



building schools for the future

# **PfS National Framework Template Document Academies Framework Confidentiality Agreement Document Status: Issued July 2007**

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<b>Title</b>	<b>PfS National Framework Template Document Academies Framework Confidentiality Agreement</b>
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Abstract	
The Confidentiality Agreement must be signed to enable the release of information relating to the PfS National Contractors Framework	

Version History				
Date	Editor	Version	Status	Reason for change
11 July 2007		3.0	Issued	Change from DfES to DCSF

This **CONFIDENTIALITY AGREEMENT** is made on

**BETWEEN:**

- (1) **Partnerships for Schools Limited** (company registered number 04650964) of Fifth Floor, 10 Great George Street, London SW1P 3AE (“PfS”); and
- (2) **[Framework User]** of ♦ (**Address and registered number of Framework User**) (the “Framework User”);

**BACKGROUND**

- A. The Department for Children, Schools and Families (**DCSF**) and Partnerships UK have set up Partnerships for Schools (**PfS**) to manage the delivery of the “Building School for the Future” (**BSF**) programme (the **BSF Programme**).
- B. The Academies Programme was introduced in March 2000. The DCSF asked Partnerships for Schools to take on delivery of Academies in March 2006, following the proposal made in June 2005 by the Secretary of State to more closely align investment in Academies with BSF. The DCSF retains responsibility for education matters and sponsor relations. Sponsors themselves will still be responsible for an Academy’s ethos, specialism, management and governance.
- C. On 29 March 2006 PfS procured the publication of a Contract Notice in the Official Journal of the European Union under reference 2006-S-063418 the purpose of which was to procure for the benefit of various parties a framework arrangement whereby selected building contractors would be appointed to a framework. 6 Panel Members have now been appointed to the Contractors Framework following the signature of the agreement between each of the Panel Members and PfS (hereinafter the “**Framework Agreement**”) with a term which will run for four years from 1 January 2007.
- D. [The Framework User has entered into a Memorandum of Understanding dated [ ] pursuant to its powers contained in section 2 of the Local Government Act 2000, section 14 of the Education Act 1996, section 22 of the Schools Standards and Framework Act 1998 and section 111 of the Local Government Act 1972 in order to enable investment in certain educational services and facilities for which it is responsible.<sup>1</sup>]
- E. During the procurement of the framework by PfS, the Panel Members made tender submissions to PfS (hereinafter “**Tender Submissions**”) which detailed the Contractor’s response to the Invitation to Tender. Contained within the Tender Submissions of each Panel Member was elemental pricing information for undertaking a model school (hereinafter the “**Elemental Rates**”).
- F. As part of the operation of the framework by Framework Users, the Framework User will undertake the Local Competition process as prescribed in the document entitled

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<sup>1</sup> This paragraph will need to be amended as appropriate depending on the status of the Framework User

Guidance for Framework Users on Local Competition issued by PfS (hereinafter the “**Framework Guidance**”) during which the Framework User will expect to receive fully priced detailed designs from the Panel Member and PfS is willing to disclose the Panel Member Information available to Framework User to assist the Framework User in its assessment of detailed design and pricing submissions by any Panel Members shortlisted in accordance with the Local Competition process in the Framework Guidance (hereinafter the “**Approved Purpose**”) The Framework Agreement required the Panel Members to use the Elemental Rates and the Panel Member Information provided to the Framework User is intended to allow the Framework User to confirm this.

G. This Confidentiality Agreement obliges the Framework User to keep the Panel Member Information confidential and establish the parties’ respective obligations and commitments to each other and to the BSF Programme at a national and local level.

## 1. Interpretation

1.1. In this Confidentiality Agreement, the following expressions have the following meaning:

“ <b>Approved Purpose</b> ”	means the assessment of detailed design and pricing submissions by any Panel Members shortlisted in accordance with the Local Competition process in the Framework Guidance
“ <b>Design and Build Contract</b> ”	means the Design and Build Contracts as set out in Schedule 4 of the Framework Agreement;
“ <b>DCSF</b> ”	means the Department for Children, Schools and Families;
“ <b>Framework Agreement</b> ”	means the agreements entered into between PfS and the Panel Members and procured pursuant to a notice published on 29 March 2006 in the Official Journal of the European Union under reference 2006-S-063418;
“ <b>Panel Members</b> ”	means the following contractors: Balfour Beatty Carillion Keir Laing O’Rourke Skanska Wilmott Dixon

<b>“Panel Member Information”</b>	means the Elemental Rates and other information provided by the Panel Member during the tender process for the PfS National Contractor Framework and disclosed (whether in writing, orally or by other means and whether directly or indirectly) by PfS or by any employee, director, officer, adviser, agent or other third party on behalf of PfS, to the Framework User or to any partner, employee, director, officer, adviser, agent or other third party on behalf of Framework User,
<b>“Restricted Procedure”</b>	means the Restricted Procedure as set out in the Public Contracts Regulations 2006.

1.2 In this Agreement, unless the context otherwise requires, words importing a gender include every gender, references to the singular include the plural and vice versa and words denoting persons include individuals and bodies corporate, governments, governmental bodies, authorities, agencies, partnerships, unincorporated associations and other bodies and vice versa.

### **Confidentiality Undertaking**

2 In consideration of the disclosure of the Panel Member Information by PfS to the Framework User, the Framework User agrees to hold the Panel Member Information in strict confidence, to use the same only for the Approved Purpose and not to disclose all or any part thereof to any other person except as provided in Clause 3 hereof without the prior written consent of PfS. The foregoing restrictions on disclosures shall not apply to Panel Member Information which:

- (i) is already in the possession of the Framework User, other than through prior disclosure by PfS;
- (ii) subsequently and lawfully comes into the Framework User’s possession without restriction on disclosure or an obligation of confidence;
- (iii) is independently developed by the Framework User;
- (iv) is now in the public domain or hereafter comes into the public domain other than by breach of this Agreement; or
- (v) is required to be disclosed by the Framework User under applicable law, order, decree, regulation or rule which is made or promulgated by a recognised court or authority of competent jurisdiction. (In which case, written notice shall be given to the PfS as soon as reasonably practicable prior to or after disclosure where such notice is lawful).

3 The Framework User may disclose the Panel Member Information to those members, employees, consultants, directors and officers of the Framework User or of its branches,

affiliates, professional advisers and bankers who reasonably require the same for the Approved Purpose (but not otherwise), each of whom shall have been under confidentiality obligations no less onerous than those contained within this agreement and shall be obliged to treat the same as confidential in the same manner and to the same extent as herein provided (which the Framework User agrees to procure).

- 4 Upon a written request from PfS to the Framework User, subject to Clause 6 and subject to any legal or regulatory requirements of the Framework User, the Framework User shall promptly retrieve all Panel Member Information disseminated to persons pursuant to Clause 3 hereof and still in existence and return to the PfS all such Panel Member Information disclosed hereunder to the Framework User and persons under Clause 3, including all copies thereof.
- 5 PfS makes no representations or warranties, express or implied, regarding the completeness, quality, or accuracy of the Panel Member Information and the Framework User hereby agrees that PfS shall have no responsibility or liability for any loss or damage or claim of whatever nature resulting from use of, or reliance on, the Panel Member Information.
- 6 The Framework User hereby undertakes to utilise the Panel Member Information solely for the Approved Purpose. The Framework User is further permitted to include the Framework Rates applicable to the Panel Member in the Design and Build Contract agreed with the relevant Panel Member.
- 7 For the avoidance of doubt, no announcement or disclosure shall be made with regard to this Agreement by the Framework User without the express prior written consent of PfS unless such announcement is required by any law, any order of a court of competent jurisdiction or any duly authorised and competent regulatory body and then only if PfS is first advised in writing of the nature of the requirement and details of the announcement.
- 8 No failure or delay in exercising any power or right under this Agreement or other relevant law or partial exercise thereof shall operate as a waiver of that right or power or preclude the further exercise of that or any other right power.
- 9 The Framework User shall indemnify and hold harmless PfS, its employees, officers from and against all liability for any loss that may arise from third party actions, claims or demands including costs, charges and expenses (including legal expenses on an indemnity basis) arising from the Framework User's breach of this Agreement.
- 10 The Framework User acknowledges that in all the circumstances, damages may not afford an adequate remedy to PfS in the event of breach of this Agreement. The Framework User recognises that PfS shall be entitled to seek injunctions, orders for specific performance or other equitable relief in the event of any actual or anticipated breach of the terms of this Agreement.
- 11 This Agreement shall be governed by and construed in accordance with the laws of England and Wales and the courts of England and Wales shall have exclusive jurisdiction to determine any dispute which may arise out of or in connection with this Confidentiality Agreement.

- 12 Each party shall be responsible for paying its own costs and expenses incurred in connection with the negotiation, preparation and execution of this Confidentiality Agreement.

Signed on behalf of Partnerships for Schools by:

Signed on behalf of the **[Framework User]** by:

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Chief Executive

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Chief Executive