Dated [Month] 2016

***(1) Midland Heart Limited***

**-and-**

***(2) [Supplier]***

**AGREEMENT**

relating to the supply of

**Energy Procurement and Associated Services**

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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:

“Approval” means the written consent of the Client.

“Clause” means a clause within the Contract.

 “Client” means Midland Heart Limited .

 “Commencement Date” means the date of the Contract.

“Commercially Sensitive Information” means information:

(a) which is provided by the Contractor to the Client in confidence for the period set out in that Schedule; and/or

(b) that constitutes a trade secret.

“Confidential Information” means:

(a) any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information 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; and

(b) the Commercially Sensitive Information and does not include any information:

 (i) which was public knowledge at the time of disclosure (otherwise than by breach of Clause E2 (Confidential Information));

 (ii) which was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;

 (iii) which 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” means the written agreement between the Client and the Contractor consisting of these Clauses and any attached Schedules.

 “Contracting Authority” means any contracting authority as defined in Regulation 3 of the Public Contracts Regulations 2006 other than the Client.

 “Contractor” means the person, firm or company with whom the Client enters into the Contract.

 “Contractor’s Representative” means the person(s) appointed by the Contractor to act on behalf of the Contractor for the purposes of this Agreement.

 “Contract Manager” means the person(s) appointed by Midland Heart as being authorised to administer the Agreement on behalf of Midland Heart.

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

(a) the date of expiry set out in Clause A2 (Contract Period); or

(b) 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 (inclusive of any applicable VAT), payable to the Contractor by the Client under the Contract, as set out in the Pricing Schedule, for the full and proper performance by the Contractor of its obligations under the Contract.

“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 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.

 “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.

 “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.

 “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 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

(a) 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 or defrauding or attempting to defraud or conspiring to defraud the Client.

“General Change in Law” means a change in Law which comes into effect after the Commencement Date, where the change is of a general legislative nature (including taxation or duties of any sort affecting the Contractor) or which would affect or relate to a comparable supply of Services of the same or a similar nature to the supply of the Services.

 “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.

 “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 Performance Indictors (KPIs)” means the key performance indicators provided in the Key Performance Indicators (KPI) Schedule.

“Key Performance Indictors (KPI) Schedule” means the Schedule containing details of the performance and monitoring arrangements.

 “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.

 “Letter of Authority” means the authorisation letter giving the Contractor permission to act on the Client’s behalf.

 “Month” means calendar month.

 “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.

 “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.

“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).

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

“Services” means the services to be supplied as specified in the Specification.

“Specification” means the description of the Services to be supplied under the Contract as set out in the Specification Schedule including, where appropriate, the Key Personnel, the Premises and the Quality Standards.

“Specification Schedule” means the Schedule containing details of the Specification.

“Specific Change in Law” means a change in Law which comes into effect after the Commencement Date that relates specifically to the business of the Client, and which would not affect a comparable supply of Services of the same or a similar nature to the supply of the Services.

“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.

“Supplier” means the supplier of any electricity and gas, or any combination of these commodities, procured under this Contract to deliver those commodities to the Client as set out in the Specification.

“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”;

(g) Headings are included in the Contract for ease of reference only and shall not affect the interpretation or construction of the Contract.

**A2 Contract Period**

 The Contract shall take effect on the Commencement Date and shall expire automatically on 31st October 2022, unless it is otherwise terminated in accordance with the provisions of the Contract, or otherwise lawfully terminated.

**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 Entire Agreement**

A5.1The 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.

A5.2 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:

(1) the Clauses of the Contract;

 (2) the Schedules; and

(3) any other document referred to in the Clauses of the Contract.

A5.3 The Contract may be executed in counterparts each of which when executed and delivered shall constitute an original but all counterparts together shall constitute one and the same instrument.

**A6 Notices**

A6.1Except 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.

A6.2 Any notice or other communication which is to be given by either Party to the other shall be given by letter (sent by hand, post, registered post or by the recorded delivery service) or by electronic mail (confirmed in either case by letter). Such letters shall be addressed to the other Party in the manner referred to in Clause A6.3. Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given 3 Working Days after the day on which the letter was posted, or 4 hours, in the case of electronic mail or sooner where the other Party acknowledges receipt of such letters or items of electronic mail.

A6.3 For the purposes of Clause A6.2, the address of each Party shall be:

(a) **For the Client:**

 Midland Heart Limited

20 Bath Row

Birmingham

West Midlands

B15 1LZ

**For the attention of:** David Reid

**Tel:** 0845 850 1020 ext. 5999

**Email:** David.Reid@midlandheart.org.uk

(b) **For the Contractor:**

[Insert Full Name of Contractor]

[Insert Address Line 2]

[Insert Address Line 3]

[Insert Post Code]

**For the attention of:** [Insert Name/Position]

**Tel:** [Insert Contact Number]

**Email:** [Insert Email Address]

A6.4 Either Party may change its address for service by serving a notice in accordance with this Clause.

**A7 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.

## A8 Conflicts of Interest

A8.1 The Contractor shall take all reasonable 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.

A8.2 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.

A8.3 This Clause A8 shall apply during the continuance of the Contract and indefinitely after its termination.

**A9 Prevention of Fraud**

A9.1 The Contractor shall take all reasonable steps, in accordance with Good Industry Practice, to safeguard the Client’s funding of the Contract against fraud generally and, in particular, fraud on the part of the Staff, or the Contractor’s directors, shareholders and members and suppliers.

A9.2 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.

A9.3 If the Contractor or its Staff commits Fraud in relation to this or any other contract with the Client (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.

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 and the provisions of the Contract in consideration of the payment of the Contact 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 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.

B1.4 Without prejudice to any other rights and remedies Midland Heart may have pursuant to the Agreement, the Contractor shall reimburse the Client for all reasonable costs incurred as a consequence of the Contractor’s delay in the performance of its obligations under the Agreement and which the delay the Contractor has failed to remedy following reasonable notice from the Client.

B1.5 Throughout the Contract Period the parties shall, acting reasonably, work together to ensure that this Agreement and the Contractor’s performance of the Services, represents value for money for Midland Heart and the Services are delivered in a progressively more efficient way to the benefit of the Client and its customers. The provision of new methods or systems which affect the provision of the Services shall be subject to prior approval by the Client.

B1.6 The Client accepts and acknowledges that, within the confines of the terms set out in the Letter of Authority, and for the Contract Period only, the Contractor is acting as an agent on the Client’s behalf when providing any part of the Services including negotiating with previous, or current or prospective Suppliers.

B1.7 Any Supplier Contract entered into is always directly between the Client and Suppliers with the Contractor solely acting as agent on behalf of the Client.

B1.8 The Client acknowledges that insofar as the Supplier Contract has been negotiated, constructed and agreed:

(a) in accordance with Good Industry Practice; and

(b) with regards to the reasonable requirements of the Client; and

(c) without any negligence, wilful misconduct or fraudulent practice by the Contractor; that

the Contractor shall not in itself assume any direct or indirect responsibility or obligation or liability whatsoever between the Suppliers or Client by virtue of the Contractor performing this Contract. Any dispute or issue arising from the Supplier Contract shall be remedied through the clauses and provisions of that Supplier Contract.

B1.9 The obligation of the Contractor to provide the Services is conditional upon the full cooperation of the Client in providing all necessary information and authority to carry out such work.

B1.10 Where a failure or delay by the Contractor causes the Client to incur costs, fees or charges, these costs, fees or charges shall be passed without mark up to the Contractor for settlement.

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, 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 and will deliver the services in accordance with Good Industry Practice.

B3.3 The Contractor shall operate its own complaints procedure to prescribed standards. The Contractor shall ensure that the Client has approved this procedure. Any changes made to this procedure by the Contractor must be approved by the Client.

## B4 Key Personnel

B4.1 The Contractor acknowledges that the Key Personnel are essential to the proper provision of the Services to the Client. The Key Personnel shall be responsible for the requirements outlined in the Specification and any additional duties and responsibilities required for the proper supply of the Services.

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 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.

B5.5 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.

B5.6 The Contractor warrants that it has carried out all necessary checks to ensure that all staff engaged in the delivery of this contract have the right to live and work in the UK and are compliant with all applicable immigration and employment Laws.

## B6 Due Diligence

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

## B7 Consultation

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 6 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

C1.1In 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).

C1.2 The Client shall, in addition to the Contract Price and following evidence 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 undisputed sums due to the Contractor via the Suppliers invoice issued by the Contractor to the Client following validation of that invoice by the Contractor. Payment will be made within the payment terms agreed with the Suppliers.

C2.2 The Contractor agrees that, where sums due to the Contractor have not been received by the Contractor, and upon production by the Client of a valid Supplier remittance advice proving payment of the sums due, all action to recover the sums due to the Contractor will be taken against the Supplier and not the Client and the Contractor shall not be entitled to terminate the Contract under clause H2.3 (Termination on Default) for failure to pay undisputed sums of money.

C2.3 The Contractor must ensure that any contract between a Supplier and the Client, which was negotiated by the Contractor as agent to the Client:

(a) contains adequate provision that prescribes each Suppliers invoice meets format requirements and contains all appropriate references and a detailed breakdown of the Services supplied; and

(b) that each Supplier invoice is supported by any other documentation reasonably required by the Client to substantiate the invoice.

C2.4 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.

C2.5 The Contractor shall add VAT to the Contract Price at the prevailing rate as applicable and the Client shall pay the VAT to the Contractor following its receipt of a valid VAT invoice.

##### C2.6 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 C2.6 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.

C2.7 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.

## C3 Recovery of Sums Due

C3.1 Wherever under the Contract any undisputed 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 Contractor will make payment of all sums due to the Client within 30 days of being notified by the Client that the sums are due. Sums due must be disputed with the Client within 15 days of being notified that those sums are due.

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 Not used.

## 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.

## C6 Compliance with Law and Changes to Law

C6.1 The Contractor shall operate their business in accordance with all applicable Laws.

C6.2 The Contractor shall neither be relieved of its obligations to supply the Services in accordance with the terms of this Contract nor be entitled to an increase in the charges as a result of:

(a) a General Change in Law; or

(b) a Specific Change in Law where the effect of that specific change in Law on the Services is known at the Commencement Date.

C6.3 If a Specific Change in Law occurs or will occur during the Contract Period

(other than those referred to in Clause C6.1), the Contractor shall notify the Client of the likely effects including:

(a) whether any Change is required to the Services, the Contract Price or this Contract; or

(b) whether any relief from compliance with the Contractor’s obligations is required, including any obligation to achieve any milestones or meet any service level requirements at any time.

C6.4 As soon as practicable after any notification in accordance with C6.1 the Parties shall discuss and agree the matters referred to in that Clause and any ways in which the Contractor can mitigate the effect of the Specific Changes of Law, including;

(a) providing evidence that the Contractor has minimised any increase in costs, including in respect of the costs of its subcontractors;

(b) demonstrating that a foreseeable Specific Change in Law had been taken into account by the Contractor before it had occurred;

(c) giving evidence as to how the Specific Change in Law has affected the cost of providing the Service; and

(d) demonstrating that any expenditure that has been avoided has been taken into account in amending the Contract Price.

C6.5 Any increase in the Contract Price or relief from the Contractor’s obligations agreed by the parties pursuant to this Condition C6 shall be implemented in accordance with Clause F3 (Variation).

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, agent or servant employed by or on behalf of or to represent 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 this 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 this Contract or any such contract. The attention of the Contractor is drawn to the criminal offences under the Prevention of Corruption Acts 1889 to 1916.

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 Where the Contractor or Contractor’s employees, servants, sub-contractors, suppliers or agents or anyone acting on the Contractor’s behalf, engages in conduct prohibited by Clauses D1.1 or D1.2 in relation to this or any other Contract with the Client, the Client has the right to:

(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, whether or not the Contract has been terminated; and

(c) 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.

D1.4 In exercising its rights or remedies under this Clause D1, the Client shall:

(a) act in a reasonable and proportionate manner having regard to such matters as the gravity of the prohibited act and the identity of the person performing the prohibited act; and

(b) give all due consideration, where appropriate, to action other than termination of the Contract.

## D2 Discrimination

D2.1 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 Sex Discrimination Act 1975, the Race Relations Act 1976, the Equal Pay Act 1970, the Disability Discrimination Act 1995, the Employment Equality (Sexual Orientation) Regulations 2003, the Employment Equality (Religion or Belief) Regulations 2003, the Employment Equality (Age) Regulations 2006, the Equality Act 2006, the Human Rights Act 1998 or other relevant or equivalent legislation, or any statutory modification or re-enactment thereof.

D2.2 The Contractor shall take all reasonable steps to secure the observance of Clause D2.1 by all Staff.

## D3 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 Client.

## D4 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.

## D5 Health and Safety

D5.1 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.

D5.2 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.

D5.3 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.

D5.4 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.

D5.5 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.

D6 Not used.

E PROTECTION OF INFORMATION

E1 Data Protection Act

E1.1 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.

E1.2 Notwithstanding the general obligation in Clause E1.1, where the Contractor is processing personal data (as defined by the DPA) as a data processor for the Client (as defined by the DPA) the Contractor shall ensure that it has in place appropriate technical and organisational measures to ensure the security of the personal data (and to guard against unauthorised or unlawful processing of the personal data and against accidental loss or destruction of, or damage to, the personal data), as required under the Seventh Data Protection Principle in Schedule 1 to the DPA; and

(a) provide the Client with such information as the Client may reasonably request to satisfy itself that the Contractor is complying with its obligations under the DPA;

(b) promptly notify the Client of any breach of the security measures to be put in place pursuant to this Clause; and

(c) ensure that it does not knowingly or negligently do or omit to do anything which places the Client in breach of its obligations under the DPA.

E1.3 The provisions of this Clause shall apply during the continuance of this Contract and indefinitely after its expiry or termination.

E2 Confidential Information

E2.1 Each Party shall:

(a) treat all Confidential Information belonging to the other Party as confidential and use all reasonable endeavours to prevent their Staff from making any disclosure to any person of any such Confidential Information; and

(b) not disclose any Confidential Information belonging to the other Party to any other person without the prior written consent of the other Party, except to such persons and to such extent as may be necessary for the performance of either Party’s obligations under the Contract or except where disclosure is otherwise expressly permitted by the provisions of the Contract.

E2.2 Where it is considered necessary in the opinion of the Client, the Contractor shall ensure that Staff or such professional advisors or consultants give a confidentiality undertaking before beginning work in connection with the Contract. The Contractor shall ensure that its Staff, professional advisors and consultants are aware of the Contractor’s confidentiality obligations under the Contract.

E2.3 The Contractor shall not use any Confidential Information it receives from the Client otherwise than for the purposes of the Contract.

E2.4 Nothing in Clauses E2.1-3 shall prevent the Client disclosing any Confidential Information obtained from the Contractor:

(a) for the purpose of the examination and certification of the Client’s accounts; or

(b) for the purpose of 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; or

(c) to any government department or any other Contracting Authority and the Contractor hereby acknowledges that all government departments or Contracting Authorities receiving such Confidential Information may further disclose the Confidential Information to other government departments 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 government department or any Contracting Authority; or

(d) to any consultant, contractor or other person engaged by the Client;

provided that in disclosing information under sub-paragraphs (c) and (d) the Client discloses only the information which is necessary for the purpose concerned and requests that the information is treated in confidence and that a confidentiality undertaking is given where appropriate.

E2.5 Nothing in Clauses E2.1-3 shall prevent either Party from:

(a) using any techniques , ideas or know-how gained during the performance of its obligations under the Contract in the course of its normal business, to the extent that this does not result in a disclosure of the other Party’s Confidential Information or an infringement of the other Party’s Intellectual Property Rights, or

(b) disclosing Confidential Information which must be disclosed pursuant to a statutory, legal or parliamentary obligation placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA or the Environmental Information Regulations.

E2.6 In the event that the Contractor fails to comply with Clauses E2.1-3, the Client reserves the right to terminate the Contract with immediate effect by notice in writing.

E2.7 In order to ensure that no unauthorised person gains access to any Confidential Information or any data obtained in the supply of the Services under the Contract, the Contractor undertakes to maintain adequate security arrangements that meet the requirements of professional standards and best practice.

E2.8 The Contractor will immediately notify the Client of any breach of security in relation to Confidential Information and all data obtained in the supply of the Services under the Contract and will keep a record of such breaches. The Contractor will use its best endeavours to recover such Confidential Information or data however it may be recorded. This obligation is in addition to the Contractor’s obligations under Clauses E2.1-3. The Contractor will co-operate with the Client in any investigation that the Client considers necessary to undertake as a result of any breach of security in relation to Confidential Information or data.

E2.9The Contractor shall, at its own expense, alter any security systems at any time during the Contract Period at the Client’s request if the Client reasonably believes the Contractor has failed to comply with Clause E2.8.

E3 Freedom of Information

E3.1 The Contractor acknowledges that the Client is subject to the requirements of the Environmental Information Regulations and may during the life of the Contract become subject to the requirements of the FOIA. If and when applicable the Contractor shall facilitate the Client’s compliance with its Information disclosure requirements pursuant to the same in the manner provided for in Clauses E3.2-6 (inclusive) below.

E3.2 Where the Client receives a Request for Information in relation to Information that the Contractor is holding on its behalf and which the Client does not hold itself the Client shall refer such Request for Information to the Contractor as soon as practicable and in any event within 5 Working Days of receiving a Request for Information and the Contractor shall:

(a) provide the Client with a copy of all such Information in the form that the Client requires as soon as practicable and in any event within 10 Working Days (or such other period as the Client acting reasonably may specify) of the Client’s request; and

(b) provide all necessary assistance as reasonably requested by the Client in connection with any such Information, to enable the Client to respond to a Request for Information within the time for compliance set out in Section 10 of the FOIA or Regulation 5 of the Environmental Information.

E3.3 Following notification under Clause E3.2, and up until such time as the Contractor has provided the Client with all the Information specified in Clause E3.2(a), the Contractor may make representations to the Client as to whether or not or on what basis Information requested should be disclosed, and whether further information should reasonably be provided in order to identify and locate the information requested, provided always that the Client shall be responsible for determining at its absolute discretion:

(a) whether Information is exempt from disclosure under the FOIA and the Environmental Information Regulations; and

(b) whether Information is to be disclosed in response to a Request for Information; and

in no event shall the Contractor respond directly, or allow its sub-contractors to respond directly, to a Request for Information unless expressly authorised to do so by the Client.

E3.4 In the event of a request from the Client pursuant to Clause E3.2, the Contractor shall as soon as practicable, and in any event within 5 Working Days of receipt of such request, inform the Client of the Contractor’s estimated costs of complying with the request to the extent these would be recoverable if incurred by the Client under Section 12(1) of the FOIA and the Fees Regulations. Where such costs (either on their own or in conjunction with the Client’s own such costs in respect of such Request for Information) will exceed the appropriate limit referred to in Section 12(1) of the FOIA and as set out in the Fees Regulations (the **“Appropriate Limit”**) the Client shall inform the Contractor in writing whether or not it still requires the Contractor to comply with the request and where it does require the Contractor to comply with the request the 10 Working Days period for compliance shall be extended by such number of additional days for compliance as the Client is entitled to under Section 10 of the FOIA. In such case, the Client shall notify the Contractor of such additional days as soon as practicable after becoming aware of them and shall reimburse the Contractor for such costs as the Contractor incurs in complying with the request to the extent it is itself entitled to reimbursement of such costs in accordance with its own FOIA policy from time to time.

E3.5 The Contractor shall ensure that all Information held on behalf of the Client is retained for disclosure for at least 2 years (from the date it is acquired) and shall permit the Client to inspect such Information as requested from time to time.

E3.6 The Contractor shall transfer to the Client any Request for Information received by the Contractor as soon as practicable and in any event within 2 Working Days of receiving it.

E3.7 The Contractor acknowledges that (notwithstanding the provisions of Clause E3) the Client may, acting in accordance with the Department of Constitutional Affairs’ Code of Practice on the Discharge of Functions of Public Authorities under Part I of the FOIA (the **“Code”**), be obliged under the FOIA or the Environmental Information Regulations to disclose Information concerning the Contractor or the Contract:

(a) in certain circumstances without consulting the Contractor, or

(b) following consultation with the Contractor and having taken its views into account,

 provided always that where (a) above applies the Client shall, in accordance with the recommendations of the Code, draw this to the attention of the Contractor prior to any disclosure.

E3.8 The Contractor acknowledges that any lists provided by him listing or outlining Confidential Information, are of indicative value only and that the Client may nevertheless be obliged to disclose Confidential Information in accordance with the requirements of the FOIA and the Environmental Information Regulations.

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 E4.1.

E4 .3 The provisions of this Clause shall apply during the continuance of this Contract and indefinitely after its expiry or termination.

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 reasonable 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 All Intellectual Property Rights in any guidance, specifications, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models, designs or other material:

(a) furnished to or made available to the Contractor by or on behalf of the Client shall remain the property of the Client; or

(b) prepared by or for the Contractor on behalf of the Client for use, or intended use, in relation to the performance by the Contractor of its obligations under the Contract shall belong to the Client;

and the Contractor shall not, and shall procure that the Contractor’s employees, servants, agents, suppliers and sub-contractors shall not, (except when necessary for the implementation of the Contract) without prior Approval, use or disclose any such Intellectual Property Rights, or any other information (whether or not relevant to this Contract) which the Contractor may obtain in performing the Contract except information which is in the public domain.

E6.2 The Contractor shall obtain Approval before using any material, in relation to the performance of its obligations under the Contract which is or may be subject to any third party Intellectual Property Rights. The Contractor shall ensure that the owner of the rights grants to the Client a non-exclusive licence, or if itself a licensee of those rights, shall grant to the Client an authorised sub-licence, to use, reproduce, modify, develop and maintain the material. Such licence or sub-licence shall be non-exclusive, perpetual, royalty free and irrevocable and shall include the right for the Client to sub-license, transfer, novate or assign to other Contracting Authorities, the Replacement Contractor or to any other third party supplying services to the Client.

E6.3 The Contractor shall not infringe any Intellectual Property Rights of any third party in supplying the Services and the Contractor shall, during and after the Contract Period, indemnify and keep indemnified and hold the Client harmless from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Client may suffer or incur as a result of or in connection with any breach of this Clause, except where any such claim arises from:

(a) items or materials based upon designs supplied by the Client; or

(b) the use of data supplied by the Client which is not required to be verified by the Contractor under any provision of the Contract.

E6.4 The Client shall notify the Contractor in writing of any claim or demand brought against the Client for infringement or alleged infringement of any Intellectual Property Right in materials supplied or licensed by the Contractor. The Contractor shall at its own expense conduct all negotiations and any litigation arising in connection with any claim for breach of Intellectual Property Rights in materials supplied or licensed by the Contractor, provided always that the Contractor:

(a) shall consult the Client on all substantive issues which arise during the conduct of such litigation and negotiations;

(b) shall take due and proper account of the interests of the Client; and

(c) shall not settle or compromise any claim without the Client’s prior written consent (not to be unreasonably withheld or delayed).

E6.5 The Client shall at the request of the Contractor afford to the Contractor all reasonable assistance for the purpose of contesting any claim or demand made or action brought against the Client or the Contractor for infringement or alleged infringement of any Intellectual Property Right in connection with the performance of the Contractor’s obligations under the Contract and the Contractor shall indemnify the Client for all costs and expenses (including, but not limited to, legal costs and disbursements) incurred in doing so. Such costs and expenses shall not be repaid where they are incurred in relation to a claim, demand or action which relates to the matters in Clause E6.3(a) or (b).

E6.6 The Client shall not make any admissions which may be prejudicial to the defence or settlement of any claim, demand or action for infringement or alleged infringement of any Intellectual Property Right by the Client or the Contractor in connection with the performance of its obligations under the Contract.

E6.7 If a claim, demand or action for infringement or alleged infringement of any Intellectual Property Right is made in connection with the Contract or in the reasonable opinion of the Contractor is likely to be made, the Contractor shall notify the Client and, at its own expense and subject to the consent of the Client (not to be unreasonably withheld or delayed), use its best endeavours to:

(a) modify any or all of the Services without reducing the performance or functionality of the same, or substitute alternative Services of equivalent performance and functionality, so as to avoid the infringement or the alleged infringement, provided that the provisions herein shall apply mutates mutandis to such modified Services or to the substitute Services; or

(b) procure a licence to use and supply the Services, which are the subject of the alleged infringement, on terms which are acceptable to the Client,

 and in the event that the Contractor is unable to comply with Clauses E6.7(a) or (b) within 20 Working Days of receipt of the Contractor’s notification the Client may terminate the Contract with immediate effect by notice in writing.

E7 Audit and the National Audit Office

E7.1 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 Anti Virus and Data Integrity

E8.1 The Contractor shall not delete or remove any proprietary notices contained within or relating to the Clients data.

E8.2 The Contractor shall preserve the integrity of the Client’s data and prevent the corruption or loss of the Clients data at all times when the Clients data is under the Contractors control or the control of any sub-contractor.

E8.3 The Parties shall perform secure back-ups of all the Clients data and shall ensure that up-to-date back-ups. The Contractor shall ensure that such back-ups are available to the Client (or to such other person that the Client may direct) at all times upon request.

E8.4 If either Parties data is corrupted, lost or sufficiently degraded as a result of either party so as to be unusable, either party may:

(a) require either parties (at their expense) to restore or procure the restoration of the data to the extent & in accordance to either parties specification. Either party shall do so as soon as practicable but not later than 5 working days from the date of receipt from the either parties notice; or

(b) itself restore or procure the restoration of the data and shall be repaid by the relevant party who caused the data corruption, loss or degradation.

E8.5 If at any time the Parties suspects or has reason to believe that either parties data has become corrupted, lost or sufficiently damaged in any way for any reason due to the fault of either Parties, the relevant party shall notify each other immediately so that remedial action can take place.

E8.6 The Parties shall, as an enduring obligation throughout the Contract Duration and any agreed Extension period, use the latest versions of anti-virus definitions and software available from an industry accepted anti-virus software vendor (unless otherwise agreed in writing between the parties) to check for, contain the spread of, and minimise the impact if Malicious Software in the IT Environment (or otherwise agreed by the parties).

E8.7 Notwithstanding clause E8.6, if Malicious Software is found, the Parties shall co-operate to reduce the effect of the Malicious Software and, particularly if Malicious Software causes loss of operational efficiency or loss or corruption of the parties data, assist each other to mitigate any losses and to restore the Services to their desired operating efficiency.

E8.8 Any cost arising out of the actions of the Parties taken in compliance the provisions of Clause E8.7 shall be borne by the Parties as follows:

(a) by the Contractor where the Malicious Software originates from the Contractor Software, the Third Party Software supplied by the Contractor (except where the Client has waived the obligation set out in Clause E9.6) or the Client data (whilst the Client data was under the control of the Contractor) unless the Contractor can demonstrate that such Malicious Software was present and not quarantined or otherwise identified by the Client when provided to the Contractor; or

(b) otherwise by the Client.

F. CONTROL OF THE CONTRACT

F1 Transfer and Sub-Contracting

F1.1 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.

F1.2 The Contractor shall not use the services of self-employed individuals without prior Approval.

F1.3 The Contractor shall be responsible for the acts and omissions of its sub-contractors as though they are its own.

F1.4 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.

F1.5 Subject to Clause F1.7, 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 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.

F1.6 Any change in the legal status of the Client such that it ceases to be a Contracting Authority shall not, subject to Clause F1.7, 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.

F1.7 If the rights and obligations under the Contract are assigned, novated or otherwise disposed of pursuant to Clause F1.5 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 insolvency and change of control) 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;

(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 previous consent in writing of the Contractor.

F1.8 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.

F1.9 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 The Contractor shall not alter any of the Services except as directed by the Client, but the Client shall have the right from time to time during the Contract Period, by written notice to the Contractor, request a variation of the Specification and add to or omit, or otherwise vary, the Services including the order in which the Services are to be delivered. Such a change is hereinafter called a “Variation”. Following such notice, the Client and Contractor shall enter into good faith negotiations (for a period of not more that 30 Working Days from the date thereof or where, in the reasonable opinion of the Client, the Variation is necessary as a matter of urgency due to circumstances outside the Parties’ control, such shorter period as the Client shall direct) to agree the Variation and any variation in the Contract Price that, in all the circumstances, properly and fairly reflects the nature and extent of the proposed Variation. If the Parties are unable to agree such matters within such period, the Client shall by written notice to the Contractor:

(a) agree that the Parties shall continue to perform their obligations under the Contract without the Variation; or

(b) terminate the contract with immediate effect and in accordance with the provisions of Clause H6 (Recovery upon Termination).

F3.2 If the Parties agree the Variation and any variation in the Contract Price within the relevant period set out in Clause F3.1, the Contractor shall carry out such Variation and be bound by the same provisions so far as is applicable, as though such Variation was stated in the Contract.

F3.3 Any such Variation shall be communicated in writing by the Client to the Contractor in accordance with Clause A6 (Notices). All Variations shall form an addendum to the Contract.

F4 Severability

F4.1 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.

F4.2 In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of the Contract, the Parties shall immediately commence negotiations in good faith to remedy the invalidity.

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 take all reasonable steps to 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 theContract 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 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 KPI Schedule including, but not limited to, providing such data and information as the Contractor may be required to produce under the Contract.

F8 Not used.

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

(e) any breach of any obligations implied by Section 12 of the Supply of Goods and Services Act 1982.

G1.2 Subject to Clause G1.3, the Contractor shall indemnify the Client and keep the Client indemnified fully against all claims, proceedings, actions, damages, costs, expenses and any other liabilities which may arise out of, or in consequence of, the supply, or the late or purported supply, of the Services or the performance or non-performance by the Contractor of its obligations under the Contract or the presence of the Contractor or any Staff on the Premises, including in respect of any death or personal injury, loss of or damage to property, financial loss arising from any advice given or omitted to be given by the Contractor, or any other loss which is caused directly or indirectly by any act or omission of the Contractor.

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 Subject always to Clause G1.1, the liability of either Party for Defaults shall be subject to the following financial limits:

(a) the aggregate liability of either Party for all Defaults resulting in direct loss to the other under or in connection with the Contract shall in no event exceed five million pounds (£5,000,000.00); and

(b) the annual aggregate liability under the Contract of either Party for all Defaults (other than a Default governed by Clauses E8.3 (Intellectual Property Rights) or G1.4(a)) shall in no event exceed the greater of one million pounds (£1,000,000.00) or one hundred per cent (100%) of the Contract Price paid or payable by the Client to the Contractor in the year in which the liability arises.

G1.5 Subject always to Clause G1.1, in no event shall either Party be liable to the other for any:

(a) loss of profits, business, revenue or goodwill; and/or

(b) loss of savings (whether anticipated or otherwise); and/or

(c) indirect or consequential loss or damage;

even if such loss was reasonably foreseeable or that Party had been advised of the possibility of incurring it.

G1.6 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.

G1.7 The Contractor shall hold employer’s liability insurance of not less than five million pounds (£5,000,000.00) in respect of Staff in accordance with any legal requirement from time to time in force.

G1.8 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.

G1.9 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.

G1.10 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.

G1.11 The Contractor is required to ensure that any Supplier appointed to deliver energy to Midland Heart effect and maintain the following levels of insurance:

1. Public Liability Insurance (no less than five million pounds (£5,000,000.00));
2. Product Liability Insurance (no less than five million pounds (5,000,000.00) if not included with Public Liability Insurance); and
3. Employers Liability Insurance (no less than five million pounds (£5,000,000.00)).

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 five million pounds (£5,000,000.00) for each individual claim or such higher limit as the Client may reasonably require (and as required by law) from time to time. 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) it shall discharge its obligations hereunder with all due skill, care and diligence including but not limited to good industry practice and (without limiting the generality of this Clause) in accordance with its own established internal procedures;

(e) all obligations of the Contractor pursuant to the Contract shall be performed and rendered by appropriately experienced, qualified and trained Staff with all due skill, care and diligence;

(f) it is not in default in the payment of any due and payable taxes or in the filing, registration or recording of any document or under any legal or statutory obligation or requirement which default might have a material adverse effect on its business, assets or financial condition or its ability to observe or perform its obligations under this Contract;

(g) 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;

(h) 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;

(i) 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;

(j) 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;

(k) 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

(l) 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.

H DEFAULT, DISRUPTION AND TERMINATION

H1 Termination on change of control and insolvency

H1.1 The Client may terminate the Contract by notice in writing with immediate effect where:

(a) the Contractor undergoes a change of control, within the meaning of section 416 of the Income and Corporation Taxes Act 1988 (“change of control”), which impacts adversely and materially on the performance of the Contract; or

(b) the Contractor is an individual or a firm and a petition is presented for the Contractor’s bankruptcy, or a criminal bankruptcy order is made against the Contractor or any partner in the firm, or the Contractor or any partner in the firm makes any composition or arrangement with or for the benefit of creditors, or makes any conveyance or assignment for the benefit of creditors, or if an administrator is appointed to manage the Contractor’s or firm’s affairs.

H1.2 The Client may only exercise its right under Clause H1.1(a) within six months after

(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 do so where it has agreed in advance to the particular change of control that occurs. The Contractor shall notify the Contract Manager immediately when any change of control occurs.

H1.3 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 section 247(3) of the Companies Act 1985, 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.

H1.4 The Client may terminate the Contract with immediate effect by notice in writing where the Contractor is an individual and:

(a) an application for an interim order is made pursuant to Sections 252-253 of the Insolvency Act 1986 or a proposal is made for any composition scheme or arrangement with, or assignment for the benefit of, the Contractor’s creditors; or

(b) a petition is presented and not dismissed within 14 days or order made for the Contractor’s bankruptcy; or

(c) a receiver, or similar officer is appointed over the whole or any part of the Contractor’s assets or a person becomes entitled to appoint a receiver, or similar officer over the whole or any part of his assets; or

(d) the Contractor is unable to pay his debts or has no reasonable prospect of doing so, in either case within the meaning of section 268 of the Insolvency Act 1986; or

(e) a creditor or encumbrancer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Contractor’s assets and such attachment or process is not discharged within 14 days; or

(f) he dies or is adjudged incapable of managing his affairs within the meaning of Part VII of the Mental Health Act 1983; or

(g) he suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of his business.

H2 Termination on Default

H2.1 The Client may terminate the Contract, or terminate the provision of any part of the Contract with immediate effect by written notice to the Contractor or the Contractor’s Representative if the Contractor commits a Default and if:

(a) the Contractor has not remedied the Default to the satisfaction of the Client within 60 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, in the opinion of the Client, capable of remedy; or

(c) the Default is a fundamental or 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, via the Supplier invoice, 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 Both Parties shall have the right to terminate the Contract in full or in part at any time by giving 12 Months’ written notice, or such notice period as is necessary in the reasonable opinion of the Client, to execute full and proper transfer of the contractual obligations to a Replacement Contractor, to the other Party. The Client reserves the right to extend the period of notice at any time before it expires by written notice to the Contractor.

H3.2 Where the Client elects to terminate the Contract in relation to years for which energy purchasing has not commenced, the Contractor will continue to perform it’s obligations for all years for which energy purchasing has commenced.

H3.3 Where the Client elects to consider the termination of the Contract in relation to years for which energy purchasing has commenced, the Contractor will provide a forecast of the costs likely to be incurred as a result of the resale of the energy already purchased. If the Client elects to proceed with termination of the Contract upon provision of this data, the Contractor is required to exercise the same diligence and care as is required for the purchase of Energy under this contract.

H3.4 Where the Contractor elects to terminate the Contract in relation to years for which energy purchasing has commenced, the Contractor will bear the cost of the resale of the energy already purchased. The Client will **not** under any circumstances reimburse this cost.

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 until the Client has established the final cost of making those other arrangements.

H4.2 Where the Client terminates the Contract under Clause H3 (Break), the Client shall indemnify the Contractor against any commitments, liabilities or expenditure which would otherwise represent an unavoidable loss by 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 Contractor shall reduce its unavoidable costs by any insurance sums available. The Contractor shall submit a fully itemised and costed list of such loss, 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; or

(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.

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 Corruption), E1 (Data Protection Act), E2 (Confidential Information), E3 (Freedom of Information), E6 (Intellectual Property Rights), E7 (Audit and National Audit Office), 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 by direction of the Client, an appropriate allowance by way of extension of time will be approved by the Client. 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 Termination or expiry of the Contract shall be without prejudice to any rights and remedies of the Contractor and the Client accrued before such 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.

H6.2 At the end of the Contract Period (howsoever arising) the Contractor shall immediately deliver to the Client upon request all Property (including materials, documents, information and access keys) used in the performance of its obligations under the Contract in its possession or under its control or in the possession or under the control of any permitted suppliers or sub-contractors and in the event the Contractor fails to do so, 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 At the end of the Contract Period (howsoever arising) and/or after the Contract Period the Contractor shall provide assistance to the Client and the Replacement Contractor in order to ensure an effective handover of all work then in progress. Where the end of the Contract Period arises due to the Contractor’s Default, the Contractor shall provide such assistance 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.

H6.4 The provisions of this Clause shall survive the continuance of this Contract and indefinitely after its termination.

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.

H7.4 This Clause H7 does not affect the Client’s rights under Clause H6.4.

H7.5 For the avoidance of doubt it is hereby expressly declared that the only events which shall afford relief from liability for failure or delay of performance of the Contract shall be any event qualifying for Force Majeure hereunder.

H8 Termination due to Modification

H8.1 The Client is entitled to terminate the contract immediately in accordance with Regulation 73 of the Public Contracts Regulations 2015 in the following circumstances:

1. where there has been a substantial modification which would have required a new procurement procedure in accordance regulation 72(9) of the Public Contracts Regulations 2015;
2. where the Contractor has, at the time of award, been in one of the situations referred to in regulation 57(1) of the Public Contracts Regulations 2015, including as a result of the application of regulation 57(2), and should therefore have been excluded from the procurement procedure; or
3. where the contract should not have been awarded to the Contractor in view of a serious infringement of the obligations under the Treaties and the Public Contracts Directive that has been declared by the Court of Justice of the European Union in a procedure under Article 258 of TFEU.

I DISPUTES AND LAW

I1 Governing Law and Jurisdiction

I1.1 The Contract shall be governed by and interpreted in accordance with English law and the Parties submit to the jurisdiction of the English courts or, if different, to the jurisdiction of the courts in the country which the defendant to the action in which legal proceedings are commenced is domiciled (subject always to Clause I2.6). Each Party irrevocably waives any objection which it might at any time have to the courts of England or (as the case may be) the courts of the country of domicile of the defendant as being nominated as the forum to hear and decide any proceedings and to settle any disputes and agrees not to claim that the courts of England are not a convenient or appropriate forum.

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 the finance 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 or other mediation provider 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 the Centre for Effective Dispute Resolution or other mediation provider 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) Failing agreement, either of the Parties may invite the Mediator to provide a non-binding but informative written opinion. Such an opinion shall be provided on a without prejudice basis and shall not be used in evidence in any proceedings relating to the Contract without the prior written consent of both Parties;

(f) 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 unless the dispute is referred to arbitration pursuant to the procedures set out in Clause I2.6.

I2.6 Subject to Clause I2.2, the Parties shall not institute court proceedings until the procedures set out in Clauses I2.1 and I2.3 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 I2.7; and/or

(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 I2.7; and/or

(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 I2.7, to which the Client may consent as it sees fit.

I2.7 In the event that any arbitration proceedings are commenced pursuant to Clause I2.6:

(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 London Court of International Arbitration (“LCIA”) procedural rules in force at the date that the dispute was referred to arbitration in accordance with I2.7(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 I2.7 (b) or if the person appointed is unable or unwilling to act, the arbitrator shall be appointed by the LCIA;

(f) The arbitration proceedings shall take place in London and in the English language;

(g) The arbitration proceedings shall be governed by, and interpreted in accordance with, English law.

J. SOCIAL VALUE AND SOCIAL RESPONSIBILITY

J1 Social Value Aspects of the Contract

J1.1 There has been a commitment from the Contractor to the Client for Social Value benefits to be delivered as part of the contract. This commitment may include but is not limited to, for the young and unemployed; creating apprenticeships, work experience, full or part time employment opportunities, implementation of Contractor staff away days at one of the Client’s schemes, fund raising, workshops, training schemes, regeneration commitments, attendance at the Client’s carnivals or other Client’s customer events etc. The actual Social Value commitment will be agreed at tender stage.

J2 Social Responsibility

J2.1 The Supplier shall, at all times, be responsible for and take all such precautions as are necessary to protect the health and safety of all employees, volunteers, service users and any such persons involved in, or receiving goods or services from, the performance of the Contract and shall comply with the requirements of the Health and Safety at Work Act 1974 and any other Act or Regulation relating to health and safety of persons and any amendment or re-enactment thereof.

J2.2 All Suppliers supplying Products and Services should ensure that all employees of the Supplier are eligible to work in the UK.

J2.3 The Client shall be entitled at the Client’s expense to inspect such books, accounts and records belonging to the Supplier as are necessary to demonstrate compliance with Clauses above.

K. NOT USED

L. HUMAN RIGHTS ACT 1988

L1. Human Rights Act 1988 Adherence

L1.1 The Contractor shall, and shall use reasonable endeavours to ensure that its employees or agents and/or sub contractors shall, at all times, act in a way which is compatible with the Convention rights within the meaning of Section 1 of the Human Rights Act 1998.

L1.2 Subject to Clause G1, the Contractor agrees to indemnify and keep indemnified the Client against all loss, costs, proceedings or damages whatsoever arising out of or in connection with any breach by the Contractor of its obligations under Clause L1.1.

**M. ETHICAL TRADING**

M1. Ethical Trading

M1.1 The Client expects the Contractor and its Sub-Contractors to adhere to the following ethical conduct guidelines which reflects the principles set out in the Ethical Trading Initiative Base Code and International labour Organisation (ILO) Conventions:

(a) Contractors must not use any form of forced, bonded or involuntary labour, and workers must not be obliged to lodge identity papers or pay any deposit as a condition of work;

(b) Workers must not be subject to physical or verbal abuse or threats or intimidation of any description;

(c) Workers must not be required to work extreme hours or work without adequate rest periods;

(d) Contractors must not use workers under the age of 15, or the minimum legal working age in the country in question, if higher than 15. Contractors must accept the principles of remediation of child and under age workers, and where such labour is discovered Contractors must establish and implement appropriate remediation for such workers and introduce effective systems to prevent the use of child labour in the future;

(e) Factories and work sites used by Contractors must be safe and hygienic with an adequate number of safe and accessible fire exits from all buildings including living accommodation and workers must have access to drinking water;

(f) Workers’ life or limb must not be endangered due to the use of dangerous machinery, unsafe building structure or layout, or hazardous chemicals. Where serious or fatal accidents have occurred Contractors must demonstrate to the satisfaction of the Client that all appropriate steps have been taken to prevent similar accidents occurring in the future;

(g) Living accommodation, where provided, must be in buildings that are separate from other areas of the workplace and have an adequate fire alarm system;

(h) Contractors must pay wages that meet the minimum requirements of the country in which they are operating from and that are sufficient to meet basic needs and to provide some discretionary income;

(i) Contractors must maintain proper and accurate employment records including calculation of pay and hours worked and Contractors must be transparent and cooperative as regards the inspection of employment records;

(j) Contractors must not engage in bribery, corruption or other similar unethical practices in order to gain competitive advantage;

(k) No discrimination is practised; and

the Client reserve the right to audit this at any time during the contract period, in the event that the Client considers that a Contractor is not in compliance with the ethical conduct guidelines the Contractor must take all such appropriate remedial actions as requested by the Client to address any areas of concern.

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

**SIGNED** for and on behalf of **Midland Heart Limited SIGNED** for and on behalf of **[*Contractor*]**

Signature.................................................... Signature....................................................

Name ....................................................... Name..........................................................

Position ................................................... Position.....................................................

**SCHEDULE 1 - Specification**

**SCHEDULE 2 - Pricing**

**SCHEDULE 3A – Key Performance Indicators**

**SCHEDULE 3B – Service Level Agreements**

**SCHEDULE 4 – OFGEM Draft Code of Practice for Non-domestic Third Party Intermediaries**

**SCHEDULE 5 – Supply Contracts**

**SCHEDULE 6 – Meter Operator Contracts**

**SCHEDULE 7 – Data Collection and Aggregation Contracts**