LHC Framework Alliance Contract

between

LHC as the central purchasing body

and

the suppliers appointed to LHC Frameworks

and

the contracting authorities calling off projects

This document contains specific amendments by LHC to the published form of the FAC1 Framework Alliance Contract. Therefore, the amendments should be read in conjunction with the FAC1 in published form* for cross reference.

Copies of the FAC1 in published form can be purchased at a discount from ACA, by emailing office@acarchitects.co.uk and quoting discount code reference LHCFAC2516102017

Key Terminology		
Party	**Term in FAC1 template form of agreement & LHC amendments**	**Term in Schedules Pages 18 - 49**
LHC / Central Purchasing Body	The *Client* & *Alliance Manager*	*LHC*
Buyer / Contracting Authority	The *Additional Client*	*LHC Client*
Supplier / Economic Operator	The *Alliance Member*	*Appointed Company*

Version	3.3
Dated	09.09.20

FRAMEWORK ALLIANCE CONTRACT

A *FRAMEWORK ALLIANCE CONTRACT* is created with effect from the date of the *Award Confirmation Notice*s described below and in accordance with the procedures described below

IN RELATION TO a programme of works in England, Wales, or Scotland (the *Framework Programme*) as described in the *Frameworks Documents*

BETWEEN LHC as the *Client*, and each of the *Alliance Members* have been issued with an *Award Confirmation Notice*, and each of the *Additional Clients* as described in amended clause 1.11 who submit a *Project Registration Document* to LHC

WHO AGREE to fulfil their agreed roles and responsibilities and to apply their agreed expertise in relation to the *Framework Programme*, in accordance with and subject to the *Frameworks Documents*, and who agree that subject to amendment in accordance with the *Contract Terms*:

The following amendments should be read with reference to the published FAC-1 *Contract Terms*

Delete existing text at clause 1.1 and replace with:

1.1   The *Alliance Members* shall work together and individually in the spirit of trust, fairness and collaboration for the benefit of the Framework programme. The roles, expertise and responsibilities of the *Alliance Member*s are described in the *Frameworks Documents* and, in addition to the *Client*, the *Alliance Member*s include each company to whom the *Client* issues an *Award Confirmation Notice* for the *Framework Programme* (each an "*Alliance Member*") and the *Client* shall notify each *Alliance Member* of the names of the other *Alliance Members*.

Delete existing text at clause 1.3 and replace with:

1.3   The *Frameworks Documents*, subject to addition and amendment in accordance with these *Conditions* are:

- this *Framework Alliance Contract* incorporating:
- the Objectives, Success Measures, Targets and Incentives (Schedule 1);
- any Timetable (Schedule 2);
- any Risk Register (Schedule 3);
- the *Direct Award Procedure* and *Competitive Award Procedure* (Schedule 4);
- the Template Project Documents (Schedule 5 Part 6);
- any Legal Requirements
- the *Contract Terms*;
- the *Framework Brief* as set out in the *Invitation to Tender* issued by the *Client* to each *Alliance Member*
- the *Framework Prices* and *Framework Proposal*s set out in or submitted with each *Alliance Member*'s *Offer Document* and each agreed confidentially between the *Client*, the *Additional Clients*, the *Alliance Manager* and an *Alliance Member*;
- any additional *Frameworks Documents* listed below:
  - each *Alliance Member*'s *Offer Document* which is the means by which each *Alliance Member* agrees to be bound by the *Framework Alliance Contract* if and when issued with an *Award Confirmation Notice* by the *Client*
  - the *Award Confirmation Notice* issued by the *Client* to each *Alliance Member* which is the means by which the *Client* and the *Alliance Manager* agree to be bound by the *Framework Alliance Contract*
- each *Additional Client*'s *Project Registration Document* which is the means by which an *Additional Client* agrees to be bound by the *Framework Alliance Contract*.

Insert new clause after 1.6.2

1.6.3   The *Core Group* members are:

- the *Alliance Manager*
- the signatories to each *Alliance Member*'s Offer.
- The *Core Group* shall meet on an annual basis unless otherwise instructed by the *Alliance Manager*.
- Any *Core Group* meeting required further to an Early Warning requested by an *Alliance Member* in accordance with clauses 1.8.1 or 15.1 shall only require the attendance of the *Alliance Manager* and the relevant other *Alliance Member* unless otherwise agreed.

Delete existing text at clause 1.9.3 and replace with:

1.9.3   The communication systems are:

Each *Alliance Member* will immediately notify the *Alliance Manager* of any change of address, email address or fax number from that set out in the *Frameworks Documents.*

Any notice required to be given by an *Alliance Member* to any other *Alliance Member* shall be validly served if:

- served by email or fax to the usual business address of the other *Alliance Member* as set out in the *Frameworks Documents* (or as notified by an *Alliance Member* to the others) during normal business hours, but only where followed within 2 Working Days by written confirmation served by first class recorded delivery post or by personal or courier delivery to such an address; or

- served by first class recorded delivery post or by personal or courier delivery to the usual business address of the relevant *Alliance Member* as set out in the *Frameworks Documents* (or as notified by an *Alliance Member* to the others). Any notice so served shall be deemed to have been served upon personal delivery to such an address, at the time of delivery recorded upon signature in the courier's or recorded delivery logbook.

Delete existing text at clause 1.11 and replace with:

1.11   The *Alliance Member*s agree that any publicly funded (either in part or fully funded) organisation throughout England, Wales and Scotland including but not limited to any local authority, unitary authority, or subsidiary or joint-venture vehicle of a local or unitary authority, any housing association, registered social landlord, tenant management organisation, arms-length management organisation, council owned company, publicly funded school, college, university or further education establishment, education authority, transport authority, any health authority, council, board or trust, any police force, fire, rescue or emergency service, any central government department, agency, devolved administration and or national/non-departmental public body, registered charity, and / or any subsidiary of the aforementioned organisations may by signing a *Project Registration Document* for the *Framework Programme* become an *Additional Client. Additional Clients* and other A*dditional Alliance Members* as listed in the *Framework Alliance Contract* or as otherwise agreed by the *Alliance Members* may join the *Alliance.*

Amend clause 1.11.2 as follows*:*

Delete 'Joining Agreement' and replace with 'Project Registration Document'

After clause 3.4 insert new clause:

3.5   The *Alliance Manager* is the *Client* as represented by an employee identified by the *Client* or such other representative as notified by the *Client* to all other *Alliance Member*s.

After clause 3.5 insert new clause:

3.6   The Independent Adviser is a suitably qualified representative of Trowers & Hamlins or such other person as the *Alliance Member*s may agree.

Insert the following text at the end of existing clause 5.1

'The *Direct Award Procedure* is detailed in Schedule 4 Part 1 of this document.'

Insert the following text at the end of existing clause 5.2

'The *Competitive Award Procedure* is detailed in Schedule 4 Part 2 of this document.'

After clause 5.7, insert new clause*:*

5.8   Any exclusivity granted to any one or more *Alliance Members* under clause 5.7 in respect of all or part of the *Framework Programme* is set out in the *Invitation to Tender* or the *Framework Documents* and is subject to adjustment under Part 2 of Schedule 1.

After clause 5.8 insert new clause:

5.9   In the event that the *Client* or any *Additional Client*:

- terminates any *Alliance Member*'s appointment under the *Framework Alliance Contract* (only permissible by the *Client*) or any *Project Contract*; or

- issues a notice under any *Project Contract* to shorten the term and/or reduce the scope of works and services to be carried out by the *Alliance Member* in relation to the *Framework Programme* or any *Project*; or

- does not award any *Project Contracts* or awards fewer *Project Contracts* (whether in terms of value and/or number) than stated in the *Framework Brief* or any *Project Brief* and/or does not award more *Project Contracts* (whether in terms of value and/or number) than stated in the *Framework Brief* or any Project Brief

The relevant *Alliance Member* shall not have a claim against the *Client* or any *Additional Client* (whether under contract, statute, in tort or otherwise) for any mobilisation costs if not already recovered and/or demobilisation costs and/or in respect of any actual or expected loss of profit, loss of revenue, loss of goodwill or loss of opportunity and/or any consequential or indirect loss other than payments for works already completed in accordance with the *Framework Alliance Contract* or any *Project Contract*.

After clause 6.3.5 insert new clause:

6.4   The *Alliance Members* shall implement the following *Supply Chain Collaboration* and/or other *Alliance Activities* in accordance with clause 6:

a) Improved Value
Alliance Members agree to meet when requested by the *Alliance Manager* in order to consider, develop and agree proposals for *Supply Chain Collaboration* and other *Alliance Activities* designed to achieve Improved Value for the benefit of the *Additional Clients*

b) Social Value and Community Benefits
The *Client* and *Additional Clients* may wish to consider social value and community benefits for a *Project* and all *Alliance Members* must be aware that the *Client* or *Additional Clients* may include requirements within the *Project Brief* related to the delivery of community benefits.

For the avoidance of doubt, in accordance with the Procurement Reform Act 2014 *Alliance Members* operating within Scotland must consider whether to include community benefit requirements as part the *Project Brief* for any *Project* where the estimated value of the *Project Contract* is equal to or greater than £4,000,000 GBP.

Further detail with regards the requirements of *Alliance Members* in regard to social value and community benefits is outlined in clause 30.

6.5   Alliance members should be aware of any additional devolved legislation, acts and / or best practice in relation to social value and community wellbeing that will be relevant in the consideration of a *Project Contract*, whether raised by the Additional Client or not.

Insert the following text at the end of clause 8.1:

'and shall be the responsibility of the *Additional Client'*

Delete clause 8.2. and all sub-clauses

Delete clause 8.3 and all sub-clauses

Delete clause 8.4 and all sub-clauses

Delete clause 8.5 and all sub-clauses

Delete clause 8.6 and all sub-clauses

Delete clause 8.7 and all sub-clauses

Delete clause 8.8 and all sub-clauses

Delete clause 8.9 and all sub-clauses

Delete clause 8.10 and all sub-clauses

Delete existing text at clause 9.1 and replace with:

9.1   The *Client* may update the terms set out in this *Framework Alliance Contract* from time to time subject to giving *Alliance Members* one month's notice by email and subject to ensuring that any updates do not materially impact the scope or nature of the *Framework Programmes*. For the avoidance of doubt any update made to the *Framework Alliance*

Contract shall not impact any *Project Contract* already registered unless statutory or regulatory changes mandate their adoption or the *Additional Client* and *Alliance Members* party to the *Project* Contract agree to their adoption.

Delete clause 10.4 and replace with

10.4   Not Applicable

After clause 10.6 insert new clause:

10.8   The agreed duties of care under clauses 10.1 and 10.2 shall be extended to each *Additional Client* in accordance with clause 1.11.

After clause 12.3 insert new clause

12.4   The *Alliance Members* shall take out the types and amounts of insurance cover in accordance with clause 12 in respect of matters governed by the *Framework Alliance Contract* as set out in the *Invitation to Tender* and the *Offer Document*. This clause does not affect the requirements in relation to insurances to be taken out in respect of each *Project Contract*.

Delete text at clause 13.2 and replace with:

13.2   No *Alliance Member* shall assign or sub-contract any of its rights or obligations under the *Framework Alliance Contract* or any Order without the consent of the *Client* with the exception of the *Client* who has the unlimited right to assign the *Framework Alliance Contract* to any successor body following a reorganisation or merger without requiring the consent of the other *Alliance Member*s.

After clause 13.3.2 insert new clause

13.3.3 Each *Alliance Member* shall not divulge, disclose or communicate to any person (other than upon the instructions or with the prior written approval of the *Client*) nor use for its own purposes or for purposes other than the *Framework Programme*, by any means any information that it is reasonable to assume must be regarded as confidential or such other information as the *Additional Client* shall designate as confidential before or upon providing it to any other *Alliance Member* (Confidential Information) that it may whether before or after the date of the *Framework Alliance Contract* have received or obtained while working for the *Additional Client* under or in relation to the *Framework Alliance Contract* or any *Project Contract*. Each *Alliance Member* shall use its best endeavours to prevent the publication or disclosure by any other person of the Confidential Information.

After new clause 13.3.3 insert new clause

13.3.4 The restriction referred to in clause 13.3 and sub clauses 13.3.1, 13.3.2, and 13.3.3shall continue to apply after the termination or expiry of an *Alliance Member*'s appointment under the *Framework Alliance Contract* and any *Project Contract* without limit in point of time but shall cease to apply to information which may come into the public domain otherwise than through a breach of the *Framework Alliance Contract* or any *Project Contract*.

After new clause 13.3.4 insert new clause

13.3.5 Each *Alliance Member* shall not without the written permission of the *Client* during or any time after the expiry of the *Framework Programme* make use of or disclose to any person (except as may be required by law), the *Frameworks Documents* or any information contained in the *Frameworks Documents*, nor any data or information collected on behalf of

the an *Additional Client*. Data or information collected on behalf of the *Additional Client* shall become the property of the *Client* and must be used only for its intended purpose in connection with the *Framework Programme*.

Insert the following text at the end of existing clause 13.4:

'Refer to amended clause 15.5 for details of the laws governing this *Framework Alliance Contract* and any *Project Contracts* awarded to *Alliance Members* under this agreement.'

Delete text at clause 14.1 and replace with:

14.1 The *Framework Alliance Contract* commences on the date stated in each *Award Confirmation Notice* and shall continue for the period stated in each *Award Confirmation Notice* subject to the remainder of clause 14 and subject to extension or earlier termination by agreement of all *Alliance Member*s or as follows:

The *Client* reserves the right to extend the framework term beyond the initial period stated in each *Award* Con*firmation Notice* if, in its opinion, the extension fulfils the conditions described in regulation 72 of the Public Contract Regulations 2015, or regulation 72 of the Public Contracts (Scotland) Regulations 2015 (as applicable, depending on which regulation governed the award of the *Framework Alliance Contract*).

The *Client* may propose to extend beyond the initial period stated in each *Award Confirmation Notice* prior to termination and may terminate the *Framework Alliance Contract* thereafter subject to giving one month notice to the *Alliance Member*s.

The *Client* may terminate the appointment of any other *Alliance Member* and an *Alliance Member* shall be entitled to terminate its own appointment upon three months written notice to the other *Alliance Member*s.

Delete clause 14.2 and replace with

14.2 Not Applicable

After clause 14.7 insert new clause

14.8 Subject to fulfilling the conditions set out in Regulation 72 – 1(a) of the Public Contract Regulations 2015, or Regulation 72 – 1(a) of the Public Contracts (Scotland) Regulations 2015 (as applicable, depending on which regulation governed the award of the *Framework Alliance Contract*) the *Client* may substitute any *Alliance Member* whose membership is terminated with a new *Alliance Member* who shall be the highest ranking unsuccessful applicant from the original procurement exercise that led to the creation of the *Framework Alliance Contract*. This replacement will be subject to that company meeting all of the following criteria:

- submitting the relevant up-to-date evidence to prove they still meet the technical (or updated technical requirements where such requirements have been superseded due to changes in applicable standards or regulations) and financial capability requirements as set out in the original procurement exercise.

- confirming they still meet any qualification criteria that is consistent with the requirements set out in the original tender exercise (or where superseded by virtue of change in regulation, law etc, and

- confirming their acceptance of the *Framework Alliance Contract*

Delete text at clause 15.5 and replace with

15.5 The *Framework Alliance Contract* and the *Project Contracts* awarded to *Alliance Members* shall be governed as follows:

- For *Projects* with goods, works and/or or services carried out in England and Wales, the *Framework Alliance Contract* and all *Project Contracts* shall be governed by the laws of England and Wales and shall be subject to the non-exclusive jurisdiction of the Courts of England and Wales; or

- For *Projects* with goods, works and/or or services carried out in Scotland the *Framework Alliance Contract* and all *Project Contracts* shall be governed by the laws of Scotland and shall be subject to the non-exclusive jurisdiction of the Courts of Scotland.

After Clause 15 insert the following new clause

16 **Payment of the *levy* by Alliance Members to the C*lient***

16.1 In respect of the *Framework Alliance Contract*, each *Alliance Member* shall pay to the *Client* the <u>Levy</u> described in this clause 8.12 (the "Levy ") in respect of all works, supplies or services provided by the *Alliance Member* or its subcontractors under each *Project Contract* including preambles and preliminaries, enabling and access works and including items not specified in the *Framework Documents* but procured under each *Project Contract*.

16.2 The *Alliance Member* shall submit information on a monthly basis to the *Client* evidencing the total value of payments received by the *Alliance Member* from each *Additional Client* and / or from funding or grants agencies in respect of each *Project Contract*. In the event an *Alliance Member* fails to provide suitable evidence of payments received related to a *Project Contract* The *Client* reserves the right to obtain information from the relevant *Additional Client* and invoice the *Alliance Member* in accordance with clause 16.3.

16.3 The *Levy* percentage to be applied is described in the *Framework Prices* or *Invitation to Tender* and will be calculated in accordance with the procedure set out in the *Framework Prices* or *Invitation to Tender.*

16.3 Following assessment of the information submitted by the *Alliance Member* the *Client* will issue an invoice to the *Alliance Member* requesting the appropriate amount due to the *Client* based on the agreed *Levy* percentage

16.5 Each *Alliance Member* agrees to pay the *Client*'s *Levy* invoice by BACS in full including value added tax ("VAT") at the current rate within 30 days from the date of the invoice (the Due Date).

16.6 In the event that payment is not received in full by the *Client* by the due date, the *Alliance Member* shall pay the *Client* interest on the unpaid amount or on the balance if some monies are paid on account in accordance with clause 16.8

16.8 The rate of interest for late payment is eight percent (8%) above the base rate for the Bank of England current on the Due Date for the relevant payment and the *Alliance Members* agree that this shall be a substantial remedy for the purposes of the Late Payment of Commercial Debts (Interest) Act 1998.

16.9 The *Client* reserves the right to pass all accounts not paid in full or in part that are past the due date for payment as set out in this clause 16.5 to a debt collection agency. The outstanding accounts will then be subject to an additional collection charge plus VAT which the relevant *Alliance Member* will be liable to pay in full.

16.10 Notwithstanding the collection process and costs set out in clause 16.9, the *Client* will add the costs of any legal action taken by the *Client* for recovery of the debt.

16.11 Pursuant to clause 16.9, the *Client* further reserves the right to notify credit reference agencies of late and non-payment of all monies due to the *Client* under the *Framework Alliance Contract* and any action taken by the *Client* for recovery.

16.12 Each *Alliance Member* agrees that it shall, on reasonable request from the *Client*, make available to the *Client* all copies of its accounts and revenue records relating to all *Project Contracts* for inspection and verification of the *Levy* paid on an open book basis. The *Client* warrants to hold all such information in strict confidence and only use it for verifying that the correct *Levy* has been paid.

16.12 Where the *Client* has reasonable grounds to believe that the correct *Levy* has not been paid to date, it shall submit its assessment and associated evidence outlining the outstanding *Levy* amount due to the *Alliance Member* along with an accompanying invoice, and the *Alliance Member* agrees to pay to the *Client* within 5 Working Days the amount due on the invoice all outstanding Levy including value added tax ("VAT") at the current rate with interest as detailed in clause 16.8

16.13 Without prejudice to any other rights and remedies that the *Client* may possess, if payment of a *Levy* invoice is not received in full by the *Client* within a period of 40 days after the due date then the *Client* reserves the right to immediately suspend the appointment of the *Alliance Member* under the *Framework Alliance Contract* and further to notify all *Additional Clients* of the suspension.

16.14 During the period of suspension from the *Framework Alliance Contract* the *Alliance Member* will be expected to continue to fulfil the requirements of any *Project Contract* however they will not be invited to participate in any further *Competitive Award Procedures* or enter in any further *Project Contracts* until such time as the outstanding *Levy* invoice is settled in full.

16.15 Irrespective of any periods of suspension or removal of an *Alliance Member* from the *Framework Alliance Contract,* payment of the agreed <u>*Levy*</u> for each *Project Contract* will remain payable by the *Alliance Member* up to the termination date of each *Project Contract*.

16.16 In the event of termination of an *Alliance Member* from the *Framework Alliance Contract* upon any grounds then in relation to payment of any amounts due to the *Client*, the *Alliance Member* will remain governed by the provisions of this clause 16.

16.7 Where an *Alliance Member* is a manufacturer or system provider, and in accordance with the *Framework Documents* they may be responsible for obtaining quotations from their supply chain on the *Additional Clients'* behalf to deliver the *Project*. In such situations when gaining quotations from their supply chain it is the responsibility of the *Alliance Member* to ensure that all *Supply Chain Members* approached by the *Alliance Member* to quote for the *Project* are made aware of, and have confirmed acceptance that the *Project* is in relation to the *Framework Alliance Contract* and as such, the terms of clause 16 of the *Framework Alliance Contract* is applicable to any invoices submitted in relation to the *Project.*

16.8 On request by the *Client* or *Additional Client*, the *Alliance Member* must be able to provide clear evidence to demonstrate that all *Supply Chain Members* that have been approached in relation to the *Project* have understood and confirmed their acceptance of the requirements of clause 16 of the *Framework Alliance Contract.*

16.9 In the event of a dispute regarding payment of the appropriate Levy between the *Client* or *Additional Client* and a supply chain member appointed by the *Alliance Member*, should the *Alliance Member* be unable to produce the evidence requested as set out in clause 16.8 then they in turn will be liable for payment of the appropriate Levy applicable to all invoices submitted by the *Supply Chain Member* applicable to the *Project.*

After clause 16 insert the following new clause

17 **Supply of works, supplies and/or services during the Framework Programme**

17.1 Each *Alliance Member* agrees that it will supply only the components, supplies and/or services as specified in the *Framework Brief, Framework Proposals* and *Framework Prices* or other items that shall be agreed in writing with the *Additional Client.*

17.2   Each *Alliance Member* will provide the *Client* with information relating to any changes in working or manufacturing processes which would have an effect upon the provisions of works, supplies and/or services under the *Framework Alliance Contract*. Modifications will be allowed in respect of innovation, technical, quality or production improvements at any time throughout the duration of the *Framework Programme*, but such modifications must not alter the overall nature of the *Framework Alliance Contract.*

17.3   Any increased prices or additional costs shall be in accordance with the *Framework Prices* and shall be agreed with the *Client* before being offered under any *Project Contract.*

After clause 17 insert the following new clause

18   Terms of sub-contracts

18.1   If for any *Project* an *Alliance Member* is named or specified as a sub-contractor to another *Alliance Member* that is the main contractor, the *Alliance Member* shall enter into a sub-contract with the Main Contractor based on the standard conditions associated with, or compatible with the form of main contract.

18.2   Neither the *Client* nor any *Additional Client* takes responsibility for nor indemnifies any *Alliance Member* against any default by a Main Contractor in making payments properly due in respect of supplies or services or works carried out on a *Project* under the *Framework Alliance Contract.*

18.3   In recognition of Lord Young's report "Growing Business", (which was accepted by government and announced in BIS publication Small Business Great Ambition, the Construction Leadership Council's Construction Supply Chain Payment Charter, and the Public Procurement Regulations), each *Alliance Member* agrees that where that *Alliance Member* forms a sub-contract or supply contract or agreement with any sub-contractor or supplier, the terms of the sub-contract, supply contract or agreement shall include provision for:

a) any payment due from the *Alliance Member* to the sub-contractor under the sub-contract is to be made no later than the end of a period of 30 days from the date on which the relevant invoice is regarded as valid and undisputed, unless expressly agreed otherwise between the *Alliance Member* and sub-contractor;

b) any invoices for payment submitted by the sub-contractor to be considered and verified by the *Alliance Member* in a timely fashion and that undue delay in doing so is not to be regarded as sufficient justification for failing to treat an invoice as valid and undisputed; and

c) that any sub-sub-contract awarded by the sub-contractor imposes obligations similar to those which sub-paragraphs (a) and (b) require to be imposed as between the parties to the sub-contract.

18.4   Such terms will be subject to provisions in the relevant *Project Contract* or Order between the *Additional Client* and each *Alliance Member,* imposing obligations similar to those that sub-paragraphs (a) and (b) require to be imposed as between the *Alliance Member* and sub-contractor.

After clause 18 insert the following new clause

19 Engagement and Use of Sub-Contractors

19.1 Where necessary, to perform their duties in line with the requirements of a *Project Contract, Alliance Members* shall proactively engage with other *Alliance Members* on a *Project*.

19.2 Where an *Alliance Member* is required to deliver supplies, works or services to *Projects* that are included in a separate *Framework Alliance Contract* managed or affiliated with the *Client*, the *Alliance Member* shall proactively seek to sub-contract companies appointed to the separate managed or affiliated *Framework Alliance Contract*.

19.3 Subject to any agreed arrangements for *Supply Chain Collaboration* each *Alliance Member* shall ensure that all contracts with sub-contractors and suppliers which the *Alliance Member* procures are awarded following a fair, open, transparent and competitive process proportionate to the nature and value of the sub-contract.

After clause 19 insert the following new clause

20. Project Bank Accounts (PBA)

20.1 *Additional Clients* may require any *Alliance Member* to operate a Project Bank Account ("PBA") which is a *Project* specific account ring fenced with effective Trust status, for payment of the *Alliance Member* and its *Supply Chain,* subject to *Project* value thresholds and minimum requirements for the operation of a PBA set out by the relevant national authority of England, Wales or Scotland at the time when the *Project* is being undertaken.

After clause 20 insert the following new clause

21. Quality Assurance

21.1 Where an *Alliance Member* is required to sub-contract the delivery of supplies, works or services for a *Project*, it shall ensure that suitable management and quality assurance processes and procedures are in place to ensure sub-contractors deliver their relevant supplies, works or services in full accordance with the terms, conditions and specifications described in the *Frameworks Documents*.

21.2 For clarity, the *Alliance Member* retains accountability for any elements of the *Project* delivered by a sub-contractor assigned by the *Alliance Member*.

After clause 21 insert the following new clause

22. Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE)

22.1 *Alliance Members* tendering for *Projects* shall be advised by the *Additional Client* or participating bodies if the terms of the Transfer of Undertakings (Protection of Employment) Regulations 2006 ("TUPE") apply to any part of the existing workforce employed by incumbent service providers or contractors and/or *Additional Clients* in relation to the work to be performed under *Project Contracts.* Successful *Alliance Members* shall have an obligation to comply with the relevant legislation and to fulfil the requirements of TUPE.

22.2 Where information concerning the employees of the incumbent service provider or contractor affected is available when the contract documents are issued for tender, the incumbent service provider or contractor shall be requested to supply information, on a confidential basis about their existing directly employed full-time workforce currently engaged upon the existing contract. Tendering *Alliance Members* will be required to complete and sign an acknowledgement restricting disclosure of the information supplied.

22.3 Unless otherwise specifically stated by the *Additional Clients* (as appropriate), *Alliance Members* shall submit tenders on the basis that TUPE will not apply. However, if an *Alliance Member* considers that TUPE is likely to apply, it shall accompany its tender submission with its evaluation of the financial implications of the implementation of TUPE by the incumbent service provider's, contractor's and/or *Additional Clients'* workforce.

22.4 *Alliance Members* shall indemnify *Client* and *Additional Clients* against any exposure under TUPE in the terms set out in *Project Contracts*.

After clause 22 insert the following new clause

23.   Provision of Information for Monitoring Objectives, Targets and Success Measures

23.1 Each *Alliance Member* agrees to provide all resources and to work with the relevant *Additional Client* to monitor the performance of the *Project Contract* as specified in Schedule 1 Parts 1 and 2 of the *Framework Alliance Contract* or in any *Project Contract.*

23.2 In all cases each *Alliance Member* agrees to respond within 5 *Working Days* to any reasonable request from the *Client* for information relating to any *Project Contract* and to make all endeavours to rectify problems and non-conformances within a time to be agreed with the *Client,* and, where applicable the *Additional Client.*

After clause 23 insert the following new clause

24.   Administration of *Project Contracts*

24.1 Each *Alliance Member* agrees to keep accurate records of transactions relating to *Projects* with the *Client* and *Additional Clients* and record all such as is required by the *Client.* Such data includes but is not limited to:

a) Details relating to the identification of *Projects;*

b) Details relating to contacts with *Additional Clients;*

c) Orders, variations, or other instructions received from *Additional Clients*;

d) Invoices received from appointed consultants and members of the *Supply Chain* in respect of works carried out under *Projects;* and

e) Invoices or other payment requests submitted to *Additional Clients*, this to be recorded in the month that it is requested from the *Additional Client.*

24.2 Each *Alliance Member* further agrees to comply at all times with all administration procedures of the *Client* in relation to the *Framework Alliance Contract* and to immediately remedy any non-compliance within 5 *Working Days* of receiving notice from the *Client.*

After clause 24 insert the following new clause

25. Data Protection and Security of Information

25.1   Each *Alliance Member* shall ensure that it shall at all times during the period of the *Framework Alliance Contract* comply with the provisions and obligations imposed by the General Data Protection Regulation 2016 / 679 (EU) ('the GDPR') or such other domestic legislation that supplements and / or implements the GDPR, along with any associated guidelines and Codes of Practice as issued from time to time, and shall indemnify and keep the *Client* and each *Additional Client* indemnified against all actions, claims, demands, proceedings, damages, costs, charges and expenses (including reasonable legal expenses) whatsoever in respect of any breach of this clause.

25.2   As a Data Processor (as defined in the GDPR) the *Alliance Member* shall at all times in respect of data for which the *Client* and/or *Additional Client* is a Data Controller, process data only in connection with the *Framework Alliance Contract* and only in accordance with the lawful and reasonable instructions of the *Client or an Additional Client* unless the *Alliance Member* is of the opinion that to act on such instructions would be unlawful.

25.3   Each *Alliance Member* will on termination or expiry of its appointment under the *Framework Alliance Contract* and according to the instructions of the *Client* either return to the destroy the data (and all copies of such data) in the *Alliance Member's* possession or other as directed by the *Client.*

25.4   Each *Alliance Member* will maintain security of any information provided by *the Client* and/or *Additional Clients* in accordance with the principles of ISO 27001.

After clause 25 insert the following new clause

26. Obligations to promote the *Framework Alliance Contract*

26.1   Each *Alliance Member* agrees to make regular contact with *the Client's* representatives through meetings, visits and other means to identify potential *Projects* and to promote the *Framework Alliance Contract* to prospective *Additional Clients*. In addition, each *Alliance Member* agrees to provide support for the *Client's* marketing and PR campaigns to consultants and prospective *Additional Clients.*

26.2   The *Client* will publicise to *Additional Clients* each *Alliance Member's* appointment under the *Framework Alliance Contract*, keep relationships and arrangements between *Additional Clients* and the *Alliance Members* under review, take reasonable commercial steps to facilitate such relationships where possible, and maintain a database of all *Projects* called off under the *Framework Alliance Contract.*

After clause 26 insert the following new clause

27. Financial and economic standing of *Alliance Members*

27.1   Throughout the *Framework Programme* the *Client* will undertake reviews of the financial and economic standing of each *Alliance Member*. These reviews may include but not be limited to obtaining credit checks on the *Alliance Member* and any parent company of the *Alliance Member* and any banker's reference.

27.2   In the event that any credit check shows that an *Alliance Member* or its parent company does not meet the requirements set by the *Client* in the *Frameworks Documents,* then the C*lient* reserves the right to:

a) suspend that *Alliance Member* under the *Framework Alliance Contract* and undertake an investigation into the situation and notify *Additional Clients* of the suspension and the grounds for such action; or

b) terminate the appointment of that *Alliance Member* under the *Framework Alliance Contract* in accordance with clause 14.

After clause 27 insert the following new clause

28.   Partnership

28.1   If any *Alliance Member* is a partnership such party acknowledges that being a partnership the rights obligations and liabilities of the partners in it under the *Framework Alliance Contract* and each *Project Contract* are joint and several.

28.2   The *Framework Alliance Contract* and each *Project Contract* and the liabilities of the *Alliance Members* shall not automatically terminate upon the death, retirement or resignation of any one or more members of a partnership or upon the admission of any additional partner or partners.

After clause 28 insert the following new clause

29.   Framework Alliance Meetings

29.1   As part of the *Framework Alliance Contract* the *Client* is seeking to ensure that *Alliance Members* work collaboratively and productively together, both in the continuous improvement of the delivery of works and services but also at delivering social value and a positive impact on the communities they are operating in.

29.2   *Alliance Members* will be expected to pro-actively participate in ongoing *Framework Alliance* engagement. Depending on the *Framework Programme* this engagement may comprise of responding to surveys, consultation requests or attendance at *Framework Alliance Meetings held either virtually or in person.*

29.3   Framework Alliance Meetings will typically review performance against KPIs (as set out in schedule 5, part 8) but also to:
- Share best practice and examples of innovation that may be useful to other *Alliance Members & Additional Clients*

- Discuss changes in standards, regulations, best practice and legislation concerned with the works or services being carried out by the *Alliance Members* relevant to the *Framework Alliance Contract.*

- Demonstrate examples of achieving a wider positive social and community impact as a direct result of *Project Contracts* delivered through the *Framework Alliance Contract.*

29.4   *Framework Alliance Meetings* will typically take place at least annually but may be six monthly and can either be in physical or video conference format. *Alliance Members* will be expected to assign an appropriate individual to participate in the *Framework Alliance Meeting* on behalf of their organisation.

After clause 29 insert the following new clause

30.   Social Value and Community Benefit Opportunities

30.1   To support the ambitions of the *Client* to make a positive impact on the communities and environments the *Client* and *Additional Clients* are operating in, *Alliance Members* will be expected to work with *Additional Clients* to identify social value and community benefit opportunities that can be delivered in conjunction with the delivery of all *Project Contracts.*

30.1   As part the management of the *Framework Alliance Contract*, for each *Project Contract* the *Client* may request evidence from the *Alliance Member* that social value and community benefit opportunities and considerations were raised by the *Alliance Member* with the *Additional Client*, whether or not the *Additional Client* raised this as a key factor in the delivery of the *Project Contract.*

30.3   *Alliance Members* will be required to report on all activity that delivers social value and community benefit outcomes for all *Project Contracts*, whether it is a direct result of an *Additional Clients'* requirements set out in the *Project Brief* or through recommendation and action by the *Alliance Member*

After clause 30 insert the following new clause

31.   *Project Contract* Performance Management

31.1   As part of the management of the *Framework Alliance Contract*, for each *Project Contract* the *Client* will request performance management information from the *Alliance Member* based on a range of defined Key performance Indicators (KPIs). The specific KPIs may vary according to the nature of the *Project Contract* but will focus on measuring the success of the Project Contract based on the key themes of time, cost, quality and customer satisfaction.

31.2   Submission of the requested KPIs using a pre-defined format supplied by the *Client*, and any supporting information (if requested) will be required irrespective of whether *Project Contract* specific KPIs have been agreed between the *Additional Client* and *Alliance Member*. Specific KPIs applicable to a *Framework Programme* will be set out in the *Framework Documents*, however examples of the typical KPIs be found in schedule 5 part 7 and 8

31.3   Where *Project Contract* specific KPIs have been agreed between the *Additional Client* and *Alliance Member*, to avoid duplication (subject to approval by the *Client*) these KPIs may be used as evidence in lieu of the KPIs set out in the *Framework Documents* if they measure and report on similar outcomes to those set out in the *Framework Documents.*

31.4   The *Client* reserves the right to use anonymised KPI information obtained from *Alliance Members* for use in marketing material to help promote the Frameworks

31.5   In addition to KPI information *the Alliance Member* may be required to provide evidence that (in accordance with clause 6 and clause 30) social value and community benefit considerations were proposed / discussed with the *Additional Client* during pre-start (and if applicable subsequently during the life of the *Project Contract)* and any identified opportunities acted upon, whether or not the *Additional Client* raised this as a key factor in the delivery of the *Project Contract.*

After clause 31 insert the following new clause

32.   *Framework Alliance Contract* Management

32.1   As part of the management of the *Framework Alliance Contract*, the *Client* will ensure that routine monitoring and reviews of all *Alliance Members* takes place to ensure that *Alliance Members* continue to meet the expectations set out in the *Framework Documents* during the life of the *Framework Alliance Contract.*

32.2 As a minimum, review of the *Alliance Member* will take on the anniversary of the *Framework* via an *Alliance Member* health check. The health check will include (but not be limited to:

- Review of qualification criteria outlined in the *Framework Documents*

- Review of up to date certifications and accreditations

- Review of up to date insurance documents

- Review of financial status of the *Alliance Member*

- Review of *Agreed Maximum Prices* in accordance with any annual uplift process as set out in the *Framework Documents*.

- Refresh of key contacts for the *Alliance Member*

- Review of any issues, concerns, problems experienced during the previous 12 months

32.3 Submission of the information outlined in 31.2 by the *Alliance Member* will be requested in a prescribed electronic format or through a web-based portal as defined by the *Client.*

32.2 In addition to the scheduled *Alliance Member* health check outlined in clause 31.2, the *Client* may carry out a reactive health check of the *Alliance Member*. This will typically be as a consequence of information received by the *Client* in relation to the *Alliance Member* that raises concern as to the operational or financial stability of the *Alliance Member*. To support the *Client* in carrying out the reactive health check the *Alliance Member* may be required to provide an explanatory statement, supporting information or participate in a discussion with representatives of the *Client* via a conference call or in person at the *Client*'s offices.

32.3 Where it is identified by the *Client* that the *Alliance Member* is experiencing financial or operational difficulties that may limit their ability to deliver on new Project Contracts, follow investigation as outlined in clause 31.2 the *Client* reserves the right to inform *Additional Clients* who are already engaging with the *Alliance Member* in relation to a project Contract or has indicated an intention to in the near future. The *Client* also reserves the right to temporarily suspend the *Alliance Member* from participating in any future opportunities until such time as the *Alliance Member* can evidence to the *Client*s' satisfaction that the issues identified have been resolved.

32.4 The *Client* will routinely monitor the financial status of the *Alliance Member* using an automated credit score checking monitoring solution. The *Client* reserves the right to inform an *Additional Client* if the credit check score for a particular *Alliance Member* has fallen below the original requirements set out in the *Framework Documents* at the time the *Additional Client* is seeking expressions of interest that the *Alliance Member* would be eligible to respond to.

After clause 32 insert the following new clause

33. General Provisions

33.1 If any wording in any provision of the *Framework Alliance Contract* is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall, to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness, be

deemed severable and the remaining wording of such provision and the remaining provision of the *Framework Alliance Contract* shall continue in full force and effect.

33.2   Failure or delay by the *Client* in enforcing or partially enforcing any provision of the *Framework Alliance Contract* will not be construed as a waiver of any of its rights under the *Framework Alliance Contract.*

33.3   Any waiver by the *Client* of any breach of, or any default under, any provision of the *Framework Alliance Contract* by an *Alliance Member* will not be deemed a waiver of any subsequent breach of default and will in no way affect the other terms of the *Framework Alliance Contract.*

SCHEDULE 1

PART 1 – OBJECTIVES

(see clause 2.1)

The Objectives are:

- for *LHC* as a central purchasing body to operate the *Framework Alliance Contract* in a way that is accessible to a wide range of *LHC Clients* covering a broad *Framework Programme*;

- to deliver the *Framework Programme* in order to achieve improved value for *LHC Clients*, and in so doing deliver social value and community benefits to the communities they serve.

PART 2 - SUCCESS MEASURES AND TARGETS

(see clause 2.3)

The *Success Measures* and *Targets* are the achievement of *Improved Value*, social value, and community benefit by implementation of the *Framework Alliance Contract* and *Project Contracts* as set out in clauses 6 and 30, and, in accordance with the detailed Service Level Requirements and Key Performance Indicators set out in Schedule 5 Part 8.

Achievement and validation of the *Success Measures* and *Targets* is subject to the following procedures:

- In all cases the *Appointed Companies* agree to respond within 5 Working Days to any reasonable requests from *LHC* for information relating to any *Project Contract* which shall include but not be limited to copies of all documents referred to in Schedule 5 Part 7 to allow validation of adherence to the *Framework Prices* and the *Framework Alliance Contract*.

- The *Appointed Companies* agree to provide all resources and to work in collaboration with *LHC* to monitor their own performance, and to act upon all reasonable requests from *LHC* during the term of the *Framework Alliance Contract* and associated *Project Contracts* to improve their operational performance including but not limited to environmental, social and economic sustainability performance, technical performance of products, and improvements in on site installation, off-site construction, and ongoing maintenance and servicing carried out.

- The *Appointed Companies* acknowledge that any omission or failure to meet the *Success Measures* and *Targets* may lead to suspension from the *Framework Alliance Contract* for an indefinite period or until the *Appointed Company* can demonstrate to *LHC*'s satisfaction that it is able to resume the delivery of *Projects* in accordance with the Framework Documents and / or *Project Contracts*.

- The *Appointed Companies* acknowledge that during any period of suspension from the *Framework Alliance Contract*, the relevant *Appointed Company*/s shall be required to maintain performance on all existing *Project Contracts* and shall be liable for the payment of all *Levy* amounts due on *Projects* that have been carried out or are being carried out.

- Each *Appointed Company* hereby indemnifies *LHC* in full, and holds it so indemnified, against all costs, expenses and losses that the *Appointed Company* may incur or any other damages resulting from its suspension from the *Framework Alliance Contract* pursuant to this provision.

- Upon any failure on the part of an *Appointed Company* to meet the performance requirements set out in the *Success Measures* and *Targets* which are not remedied after 20 Working Days' written notice to the relevant *Appointed Company* from *LHC*, *LHC* reserves its rights to terminate the *Appointed Company*'s appointment to the *Framework Alliance Contract* in line with clause 14.

PART 3 - INCENTIVES
(see clause 2.4)

Any *Incentives* are entirely at the discretion of *LHC* or each *LHC Client*

SCHEDULE 2 - TIMETABLE
(see clause 6.1)

Not used

SCHEDULE 3 - RISK REGISTER
(see clauses 9.3 & 9.4)

An *LHC Client* may require a risk register is maintained for an individual *Project.* Such requirement will be set out in the *Project Contract Conditions and / or Project Brief.*

SCHEDULE 4

GENERAL CALL OFF PROCEDURES

1.   Selection of the Procedure

1.1.   There are two options for awarding *Project Contracts* under the *Framework Alliance Contract*, these being:

   a.   A *Direct Award Procedure* as set out in Schedule 4 Part 1*; or*

   b.   A *Competitive Award Procedure* as set out in Schedule 4 Part 2.

1.2.   The *LHC Client* may choose the *Competitive Award Procedure* to award any *Project*.

1.3.   The *LHC Client* may choose the *Direct Award Procedure* to award any *Project* where:

   1.3.1.   all terms governing the provision of works, supplies and services to be delivered are laid down in the *Framework Brief, Framework Prices and Framework Alliance Contract;* or

   1.3.2.   the *Competitive Award Procedure* does not produce more than one response and or any suitable responses from the *Appointed Companies* invited to take part; or

   1.3.3.   the call-off is for a subsequent phase in a *Project* for which the *Appointed Company* has already performed the required Works, Supplies or Services and the *LHC Client* requires continuity of service in respect of such a subsequent phase; or

   1.3.4.   the call-off is linked to the outputs of previous works or services carried out by the *Appointed Company,* and the *Appointed Company* will be able to apply previous outputs to the Project Contract resulting in a reduced mobilisation or lead in time to deliver the *Project*; or

   1.3.5.   the call-off is for a *Project* where the *LHC Client* is able to utilise designs and / or manufacturing facilities already developed by the *Appointed Company* for use by other *LHC Clients; or*

   1.3.6.   the *LHC Client's* requirement for the performance of certain Works, Supplies or Services on an individual Project is so urgent as to require an accelerated selection process via the use of *Direct Award Procedure*; or

   1.3.7.   the Works, Supplies or Services are to be partly funded by private residents

1.4.   When choosing either the *Competitive Award Procedure* or *Direct Award Procedure* the *LHC Client* may award a *Project* to any *Appointed Company* in the Lot based on criteria or weightings set out by *LHC* in the *Framework Brief* or criteria or weightings relevant to the *Project* set out by the *LHC Client,* subject to ensuring that any action taken is transparent, non-discriminatory and fair. If an *Appointed Company* declines a *Project,* they have been awarded then the relevant *Project* will be offered to the next-ranked *Appointed Company* and so on (Cascade).

1.5.   When choosing the *Direct Award Procedure* and where the *LHC Client* considers it appropriate to do so, it may award a *Project* to the first-ranked *Appointed Company* in the Lot and then award its next *Project* to the second-ranked *Appointed Company* and so on (Rotation). If an *Appointed Company* declines any offered *Project,* the relevant *Project* will be offered to the next-ranked *Appointed Company* and the Rotation shall continue as above.

1.6.   For the avoidance of doubt, the choice of award procedure in each and every case is at the *LHC Client*'s sole discretion.

2.   Selection of the *Appointed Companies* to invite to tender

2.1.   Only those capable *Appointed Companies* appointed to the *Framework Alliance Contract* may be considered. The evaluation of capability to deliver a *Project* shall typically include, but not be limited to:

- technical performance

- experience of delivering similar works to the specifics required by the *LHC Client*'s *Project Contract*

- ability to complete the *LHC Clients*' works, services or deliveries within the required timescales

- financial capacity (where the financial requirements differ from those set at the time the *Framework Alliance Contract* was established*)*

- geographic capability

- delivery of social value and / or community benefits

2.2.   For the avoidance of doubt *Appointed Companies* may deliver individual *Projects* comprising multiple sites where one or more sites are outside the geographic confines of the Lot.

2.3.   Where there are insufficient *Appointed Companies* in a geographical lot to run the *LHC Client*'s preferred call off procedure, then the *LHC Client* may, but is not obliged to, extend the invitation to *Appointed Companies* within neighbouring geographical lots who were also evaluated for their capability to deliver the same type of works, goods or services as the *Appointed Companies* in the originally selected lot.

2.4.   Where a *Project Contract* consists of a multiple types of works or services and there are individual workstreams or lots under the *Framework Alliance Contract* that will cover the requirements of the *Project Contract*, the workstream / lot that forms the majority of the *Project Contract* value is to be used for the purpose of awarding the *Project Contract.*

2.5.   Where a *Project Contract* includes complimentary, additional or facilitating works or services that are not included:

a)   in the *Framework Documents,* or

b)   are included in the *Framework Documents* however not listed in the scope of the specific lot the *LHC Client* is intending to call off from;

the *LHC Client* may include these requirements within the *Project Contract* subject to the value of the additional works or services not exceeding the value of the works or services within scope of the Framework Programme

3.   **Prices**

3.1.   In respect of Schedule 4 Parts 1 and 2 the *Appointed Companies* agree to submit quotations to *LHC* or any *LHC Client* with prices for supplies, works and/or services which do not exceed the *Agreed Maximum Prices* submitted as set out in the *Framework Prices.*

3.2.   Any scheduled adjustments to the *Agreed Maximum Prices* set out in the *Framework Prices* may be communicated to the *Appointed Company* in writing from time to time by *LHC* . Such price adjustments will be calculated in accordance with the principles described in the *Framework Documents.*

3.3.   Where it is not set out within the *Framework Documents* the baseline index date used for the review of the *Agreed Maximum Prices* will be the month in which the *Framework Prices* were submitted and any adjustment will be applicable on the annual anniversary of the *Framework Programme.*

3.4.   An *Appointed Company* and *LHC* may agree variations to the specification and *Agreed Maximum Prices* in response to changes in standards or regulations during the term of the *Framework Alliance Contract* that were not reasonably foreseeable at the inception of the *Framework Alliance Contract* or which were not clearly outlined in the framework tender documents to the *Appointed Company* as needing to allow for. In such cases the *Appointed Company* will be required to present to *LHC* their assessment of the impact of the change on the A*greed Maximum Prices* for review and decision by *LHC.* For clarity any change to the *Agreed Maximum Prices* will be at the discretion of *LHC* and any change agreed will not affect agreed pricing for any existing *Project Contracts.*

3.5.   An *Appointed Company* and *LHC Client* may agree variations to the specification and prices in response to unforeseen works for a *Project Contract*. In such cases the *Appointed Company* agrees to notify the *LHC Client* immediately of any such works in accordance with the procedures set out in the Project Contract. In the absence of a defined procedure within the *Project Contract* the *Appointed Company* must provide a detailed specification and scope of the works required with estimated quantities and costs and impact on the total cost of the *Project Contract* to the *LHC Client.* The *Appointed Company* may only proceed with the works on receipt of a written instruction from the relevant *LHC Client.*

3.6.   Subject to the restrictions set out in Article 72 of the Public Contracts Regulations 2015 or Article 72 of the Public Contracts (Scotland) Regulations 2015 (whichever is applicable to the *LHC Client),* an *Appointed Company* and *LHC Client* may agree variations to the scope, length, specification and prices of a *Project Contract* during it's term.

4.   Responding to Projects

4.1.   Where an *Appointed Company* receives *Project Registration Document* for a specific *Project*, it agrees to return its expression of interest to *LHC* within 5 *Working Days* using the form set out in Part 2 of Schedule 5.

4.2.   If an *Appointed Company* fails to respond or declines to return an E*xpression of Interest* form for any *Project,* then the *Appointed Company* must provide *LHC* and the relevant *LHC Client* with a reason for doing so.

4.3.   If an *Appointed Company* fails to respond or declines to return an E*xpression of Interest* form on three or more occasions without providing reasonable grounds for doing so then *LHC* reserves the right to temporarily suspend or remove the *Appointed Company* from the *Framework Alliance Contract.*

4.4.   If, having previously indicated interest in a *Project* via the return of the related E*xpression of Interest* form an *Appointed Company* subsequently decides they do not wish to submit an *Offer or Mini-Competition response* in response to the Invitation provided by the *LHC Client* the *Appointed Company* must notify *LHC* and the relevant *LHC Client* of this with a reason for doing so at the earliest opportunity and before the tender response deadline.

4.5.   If, having indicated interest in a *Project* via the return of the related E*xpression of Interest* form an *Appointed Company* subsequently fails to respond or declines the invitation to submit an *Offer or Mini-Competition response* on three or more occasions without providing reasonable grounds for doing so then *LHC* reserves the right to temporarily suspend or remove the *Appointed Company* from the *Framework Alliance Contract.*

SCHEDULE 4

PART 1 - *DIRECT AWARD PROCEDURE*

(see clause 5.1)

1 **Project Registration**

1.1 The *LHC Client* shall summarise the relevant details of the *Project* and complete a *Project Registration Document* and forward it to *LHC*.

1.2 An *LHC* Project is created by *LHC* upon receipt of a *Project Registration Document* and will result in the creation of an *LHC* Project Number.

1.3 Once an *LHC* Project Number has been created the *LHC Client* and the *Appointed Company* must include the assigned *LHC* Project Number relating to the *Project* in all correspondence with each other and/or *LHC.*

2 **Expression of Interest**

2.1 On behalf of the *LHC Client*, *LHC* shall issue to the proposed *Appointed Company* a completed *Project Registration Document* and *Expression of Interest Form* template. The *Appointed Company is required* to confirm its interest, or not in delivering the *Project* by completing and returning their E*xpression of Interest* using the form set out in Part 2 of Schedule 5. This must be provided within 5 *Working Days* from receipt of the request (unless otherwise requested by the *LHC Client)*

2.2 In the event that the proposed *Appointed Company* fails to respond in accordance with clause 2.1; *LHC* reserves the right to deem the *Appointed Company* to have rejected the expression of Interest and subsequently engage with an alternative *Appointed Company* within the same lot on behalf of the *LHC Client.*

3 **Project Brief**

1.4 Using Schedule 5 Part 3 as a reference the *LHC Client* shall then issue to the proposed *Appointed Company* an invitation to submit an *Offer* in writing along with the *Project Contract Documents* which will include (but not be limited to)

    a)   Details of the relevant *Project*,

    b)   The *Project Contract Conditions* to be used,

    c)   The relevant pricing model or price framework, the criteria for the evaluation of the tender,

    d)   The deadline for the return of the *Offer* to the *LHC Client*

    e)   Any other matters or relevant information relating to the *Project.*

4 **Offer**

4.1 The proposed *Appointed Company* shall submit an *Offer* in writing based on the *LHC Form of Offer* or equivalent, and will be fully responsible for all costs and expenses including fees and disbursements in the preparation, submission of the *Offer* and no reimbursement or

payment will be made by the *LHC Client* or *LHC* to the proposed *Appointed Company* for such costs, expenses, fees and disbursements whether the *LHC Client* proceeds with the *Project* or not.

4.2   All information supplied by the *LHC Client* in connection with the *Project* itself shall be treated as confidential and the proposed *Appointed Company* shall not, without the prior written consent of the *LHC Client*, at any time make use of such information for its own purposes or disclose such information to any person or organisation other than *LHC* (except as may be required by law or where such information is disclosed with the prior written agreement of the *LHC Client* for the purposes of obtaining sureties, guarantees or commitments from proposed sub-contractors or suppliers and other information required to be submitted with the offer).

5   **Validation and acceptance of the offer**

5.1   Only an offer submitted with a completed and signed *Form of Offer* or equivalent together with all the required supporting documentation will be considered by the *LHC Client*.

5.2   If stated by the *LHC Client* within the invitation documents that the proposed *Appointed Company* is to give a presentation or attend an interview to the *LHC Client*'s organisation as part of the validation process; the proposed *Appointed Company* will be provided with the necessary information by the *LHC Client* in relation to such presentation or interview.

5.3   As part of the final validation process, the *LHC Client* will agree and/or confirm with the proposed *Appointed Company* all relevant items detailed in Schedule 5 Part 3 and any other relevant information which may include approval of the proposed key personnel of the proposed *Appointed Company* who will be responsible for carrying out the *Project.*

6   **Acceptance or rejection of an offer by the *LHC Client***

6.1   The *LHC Client* shall not be bound to accept any offer and reserves the right at its discretion to accept or not accept any offer submitted.

6.2   The *LHC Client* may in its discretion refrain from considering and thereby reject any offer if either:

6.2.1   the offer contains any significant omissions, or

6.2.2   the offer in any respect does not comply with the requirements of the invitation

6.3   Any offers or other documents submitted by any proposed *Appointed Company* shall not be considered by the *LHC Client* for acceptance and shall accordingly be rejected if the proposed *Appointed Company:*

6.3.1   communicates to any person other than the *LHC Client* any information except as stated in these conditions or fixes or adjusts the amount, prices, charges and rates with any other person.

6.3.2   offers or agrees to pay or give, or does 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 in relation to any other company or any other proposed offers or other documents any act or omission.

6.4   Any non-acceptance or rejection by the *LHC Client* shall be without prejudice to any other civil remedies available to the *LHC Client* in respect thereof or to any criminal liability that the conduct or action by a proposed *Appointed Company* may attract.

7   **Award of *Project Contract***

7.1   If the *LHC Client* decides to appoint the proposed *Appointed Company*, the *LHC Client* shall issue a *Project Contract* setting out the information agreed in accordance with clause 5.3 above.

7.2   Upon the issue of the *Project Contract,* the proposed *Appointed Company* shall execute and return the relevant *Project Contract* to the *LHC Client* within 21 *Working Days* of receipt of same or such longer period as the *LHC Client* may specify in writing.

7.3   Should the proposed *Appointed Company* fail to comply with its obligations in clause 7.2 above, the proposed *Appointed Company* shall be deemed to have declined the offer to enter into the *Project Contract* and the *LHC Client* may terminate the process.

7.4   Both the *LHC Client* and the *Appointed Company* shall notify *LHC* when the *Project Contract* has been signed.

7.5   The proposed *Appointed Company* shall, when appointed in accordance with this procedure, carry out the relevant *Project* in accordance with the terms of the relevant *Project Contract* and maintaining the standards set out in the *Success Measures and Targets*.

7.6   The terms of the *Framework Alliance Contract* will supplement and complement the terms of any *Project Contract*, however, in the event of any conflict or discrepancy between the terms of a *Project Contract* and the terms of the *Framework Alliance Contract* the conflicting or discrepant terms of the relevant *Project Contract* will prevail over the conflicting or discrepant terms of the *Framework Alliance Contract.*

SCHEDULE 4

PART 2 - *COMPETITIVE AWARD PROCEDURE*

(see clause 5.2)

1 **Project Registration**

1.1 The LHC Client shall summarise the relevant details of the Project and complete a Project Registration Document which is then passed to LHC.

1.2 An LHC Project is created by LHC upon receipt of a Project Registration Document and will result in the creation of an LHC Project Number.

1.3 Once an LHC Project Number has been created the LHC Client and the Appointed Companies shall include the LHC Project Number relating to the Project on all correspondence with each other and/or LHC.

2 **Expression of Interest**

2.1 On behalf of the *LHC Client*, *LHC* shall issue to all *Appointed Companies* eligible to participate in the *Mini-Competition* a completed *Project Registration Document,* and an *Expression of Interest Form* template. The *Appointed Companies* are required to express their interest, or not, in delivering the *Project* by completing and returning the E*xpression of Interest* using the form set out in Part 2 of Schedule 5. This must be provided within 5 *Working Days* from receipt of the request (unless otherwise requested by the *LHC Client*).

2.2 On behalf of the *LHC Client, LHC* reserve the right to accept or dismiss any *Appointed Companies* who confirm their interest in the *Project* after the agreed deadline for Expressions of Interest**.**

3 **Project Brief**

3.1 Using Schedule 5 Part 3 as a reference the LHC Client shall then issue to all Appointed Companies who confirm their interest an invitation to submit an offer in writing along with the Project Contract Documents which will include (but not be limited to)

    f) Details of the relevant *Project*,

    g) The Project Contract Conditions to be used,

    h) The relevant pricing model or price framework, the criteria for the evaluation of the tender,

    i) The deadline for the return of the Mini-Competition Response to the LHC Client

    j) Any other matters or relevant information relating to the Project.

4 **Offer**

4.1 All Appointed Companies invited to submit a Mini-Competition Response shall submit an offer in writing based on the LHC Form of Offer or equivalent, and will be fully responsible for all costs and expenses including fees and disbursements in the preparation, submission and any other subsequent elements of the Mini-Competition process and no reimbursement

or payment will be made by LHC or any LHC Client to Appointed Companies for such costs, expenses, fees and disbursements whether the LHC Client proceeds with the Project or not.

4.2   All information supplied by the *LHC Client* in connection with the *Mini-Competition* itself shall be treated as confidential and participating *Appointed Companies* shall not, without the prior written consent of *LHC* and the *LHC Client* at any time make use of such information for their own purposes or disclose such information to any person or organisation other than *LHC* (except as may be required by law or where such information is disclosed with the prior written agreement of the *LHC Client* for the purposes of obtaining sureties, guarantees or commitments from proposed sub-contractors or suppliers and other information required to be submitted with the *Mini-Competition Response*).

5   Evaluation of the Mini Competition Responses

5.1   Only Mini-Competition Responses submitted with a completed and signed *LHC Form of* Offer together with all the required supporting documentation will be considered.

5.2   The *LHC Client* will either evaluate the *Mini-Competition Responses* upon:

a) the criteria or any supplementary criteria applicable to the Mini-Competition as set out in the Mini-Competition documents; or

b) the basis of the lowest price only as set out in the Mini-Competition documents.

5.3   If stated by the LHC Client in the Mini-Competition documents that Appointed Companies are to be invited to attend an interview or give a presentation to the LHC Client's organisation as part of the full evaluation process, Appointed Companies will be provided with the necessary information by the LHC Client in relation to such presentation and interview.

6   Acceptance or rejection of Mini-Tenders by the LHC Client

6.1   The *LHC Client* reserves the right to accept any *Mini-Competition Response* which has been submitted pursuant to the *Mini-Competition*.

6.2   The *LHC Client* shall not be bound to accept any *Mini-Competition Response* and reserves the right in its absolute discretion to accept or not accept any *Mini-Competition Response* submitted.

6.3   The *LHC Client* may in its absolute discretion refrain from considering and thereby reject *Mini-Competition Responses* if either:

a) the Mini-Competition Response contains any significant omissions, or

b) the Mini-Competition Response, in any respect, does not comply with the requirements of the Mini-Competition.

6.4   Any Mini-Competition Response or other documents submitted by any Appointed Company shall not be considered by the LHC Client for acceptance and shall accordingly be rejected if the *Appointed Company*:

a) communicates to any person other than the *LHC Client* any information except as stated in these conditions or fixes or adjusts the amount, prices, charges and rates with any other person or by reference to any other *Mini-Competition Responses*; or

b) offers or agrees to pay or give, or does 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 in relation to any other company or any other proposed *Mini-Competition Responses* or other documents any act or omission; or

c) enters into any agreement or arrangement with any other person that such other person shall refrain from submitting a *Mini-Competition Response* or to limit or restrict the amounts, prices, charges and rates to be shown by any other company in their *Mini-Competition Response* and other documents; or

d) has directly or indirectly canvassed any representative, official or officer of the *LHC Client's* organisation concerning the acceptance of any *Mini-Competition Response* or has directly or indirectly obtained or attempted to obtain information from any such representative, official or officer of the *LHC Client* concerning any other *Mini-Competition Response* submitted by any other company.

6.5   Any non-acceptance or rejection by the *LHC Client* shall be without prejudice to any other civil remedies available to the *LHC Client* in respect thereof or to any criminal liability that the conduct or action by an *Appointed Company* may attract.

7   Award of the *Project Contract*

7.1   If the *LHC Client* decides to select and appoint one of the *Appointed Companies* who submitted a *Mini-Competition Response*, the *LHC Client* shall immediately

a) issue the relevant *Project Contract* setting out the information agreed (see Project Brief Checklist detailed in Schedule 5 Part 3) and any other relevant information which may include any key personnel of the proposed *Appointed Company* who will be responsible for carrying out the *Project*; and

b) notify in writing all the other *Appointed Companies* who submitted a *Mini-Competition Response* of their failure to be selected.

7.2   Upon the issue of the *Project Contract,* the successful *Appointed Company* shall execute and return the relevant *Project Contract* to the *LHC Client* within 21 *Working Days* of receipt of same or such longer period as the *LHC Client* may specify in writing.

7.3   Should any successful *Appointed Company* fail to comply with its obligations in clause 7.2 above, the *Appointed Company* shall be deemed to have declined the offer to enter into the *Project Contract* and the *LHC Client* may recommence the selection process in accordance with clauses 1.1 and 1.2 above.

7.4   Both the *LHC Client* and the *Appointed Company* shall notify *LHC* when the *Project Contract* has been signed.

7.5   The successful *Appointed Company* shall, when appointed in accordance with this procedure, carry out the relevant *Project* or *Projects* in accordance with the terms of the relevant *Project Contract* and maintaining the standards set out in the *Success Measures and Targets*

7.6   The terms of the *Framework Alliance Contract* will supplement and complement the terms of any *Project.* However, in the event of any conflict or discrepancy between the terms of a *Project Contract* and the terms of the *Framework Alliance Contract* the conflicting or discrepant terms of the relevant *Project Contract* will prevail over the conflicting or discrepant terms of the *Framework Alliance Contract.*

SCHEDULE 5

PART 1

PROJECT REGISTRATION DOCUMENT TEMPLATE

PLEASE NOTE THE FOLLOWING TEMPLATE IS AN EXAMPLE OF THE PROJECT REGISTRATION FORM. THE ACTUAL FORM USED WILL BE BASED ON THIS FORMAT BUT CUSTOMISED TO SUIT THE INFORMATION REQUIREMENTS OF THE FRAMEWORK THE FORM IS BEING USED FOR.

LHC Clients are requested to state key project information, which will be recorded and distributed by LHC to relevant Appointed Companies who will review the information and declare their Expression of Interest (EOI) in undertaking the Project.

Upon registering this Project, the Client will become an LHC Client under the terms of the FAC-1 Framework Alliance Contract (as amended by LHC), which governs all rights, obligations and procedures relating to award of the Project.

Appointed Companies: are to review the information and confirm their Expression of Interest, within 5 Working Days of receipt, by completing the Expression of Interest Form (Schedule 5, Part 2)

Section 1 – Project Registration Information

The Following section is completed by LHC as part of registering the Project.

LHC Project Number (to be completed by LHC):

Section 2 – Project Summary Details

The following information is to be completed by the LHC Client

It is important to complete this form as fully as possible – especially the project scope – so the Appointed Companies know as much as possible about the range of works, suppliers or services to be delivered.

This form will be issued to the Appointed Companies and used by them as a basis to decide whether they will likely submit a bid for your opportunity. Failure to provide sufficient information may result in further clarifications sought by Appointed Companies which will delay expressions of interest being received or lack of interest due to uncertainty.

LHC Client:

Project Name:

Site Address or Area:

Anticipated Project Value:

£

Work Element:

Work Elements	OPTION 1 (E.G. SUPPLY ONLY /OR VALUE BAND 1	OPTION 2 (E.G. INSTALL / OR VALUE BAND 2
WORKSTREAM 1	☐	☐
WORKSTREAM 2	☐	☐
WORKSTREAM 3	☐	☐
WORKSTREAM 4	☐	☐

Key Project Information:

Project Scope:
It is important that the *Appointed Companies* know as much information as possible about the range of works, supplies or services to be delivered.

Project/site details and risks:
Please indicate any identified *project/site* risks (if any). If there are specific sites or a range of sites, please provide the details here or supply a list of site addresses as a separate attachment.

Key Anticipated Project Dates (please insert dates where applicable):

1. Pre-tender briefing:		5. Pre-start meeting:	
2. Site visit (if applicable):		6. Contract award:	
3. Tender issue:		7. Start on site:	
4. Tender return:		8. Completion on site:	

Mini-Tender or Direct Award without Re-opening Competition?

☐ Mini-Tender   If Mini-Tender, please indicate platform to be used (e-tendering portal, email, postal etc):

☐ Direct Award   If Direct award, please indicate who the award should be to:

Overall Weightings for Quality and Price

Quality %

Price %

Quality Sub Criteria:

Please specify any specific quality criteria that may be applicable to the quality element of the tender if known at this stage e.g.

- Mobilisation and project delivery approach
- Project timescales and project management approach
- Sustainability and environmental factors (such as waste reduction, recycling and low carbon)
- Local economic development, social value and community benefits
- Client communication and resident engagement
- Management of site risks, Health and Safety & CDM
- Whole life costing

Pricing Structure:

Please indicate pricing methodology to be used in the Mini-Competition (e.g. fixed price, target cost, schedule of rates, scenario based etc.):

Form of Project Contract:

Please indicate the Form of *Project Contract Conditions* to be used, including any amendments if known at this stage

LHC Clients acknowledge that by returning the project registration form they accept the terms of the Framework Alliancing contract FAC-1 (A copy of which can be purchased from the Association of Consultant Architects (01959 928412, email office@acarchitects.co.uk), and the schedule of amendments to the FAC-1 agreement specific to LHC.

☐ YES

This information has been provided on behalf of the LHC Client by:

Name:	
Position:	
Date:	
Signature:	

SCHEDULE 5

PART 2 – EXPRESSION OF INTEREST FORM TEMPLATE

PLEASE NOTE THE FOLLOWING TEMPLATE IS AN EXAMPLE OF THE PROJECT REGISTRATION FORM. THE ACTUAL FORM USED WILL BE BASED ON THIS FORMAT BUT CUSTOMISED TO SUIT THE INFORMATION REQUIREMENTS OF THE FRAMEWORK THE FORM IS BEING USED FOR.

Expression of Interest (EOI)

To be completed by the *Appointed Company* and returned to LHC within five (5) working days (unless an alternative return date has been advised by LHC).

We have reviewed the Project Registration Document to which this completed Expression of Interest Form is annexed and we have completed section 1. or 2. as applicable):

SECTION 1 – CONFIRMING YOUR INTEREST IN THIS OPPORTUNITY

We confirm our interest in submitting a bona fide and fully detailed quotation for the Project described and make the following statements about the *Appointed Company's* capability:

a) The *Appointed Company* will be able to comply with the timetable of return dates, subject to the *LHC Client* providing all necessary information on or before the dates timetabled and/or reasonably requested.

b) The *Appointed Company* has suitable financial standing to complete the *Project* described.

c) The *Appointed Company* has suitable resources to complete the *Project* within the timetable described, subject to the *LHC Client* providing all necessary information on or before the dates timetabled and/or reasonably requested.

d) No employee of the *Appointed Company* has or will canvass any member or officer of *LHC* or the *LHC Client* organisation, directly or indirectly, relating to the award of this *Project Contract*.

e) As per the terms of the Framework Alliance Contract all quotes and invoices supplied to the *LHC Client* in relation to the *Project Contract* will be inclusive of the LHC *Levy (as noted below)*. For clarity this includes quotes and invoices both for works and services specified in the original call off but also for any variations or additions agreed throughout the life of the *Project Contract*.

f) The *LHC Levy* % will be included in the total of each project invoice.

g) Where the *Levy* rate listed below is other that the maximum rate set out in the Framework Documents, I shall adjust my submitted rates accordingly to reflect the lower levy.

To be completed by LHC:

LHC Levy %	

Please Sign below to confirm Expression of Interest:

Name:		Company:	
Position:		Date:	

	Please tick to confirm that you have read and agree to the Framework Alliance Contract (FAC-1), including LHC specific amendments.
☐	A copy of the FAC-1 and specific amendments was provided as part of the tender documents used to establish the framework. However, if required a copy of the FAC-1 can be purchased from the Association of Consultant Architects (01959 928412, email office@acarchitects.co.uk)

The below is only to be completed if you are unable to submit a tender

SECTION 2 – DECLINING YOUR INTEREST IN THIS OPPORTUNITY

We are unable to submit a quotation for the Project described for the following reason/s:

PLEASE NOTE – In addition to providing your reason/s for declining the opportunity, please advise if there are any specific factors that if changed (such as changing the project timetable or certain requirements) would allow you to submit a quotation

Name:

Position:

Company:

Date:

SCHEDULE 5

PART 3 - PROJECT BRIEF CHECKLIST TEMPLATE

THIS IS AN OPTIONAL TEMPLATE TO HELP GUIDE *LHC CLIENTS* IN ENSURING KEY INFORMATION ABOUT THE *PROJECT* IS PROVIDED TO THE *APPOINTED COMPANIES* (THAT HAVE PREVIOUSLY EXPRESSED AN INTEREST IN THE *PROJECT*) FOR THEM TO BE ABLE TO UNDERSTAND YOUR REQUIREMENTS AND SUBMIT A COMPLETE OFFER.

Your Details
- ☐ *Client* Organisation
- ☐ *Project* Name

LHC Details
- ☐ *LHC Project* Number
- ☐ *LHC* Framework name and reference no.
- ☐ Details of the *LHC* Levy

Project Details
- ☐ Scope of the works, goods and/or services including
    - Location/s
    - Quantities
    - Units
    - Product and / or service specifications
- ☐ Project/site risks, where known (e.g. access requirements, asbestos, H&S matters etc)
- ☐ Social value elements (social, economic and environmental considerations)
- ☐ Timescale or programme for carrying out the *Project*
- ☐ Budget/s associated with the *Project*
- ☐ Pricing Structure / methodology to be used both in the *Mini Competition* and ongoing *Project*
- ☐ Payment terms
- ☐ Confirmation of any specific economic and financial standing requirements
- ☐ Insurance requirements
- ☐ Warranty, product guarantees, and / or required defects period
- ☐ KPIs and any other performance management structure or requirements
- ☐ *Project Contract* to be used including any specific amendments, or additional terms
- ☐ *TUPE* Considerations

Procurement Approach / Route
- ☐ Direct Award Procedure
- ☐ Mini Competition

The following must also be provided to *Appointed Companies* participating in a Mini Competition:
- ☐ Quality questions / criteria
- ☐ Methodology for evaluating and then ranking offers, including
- ☐ Weighting of quality, price and social value or community benefits requirements to be applied

Submission returns
- ☐ *Name, address and contact details of the Client's* appointed officer
- ☐ Deadline for submissions (Date & Time)
- ☐ Where the responses are to be sent or uploaded.

SCHEDULE 5

PART 4 - PROJECT FORM OF OFFER TEMPLATE

IRRESPECTIVE IF ANY ADDITIONAL FORM OF OFFER DOCUMENT SPECIFICED BY THE LHC CLIENT, COMPLETION, AND INCLUSION OF THE FOLLOWING FORM BY THE *APPOINTED COMPANY* IN THE TENDER RESPONSE IS MANDATORY.

Checklist

☐ We have adhered to the *LHC* specification except for *Project* specific requirements as set out in the information provided by the *LHC Client.*

☐ We have adhered to the *Agreed Maximum Prices* submitted to *LHC*, or identified and provided rationale to the *LHC Client* for any exceptions where the submitted prices deviate from *Agreed Maximum Prices.*

☐ We have incorporated the *LHC Levy* in our total price quoted to the *LHC Client*

Form of Offer

To:

Client Organisation		("the *LHC Client*")
Client Officer		
Client Address		

Re:

LHC Project Number		("the *Project*")
Project Name		
Tender Submission Date		

I/We unconditionally offer to provide the works/supplies/services requested under the *Mini-Competition* or invitation to submit an *offer* and in accordance with the *Framework Alliance Contract*, the *Project Contract,* and any *Orders* issued under the *Project Contract*, enclose the following documents which comprise my/our *Mini Competition Response* / *Offer* :

- [Tenderer to list all documents being submitted]
-
-
-
-

I/We have satisfied myself/ourselves as to the accuracy and sufficiency of our tendered prices, rates and percentage additions which are those set out in the *LHC Framework Alliance Contract* documentation taking into consideration the requirement that such rates and prices should not exceed those quoted in the *Framework Alliance Contract* (unless clear rational has been provided with your response).

We confirm that such rates, prices and percentage additions (except in so far as it is otherwise provided for in the *Project Contract*) cover all my/our obligations, liabilities, risks and other matters in connection with fully and properly undertaking all the works/supplies/services required and ordered in accordance with the *Project Contract.*

I/We confirm that the total amount of our tendered prices for the *Project* is

£ [VALUE]

as set out in the attached *Agreed Prices* and that:

- the Rates and Prices and all total sums or amounts are <u>exclusive of Value Added Tax</u> (VAT) which will be recoverable from the *LHC Client* in accordance with the VAT liability of our Company.

- the Rates and Prices and all total sums or amounts incorporate the defined *Levy* for this *Project and I/We* warrant to pay the required *Levy* in accordance with the terms of the *Framework Alliance Contract.*

I/We agree that our Tender shall remain open and valid for acceptance by the *LHC Client* for a period of

[NUMBER OF DAYS]

days from the closing date for the receipt of Tenders or such longer period as may be agreed with the *LHC Client*, and that the prices and rates set out in our Tender shall remain firm until

[DATE]

I/we understand the grounds set out in the Procedure for *Mini-Competition* and that the *LHC Client* reserves the right at its absolute discretion to accept or not to accept the lowest or any *Mini-Completion Response* submitted and further that these grounds are without prejudice to any other remedies available to the *LHC Client*.

I/We further acknowledge that we are fully responsible for all costs and expenses in the preparation, submission and any subsequent elements of the *Mini-Competition* process and accept that no reimbursement or payment will be made by *LHC* or the *LHC Client* for such costs and expenditure to us as the Tenderer, the definition of which shall also include expenses, fees, disbursements and any other costs.

Signed and dated: *(second signatory where required)*

Signature		Signature	
Name		Name	
Position		Position	
Date		Date	

For and on behalf of:

Company Name	
Company Registration Number	
Registered Address	

SCHEDULE 5

PART 5 - PRE-CONTRACT SERVICE AGREEMENT TEMPLATE

(See clause 7)

A two-stage construction tender process is designed to achieve the early appointment of a Contractor on the basis of an agreement to undertake a range of pre-construction services using a Pre-Construction Services Agreement ("PCSA"). This is not to be confused with a restricted tender process as outlined in the Public Contract Regulations 2015.

The two-stage construction tender process typically includes the following:

Stage 1

A tender process will be carried out by the *LHC Client* based on defined criteria (such as overview construction programme, method statements, preliminaries, profits and overheads)to appoint a Contractor to enter into a PCSA with. Following which the Contractor will perform the services required under the PCSA which will typically, consist of design, building completion costing, method of construction, and refined programme timelines, for which the Contractor will be reimbursed. The purpose of this stage of the process is for the Contractor and Client to work together to refine the design and build requirements, removing ambiguity and therefore risk from the project.

Stage 2

Typically based on an open book pricing basis the Contractor will then submit to the client a lump sum contract proposal using the additional information gained from stage 1 and having completed the necessary activities outlined within the PCSA (which may include obtaining specialist designs, material costs and sub-contractor quotations.

The intention of this process is that the Contract involved in stage 1 and 2 of the two stage tendering process will be appointed to carry out the works, and a fixed price for the Contract based on a design, specification and scope of works agreed by both parties with foreseeable risk and / or uncertainties removed through the PCSA stages.

In theory, early involvement of the contractor should improve the buildability and cost-certainty of the design and reduce the likelihood of disputes in the construction phase.

The following template is only relevant to construction projects using a two-stage tender process but provides a simple framework for use by LHC Clients of a Pre-Construction Services Agreement.

Use of this template when carrying out a two-stage construction tender process is not mandatory and *LHC Clients* are able to use templates provides from standard contract forms such as JCT or NEC.

.

PRE-CONTRACT SERVICE AGREEMENT

LHC *Project* Number

LHC *Framework Programme & Lot:*

Framework Name & Ref	
Lot / workstream	
Value Band (if Applicable)	

The *LHC Client* and the *Appointed Company* named below in accordance with and subject to the *LHC Framework Programme* listed above *LHC* (the **Framework Alliance Contract**) made between them and others in relation to *LHC* Project Number listed above (the **Framework Programme**) agree under this Pre-Contract Service Agreement (the **Order**) that:

1. Words and expressions used in this *Order* shall have the same meaning as in the *Framework Alliance Contract.*

2. The *Appointed Company* shall undertake the following *Pre-Contract Activities:*
_____
_____
_____

3. The dates and key milestones for completion of those *Pre-Contract Activities* are*:*
_____
_____
_____

4. The *LHC Client* shall pay the *Appointed Company* the following amounts for those *Pre-Contract Activities:*
_____
_____
_____

5. **[Delete if not applicable]** If a *Project Contract* is entered into, then the *Pre-Contract Activities* shall be treated as part of the *Project* and shall be governed by the *Project Contract Conditions*.

6. [Other terms as required]
_____
_____
_____

Signed on behalf of   *Signed on behalf of*

_____   _____
(LHC Client)   **(Appointed Company)**

By_____   *By_____*

Date_____   Date_____

SCHEDULE 5

PART 6

PROJECT CONTRACT CONDITIONS GUIDANCE

THIS SECTION SETS OUT THE PRINCIPLE EXPECTATIONS FOR A *PROJECT CONTRACT* AND IS PROVIDED AS A GUIDE FOR *LHC CLIENTS* TO REFER TO, TO ENSURE THEY CONSIDER THE VARIOUS ELEMENTS NECESSARY TO PUT IN PLACE A SUITABLE AND ROBUST *PROJECT CONTRACT* THAT IS IN KEEPING WITH THE *FRAMEWORK ALLIANCE CONTRACT*. THESE ARE NOT ADDITIONAL TERMS OF THE *FRAMEWORK ALLIANCE CONTRACT*

1. **Form of *Project Contract* Conditions**
   - The Project Contract Conditions used by an LHC Client for a Project Contract awarded to an Appointed Company will typically be one or more of the following standard forms of building contract, or the LHC Client's modified version of such standard forms

   - JCT / SBCC suite of contracts

   - NEC suite of contracts

   - PPC suite of contracts

   - Bespoke Agreements (see 1.2 below)

   - ACE Professional Services Agreement 2017

   - NHF suite of contracts

   1.1. This list is not exhaustive and other standard forms of Contract are permissible including bespoke Contracts produced by the LHC Client. It is at the LHC Clients discretion what Contract form they use.

2. **Standard Project Contract Conditions**

   2.1. The following conditions should be considered as boilerplate provisions in any Project Contract:
   - (a)   Term of the contract (including any break, review or extension options)

   - (b)   Pricing conditions, including (as examples):

        i   Any tiering or structure of pricing mechanisms

        ii   Pricing review conditions and / or fixed price requirements

        iii   How Variations and / or additional works are to be priced

   - (c)   Any specific requirements for evidence to support pricing valuations

   - (d)   Payment provisions (including payment of additional agreed works).

   - (e)   Dispute resolution provision.

   - (f)   Contracts (Rights of Third Parties) Act 1999 to not apply unless expressly provided in respect of specific parties.

(g) Restriction on publicity (without prior consent)

(h) Events in which termination of the contract will be applicable (examples provided as follows):

   i   Events leading to default or material breach of the contract both by the *LHC Client* and *Appointed Company*.

   ii   Poor performance of the Appointed Company

   iii   Novation or assignment of the Contract

   iv   Change of Control by the *Appointed Company*

   v   Events of default entitling termination by the *LHC Client* and *Appointed Company*.

   vi   Termination for convenience / no fault options

(i) Procedures and co-operation requirements in the event of termination of the Contract

(j) Formal process for providing notice to each party and addresses for serving notices.

(k) Provision stating whether a guarantor of the Appointed Company will be required.

(l) Provisions stating that the Appointed Company will not breach the Bribery Act.

(m) Performance and contract management requirements and procedures

(n) Key performance indicators and service level agreements

(o) Execution as a deed and limitation period of 12 years.

3. **Terms of Development Agreement Conditions (for new build construction projects)**

   3.1. The following should be considered as the key clauses for consideration when developing an appropriate Construction or Development agreement *Project Contract*

   (a) Control over design by *LHC Client*.

   (b) Grounds for an application of time specified by the *LHC Client*.

   (c) *LHC Client* remedies for delay including liquidated and ascertained damages.

   (d) *LHC Client* right to instruct variations to design.

   (e) *LHC* or *LHC Client's* rights of access to examine works.

   (f) Robust duty of care provision setting out the *Appointed Company's* liability for construction risk in accordance with the specification, statutory requirements, any planning permission, requisite consents and environmental laws.

   (g) *Appointed Company* is obliged to utilise good quality, new and suitable materials and plant.

   (h) Rights of *the LHC Client* to approve members of construction team and their terms of appointment.

(i) Collateral warranties in favour of the *LHC Client* and in favour of funders and third parties such as possible tenants and purchasers, if required.

(j) Indemnity from the *Appointed Company* to the *LHC Client* for any liability arising out of personal injury, death, damage to any real or personal property, nuisance to any adjoining owner arising out of the Works. The *Appointed Company* is obliged to maintain public liability and third-party liability insurance in respect to such liabilities.

(k) The *Appointed Company* to maintain an all risks joint names insurance policy for the reinstatement of the Works.

(l) The *Appointed Company* to maintain professional indemnity insurance for 12 years post-practical completion.

(m) A copyright provision in which the *Appointed Company* grants to the *LHC Client* an irrevocable royalty-free non-exclusive licence to use, reproduce and distribute documents connected with the Works.

(n) A new home warranty insurance policy for latent defects cover to be provided.

(o) "Step-down" of CDM Regulations with drafting addressing nomination of Principal Contractor and Principal Designer and also *LHC Clients* if appropriate.

(p) Retention utilised which is released at the end of the defects liability period.

(q) *Appointed Company* to provide copies of surveys, reports relevant to the Site or Works upon request by the *LHC Client*.

(r) The *Appointed Company* to provide notice to the *LHC Client* of the anticipated date of practical completion in order to arrange inspection of the Works.

(s) The *Appointed Company* must be obliged to rectify defects before handover if any are found upon inspection of the Works.

(t) Handover and the reaching of practical completion are to be at the *LHC Client*'s discretion.

(u) Specification of items required to be delivered upon completion.

(v) Obligation to rectify defects during the defects liability period (Minimum 12 months) and liability in respect of latent defects for 12 years post-practical completion.

(w) Time limits for rectification of defects during the defects liability period specified based on urgency / severity.

(x) Long stop date utilised and right of termination for the *LHC Client* if the project has not reached practical completion.

(y) Full suite of documentation (e.g. certificates, operational manuals, service plans and location points etc.) to be provided on handover to the *LHC Client*.

(z) Responsibility for the *Appointed Company* to ensure that all activities carried out by the *Appointed Company* and those of sub-contractors comply at all times with all relevant statutes, statutory instruments regulations and industry recognised and adhered to codes of practice.

4. **Project Specific Conditions**

   4.1. The following additional conditions should be considered by the LHC *Client* as appropriate on a project by project basis

       (a)   Land transfer structure

       (b)   Appointment of a rights of light surveyor.

       (c)   Appointment of a party wall surveyor.

       (d)   Environmental reports/surveys and appropriate assignment/collateral warranties.

       (e)   Planning permission and if so, completion conditional on satisfaction.

       (f)   Section 106 Agreements and how liability for costs of compliance to be allocated where private sale/ commercial involved.

       (g)   Treatment of VAT.

       (h)   Application of CIL and any relief.

       (i)   Stamp duty land tax and degree of relief (none/ public subsidy/ qualifying vendor/ charities).

       (j)   Full suite of documentation (e.g. copy of certificate of practical completion, reports, planning permission and confirmation of conditions being satisfied, building regulations approval etc) to be provided for a funding/ charging exercise.

   4.2. The onus is on the *LHC Client* to define the particular *Project Contract* Conditions applicable to a *Project*, however it is advised that the *Project Contract* Conditions should not be less onerous than the terms and conditions of the *Framework Alliance Contract*.

SCHEDULE 5

PART 7 - PROJECT MONITORING DOCUMENTS

In order to monitor the *Project, LHC* reserves the right to request documents, data, and information *related to the Project*, which the *Appointed Company* and/or the *LHC Client* shall provide to *LHC* upon request. The following are examples of typical information that may be requested however this list is not exhaustive and *LHC* reserves the right to reasonably request alternative or additional information*:*

- Contract Acceptance Document.

- Confirmation of type of contract being utilised

- Confirmation of *Agreed Prices* total and annual (where applicable)

- Project Programme, with monthly updates thereafter (where applicable)

- Notification of monthly progress meetings (where applicable).

- Copy of KPIs, which may include

    - Defects at practical completion
    - Safety (accident incidence rate)
    - Predictability - cost
    - Predictability - time
    - *Client* satisfaction
    - Resident/end-user satisfaction
    - Social value

- Copy of Progress Minutes, including contractors report.

- Quotations / valuations / applications for payment

- Notification of initial final inspection of completed works (or stage, where applicable).

- Notification of any major project variations and copy of *Client* acceptance/approval.

- 'Practical Completion' certificate (where applicable)

- Signed final account

- Copies of any building and/or project performance data collected and submitted to national and/or devolved governments and/or agencies acting on their behalf

SCHEDULE 5

PART 8A - SERVICE LEVEL REQUIREMENTS AND KEY PERFORMANCE INDICATORS

GENERAL FRAMEWORK SERVICE LEVEL REQUIREMENTS

As part of their appointment to the *Framework Alliance Contract* the *Appointed Companies* must adhere to the following service level requirements which are applicable to the management and administration of each *Framework Programme* under the *Framework Alliance Contract*.

1. Response to Project Contract Engagement Invites
Respond to *LHC* and *LHC Clients'* enquiries, tenders and EOI requests within 5 (five) *Working Days* unless specified otherwise, whether the response is positive or negative
a. If an *Appointed Company* needs to request a time extension (e.g. to review a complex project and/or engage with sub-contractors before submitting a response) the *Appointed Company* must give as much notice as possible of this request.
b. If an *Appointed Company's* response to an EOI request is negative the *Appointed Company* <u>must</u> give reasonable grounds for doing so.
c. If an *Appointed Company* fails to respond to an EOI request on three or more occasions without providing reasonable grounds for doing so then *LHC* reserves the right to temporarily suspend that *Appointed Company* from the *Framework Programme.* Repeated breaches will result in longer suspensions or removal from a *Framework Programme* or the F*ramework Alliance Contract* in its entirety*.*
d. If an *Appointed Company* fails to submit a tender (having previously notified their interest through an EOI) on three or more occasions without providing reasonable grounds for doing so then *LHC* reserves the right to temporarily suspend that *Appointed Company* from the *Framework Alliance Contract* for a period of time. Repeated breaches will result in longer suspensions or removal from the F*ramework Alliance Contract.*

2. Pricing
Framework Prices must be in accordance with the terms of the *Framework Documents*
a. *Appointed Companies* must ensure the *LHC Levy* whether inclusive or exclusive has been included in the total of all quotes and invoices submitted to *LHC* and *LHC Clients*.
b. Framework Prices on scheduled items must not exceed each Appointed Company's Agreed Maximum Prices (exclusive of VAT), noting that *Framework Prices* are subject to annual uplifts based on allowable fluctuation adjustments as detailed in the *Framework Documents*
c. Any price exceptions must be agreed in advance with LHC
d. Agreed Prices on *Project Contracts* must be held firm for 90 days from the date of quotation unless otherwise stipulated in the *Project Contract* documentation

3. *Project Contract* Delivery
e. Engage proactively with *LHC, LHC Client, LHC Clients'* consultants, other *Appointed Companies* and supply/sub-contract companies or *Supply Chain Members* on all aspects of each *LHC Project*

f.	Ensure full compliance with) agreed *Project Contract* specific KPI targets, reporting schedule, reporting format with the *LHC Client* which may include (as examples): 1. Quality of workmanship measurements such as inspections passed, recalls, defects etc 2. Performance against target cost 3. Performance against time target 4. *Client* and / or Resident/end-user satisfaction 5. Achievement of community benefit and / or social value targets 6. Delivery of environmental targets (such as recycling, travel, landfill waste reduction)
g.	Fully comply with the supply and/or installation of works, supplies and/or services specified under the *Frameworks Documents* and *Project Contract Documents*
h.	Treat the resident / end-user with dignity and respect at all times and fulfil the requirements of resident engagement exercises
i.	Respond positively and pro-actively to any complaints or incidents, changes of status or personnel or any issues that impact the *Framework Programme*, either positively or negatively.

4. Declarations & Settlement

a. Notify and declare all *Projects,* orders and invoices
   1. Register details via the "My *LHC*" portal
   2. Register *LHC Client* invoices within 5 *Working Days* of receipt of funds from *LHC Client.*

b. Pay *LHC* invoices within 30 calendar days from date of invoice
c. Provide *LHC* with the contact details for the person/s and department/s responsible for declaration and settlement of *LHC* invoices for each *Project*

5. Framework Alliance Monitoring
a.   Attendance at *Framework Alliance Contract* Meetings

b. Completion of annual framework health check requirement which will include:
   a. Review meeting or call with *LHC* lead technical manager
   b. Submission of up to date insurances
   c. Submission of up to date certificates, industry registrations and accreditations as relevant to the requirements set out in the *Framework Documents*

GENERAL FRAMEWORK KEY PERFORMANCE INDICATORS

Appointed Companies will be specifically monitored by *LHC* in relation to their performance against the general framework service level requirements (identified above) using the following Key Performance Indicators

KPI	Name	Purpose	Target
1	EOI Responses	Respond to *LHC* and *LHC Clients'* enquiries, tenders and EOI requests within 5 (five) *Working Days* unless specified otherwise, whether the response is positive or negative	100%
2	Intent to Bid following receipt of tender documentation	Confirm to Client with intention to bid to tender within 5 working days	100%
3	Registration of Levy due in the portal	Register LHC Client invoices within 5 Working Days of receipt of funds from LHC Client.	100%
4	Payment of Levy	Pay LHC invoices within 30 calendar days from date of invoice	100%

SCHEDULE 5

PART 8B - SERVICE LEVEL REQUIREMENTS AND KEY PERFORMANCE INDICATORS

PROJECT SPECIFIC KEY PERFORMANCE INDICATORS

To allow *LHC* to monitor the ongoing performance of the *Appointed Companies* assigned to the *Framework Alliance Contract*, each *Appointed Company* will be required to submit a summary report demonstrating their performance against the following key performance indicators for every *Project Contract the Appointed Company* is delivering under this agreement.

To avoid duplication of effort where these Key Performance Indicators (or closely similar measures) are already being collected by the *LHC Client* or the *Appointed Company* as part of the *Project Contract* performance management data collection then, (subject to prior agreement) *LHC* may accept existing performance measurement data collated as part of the *Project Contract*.

Acceptance of alternative performance measurement information to that which is outlined below will be at *LHC*s' discretion.

The specific KPIs their targets and their measurements may differ to suit the requirements of each *Framework Programme* however the below table sets out the basis of the reportable *Project* KPIs.

KPI	Name	Purpose	Target
1	Predictability of Time	To measure the reliability of time targets for the Project Contract	+/- 0%
2	Predictability of Cost	To measure the cost performance of the Contractor against the Agreed Project Contract total for the project	+/- 0%
3	Post Inspection Quality	To measure the quality of works undertaken by the Contractor based on inspections completed by the Client	0
4	Defects certificate	To check whether all issues have been completed and the retention (if applicable) will be paid	Pass/Fail
5	Health and Safety	To measure the number of accidents and near misses incurred by Contractor and Supply Chain for the Project	0
6	Customer Satisfaction	To determine the overall level of Customer satisfaction with the service received	100%
7	Community Impact Assessment	To evidence that community benefits and social value is being delivered as a result of the Project Contract.	Pass/Fail
8	Community Impact Case Study	To evidence that community benefits and social value is being delivered as a result of the Project Contract.	Pass/Fail

SCHEDULES 1 to 5

ADDITIONAL DEFINITIONS

In addition to the definitions set out in Appendix 1 the following definitions shall be used in respect of the *Framework Alliance Contract:*

Agreed Maximum Prices – means the maximum price that *Alliance Members* can charge for goods, works, or services provided in accordance with the *Framework Documents*.

Award Confirmation Notice – means the acceptance of the relevant *Alliance Members Offer Document* by *the Client*;

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

Appointed Company – an *Alliance Member* selected as a contractor, consultant or supplier and issued with an *Award Confirmation Notice*

Conditions – such terms set out in the *Framework Alliance Contract;*

Documents - all technical information, drawings, models, specifications, schedules, details, plans, calculations or other materials provided or to be provided by any *Alliance Member* pursuant to the *Framework Alliance Contract* and all amendments and additions thereto (whether in existence or yet to be made) and any work or inventions of any *Alliance Members* incorporated or referred to therein;

Expression of Interest Form– A completed version of the template form set out in Schedule 5, Part 2. Completed by the *Alliance Members* in response to a Project Registration Document provided by *the Client.*

Form of Offer - the template set out at Schedule 5 Part 4;

Invitation to Tender means the *invitation to tender* issued by *the Client* in respect of the *Framework Programme*

Levy – means the payment by each *Appointed Company or Supply Chain Member* to the *Client* based on the agreed percentage of the total value of each and every invoice submitted to an *Additional Client* in relation to a *Project Contract*.

LHC - *Client;*

LHC Client - *Additional Client;*

LHC Framework - *Framework Programme*;

LHC Project – *Project*

Lot- A sub-category of the *LHC Framework*, applicable in situations where the overall *LHC Framework* is split into smaller subdivisions based on (as examples) value bands, geographical regions, or type of goods, works or services.

Main Contractor- An *Alliance Member* who is the primary / lead Contractor for the *Project* and for the purposes of the CDM regulations would be considered the Principal Contractor;

Mini-Competition - the *Competitive Award Procedure* as set out at Schedule 4 Part 2;

Mini-Competition Response- response from *Appointed Companies* to a Mini Competition;

Offer – the response from the *Appointed Company* to an Invitation to submit an Offer in accordance with the *Direct Award Procedure* set out in Schedule 4 Part 1;

Offer Document means each *Appointed Company's* offer to comply with the requirements of the *Invitation to Tender* including the signed form of tender submitted by the relevant *Appointed Company*

Project Registration Document - the template document set out at Schedule 5 Part 1;

Project Contract Conditions – Contractual terms of the *Project Contract* as set out by the *Additional Client.*

Supply Chain Member – A organisation appointed to a list of approved Installers / Contractors by an *Alliance Member* who is a manufacturer or system supplier to provide the installation / works element of a *Project Contract*.

Term Programme - a series of *Projects* to be instructed under a term contract

- END -