NOW IN CONSIDERATION OF THE SUM OF ONE POUND (£1) (RECEIPT OF WHICH THE GUARANTOR HEREBY ACKNOWLEDGES) THE GUARANTOR HEREBY COVENANTS WITH THE BENEFICIARY as follows:

1 The Guarantor will in all respects guarantee:

- 1.1 the due and proper performance of the Contract and the due observance and punctual performance of all the obligations, duties, undertakings, covenants and conditions by or on the part of the Supplier contained therein and to be observed and performed by it ("**the Obligations**"); and
- 1.2 payment by the Supplier of any losses, debt, damages, interest, expenses or costs due from the Supplier to the Beneficiary under or in connection with the Contract ("**the Liabilities**"),

which guarantee shall extend to include any variation or addition to the Contract.

2 In the event of:

- 2.1 the Supplier failing to carry out, observe or perform all or any of the said Obligations (unless relieved from the performance of any part of the Contract by statute or by the decision of a court or tribunal of competent jurisdiction); and/or
- 2.2 the Supplier failing to fails to make payment of the Liabilities; and/or
- 2.3 the employment of the Supplier under the Contract being determined by operation of or notice given under clause 8.4, 8.5 or 8.6 of the Contract

the Guarantor will observe or perform or cause to be observed or performed the Obligations and shall be liable for and shall indemnify the Beneficiary against all Liabilities whatsoever which the Beneficiary may incur by reason or in consequence of any such failure to carry out observe or perform the Obligations, any non-payment of the Liabilities and/or termination of

the Contract. The Beneficiary will not be bound first to make demand on or enforce any rights against the Supplier or any other guarantor or other person before enforcing this Guarantee.

- 3 The Guarantor shall not be discharged or released from this Guarantee by the occurrence of any one or more of the following:
 - 3.1 any alteration to the nature or extent of the Works or otherwise to the terms of the Contract;
 - 3.2 any allowance of time, forbearance, indulgence or other concession or arrangement granted or made by the Beneficiary to or with the Supplier under the Contract or any other compromise or settlement of any dispute between the Beneficiary and the Supplier or by anything that the Beneficiary or the Supplier may do or omit or neglect to do (but so that the Beneficiary shall not pursue against the Guarantor a remedy contrary to the terms of any such compromise or settlement insofar as the Supplier shall have complied with such terms);
 - 3.3 the liquidation, bankruptcy, administration, absence of legal personality, dissolution, incapacity, or any change in the name, composition or constitution of the Supplier or the Guarantor;
 - 3.4 the taking, variation, compromise, renewal or release of, or refusal or neglect to take, effect or enforce any rights securities or remedies against the Supplier or any other person;
 - 3.5 any amendment or supplement to the Contract or any other document or security;
 - 3.6 the insolvency, dissolution, liquidation, amalgamation, reconstruction or reorganisation of the Supplier or any other person;
 - 3.7 any invalidity of (i) the obligations of the Supplier under the Contract, or (ii) any security held from the Supplier, or (iii) any other person in connection with the Contract;
 - 3.8 anything that the Beneficiary or the Supplier may do or omit or neglect to do in connection with the Contract which but for this provision may operate to exonerate or discharge the Guarantor or otherwise reduce or extinguish its liability under this Guarantee.
- 4 This Guarantee is a continuing guarantee and accordingly shall remain in operation until all liabilities, obligations, duties, undertakings, covenants, conditions and warranties now or hereafter to be carried out or performed by the Supplier under the Contract shall have been satisfied or performed in full and is in addition to and not in substitution for any other security which the Beneficiary may at any time hold for the performance of such obligations and may be enforced without first having recourse to any such security and without taking any other steps or proceedings against the Supplier.
- 5 So long as any sums are payable (contingently or otherwise) by the Supplier to the Beneficiary under the terms of the Contract then the Guarantor shall not claim to have the benefit of any security which the Beneficiary holds or may hold for any money or liabilities due or incurred by the Supplier to the Beneficiary, exercise any right of set off or counterclaim against the Supplier or any other person or prove in competition with the Beneficiary in respect of any payment by the Guarantor hereunder and in case the Guarantor receives any sums from the Supplier or any other person in respect of any payment of the Guarantor hereunder the Guarantor shall hold such monies in trust for the Beneficiary so long as any sums are payable (contingently or otherwise) under this Guarantee.
- 6 The Guarantor will not, without the prior written consent of the Beneficiary hold any security from the Supplier or any other person in respect of the Guarantor's liability hereunder or in respect of any liabilities or other obligations of the Supplier to the Guarantor. The Guarantor

will hold any security held by it in breach of this provision in trust for the Beneficiary.

- 7 This Guarantee is in addition to and not in substitution for any present and future guarantee lien or other security held by the Beneficiary. The Beneficiary's rights under this Guarantee are in addition to and not exclusive of those provided by law.
- 8 By entering into this Guarantee the Guarantor confirms that it is liable to the Beneficiary as if it was primary obligor and had entered into the Contract as contractor.
- 9 The Beneficiary shall have no greater rights against the Guarantor by virtue of the guarantee given the by Guarantor than it has or had against the Supplier and the same defences set-off and/or counterclaims which would have been available to the Supplier shall be available to the Guarantor but without double-counting any such entitlement and without limitation to the rights of the Beneficiary to counter any such defence set-off and/or counterclaim.
- 10 If any payment, security or other disposition is avoided on the bankruptcy, liquidation or otherwise of the Supplier then the liability of the Guarantor under this Guarantee shall continue as if no such payment, security or disposition has been made.
- 11 The Beneficiary may without the consent of the Guarantor assign or charge the benefit of this Guarantee to any person providing funding for the Works or to whom the Beneficiary lawfully assigns or charges the benefit of the Contract. This Guarantee shall not be otherwise assignable without the Guarantor's consent (such consent not to be unreasonably withheld or delayed). The Guarantor shall not contend that any person to whom the benefit of this Guarantee is assigned under this clause 11 may not recover any sum under this Guarantee because that person is an assignee and not a named party to this Guarantee.
- 12 Any notice to be given under this Guarantee shall be in writing and shall be deemed to be given properly if it is delivered by hand, or sent by special delivery or recorded delivery to the address of the relevant party set out above (or such other address as that party may have nominated for service). If the notice is sent by special delivery or recorded delivery, it shall be deemed to be received two working days after the day it was posted. If the notice is delivered by hand, it shall be deemed to be received on the day it is delivered.
- 13 This Guarantee and any dispute or claim arising out of, relating to or in connection with it is governed by, and construed in accordance with, the laws of England. All disputes or claims arising out of, relating to or in connection with this Guarantee shall be subject to the jurisdiction of the English courts to which the parties irrevocably submit
- 14 Notwithstanding any other provision of this Guarantee nothing in this Guarantee confers or purports to confer any right to enforce any of its terms on any person who is not a party to it where that right would not exist but for the Contracts (Rights of Third Parties) Act 1999.

IN WITNESS WHEREOF the Guarantor has executed this Deed of Guarantee the day and year first before written

EXECUTED as a DEED by
[GUATANTOR] acting by (or
where the Common Seal
of **[GUARANTOR]** was hereunto
affixed, in the presence of):

Director
Signature
.....
Print Name

Director/Secretary
Signature
.....
Print Name

EXECUTED as a DEED by
[CONTRACTOR] acting by (or
where the Common Seal
of **[CONTRACTOR]** was hereunto
affixed, in the presence of):

Director
Signature
.....
Print Name

Director/Secretary
Signature
.....
Print Name

EXECUTED as a DEED by affixing)
the common seal of)
[SANCTUARY HOUSING ASSOCIATION])
in the presence of:)

Authorised Signatory
Signature

.....
Print Name

Authorised Signatory
Signature

.....
Print Name

SCHEDULE 7

Third Party Rights

In this schedule, unless otherwise defined or a contrary intention appears, words shall have the meanings ascribed to them in the Appointment.

1 DUTY OF CARE

- 1.1 The Supplier warrants to the Third Party that it has carried out and completed or has carried out and will continue to carry out and complete the Works fully in accordance with and subject to the terms of this Contract and has observed and performed and will continue to observe and perform all of its obligations expressed in or arising out of the Contract.
- 1.2 Without derogation from paragraph 1.1 and to the extent that under the Contract the Supplier takes responsibility for the design of the Works and the selection of goods materials plant and equipment for incorporation therein the Supplier warrants to the Third Party that the same have been or will be designed and selected using all the reasonable skill and care to be expected of a professionally qualified and competent designer experienced in the design of works similar in scope, type, complexity, value, timescale and character to the Works.
- 1.3 The Supplier further warrants that it owes a duty of care to the Third Party and the Supplier acknowledges that the Third Party will be relying upon the Supplier complying with its obligations under the Contract **PROVIDED THAT** the Supplier shall have no greater liability to the Third Party by virtue of this Schedule 7 that it would have had if the Third Party been named as the employer of the Supplier in this Contract provided always that the Supplier shall not be entitled to raise any defence made on the basis that loss incurred by the Third Party is not a loss to (or is not the same loss suffered by) the Employer not shall it be entitled to raise as a defence to a claim under this Schedule 7 any counterclaim or set-off that it may have against the Employer under this Contract.

2 DELEGATION

- 2.1 It is hereby agreed and declared that the duties obligations responsibilities and liabilities of the Supplier under this Schedule shall not be modified released or in any way affected by the fact that the Supplier may delegate or may have delegated all or any part of the design and/or construction of the Works to a consultant or sub-contractor .

3 COPYRIGHT

- 3.1 To the extent that Intellectual Property Rights in the Supplier's Design Documents remain vested in the Supplier (or relevant author) the Supplier hereby grants (or where it is not the copyright owner shall procure that there is granted) to the Third Party an irrevocable, non-exclusive and royalty free licence to copy and use the Supplier's Design Documents and reproduce the designs and content of them for any purpose relating to the Works, their development and use but the Supplier shall not be liable for any use other than that for which the Supplier's Design Documents were originally prepared. Such licence shall be capable of sub-licence and assignment.
- 3.2 The Supplier shall upon the written request of the Third Party (but subject to reimbursement of the Supplier's reasonable photocopying charges) provide to the Third Party copies of the Supplier's Design Documents and such other information in relation to the Works as the Supplier can reasonably supply.
- 3.3 The Supplier warrants that the use of the Supplier's Design Documents for the purposes of the Works will not infringe the rights of any third person.

- 3.4 The Supplier waives any moral right it may have as the author of the Supplier's Design Documents and where it is not the author will use reasonable endeavours to procure from the author a corresponding waiver in favour of the Third Party.

4 THIRD PARTY'S RIGHTS AND LIABILITIES

- 4.1 Save as hereinafter mentioned the Third Party has no authority to issue any direction or instruction to the Consultant in relation to the performance of the Supplier's duties and responsibilities under the Contract.
- 4.2 The Supplier acknowledges that the Third Party has no liability to the Supplier in respect of fees and expenses under the Contract unless and until the Third Party is granted rights under paragraph 12, and exercises its rights under paragraph 12.3 to be substituted for the Employer.

5 INSURANCE

- 5.1 The Supplier shall maintain professional indemnity insurance in the amount stated and in accordance with the Contract.
- 5.2 The Supplier shall when required so to do supply to the Third Party documentary evidence of such insurance and shall immediately inform the Third Party if the Supplier fails to renew such insurance or fails to renew such insurance at the level required by paragraph 5.1.

6 ASSIGNMENT

- 6.1 The Third Party shall be fully entitled without the consent of the Supplier to assign all or any of its rights and benefits arising under this Schedule at any time to any third party (but such rights and benefits shall not be assigned on more than two occasions).
- 6.2 The limitations on assignment contained in paragraph 6.1 shall not apply:
- (a) to and from subsidiaries or other associated companies within the same group of companies as the Third Party (within the meaning of section 1159 of the Companies Act 2006 (as amended or re-enacted) so long as that assignee remains within the same group of companies as the Third Party); or
 - (b) to assignments to any party having or acquiring a mortgage or charge over the Works or any part of it and by way of re-assignment on redemption.
- 6.3 The Third Party shall notify the Supplier upon each occasion that it shall make an assignment under paragraph 6.1.
- 6.4 The Supplier shall not be entitled to assign transfer charge or otherwise dispose of all or any of its rights or liabilities arising under Schedule to any other party.
- 6.5 The Supplier shall not be entitled to contend that any person to whom the benefit of this Schedule is assigned in accordance with clause 6.1 or 6.2 is precluded from recovering under this Schedule any loss incurred by such assignee resulting from the breach of this Schedule (whenever happening) by reason that such person is an assignee or has suffered a different loss from that of the Employer.

7 INDEPENDENT INSPECTION

- 7.1 The liability of the Supplier under this Schedule shall not be modified released or diminished or in any way affected by any independent inspection investigation or enquiry into any relevant matter which may be made or carried out by or for the Third Party nor by any failure or omission to carry out any such inspection investigation or enquiry nor by the appointment by the Third Party of any independent firm company or party whatsoever to review the progress of or otherwise report to the Third Party in respect of the Works nor by any action or omission

of such firm company or party whether or not such action or omission might give rise to any independent liability of such firm company or party to the Third Party provided always that nothing in this paragraph shall modify or affect any rights which the Supplier might have but for the existence of this paragraph to claim a contribution from any third party whether under statute or at common law.

8 LIMITATION

- 8.1 No action or proceedings for any breach of the warranties and obligations under this Schedule shall be commenced against the Supplier after the expiry of 12 years from the date of practical completion of the Works under the Contract.

9 NOTICES

- 9.1 Any notice provided for in this Schedule shall be duly given if delivered by hand or sent by first class pre-paid special delivery or recorded delivery post to the party named therein at its registered address or principal place of business or at such other address as such party may specify from time to time by written notice to the other parties hereto. If the notice is sent by first class pre-paid special delivery or recorded delivery post it shall be deemed to have been received on the second working day after the date of posting. If the notice is delivered by hand, it shall be deemed to be received on the day it is delivered.

10 LAW

- 10.1 This Schedule and any dispute or claim arising out of, relating to or in connection with it is governed by, and construed in accordance with, the laws of England. All disputes or claims arising out of, relating to or in connection with this Schedule shall be subject to the jurisdiction of the English courts to which the parties irrevocably submit.

11 GENERAL

- 11.1 The provisions of this Schedule shall remain in full force and effect notwithstanding the termination of the Contract.

12 STEP-IN RIGHTS

- 12.1 This paragraph 12 shall apply in favour of any Third Party who is granted a right to enforce it pursuant to a notice under clause 7.5 of the Contract, and in that case shall have effect according to its terms, but otherwise shall be of no effect.
- 12.2 The Supplier will not in any circumstances exercise any right it may have to terminate its employment under the Contract or to treat its employment under the Contract as having been terminated by the Employer or to discontinue the performance of its duties and responsibilities thereunder until it shall first have given to the Third Party not less than twenty eight days written notice of such matters ("**the Supplier's Notice**") PROVIDED THAT compliance by the Supplier with the provisions of this paragraph 12 shall not be treated as a breach of the Contract nor as a waiver of any breach on the part of the Employer giving rise to the right of determination nor otherwise prevent the Supplier from exercising his rights after the expiration of the notice unless the right of determination has ceased under the provisions of paragraph 12.4.
- 12.3 In the event of the Third Party giving notice to the Supplier of a requirement to be substituted as the employer under the Contract or the service of a Contractor's Notice the Supplier will if so required by notice in writing given to it by the Third Party within 28 days of receipt of the said notice or the Supplier's Notice accept the instructions of the Third Party or its appointee to the exclusion of the Employer to continue to perform its duties and responsibilities under the Contract.
- 12.4 Provided always that any notice given by the Third Party under paragraph 12.3 shall state that in the event of the Third Party's right to be substituted for the Employer being exercised the

Third Party or its appointee accepts liability for payment of the monies payable to the Supplier under the Contract including payment of any monies properly due to the Supplier under the terms of the Contract and outstanding at the date of such notice. Upon receipt of such notice by the Supplier the Contract shall continue in full force and effect as if any right of determination on the part of the Supplier had not arisen and in all respects as if the Contract had been made between the Supplier and the Third Party (to the exclusion of the Employer) ab initio.

- 12.5 Upon payment by the Third Party of an amount equal to the fees and disbursements owed by the Employer to the Supplier at the date of the Third Party's notice under paragraph 12.3 the Supplier shall assign to the Third Party all the Supplier's rights against the Employer in respect of such unpaid fees and disbursements and shall pay to the Third Party any of the same subsequently received by him from the Employer.
- 12.6 The Employer (including any party to whom the Contract is novated) and the Supplier hereby agree with the foregoing provisions of this paragraph 12 and to be bound by them and that they will not vary or agree to vary the conditions of the Contract without the prior written consent of the Third Party such consent not to be unreasonably withheld or delayed.