

Dated:

(1) STOCKPORT HOMES Limited

-and-

(2) {Insert name of Contractor}

AGREEMENT

relating to the supply of  
a Hosted Health and Safety System

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## A. GENERAL PROVISIONS

### A1 **Definitions and Interpretation**

A1.1 In this Contract unless the context otherwise requires the following provisions shall have the meanings given to them below:

**“Annual Subscription”** means an option to rent a license for the Software over a period set out in the Order Schedule rather than purchase.

**“Annual Fee”** means the fees for the initial and subsequent periods of any Annual Subscription Agreement

**“Annual Support Fee”** means the fee detailed in the Order Schedule;

**“Approval”** means the written consent of the Client.

**“Client or Licensee”** means Stockport Homes Limited (Cornerstone, “ Edward Street, Stockport, SK1 3NQ. Company registration number 04521257)

**“Cloud Service”** means the service detailed in the Cloud Service Description;

**“Cloud Service Description”** means the Cloud service description accessible at Schedule 1, Section 6.0 which details the basis upon which the Software is accessible by the Licensee, in a Cloud environment (including any applicable service levels) such description being amended from time to time to reflect any Software Upgrades provided that the Cloud Service is never any less than that enjoyed by the Licensee at the Installation Date;

**“Commencement Date”** means the date of the Contract.

**“Commercially Sensitive Information”** means any information of a commercially sensitive nature comprised of information:

- (a) which is provided by the Contractor to the Client in confidence; and/or
- (b) which is provided by the Client to the Contractor in confidence; and/or
- (c) that constitutes a trade secret.

**“Confidential Information”** means any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information the disclosure of which would, or would be likely to, prejudice the commercial interests of any person, trade secrets, Intellectual Property Rights and know-how of either Party and all personal data and sensitive personal data within the meaning of the DPA. This includes the Contractor’s Software and Documentation. Confidential Information shall not include information which:

- (i) was public knowledge at the time of disclosure (otherwise than by breach of clause E2 (Confidential Information));
- (ii) was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;
- (iii) is received from a third party (who lawfully acquired it) without restriction as to its disclosure; or

- (iv) is independently developed without access to the Confidential Information.

**“Contract or Agreement”** means this written agreement between the Client and the Contractor consisting of these clauses and any attached Schedules.

**“Contracting Authorities”** means any Contracting Authority as defined as ‘Contracting Authorities’ in Regulation 2 of the Public Contracts Regulations 2015.

**“Contractor”** means {insert details of Contractor – name, address, company registration etc}

**“Contract Period”** means the period from the Commencement Date to:

- (a) the date of expiry set out in clause A2 (Initial Contract Period), or
- (b) following an extension pursuant to clause F8 (Extension of Initial Contract Period), the date of expiry of the extended period,

or such earlier date of termination or partial termination of the agreement in accordance with the Law or the provisions of the Contract.

**“Contract Price”** means the price (exclusive of any applicable VAT), payable to the Contractor by the Client under the Contract, as set out in the Pricing Schedule at Schedule 1, for the full and proper performance by the Contractor of its obligations under the Contract but before taking into account the effect of any adjustment of price in accordance with clause C4 (Price Adjustment on Extension of Initial Contract Period). This includes the aggregate of the Licence Fee, Cloud Service Fee, Annual Support Fee and the Professional Services Fee;

**“Daily Rate”** means the fee charged per working day as outlined in the Order Schedule;

**“Default”** means any breach of the obligations of the relevant Party (including but not limited to fundamental breach or breach of a fundamental term) or any other default, act, omission, negligence or negligent statement of the relevant Party or the Staff in connection with or in relation to the subject-matter of the Contract and in respect of which such Party is liable to the other.

**“Documentation”** means the System Overview Document, Service Level Description, Cloud Service Description, training course notes and other documents relating to the Software made available by the Contractor to the Licensee (as attached in Schedule 1)

**“DPA”** means the Data Protection Act 1998 and any subordinate legislation made under such Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.

**“Employee”** means employees of, and any other service providers to, the Licensee including, but not limited to, volunteers, stewards, contractors, agency staff, short term contract staff, office holders, interns, probationary staff and temporary employees (the term “Employees” shall be construed accordingly).

**“Environmental Information Regulations”** means the Environmental Information Regulations 2004 and any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations.

**“Equipment”** means the Contractor’s equipment, plant, materials and such other items supplied and used by the Contractor in the performance of its obligations under the Contract.

**“European Economic Area”** means the European single market made up of the European member states and Iceland, Liechtenstein and Norway

**“Fees Regulations”** means the Freedom of Information and Data Protection (Appropriate Limit and Fees) Regulations 2004.

**“FOIA”** means the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.

**“Force Majeure”** means any event or occurrence which is outside the reasonable control of the Party concerned and which is not attributable to any act or failure to take preventative action by that Party, including fire; flood; violent storm; pestilence; explosion; malicious damage; armed conflict; acts or threats of terrorism; nuclear, biological or chemical warfare; or any other disaster, natural or man-made, but excluding:

- (a) any industrial action occurring within the Contractor’s or any sub-contractor’s organisation; or
- (b) the failure by any sub-contractor to perform its obligations under any sub-contract.

**“Fraud”** means any offence under Laws creating offences in respect of fraudulent acts or at common law in respect of fraudulent acts in relation to the Contract.

**“Group”** ‘The Company, any subsidiary or any holding company from time to time of that company, and any subsidiary from time to time of a holding company of that company. Each company in a Group is member of the Group.

**“Good Industry Practice”** means standards, practices, methods and procedures conforming to the Law and the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in a similar type of undertaking under the same or similar circumstances.

**“Information”** has the meaning given under section 84 of the FOIA.

**“Initial Contract Period or License Period”** means the period from the Commencement Date to the date of expiry set out in clause A2 (Initial Contract Period), or such earlier date of termination of the Contract in accordance with the Law or the provisions of the Contract.

**“Input Material”** means all documents, information and materials provided by the Client relating to the Services including data, images, computer programs, logos, graphics, reports and specifications.

**“Installation”** installation of the Software (the terms “Install” and “Installed” shall be construed accordingly);

**“Installation Date”**: the date on which the Software has been Installed;

**“Intellectual Property Rights”** means patents, inventions, trade marks, service marks, logos, design rights (whether registerable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registerable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off.

**“Key Personnel”** means those persons named in the Specification as being key personnel.

**“Law”** means any applicable Act of Parliament, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, exercise of the royal prerogative, enforceable community right within the meaning of Section 2 of the European Communities Act 1972, regulatory policy, guidance or industry code, judgment of a relevant court of law, or directives or requirements or any Regulatory Body of which the Contractor is bound to comply.

**“License Fee”**: the fee detailed in the Order Schedule;

**“Monitoring Schedule”** means the Schedule containing details of the monitoring arrangements.

**“Month”** means calendar month.

**“Notification”** means notification given in writing or via e-mail to the Licensee or by publication on the Website (at Contractor’s election);

**“Order Schedule”** means the order schedule detailing the services to be provided under this contract attached at Schedule 1 section 1, of these terms and conditions;

**“Party”** means a party to the Contract.

**“Premises”** means the location where the Services are to be supplied, as set out in the Specification.

**“Pricing Schedule”** means the Schedule containing details of the Contract Price.

**“Project Plan”** means the document attached at Schedule 1, Section 4.1 which details the methodology used by the Contractor in the Installation and delivery of the Software through Professional Services

**“Property”** means the property, other than real property, issued or made available to the Contractor by the Client in connection with the Contract.

**“Quality Standards”** means the quality standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardization or other reputable or equivalent body, (and their successor bodies) that a skilled and experienced operator in the same type of industry or business sector as the Contractor would reasonably and ordinarily be expected to comply with, and as may be further detailed in the Specification Schedule.

**“Receipt”** means the physical or electronic arrival of the invoice at the address of the Client detailed at clause A5.3 or at any other address given by the Client to the Contractor for the submission of invoices.

**“Regulatory Bodies”** means those government departments and regulatory, statutory and other entities, committees, ombudsmen and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in the Contract or any other affairs of the Client and “Regulatory Body” shall be construed accordingly.

**“Replacement Contractor”** means any third party service provider appointed by the Client to supply any services which are substantially similar to any of the Services and which the Client receives in substitution for any of the Services following the expiry, termination or partial termination of the Contract.

**“Request for Information”** shall have the meaning set out in FOIA or the Environmental Information Regulations as relevant (where the meaning set out for the term “request” shall apply).

**“Relevant Convictions”** means a conviction that is relevant to the nature of the Services or as listed by the Client and/or relevant to the work of the Client

**“Schedule”** means any schedule attached to, and forming part of, the Contract.

**“Service Level Description”** means the document attached at Schedule 1 Section 5.0 which details the standards of service to be achieved by the Contractor in supplying the Annual Support Service (including any applicable service levels) such description being amended from time to time to reflect any Software Upgrades provided that the Annual Support Service is never any less than that enjoyed by the Licensee at the Installation Date;

**“Services”** means the services to be supplied as specified in the specification at Schedule 1 including any service associated with the Software including, installation, training, general consultancy and data migration, but excluding the Annual Support Service and the Cloud Service if applicable.

**“Software”** means the object code of the computer program indicated as being ordered in the Order Schedule including any Software Upgrades made during the term of the Annual Support Service.

**“Software Upgrade”** means any new version of, or enhancement, addition or patch to the Software.

**“Staff”** means all persons employed by the Contractor to perform its obligations under the Contract together with the Contractor’s servants, agents, suppliers and sub-contractors used in the performance of its obligations under the Contract.

**“Staff Vetting Procedure”** means the Client’s procedures for the vetting of personnel and as adv

**“System Overview Document”** means the document accessible at Schedule 1, Section 1,0 which details the functionality of the Software, such document being amended from time to time to reflect any Software Upgrades provided that the functionality of the Software is never any less than that enjoyed by the Licensee at the Installation Date;

“**Tender**” means the document(s) submitted by the Contractor to the Client in response to the Client’s invitation to suppliers for formal offers to supply it with the Services.

“**Variation**” has the meaning given to it in clause F3.1 (Variation).

“**VAT**” means value added tax in accordance with the provisions of the Value Added Tax Act 1994.

“**Working Day**” means a day (other than a Saturday or Sunday) on which banks are open for general business in the City of London.

A1.2 The interpretation and construction of this Contract shall be subject to the following provisions:

- (a) words importing the singular meaning include where the context so admits the plural meaning and vice versa;
- (b) words importing the masculine include the feminine and the neuter;
- (c) reference to a clause is a reference to the whole of that clause unless stated otherwise;
- (d) reference to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent enactment, modification, order, regulation or instrument as subsequently amended or re-enacted;
- (e) reference to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;
- (f) the words “include”, “includes” and “including” are to be construed as if they were immediately followed by the words “without limitation”; and
- (g) headings are included in the Contract for ease of reference only and shall not affect the interpretation or construction of the Contract.

A2 **Initial Contract Period**

The Contract shall take effect on the Commencement Date and shall expire after 60 months, unless it is otherwise terminated in accordance with the provisions of the Contract, or otherwise lawfully terminated, or extended under clause F8 (Extension of Initial Contract Period).

A3 **Contractor’s Status**

At all times during the Contract Period the Contractor shall be an independent contractor and nothing in the Contract shall create a contract of employment, a relationship of agency or partnership or a joint venture between the Parties and accordingly neither Party shall be authorised to act in the name of, or on behalf of, or

otherwise bind the other Party save as expressly permitted by the terms of the Contract.

A4 **Client's Obligations**

Save as otherwise expressly provided, the obligations of the Client under the Contract are obligations of the Client in its capacity as a contracting counterparty and nothing in the Contract shall operate as an obligation upon, or in any other way fetter or constrain the Client in any other capacity, nor shall the exercise by the Client of its duties and powers in any other capacity lead to any liability under the Contract (howsoever arising) on the part of the Client to the Contractor.

A5 **Notices**

A5.1 Except as otherwise expressly provided within the Contract, no notice or other communication from one Party to the other shall have any validity under the Contract unless made in writing by or on behalf of the Party concerned.

A5.2 Any notice or other communication which is to be given by either Party to the other shall be given by letter (sent by hand, first class post, recorded delivery or special delivery), or by facsimile transmission or electronic mail (confirmed in either case by letter). Such letters shall be addressed to the other Party in the manner referred to in clause A5.3. Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given 2 Working Days after the day on which the letter was posted, or 4 hours, in the case of electronic mail or facsimile transmission or sooner where the other Party acknowledges receipt of such letters, facsimile transmission or item of electronic mail.

A5.3 For the purposes of clause A5.2, the address of each Party shall be as set out in the Contract.

A5.4 Either Party may change its address for service by serving a notice in accordance with this clause.

A6 **Mistakes in Information**

The Contractor shall be responsible for the accuracy of all drawings, documentation and information supplied to the Client by the Contractor in connection with the supply of the Services and shall pay the Client any extra costs occasioned by any discrepancies, errors or omissions therein.

A7 **Conflicts of Interest**

A7.1 The Contractor shall take appropriate steps to ensure that neither the Contractor nor any Staff is placed in a position where, in the reasonable opinion of the Client, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Contractor and the duties owed to the Client under the

provisions of the Contract. The Contractor will disclose to the Client full particulars of any such conflict of interest which may arise.

- A7.2 The Client reserves the right to terminate the Contract immediately by notice in writing and/or to take such other steps it deems necessary where, in the reasonable opinion of the Client, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Contractor and the duties owed to the Client under the provisions of the Contract. The actions of the Client pursuant to this clause shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Client.

## **B. SUPPLY OF SERVICES**

### **B1 The Services**

- B1.1 The Contractor shall supply the Services during the Contract Period in accordance with the Client's requirements as set out in the Specification (at Schedule 1) and the provisions of the Contract in consideration of the payment of the Contract Price. The Client may inspect and examine the manner in which the Contractor supplies the Services at the Premises during normal business hours on reasonable notice.
- B1.2 If the Client informs the Contractor in writing that the Client reasonably believes that any part of the Services does not meet the requirements of the Contract or differ in any way from those requirements, and this is other than as a result of a Default by the Client, the Contractor shall at its own expense re-schedule and carry out the Services in accordance with the requirements of the Contract within such reasonable time as may be specified by the Client.
- B1.3 Subject to the Client providing written consent in accordance with clause B2.2 (Provision and Removal of Equipment), timely supply of the Services shall be of the essence of the Contract, including in relation to commencing the supply of the Services within the time agreed or on a specified date.

### **B2 Provision and Removal of Equipment**

- B2.1 The Contractor shall provide all the Equipment necessary for the supply of the Services.
- B2.2 The Contractor shall not deliver any Equipment nor begin any work on the Premises without obtaining prior Approval.
- B2.3 All Equipment brought onto the Premises shall be at the Contractor's own risk and the Client shall have no liability for any loss of or damage to any Equipment unless the Contractor is able to demonstrate that such loss or damage was caused or contributed to by the Client's Default. The Contractor shall provide for the haulage or

carriage thereof to the Premises and the removal of Equipment when no longer required at its sole cost. Unless otherwise agreed between the Parties, Equipment brought onto the Premises will remain the property of the Contractor.

- B2.4 The Contractor shall maintain all items of Equipment within the Premises in a safe, serviceable and clean condition.
- B2.5 The Contractor shall, at the Client's written request, at its own expense and as soon as reasonably practicable:
- (a) remove from the Premises any Equipment which in the reasonable opinion of the Client is either hazardous, noxious or not in accordance with the Contract; and
  - (b) replace such item with a suitable substitute item of Equipment.
- B2.6 On completion of the Services the Contractor shall remove the Equipment together with any other materials used by the Contractor to supply the Services and shall leave the Premises in a clean, safe and tidy condition. The Contractor is solely responsible for making good any damage to the Premises or any objects contained thereon, other than fair wear and tear, which is caused by the Contractor or any Staff.

**B3 Manner of Carrying Out the Services**

- B3.1 The Contractor shall at all times comply with the Quality Standards, and where applicable shall maintain accreditation with the relevant Quality Standards authorisation body. To the extent that the standard of Services has not been specified in the Contract, the Contractor shall agree the relevant standard of the Services with the Client prior to the supply of the Services and, in any event, the Contractor shall perform its obligations under the Contract in accordance with the Law and Good Industry Practice.
- B3.2 The Contractor shall ensure that all Staff supplying the Services shall do so with all due skill, care and diligence and shall possess such qualifications, skills and experience as are necessary for the proper supply of the Services.

**B4 Key Personnel**

- B4.1 The Contractor acknowledges that the Key Personnel are essential to the proper provision of the Services to the Client.
- B4.2 The Key Personnel shall not be released from supplying the Services without the agreement of the Client, except by reason of long-term sickness, maternity leave, paternity leave or termination of employment and other extenuating circumstances.
- B4.3 Any replacements to the Key Personnel shall be subject to the agreement of the Client. Such replacements shall be of at least equal status or of equivalent experience and skills to the Key Personnel being replaced and be suitable for the responsibilities of that person in relation to the Services.

B4.4 The Client shall not unreasonably withhold its agreement under clauses B4.2 or B4.3. Such agreement shall be conditional on appropriate arrangements being made by the Contractor to minimise any adverse impact on the Contract which could be caused by a change in Key Personnel.

**B5 Contractor's Staff**

B5.1 The Client may, by written notice to the Contractor, refuse to admit onto, or withdraw permission to remain on, the Premises:

(a) any member of the Staff; or

(b) any person employed or engaged by any member of the Staff,

whose admission or continued presence would, in the reasonable opinion of the Client, be undesirable.

B5.2 At the Client's written request, the Contractor shall provide a list of the names and addresses of all persons who may require admission in connection with the Contract to the Premises, specifying the capacities in which they are concerned with the Contract and giving such other particulars as the Client may reasonably request.

B5.3 The Contractor's Staff, engaged within the boundaries of the Premises, shall comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force from time to time for the conduct of personnel when at or outside the Premises.

B5.4 The Contractor shall comply with Staff Vetting Procedures in respect of all persons employed or engaged in the provision of the Services. The Contractor confirms that all persons employed or engaged by the Contractor were vetted and recruited on a basis that is equivalent to and no less strict than the Staff Vetting Procedures.

B5.5 The Client may require the Contractor to ensure that any person employed in the provision of the Services has undertaken a Disclosure and Barring Service check as per the Staff Vetting Procedures. The Contractor shall ensure that no person who discloses that he/she has a Relevant Conviction, or is found by the Contractor to have a Relevant Conviction (whether as a result of a police check or through the Disclosure and Barring Service check or otherwise) is employed or engaged in the provision of any part of the Services.

B5.6 If the Contractor fails to comply with clause B5.2 within 2 Months of the date of the request and in the reasonable opinion of the Client, such failure may be prejudicial to the interests of the Client, then the Client may terminate the Contract, provided always that such termination shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Client.

B5.7 The decision of the Client as to whether any person is to be refused access to the Premises and as to whether the Contractor has failed to comply with clause B5.2 shall be final and conclusive.

**B6 Inspection of Premises**

Save as the Client may otherwise direct, the Contractor is deemed to have inspected the Premises before submitting its Tender and to have made appropriate enquiries so as to be satisfied in relation to all matters connected with the performance of its obligations under the Contract.

**B7 Licence to occupy Premises**

- B7.1 Any land or Premises made available from time to time to the Contractor by the Client in connection with the Contract, shall be made available to the Contractor on a non-exclusive licence basis free of charge and shall be used by the Contractor solely for the purpose of performing its obligations under the Contract. The Contractor shall have the use of such land or Premises as licensee and shall vacate the same on completion, termination or abandonment of the Contract.
- B7.2 The Contractor shall limit access to the land or Premises to such Staff as is necessary to enable it to perform its obligations under the Contract and the Contractor shall co-operate (and ensure that its Staff co-operate) with such other persons working concurrently on such land or Premises as the Client may reasonably request.
- B7.3 Should the Contractor require modifications to the Premises, such modifications shall be subject to prior Approval and shall be carried out by the Client at the Contractor's expense. The Client shall undertake approved modification work without undue delay. Ownership of such modifications shall rest with the Client.
- B7.4 The Contractor shall (and shall ensure that its Staff shall) observe and comply with such rules and regulations as may be in force at any time for the use of such Premises as determined by the Client, and the Contractor shall pay for the cost of making good any damage caused by the Contractor or its Staff other than fair wear and tear. For the avoidance of doubt, damage includes damage to the fabric of the buildings, plant, fixed equipment or fittings therein.
- B7.5 The Parties agree that there is no intention on the part of the Client to create a tenancy of any nature whatsoever in favour of the Contractor or its Staff and that no such tenancy has or shall come into being and, notwithstanding any rights granted pursuant to the Contract, the Client retains the right at any time to use any premises owned or occupied by it in any manner it sees fit.

**B8 Property**

- B8.1 Where the Client issues Property free of charge to the Contractor such Property shall be and remain the property of the Client and the Contractor irrevocably licences the Client and its agents to enter upon any premises of the Contractor during normal business hours on reasonable notice to recover any such Property. The Contractor shall not in any circumstances have a lien or any other interest on the Property and the Contractor shall at all times possess the Property as fiduciary agent and bailee of the Client. The Contractor shall take all reasonable steps to ensure that the title of the Client to the Property and the exclusion of any such lien or other interest are brought to the notice of all sub-contractors and other appropriate persons and shall, at the Client's request, store the Property separately and ensure that it is clearly identifiable as belonging to the Client.

- B8.2 The Property shall be deemed to be in good condition when received by or on behalf of the Contractor unless the Contractor notifies the Client otherwise within 5 Working Days of receipt.
- B8.3 The Contractor shall maintain the Property in good order and condition (excluding fair wear and tear), and shall use the Property solely in connection with the Contract and for no other purpose without prior Approval.
- B8.4 The Contractor shall ensure the security of all the Property whilst in its possession, either on the Premises or elsewhere during the supply of the Services, in accordance with the Client's reasonable security requirements as required from time to time.
- B8.5 The Contractor shall be liable for all loss of, or damage to, the Property (excluding fair wear and tear), unless such loss or damage was caused by the Client's Default. The Contractor shall inform the Client within [2] Working Days of becoming aware of any defects appearing in, or losses or damage occurring to, the Property.

**B9 Offers of Employment**

For the duration of the Contract and for a period of 12 months thereafter neither the Client nor the Contractor shall employ or offer employment to any of the other Party's staff who have been associated with the procurement and/or the contract management of the Services without that other Party's prior written consent.

**C PAYMENT AND CONTRACT PRICE**

**C1 Contract Price**

- C1.1 In consideration of the Contractor's performance of its obligations under the Contract, the Client shall pay the Contract Price in accordance with clause C2 (Payment and VAT) and as per the Order Schedule and the Pricing Schedule in Schedule 1.
- C1.2 The Client shall, in addition to the Contract Price and following Receipt of a valid VAT invoice, pay the Contractor a sum equal to the VAT chargeable on the value of the Services supplied in accordance with the Contract.

**C2 Payment and VAT**

- C2.1 The Client shall pay all sums due to the Contractor within 30 days of Receipt of a valid invoice, submitted monthly in arrears as stated in the Order Schedule.
- C2.2 The Contractor shall ensure that each invoice contains all appropriate references and a detailed breakdown of the Services supplied and that it is supported by any other documentation reasonably required by the Client to substantiate the invoice.
- C2.3 Where the Contractor enters into a sub-contract with a supplier or contractor for the purpose of performing its obligations under the Contract, it shall ensure that a provision is included in such a sub-contract which requires payment to be made of all sums due by the Contractor to the sub-contractor within a specified period not exceeding 30 days from the receipt of a valid invoice.

- C2.4 The Contractor shall add VAT to the Contract Price at the prevailing rate as applicable.
- C2.5 The Contractor shall indemnify the Client on a continuing basis against any liability, including any interest, penalties or costs incurred, which is levied, demanded or assessed on the Client at any time in respect of the Contractor's failure to account for or to pay any VAT relating to payments made to the Contractor under the Contract. Any amounts due under this clause C2.5 shall be paid by the Contractor to the Client not less than 5 Working Days before the date upon which the tax or other liability is payable by the Client.
- C2.6 The Contractor shall not suspend the supply of the Services unless the Contractor is entitled to terminate the Contract under clause H2.3 (Termination on Default) for failure to pay undisputed sums of money. Interest shall be payable by the Client on the late payment of any undisputed sums of money properly invoiced in accordance with the Late Payment of Commercial Debts (Interest) Act 1998.

**C3 Recovery of Sums Due**

- C3.1 Wherever under the Contract any sum of money is recoverable from or payable by the Contractor (including any sum which the Contractor is liable to pay to the Client in respect of any breach of the Contract), the Client may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Contractor under the Contract or under any other agreement or contract with the Client.
- C3.2 Any overpayment by either Party, whether of the Contract Price or of VAT or otherwise, shall be a sum of money recoverable by the Party who made the overpayment from the Party in receipt of the overpayment.
- C3.3 The Contractor shall make all payments due to the Client without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Contractor has a valid court order requiring an amount equal to such deduction to be paid by the Client to the Contractor.
- C3.4 All payments due shall be made within a reasonable time unless otherwise specified in the Contract, in cleared funds, to such bank or building society account as the recipient Party may from time to time direct.

**C4 Price adjustment on extension of the Initial Contract Period**

- C4.1 The Contract Price shall apply for the Initial Contract Period. In the event that the Client agrees to extend the Initial Contract Period pursuant to clause F8 (Extension of Initial Contract Period) the Client shall, in the 6 month period prior to the expiry of the Initial Contract Period, enter into good faith negotiations with the Contractor (for a period of not more than 30 Working Days) to agree a variation in the Contract Price.
- C4.2 If the Parties are unable to agree a variation in the Contract Price in accordance with clause C4.1, the Contract shall terminate at the end of the Initial Contract Period.
- C4.3 If a variation in the Contract Price is agreed between the Client and the Contractor, the revised Contract Price will take effect from the first day of any period of extension

and shall apply during such period of extension unless otherwise agreed between the Parties.

C4.4 Any increase in the Contract Price pursuant to clause C4.1 shall not exceed the percentage change in the Office of National Statistics' Consumer Prices Index (CPI) (or another such index specified in the Pricing Schedule) between the Commencement Date and the date 6 Months before the end of the Initial Contract Period.

C5 **Euro**

C5.1 Any requirement of Law to account for the Services in Euro, (or to prepare for such accounting) instead of and/or in addition to sterling, shall be implemented by the Contractor free of charge to the Client.

C5.2 The Client shall provide all reasonable assistance to facilitate compliance with clause C5.1 by the Contractor.

**D. STATUTORY OBLIGATIONS AND REGULATIONS**

D1 **Prevention of Corruption**

D1.1 The Contractor shall not offer or give, or agree to give, to the Client or any other public body or any person employed by or on behalf of the Client or any other public body any gift or consideration of any kind as an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of the Contract or any other contract with the Client or any other public body, or for showing or refraining from showing favour or disfavour to any person in relation to the Contract or any such contract.

D1.2 The Contractor warrants that it has not paid commission or agreed to pay commission to the Client or any other public body or any person employed by or on behalf of the Client or any other public body in connection with the Contract.

D1.3 If the Contractor, its Staff or anyone acting on the Contractor's behalf, engages in conduct prohibited by clauses D1.1 or D1.2, the Client may:

- (a) terminate the Contract and recover from the Contractor the amount of any loss suffered by the Client resulting from the termination, including the cost reasonably incurred by the Client of making other arrangements for the supply of the Services and any additional expenditure incurred by the Client throughout the remainder of the Contract Period; or
- (b) recover in full from the Contractor any other loss sustained by the Client in consequence of any breach of those clauses.

## **D2 Prevention of Fraud**

- D2.1 The Contractor shall take all reasonable steps, in accordance with Good Industry Practice, to prevent Fraud by Staff and the Contractor (including its shareholders, members, directors) in connection with the receipt of monies from the Client.
- D2.2 The Contractor shall notify the Client immediately if it has reason to suspect that any Fraud has occurred or is occurring or is likely to occur.
- D2.3 If the Contractor or its Staff commits Fraud in relation to this or any other contract with the Crown (including the Client) the Client may:
- (a) terminate the Contract and recover from the Contractor the amount of any loss suffered by the Client resulting from the termination, including the cost reasonably incurred by the Client of making other arrangements for the supply of the Services and any additional expenditure incurred by the Client throughout the remainder of the Contract Period; or
  - (b) recover in full from the Contractor any other loss sustained by the Client in consequence of any breach of this clause.

## **D3 Discrimination**

- D3.1 The Contractor shall not unlawfully discriminate either directly or indirectly on such grounds as race, colour, ethnic or national origin, disability, sex or sexual orientation, religion or belief, or age and without prejudice to the generality of the foregoing the Contractor shall not unlawfully discriminate within the meaning and scope of the Equality Act 2010, the Human Rights Act 1998 or other relevant or equivalent legislation, or any statutory modification or re-enactment thereof.
- D3.2 The Contractor shall take all reasonable steps to secure the observance of clause D3.1 by all Staff.

## **D4 The Contracts (Rights of Third Parties) Act 1999**

A person who is not a Party to the Contract shall have no right to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of both Parties. This clause does not affect any right or remedy of any person which exists or is available apart from the Contracts (Rights of Third Parties) Act 1999 and does not apply to the Crown.

## **D5 Environmental Requirements**

The Contractor shall, when working on the Premises, perform its obligations under the Contract in accordance with the Client's environmental policy, which is to conserve energy, water, wood, paper and other resources, reduce waste and phase out the use of ozone depleting substances and minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment.

## **D6 Health and Safety**

- D6.1 The Contractor shall promptly notify the Client of any health and safety hazards which may arise in connection with the performance of its obligations under the Contract. The Client shall promptly notify the Contractor of any health and safety hazards which may exist or arise at the Premises and which may affect the Contractor in the performance of its obligations under the Contract.
- D6.2 While on the Premises, the Contractor shall comply with any health and safety measures implemented by the Client in respect of Staff and other persons working there.
- D6.3 The Contractor shall notify the Client immediately in the event of any incident occurring in the performance of its obligations under the Contract on the Premises where that incident causes any personal injury or damage to property which could give rise to personal injury.
- D6.4 The Contractor shall comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to Staff and other persons working on the Premises in the performance of its obligations under the Contract.
- D6.5 The Contractor shall ensure that its health and safety policy statement (as required by the Health and Safety at Work etc Act 1974) is made available to the Client on request.

## **D7 Bribery**

- D7.1 The Contractor shall:
- (a) comply with all applicable laws, statutes, regulations relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 and not engage in any activity, practice or conduct which would constitute an offence under the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;
  - (b) comply with the Client's corporate fraud and anti-bribery policies;
  - (c) promptly report to the Client any request or demand which if complied with would amount to a breach of either this Agreement or Client's corporate fraud and anti-bribery policies;
  - (d) ensure that any person associated with it who is performing services [or providing goods] in connection with this Agreement does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed in this clause.
- 7.1 Breach of this clause shall be deemed a material breach of this Agreement entitling the Client to terminate it forthwith

## **E PROTECTION OF INFORMATION**

**E1 Data Protection Act**

- E1.1 For the purposes of this Clause E1, the terms “Data Controller”, “Data Processor”, “Data Subject”, “Personal Data”, “Process” and “Processing” shall have the meaning prescribed under the DPA.
- E1.2 The Contractor shall (and shall ensure that all of its Staff) comply with any notification requirements under the DPA and both Parties will duly observe all their obligations under the DPA which arise in connection with the Contract.
- E1.3 Notwithstanding the general obligation in clause E1.2, where the Contractor is Processing Personal Data (as defined by the DPA) , the Contractor Shall:
- (a) Process the Personal Data only in accordance with instructions from the Client (which may be specific instructions or instructions of a general nature) as set out in this Contract or as otherwise notified by the Contracting Authority;
  - (b) comply with all applicable laws;
  - (c) Process the Personal Data only to the extent; and in such manner as is necessary for the provision of the Contractor’s obligations under this Contract or as is required by Law or any Regulatory Body;
  - (d) implement appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful Processing and against accidental loss, destruction, damage, alteration or disclosure. These measures shall be appropriate to the harm which might result from any unauthorised or unlawful Processing, accidental loss, destruction or damage to the Personal Data and having regard to the nature of the Personal Data which is to be protected;
  - (e) take reasonable steps to ensure the reliability of its staff and agents who may have access to the Personal Data;
  - (f) obtain prior written consent from the Contracting Authority in order to transfer the Personal Data to any sub-contractor for the provision of the Services;
  - (g) not cause or permit the Personal Data to be transferred outside of the European Economic Area without the prior consent of the Client;
  - (h) ensure that all staff and agents required to access the Personal Data are informed of the confidential nature of the Personal Data and comply with the obligations set out in this clause E1;
  - (i) ensure that none of the staff and agents publish disclose or divulge any of the Personal Data to any third parties unless directed in writing to do so by the Client;
  - (j) not disclose Personal Data to any third parties in any circumstances other than with the written consent of the Client or in compliance with a legal obligation imposed upon the Client; and
- E1.4 notify the Client (within two Working Days) if it receives:

- (a) a request from a Data Subject to have access to that person's Personal Data;  
or
  - (b) a complaint or request relating to the Client's obligations under the DPA;
- E1.5 The provision of this Clause E1 shall apply during the Contract Period and indefinitely after its expiry.
- E1.6 The Contractor will indemnify the Client in respect of any monetary penalty issued by the Information Commissioner's Office and any other claim, loss, liability or costs incurred arising as a result of a data breach or as a result of any negligence or breach of statute or common law in processing the information disclosed to it. This indemnity will be subject to a cap of 150% of the first 12 months fees.
- E1.7 The Client acknowledges and agrees that:
- (a) the Personal Data will be stored within the UK in order to carry out any of the services contemplated in this Agreement and the Contractor's other obligations under this agreement;
  - (b) the Client is entitled to transfer the relevant Personal Data to the Contractor so that the Contractor may lawfully use, process and transfer the personal data in accordance with this Contract on the Client's behalf;
  - (c) the relevant third parties have been informed of, and have given their consent to, such use, processing, and transfer as required by all applicable data protection legislation;
- E1.8 The Contractor may:
- (a) use the Client's details and any information it obtains from other sources to provide the Client with goods and services, for administration and customer services, to analyse the Clients' purchasing preferences and to ensure that the content, services and direct marketing that it offers to the Client are tailored to its needs and interests. The Contractor may keep its information for a reasonable period for these purposes. The Contractor may also use such information to write, phone or contact it by other means to offer products and services or promotions.
  - (b) record telephone calls to improve its service to and assist with training. A warning that a call may be recorded will be audibly provided at the outset of any such call. The Client has a right at any time to stop the Contractor from contacting it for direct marketing by giving it notice in writing.

## E2 **Confidential Information**

- E2.1 Except to the extent set out in this clause or where disclosure is expressly permitted elsewhere in this Contract, each Party shall:
- (a) treat the other party's Confidential Information as confidential[ and safeguard it accordingly]; and
  - (b) not disclose the other party's Confidential Information to any other person without the owner's prior written consent.

- E2.2 Clause E2.1 shall not apply to the extent that:
- (a) such disclosure is a requirement of Law placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA or the Environmental Information Regulations pursuant to clause E4 (Freedom of Information);
  - (b) such information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
  - (c) such information was obtained from a third party without obligation of confidentiality;
  - (d) such information was already in the public domain at the time of disclosure otherwise than by a breach of this Contract; or
  - (e) it is independently developed without access to the other Party's Confidential Information.
- E2.3 The Contractor may only disclose the Client's Confidential Information to the Staff who are directly involved in the provision of the Services and who need to know the information, and shall ensure that such Staff are aware of and shall comply with these obligations as to confidentiality.
- E2.4 The Contractor shall not, and shall procure that the Staff do not, use any of the Client's Confidential Information received otherwise than for the purposes of this Agreement.
- E2.5 At the written request of the Client, the Contractor shall procure that those members of the Staff identified in the Client's notice signs a confidentiality undertaking prior to commencing any work in accordance with this Agreement.
- E2.6 Nothing in this Agreement shall prevent the Client from disclosing the Contractor's Confidential Information:
- (a) to any Crown Body or any other Contracting Authority. All Crown Bodies or Contracting Authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to other Crown Bodies or other Contracting Authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Crown Body or any Contracting Authority;
  - (b) to any consultant, contractor or other person engaged by the Client or any person conducting an Office of Government Commerce gateway review;
  - (c) for the purpose of the examination and certification of the Client's accounts; or
  - (d) for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Client has used its resources.
- E2.7 The Client shall use all reasonable endeavours to ensure that any government department, Contracting Authority, employee, third party or sub-contractor to whom

the Contractor's Confidential Information is disclosed pursuant to clause E2.6 is made aware of the Client's obligations of confidentiality.

E2.8 Nothing in this clause E2 shall prevent either party from using any techniques, ideas or know-how gained during the performance of the Agreement in the course of its normal business to the extent that this use does not result in a disclosure of the other party's Confidential Information or an infringement of Intellectual Property Rights.

### **E3 Freedom of Information**

E3.1 The Contractor acknowledges that the Client is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with the Client to enable the Client to comply with its Information disclosure obligations.

E3.2 The Contractor shall procure that any sub-contractors shall transfer to the Client all Requests for Information that it receives as soon as practicable and in any event within two Working Days of receiving a Request for Information;

- (a) provide the Client with a copy of all Information in its possession, or power in the form that the Client requires within five Working Days (or such other period as the Client may specify) of the Client's request; and
- (b) provide all necessary assistance as reasonably requested by the Client to enable the Client to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or Regulation 5 of the Environmental Information Regulations.

E3.3 The Client shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Agreement or any other agreement whether the Commercially Sensitive Information and/or any other Information is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations

E3.4 In no event shall the Contractor respond directly to a Request for Information unless expressly authorised to do so by the Client.

E3.5 The Contractor acknowledges that (notwithstanding the provisions of Clause E4) the Client may, acting in accordance with the Secretary of State for Constitutional Affairs Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the Freedom of Information Act 2000 ("the Code"), be obliged under the FOIA, or the Environmental Information Regulations to disclose information concerning the Contractor or the Services in certain circumstances:

- (a) without consulting the Contractor; or
- (b) following consultation with the Contractor and having taken their views into account;

provided always that where E4.5(a) applies the Client shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the

Contractor advanced notice, or failing that, to draw the disclosure to the Contractor's attention after any such disclosure.

E3.6 The Contractor shall ensure that all Information is retained for disclosure and shall permit the Client to inspect such records as requested from time to time.

E3.7 The Client shall allow time for the Contractor to make representation as to any exemption they believe applies to the information that has been supplied and will take such representation into the consideration of the exemption and, where applicable, the public interest test.

#### **E4 Publicity, Media and Official Enquiries**

E4.1 Without prejudice to the Client's obligations under the FOIA, neither Party shall make any press announcement or publicise the Contract or any part thereof in any way, except with the written consent of the other Party.

E4.2 Both Parties shall take reasonable steps to ensure that their servants, employees, agents, sub-contractors, suppliers, professional advisors and consultants comply with clause E5.1.

#### **E5 Security**

E5.1 The Client shall be responsible for maintaining the security of the Premises in accordance with its standard security requirements. The Contractor shall comply with all security requirements of the Client while on the Premises, and shall ensure that all Staff comply with such requirements.

E5.2 The Client shall provide the Contractor upon request copies of its written security procedures and shall afford the Contractor upon request with an opportunity to inspect its physical security arrangements.

#### **E6 Intellectual Property Rights**

E6.1 The Intellectual Property Rights in the Software and Documentation are and shall remain the property of the Contractor and the Client acknowledges that it shall gain no title right or interest in the Software or Documentation by virtue of this Contract other than the non-exclusive licences granted to it by the Contractor.

E6.2 The Client shall only make such back up or other copies of the Software and the Documentation as are reasonable for the use of the Software in accordance with this Contract but shall not otherwise be entitled to copy them.

E6.3 The terms of this Contract apply to all copies made of the Software and the Documentation as it applies to the original copies of them as supplied by the Contractor and all copies of the Software and the Documentation are the property of the Contractor on loan to the Client for the Contract Term.

E6.4 On termination of this Agreement for any reason all copies of the Software and the Documentation shall be returned immediately to the Contractor at the expense of the

Client or the Client shall provide a certificate signed by a director or other officer of the Client confirming that:

- (a) all copies of and reference to the Software have been deleted from any and all computer held files and/or storage;
- (b) the Software has not been loaded or accessed since the date of termination of this Agreement;
- (c) all programs written in the Software have been deleted from any and all computer held files and/or storage and that no such programs have been in existence or use since the date of termination of this Agreement; and
- (d) the Software and Documentation have been irretrievably erased or destroyed and cannot be referred to or accessed in any way.

E6.5 The Contractor warrants that the Software and the Documentation should not infringe the Intellectual Property Rights of any third party.

E6.6 Subject always to Clauses E2 and E6.7, the Contractor shall indemnify the Client against any damages (including costs) that may be awarded or agreed to be paid in respect of any claim by a third party that the Software infringes any third party's Intellectual Property Rights in the United Kingdom, provided that the Licensee:

- (a) promptly notifies the contractor of any such claim;
- (b) gives the Contractor the sole conduct of the defence and settlement of any such claim and at no time admits liability; and
- (c) acts in accordance with the reasonable instructions of the Contractor and gives the Contractor all such assistance as it may reasonably require to defend or settle such claim.

E6.7 The indemnity in Clause E6.6 does not extend to claims arising directly or indirectly from modifications, upgrades or other amendments made to the Software by or on behalf of the Client .

E6.8 If the Software infringes any Intellectual Property Rights of any third party in the United Kingdom, or such infringement is alleged, the Contractor may procure the right of the Client to continue to use the Software or to modify or replace the Software so as to stop such infringement or allegation provided that the Software as modified or replaced substantially meets the requirements of the Documentation. If, after the Contractor has used its reasonable endeavours, the foregoing has not been achieved, the Contractor may end this Agreement immediately by giving notice to the Client.

E6.9 The Contractor acknowledges that it shall not acquire ownership of any of the Intellectual Property Rights in the Client's Input Materials.

## E7 **Audit**

The Contractor shall keep and maintain until 6 years after the end of the Contract Period, or as long a period as may be agreed between the Parties, full and accurate records of the Contract including the Services supplied under it, all expenditure reimbursed by the Client, and all payments made by the Client. The Contractor shall

on request afford the Client or the Client's representatives such access to those records as may be requested by the Client in connection with the Contract.

## **E8 Transparency**

- E8.1 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA the text of this Agreement, and any Schedules to this Agreement, is not Confidential Information. The Authority shall be responsible for determining in its absolute discretion whether any part of the Agreement or its Schedules is exempt from disclosure in accordance with the provisions of the FOIA
- E8.2 Notwithstanding any other term of this Agreement, the Contractor hereby gives confirms that, subject to prior written approval being obtained, the Client may publish this Agreement and its Schedules in its entirety, including from time to time agreed changes to the Agreement, to the general public in whatever form the Client decides.

## **F. CONTROL OF THE CONTRACT**

### **F1 Transfer and Sub-Contracting**

- F1.1 Except where F1.4 and 5 applies, the Contractor shall not assign, sub-contract or in any other way dispose of the Contract or any part of it without prior Approval. Sub-contracting any part of the Contract shall not relieve the Contractor of any of its obligations or duties under the Contract. Notwithstanding the above, the Contractor may assign the Agreement, without the Client's prior written consent, in the following circumstances:
- (a) As part of a general assignment to a successor-in-interest who is not a direct competitor of the non-assigning party;
  - (b) To a member of its Group.
- F1.2 The Contractor shall be responsible for the acts and omissions of its sub-contractors as though they are its own.
- F1.3 Where the Client has consented to the placing of sub-contracts, copies of each sub-contract shall, at the request of the Client, be sent by the Contractor to the Client as soon as reasonably practicable.
- F1.4 Notwithstanding clause F1.1, the Contractor may assign to a third party ("the Assignee") the right to receive payment of the Contract Price or any part thereof due to the Contractor under this Contract (including any interest which the Client incurs under clause C2.6). Any assignment under this clause F1.4 shall be subject to:
- (a) reduction of any sums in respect of which the Client exercises its right of recovery under clause C3 (Recovery of Sums Due);
  - (b) all related rights of the Client under the Contract in relation to the recovery of sums due but unpaid; and
  - (c) the Client receiving notification under both clauses F1.5 and F1.6.

- F1.5 In the event that the Contractor assigns the right to receive the Contract price under clause F1.4, the Contractor or the Assignee shall notify the Client in writing of the assignment and the date upon which the assignment becomes effective.
- F1.6 The Contractor shall ensure that the Assignee notifies the Client of the Assignee's contact information and bank account details to which the Client shall make payment.
- F1.7 The provisions of clause C2 (Payment and VAT) shall continue to apply in all other respects after the assignment and shall not be amended without the Approval of the Client.
- F1.8 Subject to clause F1.10, the Client may assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof to:
- (a) any Contracting Authority; or
  - (b) any other body established by the Crown or under statute in order substantially to perform any of the functions that had previously been performed by the Client; or
  - (c) any private sector body which substantially performs the functions of the Client,
- provided that any such assignment, novation or other disposal shall not increase the burden of the Contractor's obligations under the Contract.
- F1.9 Any change in the legal status of the Client such that it ceases to be a Contracting Authority shall not, subject to clause F1.8, affect the validity of the Contract. In such circumstances, the Contract shall bind and inure to the benefit of any successor body to the Client.
- F1.10 If the rights and obligations under the Contract are assigned, novated or otherwise disposed of pursuant to clause F1.6 to a body which is not a Contracting Authority or if there is a change in the legal status of the Client such that it ceases to be a Contracting Authority (in the remainder of this clause both such bodies being referred to as the "Transferee"):
- (a) the rights of termination of the Client in clauses H1 (Termination on change of control and insolvency) and H2 (Termination on Default) shall be available to the Contractor in the event of respectively, the bankruptcy or insolvency, or Default of the Transferee; and
  - (b) the Transferee shall only be able to assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof with the prior consent in writing of the Contractor.
- F1.11 The Client may disclose to any Transferee any Confidential Information of the Contractor which relates to the performance of the Contractor's obligations under the Contract. In such circumstances the Client shall authorise the Transferee to use such Confidential Information only for purposes relating to the performance of the Contractor's obligations under the Contract and for no other purpose and shall take all reasonable steps to ensure that the Transferee gives a confidentiality undertaking in relation to such Confidential Information.
- F1.12 Each Party shall at its own cost and expense carry out, or use all reasonable endeavours to ensure the carrying out of, whatever further actions (including the

execution of further documents) the other Party reasonably requires from time to time for the purpose of giving that other party the full benefit of the provisions of the Contract.

## **F2 Waiver**

- F2.1 The failure of either Party to insist upon strict performance of any provision of the Contract, or the failure of either Party to exercise, or any delay in exercising, any right or remedy shall not constitute a waiver of that right or remedy and shall not cause a diminution of the obligations established by the Contract.
- F2.2 No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with clause A6 (Notices).
- F2.3 A waiver of any right or remedy arising from a breach of the Contract shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of the Contract.

## **F3 Variation**

- F3.1 Subject to the provisions of this clause F3, the Client may request a variation to the Services provided that such variation does not amount to a material change to the Services. Such a change is hereinafter called a "Variation".
- F3.2 The Client may request a Variation by notifying the Contractor in writing of the "Variation" and giving the Contractor sufficient information to assess the extent of the Variation and consider whether any change to the Contract Price is required in order to implement the Variation. The Client shall specify a time limit within which the Contractor shall respond to the request for a Variation. Such time limits shall be reasonable having regard to the nature of the Variation. If the Contractor accepts the Variation it shall confirm the same in writing.
- F3.3 In the event that the Contractor is unable to accept the Variation to the Specification or where the Parties are unable to agree a change to the Contract Price, the Client may;
- (a) allow the Contractor to fulfil its obligations under the Contract without the variation to the Specification;
  - (b) terminate the Contract with immediate effect, except where the Contractor has already delivered all or part of the Services or where the Contractor can show evidence of substantial work being carried out to fulfil the requirements of the Specification; and in such case the Parties shall attempt to agree upon a resolution to the matter. Where a resolution cannot be reached, the matter shall be dealt with under the Dispute Resolution procedure detailed at Clause 12.

## **F4 Severability**

If any provision of the Contract is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the

remainder of the provisions of the Contract shall continue in full force and effect as if the Contract had been executed with the invalid, illegal or unenforceable provision eliminated.

**F5 Remedies in the event of inadequate performance**

- F5.1 Where a complaint is received about the standard of Services or about the manner in which any Services have been supplied or work has been performed or about the materials or procedures used or about any other matter connected with the performance of the Contractor's obligations under the Contract, then the Client shall notify the Contractor, and where considered appropriate by the Client, investigate the complaint. The Client may, in its sole discretion, uphold the complaint and take further action in accordance with clause H2 (Termination on Default) of the Contract.
- F5.2 In the event that the Client is of the reasonable opinion that there has been a material breach of the Contract by the Contractor, then the Client may, without prejudice to its rights under clause H2 (Termination on Default), do any of the following:
- (a) without terminating the Contract, itself supply or procure the supply of all or part of the Services until such time as the Contractor shall have demonstrated to the reasonable satisfaction of the Client that the Contractor will once more be able to supply all or such part of the Services in accordance with the Contract;
  - (b) without terminating the whole of the Contract, terminate the Contract in respect of part of the Services only (whereupon a corresponding reduction in the Contract Price shall be made) and thereafter itself supply or procure a third party to supply such part of the Services; and/or
  - (c) terminate, in accordance with clause H2 (Termination on Default), the whole of the Contract.
- F5.3 Without prejudice to its right under clause C3 (Recovery of Sums Due), the Client may charge the Contractor for any costs reasonably incurred and any reasonable administration costs in respect of the supply of any part of the Services by the Client or a third party to the extent that such costs exceed the payment which would otherwise have been payable to the Contractor for such part of the Services and provided that the Client uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Services.
- F5.4 If the Contractor fails to supply any of the Services in accordance with the provisions of the Contract and such failure is capable of remedy, then the Client shall instruct the Contractor to remedy the failure and the Contractor shall at its own cost and expense remedy such failure (and any damage resulting from such failure) within 10 Working Days or such other period of time as the Client may direct.
- F5.5 In the event that:
- (a) the Contractor fails to comply with clause F5.4 above and the failure is materially adverse to the interests of the Client or prevents the Client from discharging a statutory duty; or

(b) the Contractor persistently fails to comply with clause F5.4 above, the Client may terminate the Contract with immediate effect by notice in writing.

**F6 Remedies Cumulative**

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

**F7 Monitoring of Contract Performance**

The Contractor shall comply with the monitoring arrangements set out in the Specification including, but not limited to, providing such data and information as the Contractor may be required to produce under the Contract.

**F8 Extension of Initial Contract Period**

Subject to clause C4. (Price adjustment on extension of the Initial Contract Period), the Client may, by giving written notice to the Contractor not less than 3 Months prior to the last day of the Initial Contract Period, extend the Contract for a further period of up to 24 Month(s). The provisions of the Contract will apply (subject to any Variation or adjustment to the Contract Price pursuant to clause C4 (Price adjustment on extension of the Initial Contract Period)) throughout any such extended period.

**F9 Entire Agreement**

F9.1 The Contract constitutes the entire agreement between the Parties in respect of the matters dealt with therein. The Contract supersedes all prior negotiations between the Parties and all representations and undertakings made by one Party to the other, whether written or oral, except that this clause shall not exclude liability in respect of any Fraud or fraudulent misrepresentation.

F9.2 In the event of, and only to the extent of, any conflict between the clauses of the Contract, any document referred to in those clauses and the Schedules, the conflict shall be resolved in accordance with the following order of precedence:

- (a) the Schedules; and clauses of the Contract;
- (b) Clauses of the Contract;; and
- (c) any other document referred to in the clauses of the Contract.

**G LIABILITIES**

**G1 Liability, Indemnity and Insurance**

- G1.1 Neither Party excludes or limits liability to the other Party for:
- (a) death or personal injury caused by its negligence; or
  - (b) fraud; or
  - (c) fraudulent misrepresentation; or
  - (d) any breach of any obligations implied by Section 2 of the Supply of Goods and Services Act 1982.
- G1.2 The Contractor's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of the Contract shall be limited to 110% of the Total Fees paid to **{insert the contractors name}** in the first 12 months of this Agreement
- The Contractor shall not in relation to this Agreement, be liable to the Licensee (in each case whether they are direct, indirect or consequential) for each of the following:
- (i) loss of profit;
  - (ii) loss of business;
  - (iii) loss of anticipated savings;
  - (iv) pure economic loss;
  - (v) depletion of goodwill;
  - (vi) costs, damages and expenses.
- G1.3 The Contractor shall not be responsible for any injury, loss, damage, cost or expense if and to the extent that it is caused by the negligence or wilful misconduct of the Client or by breach by the Client of its obligations under the Contract.
- G1.4 The Contractor shall not exclude liability for additional operational, administrative costs and/or expenses or wasted expenditure resulting from the direct Default of the Contractor.
- G1.5 The Contractor shall effect and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover in respect of all risks which may be incurred by the Contractor, arising out of the Contractor's performance of its obligations under the Contract, including death or personal injury, loss of or damage to property or any other loss. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Contractor. Such insurance shall be maintained for the duration of the Contract Period and for a minimum of 6 (six) years following the expiration or earlier termination of the Contract.
- G1.6 The Contractor shall hold employer's liability insurance of not less than £5million in respect of Staff in accordance with any legal requirement from time to time in force.

- G1.7 The Contractor shall give the Client, on request, copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.
- G1.8 If, for whatever reason, the Contractor fails to give effect to and maintain the insurances required by the provisions of the Contract the Client may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Contractor.
- G1.9 The provisions of any insurance or the amount of cover shall not relieve the Contractor of any liabilities under the Contract. It shall be the responsibility of the Contractor to determine the amount of insurance cover that will be adequate to enable the Contractor to satisfy any liability referred to in clause G1.2.

## **G2 Professional Indemnity**

The Contractor shall effect and maintain appropriate professional indemnity insurance cover during the Contract Period and shall ensure that all agents, professional consultants and sub-contractors involved in the supply of the Services do the same. To comply with its obligations under this clause and as a minimum, the Contractor shall ensure professional indemnity insurance held by the Contractor and by any agent, sub-contractor or consultant involved in the supply of the Services has a limit of indemnity of not less than £10,000,000 for each individual claim. Such insurance shall be maintained for a minimum of 6 (six) years following the expiration or earlier termination of the Contract.

## **G3 Warranties and Representations**

The Contractor warrants and represents that:

- (a) it has full capacity and authority and all necessary consents (including where its procedures so require, the consent of its parent company) to enter into and perform its obligations under the Contract and that the Contract is executed by a duly authorised representative of the Contractor;
- (b) in entering the Contract it has not committed any Fraud;
- (c) as at the Commencement Date, all information contained in the Tender remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Client prior to execution of the Contract;
- (d) no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets which will or might have a material adverse effect on its ability to perform its obligations under the Contract;

- (e) it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under the Contract;
- (f) no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Contractor or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Contractor's assets or revenue;
- (g) it owns, has obtained or is able to obtain, valid licences for all Intellectual Property Rights that are necessary for the performance of its obligations under the Contract;
- (h) in the three (3) years prior to the date of the Contract:
  - i) it has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts;
  - ii) it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established; and
  - iii) it has not done or omitted to do anything which could have a material adverse effect on its assets, financial condition or position as an ongoing business concern or its ability to fulfil its obligations under the Contract.
  - iv) The Contractor warrants that the Software will conform in all material respects to the System Overview Document for a period of 90 days from the Installation Date or for so long as the Annual Support Service is being performed (whichever the longer) ("Warranty Period").
- (j) If, within the Warranty Period, the Client notifies the Contractor in writing of any defect or fault in the Software in consequence of which it fails to conform in all material respects to the System Overview Document, subject to the limitations set out in the rest of this clause, the Contractor shall, at its option repair or replace (at its own cost and expense) the Software so that it has the functionality detailed in the System Overview Document.
- (k) Specifically excluded from the warranty set out in this clause are faults which arise from:
  - i) misuse, incorrect use of or damage to the Software as compared to the instructions given by the Contractor or that which is set out in the System Overview Document;
  - ii) failure to maintain the necessary environmental conditions for use of the Software;
  - iii) use of the Software in combination with any equipment or software not provided by the Contractor, or otherwise contemplated by the Technical Pre-Requisites Document;

- iv) any modifications to the Software or its interaction with other software or hardware not undertaken by the Contractor;
  - v) relocation or installation of the Software by any person other than the Contractor or a person acting under the Contractor's instructions;
  - vi) any breach of the Clients obligations under this Agreement.
- (l) As the Software is provided in conjunction with the Cloud Service, given the inherent nature of the internet, the Contractor does not warrant that the use of the Software will be uninterrupted or error free.

## **H DEFAULT, DISRUPTION AND TERMINATION**

### **H1 Termination on insolvency and change of control**

- H1.1 The Client may terminate the Contract with immediate effect by notice in writing where the Contractor is a company and in respect of the Contractor:
- (a) a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors; or
  - (b) a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation); or
  - (c) a petition is presented for its winding up (which is not dismissed within 14 days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to section 98 of the Insolvency Act 1986; or
  - (d) a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or
  - (e) an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given; or
  - (f) it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986; or
  - (g) being a "small company" within the meaning of the Companies Act 2006, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or
  - (h) any event similar to those listed in H1.1(a)-(g) occurs under the law of any other jurisdiction.
- H1.2 The Contractor shall notify the Client immediately if the Contractor undergoes a change of control within the meaning of the Corporation Tax Act 2010 ("change of

control"). The Client may terminate the Contract by notice in writing with immediate effect within six months of:

- (a) being notified that a change of control has occurred; or
- (b) where no notification has been made, the date that the Client becomes aware of the change of control,

but shall not be permitted to terminate where an Approval was granted prior to the change of control.

## **H2 Termination on Default**

H2.1 The Client may terminate the Contract by written notice to the Contractor if the Contractor commits a Default and if:

- (a) the Contractor has not remedied the Default within 25 Working Days, or such other period as may be specified by the Client, after issue of a written notice specifying the Default and requesting it to be remedied; or
- (b) the Default is not, capable of remedy; or
- (c) the Default is a material breach of the Contract.

H2.2 In the event that through any Default of the Contractor, data transmitted or processed in connection with the Contract is either lost or sufficiently degraded as to be unusable, the Contractor shall be liable for the cost of reconstitution of that data and shall reimburse the Client in respect of any charge levied for its transmission and any other costs charged in connection with such Default.

H2.3 If the Client fails to pay the Contractor undisputed sums of money when due, the Contractor shall notify the Client in writing of such failure to pay. If the Client fails to pay such undisputed sums within 90 Working Days of the date of such written notice, the Contractor may terminate the Contract in writing with immediate effect, save that such right of termination shall not apply where the failure to pay is due to the Client exercising its rights under clauses C3.1 (Recovery of Sums Due).

## **H3 Break**

H3.1 Subject to circumstances outside of the Client's control, the Client shall have the right to terminate the Contract at any time by giving 3 Months' written notice to the Contractor.

## **H4 Consequences of Expiry or Termination**

H4.1 Where the Client terminates the Contract under clause H2 (Termination on Default) and then makes other arrangements for the supply of Services, the Client may recover from the Contractor the cost reasonably incurred of making those other arrangements and any additional expenditure incurred by the Client throughout the remainder of the Contract Period. The Client shall take all reasonable steps to mitigate such additional expenditure. Where the Contract is terminated under clause H2 (Termination on Default), no further payments shall be payable by the Client to the Contractor (for Services supplied by the Contractor prior to termination and in

accordance with the Contract but where the payment has yet to be made by the Client), until the Client has established the final cost of making the other arrangements envisaged under this clause.

H4.2 Subject to clause G1, where the Client terminates the Contract under clause H3 (Break), the Client shall indemnify the Contractor against any commitments, liabilities or expenditure which represent an unavoidable direct loss to the Contractor by reason of the termination of the Contract, provided that the Contractor takes all reasonable steps to mitigate such loss. Where the Contractor holds insurance, the Client shall only indemnify the Contractor for those unavoidable direct costs that are not covered by the insurance available. The Contractor shall submit a fully itemised and costed list of unavoidable direct loss which it is seeking to recover from the Client, with supporting evidence, of losses reasonably and actually incurred by the Contractor as a result of termination under clause H3 (Break).

H4.3 The Client shall not be liable under clause H4.2 to pay any sum which:

- (a) was claimable under insurance held by the Contractor, and the Contractor has failed to make a claim on its insurance, or has failed to make a claim in accordance with the procedural requirements of the insurance policy;
- (b) when added to any sums paid or due to the Contractor under the Contract, exceeds the total sum that would have been payable to the Contractor if the Contract had not been terminated prior to the expiry of the Contract Period; or
- (c) is a claim by the Contractor for loss of profit, due to early termination of the Contract.

H4.4 Save as otherwise expressly provided in the Contract:

- (a) termination or expiry of the Contract shall be without prejudice to any rights, remedies or obligations accrued under the Contract prior to termination or expiration and nothing in the Contract shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry; and
- (b) termination of the Contract shall not affect the continuing rights, remedies or obligations of the Client or the Contractor under clauses C2 (Payment and VAT), C3 (Recovery of Sums Due), D1 (Prevention of Fraud), E1 (Data Protection Act), E2 (Confidential Information), E3 (Freedom of Information), E6 (Intellectual Property Rights), E7 (Audit), F6 (Remedies Cumulative), G1 (Liability, Indemnity and Insurance), G2 (Professional Indemnity), H4 (Consequences of Expiry or Termination), H6 (Recovery upon Termination) and I1 (Governing Law and Jurisdiction).

## H5 **Disruption**

H5.1 The Contractor shall take reasonable care to ensure that in the performance of its obligations under the Contract it does not disrupt the operations of the Client, its employees or any other contractor employed by the Client.

H5.2 The Contractor shall immediately inform the Client of any actual or potential industrial action, whether such action be by their own employees or others, which affects or might affect its ability at any time to perform its obligations under the Contract.

- H5.3 In the event of industrial action by the Staff, the Contractor shall seek Approval to its proposals to continue to perform its obligations under the Contract.
- H5.4 If the Contractor's proposals referred to in clause H5.3 are considered insufficient or unacceptable by the Client acting reasonably, then the Contract may be terminated with immediate effect by the Client by notice in writing.
- H5.5 If the Contractor is temporarily unable to fulfil the requirements of the Contract owing to disruption of normal business of the Client, the Contractor may request a reasonable allowance of time and in addition, the Client will reimburse any additional expense reasonably incurred by the Contractor as a direct result of such disruption.

## **H6 Recovery upon Termination**

- H6.1 On the termination of the Contract for any reason, the Contractor shall:
- (a) Immediately return to the Client (where applicable) all Confidential Information, Personal Data and IP Materials in its possession or in the possession or under the control of any permitted suppliers or sub-contractors, which were obtained or produced in the course of providing the Services;
  - (b) Immediately deliver to the Client all Property (where applicable) (including materials, documents, information and access keys) provided to the Contractor under clause B11. Such property shall be handed back in good working order (allowance shall be made for reasonable wear and tear);
  - (c) assist and co-operate with the Client to ensure an orderly transition of the provision of the Services to the Replacement Contractor and/or the completion of any work in progress.
  - (d) promptly provide all information concerning the provision of the Services which may reasonably be requested by the Client for the purposes of adequately understanding the manner in which the Services have been provided or for the purpose of allowing the Client or the Replacement Contractor to conduct due diligence.
- H6.2 If the Contractor fails to comply with clause H6.1 (a) and (b), the Client may recover possession thereof and the Contractor grants a licence to the Client or its appointed agents to enter (for the purposes of such recovery) any premises of the Contractor or its permitted suppliers or sub-contractors where any such items may be held.
- H6.3 Where the end of the Contract Period arises due to the Contractor's Default, the Contractor shall provide all assistance under clause H6(c) and (d) free of charge. Otherwise, the Client shall pay the Contractor's reasonable costs of providing the assistance and the Contractor shall take all reasonable steps to mitigate such costs.

## **H7 Force Majeure**

- H7.1 Neither Party shall be liable to the other Party for any delay in performing, or failure to perform, its obligations under the Contract (other than a payment of money) to the extent that such delay or failure is a result of Force Majeure. Notwithstanding the foregoing, each Party shall use all reasonable endeavours to continue to perform its obligations under the Contract for the duration of such Force Majeure. However, if such Force Majeure prevents either Party from performing its material obligations

under the Contract for a period in excess of 6 Months, either Party may terminate the Contract with immediate effect by notice in writing.

- H7.2 Any failure or delay by the Contractor in performing its obligations under the Contract which results from any failure or delay by an agent, sub-contractor or supplier shall be regarded as due to Force Majeure only if that agent, sub-contractor or supplier is itself impeded by Force Majeure from complying with an obligation to the Contractor.
- H7.3 If either Party becomes aware of Force Majeure which gives rise to, or is likely to give rise to, any failure or delay on its part as described in clause H7.1 it shall immediately notify the other by the most expeditious method then available and shall inform the other of the period for which it is estimated that such failure or delay shall continue.

## **I DISPUTES AND LAW**

### **I1 Governing Law and Jurisdiction**

Subject to the provisions of clause I2, the Client and the Contractor accept the exclusive jurisdiction of the English courts and agree that the Contract and all non-contractual obligations and other matters arising from or connected with it are to be governed and construed according to English Law.

### **I2 Dispute Resolution**

- I2.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Contract within 20 Working Days of either Party notifying the other of the dispute and such efforts shall involve the escalation of the dispute to relevant director (or equivalent) of each Party.
- I2.2 Nothing in this dispute resolution procedure shall prevent the Parties from seeking from any court of competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.
- I2.3 If the dispute cannot be resolved by the Parties pursuant to clause I2.1 the Parties shall refer it to mediation pursuant to the procedure set out in clause I2.5 unless (a) the Client considers that the dispute is not suitable for resolution by mediation; or (b) the Contractor does not agree to mediation.
- I2.4 The obligations of the Parties under the Contract shall not cease, or be suspended or delayed by the reference of a dispute to mediation (or arbitration) and the Contractor and the Staff shall comply fully with the requirements of the Contract at all times.
- I2.5 The procedure for mediation and consequential provisions relating to mediation are as follows:
- (a) a neutral adviser or mediator (the "Mediator") shall be chosen by agreement between the Parties or, if they are unable to agree upon a Mediator within 10 Working Days after a request by one Party to the other or if the Mediator agreed upon is unable or unwilling to act, either Party shall within 10 Working Days from the date of the proposal to appoint a Mediator or within 10 Working Days of notice to either Party that he is unable or unwilling to act, apply to the

Centre for Effective Dispute Resolution (CEDR) 70 Fleet Street London EC4Y 1EU to appoint a Mediator.

- (b) The Parties shall within 10 Working Days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate, the Parties may at any stage seek assistance from CEDR to provide guidance on a suitable procedure.
- (c) Unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings.
- (d) If the Parties reach agreement on the resolution of the dispute, the agreement shall be recorded in writing and shall be binding on the Parties once it is signed by their duly authorised representatives.
- (e) If the Parties fail to reach agreement in the structured negotiations within 60 Working Days of the Mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to the Courts.

12.6 Subject to clause 12.2, the Parties shall not institute court proceedings until the procedures set out in clauses 12.1 and 12.3 have been completed save that:

- (a) The Client may at any time before court proceedings are commenced, serve a notice on the Contractor requiring the dispute to be referred to and resolved by arbitration in accordance with clause 12.7.
- (b) If the Contractor intends to commence court proceedings, it shall serve written notice on the Client of its intentions and the Client shall have 21 days following receipt of such notice to serve a reply on the Contractor requiring the dispute to be referred to and resolved by arbitration in accordance with clause 12.7.
- (c) The Contractor may request by notice in writing to the Client that any dispute be referred and resolved by arbitration in accordance with clause 12.7, to which the Client may consent as it sees fit.

12.7 In the event that any arbitration proceedings are commenced pursuant to clause 12.6:

- (a) The arbitration shall be governed by the provisions of the Arbitration Act 1996;
- (b) The Client shall give a written notice of arbitration to the Contractor (the "Arbitration Notice") stating:
  - (i) that the dispute is referred to arbitration; and
  - (ii) providing details of the issues to be resolved;
- (c) The CEDR procedural rules in force at the date that the dispute was referred to arbitration in accordance with 12.7(b) shall be applied and are deemed to

be incorporated by reference to the Contract and the decision of the arbitrator shall be binding on the Parties in the absence of any material failure to comply with such rules;

- (d) The tribunal shall consist of a sole arbitrator to be agreed by the Parties;
- (e) If the Parties fail to agree the appointment of the arbitrator within 10 days of the Arbitration Notice being issued by the Client under clause 12.7 (b) or if the person appointed is unable or unwilling to act, the arbitrator shall be appointed by the CEDR;
- (f) The arbitration proceedings shall take place in Manchester and in the English language; and
- (g) The arbitration proceedings shall be governed by, and interpreted in accordance with, English law.

IN WITNESS of which this Agreement has been duly executed by the parties.

SIGNED for and on behalf of

SIGNED for and on behalf of

Stockport Homes Limited

{insert name of contractor}

Signature.....

Signature.....

Name .....

Name.....

Position .....

Position.....

## **Schedule 1: The Services**

### **1.0 Licence and Documentation**

- 1.1 In consideration for payment by The Client of the Licence Fee, the Contractor hereby grants to the Client a perpetual, non-exclusive, non-transferable, non sub-licensable right and licence to:
- (a) use the Documentation; and
  - (b) Install and allow a number of users as per the Order Schedule to access and use the Software.
- 1.2 As the Client has chosen to receive the Software on an 'Annual Subscription' basis (as recorded in the Order Schedule), the licence referred to in clause A4.1 shall be applicable only for the Licence Period.
- 1.3 The Software and Documentation is to be used by the Client for its own internal purposes. Save as expressly set out in this Agreement the Client shall not use the Software on behalf of any third party or operate a software or similar bureau service using the Software.
- 1.4 The Client shall follow all reasonable instructions given by Contractor from time to time with regard to the use of the Software. The Client shall permit the Contractor, on reasonable notice and at the Contractors' expense, to verify that the use of the Software is within the terms of this Agreement.
- 1.5 Except for the purposes of interoperability (as defined in Section 50B of the Copyright, Designs and Patents Act 1988) the Client shall not disassemble, decompile or reverse engineer the Software. Information necessary to achieve the interoperability of the Software with other programs is available from the Contractor for a nominal fee.
- 1.6 Use of the Software relies on the Client complying with the Technical (Cloud) Pre-Requisites Document (see Schedule 1, Section 6.0), which may include a requirement for procuring additional software. Such additional software licenses are not included in the Licence Fee, and are the responsibility of the Client to provide.

{insert the Order schedule here }

{insert the System overview here}

### **2.0 Installation**

- 2.1 Upon provision of the Input Materials, the Contractor shall use its reasonable endeavours to install the Software by the date agreed within the Project Plan
- 2.2 The Client agrees that the Installation Date shall be a date which is no more than 20 weeks after the date of signature of the Order Schedule.

- 2.3 No provision is made for any test/training system or acceptance tests unless explicitly included in the Order Schedule.
- 2.4 Installation shall be carried out remotely by the Contractor to the Client's hardware which must comply with the Technical (Cloud) Pre-Requisites document (see Schedule 1, Section 6.0).
- 2.5 Data Migration shall be carried out at the Client's own site and the Client must provide the data as per the Contractor's instructions.

### **3.0 Client Obligations**

- 3.1 The Client undertakes to ensure that:
- (a) adequate supervision and control of the use of and access to the Software and the Documentation so that each are operated in accordance with this Agreement and any instructions or advice given by the Contractor;
  - (b) properly trained staff operate the Software in accordance with best computing practice and that proper and adequate backup plans and restart procedures are provided to meet the operational requirements of the Client;
  - (c) the Contractor's maintenance and support staff have full, free and timely access to the Software either by remote access or visit to the Client's premises at the discretion and request of the Contractor and that provision is made for adequate working and storage space and other such facilities as the Contractor may reasonably require and that any common law or statutory requirements relating to a healthy and safe place of work at the Client's premises are followed by the Client and that it co-operates with Contractor's staff as reasonably required to perform the Annual Support Service;
  - (d) the Software including database scheme is not under any circumstances altered, modified, adjusted or interfered with except by the Contractor's authorised staff or with the agreement of the Contractor in writing; and
  - (e) its own trained and experienced staff are available at the Client's premises where faults may include, interface with or be dependent upon the Client's or third-party-supplied hardware or software;
  - (f) the Software meets the needs of its business;
  - (g) the Software is configured to reflect operational requirements before it is so used;
  - (h) the Software is not constrained from transmitting data to the Contractors at any time to enable the Contractor to check whether the Client is using it in accordance with this Contract;
  - (i) the Contractor can study any other relevant software, equipment or information and data used by the Client with the Software for the purpose of rectifying any problems with the Software in relation to provision of Annual Support Service (where reasonable); and

- (j) ensure that the operating system and compiler and any other software with which the Software will be used is either its property or it is legally licensed to it for use with the Software.

#### **4.0 Project Management**

- 4.1 All Services shall be delivered to the standards and methodology set out in the Project plan

{Description of the Contractors Project Plan to be inserted here}

#### **5.0 Annual Support Service**

- 5.1 In consideration for payment by the Client of the Annual Support Fee or Annual Fee the Contractor shall commencing on the **Installation Date**, provide the Annual Support Service for each 12 calendar month period in which the Licensee utilises the Software.
- 5.2 The Annual Support Fee shall be due and payable in advance before each anniversary date of this Agreement. The first Annual Support Fee shall be invoiced as stated in this Contract.
- 5.3 The Annual Support Service relates only to the Software and shall comprise (but is limited to) the following services, which shall be undertaken in accordance with the Service Level Description and subject to this clause
  - (a) fault diagnosis and, where feasible, recommendations for fault correction following the reporting of any fault via telephone, email or Contractor support portal by the Client to the Contractors. Diagnosis and solution of operational problems will be carried out remotely from the Licensor's site;
  - (b) reasonable support via telephone, email and the Contractor support portal on the routine use and operation of the Software;
  - (c) reasonable advice and assistance via telephone, email and the Contractor support portal on user procedures and on ideas and methods intended to assist the Licensee in obtaining the best possible use from the Software;
  - (d) any Software Upgrades released by the Contractor (or installation of Software Upgrades if part of a Cloud Service);
  - (e) installation of minor releases (for instance, reflecting legislative or technical changes) of Software Upgrades, for modules in a locally installed environment, which can be undertaken remotely are provided at no additional cost, but installation of major releases of Software Upgrades are provided at additional cost (whether a new release is deemed a major or minor Software Upgrades is determined in Contractors' reasonable opinion). Should the Licensee request more frequent Software Upgrades than the Professional Services required to complete each Software Upgrade shall be agreed in writing, in the form of an Order Schedule, and charged appropriately prior to the update being applied; and

(f) Notification of all major problems or errors in the Software of which the Client become aware which relate to its user base generally.

5.4 The Annual Support Service does not extend to any defects or errors resulting from any modifications or enhancements made to the Software by or on behalf of the Client or without the Contractors' written consent or resulting from incorrect use of the Software.

5.5 Provision of the Annual Support Service does not imply any guarantee that the Contractor will be able to assist the Client in achieving any results which are not technically possible.

5.6 Any support or maintenance services which are outside the scope of this Agreement, including for the avoidance of doubt any training relating to Software Upgrades, will, at the Client's request and Contractor's option, be provided by the Contractor as a Professional Service

{Details of Service Level Agreement to be provided by the contractor to be inserted here}

## **6.0 Cloud Services**

6.1 In consideration for payment by the Client of the Cloud Services Fee, Contractor shall provide the Cloud Services as detailed in the documents attached.

{Details of Cloud Services and pre-requisites to be provided by the contractor to be inserted here}

## **7.0 Pricing**

7.1 The Contractor shall issue an invoice for 50% of the Contract Price on signature of the Order Schedule and 25% of the Contract Price on the Installation Date and 25% of the Contract Price six months after the Installation Date

7.2 For the supply of the Software on an 'Annual Subscription' basis (as recorded in the Order Schedule) the initial Annual Fees shall be invoiced on signature of the Order Schedule and all Annual Fees shall be invoiced annually, 12 months after the Installation date, thereafter.

7.3 If the Client wishes to extend the number of Employees, the Client shall notify the Contractor of its request in writing, and, if the Contractor approves the Clients' request to purchase such additional capacity, (such consent not to be unreasonably withheld), the Client shall, within 30 days of the date of Contractor's invoice, pay to the Contractor the additional quoted fees.

7.4 For the supply of the Cloud Service then 'SSL Certificates' may be required at additional cost. The annual or bi annual fees for these certificates will be payable by the Client at the time of Installation and 30 days prior to renewal of the SSL Certificate.

- 7.5 Services cancelled with less than 10 working days written notice are chargeable at the full rate unless prior agreement is obtained from the Contractor in writing.
- 7.6 Services shall be provided within the UK mainland. Any Services delivered outside the UK mainland may incur additional charges for expenses and travelling time.

{Details of the pricing schedule to be inserted here}