

**OFFICIAL SENSITIVE**

**DATED 16th February 2024**

**(1) THE SECRETARY OF STATE FOR THE HOME DEPARTMENT ACTING ON BEHALF OF THE  
CROWN**

**and**

**(2) ULTRA EVC LIMITED**

## PART 1 – FORM OF AGREEMENT

THIS Agreement is made on the

2024

### BETWEEN:

- (1) **THE SECRETARY OF STATE FOR THE HOME DEPARTMENT ACTING ON BEHALF OF THE CROWN** of 2 Marsham Street, London, SW1P 4DF (the "**Client**", with such term including its successors in title and permitted assigns); and
- (2) **ULTRA EVC LIMITED** (company number 03021356), whose registered office is at 80 Fenchurch Street, London EC3M 4BY (the "**Contractor**").

### BACKGROUND:

- (A) This Agreement comprises 4 Parts. Part 1 is the Form of Agreement, Part 2 is the Base Information for defining the Scope, Site Information and Prices. Part 3 is the form of Notice to Proceed for works at a Site together with associated Contract Data forms. Part 4 contains the amendments and additional clauses to the NEC4 Engineering and Construction Short Contract (June 2017 Edition, amended January 2019, October 2020 and January 2023).
- (B) On 27 January 2021 the *Client* and the *Contractor* entered into a contract for the provision of services and works to provide electric vehicles charging points and associated works. The Contract expired on 26 January 2023.
- (C) The *Client* intends to appoint the *Contractor* to undertake the design and installation of further electric vehicles charging points and associated works at specific sites as will be described in the Contract Data for a particular site defined pursuant to this Agreement.
- (D) The *Client* has purchased the electric vehicle charging points referred to in the Base Information and it is intended that the *Contractor* will use the electric vehicle charging points at selected sites as part of the services and works or other equipment supplied by the *Client*.

### IT IS AGREED:

1. The *Client* will pay to the *Contractor* the amount due and carry out its duties in accordance with this Agreement.
2. The *Contractor* will provide a scope of services and rates for the design and survey work in relation to the first Notice to Proceed at set out in Part 2A Base Information Notice to Proceed 1- Design and Surveys. The *Client* may in its absolute discretion issue a Notice to Proceed for the provision of design and survey services, under which the *Contractor* will be instructed to prepare designs and carry out surveys in relation to the Sites specified by the *Client*.
3. As required by the *Client*, the *Contractor* will deliver the *works* required for each Site, using the Part 2B Base Information Notice to Proceed - *works*, and prepare the information necessary to complete the Contract Data, Scope, Pricing Information and Site Plans specific to a Site or grouping of Sites. When the *Client* is satisfied that the *Contractor* has provided the necessary information, the *Client* may from time-to-time in its absolute discretion issue to the *Contractor* Notices to Proceed for *works* at such Sites.
4. All activities carried out by the *Contractor* pursuant to clause 2 and clause 3 shall be carried out and shall be deemed to have been carried out as part of the *works* and be subject to the terms of this Agreement. Following an instruction under clause 2 the *Contractor* will Provide the Works for the relevant Sites and comply with its other obligations in accordance with the terms of this Agreement.
5. The *Contractor* has no guarantee of any minimum levels of work or payment under this Agreement

**OFFICIAL SENSITIVE**

and irrevocably waives and abandons any and all claims it may have in relation to any expectation to provide services and or works in return for payment under this Agreement.

6. The terms comprise:

- 6.1 this Agreement;
- 6.2 the "*conditions of contract*" of (and as such term is defined in) the standard form of NEC4 Engineering and Construction Short Contract (June 2017 Edition, amended January 2019, October 2020 and January 2023) (with such "*conditions of contract*" deemed to be incorporated into this Agreement by reference);
- 6.3 the amendments to the NEC4 Engineering and Construction Short Contract included in Part 4 (which shall be deemed to be incorporated into the Agreement by reference and shall be subject to any agreed modifications to the same as expressly stated in the *Client's* Contract Data only included in Part 4;
- 6.4 the *Client's* Contract Data for the works included in a Notice to Proceed;
- 6.5 the *Contractor's* Contract Data for the works included in a Notice to Proceed; and
- 6.6 any and all other documents annexed to and/or referred to in the Contract Data,

which together form this Agreement.

7. If there is any error, mistake, inaccuracy, inadequacy, ambiguity, inconsistency, omission, discrepancy and/or conflict in or between the documents which comprise this Agreement (or that are referred to herein and/or are incorporated into this Agreement by reference), the priority of such documents is in accordance with the following sequence:

- 7.1 this Form of Agreement;
- 7.2 the "*conditions of contract*" (as modified by Part 4 and any further modifications to the same as expressly stated in the *Client's* Contract Data);
- 7.3 the *Client's* Contract Data for the works included in a Notice to Proceed;
- 7.4 the *Contractor's* Contract Data for the works included in a Notice to Proceed; and
- 7.5 all other documents annexed to or referred to in the above in the sequence stated.

8. No party other than the Parties shall have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce this Agreement.

9. The Parties acknowledge and agree that this Agreement may be executed:

- 9.1 in any number of counterparts and by the Parties to it on separate counterparts, each of which when so executed and delivered is an original, and all counterparts together constitute one and the same instrument; and
- 9.2 by electronic signature, which shall be considered as an original signature for all intents and purposes and shall have the same force and effect as an original signature (with "electronic signature" in this context including, without limitation, electronically scanned and transmitted versions of an original signature provided by a Party to the other Party).

10. This Agreement shall be governed by and construed in accordance with the laws of England and Wales and the Parties hereby irrevocably submit to the non-exclusive jurisdiction of the English and Welsh courts (as applicable), provided that other jurisdictions may apply solely for the purpose of

**OFFICIAL SENSITIVE**

giving effect to this paragraph 9 and for the enforcement of any judgment, order or award given under English or Welsh (as applicable) jurisdiction.

11. The period during which the *Client* may issue Notices to Proceed under this Agreement is 2 years following the Effective Date. This period may be extended by a period of 1 year if mutually agreed between the Parties.

**IN WITNESS WHEREOF THIS AGREEMENT HAS BEEN SIGNED BY THE PARTIES ON THE DATE FIRST WRITTEN ABOVE**

**SIGNED by THE SECRETARY OF STATE FOR THE HOME DEPARTMENT ACTING ON BEHALF OF THE CROWN by:**

(signature):

REDACTED UNDER FOIA 40 PERSONAL  
INFORMATION

(printed name):

REDACTED UNDER FOIA 40 PERSONAL  
INFORMATION



**OFFICIAL SENSITIVE**

**SIGNED** by **ULTRA EVC LIMITED** acting by an authorised attorney pursuant to a Power of Attorney dated 15 January 2024 in the presence of a witness:

<b>Attorney (signature):</b>	<b>REDACTED UNDER FOIA 40 PERSONAL INFORMATION</b>
<b>Attorney (printed name):</b>	<b>REDACTED UNDER FOIA 40 PERSONAL INFORMATION</b>
<b>Witness (signature):</b>	<b>REDACTED UNDER FOIA 40 PERSONAL INFORMATION</b>
<b>Witness (printed name):</b>	<b>REDACTED UNDER FOIA 40 PERSONAL INFORMATION</b>
<b>Witness address:</b>	<b>REDACTED UNDER FOIA 40 PERSONAL INFORMATION</b>
<b>Witness occupation:</b>	<b>REDACTED UNDER FOIA 40 PERSONAL INFORMATION</b>

**PART 2A– BASE INFORMATION**

**Notice to Proceed 1 – Design and Surveys**

**SCOPE**

A detailed description of the Scope will be included in the Notice to Proceed.

**SITE INFORMATION**

**REDACTED UNDER FOIA 23 Information supplied by, or  
relating to, bodies dealing with security matters**

## PRICES

The Prices for design activities and surveys will apply for a period of 2 years from this Agreement. By the date falling 21 months after the date of this Agreement the *Contractor* will provide details of any proposed revisions to the Prices for design activities and surveys.

The Notice to Proceed for design activities and surveys will terminate 24 months after the date of such Notice to Proceed. Once agreed between the Parties, the revised Prices shall apply to any Notices to Proceed for design activities and surveys that are issued after the date that is 24 months after the date of the first Notice to Proceed for design activities and surveys.

REDACTED UNDER FOIA 43 COMMERCIAL INTERESTS

**PART 2B**

**Notice to Proceed – *works***

The Base Information included in this Part 2B is used by the Parties to define the information required for the Scope, Site Information, Prices and other information required for a package of *works* to be included in a Notice to Proceed.

**THE SCOPE**

A detailed description of the Scope will be included in the Notices to Proceed.

**SITE INFORMATION**

The Home Office may add additional Sites to those contained in Site Information list from time to time. Contractor may be instructed to undertake works on some or all of the Sites including additional Sites listed in the Site Information document.

**REDACTED UNDER FOIA 23 Information supplied by, or relating to, bodies dealing with security matters**

**PRICES**

The Prices for works will apply for a period of 2 years from this Agreement. By the date falling 21 months after the date of this Agreement the Contractor will provide details of any proposed revisions to the Prices for works. Once agreed between the Parties, the revised Prices for works shall apply to any Notice to Proceed for works activities that is issued after the date that is 24 months after the date of this Agreement.

**REDACTED UNDER FOIA 43 COMMERCIAL INTERESTS**

PART 3 – FORM OF NOTICE TO PROCEED FOR A SITE

THIS NOTICE TO PROCEED WITH WORKS is made on the

20[24]

BETWEEN:

- (1) THE SECRETARY OF STATE FOR THE HOME DEPARTMENT ACTING ON BEHALF OF THE CROWN, whose principal place of business is at 2 Marsham Street, London, SW1P 4DF (the "*Client*", with such term including its successors in title and permitted assigns); and
- (2) [INSERT NAME OF CONTRACTOR] (company number [INSERT COMPANY NUMBER]) whose registered office is at [INSERT REGISTERED OFFICE] (the "*Contractor*").

BACKGROUND:

- (A) This Notice to Proceed with services and/or works has been issued pursuant to and in accordance with the contract between (1) the *Client* and (2) the *Contractor* dated [INSERT DATE].

IT IS AGREED:

1. The Contractor will proceed with the services and/or works set out in the Contract Data in the Appendix to this Notice to Proceed in accordance with the terms of the Agreement dated [INSERT DATE] between the Parties.

IN WITNESS WHEREOF THIS NOTICE TO PROCEED HAS BEEN SIGNED BY THE PARTIES ON THE DATE FIRST WRITTEN ABOVE

SIGNED for and on behalf of THE SECRETARY OF STATE FOR THE HOME DEPARTMENT ACTING ON BEHALF OF THE CROWN acting by an authorised signatory:

Authorised signatory (signature):

\_\_\_\_\_

Authorised signatory (printed name):

\_\_\_\_\_

Role:

\_\_\_\_\_

Date:

\_\_\_\_\_

[NB. SIGNING AUTHORITY PROCESS TO BE CONFIRMED]

**OFFICIAL SENSITIVE**

**EXECUTION BLOCK FOR THE CONTRACTOR TO BE CONFIRMED.]**

**SIGNED** by **[INSERT NAME OF CONTRACTOR]** acting by an Authorised Signatory to bind the Contractor:

**Director (signature):**

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**Director (printed name):**

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APPENDIX TO NOTICE TO PROCEED

CONTRACT DATA

THE *CLIENT'S CONTRACT DATA*

1 General

- General • The **conditions of contract** are the NEC4 Engineering and Construction Short Contract (June 2017, amended January 2019, October 2020 and January 2023).
- Contact details • The **Client** is:  
**Name:** [The Secretary of State for the Home Department].  
**Address for communications:** FAO [INSERT NAME OR POSITION], The Secretary of State for the Home Department, 2 Marsham Street, London, SW1P 4DF.  
**Address for electronic communications:** [INSERT EMAIL ADDRESS].
- The **Client's delegate** is:  
**Name:** [INSERT NAME].  
**Address for communications:** [INSERT ADDRESS].  
**Address for electronic communications:** [INSERT EMAIL ADDRESS].
- The authority of the *Client's delegate* is to act on behalf of the *Client* in performance of the *Client's* obligations under the contract, provided that the *Client's delegate* shall have no authority to amend the contract and except as otherwise stated in the contract:
- whenever carrying out duties or exercising any authority specified in or implied by the contract, the *Client's delegate* is deemed to act for the *Client*;
  - the *Client's delegate* has no authority to relieve either Party of any duties, obligations or responsibilities under the contract; and
  - any approval, acceptance, check, certificate, consent, examination, inspection, instruction, notice, proposal, request, test or similar act by the *Client's delegate* (including any absence of disapproval or rejection and any failure to give, issue, make or undertake any of the foregoing) shall not relieve the *Contractor* from any responsibility it has under the contract.
- The *works* • The **works** are [INSERT DESCRIPTION OF THE WORKS] (as more particularly described in the Scope).
- The Site • The **Site (or "site")** is [INSERT DETAILS].
- Occupiers / Users • [Insert names of Occupiers / Users at Sites who are affected by the *works*]
- A **Decant Protocol** [applies / does not apply] to this contract[.]; and
- **The Decant Protocol** is set out at [INSERT LOCATION].<sup>1</sup>
- Time • The **starting date** is [INSERT DATE].
- The **completion date** is [INSERT DATE].
- The **delay damages** are [TO BE CONFIRMED] (£[TO BE CONFIRMED]) pounds per

<sup>1</sup> **DRAFTING NOTE:** The operational requirements that apply to the Site may be updated on a case-by-case basis to reflect the requirements applicable to the operational establishment.



week or part thereof.<sup>2</sup>

- Period for reply • The **period for reply** is **ten (10)** Working Days.
- Quality • The **defects date** is six (6) months after the earlier of the following dates to occur:
  - the Completion of the whole of the *works*;
  - the last date on which the *Contractor* completed an activity forming part of the *works*; or
  - the termination of the engagement of the *Contractor* under the contract.
- The **defects correction period** is **two (2)** weeks.
- Payment • The **assessment day** is the final Working Day of each month.
  - The **final date for payment** is fourteen (14) days after the date on which payment becomes due
  - The **Purchase Order Number** is **[INSERT DETAILS]**
  - The template form of **Valid Invoice** is as specified in **[INSERT AS SCHEDULE]** (including a reference to the Purchase Order Number), provided that the *Client* may (acting reasonably and with reasonable notice) vary the form of invoice from time to time by written notice to the *Contractor*, with any such amendments applying as from the next *assessment day* after such notification and a Valid Invoice must have the relevant VAT invoice attached to it.
  - The **interest rate** is three per cent (3%) per annum above the base rate in force from time to time of the Bank of England.
- Retention • The **retention** percentage is zero per cent (0)%.
- Construction Act • The **Housing Grants, Construction and Regeneration Act 1996** does apply to the contract.
- Law • The **law of the contract** is the law of England and Wales.
  - The **Adjudicator** is as nominated by the *Adjudicator nominating body*.
  - The **Adjudicator nominating body** is The Technology and Construction Solicitors Association (TeCSA).
  - The **tribunal** is litigation in the courts of England or Wales as appropriate
- Period for retention • The **period for retention** commences on the Effective Date and (subject to clause 18) expires on the End of Liability Date.
- Insurance • In respect of the insurances that the *Contractor* is required to take out and maintain pursuant to and in accordance with the contract, the minimum amount of cover / indemnity for these insurances is as follows:<sup>3</sup>

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<sup>2</sup> **DRAFTING NOTE:** To be confirmed on a project-specific basis based on the information that is available as at the date of the Agreement and given the nature of the works in question.

<sup>3</sup> **DRAFTING NOTE:** The Client is cognisant of prevailing insurance market conditions in the United Kingdom relating to infrastructure and construction requirements and is currently undertaking an insurance due diligence to review. The results of the review will determine the scope and levels of required insurances to protect the Client's separate interests and the insurable risk profile of the works to be covered by this Agreement. The outcome of the review will also determine the appropriate contractual articulation of the Client's minimum insurance requirements under each Notice to Proceed for Activities to be governed by this Agreement. Accordingly, the precise insurance provisions

**OFFICIAL SENSITIVE**

Insurance against	Minimum amount of cover or minimum level of indemnity
Loss of or damage to the <i>works</i> , Plant and Materials.	The reinstatement cost of the <i>works</i> , Plant and Materials, from the Effective Date and up to and including the date of Completion of the whole of the <i>works</i> and, following Completion, up to (and including) the issue of the Defects Certificate.
Loss of or damage to Equipment.	The replacement cost of the relevant Equipment from the Effective Date and up to and including the date of Completion of the whole of the <i>works</i> and, following Completion, up to (and including) the issue of the Defects Certificate.
Loss of or damage to property (except the <i>works</i> , Plant and Materials and Equipment) and liability for bodily injury to or death of a person (that is not an employee of the <i>Contractor</i> ) caused by activity in connection with the contract.	<div style="background-color: black; color: white; padding: 2px;"><b>REDACTED UNDER FOIA 43 COMMERCIAL INTERESTS</b></div> <p>respect of any one (1) occurrence, the number of occurrences being unlimited in any one (1) policy period, but in the aggregate in respect of product liability or pollution liability (to the extent insured under the policy) from the Effective Date and up to and including the date of Completion of the whole of the <i>works</i> and, following Completion, up to (and including) the issue of the Defects Certificate.</p>
Death of or bodily injury to employees of the <i>Contractor</i> arising out of and in the course of their employment in connection with the contract.	<div style="background-color: black; color: white; padding: 2px;"><b>REDACTED UNDER FOIA 43 COMMERCIAL INTERESTS</b></div> <p>occurrence inclusive of costs, the number of occurrences being unlimited in any one (1) annual policy period from the Effective Date and up to and including the End of Liability Date (subject always to clause 18), from the Effective Date and up to and including the date of Completion of the whole of the <i>works</i> and, following Completion, up to (and including) the issue of the Defects Certificate.</p>
[New pollution and new contamination caused by the <i>Contractor's</i> activity under the contract, including exacerbation of existing pollution and contamination at the Site. <sup>4</sup>	[TO BE CONFIRMED] million pounds (£[TO BE CONFIRMED]) in respect of any one (1) occurrence, the number of occurrences being unlimited in any one (1) policy period (which shall not exceed

in this Agreement (and the expression of required insurance coverage, both in description and value) will be finalised on a case-by-case basis in due course.

<sup>4</sup> **DRAFTING NOTE:** To be discussed / agreed on a case-by-case basis to reflect the nature of the installation works.

	three (3) years) but not less than [TO BE CONFIRMED] million (£[TO BE CONFIRMED]) in the aggregate during any one (1) policy period, as from the Effective Date and up to and including the End of Liability Date (subject always to clause 18).]
Negligent acts, errors and/or omissions in the performance of the <i>Contractor's</i> professional obligations under the contract (with such insurance being referred to in the contract as " <b>professional indemnity insurance</b> ").	<p>REDACTED UNDER FOIA 43 COMMERCIAL INTERESTS</p> <p>each and every claim against the <i>Contractor</i> in relation to the <i>works</i> from the Effective Date for the duration of the contract renewable on an annual basis unless agreed otherwise by the <i>Client</i> and up to and including the End of Liability Date (subject always to clause 18).</p>

- The *Client* elects to "self-insure" the existing buildings and property at the Site and in doing so accepts all of the *Client's* associated risks arising out of or in relation to such "self-insurance". In accordance with the *Client's* decision to "self-insure", the *Client* does not require any additional premium / cost from the *Contractor* other than as set out above and/or referred to in the Insurance Table.
- Limitation of liability • For the purposes of clause 83.5, the *Contractor's* total aggregate liability to the *Client* and to all and any Beneficiary(s) for all matters arising under or in connection with the contract (whether in contract, tort (including negligence) or any other basis of law) other than in respect of the excluded matters, is limited to  
REDACTED UNDER FOIA 43 COMMERCIAL INTERESTS
- The **End of Liability Date** for *works* in a NTP is 12 years from the date of Completion of the *works* in the relevant NTP.
- The **Client's Policies** are set out at [INSERT LOCATION] of the Scope.
- The **Principal Contractor** is [the *Contractor*/ or other company as agreed between the Parties].
- The **Principal Designer** is [the *Contractor*].
- Without prejudice to the generality of clause 12.1, the **BIM Requirements** are the requirements specified in the Scope, all references to "**BIM Requirements**" in this contract shall be construed by reference to such requirements).

CONTRACT DATA

THE CONTRACTOR'S CONTRACT DATA

1 General

- Contact details • The **Contractor** is:  
**Name:** Ultra EVC Limited  
**Address for communications:** FAO [INSERT NAME OR POSITION], [INSERT ADDRESS].  
**Address for electronic communications:** [INSERT EMAIL ADDRESS].
- Price • The **offered total of the Prices** is [INSERT DETAILS], as set out [in the Price List / INSERT LOCATION]. [n.b. The "Prices" is the total price agreed for a scope of works instructed within a NTP (it could be for one Site or a number of Sites). The Price List is the document which sets out the breakdown of the Prices.]
- Fee and rates • The **fee percentage** applied to Defined Cost to assess compensation events (including changes to Scope) is [INSERT PERCENTAGE] ([INSERT PERCENTAGE]%). [n.b this would normally be the same as the % agreed for the initial pricing]
  - The **people rates** used to calculate Defined Cost for assessing compensation events (including Changes to Scope) are the same as the rates set out in the Price List or as otherwise agreed by the *Client* and the *Contractor*.
  - The **published list of Equipment** is as set out in the Price List.
  - The **percentage for adjustment for Equipment** is as set out in the Price List or as otherwise agreed by the *Client* and the *Contractor*.

PART 4: CONTRACT AMENDMENTS

APPENDIX 1 – AMENDMENTS TO STANDARD CLAUSES

1. AMENDMENTS TO CLAUSE 1 – GENERAL

- 1.1 Replace the definition of “**Corrupt Act**” at clause 11.2(3) with “Not used.”
- 1.2 In the definition of “**Defect**” at clause 11.2(4), insert “, applicable law and/or any other requirement of this contract” after “Scope”.
- 1.3 Insert a new clause 11.2(A) with the heading “**Additional identified and defined terms: general**” and with the following new sub-clauses:
- (1) **Agreement** means the document entitled “Agreement” as executed by the *Client* and the *Contractor* in connection with the *works*.
  - (2) **Construction Act Supplement** means the section of the *conditions of contract* headed “If the United Kingdom Housing Grants, Construction and Regeneration Act 1996 as amended by the Local Democracy, Economic Development and Construction Act 2009 (the Act) applies to the contract, the following additional conditions apply.”
  - (3) **COVID-19** means the strain of coronavirus known as coronavirus infectious disease 2019 (COVID-19) and/or the causative virus known as severe acute respiratory syndrome coronavirus 2 (SARS-CoV-2), including any mutations of COVID-19 and/or SARS-CoV-2 recognised by the World Health Organization.
  - (4) **Effective Date** means the date of the Agreement.
  - (5) **End of Liability Date** means the date on which the Contractor’s liability for the *works* ends, as stated in the Contract Data
  - (6) The **Final Date for Payment** is the date identified as such in the Contract Data.
  - (7) A **Force Majeure Event** means any of the following events (and any circumstance arising as a direct consequence of any of the following events, other than any circumstances which are excluded in the description of such event) which is not or does not result in the occurrence of a *Client*’s liability
    - war, civil war, rebellion, revolution, insurrection, military or usurped power,
    - ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel, radioactive toxic explosive or other hazardous properties of any explosive nuclear assumption or nuclear component thereof (unless caused or contributed towards by the acts and/or omissions of the *Contractor*),
    - pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds,
    - any epidemic, pandemic or pestilence (as classified or advised by the World Health Organization or the United Kingdom government, including COVID-19),
    - action by protestors outside of the Site that is directly related to the intended construction and/or use of the completed *works* as a custodial establishment (and

neither involving solely nor originating with the personnel or other employees of the *Contractor* or Subcontractors or lower tier subcontractors or the employees or subcontractors of any group company associated with the *Contractor*),

- riot, civil commotion, public disorder, sabotage and/or acts of vandalism outside of the Site (and neither involving solely nor originating with the personnel or other employees of the *Contractor* or Subcontractors or lower tier subcontractors or the employees or subcontractors of any group company associated with the *Contractor*); and/or
- strike, industrial action, lockout or trade dispute occurring nationwide and neither involving solely nor originating with the personnel or other employees of the *Contractor* or Subcontractors or lower tier subsubcontractors or the employees or subcontractors of any group company associated with the *Contractor*.

- (8) **Notice to Proceed** means the notice issued by the *Client*, pursuant to Part 3 of the Agreement, instructing the *Contractor* to proceed with *works* at a Site.
- (9) **Principal Contractor** is the party identified as such in the Contract Data to fulfil such statutory role under and as defined in the CDM Regulations.
- (10) **Principal Designer** is the party identified as such in the Contract Data to fulfil such statutory role under and as defined in the CDM Regulations.
- (11) **Purchase Order Number** means the number identified as such in the Contract Data.
- (12) **Reasonable Rates and Terms** has the meaning given to such term in clause 83.4.
- (13) **Standard of Care** means all of the reasonable skill, care, diligence and prudence to be expected of an appropriately qualified, skilled, competent and experienced professional designer that is experienced in the carrying out of such activities for projects of a similar size, scope, value, character and complexity to the Agreement and subject to this Notice to Proceed.
- (14) **Valid Invoice** means a VAT compliant invoice in the form specified in [INSERT AS SCHEDULE] (including a reference to the Purchase Order Number), provided that the *Client* may (acting reasonably and with reasonable notice) vary the form of invoice from time to time by written notice to the *Contractor*, with any such amendments applying as from the next *assessment day* after such notification.

- 1.4 Replace the wording of clause 12.1 in its entirety with the following:

“Subject to paragraph 5 of the Agreement, the Parties acknowledge and agree that capitalised terms and/or italicised terms in the contract have the meaning given to them in clause 11.2 and clause 11.2(A) unless expressly defined elsewhere in the contract.”

- 1.5 Replace the wording of clause 13.1 in its entirety with the following:

“Any communication required under the contract from the *Contractor* to Others is copied simultaneously to the *Client* and *Client’s delegate*.”

- 1.6 Insert a new clause 13.3 with the following wording:

“The *Contractor* retains copies of drawings, specifications, reports and other documents which record the *works* for the *period for retention*.”

- 1.7 Replace the wording of clause 14.3 in its entirety with the following:

"The *Contractor* has reviewed the contract documents contained or referenced within each Notice to Proceed prior to its issue by the *Client* with a view to, identifying any error, mistake, inaccuracy, inadequacy, ambiguity, inconsistency, omission, discrepancy and/or conflict in or between the documents which are part of the Notice to Proceed and has notified the *Client* of the outcome of the review prior to issue by the *Client*.

As from the date of issue of each Notice to Proceed by the *Client*

- each Party notifies the other as soon as it becomes aware of any error, mistake, inaccuracy, inadequacy, ambiguity, inconsistency, omission, discrepancy and/or conflict in or between the documents which are part of the contract,
- the *Contractor* submits a proposal to the *Client* as to how to resolve the issue,
- the *Client* gives an instruction resolving the issue and
- the instruction shall not constitute a compensation event and shall not give rise to any adjustment to the Prices and/or the Completion Date."<sup>5</sup>

- 1.8 Insert a new clause 14.6 with the following wording:

"The *Client*

- has delegated its responsibilities to the *Client's delegate* as identified in the Contract Data and
- may replace the *Client's delegate* after it has notified the *Contractor* of the name of the replacement."

- 1.9 Replace the wording of clause 16.1 in its entirety with the following:

"The *Client* allows non-exclusive access to and use of each part of the Site to the *Contractor*.

"The *Contractor* acknowledges and agrees that the *Client* and all persons authorised by the *Client* shall at all times have access to the Site and the non-exclusive access that it is entitled to under this clause 16.1 takes effect as a non-exclusive licence only for the purpose of Providing the Works and performing the *Contractor's* other obligations under the contract, and such non-exclusive licence shall not give rise to any other rights or entitlements in favour of the *Contractor* over or in connection with the Site and/or the Site's use. Any additional arrangements and/or requirements relating to this period of non-exclusive possession referred to in this clause 16.1 will be set out in the Scope and/or (if stated in the Contract Data as applying to this contract) the Decant Protocol."<sup>6</sup>

If the *Contractor* require access to any area within the *Client's* control outside the agreed Site of the works, it shall notify the *Client* as soon as reasonably practicable and not access any such area(s) without the *Client's* express written approval. The *Contractor* shall comply with any restrictions in relation to such areas that are referred to in this which shall be deemed the equivalent requirements set out in this contract in relation to the Site and/or any other requirements that may be notified to the *Contractor* by the *Client*.

- 1.10 Insert a new clause 16A with the following wording:

"16A **Decant Protocol**<sup>7</sup>

16A.1 The provisions of this clause 16A apply where it is specified in the Contract Data that a Decant Protocol applies to this contract.

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<sup>5</sup> Ultra to confirm list of contract documents relevant to a Notice to Proceed have been reviewed and received.

<sup>6</sup> **DRAFTING NOTE:** The operational requirements that apply to the Site may be updated on a case-by-case basis to reflect the requirements applicable to the operational establishment.

<sup>7</sup> **DRAFTING NOTE:** The operational requirements that apply to the Site may be updated on a case-by-case basis to reflect the requirements applicable to the operational establishment.



- 16A.2 The Parties acknowledge that the *Contractor* shall comply (and ensure that its Subcontractors comply) with the Decant Protocol (and if the *works* are to be constructed in sections, the Decant Protocol shall apply to each section on the basis set out therein).
- 16A.3 Without prejudice to the generality of clause 16A.2), the *Contractor* shall not commence any works and/or services in connection with the *works* at the Site other than in accordance with the Decant Protocol."

1.11 Replace the wording of clause 17 in its entirety with the following:

"17 **Basis of engagement and non-exclusivity**

17.1 The *Contractor* acknowledges and agrees that

- it is appointed by the *Client* under the contract solely to Provide the Works and perform its duties and obligations under the contract,
- the *Client* makes no guarantee to the *Contractor* that the *Contractor* will be issued a Notice to Proceed for any *works* and the *Contractor* shall have no entitlement to perform the same
- the *Contractor* shall have no entitlement to make any claim against the *Client* whatsoever (whether in contract, tort or any other basis of law) in respect of, without limitation, any costs, damages, expenses and/or losses (whether direct, indirect, consequential, linked to lost profit, loss of opportunity, loss of goodwill or otherwise) arising out of or in connection with it not being issued with a Notice to Proceed to with any *works* and
- the *Contractor* shall have liability for the works (including any defects in the works) until the End of Liability Date.

17.2 Notwithstanding any other provision of the contract, the *Contractor* acknowledges and agrees that the *Client* may give an instruction to the *Contractor* which changes the Scope to remove or omit all or part of the *works* in a Notice to Proceed at any time and for any reason and the *Client* may instruct a third party to carry out such omitted work, in which case

- the total of the Prices shall be reduced to reflect such removal or omission, calculated by reference to the *Client's* reasonable determination of the value attributable to such omitted part(s) or by such other sum as otherwise agreed between the Parties,
- the *Client* shall have no liability whatsoever to the *Contractor* in respect of any such reduction or omission (whether in contract, tort (including negligence) or otherwise), and such reduction or omission shall not give rise to any entitlement for the *Contractor* to claim for abortive costs, actual or expected loss of payment or profit, loss of revenue, loss of goodwill, loss of opportunity or any direct, consequential or indirect losses of any type or for any other amount under the contract and
- the *Contractor* shall not be entitled to any adjustment to the Completion Date arising out of or in connection with any instruction(s) issued by the *Client* pursuant to this clause 17.2,

provided always that nothing in this clause 17.2 shall affect, in respect of any works and/or services forming part of an activity that is subject to such an omission instruction, the *Contractor's* entitlement to payment (or reimbursement) in respect of

- any works and/or services forming part of that activity that have been properly performed by the *Contractor* as at the effective date of the relevant omission instruction but which cannot, by reason of the omission, be completed, the value of which shall be determined by the *Client*, acting reasonably, on a pro rata basis by reference to the value of the relevant works and/or services as against the total of the Prices for the relevant activity,
- the *Contractor's* reasonably and properly incurred direct demobilisation costs (as



**OFFICIAL SENSITIVE**

disclosed to the *Client* for review and approval on an open book basis) in relation to the omitted works and/or services only,

- the cost of any Plant and Materials that the *Contractor* has itself manufactured in connection with the *works* and that are stored, as at the date of the omission, at a location other than at the Site that and provided that the *Contractor* has used reasonable endeavours to mitigate such costs, either whole or in part (including by using such Plant and Materials as part of the wider delivery of the *works*) and
- any direct costs that the *Contractor* is contractually committed to pay to any third party (including its Subcontractors) that relate to such omitted works and/or services only (such as cancellation costs and the cost of Plant and Materials that have been manufactured by a third party in connection with the *works* and that are stored, as at the date of the omission, at a location other than at the Site) and to the extent that which the *Contractor* is unable, using reasonable endeavours and exercising the terms of the relevant contract with such third party (but without having to incur further costs to such third party in doing so) to mitigate such costs, either whole or in part (including by using any Plant and Materials, Equipment and/or other physical items that the *Contractor* is contractually committed to purchase as part of the wider delivery of the *works*).

Where any sums are to be paid to the *Contractor* under the third and fourth bulleted items above in respect of Plant and Materials, Equipment and/or other physical items referred to in such bulleted items, it shall be a precondition to the *Contractor's* entitlement to payment in respect of the same under this clause 17.2 that

- (save in relation to Plant and Materials and/or Equipment that is hired by the *Contractor* and/or its Subcontractors) ownership and title in such Plant and Materials, Equipment and/or other physical items transfers to the *Client* and
- the *Contractor* delivers the same to a location to be agreed between the Parties in advance,

no later than the date on which the *Contractor* receives payment from the *Client* in connection with the relevant Plant and Materials, Equipment and/or other physical items under this clause 17.2.

2. <b>AMENDMENTS TO CLAUSE 2 – THE <i>CONTRACTOR</i>’S MAIN RESPONSIBILITIES</b>
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2.1     In clause 20.1, insert “(but subject always to clause 20.3) and in accordance with the contract” after “Scope”.

2.2     Insert a new clause 20.3 with the following wording:

“20.3     The *Contractor*

- carries out and completes the *works* in a good and workmanlike manner, using only materials which are new (unless the contract states otherwise or as otherwise agreed with the *Client* in writing), and are sound and of good quality and which are consistent with the intended use of the *works* as stated in the contract or reasonably to be inferred given the nature of the *works*,
- in providing any services (including any design in respect of the *works*) that are ancillary or otherwise related to the *works* as required by the contract (including the preparation of any reports, summaries, recommendations and/or any other analogous deliverables in relation to the *works*) is to exercise (and it warrants that it has exercised) the Standard of Care in respect of the same,
- Provides the Works in accordance with all applicable laws and (to the extent that the *Contractor* can control the same) so that the product of the *works* complies with all applicable laws,
- (where identified as the Principal Designer in the Contract Data) fulfils the role of Principal Designer in connection with the *works* and
- (where identified as the Principal Contractor in the Contract Data) fulfils the role of Principal Designer in connection with the *works*.

The Parties acknowledge and agree that nothing in the contract, whether express or implied, shall impose any fitness for purpose obligation on the *Contractor* in relation to the *works*.”

2.3     Insert a new clause 20.4 with the following wording:

“The *works* when completed by the *Contractor* shall comply with all appropriate requirements of any relevant local or other relevant authority and all relevant statutory requirements.”

2.4     Insert a new clause 20.5 with the following wording:

“The *Contractor* shall comply with the BIM Requirements at all times in the provision of the *works*.”

2.5     Replace the wording of clause 21.3 in its entirety with the following:

“After consultation with the *Contractor*, the *Client* may (acting reasonably), having stated its reasons, request the removal of a person employed by the *Contractor*. The *Contractor* then promptly replaces that person with a replacement person accepted by the *Client* not later than ten (10) Working Days after the date of the *Client*’s request. The *Client* does not unreasonably withhold or delay its acceptance of such replacement person.”

2.6     Insert a new clause 21.4 with the following wording:

“21.4     The *Contractor* may not subcontract the *works* without the written consent of the *Client*.”

3. <b>AMENDMENTS TO CLAUSE 3 – TIME</b>
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- 3.1     At the end of the second bulleted item of clause 30.4, insert “pursuant to and in accordance with clause 17.2”.
- 3.2     Replace the wording of clause 31.1 in its entirety with the following:
- “As from the date of the relevant Notice to Proceed (and in addition to any other requirements as set out in the Scope), the *Contractor* submits programmes to the *Client* every four (4) weeks (or at such other frequency as the *Client* may request, acting reasonably) showing
- the changes to the programme previously submitted by the *Contractor* (if applicable),
  - the progress of the *works* (as against the original programme for the *works*),
  - the effects of any implemented compensation events,
  - any changes that the *Contractor* proposes to make the programme.”

4.	<b>AMENDMENTS TO CLAUSE 4 – DEFECTS</b>
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- 4.1 In clause 41.1, insert “and, where the *Client* has a reasonable basis for requesting the search or where a Defect is found upon inspection, such instruction shall not constitute a compensation event” before the full stop.
- 4.2 Add the following to the end of clause 44.1:  
“The *Client* informs the *Contractor* of the amount that it actually cost the *Client* to have the Defect corrected by other people within a reasonable time of that being known. If the actual cost differs from that amount assessed and paid by the *Contractor* to the *Client*, either the *Client* repays promptly the *Contractor* any overpayment or the *Contractor* promptly pays to the *Client* any underpayment (as the context requires).”
- 4.3 Insert a new clause 44A as follows:  
“Without prejudice to the generality of clause 44, all Defects shall be rectified by the *Contractor* in accordance with any requirements as set out in the Decant Protocol and/or the Scope at no additional cost to the *Client* unless the *Client* otherwise agrees in writing.”

5. AMENDMENTS TO CLAUSE 5 – PAYMENT

- 5.1 Insert a new sentence at the end of clause 50.1:
- “The *Contractor* acknowledges and agrees that
- it is a condition precedent to the commencement of the processes set out in clause 50 to clause 51 (inclusive) and in the Construction Act Supplement in respect of an invoice submitted by or on behalf of the *Contractor* that the invoice is a Valid Invoice (provided always that the *Client* must act reasonably and proportionately in making a determination as to whether an invoice is a Valid Invoice based upon the nature and type of the purported non-compliant part(s) of the invoice),
  - where an invoice submitted by the *Contractor* to the *Client* at an *assessment day* is not a Valid Invoice, the *Client* shall notify the *Contractor* of this in writing and the *Contractor* shall be entitled to apply for payment for the items otherwise referred to in the non-compliant invoice as part of the invoice that it issues to the *Client* at the next *assessment day* and no earlier and,
  - clause 50 to clause 51 (inclusive) and the Construction Act Supplement shall be construed accordingly.”
- 5.2 In the second bulleted item of clause 50.3, insert the words “(which includes any VAT that may be payable on the amount due)” after the words “paid to the *Contractor*”.
- 5.3 Insert a new clause 50.3A after clause 50.3 and before clause 50.4 with the following wording:
- “50.3A If there is subsequently any adjustment to the consideration due to the *Contractor* under the contract or the extent to which the *Contractor* Providing the Works is a supply on which VAT is chargeable under applicable law, then
- if the adjustment is upward or the extent to which the supply is a supply on which the VAT that is chargeable increases, then
    - the *Contractor* shall issue a new Valid Invoice or an additional or revised Valid Invoice (as the case may be) to the *Client* and
    - the *Client* will pay to the *Contractor* an amount which is equal to any VAT or additional VAT (as the case may be) arising on and from the date of the adjustment in respect of the supply for which the *Contractor* is liable to account or
  - if the adjustment is downward or the extent to which the supply is a supply on which the VAT that is chargeable decreases, then
    - the *Contractor* shall issue a valid VAT credit note or a revised Valid Invoice to the *Client* and
    - the *Contractor* will pay to the *Client* an amount which is equal to any reduction in the VAT arising in respect of the supply for which the *Contractor* is liable to account or
    - the Parties may agree in writing to withhold from any further sums payable to the *Contractor* an amount which is equal to any reduction in the VAT arising in respect of the supply for which the *Contractor* is liable to account.”
- 5.4 Replace the wording of clause 50.4 in its entirety with “Not used.”
- 5.5 In clause 50.8, insert “(1/4)” after “quarter”.
- 5.6 In clause 51.1:
- replace “within three weeks” with “on or before the Final Date for Payment”; and

**OFFICIAL SENSITIVE**

- insert the following wording at the end of the clause:

“If the *Client* pays the *Contractor* any sums under or in connection with the contract prior to the submission of a Valid Invoice, such payment shall be deemed to have been paid to the *Contractor* on account and shall be deductible from the next payment to be made to the *Contractor* under the contract.”

5.7 Insert a new clause 51.4 with the following wording:

“Notwithstanding clause 51.2, where a Party notifies the other Party that it has made an overpayment to that Party in connection with the contract, the payee shall repay such overpaid amount to the payer within twenty-eight (28) days of the date of the notification of the overpayment and the amount of such sum, if not so repaid, shall be recoverable on demand by the payer as a debt. The Parties agree that this clause 51.4 shall not apply in relation to any overpaid amounts that are, as at the time of the notification, the subject of any dispute which has been referred to an *Adjudicator* and/or a *tribunal* to be resolved. The Parties further acknowledge and agree that neither shall exercise the rights afforded under this clause 51.4 in a manner which is inconsistent with Part II of the Housing Grants, Construction and Regeneration Act 1996 (as amended).”

5.8 Insert a new clause 51.5 with the following wording:

“The *Contractor* shall make all payments due to the *Client* under or in connection with the contract without any deduction (whether by set-off, counterclaim, abatement or otherwise) unless the *Contractor* has a valid adjudication, judgment (or equivalent) or court order requiring an amount equal to such deduction to be paid to the *Contractor*.”

6.	<b>AMENDMENTS TO CLAUSE 6 – COMPENSATION EVENTS</b>
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- 6.1 Replace the first sentence of clause 60.1 with the following:  
“The following events are compensation events, but only to the extent that they
- are not due to any negligence, default, fault, unlawful act or omission or breach of or failure to comply with the contract by the *Contractor* or due to any acts and omissions (including tortious acts and omissions) of its Subcontractors and/or its employees,
  - are not attributable or related to any works and/or services undertaken (or to be undertaken) by or on behalf of the *Contractor* pursuant to any additional Notice to Proceed issued, whether due to any negligence, default, fault, unlawful act or omission or breach of or failure to comply with the relevant contract (in each case, by act or omission) or due to any acts or omissions of its subcontractors and/or its employees in respect of the same and/or
  - do not otherwise arise as a consequence of (or are related to) the presence at the Site of the *Contractor* pursuant to and in accordance with any additional Notice to Proceed issued.”
- 6.2 Add at the end of clause 60.1(1):  
“or a change to the Scope provided by the *Contractor* which is made either at its request or to comply with other Scope provided by the *Client* at the Effective Date (subject to clause 14.3)”.
- 6.3 Replace the wording of clause 60.1(11) with the following:  
“The occurrence of a Force Majeure Event which
- stops the *Contractor* completing the whole of the *works* at a specific Site or
  - stops the *Contractor* completing the whole of the *works* at a specific Site by the Completion Date.”
- 6.4 In clause 61.2, insert “(1)” after “one”.
- 6.5 In clause 61.3, insert “(4)” after “four”.
- 6.6 In clause 62.2, insert “(2)” after “two”.
- 6.7 In clause 62.3, insert the following at the end of the clause and before the full stop:  
“(provided always that the *Contractor* has first notified the *Client* a further time in writing of its failure to reply and the *Client* then fails to reply to the *Contractor* within a further five (5) Working Days of such notice)”.
- 6.8 In clause 62.4, insert “(1)” after “one”.
- 6.9 In clause 63.2, insert the following as a new paragraph at the end of the clause:  
“Where the compensation event notified by the *Contractor* to the *Client* is a Force Majeure Event, the *Contractor* shall not be entitled to any adjustment to the Prices and shall, subject to the provisions of clause 61 to clause 65 (inclusive), be entitled to an adjustment to the Completion Date only.”
- 6.10 Replace the wording of clause 63.8 with “Not used.”
- 6.11 In clause 63.10, replace “the assessment” with the following:  
“save in the case of a compensation event arising as a result of a breach of the contract or failure to perform in accordance with the contract by the *Client*, the assessment”.

7.	<b>AMENDMENTS TO CLAUSE 7 – TITLE</b>
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7.1 At the end of the first sentence in clause 70.1 insert:

“and the *Contractor* acknowledges and agrees that title in any such object vests in the *Client*”.

7.2 Insert a new clause 70.3 with the following wording:

“Each item of Plant and Materials becomes the property of (and title in that item transfers to) the *Client* at whichever is the earlier of the following circumstances to occur

- when it is brought within the internal boundaries of the Site or
- (whether or not the item has been brought within the internal boundaries of the Site) the date on which the *Contractor* receives payment from the *Client* for the item in question.

Where, prior to delivery to the Site, the title to an item of Plant and Materials passes to the *Client*, the *Contractor* sets such item of Plant and Materials aside and marks it clearly and visibly as being the *Client*’s property and identifies its destination as the Site.

It is a precondition to the *Contractor*’s entitlement to payment for any Plant and Materials that the *Contractor*

- marks and stores such Plant and Equipment it in accordance with the contract (including any requirements in respect of the same as specified in the Scope) and
- (unless otherwise agreed in advance and in writing by the *Client*) provides an executed Vesting Agreement in favour of the *Client* in the form referred to in the Contract Data in respect of such Plant and Equipment (with such amendments as the *Client* may approve in advance, acting reasonably) (or in such alternative form as is acceptable to the *Client*, acting reasonably).

Upon request, the *Contractor* provides reasonable proof to the *Client* (in a form to be agreed in writing in advance with the *Client*) that the relevant item of Plant and Materials has been so set aside and marked (including procuring access for the *Client* and/or its persons to inspect the item of Plant and Materials at the relevant place of storage). The *Contractor* does not remove the relevant item from its place of storage without the prior written consent of the *Client*.”

7.3 Insert a new clause 70.4 with the following wording:

“Title to Plant and Materials that the *Client* has not paid for under this contract passes back to the *Contractor* if they are removed from the Site. If the Plant and Materials have been paid for by the *Client* under this contract, the title in such Plant and Materials remains with the *Client* even if they are removed from the Site and the *Contractor* complies with the requirements of clause 70.3 as to the marking and storage of such removed Plant and Materials. No Plant and Materials within the Site may be removed from the Site without the *Client*’s prior written permission.”

7.4 Insert a new clause 70.5 with the following wording:

“The *Contractor* removes Equipment from the Site when it is no longer needed unless the *Client* allows it to be left in the *works*.”



8. **AMENDMENTS TO CLAUSE 8 – LIABILITIES & INSURANCE<sup>98</sup>**

8.1 In clause 80.1:

- delete the third bulleted item; and
- delete the fifth bulleted item.

8.2 Replace the wording of clause 81.1 in its entirety with the following:

“From the Effective Date until the Defects Certificate has been issued, the risks which are not expressly stated as being *Client’s* liabilities are carried by the *Contractor*.”

8.3 At the beginning of clause 82.1, replace “Any cost” with “Without prejudice to the *Contractor’s* indemnities in this contract and its other liabilities pursuant to the contract, any cost”.

8.4 Replace the wording of clause 82.4 with “Not used.”

8.5 Replace the wording of clause 83.1 in its entirety with “Not used.”

8.6 In clause 83.3, add the following row to the Insurance Table:

Insurance against	Minimum amount of cover or minimum limit of indemnity
Negligent acts, errors and/or omissions in the performance of the <i>Contractor’s</i> professional obligations under the contract (with such insurance being referred to in the contract as “ <b>professional indemnity insurance</b> ”).	The amount stated in the Contract Data.

8.7 Delete clause 83.4 in its entirety and replace with a new clause 83.4 with the heading “**Professional indemnity insurance**” with the following wording:

“83.4 **Professional Indemnity**

- Without prejudice to the generality of clause 83.3, the *Contractor* shall maintain professional indemnity insurance covering (inter alia) its potential liability under the contract for the given insurance policy year in the event that it breaches the contract upon market norm terms and conditions prevailing for the time being in the insurance market, and with reputable insurers lawfully carrying on such insurance business in the United Kingdom, with the minimum level of indemnity as stated in the Insurance Table, in respect of each and every claim or series of claims arising out of the same original cause or source (or equivalent), without limit to the number of claims, with lower annual and/or annual aggregate limits of cover in respect of pollution and contamination related claims and similar where such limited cover is the norm for the period specified in the Contract Data, provided always that such insurance is available at commercially affordable rates and on terms such that prudent building contractors who undertake design generally carry such insurance (“**Reasonable Rates and Terms**”).
- Any increased or additional premium required by insurers in respect of the *Contractor’s* professional indemnity insurance by reason of the *Contractor’s* own claims record or other acts, omissions, matters or things particular to the *Contractor* shall be deemed to be within Reasonable Rates and Terms.
- The *Contractor* shall immediately inform the *Client* if its professional indemnity insurance ceases to be available upon Reasonable Rates and Terms in order

<sup>98</sup> **DRAFTING NOTE:** See the earlier comment on the treatment of insurance in the Agreement.

that the *Contractor* and the *Client* can discuss means of best protecting their respective positions in respect of the contract and the *works* in the absence of such professional indemnity insurance.

- The *Contractor* shall co-operate fully with any measures reasonably required by the *Client* including (without limitation) completing any proposals for insurance and associated documents, maintaining such insurance at rates above Reasonable Rates and Terms if the *Client* undertakes in writing to reimburse the *Contractor* in respect of the net cost of such insurance to the *Contractor* above Reasonable Rates and Terms.
- The *Contractor* shall produce promptly for inspection and/or provide a copy of satisfactory documentary evidence (and a copy of an insurance broker's letter or similar certificate shall be satisfactory) that the required professional indemnity insurance is being maintained.
- The *Contractor* shall notify the *Client* in writing from time to time of any change in its professional indemnity insurance arrangements which take it outside the requirements of the contract and within seven (7) days of the *Client's* request at any time the *Contractor* will produce for inspection documentary evidence as to compliance with this clause 83.4."

8.8 Insert a new clause 83.5 with the following wording:

"83.5 The Parties acknowledge and agree that

- the *Contractor's* total aggregate liability to the *Client* under or in connection with this contract (save in respect of the excluded matters) is limited to the amount stated in the Contract Data,
- the *Client* shall have no liability to the *Contractor*, however that liability arises (including any liability arising by breach of contract, tort (including the tort of negligence) or by breach of statutory duty) for loss of profit, loss of contract, loss of business, loss of chance or other similar loss and/or indirect or consequential loss of any type arising out of or in connection with the contract and
- nothing in this clause 83.5 or elsewhere in the contract is intended to, or shall, limit or exclude a Party's liability in relation to
  - bodily injury or death caused by any negligence of a Party and/or
  - fraud or fraudulent misrepresentation of a Party."

For the purposes of this clause 83.5, the "excluded matters" are as follows

- interest on any debt or damages,
- wilful default,
- costs in any proceedings,
- loss or damage to the *Client's* property and/or
- delay damages."

8.9 Delete clause 84.1 in its entirety.

**OFFICIAL SENSITIVE**

- 9.1 Replace the wording of clause 90.2 with the following:  
“The *Client* may terminate the contract and/or any Notice to Proceed immediately on written notice to the *Contractor* if the *Contractor* is subject to or has suffered an Insolvency Event, the notice of such termination shall also constitute a valid notice of termination issued under this clause 90.3 if the notice states that it also applies to the same (in each case, Reason 1).”
- 9.2 At the end of clause 90.7 before “(Reason 9)”, insert the following after “for any other reason”:  
“(including where, the *Client* intends to engage a third party to perform all or part of the *works* that have yet to be completed by the *Contractor* as at the date of termination)”.
- 9.3 Insert a new clause 90.8 with the following wording:  
“The *Client* may immediately terminate the engagement of the *Contractor* under the contract by reference to the circumstances set out at regulation 73(1)(a) or regulation 73(1)(c) of the Public Contracts Regulations 2015, which shall be treated the same as a termination for “Reason 5” for the purposes of clause 90 to clause 92 (inclusive).”
- 9.4 Replace the wording of clause 92.3 with “Not used.”
- 9.5 In clause 92.4:
- insert “(13)” after “thirteen” and
  - insert “(3)” after “three”.
- 9.6 Insert a new clause 92.5 with the following wording:  
“Any final payment made by the *Client* to the *Contractor* pursuant to this clause 92 in relation to the termination of the *Contractor*’s obligation to Provide the Works shall be the sole and exclusive remedy of the *Contractor* arising out of or in connection with such termination (whether in contract, tort (including negligence) or any other basis of law) and the *Contractor* shall have no right to claim any other amounts in respect of the termination above and beyond such sums, including (without limitation) amounts in respect of loss or deferment of anticipated or actual profit, loss of opportunity, and/or redeployment of workforce and/or for any consequential or indirect losses of any other kind.”

10.	<b>AMENDMENTS TO THE SECTION OF THE CONTRACT HEADED “IF THE UNITED KINGDOM HOUSING GRANTS, CONSTRUCTION AND REGENERATION ACT 1996 AS AMENDED BY THE LOCAL DEMOCRACY, ECONOMIC DEVELOPMENT AND CONSTRUCTION ACT 2009 (THE ACT) APPLIES TO THE CONTRACT, THE ADDITIONAL CONDITIONS APPLY” (REFERRED TO AS THE “CONSTRUCTION ACT SUPPLEMENT” HEREIN)</b>
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- 10.1 Replace the wording of clause 1.1(2) with the following:  
“The date on which a payment becomes due is seven (7) days after the *assessment day*. If there is a termination, the payment due date is thirteen (13) weeks after the notice of termination.”
- 10.2 In clause 1.1(3), replace “three weeks after the payment due date” with “the date identified as such in the Contract Data”.
- 10.3 Replace the wording of clause 1.3 with “Not used.”
- 10.4 In clause 1.4, insert “(7)” after “seven”.
- 10.5 In clause 1.6, insert “(7)” after “seven”.
- 10.6 In clause 1.8, insert “(5)” after “five”.
- 10.7 In clause 1.9, insert “(7)” after “seven”.

**PART 4 – CONTRACT AMENDMENTS**

**APPENDIX 2A - ADDITIONAL CLAUSES APPLICABLE TO THE CONTRACT**

1.	REPUTATIONAL RISK		
	1.1.	The <i>Contractor</i> shall take all appropriate steps to ensure that neither it nor any personnel and/or party employed and/or engaged by the <i>Contractor</i> (in whatever capacity) is placed in a position where, in the reasonable opinion of the <i>Client</i> the behaviour of the <i>Contractor</i> or any person engaged by or on behalf of it is not in the <i>Client's</i> best interest or might adversely affect the <i>Client's</i> reputation (a " <b>Reputational Risk</b> ").	
	1.2.	The <i>Contractor</i> :	
		1.2.1.	warrants that, as at the date of each Notice to Proceed, it is not aware of any actual or potential <i>Reputational Risk</i> ; and
		1.2.2.	shall notify and disclose to the <i>Client</i> full particulars of any behaviour which might give rise to an actual or potential <i>Reputational Risk</i> immediately upon becoming aware of the same.
	1.3.	The <i>Client</i> may terminate the and/or take such other steps it deems necessary where, in the reasonable opinion of the <i>Client</i> , there is or may be an actual or potential <i>Reputational Risk</i> that is not capable of being remedied by the <i>Contractor</i> .	
2.	MALICIOUS CODE		
	2.1.	The <i>Contractor</i> shall, at all times ensure that:	
		2.1.1.	<i>Anti-Virus Software</i> is installed on its <i>Non-Client ICT System</i> ,
		2.1.2.	such <i>Anti-Virus Software</i> is used on a continuous basis to
		2.1.2.1.	identify, detect and/or remove <i>Malicious Code</i> from its <i>Non-Client ICT System(s)</i> ,
		2.1.2.2.	prevent the transmission of <i>Malicious Code</i> from its <i>Non-Client ICT System</i> onto any <i>Client ICT System</i> or other <i>Non-Client ICT System(s)</i> and
		2.1.2.3.	protect (and inoculate) its <i>Non-Client ICT System(s)</i> and protect any <i>Client ICT System</i> and other <i>Non-Client ICT System(s)</i> against <i>Malicious Code</i> and
		2.1.3.	such <i>Anti-Virus Software</i> is maintained and updated on a continuous basis with all (without limitation) anti-virus definitions and signatures that are developed and distributed by the developer of such <i>Anti-Virus Software</i> from time to time,
		2.1.4.	where such <i>Anti-Virus Software</i> is maintained and updated by its developer on a subscription basis, its subscription is maintained on a continuous basis and is not permitted to lapse and
		2.1.5.	where a piece of <i>Anti-Virus Software</i> ceases to be maintained on a continuous basis by its developer or is discontinued, it is replaced by at least an equivalent piece of <i>Anti-Virus Software</i> .
	2.2.	Where (as an " <b>Identifying Party</b> ")	
		2.2.1.	the <i>Contractor</i> becomes aware of the presence of or exposure to <i>Malicious Code</i> on a <i>Non-Client ICT System(s)</i> or any <i>Client ICT System</i> or

**OFFICIAL SENSITIVE**

		2.2.2.	the <i>Client</i> becomes aware of presence of or exposure to <i>Malicious Code</i> on its <i>Client ICT System</i> and/or any <i>Non-Client ICT System(s)</i> ,
			each an " <b>Affected ICT System</b> ", the <i>Identifying Party</i> shall immediately notify (as the context requires) the other who, in the reasonable opinion of the <i>Identifying Party</i> has been exposed to <i>Malicious Code</i> (as an " <b>Affected Party</b> "), following which:
		2.2.3.	the <i>Identifying Party</i> and the <i>Affected Party</i> shall cooperate to actively minimise the effect and (as the context requires) remove from and/or protect the <i>Affected ICT System(s)</i> from such <i>Malicious Code</i> as soon as reasonably practicable upon becoming aware of its presence on the <i>Affected ICT System(s)</i> or their exposure to the <i>Malicious Code</i> ; and
		2.2.4.	where such <i>Malicious Code</i> causes (or could cause) a loss of operational efficiency and/or loss or corruption of the <i>Client Data</i> , the <i>Identifying Party</i> and the <i>Affected Party</i> shall assist each other in order to
		2.2.4.1.	mitigate the immediate and long-term impact of the <i>Malicious Code</i> on the <i>Affected ICT System(s)</i> ,
		2.2.4.2.	minimise any actual or potential losses of operational efficiency or corruption of <i>Client Data</i> on such <i>Affected ICT System(s)</i> (including by, as the context requires, restoring any affected <i>Client Data</i> from the most recent back-ups of the <i>Client Data</i> ) and
		2.2.4.3.	protect (and inoculate) the <i>Affected ICT System(s)</i> against the <i>Malicious Code</i> in order to restore and maintain the full security of the <i>Affected ICT Systems</i> and protect the <i>Client Data</i> from <i>Malicious Code</i> .
	2.3.		Where the <i>Affected ICT System</i> that is affected by <i>Malicious Code</i> is the <i>Client's</i> and the <i>Malicious Code</i> has originated from a <i>Non-Client ICT System</i> that is in the control of and/or used by the <i>Alliance Member</i> (including where relating to <i>Client Data</i> that was under the control of the <i>Alliance Member</i> at the relevant time), the <i>Alliance Member</i> shall comply with the requirements of <i>Special</i> this clause at its own cost and reimburse the <i>Client</i> in full in respect of any costs, losses and expenses arising out of or in connection with presence and impact on and/or removal of such <i>Malicious Code</i> on its <i>Affected ICT System</i> .
<b>3.</b>	<b>CYBER ESSENTIALS SCHEME</b>		
	3.1.		Where the <i>Client</i> has notified the <i>Contractor</i> that its engagement is conditional upon receipt of a <i>Valid Cyber Essentials Plus Certificate</i> or <i>Valid Cyber Essential Certificate</i> equivalent, then the <i>Contractor</i> shall provide to the <i>Client</i> a copy of relevant certificate within ten (10) <i>Working Days</i> of the <i>Effective Date</i> or the date of the <i>Client's</i> request (as the context requires).
	3.2.		Where the <i>Contractor</i> processes <i>Cyber Essentials Scheme Data Programme</i> in connection with this <i>Agreement</i> at any time during its engagement, the <i>Contractor</i> shall deliver to the <i>Client</i> evidence of renewal of a <i>Valid Cyber Essentials Plus Certificate</i> or <i>Valid Cyber Essentials Certificate</i> equivalent on each anniversary of the first (1st) applicable certificate obtained by the <i>Contractor</i> .
<b>4.</b>	<b>FINANCIAL STANDING</b>		
	4.1.		The <i>Client</i> may terminate the appointment of the <i>Contractor</i> where, in the reasonable opinion of the <i>Client</i> , there is a material detrimental change in the

**OFFICIAL SENSITIVE**

		financial standing and/or the credit rating of the <i>Contractor</i> which:	
		4.1.1.	adversely impacts the <i>Contractor</i> ability to perform its obligations; and/or
		4.1.2.	could reasonably be expected to have an adverse impact on the <i>Contractor's</i> ability to perform its obligations.
<b>5.</b>	<b>DATA PROTECTION</b>		
	5.1.	The <i>Contractor</i> :	
		5.1.1.	shall comply and ensure that its personnel (which term shall include all directors, officers, employees, servants, agents, consultants, <i>Subcontractors</i> and <i>Supply Chain members</i> ) complies with all applicable requirements of the <i>Data Protection Laws</i> and shall not knowingly or negligently by any act and/or omission, place itself, the <i>Client</i> and/or any other party in breach, or potential breach of <i>Data Protection Laws</i> ; and
	5.2.	The <i>Contractor</i> acknowledges and agrees that it may need to <i>Process Personal Data</i> relating to and/or otherwise in the possession of the <i>Client</i> in connection with this Agreement in order to (as appropriate):	
		5.2.1.	administer and Provide the Works
		5.2.2.	request and receive the works;
		5.2.3.	request or grant access to the <i>Site</i> including security and background checks where required;
		5.2.4.	compile, dispatch and manage the payment of invoices relating to the works;
		5.2.5.	manage this Agreement and resolve any disputes relating to it;
		5.2.6.	respond and/or raise general queries relating to the works; and
		5.2.7.	comply with its obligations under and in connection with this Agreement;
		together the " <b><i>Permitted Purposes</i></b> ".	
	5.3.	The <i>Contractor</i> :	
		5.3.1.	shall <i>Process</i> the <i>Personal Data</i> referred to at clause 5.2 for the <i>Permitted Purposes</i> in accordance with its own fair processing notice (which it shall make available to the <i>Client</i> ); and
		5.3.2.	acknowledges that it may be required to share <i>Personal Data</i> with the <i>Programme Consultants</i> in the case of their group companies and other relevant parties in order to carry out its activities and in doing so the <i>Contractor</i> will ensure that the sharing and use of this <i>Personal Data</i> complies with applicable <i>Data Protection Laws</i> .
	5.4.	The <i>Contractor</i> shall ensure that all fair processing notices have been given to (and as applicable consents obtained from) the relevant <i>Data Subjects</i> and are sufficient in scope to allow the <i>Processing</i> of the <i>Personal Data</i> .	
	5.5.	Without limitation the <i>Contractor</i> shall:	
		5.5.1.	only <i>Process</i> the <i>Personal Data</i> for the <i>Permitted Purposes</i> ;
		5.5.2.	make due notification to the Information Commissioner's Office (or other such regulatory authority as required by <i>Data Protection Laws</i> ), including in relation to its use and <i>Processing</i> of the <i>Personal Data</i> and comply at all times with the <i>Data Protection Laws</i> ;
		5.5.3.	maintain complete and accurate records and information to



**OFFICIAL SENSITIVE**

			demonstrate its compliance with this <i>clause 5</i> , provided always that this requirement does not apply to the <i>Contractor</i> where it employs fewer than two hundred and fifty (250) staff, unless
		5.5.3.1.	the <i>Client</i> determines that the <i>Processing</i> is not occasional;
		5.5.3.2.	the <i>Client</i> determines the <i>Processing</i> includes special categories of data as referred to in Article 9(1) of the <i>UK GDPR</i> or <i>Personal Data</i> relating to criminal convictions and offences referred to in Article 10 of the <i>UK GDPR</i> ; and/or
		5.5.3.3.	the <i>Client</i> determines that the <i>Processing</i> is likely to result in a risk to the rights and freedoms of <i>Data Subjects</i> ;
		5.5.4.	prepare and/or support the <i>Client</i> (as applicable) in preparing, any <i>Data Protection Impact Assessment</i> prior to commencing any <i>Processing</i> ;
		5.5.5.	ensure that it has in place <i>Protective Measures</i> , which are appropriate to protect against a <i>Data Loss Event</i> , which the <i>Client</i> may reasonably reject (but failure to reject shall not amount to approval by the <i>Client</i> of the adequacy of the <i>Protective Measures</i> ), having taken account of the:
		5.5.5.1.	nature of the data to be protected;
		5.5.5.2.	harm that might result from a <i>Data Loss Event</i> ;
		5.5.5.3.	state of technological development; and
		5.5.5.4.	cost of implementing any measures;
		5.5.6.	not transfer <i>Personal Data</i> outside the United Kingdom unless the prior written consent of the <i>Client</i> has been obtained and the following conditions are fulfilled:
		5.5.6.1.	the <i>Contractor</i> has provided appropriate safeguards in relation to the transfer (in accordance with the <i>Data Protection Laws</i> ) as determined by the <i>Originating Controller</i> ;
		5.5.6.2.	the <i>Data Subject</i> has enforceable rights and effective legal remedies;
		5.5.6.3.	that <i>Contractor</i> complies with its obligations under the <i>Data Protection Laws</i> by providing an adequate level of protection to any <i>Personal Data</i> that is transferred; and
		5.5.6.4.	the <i>Contractor</i> complies with any reasonable instructions notified to it in advance by the <i>Originating Controller</i> with respect to the <i>Processing</i> of the <i>Personal Data</i> ;
		5.5.7.	at the written direction of the <i>Client</i> , delete or return <i>Personal Data</i> (and any copies of it) to the <i>Client</i> on termination of the <i>Contractors</i> engagement under this <i>Agreement</i> unless the <i>Contractor</i> is required by <i>Applicable Law</i> to retain such <i>Personal Data</i> ;
		5.5.8.	notify the <i>Client</i> immediately if it:
		5.5.8.1.	receives a <i>Data Subject Request</i> (or purported <i>Data Subject Request</i> );
		5.5.8.2.	receives a request to rectify, block or erase any



**OFFICIAL SENSITIVE**

				<i>Personal Data</i> ;
			5.5.8.3.	receives any other request, complaint or communication relating to any <i>Party's</i> obligations under the <i>Data Protection Laws</i> ;
			5.5.8.4.	receives any communication from the Information Commissioner's Office or any other regulatory authority (including a supervisory authority as defined in the <i>Data Protection Laws</i> ) in connection with <i>Personal Data Processed</i> under this Agreement;
			5.5.8.5.	receives a request from any third party for disclosure of <i>Personal Data</i> where compliance with such request is required or purported to be required by <i>Applicable Law</i> ; and/or
			5.5.8.6.	becomes aware of a <i>Data Loss Event</i> ;
		5.5.9.	following notification to the <i>Client</i> as noted above and the <i>Client's</i> determination and confirmation to the <i>Contractor</i> as to whether it or the <i>Contractor</i> shall be the primary point of contact and responder to the request, complaint or communication received (and all <i>Parties</i> shall ensure this is reflected within the relevant fair processing notices provided to <i>Data Subjects</i> ) then where the <i>Client</i> :	
			5.5.9.1.	designates the <i>Contractor</i> as the primary point of contact, provide updates and further information to the <i>Client</i> , including (where directed by the <i>Client</i> ) allowing the <i>Client</i> to have final oversight and approval of any response, prior to such response being released to the relevant party; and
			5.5.9.2.	designates itself as the primary point of contact, provide all support as necessary within the timescales directed by the <i>Client</i> , including providing all <i>Personal Data</i> held by the <i>Contractor</i> in respect of the request, complaint or communication received to the <i>Client</i> as soon as practicable and in any event within five (5) days, or as otherwise agreed by the <i>Client</i> acting reasonably and in good faith;
		5.5.10.	further to the <i>Contractor's</i> obligation to notify set out above, provide further information to the <i>Client</i> in phases, as details become available, provided always that:	
			5.5.10.1.	the <i>Contractor</i> shall be the primary point of contact for any communication in respect of the <i>Data Loss Event</i> to which it is subject;
			5.5.10.2.	the <i>Contractor</i> shall act quickly to remedy a <i>Data Loss Event</i> and minimise the impact(s) of a <i>Data Loss Event</i> ; and
			5.5.10.3.	the <i>Contractor</i> and the <i>Client</i> shall work together (acting reasonably and in good faith) to formulate responses, notifications and other communications in respect of the <i>Data Loss Event</i> ;
		5.5.11.	provide such assistance as is reasonably requested by the <i>Client</i> within such timescales as requested by the <i>Client</i> in relation to any <i>Data Subject Request</i> received by the <i>Client</i> , <i>Data Loss Event</i> suffered by the <i>Client</i> or any request from the Information	

**OFFICIAL SENSITIVE**

			Commissioner's Office, or any consultation by the <i>Client</i> with the Information Commissioner's Office in relation to any <i>Personal Data</i> shared by the <i>Contractor</i> with the <i>Client</i> ;
		5.5.12.	take reasonable steps to ensure the reliability of and adequate training of, any personnel who have access to the <i>Personal Data</i> ;
		5.5.13.	hold the information contained in the <i>Personal Data</i> confidentially
		5.5.14.	not do anything which shall damage the reputation of its (if applicable) or the <i>Client</i> 's or any third party from whom the <i>Personal Data</i> may originate (being consultants, contractors and subcontractors) relationship with the <i>Data Subjects</i> ; and
		5.5.15.	allow for audits of its <i>Processing</i> activity by the <i>Client</i> or the <i>Client</i> 's designated auditor.
	5.6.	Before the <i>Contractor</i> allows any <i>Sub-Processor</i> to <i>Process</i> any <i>Personal Data</i> received from the <i>Client</i> or the <i>Client</i> personnel related to this Agreement, the <i>Contractor</i> must:	
		5.6.1.	notify the <i>Client</i> in writing of the intended <i>Sub-Processor</i> and <i>Processing</i> ;
		5.6.2.	obtain the written consent of the <i>Client</i> ;
		5.6.3.	enter into a written agreement with the <i>Sub-Processor</i> which give effect to the terms set out in Articles 28 of the UK GDPR and to enable the <i>Contractor</i> to meet its obligations under this <i>clause 5</i> ; and
		5.6.4.	provide the <i>Controller</i> with such information regarding the <i>Sub-Processor</i> as the <i>Controller</i> may reasonably require.
	5.7.	The <i>Contractor</i> shall remain fully liable for all acts or omissions of any of its <i>Sub-Processors</i> in connection with the application of <i>Data Protection Laws</i> and the provisions of this <i>Agreement</i> .	
	5.8.	The <i>Client</i> may, at any time on not less than thirty (30) Working Days' notice, revise this <i>clause</i> by replacing it with any applicable "Controller" to "Controller" standard clauses or similar terms forming part of an applicable certification scheme (which shall be deemed to apply to this <i>Agreement</i> when received by the <i>Contractor</i> ).	
	5.9.	The <i>Contractor</i> agrees to take account of any guidance issued by the Information Commissioner's Office from time to time in connection with the storage and/or <i>Processing</i> of <i>Personal Data</i> .	
	5.10.	The <i>Client</i> may on not less than thirty (30) Working Days' notice to the <i>Contractor</i> amend this <i>Agreement</i> to ensure that it complies with any guidance issued by the Information Commissioner's Office and/or its own internal requirements and/or policies in connection with <i>Data Protection Laws</i> .	
	5.11.	The <i>Contractor</i> shall be liable for and hereby indemnify the <i>Client</i> from and against all claims, proceedings, damages, liabilities, losses, costs and expenses suffered or incurred by the <i>Client</i> where and to the extent that the same arises in connection with any breach of this <i>Contractor</i> and/or its personnel (of any type) and/or its <i>Subcontractors</i> and <i>supply chain</i> members.	
6.	AUDIT		
	6.1.	The <i>Contractor</i> shall:	
		6.1.1.	keep and maintain during the <i>Period for Retention</i> , full and accurate records in connection with its engagement under this Agreement,

**OFFICIAL SENSITIVE**

			covering all <i>works</i> provided by or on behalf of the <i>Contractor</i> and all payments made by the <i>Client</i> ;
		6.1.2.	on request, afford the <i>Client</i> or the <i>Client's</i> representatives such access to those records and processes as may be requested by the <i>Client</i> ;
		6.1.3.	make available to the <i>Client</i> , without charge and on request, copies of audit reports obtained by the <i>Contractor</i>
		6.1.4.	allow authorised representatives of the <i>Client</i> and/or the <i>National Audit Office</i> , the Financial Reporting Council and/or the Cabinet Office to examine the <i>Contractor's</i> records and documents and provide such copies and any oral and/or written explanations as may reasonably be required to substantiate the same; and
		6.1.5.	allow the Comptroller and Auditor General (as the head of the <i>National Audit Office</i> from time to time, as well as its appointed representatives) access free of charge during normal business hours on reasonable notice, to all such documents (in any medium) and other information as the Comptroller and Auditor General may reasonably require for the purposes of its financial audit of the <i>Client</i> and for carrying out examinations into the economy, efficiency and effectiveness with which the <i>Client</i> has used its resources and the <i>Contractor</i> shall provide such explanations as are reasonably required for these purposes.
<b>7.</b>	<b>WHISTLE BLOWING</b>		
	7.1.		The <i>Contractor</i> shall ensure that staff engaged by it in connection with this Agreement (and use reasonable endeavours to ensure that any staff engaged by any <i>subcontractor</i> ) are aware of the requirements of the Public Interest Disclosure Act 1998, any whistle blowing policy that the <i>Contractor</i> may have and the arrangements to be followed in the event of any staff having any concerns and wishing to make a disclosure pursuant to the Public Interest Disclosure Act 1998.
<b>8.</b>	<b>TAX COMPLIANCE</b>		
	8.1.		If, at any time during the <i>Contractor's</i> engagement under this Agreement, it becomes aware that it is subject to an <i>Occasion of Tax Non-Compliance</i> , the <i>Contractor</i> shall notify the <i>Client</i> and in writing of the same within seven (7) days of its occurrence and thereafter promptly give the <i>Client</i>
		8.1.1.	details of the steps it is taking to address the <i>Occasion of Tax Non-Compliance</i> and to prevent the same from recurring, together with any mitigating factors it considers relevant; and
		8.1.2.	such other information in relation to the <i>Occasion of Tax Non-Compliance</i> as the <i>Client</i> may reasonably require.
	8.2.		If the <i>Contractor</i> or any persons engaged by it (directly or indirectly and at any tier) from time to time are liable to be taxed in the United Kingdom and/or to pay <i>NICs</i> in respect of consideration received under or pursuant to the <i>this Agreement</i> , the <i>Contractor</i> shall:
		8.2.1.	at all times comply with <i>ITEPA</i> and all other <i>Applicable Law</i> relating to income tax, <i>SSCBA</i> and all other statutes and regulations relating to <i>NICs</i> , in respect of that consideration; and
		8.2.2.	indemnify the <i>Client</i> against any income tax, <i>NICs</i> (including secondary contributions), apprenticeship levies, social security contributions and any other liability, deduction, contribution, assessment or claim (including any interest, fines, penalties and/or expenses thereon) arising from or made in connection with the

**OFFICIAL SENSITIVE**

			provision of the works by the Contractor or any persons engaged by it, including where the Client is required to pay or account for to the relevant taxing authority any sums (of whatever type and nature) due to the engagement by the Contractor of any individual(s) engaged through a limited company or partnership which meets the conditions specified in sections 61O or 61P of ITEPA (provided that such recovery is not prohibited by Applicable Law).	
9.	EQUALITY LEGISLATION			
	9.1.	Notwithstanding any other provision of this Agreement, the Contractor shall (and shall ensure that its personnel and its subcontractors):		
		9.1.1.	perform its duties and obligations under this Agreement in accordance with:	
			9.1.1.1.	any Applicable Law in relation to non-discrimination and equality (whether in relation to race, sex, gender (including gender reassignment), religion or belief, disability, sexual orientation, pregnancy, maternity, age or otherwise); and
			9.1.1.2.	any other requirements and instructions which the Client reasonably notifies to the Contractor from time to time in writing in connection with any non-discrimination and/or equality-related obligations imposed on the Client at any time under any Applicable Law; and
		9.1.2.	take all necessary steps, and inform the Client of the steps taken, to prevent unlawful discrimination designated as such by any court or tribunal, or the Equality and Human Rights Commission (or any successor or equivalent replacement organisation to the same).	
10.	MODERN SLAVERY			
	10.1.	The Contractor undertakes that it shall comply with all requirements of the Modern Slavery Act 2015 and it warrants and represents to the Client that neither it nor any of its employees, agents and/or subcontractors (as far as the Contractor is aware, having made reasonable enquiries of each subcontractor prior to the date of their subcontracts and having also included wording in their subcontracts that is no less onerous than this clause) has:		
		10.1.1.	committed an MSA Offence;	
		10.1.2.	been notified that it is subject to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015; and/or	
		10.1.3.	is aware of any circumstances within its Supply Chain (including its Subcontractors) that could give rise to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015.	
	10.2.	The Contractor shall notify the Client immediately in writing if it becomes aware of the fact or has reason to believe that it has, or any of its employees, agents and/or subcontractors have, breached or potentially breached any of the Contractor's obligations and any such notice shall set out full details of the circumstances concerning the breach or potential breach of the Contractor obligations under this clause.		
	10.3.	If the Contractor is in breach of this clause, the Client may terminate the Contractor's engagement under all or part of this Agreement or a Notice to Proceed.		

**OFFICIAL SENSITIVE**

11.	CONFLICTS OF INTEREST		
	11.1.	The <i>Contractor</i> shall:	
		11.1.1.	take all appropriate steps to ensure that neither it nor any person engaged by or on behalf of it (including its <i>subcontractors</i> ) is or is placed in a position where, in the reasonable opinion of the <i>Client</i> , there is or may be an actual conflict, or a potential conflict, between the pecuniary, professional and/or personal interests of the <i>Contractor</i> (including its <i>subcontractors</i> ) and the duties owed by the <i>Contractor</i> to the <i>Client</i> in connection with this Agreement; and
		11.1.2.	notify the <i>Client</i> immediately, giving full particulars of any such conflict of interest, which the <i>Contractor</i> becomes aware of or becomes aware may arise.
	11.2.	If the <i>Contractor</i> is in breach of this <i>clause</i> , the <i>Client</i> may terminate the <i>Contractor's</i> engagement under all or part of this Agreement.	
12.	COMPETITION LAW, CORRUPT GIFTS & PAYMENT		
	12.1.	The <i>Contractor</i> represents and warrants to the <i>Client</i> that neither it nor (as far as the <i>Contractor</i> <i>ember</i> is reasonably aware or can reasonably ascertain) any person(s) associated with the Contractor have at any time prior to the Effective Date:	
		12.1.1.	committed a <i>Corrupt Act</i> and/or have been formally notified that it is subject to an investigation or prosecution which relates to an alleged <i>Corrupt Act</i> ;
		12.1.2.	been listed by any governmental department or agency as being debarred, suspended, proposed for suspension or debarment and/or otherwise ineligible for participation in governmental procurement programmes or contracts in connection with a <i>Corrupt Act</i> ; and/or
		12.1.3.	(without prejudice to the generality of <i>clause 11</i> ), received a request or demand for any undue financial or other advantage of any kind in connection with the performance of the this Agreement and/or otherwise suspects that any person directly or indirectly connected with the this Agreement has committed or attempted to commit a <i>Corrupt Act</i> .
	12.2.	The <i>Contractor</i> represents and warrants to the <i>Client</i> on a continuing basis that it shall:	
		12.2.1.	not commit any <i>Corrupt Act</i> ;
		12.2.2.	comply with the <i>Relevant Policies</i> ;
		12.2.3.	comply with the <i>Relevant Requirements</i> ;
		12.2.4.	have and shall continue to maintain its own policies and procedures, including adequate procedures under the Bribery Act 2010, to ensure compliance with the <i>Relevant Requirements</i> and the <i>Relevant Policies</i> and to prevent the occurrence of <i>Corrupt Acts</i> and shall enforce them as appropriate;
		12.2.5.	provide reasonable evidence to demonstrate the <i>Contractor's</i> compliance with the provisions of this <i>clause</i> ;
		12.2.6.	ensure that any person associated with the <i>Contractor</i> who is performing works in connection with this Agreement (including any <i>subcontractor</i> ) does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on the <i>Contractor</i> in this clause (the " <b>Relevant</b>

**OFFICIAL SENSITIVE**

			<i>Terms</i> ") and the <i>Contractor</i> shall be responsible for the observance and performance by such persons of the <i>Relevant Terms</i> , and shall be directly liable to the <i>Client</i> for any breach by such persons of any of the <i>Relevant Terms</i> ; and
		12.2.7.	not act in a manner, in relation to the performance of this Agreement, which the <i>Client</i> reasonably considers to be inconsistent with the Competition Act 1998 and/or the Treaty on the Functioning of the European Union (2012/C 326/01) and/or any other <i>Applicable Law</i> that is equivalent in intent.
	12.3.	The <i>Contractor</i> shall immediately notify the <i>Client</i> in writing if it becomes aware of any breach of this clause or if it has reason to believe that it has or any person associated with the <i>Contractor</i> has:	
		12.3.1.	been subject to an investigation or prosecution which relates to an alleged <i>Corrupt Act</i> ;
		12.3.2.	been listed by any governmental department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in governmental procurement programmes or contracts in connection with a <i>Corrupt Act</i> ; and/or
		12.3.3.	received a request or demand for any undue financial or other advantage of any kind in connection with the performance of the this Agreement or otherwise suspects that any person directly or indirectly connected with this Agreement has committed or attempted to commit a this Agreement.
	12.4.	For the purpose of this clause, the meaning of " <b>adequate procedures</b> " and whether a person is " <b>associated</b> " with another person shall be determined in accordance with (as the context permits):	
		12.4.1.	section 7(2) of the Bribery Act 2010 and any guidance issued under the Bribery Act 2010 (as applicable); and/or
		12.4.2.	the definition of "associated person" in section 44(4) of the Criminal Finances Act 2017,
		with, for the purposes of this clause, a person associated with the <i>Contractor</i> including any <i>subcontractor</i> .	
	12.5.	Any dispute, difference and/or question arising in respect of the interpretation of this clause shall be decided by the <i>Client</i> (acting reasonably), whose decision, in the absence of manifest error, shall be final and conclusive.	
	12.6.	If the <i>Contractor</i> is in breach of this clause, the <i>Client</i> may terminate the <i>Alliance Member's</i> engagement under the whole or part of this Agreement.	
13.	DISCLOSURE & CONFIDENTIALITY		
	13.1.	The <i>Contractor</i> shall treat all <i>Confidential Information</i> as confidential and safeguard it accordingly and not disclose <i>Confidential Information</i> to any other person without the <i>Client's</i> prior written consent, provided always that financial information and proposals prepared by the <i>Contractor</i> under this Agreement and/or pursuant to a Notice to Proceed are confidential as between the <i>Contractor</i> and the <i>Client</i> .	
	13.2.	Subject always to clause 13.7, the <i>Contractor's</i> obligations in relation to <i>Confidential Information</i> pursuant to clause 13.1 do not apply where:	
		13.2.1.	the disclosure is a requirement of <i>Applicable Law</i> placed upon the <i>Party</i> making the disclosure, including any requirements for disclosure under the <i>FOIA</i> or the <i>Environmental Information Regulations</i> ;



**OFFICIAL SENSITIVE**

		13.2.2.	the information was in the possession of the <i>Party</i> making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
		13.2.3.	the information was obtained from a third party without any obligation of confidentiality being owed to such third party;
		13.2.4.	the information was already in the public domain at the time of disclosure otherwise than by a breach of this Agreement; and/or
		13.2.5.	it is independently developed without access to the <i>Client Confidential Information</i> .
	13.3.	The <i>Contractor</i> shall only disclose the <i>Client Confidential Information</i> relevant to the carrying out and completion of the <i>works</i> to its personnel (of any type) and <i>Subcontractors</i> (including its <i>Supply Chain</i> ) who are directly involved in carrying out and completing the <i>works</i> , and shall ensure that such persons are aware of and comply with their obligations in respect of <i>Confidential Information</i> under this Agreement.	
	13.4.	The <i>Contractor</i> shall not, and shall procure that its personnel (of any type) and <i>Subcontractors</i> do not use any of the <i>Client Confidential Information</i> received otherwise than for the purposes of this Agreement.	
	13.5.	At the written request of the <i>Client</i> , the <i>Contractor</i> shall procure that its personnel (of any type) and/or <i>Subcontractors</i> (including members of its <i>Supply Chain</i> ) identified in the <i>Client's</i> notice sign a confidentiality undertaking that reflect (as a minimum) the requirements of this clause 13 prior to commencing any work in connection with this Agreement.	
	13.6.	Nothing in this Agreement shall prevent the <i>Client</i> from (acting reasonably and/or in compliance with or in furtherance of its own duties and obligations under any <i>Applicable Law</i> or that apply to the <i>Client</i> in its capacity as a Crown body) disclosing any <i>Contractor Confidential Information</i> :	
		13.6.1.	to any Crown body or any other public body on the understanding that they are entitled to further disclose the <i>Contractor Confidential Information</i> to other Crown bodies or other public bodies on the basis that the information is to be treated as confidential and is not to be disclosed to a third party which is not part of any Crown body or any public body;
		13.6.2.	to any party engaged by the <i>Client</i> in connection with this Agreement or any person conducting a review of this Agreement (subject to any commercial redactions as may be reasonably appropriate so as not to disclose any commercially sensitive financial information of the <i>Contractor</i> to a competitor organisation);
		13.6.3.	for the purpose of the examination and certification of the <i>Client's</i> accounts; and/or
		13.6.4.	for any examination pursuant to the National Audit Act 1983.
	13.7.	Notwithstanding <i>clause 13.1 to clause 13.6</i> (inclusive):	
		13.7.1.	the <i>Contractor</i> shall ensure that it, its personnel (of any type) and its <i>Subcontractors</i> (including its <i>Supply Chain</i> ) shall not use and/or disclose to any third party any <i>Foreground Materials</i> and/or <i>Client Materials</i> relating to any <i>Security Measures</i> in respect of this Agreement without the prior written approval of the <i>Client</i> ; and
	13.8.	Notwithstanding any other term of this Agreement, the <i>Contractor</i> :	
		13.8.1.	consents that the <i>Client</i> can publish this Agreement in its entirety and any details in respect of this Agreement, including from time to time agreed changes to this Agreement, to the general public; and

**OFFICIAL SENSITIVE**

		13.8.2.	shall assist and co-operate with the <i>Client</i> in order to make information available to the general public as required by the <i>Client</i> from time to time,
			provided that, prior to such publication, the <i>Client</i> may, at its sole discretion, in whole or in part, redact information that concerns national security, personal data, information protected by intellectual property law, information which is not in the public interest to disclose (under a <i>FOIA</i> analysis), third party confidential information, information technology security, pricing (and other commercially sensitive) information of the <i>Contractor</i> and/or the prevention of a <i>Corrupt Act</i> .
<b>14.</b>	<b>FREEDOM OF INFORMATION</b>		
	14.1.		The <i>Contractor</i> acknowledges that the <i>Client</i> is subject to the requirements of the <i>FOIA</i> and the <i>Environmental Information Regulations</i> and the <i>Contractor</i> shall assist and co-operate with the <i>Client</i> and any other part the <i>Client</i> indicates (at its own expense) to enable it to comply with these requirements.
	14.2.		The <i>Contractor</i> shall and shall ensure that its <i>Subcontractors</i> shall provide:
		14.2.1.	the <i>Client</i> with a copy of all information in its possession, power or control in the form that it requires within five (5) days (or such other period as the <i>Client</i> , as the context permits, may notify to the <i>Contractor</i> ) of receiving a written request from the <i>Client</i> for such information; and
		14.2.2.	all necessary assistance as is reasonably requested by the <i>Client</i> to enable them to respond to a <i>Request for Information</i> within the time for compliance set out in section 10 of the <i>FOIA</i> or Regulation 5 of the <i>Environmental Information Regulations</i> ,
			and the <i>Contractor</i> shall be liable for and hereby indemnifies the <i>Client</i> from and against all claims, proceedings, damages, liabilities, losses, costs and expenses suffered or incurred by the <i>Client</i> where and to the extent that the same arises in connection with any breach of this clause 14.2 by the <i>Contractor</i> and/or its personnel (of any type) and/or its <i>Subcontractors</i> .
	14.3.		If the <i>Contractor</i> considers that all or any information provided to the <i>Client</i> under clause 14.2 is a "trade secret" in accordance with section 43(1) of the <i>FOIA</i> , or that a duty of confidentiality applies under section 41(1) of the <i>FOIA</i> , or is exempt by the operation of any other provision of <i>FOIA</i> :
		14.3.1.	it shall ensure that the relevant information and the claimed exemption is clearly identified as such to the <i>Contractor</i> and <i>Client</i> ; and
		14.3.2.	notwithstanding any such identification, the <i>Client</i> (as the context permits) shall be solely responsible for determining at its absolute discretion whether such information and/or any other information is exempt from disclosure in accordance with the provisions of the current version of "Freedom of Information Code of Practice" (as published by the Cabinet Office, or any successor body, at the relevant time), the <i>FOIA</i> and/or the <i>Environmental Information Regulations</i> or is to be disclosed in response to a <i>Request for Information</i> .
	14.4.		In no event shall the <i>Contractor</i> (or shall the <i>Contractor</i> allow its personnel (of any type) and/or its <i>Subcontractors</i> to) respond directly to any <i>Request for Information</i> from members of the public unless expressly authorised to do so in advance by the <i>Client</i> and/or any other third party.
	14.5.		The <i>Contractor</i> acknowledges that the <i>Client</i> may, acting in accordance with



**OFFICIAL SENSITIVE**

		the FOIA or the <i>Environmental Information Regulations</i> , be required to disclose information without consulting with the <i>Contractor</i> before and/or following consultation with the <i>Contractor</i> and having considered its views.			
15.	FINANCIAL DISTRESS				
	15.1.	The <i>Contractor</i> warrants and represents to the <i>Client</i> that as at the Effective Date of this Agreement its credit rating as determined by the <i>Rating Agency</i> is equal to or exceeds its <i>Agreed Credit Rating</i> .			
	15.2.	The <i>Contractor</i> shall promptly notify (or shall procure that its auditors promptly notify) the <i>Client</i> in writing if any <i>Rating Agency</i> downgrades the <i>Contractor's</i> credit rating below its <i>Agreed Credit Rating</i> (and in any event within five (5) <i>Working Days</i> from the occurrence of the downgrade) (a " <b>Notifiable Credit Rating Downgrade</b> ").			
	15.3.	<div>If the <i>Contractor</i> is subject to a <i>Notifiable Credit Rating Downgrade</i>, the <i>Contractor</i> shall ensure that the <i>Contractor's</i> auditors thereafter provide the <i>Client</i> within ten (10) <i>Working Days</i> from the end of the then current financial year of the <i>Contractor</i> and within ten (10) <i>Working Days</i> from the date of any written request by the <i>Client</i> (such requests not to exceed four (4) in any one (1) financial year of the <i>Contractor</i>) with written calculations of the quick ratio for the <i>Contractor</i> as at the relevant time, with "<b>quick ratio</b>" in this context being the sum of the following calculation:</div> <table><tr><td><math display="block">\frac{A + B + C}{D}</math></td><td><div>A is the value at the relevant date of all cash in hand and at the bank of the <i>Contractor</i>;</div><div>B is the value of all marketable securities held by the <i>Contractor</i> determined using closing prices on the Working Day preceding the relevant date;</div><div>C is the value at the relevant date of all account receivables of the <i>Contractor</i>; and</div><div>D is the value at the relevant date of the current liabilities of the <i>Contractor</i>.</div></td></tr></table>		$\frac{A + B + C}{D}$	<div>A is the value at the relevant date of all cash in hand and at the bank of the <i>Contractor</i>;</div> <div>B is the value of all marketable securities held by the <i>Contractor</i> determined using closing prices on the Working Day preceding the relevant date;</div> <div>C is the value at the relevant date of all account receivables of the <i>Contractor</i>; and</div> <div>D is the value at the relevant date of the current liabilities of the <i>Contractor</i>.</div>
$\frac{A + B + C}{D}$	<div>A is the value at the relevant date of all cash in hand and at the bank of the <i>Contractor</i>;</div> <div>B is the value of all marketable securities held by the <i>Contractor</i> determined using closing prices on the Working Day preceding the relevant date;</div> <div>C is the value at the relevant date of all account receivables of the <i>Contractor</i>; and</div> <div>D is the value at the relevant date of the current liabilities of the <i>Contractor</i>.</div>				
	15.4.	Without prejudice to the generality of clause 15.2, the <i>Contractor</i> shall:			
	15.4.1.	regularly monitor the credit ratings of the <i>Contractor</i> with the <i>Rating Agency</i> ; and			
	15.4.2.	promptly notify (or shall procure that its auditors promptly notify) the <i>Client</i> in writing following the occurrence of a <i>Financial Distress Event</i> or any fact, circumstance or matter which could cause a <i>Financial Distress Event</i> and in any event, shall ensure that such notification is made within ten (10) <i>Working Days</i> of the date on which the <i>Contractor</i> first becomes aware of the <i>Financial Distress Event</i> or the fact, circumstance or matter which could cause a <i>Financial Distress Event</i> .			
	15.5.	Following the notification issued by the <i>Contractor</i> pursuant to clause 15.4:			
	15.5.1.	the <i>Contractor</i> shall:			
	15.5.1.1.	at the request of the <i>Client</i> , meet the <i>Client</i> three (3) <i>Working Days</i> of such notification (or such other period as the <i>Client</i> may permit and notify to the <i>Contractor</i> in writing) to review the effect of the actual or potential <i>Financial Distress Event</i> on its continuing ability to performance and discharge its obligations under and in connection with this Agreement; and			
	15.5.1.2.	where the <i>Client</i> reasonably believes and notifies the			

**OFFICIAL SENSITIVE**

				<i>Contractor</i> in writing (taking into account any discussions and representations under clause 15.5.1.1) that the actual or potential <i>Financial Distress Event</i> could impact on the <i>Contractor's</i> continued performance and discharge its obligations under and in connection with this Agreement, the <i>Contractor</i> shall:	
				(a)	submit to the <i>Client</i> for approval, a draft <i>Financial Distress Service Continuity Plan</i> within five (5) <i>Working Days</i> of the date of the notification (or such other period as the <i>Client</i> may permit and notify to the <i>Contractor</i> in writing); and
				(b)	provide such financial information relating to the financial standing of the <i>Contractor</i> as the <i>Client</i> may reasonably require;
		15.5.2.	the <i>Client</i> shall not withhold its approval of a draft <i>Financial Distress Service Continuity Plan</i> unreasonably;		
		15.5.3.	if the <i>Client</i> does not approve a draft <i>Financial Distress Service Continuity Plan</i> submitted by the <i>Contractor</i> , the <i>Client</i> shall inform the <i>Contractor</i> of its reasons and the <i>Contractor</i> shall take those reasons into account in the preparation of a further draft <i>Financial Distress Service Continuity Plan</i> , which shall be resubmitted to the <i>Client</i> within five (5) <i>Working Days</i> of the rejection of the first or subsequent (as the case may be) drafts, with this process being repeated until the <i>Financial Distress Service Continuity Plan</i> is approved by the <i>Client</i> or referred to the dispute resolution procedure referred to at Clause 93 of this Agreement.		
		15.5.4.	if the <i>Client</i> and the <i>Contractor</i> consider that a draft <i>Financial Distress Service Continuity Plan</i> is insufficiently detailed to be properly evaluated, will take too long to complete or will not remedy the relevant <i>Financial Distress Event</i> , then it may either agree a further time period for the development and agreement of the <i>Financial Distress Service Continuity Plan</i> or escalate any issues with the draft <i>Financial Distress Service Continuity Plan</i> using the dispute resolution procedure referred to at Clause 93 of this Agreement.		
		15.5.5.	following the approval of the <i>Financial Distress Service Continuity Plan</i> by the <i>Client</i> and the <i>Contractor</i> , the <i>Contractor</i> shall:		
			15.5.5.1.	on a regular basis (which shall not be less than monthly), review the <i>Financial Distress Service Continuity Plan</i> and assess whether it remains adequate and up-to-date to ensure that the continued performance in accordance with this Agreement;	
			15.5.5.2.	where the <i>Financial Distress Service Continuity Plan</i> is not adequate or up to date, submit an updated <i>Financial Distress Service Continuity Plan</i> to the <i>Client</i> for its approval, and the provisions of this clause shall apply to the review and approval process for the updated <i>Financial Distress Service Continuity Plan</i> ; and	
			15.5.5.3.	comply with the <i>Financial Distress Service Continuity Plan</i> (including any updated <i>Financial Distress Service Continuity Plan</i> ).	
	15.6.	Where the <i>Contractor</i> reasonably believes that the relevant actual or potential			

**OFFICIAL SENSITIVE**

		<i>Financial Distress Event</i> (or the circumstance or matter which has caused or otherwise led to it) no longer exists, it shall notify the <i>Client</i> and subject to the agreement of the <i>Client</i> , the <i>Contractor</i> may be relieved of its obligations under clause 15 in respect of that specific actual or potential <i>Financial Distress Event</i> only.	
	15.7.	The <i>Client</i> shall be entitled to terminate the appointment of the <i>Contractor</i> under this Agreement if:	
		15.7.1.	the <i>Contractor</i> fails to notify the <i>Client</i> of a <i>Financial Distress Event</i> in accordance with <i>Special Term</i> 15.4;
		15.7.2.	the <i>Client</i> and the <i>Contractor</i> fail to agree a <i>Financial Distress Service Continuity Plan</i> (or any updated <i>Financial Distress Service Continuity Plan</i> ) in accordance with <i>clause</i> 15.5; and/or
		15.7.3.	the <i>Contractor</i> fails to comply with the terms of the <i>Financial Distress Service Continuity Plan</i> (or any updated <i>Financial Distress Service Continuity Plan</i> ) in accordance with <i>clause</i> 15.5.
	15.8.	Each time that a Notice to Proceed <i>is</i> executed by the <i>Client</i> and the <i>Contractor</i> in accordance with this Agreement, the warranty in <i>clause</i> 15.1 shall be deemed to be repeated by the <i>Contractor</i> with reference to the circumstances existing at the time on a mutatis mutandis basis.	
	15.9.	Without prejudice to the <i>Contractor's</i> obligations and the <i>Client's</i> rights and remedies under this Agreement, if, following the occurrence of a <i>Financial Distress Event</i> that relates to the downgrading of the <i>Contractor's</i> credit rating below the <i>Credit Rating Threshold</i> , the <i>Rating Agency</i> reviews and reports subsequently that the credit ratings do not fall below the relevant <i>Credit Rating Threshold</i> , then the <i>Contractor</i> shall be relieved automatically of its obligations under clauses 15.4 and 15.5.	
16.	DUE DILIGENCE & NO RELIANCE		
	16.1.	The <i>Contractor</i> represents and warrants that:	
		16.1.1.	the <i>Client</i> has delivered or made available to it all of the information and documents that the <i>Contractor</i> considers necessary or relevant for the performance or its obligations under this Contract as at the Effective Date of this Agreement;
		16.1.2.	it has made its own enquiries to satisfy itself as to the accuracy of all such information and documents prior to the Effective Date of this Agreement;
		16.1.3.	it has raised all relevant due diligence questions with the <i>Client</i> before the Effective Date of this Agreement, has undertaken all necessary due diligence and has entered into this Agreement in reliance on its own due diligence alone;
		16.1.4.	it shall not be excused from the performance of any of its duties and/or obligations under this Agreement on the grounds of, nor shall it be entitled to recover any additional costs or charges, arising as a result of any:
			16.1.4.1. misrepresentation of the requirements of the <i>Contractor</i> in this Agreement or a Notice to Proceed or elsewhere;
			16.1.4.2. failure by the <i>Contractor</i> to satisfy itself as to the accuracy and/or adequacy of all information and documents provided by or on behalf of the <i>Client</i> to the <i>Contractor</i> ; and/or
			16.1.4.3. failure by the <i>Contractor</i> to undertake its own due

**OFFICIAL SENSITIVE**

			diligence as referred to in this <i>Special Term</i> 16.1.
	16.2.	<b>NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT:</b>	
		16.2.1.	the <i>Client</i> makes no representation nor gives any warranty to the <i>Contractor</i> as to the accuracy, adequacy, sufficiency, suitability and/or completeness of any information (of any type and/or nature) provided by or on behalf of it to the <i>Contractor</i> in connection with this Agreement; and
		16.2.2.	to the extent permitted by <i>Applicable Law</i> , the <i>Client</i> has no liability arising out of or in relation to such information provided by or on behalf of it to the <i>Contractor</i> and/or from any representation or statement, whether negligently or otherwise made in relation to this Agreement.
	16.3.	Each time that a Notice to Proceed is executed by the <i>Client</i> and the <i>Contractor</i> in accordance with this Agreement, the warranties and representations in clause 16.1 and the provisions of <i>Special</i> clause 16.2 shall be deemed to be repeated by and apply to (as the context requires) the <i>Contractor</i> with reference to the circumstances existing at the time on a mutatis mutandis basis.	
<b>17.</b>	<b>REPRESENTATIONS &amp; WARRANTIES</b>		
	17.1.	The <i>Contractor</i> represents and warrants that:	
		17.1.1.	it has full capacity and authority to enter into and to perform its obligations under this Agreement;
		17.1.2.	this agreement has been executed by its duly authorised representative(s);
		17.1.3.	there are no actions, suits, proceedings and/or regulatory investigations before any court or administrative body or arbitration tribunal pending or, to its knowledge, threatened against it or any of its <i>Affiliates</i> that might affect its ability to perform its obligations under this Agreement; and
		17.1.4.	its duties and obligations under this Agreement constitute legal, valid and binding obligations, enforceable in accordance with its terms subject to (as the case may be for the <i>Contractor</i> ) bankruptcy, reorganisation, insolvency, moratorium or similar circumstances under <i>Applicable Law</i> affecting creditors' rights generally and subject, as to enforceability, to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or under <i>Applicable Law</i> ).
	17.2.	The <i>Contractor</i> represents and warrants that:	
		17.2.1.	it is validly incorporated, organised and subsisting in accordance with the <i>Applicable Laws</i> of England and Wales;
		17.2.2.	it has obtained and will maintain all licences, authorisations, permits, necessary consents (including, where its procedures so require, the consent of its parent company) and regulatory approvals to enter into and perform its obligations under this Agreement;
		17.2.3.	its execution of and delivery and performance of its obligations under this Agreement (including pursuant to any Notice to Proceed issued pursuant to and in accordance with this Agreement) does not and will not constitute a breach of any <i>Applicable Law</i> or obligation applicable to it and does not and will not cause or result in a breach of any agreement by which it is bound;

**OFFICIAL SENSITIVE**

		17.2.4.	as at the Effective Date, all written statements and representations in any written submissions made and documents provided by the <i>Contractor</i> as part of the procurement process pursuant to which it has been appointed under this Agreement submitted pursuant to such process remain true and accurate, save to the extent that such statements and representations have been superseded or varied by this Agreement;
		17.2.5.	it shall take all steps, using the <i>Standard of Care</i> , to prevent the introduction, creation or propagation of any disruptive elements (including any virus, worms and/or trojans, spyware or other malware) into information technology systems, data, software and/or the <i>Client Confidential Information</i> (held in electronic form) owned by and/or under the control of, or used by, the <i>Client</i> ;
		17.2.6.	it is not subject to any contractual obligation in respect of which its compliance is likely to have a material adverse effect on its ability to perform its obligations under this Agreement;
		17.2.7.	it is not subject to an <i>Insolvency Event</i> and no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, have been or are threatened) for the winding up of the <i>Contractor</i> 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 <i>Contractor's</i> assets or revenue; and
		17.2.8.	as from the Effective Date and expiring on the date falling twelve (12) months after the date on which the <i>Notice to Proceed</i> is issued to the <i>Contractor</i> under this Agreement (or, if occurring earlier, the date on which the <i>Client</i> notifies the <i>Contractor</i> that it will not issue any or any further <i>Notices to Proceed</i> in connection with this Agreement) the <i>Contractor</i> shall not employ or offer employment to any staff of the <i>Client</i> who has been associated with implementing this Agreement and/or the management of any <i>Notice to Proceed</i> without the prior written consent of the <i>Client</i> , which shall not be unreasonably withheld.
	17.3.	Each of the representations and warranties set out in clause 17.1 and clause 17.2 shall be construed as a separate representation and warranty and shall not be limited or restricted by reference to, or inference from, the terms of any other representation, warranty or any undertaking in this Agreement.	
	17.4.	If at any time the <i>Contractor</i> becomes aware that a representation or warranty given by it under clause 17.1 and/or 17.2 has been breached, is untrue or is misleading, it shall immediately notify the <i>Client</i> of the relevant occurrence in sufficient detail to enable the <i>Client</i> to make an accurate assessment of the situation.	
	17.5.	The fact that any provision within any part of this Agreement is expressed as a warranty shall not preclude any right of termination the <i>Client</i> may have in respect of the breach of that provision by the <i>Contractor</i> which constitutes a breach of the relevant part of this Agreement.	
	17.6.	Each time that a Notice to Proceed is executed by the <i>Client</i> and the <i>Contractor</i> in accordance with this Agreement, the warranties and representations in clause 17.1 and 17.2 shall be deemed to be repeated by the <i>Contractor</i> with reference to the circumstances existing at the time on a mutatis mutandis basis.	

## APPENDIX 2B - DEFINITIONS TO ADDITIONAL CLAUSES SCHEDULE

**Affected ICT System** - has the meaning given to such term in additional clause 2.

**Applicable Law or applicable law** – is:

- any Act of Parliament or subordinate legislation, exercise of the Royal Prerogative and/or enforceable community right under the European Communities Act 1972;
- any statute, directive, regulation, rule or order made under any statute or directive and having the force of law (including building and fire regulations);
- any rule of equity or common law or the ruling, judgment or order of any Court; and/or
- any *Consents* and any other official request or requirement made by or of any *Statutory Authority* and all orders, rules, guidance notes, bye-laws, codes of practice and any other document with analogous and/or equivalent effect relating to any of the foregoing having binding effect,

provided that:

- any references to *Applicable Law* and/or otherwise to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to such *Applicable Law*, statute, enactment, order, regulation or instrument as amended by any subsequent statute, enactment, order, regulation or instrument or as contained in any subsequent re-enactment of it; and
- where a capitalised term is stated as having the meaning given to the same term in any *Applicable Law*, the letter case used to define the term in the relevant *Applicable Law* shall be disregarded;

**Client Confidential Information** – means:

- this Agreement and anything referred to herein;
- all information disclosed by the *Client* to the *Contractor* in connection with this Agreement and the *Works*;
- any information concerning the business and/or financial affairs of the *Client* which the *Contractor* learns due to its relationship with the *Client* under this Agreement; and
- all Personal Data which the *Contractor* obtains and/or becomes aware of due to its engagement under this Agreement,

in each case of any type and in any medium, communicated directly or indirectly, and whether disclosed before, on or after the Effective Date;

**Client ICT System** - any *ICT System* used by the *Client* in connection with this contract which is owned by and/or licensed to the *Client* by a third party and which interfaces with any *Non-Client ICT System* and/or which is provided for use by the *Client* in connection with this contract (but excluding any *Non-Client ICT System*);

**Communications Software** – the cloud-based software application known as "CEMAR", as developed and maintained by Client Managers Toolkit Limited (company number 05430351, whose registered office is at Welland House Meteor Court, Barnett Way, Barnwood, Gloucester, England, GL4 3GG) or such other software platform as the *Alliance Manager* may notify to the *Alliance Member* in writing from time to time;

**Confidential Information** – the *Client Confidential Information* and/or the *Alliance Member Confidential Information* (as the context permits);



**Contractor Confidential Information** – any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel and suppliers of the *Alliance Member*, including *Intellectual Property Rights*, together with all information derived from the same, and any other information clearly designated as being confidential (whether or not it is marked as "confidential") or which ought reasonably to be considered to be confidential (including commercially sensitive information);

**Corrupt Act** – any of the following offences or practices:

- corruption, including offering, giving, receiving, or soliciting, directly or indirectly, anything of value to influence improperly the actions of any person, whether an offence under the Bribery Act 2010 or otherwise;
- fraud, including any act, omission or misrepresentation, that knowingly or recklessly misleads (or attempts to mislead) any person to obtain a financial or other benefit or to avoid any obligation;
- the coercion (including impairing or harming, or threatening to impair or harm, directly or indirectly) of any person (or the property of any person) with the intent (or effect) of influencing the actions of any person;
- collusion and/or price fixing, including entering into any arrangement between two (2) or more persons or entities (including any other contractor or *Subcontractor*) designed to achieve an improper purpose, and including influencing improperly the actions of another person;
- the deliberate destruction, falsification, alteration or concealing of any evidence material to any investigation;
- the threatening, harassment or intimidation of any person with the effect or aim of preventing that (or any other) person from disclosing knowledge of matters relevant to any investigation or from pursuing any investigation;
- any act or omission intended to materially impede the exercise of any rights of audit or access to information (including any such rights of the *Client*) or the rights that any funder or any banking, regulatory or examining authority or other equivalent body may have in accordance with any *Applicable Law*; and/or
- money laundering,

in each case, in connection with this Agreement or any other contract between the *Contractor* and the *Client* and/or any other party;

**Credit Rating Threshold** – the minimum credit rating level for the Contractor as set out in the "additional clauses" section of this Agreement;

**Cyber Essentials Scheme** – the "Cyber Essentials Scheme" developed by the United Kingdom government which provides a clear statement of the basic controls all organisations should implement to mitigate the risk from common internet-based threats;

**Cyber Essentials Scheme Data** – sensitive and personal information and other relevant information as referred to in the *Cyber Essentials Scheme*;

**Data Loss Event** – any event that results, or may result, in unauthorised access to Personal Data held by the *Alliance Member* under this Agreement and/or actual or potential loss and/or destruction of such *Personal Data*, including any *Personal Data Breach*;

**Data Protection Laws** – the *UK GDPR*, the *LED*, the *DPA* (to the extent it relates to *Processing of Personal Data* and privacy) and all *Applicable Laws* about the *Processing of Personal Data* and privacy;

**Data Protection Impact Assessment** – an assessment by the *Controller* of the impact of the envisaged *Processing* on the protection of *Personal Data*;

**Data Subject** – has the meaning given to such term in the *DPA*;

**Data Subject Access Request** – a request made by, or on behalf of, a *Data Subject* under the *Data Protection Laws* to access its *Personal Data*;

**Database Rights** – any rights in a "database" as such term is defined in Part 1 of Chapter 1 of the Copyright, Designs and Patents Act 1988;

**Disclosure and Barring Service** – the body of the same name as established under the Protection of Freedoms Act 2012;

**DPA** – the Data Protection Act 2018 as amended in accordance with the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 (as amended by SI 2020 no. 1586);

**DOTAS** – the "Disclosure of tax avoidance schemes rules" which require a promoter of tax schemes to notify Her Majesty's Revenue and Customs of notifiable arrangements or proposals and provide prescribed information on them within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 7 of the Finance Act and as extended to NICs by the National Insurance (Application of Part 7 of the Finance Act 2004) Regulations 2012 (SI 2012/1868) made under section 132A of the Social Security Administration Act 1992;

**Environmental Information Regulations** – the Environmental Information Regulations 2004 and all associated guidance and/or codes of practice in relation to such regulations from time to time;

**Financial Distress Event** – where:

- the credit rating of the *Contractor* falls below the applicable *Credit Rating Threshold* (as determined by the *Rating Agency*);
- the *Contractor* issues a profit warning to a stock exchange or making any other public announcement about a material deterioration in its financial position or prospects;
- there is a public investigation into improper financial accounting and reporting, suspected fraud or any other impropriety of the *Contractor*;
- the *Contractor* has committed a material breach of covenant to its lenders;
- a *Subcontractor* notifying the *Client* that the *Contractor* has not satisfied any sums properly due under a specified invoice or sequences of invoices not subject to a genuine dispute; and/or
- any of the following occurs:
  - the commencement of any litigation against the *Contractor* with respect to financial indebtedness or obligations under or in connection with this Agreement and/or any Notice to Proceed;
  - the non-payment by the *Contractor* of any financial indebtedness; any financial indebtedness of the *Contractor* becoming due as a result of an event of default; and/or
  - the cancellation or suspension of any financial indebtedness in respect of the *Contractor* in each case which the *Client* reasonably believes (or would be likely to reasonably believe) could directly impact on the continued performance of the *Contractor* in accordance with this Agreement and/or in connection with any *Works and/or Services* to be provided (or being provided) by the *Contractor* pursuant to and in accordance with a *Notice to Proceed*;



## OFFICIAL SENSITIVE

**Financial Distress Service Continuity Plan** – a plan setting out how the *Contractor* will ensure its continued performance in accordance with this Agreement in the event that a *Financial Distress Event* occurs;

**FOIA** – the Freedom of Information Act 2000 and any subordinate legislation (as defined in section 84 of the Freedom of Information Act 2000) made under or pursuant to the Freedom of Information Act 2000 from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner and/or the Department for Constitutional Affairs in relation to that Act from time to time;

**ITEPA** – the Income Tax (Earnings and Pensions) Act 2003;

**Malicious Code** – any software program or code that is intended to destroy, interfere with, corrupt and/or detrimentally affect program files, data or other information, executable code or application software macros, whether or not its operation is immediate or delayed, and whether introduced wilfully, negligently or without knowledge of its existence;

**MSA Offence** – an offence under the Modern Slavery Act 2015

**National Audit Office** – the body of the same name as established under the National Audit Act 1983;

**Non-Client ICT System** - any *ICT System* which is owned by the *Alliance Member* and/or licensed to the *Alliance Member* by a third party and which is operated by or on behalf of the *Alliance Member* (including any Subcontractor (and excluding any *Affected ICT System*)).

**Occasion of Tax Non-Compliance** – any tax return of the *Alliance Member* submitted to a *Relevant Tax Authority* on or after 1 October 2012 which, on or after 1 April 2013:

- is found to be incorrect as a result of:
  - a *Relevant Tax Authority* successfully challenging the *Alliance Member* under the *General Anti-Abuse Rules* or the *Halifax Abuse Principle* or under any rules or *Applicable Law* having equivalent or similar legal effect; and/or
  - the failure of an avoidance scheme which the *Alliance Member* was involved in, and which was, or should have been, notified to the *Relevant Tax Authority* under *DOTAS* or any equivalent or similar regime; and/or
- gives rise on or after 1 April 2013 to a criminal conviction in any jurisdiction for tax related offences which is not spent at entry into the Agreement or to a civil penalty for fraud or evasion;

**Personal Data** – has the meaning given to such term in the *UK GDPR*;

**Personal Data Breach** – has the meaning given such term in the *UK GDPR*;

**Relevant Tax Authority** – Her Majesty's Revenue and Customs or, if applicable, a tax authority in the jurisdiction in which the *Alliance Member* is established;

**Request for Information** – any request for information under the *FOIA* or the *Environmental Information Regulations*;

**Security Measures** – any and all active and passive, peremptory, contingent and other physical and procedural security and safeguarding measures, deterrents, countermeasures and precautions, designed, taken, implemented and/or intended (including software and coding solutions, as well as physical and strategic solutions) to:

- maintain the safety of persons and public and personal property;
- prevent the risk of any person being exposed to actual or potential death, personal injury or any other type of harm;

## OFFICIAL SENSITIVE

- prevent the risk of actual or potential damage or harm to public and personal property howsoever caused (including by fire);
- maintain political, national and/or international security;
- prevent the access to a location (or part thereof), persons, information and/or any electronic or information technology system by unauthorised persons or parties; and/or
- (as the context permits) facilitate the detention or imprisonment (or continued detention or imprisonment) of persons, in accordance with *Applicable Law*,

such as intruder detector systems, lighting systems, surveillance systems, natural surveillance models, physical barriers, information technology systems, communications systems, access control systems, screening arches and areas, entry systems, fire security and safety systems, reinforced glass and strategic and/or any internal or external layouts;

**Subcontractor** – any person or organisation of any type that is appointed by the *Contractor* in connection with this Agreement, including any consultant, supplier, manufacturer and member of the *Supply Chain*;

**Sub-Processor** – any third party appointed to *Process* any *Personal Data* on behalf of the *Alliance Member* in connection with this Agreement;

**Supply Chain** – any party or parties providing to the *Contractor* works or services or supplies of goods, materials or equipment;

**Supply Chain Collaboration** – any activities agreed to be performed by the *Contractor* under clause in order to achieve *Improved Value* through more consistent, longer term, larger scale *Supply Chain Contracts* and through other improved *Supply Chain* commitments and working practices;

**Supply Chain Contract** – a contract entered into between the *Contractor* and any of its *Supply Chain* (and, as the context requires, the *Client*);

**UK GDPR** – the General Data Protection Regulation (Regulation (EU) 2016/679) as incorporated into UK law under the UK European Union (Withdrawal) Act 2018), and amended in accordance with the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 (as amended by SI 2020 no. 1586);

**Valid Cyber Essentials Certificate** – a current *Cyber Essentials Scheme* certificate held by the *Alliance Member*, or held within the *Alliance Member's* parent company organisation, that has been issued by an approved accreditation body;

**Valid Cyber Essentials Plus Certificate** – a current *Cyber Essentials Scheme "Plus"* certificate held by the *Alliance Member*, or held within the *Alliance Member's* parent company organisation, that has been issued by an approved accreditation body;

**VAT** – value added tax as referred to in the Value Added Tax Act 1994 or any tax of a similar nature that may be substituted for or levied in addition to it;

**Working Day** – any day other than a Saturday or Sunday, Christmas Day or Good Friday or any other day which is a bank holiday in England and Wales under the Banking and Financial Dealings Act 1971;