|  |
| --- |
| **DATED** the **?** day of  **?** 201[**?**] |

|  |  |
| --- | --- |
| **(1)** | **[ ? ] COUNCIL** |
|  |  |
| **(2)** | **[Partnership Client/Framework User?]** |

**ACCESS AND CONFIDENTIALITY AGREEMENT**

relating to the use of and information provided in connection with access to the YORhub Framework Agreements

**Ref:** [ ]

THIS AGREEMENT is made the ? day of ? 201[?]

BETWEEN:

1. [ Contracting Authority ] COUNCIL whose main offices are at [ address ] (the ‘Council’) and
2. [Partnership Client/Framework User? ] whose main offices are at [ address ] (the ‘Partnership Client’)

BACKGROUND

(1) The Council has participated in a regional initiative to secure the establishment and management of regional Construction Framework Agreements for use by public and third sector organisations principally in the Yorkshire and Humber region.

(2) The ‘YORhub suite of Framework Agreements’ (as listed in schedule 3) have been procured in accordance with the relevant Public Contracts Regulations in force at the time of the framework tender (as stated in schedule 3).

(3) The Partnership Client has requested permission to use one or more of the ‘YORhub suite of Framework Agreements’

(4) The Council is prepared to permit the Partnership Client to use the ‘YORhub suite of Framework Agreements’, subject to the Partnership Client complying with certain conditions including:

* 1. paying any fees referred to in this Access and Confidentiality Agreement;
  2. entering into this Access and Confidentiality Agreement with the Council, governing the terms and conditions upon which access is available to the Frameworks; and
  3. obtaining prior written approval from the Council for each call off project they wish to be procured under this Access and Confidentiality Agreement, in accordance with the call off letter template in Schedule 2.

operative provisions

# 1 Interpretation and definitions

In this Agreement, unless otherwise specified:

## 1.1 words denoting the masculine gender, shall include the feminine gender;

## 1.2 words in the singular, shall include the plural and vice versa;

## 1.3 words denoting persons, shall include corporations, incorporated or unincorporated associations and partnerships;

## 1.4 a reference to any statutory provisions, shall include, unless the context otherwise requires, any statutory provisions superseding or re-enacting those statutory provisions and, any reference to a specific statutory provision shall include a reference to any statutory provision superseding or re‑enacting that statutory provision;

## 1.5 a reference to clauses or schedules, shall, be a reference to a clause or a schedule to this Agreement and, references to a sub-clause shall be a reference to a sub-clause of the clause in which the reference appears;

## 1.6 the headings and sub-headings in this Agreement are for ease of reference only and shall not be taken into account in its construction or interpretation;

1.7 the following words and expressions have the meanings set out below:

* + 1. ‘**Call Off’** means the award of a contract under the relevant Framework for a package of work in relation to a Project ;

1.7.2 the **‘Framework(s)’** means one or more of the Frameworks from the YORhub suite of Framework Agreements (as listed in schedule 3); and

1.7.3 the **‘Project(s)’** means a project approved by the Council forCall Off by the Partnership Client from one of the YORhub suite of Framework Agreements

1.7.4 The **‘Fee’** means the cost to the Partnership Client for accessing the relevant Framework and any other agreed additional services as set out in the call-off approval letter in Schedule 2.

# 1.7.5 ‘Confidential Information’ means:

# 1.7.5.1 all data, information, drawings, specifications, documents and other data or information that the Council, a consultant or a Supplier may have imparted or, may from time to time impart, to the Partnership Client relating to the Council’s business, the Frameworks, any Call Off or otherwise and including any technical specifications and contractual information; and

1.7.5.2 all data, information, drawings, specifications, documents and other data or information that the Partnership Client may have imparted or, may from time to time impart, to the Council, a consultant or a Supplier relating to the Partnership Client’s business, the Frameworks any Call Off or otherwise and including any technical specifications and contractual information.

1.7.6 **‘Supplier** means a supplier appointed to one or more of the Frameworks by the Council.

### 2 Statutory powers

2.1 This Agreement is completed pursuant to the powers of the Council and the Partnership Client arising pursuant to the Local Authorities (Goods and Services) Act 1970, the Local Government Act 2003 and the Localism Act 2011 and all other enabling powers.

**3 Framework Access Conditions**

3.1 The Partnership Client shall only access the Framework to secure the delivery of Projects which have received the prior agreement of the Council.

3.2 Approval to use the YORhub suite of Framework Agreements is at the sole discretion of the Council which may be withdrawn at any time prior to the award of a Call-Off.

* 1. The Partnership Client shall satisfy itself and will continue to satisfy itself regarding all aspects of the YORhub suite of Framework Agreements including but not limited to:

3.3.1 the adequacy of the YORhub suite of Framework Agreements for the Partnership Client’s purposes;

3.3.2 compliance of the Framework with the EU procurement directives, the relevant Public Contracts Regulations, any other statutory or regulatory provision, the Partnership Client’s own procurement arrangements and requirements and the Partnership Client’s own funding arrangements and requirements.

3.3.3 the Call Off process including the selection and the appointment of the Supplier including the legal and financial status, technical capability and capacity, health and safety record, equal opportunities standards, records and systems and insurances of the Supplier;

3.3.4 all aspects of the contract documentation and any other documentation, including any documentation issued or made available by the Council.

3.4 Any Call Off by the Partnership Client shall be procured in accordance with the terms and conditions of the relevant Framework. This includes the selection process and the conditions of contract that apply to the individual Call Off.

* 1. In awarding a Call Off and managing the Project, the Partnership Client shall not act in any way that is discriminatory, improper or has the effect of distorting competition.
  2. The Partnership Client shall be the employer/client and shall be responsible for the day to day management of the Project in relation to each Call Off the Partnership Client makes under this Agreement.
  3. Any Call Off by the Partnership Client accessing the YORhub suite of Framework Agreements will use the contract forms as set out and permitted within the individual Framework conditions.
  4. The Partnership Client will provide to the Council such information as the Council requires in respect of the performance of the Supplier appointed under any particular Call Off so as to enable the Council to maintain its records relating to the Supplier’s performance. This will include the timely completion of performance reports (RAG reports) at quarterly intervals throughout the commission.
  5. The Partnership Client must document all dealings with the Supplier to ensure a clear and precise audit trail.
  6. The Partnership Client shall save harmless and fully indemnify the Council from and against any and all loss, damage, liability, claims, actions, costs and expenses whatsoever arising out of or in connection with this Agreement, the use by Partnership Client and / or it’s employee’s, servants, agents, contractors, sub-contractors or subsidiaries of the Framework or any Call Off or use by the Partnership Client of information provided by the Council;
     1. The Fee for accessing the YORhub suite of Framework Agreements and receiving the basic service from the Council is included within the Supplier’s rates and will be recovered by the Council from the Supplier. The Partnership Client shall pay the Council’s costs for any other agreed additional services provided pursuant to clause 4 of this Agreement at the rates or such other charge as set out in the call-off approval letter in Schedule 2;
     2. This Agreement does not impose any contractual obligation or liability on the Council and no warranty is given or implied that the Framework meets the requirements of the Partnership Client.
     3. The Council will supply to the Partnership Client full details of the selection process that must be followed in the selection of a Supplier and the award of a Call Off by granting access to the YORhub.net processes and procedures.
     4. The Partnership Client will have permission to access electronic copies of NEC3 and NEC4 contract documentation held on the YORhub.net secure network for Projects accessing the YORhub Frameworks only, when available and in accordance with the following provisions:

3.10.4.1 Permitted uses: the Partnership Client may:

* Search, view, retrieve and display the documentation.
* Print single or multiple copies of individual items taken from the documentation.
* Make electronic copies of individual items taken from the documentation for storage on the Partnership Clients machine only.
* Distribute single copies of individual items taken from the documentation in print or electronic form to other Partnership Clients only;

3.10.4.2 Prohibited uses: the Partnership Client shall not:

* remove or alter the authors’ names or affiliations or the publishers copyright notices or other means of identification or disclaimers as they appear in the documentation.
* systematically make print or electronic copies of multiple extracts of the documentation for any purpose other than as explicitly permitted under clause 3.10.4.1 above.
* provide or make available by electronic means to any third party a retained electronic copy of any part of the NEC3 or NEC4 contract documentation held on the YORhub.net secure network other than as permitted above.
* mount or distribute any part of the documentation on any electronic network, including but not limited to the Internet and the World Wide Web, other than the Secure YORhub.net secure network and as permitted above.
* without the publisher’s explicit written permission:
  + Use the whole or any part of the documentation for sale, reward or exploitation other than as expressly permitted by this Agreement.
  + Publish, distribute or make available the documentation, works based on the documentation or works which combine it with any other material, other than as permitted in this Agreement.
  + Alter, abridge, adapt or modify the documentation on a computer screen. For the avoidance of doubt, no alteration of the words or their order is permitted;
    1. The Partnership Client agrees to permit the Council to include details of the Call Off and Project and the Partnership Clients Logo(s) within publicity/marketing material including but not limited to websites, presentation/event supporting material and promotional publications. Where the Project has a site sign board and/or perimeter site hoardings the Partnership Client also agrees to the inclusion of promotional logos relevant to the framework agreement being accessed and as set out in the YORhub call off document templates. Where the Partnership Client uses their own call off document template they agree to include the YORhub hoarding and sign board requirements; and
    2. The Partnership Client agrees to apply the recommended tendering and lead-in periods to Call-Off Projects as set out below wherever possible:

|  |  |  |
| --- | --- | --- |
| **Procurement Route** | **Traditional (Contractor builds only)** | **D&B**  **Single Stage** |
| **Works contracts up to £1m** |  |  |
| Baseline tender period | 3-4 weeks | 4-6 weeks |
| Lead-in period | 2-3 weeks | 6-8 weeks |
| **Works contracts over £1m up to £10m** |  |  |
| Baseline tender period | 4-5 weeks | 5-6 weeks |
| Lead-in period | Min 4 weeks | 8 weeks |
| **Works contracts over £10m** |  |  |
| Baseline tender period | 4-6 weeks | 5-8 weeks |
| Lead-in period | Min 4 weeks | Min 8 weeks |

* + 1. The Partnership Client shall remain responsible for ensuring that the use of the Framework complies with any internal / external funding requirements. This includes situations where the Partnership Client uses a later version of a contract to those included when the Framework was established.

3.10.8 There is no obligation on the part of the Partnership Client to proceed with the award of a Call Off under the terms of this Agreement. It can withdraw at any time but in doing so it will be responsible for paying to the Council and, if appropriate, the Supplier, any Fees, costs or expenses incurred by them up to the point of withdrawal by the Partnership Client.

1. **Advice and Assistance**

4.1 The Council will:

4.2.1 provide advice and assistance to the Partnership Client as set out in **Schedule 1.** This includesadvice to the Partnership Client on the procurement, post contract advice and support in delivering the strategic aims of the Framework in relation to any Call Off under the terms of the Framework;

* + 1. provide any other advice and assistance in relation to a Call Off under the Framework as agreed between the parties as set out in the call-off approval letter as detailed in **Schedule 2** or other agreement in writing. Where required and agreed between the parties the Council will keep timesheets to evidence all charges for any additional services made pursuant to the terms of this Agreement;
    2. permit the Partnership Client to access electronic copies of NEC3 and NEC4 contract documents subject to any NEC copyright provisions and subject to the terms referred to in **clause 3.10.4** above.

## 4.3 Any costs due to the Council pursuant to this Agreement if not paid by the Partnership Client on the due date, shall be a debt recoverable by action and shall bear interest at 3% above the base lending rate of the Council’s bank from the due date until the date of payment (but excluding that date).

4.4 This Agreement will survive the termination of each Framework accessed for a period of 6 years.

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

**5 Confidential Information**

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

5.1.1 will receive and hold any Confidential Information in the strictest confidence subject to the provisions of **clauses 5.3, 5.4 & 5.5** whether the same came into the respective party’s possession before or after the date of this Agreement and, will use their best endeavours to take all security precautions necessary to ensure the safekeeping of any Confidential Information and to prevent it's unauthorised disclosure to third parties;

5.1.2 shall use such Confidential Information and all other data solely for the purposes of the Framework and all Call Offs made pursuant to them and that they shall not at any time during or any time after the completion expiry or termination of the Framework or any Call Offs, use the Confidential Information for the respective party’s own purposes or disclose the same whether directly or indirectly to any third party without the prior written consent of the other party;

5.1.3 shall not themselves or through any employees, servant, agent, contractor, sub-contractor or subsidiary sell or otherwise deal in any Confidential Information;

5.1.4 shall only make copies of any Confidential Information as strictly necessary for the operation of the Frameworks and Call Offs and, shall not copy or store the Confidential Information electronically outside of the respective party’s usual place of business;

5.1.5 shall ensure that their respective employees, servants, agents, contractors, sub-contractors and subsidiaries are only given access to any Confidential Information on a need to know basis for the purposes of dealing with the Frameworks and Call Offs and that those employees, servants, agents, contractors, sub-contractors and subsidiaries are informed of the confidential nature of the Confidential Information and are contractually bound to safeguard the Confidential Information;

5.1.6 shall maintain the safe custody of all Confidential Information and return it in the same condition as it was when first forwarded, save for any modification that may be required to ensure that it can be used on or in the party's systems and the party receiving the Confidential Information shall be liable for any loss or deterioration of it (save for normal wear);

5.1.7 shall, except as provided by **clause 5.1.6,** ensure that any such Confidential Information held in electronic form whilst in their possession shall maintain it’s integrity and the respective party shall prevent any corruption or loss of the same; and

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

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

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

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

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

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

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

5.4 The Parties to this Agreement acknowledge that they are subject to; the requirements of the Freedom of Information Act 2000 (FOIA), the Environmental Information Regulations, Data Protection Act 1998, Human Rights Act 1998, together with any subsequent re-enactments including the General Data Protection Regulation (EU)2016/679 and Data Protection Act 2018, codes of practice and best practice guidance issued by the Government and the enforcement agencies and both parties shall assist and cooperate with each other to enable both parties to comply with their Information disclosure obligations.

5.5 As part of their duties under the FOIA, either or both parties may be required to disclose information relating to this agreement or Call-Offs made under the Frameworks. Prior to releasing any information the party subject to the request for information will consult with the other party to discuss whether any information should not be disclosed and why.

**6 Severability**

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

## 7 Notices

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

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

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

**8 Entire understanding and waiver**

8.1 This Access and Confidentiality Agreement constitutes the entire understanding and agreements relating to access to the Frameworks and, save as expressly referred to or incorporated by reference, supersede all prior negotiation submissions or understandings.

8.2 No forbearance indulgence waiver or relaxation by any party shown to the other in respect of its obligations under this Agreement shall in any way affect, restrict or diminish the rights and powers of that party or operate or be deemed a waiver of any breach of this Agreement.

8.3 No waiver of any of the provisions of this Agreement shall operate as such nor be effective unless it is expressly stated to be a waiver and communicated in writing to the other party.

**9 No partnership**

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

**10 Contracts (Rights of Third Parties) Act 1999**

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

## 11 Law

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

**AS WITNESS** the Parties have signed this Agreement the day and year first before written.

|  |  |
| --- | --- |
| **SIGNED** on behalf of **[ insert name of Council\* ]** in the presence of:  Signature of witness:  …………………………………………  Full name  …………………………………………  Address:  …………………………………………  …………………………………………  Occupation:  ………………………………………… | )  ) ……………………………….\*  )  Full name  )  )...............................................  )  Address: )…………………………………  )  )………………………………….  Occupation:  )  )................................................  ) |
| **SIGNED** on behalf of **[ insert name of Partnership Client ]** in the presence of:  Signature of witness:  …………………………………………  Full name  …………………………………………  Address:  …………………………………………  …………………………………………  Occupation:  ………………………………………… | )  ) ……………………………….\*  )  Full name  )  )…………………………………  )  Address: )………………………………….  )  )………………………………….  Occupation:  )  )………………………………….  ) |

\*Signatory must have delegated authority to sign

**SCHEDULE 1**

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

The assistance offered is summarised as follows:

* Procurement advice relating to the proposed Call Off
* Post contract advice relating to clarification of the Framework terms and conditions only
* Performance measurement and management i.e. collection and summation of key performance indicators
* Provision of sample templates and advice in relation to the interpretation of these.
* Support in delivering the strategic aims of the Framework, these being
  + Employment & skills outputs
  + Sustainability
  + Supply chain engagement
  + Economic regeneration
  + BIM

Further guidance on the level of assistance provided can be found within the YORhub User Handbook available on the YORhub.net web-site.

**SCHEDULE 2**

**Access and Confidentiality Agreement Call-off Approval letter template**

|  |  |
| --- | --- |
| Address | **Our Ref:** Reference  **Enquiries to:** Name  **Date:** Date |

Dear Sir/Madam

# Project No - Project Name

This letter refers to the previously signed YORhub Access and Confidentiality Agreement between our organisations, dated………\*/ a copy of which is available on request\*.

This letter confirms that these terms and conditions apply to the above project and in this respect I would be grateful if you would enter details, sign and date where indicated below and return a copy of this letter to me at your earliest convenience.

*------------------------------------------------------------------------------------------------------------------------------------------------------------------*

We hereby agree that this call off project shall be in accordance with the terms and conditions of the YORhub Access and Confidentiality Agreement entered into between our organisations on [insert date].

*Clause for additional services only\**

In accordance with clause 3.10.1 of the YORhub Access and Confidentiality Agreement the charge for additional services as scheduled below is £………………

*Insert here Schedule of agreed additional services where relevant*

|  |  |
| --- | --- |
| **SIGNED** on behalf of …**[Insert Name] Partnership Client**:  Name: …………………………………………  Address: …………………………………………  …………………………………………  Date: ………………………………………… | …………………………………… |

Yours faithfully

Name

Job Title

Service Area

**[Insert Name]** Council

\*Delete as appropriate

**SCHEDULE 3**

**List of YORhub Suite of Framework Agreements**

|  |  |  |
| --- | --- | --- |
| Title | Contracting Authority\* | Applicable Date of Public Contract Regulations |
| YORbuild2 North | Scarborough BC | 2006 |
| YORbuild2 South | Rotherham MBC | 2006 |
| YORbuild2 West | Leeds CC | 2006 |
| YORbuild2 East | ERYC | 2006 |
| YORcivil2 North and East | ERYC | 2015 |
| YORcivil2 South and West | Sheffield CC | 2015 |
| YORconsult2 North and East | ERYC | 2015 |
| YORconsult2 South and West | Sheffield CC | 2015 |

\*Contracting Authorities:

ERYC – East Riding of Yorkshire Council

Sheffield CC – Sheffield City Council

Scarborough BC – Scarborough Borough Council

Rotherham MBC – Rotherham Metropolitan Borough Council

Leeds CC – Leeds City Council