

Standard Terms and Conditions of Contracts for Services

Date _____

Dated 20 [---]

(1) STOCKPORT HOMES LIMITED

-and-

(2) [THE CONTRACTOR]

AGREEMENT

relating to the supply of Tree Services

Contents	Page
A. <u>General Provisions</u>	
A1 Definitions and Interpretation	5
A2 Initial Contract Period	15
A3 Contractor's Status	15
A4 Client's Obligations	16
A5 Notices	16
A6 Mistakes in Information	17
A7 Conflicts of Interest	17

B. Supply of Services

B1	The Services	18
B2	Provision and Removal of Equipment	19
B3	Manner of Carrying Out the Services	20
B4	Key Personnel	21
B5	Contractor's Staff	26
B6	Inspection of Premises	28
B7	Licence to Occupy Premises	25
B8	Property	29
B9	Offers of Employment	30

C. Payment and Contract Price

C1	Contract Price	30
C2	Payment and VAT	31
C3	Recovery of Sums Due	32
C4	Price Adjustment on Extension of Initial Contract Period	33

D. Statutory Obligations and Regulations

D1	Prevention of Corruption	34
D2	Prevention of Fraud	35
D3	Discrimination	36
D4	The Contracts (Rights of Third Parties) Act 1999	36
D5	Environmental Requirements	36
D6	Health and Safety	37
D7	Bribery	38

E. Protection of Information

E1	Data Protection Act	38
E2	Confidential Information	41
E3	Freedom of Information	43

E4	Publicity, Media and Official Enquiries	45
E5	Security	45
E6	Intellectual Property Rights	46
E7	Audit	50
E8	Transparency	50

F. Control of the Contract

F1	Transfer and Sub-Contracting	51
F2	Waiver	54
F3	Variation	55
F4	Severability	55
F5	Remedies in the Event of Inadequate Performance	56
F6	Remedies Cumulative	58
F7	Monitoring of Contract Performance	59
F8	Extension of Initial Contract Period	60
F9	Entire Agreement	61

G. Liabilities

G1	Liability, Indemnity and Insurance	60
G2	Professional Indemnity	62
G3	Warranties and Representations	62

H. Default, Disruption and Termination

H1	Termination on Insolvency and Change of Control	64
H2	Termination on Default	69
H3	Break	70
H4	Consequences of Expiry or Termination	72
H5	Disruption	72
H6	Recovery upon Termination	73
H7	Force Majeure	74

I. Disputes and Law

I1	Governing Law and Jurisdiction	75
I2	Dispute Resolution	75

J. Schedules

Schedule 1	Service Specification
Schedule 2	Pricing Schedule

A. GENERAL PROVISIONS

A1 Definitions and Interpretation

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

“Approval” means the written consent of the Client.

“Additional Services” means such Services as may from time to time be requested by the Client pursuant to clause C1

“Client” means Stockport Homes Limited

“Commencement Date” means the date of the Contract.

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

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

“Confidential Information” means any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information the disclosure of which would, or would be likely to, prejudice the commercial interests of any person, trade secrets, Intellectual Property Rights and know-how of either Party and all personal data and sensitive

personal data within the meaning of the DPA. Confidential Information shall not include information which:

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

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

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

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

“Contract Manager” means [] or such other named person as may from time to time be nominated by the Client

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

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

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

“Core Fee” means the rates and prices in respect of the Services to be provided by the Contractor, or any other sum as stipulated in writing by the Client in respect of the Services provided by the Contractor as set out in Schedules 2 & 3

“Contractor’s Representative” means the person nominated in writing from time to time by the Contractor to act as a single point of contact with the Client.

“Customer Care Training” means a learning activity with the aim of ensuring an ability to communicate with the public in an appropriate manner.

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

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

“Effective Date” means the date on which all the conditions set out at clause A2.2 have been fulfilled

“Employees” means those employees whose contracts of employment transfer to the Contractor as at the Effective Date, being those employees who are listed in Schedule 4

“Employment Regulations” means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“Month” means calendar month.

“Party” means a party to the Contract.

“Premises” means the location where the Services are to be supplied,

“Pricing Schedule” means the Schedule containing details of rates to be charged for the Additional Services

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

“Operational Plan” means a procedure by which the Contractor will ensure the control of the quality of the Services and by which the Client may obtain information about the quality of the Services and including:

1. Vehicles and Machinery
2. Staffing and Qualifications
3. Training
4. Health and Safety
5. Communication and Customer Care
6. Technical Operation and Maintenance
7. Management and Quality Information
8. Environmental Issues
9. Social Value

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

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

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

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

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

"Relevant Convictions" means a conviction or caution for offences involving dishonesty or involving harm to a Vulnerable Adult.

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

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

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

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

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

“Staff Vetting Procedure” means the Client’s procedures for the vetting of personnel and as advised to the Contractor by the Client.

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

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

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

“Waste Disposal Site” means such suitable authorised waste disposal site as may from time to time be agreed between the Contractor and the Client

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

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

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

A2 Initial Contract Period and Mobilisation

A2.1 The Contract shall take effect on the Commencement Date and shall expire automatically at the end of year 1 from the Commencement Date, unless it is otherwise terminated in accordance with the provisions of the Contract, or otherwise lawfully terminated, or extended under clause F8 (Extension of Initial Contract Period).

A2.2 Prior to the Commencement Date the following criteria will be satisfied (and no sums shall be payable by the Client until this is the case):

- a) An Operational Plan has been in writing agreed between the Parties
- b) The Contractor has attended a meeting with the Client and explained to the satisfaction of the Client the proposed methods and systems of operating which the Contractor intends to adopt in the provision of the Services
- c) The Contractor has provided the name of the Contractor's Representative to the Client

A3 Contractor's Status

At all times during the Contract Period the Contractor shall be an independent contractor and nothing in the Contract shall create a contract of employment, a relationship of agency or partnership or a joint venture between the Parties and accordingly neither Party shall be authorised to act in the name of, or on behalf of, or otherwise bind the other Party save as expressly permitted by the terms of the Contract.

A4 Client's Obligations

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

A5 Notices

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

A5.2 Any notice which is to be given by either Party to the other shall be given in writing delivered by hand, or by first class Royal Mail special delivery (or any successor service thereto), or by electronic mail. Such communications shall be addressed to the other Party in the manner referred to in clause A5.3.

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

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

A6 Mistakes in Information

The Contractor shall be responsible for the accuracy of all drawings, documentation and information supplied to the Client by the Contractor in connection with the supply of the Services and shall

pay the Client all costs (including the costs of work carried out by the Client's employees or agents) incurred by the Client as a result of any discrepancies, errors or omissions therein.

A7 Conflicts of Interest

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

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

B. SUPPLY OF SERVICES

B1 The Services

B1.1 The Contractor shall supply the Services during the Contract Period in accordance with the Client's requirements as set out in the Operational Plan and Specification, the provisions of the Contract in consideration of the payment of the Contract Price. The Client may

inspect and examine the manner in which the Contractor supplies the Services at the Premises during normal business hours on reasonable notice.

B1.2 The Contractor shall supply such Additional Services as the Client may from time to time request at the in consideration of the sums set out in the Pricing Schedule PROVIDED THAT no Additional Services shall be supplied until the conditions set out below have been fulfilled. The conditions are:

- a) the Client has discussed and agreed with the Contractor, details of the Premises where the Additional Services are to be performed together with details of the Additional Services
- b) the Contractor has agreed in writing to provide the Additional Services in accordance with the Operational Plan and any other information provided..

B1.2 If the Client informs the Contractor in writing that the Client reasonably believes that any part of the Services does not meet the requirements of the Contract or differ in any way from those requirements, and this is other than as a result of a Default by the Client, the Contractor shall at its own expense re-schedule and carry out the Services in accordance with the requirements of the Contract within such reasonable time as may be specified by the Client.

B1.3 Timely supply of the Services shall be of the essence of the Contract, including in relation to commencing the supply of the Services within the time agreed or on a specified date.

B2 Provision of Equipment and Materials

- B2.1 Except as otherwise specified in this Agreement, the Contractor shall provide all materials and equipment necessary for the provision of the Service.
- B2.2 The Contractor shall be responsible for the security of all materials and equipment used by the Contractor in connection with the provision of the Service and the Client shall be under no liability in respect thereof.
- B2.3 The Contractor shall be responsible for all waste disposal in connection with the provision of the Service at the Waste Disposal Site as detailed in the Operational Plan and the relevant method statements.
- B2.4 The Contractor shall remove any equipment together with any unused materials used by the Contractor to supply the Services in accordance with the Specification Schedule or in accordance with a written instruction from the Contract Manager and shall ensure that the Premises are kept in a clean, safe and tidy condition during and after the carrying out of the Services save to the extent that it is not practically feasible for the Contractor to reasonably do so as a result of, for example, adverse weather conditions. The Contractor is solely responsible for making good any damage to the Premises and to any structure, plant or other thing at the Premises which is caused by the Contractor or any Staff provided that the Contractor shall not be obliged to make good any damage which the Client in writing agrees amounts to fair wear and tear.

B3 Manner of Carrying Out the Services

- B3.1 The Contractor shall at all times comply with the Quality Standards, and where applicable shall maintain accreditation with the relevant Quality Standards authorisation body. To the extent that the

standard of Services has not been specified in the Contract, the Contractor shall agree the relevant standard of the Services with the Client prior to the supply of the Services and, in any event, the Contractor shall perform its obligations under the Contract in accordance with the Law and Good Industry Practice.

B3.2 The Contractor shall ensure that all Staff supplying the Services shall do so with all due skill, care and diligence and shall possess such qualifications, skills and experience as are necessary for the proper supply of the Services.

B3.3 The Contractor shall review the Operation Plan System in the light of any reasonable recommendations made by the Client and shall in writing agree any changes to the Operational Plan reasonably required by the Client with a view to the improvement of the system at no additional charge to the Client.

B3.4 The Contractor's Representative shall attend such meetings as the Contract Manager requires at a mutually agreed time and place in order to:

- a) discuss progress of the Services and compliance with the Contract and
- b) provide a detailed an up to date report on the progress of the Services, any complaints received by the Contractor and any failures to comply with the Specification Schedule

B4.1 Sub-Contractor

In the event that the Contractor enters into any Sub-Contract in connection with this Agreement it shall impose obligations on its Sub-Contractor in the same terms as those imposed on it pursuant to this Clause B4 and shall procure that the Sub-Contractor complies with such terms. The Contractor shall indemnify the Client and the current provider and keep the Client and the current provider indemnified in full form and against all direct, indirect or consequential liability, loss, damages, injury, claims, costs and expenses

(including legal expenses) awarded against or incurred or paid by the Client or the current provider as a result of or in connection with any failure on the part of the Sub Contractor to comply with such terms.

B5 Contractor's Staff

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

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

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

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

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

B5.4 If the Contractor fails to comply with clause B5.2 within two months of the date of the request and in the reasonable opinion of the Client, such failure may be prejudicial to the interests of the Client, then the Client may terminate the Contract, provided always that such termination shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the Client.

B5.5 The decision of the Client as to whether any person is to be refused access to the Premises and as to whether the Contractor has failed to comply with clause B5.2 shall be final and conclusive.

B6 Inspection of Premises

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

B7 Licence to enter Premises

B7.1 The Contractor is hereby permitted to enter and use the Premises solely for the purpose of performing its obligations under the Contract. The Contractor shall have the use of the Premises as licensee from time to time but the licence shall upon completion, termination or abandonment of the Contract. The Contractor's use or possession of the Premises shall not be exclusive and shall at all times be shared with the Client and any other licensees.

B7.2 The Contractor shall limit access to the Premises to such Staff as is necessary to enable it to perform its obligations under the Contract and the Contractor shall co-operate (and ensure that its Staff co-

operate) with such other persons working concurrently on such land or Premises as the Client may reasonably request.

B7.3 The Contractor shall (and shall ensure that its Staff shall) observe and comply with such rules and regulations as may be in force at any time for the use of such Premises as determined by the Client.

B7.5 The Parties agree that there is no intention on the part of the Client to create a tenancy of any nature whatsoever in favour of the Contractor or its Staff and that no such tenancy has or shall come into being and, notwithstanding any rights granted pursuant to the Contract, the Client retains the right at any time to use any premises owned or occupied by it in any manner it sees fit.

B7.6 The Parties may from time to time agree that the Contractor shall occupy land which does not form part of the Premises in order to facilitate the delivery of the Services or Additional Services. Any such land shall be occupied pursuant to a licence substantially in the form attached at Schedule 6

B8 Property

B8.1 Where the Client issues Property free of charge to the Contractor such Property shall be and remain the property of the Client and the Contractor irrevocably licences the Client and its agents to enter upon any premises of the Contractor during normal business hours on reasonable notice to recover any such Property. The Contractor shall not in any circumstances have a lien or any other interest on the Property and the Contractor shall at all times possess the Property as fiduciary agent and bailee of the Client. The Contractor shall take all reasonable steps to ensure that the title of the Client to the Property and the exclusion of any such lien or other interest are

brought to the notice of all sub-contractors and other appropriate persons and shall, at the Client's request, store the Property separately and ensure that it is clearly identifiable as belonging to the Client.

B8.2 The Property shall be deemed to be in good condition when received by or on behalf of the Contractor unless the Contractor notifies the Client otherwise within 5 Working Days of receipt.

B8.3 The Contractor shall maintain the Property in good order and condition (excluding fair wear and tear), and shall use the Property solely in connection with the Contract and for no other purpose without prior Approval.

B8.4 The Contractor shall ensure the security of all the Property whilst in its possession, either on the Premises or elsewhere during the supply of the Services, in accordance with the Client's reasonable security requirements as required from time to time.

B8.5 The Contractor shall be liable for all loss of, or damage to, the Property (excluding fair wear and tear), unless such loss or damage was caused by the Client's Default. The Contractor shall inform the Client within [2] Working Days of becoming aware of any defects appearing in, or losses or damage occurring to, the Property.

B9 Offers of Employment

B9.1 For the duration of the Contract and for a period of 12 months thereafter neither the Client nor the Contractor shall employ or offer employment to any of the other Party's staff who have been associated with the procurement and/or the contract management of the Services without that other Party's prior written consent.

C PAYMENT AND CONTRACT PRICE

C1 Contract Price

C1.1 In consideration of the Contractor's full and proper performance of its obligations under the Contract including the disposal of waste the Client shall pay the Core Fee in accordance with clause C2 (Payment and VAT).

C1.2 In consideration of the Contractor's performance of any Additional Services the Client shall pay the Additional Services Fee.

C1.3 The Client shall, in addition to the Core Fee and any Additional Services Fee and following Receipt of a valid VAT invoice, pay the Contractor a sum equal to the VAT chargeable on the Core Fee and on the Additional Services Fee

C2 Payment and VAT

C2.1 The Client shall pay the Core Fee in accordance with the Pricing Schedule to the Contractor within 30 days of Receipt of an undisputed invoice, submitted monthly in arrears.

C2.2 The Client shall pay any Additional Services Fee to the Contractor within 30 days of Receipt of an undisputed invoice following satisfactory completion of the Additional Services.

C2.2 The Contractor shall ensure that each invoice contains all appropriate references and a detailed breakdown of the Services supplied and that it is supported by any other documentation reasonably required by the Client to substantiate the invoice.

- C2.3 Where the Contractor enters into a sub-contract with a supplier or contractor for the purpose of performing its obligations under the Contract, it shall ensure that a provision is included in such a sub-contract which requires payment to be made of all sums due by the Contractor to the sub-contractor within a specified period not exceeding 30 days from the receipt of a valid invoice.
- C2.4 The Contractor shall add VAT to the Contract Price at the prevailing rate as applicable.
- C2.5 The Contractor shall indemnify the Client on a continuing basis against any liability, including any interest, penalties or costs incurred, which is levied, demanded or assessed on the Client at any time in respect of the Contractor's failure to account for or to pay any VAT relating to payments made to the Contractor under the Contract. Any amounts due under this clause C2.5 shall be paid by the Contractor to the Client not less than 5 Working Days before the date upon which the tax or other liability is payable by the Client.
- C2.6 The Contractor shall not suspend the supply of the Services unless the Contractor is entitled to terminate the Contract under clause H2.3 (Termination on Default) for failure to pay undisputed sums of money. Interest shall be payable by the Client on the late payment of any undisputed sums of money properly invoiced in accordance with the Late Payment of Commercial Debts (Interest) Act 1998.

C3 Recovery of Sums Due

- C3.1 Wherever under the Contract any sum of money is recoverable from or payable by the Contractor (including any sum which the Contractor is liable to pay to the Client in respect of any breach of the Contract), the Client may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the

Contractor under the Contract or under any other agreement or contract with the Client.

C3.2 Any overpayment by either Party, whether of the Contract Price or of VAT or otherwise, shall be a sum of money recoverable by the Party who made the overpayment from the Party in receipt of the overpayment.

C3.3 The Contractor shall make all payments due to the Client without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Contractor has a valid court order requiring an amount equal to such deduction to be paid by the Client to the Contractor.

C3.4 All payments due shall be made within a reasonable time unless otherwise specified in the Contract, in cleared funds, to such bank or building society account as the recipient Party may from time to time direct.

C4 Price adjustment on extension of the Initial Contract Period

C4.1 The Core Fee shall apply for the Initial Contract Period. In the event that the Client agrees to extend the Initial Contract Period pursuant to clause F8 (Extension of Initial Contract Period) the Client shall, in the 6 month period prior to the expiry of the Initial Contract Period, enter into good faith negotiations with the Contractor (for a period of not more than 30 Working Days) to agree a variation in the Contract Price.

C4.2 If the Parties are unable to agree a variation in the Contract Price in accordance with clause C4.1, the Contract shall terminate at the end of the Initial Contract Period.

- C4.3 If a variation in the Contract Price is agreed between the Client and the Contractor, the revised Contract Price will take effect from the first day of any period of extension and shall apply during such period of extension unless otherwise agreed between the Parties.

D. STATUTORY OBLIGATIONS AND REGULATIONS

D1 Prevention of Corruption

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

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

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

- (a) terminate the Contract and recover from the Contractor the amount of any loss suffered by the Client resulting from the termination, including the cost reasonably incurred by the Client of making other arrangements for the supply of the Services and

any additional expenditure incurred by the Client throughout the remainder of the Contract Period; and/or

(b) recover in full from the Contractor any other loss sustained by the Client in consequence of any breach of those clauses and/or

(c) at the sole and unfettered choice of the Client require that any Staff member(s) who are responsible be dismissed from the Contractor's employment.

D2 Prevention of Fraud

D2.1 The Contractor shall take all reasonable steps, in accordance with Good Industry Practice, to prevent Fraud by Staff and the Contractor (including its shareholders, members, directors) in connection with the receipt of monies from the Client.

D2.2 The Contractor shall notify the Client immediately if it has reason to suspect that any Fraud has occurred or is occurring or is likely to occur.

D2.3 If the Contractor or its Staff commits Fraud in relation to this or any other contract with the Crown (including the Client) the Client may:

(a) terminate the Contract and recover from the Contractor the amount of any loss suffered by the Client resulting from the termination, including the cost reasonably incurred by the Client of making other arrangements for the supply of the Services and any additional expenditure incurred by the Client throughout the remainder of the Contract Period; or

- (c) recover in full from the Contractor any other loss sustained by the Client in consequence of any breach of this clause.

D3 Discrimination

D3.1 The Contractor shall not unlawfully discriminate either directly or indirectly grounds of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race religion or belief, sex and sexual orientation and without prejudice to the generality of the foregoing the Contractor shall not unlawfully discriminate within the meaning and scope of the Equality Act 2010, the Human Rights Act 1998 or other relevant or equivalent legislation, or any statutory modification or re-enactment thereof.

D3.2 The Contractor shall take all reasonable steps to secure the observance of clause D3.1 by all Staff.

D4 The Contracts (Rights of Third Parties) Act 1999

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

D5 Environmental Requirements

The Contractor shall, when working on the Premises, perform its obligations under the Contract in accordance with the Client's

environmental policy, which is to conserve energy, water, wood, paper and other resources, reduce waste and phase out the use of ozone depleting substances and minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment.

D6 Health and Safety

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

D6.5 The Contractor shall ensure that its health and safety policy statement (as required by the Health and Safety at Work etc. Act 1974) is made available to the Client on request.

D7 Bribery

D7.1 The Contractor shall:

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

7.1 Breach of this clause shall be deemed a material breach of this Agreement entitling the Client to terminate it forthwith

E PROTECTION OF INFORMATION

E1 Data Protection Act

- E1.1 For the purposes of this Clause E1, the terms “Data Controller”, “Data Processor”, “Data Subject”, “Personal Data”, “Process” and “Processing” shall have the meaning prescribed under the DPA.
- E1.2 The Contractor shall (and shall ensure that all of its Staff) comply with any notification requirements under the DPA and both Parties will duly observe all their obligations under the DPA which arise in connection with the Contract.
- E1.3 Notwithstanding the general obligation in clause E1.2, where the Contractor is Processing Personal Data (as defined by the DPA) as a Data Processor for the Client the Contractor shall:
- (a) Process the Personal Data only in accordance with instructions from the Client (which may be specific instructions or instructions of a general nature) as set out in this Contract or as otherwise notified by the Contracting Authority;
 - (b) comply with all applicable laws;
 - (c) Process the Personal Data only to the extent; and in such manner as is necessary for the provision of the Contractor’s obligations under this Contract or as is required by Law or any Regulatory Body;
 - (d) implement appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful Processing and against accidental loss, destruction, damage, alteration or disclosure. These measures shall be appropriate to the harm which might result from any unauthorised or unlawful Processing, accidental loss, destruction or damage

to the Personal Data and having regard to the nature of the Personal Data which is to be protected;

- (e) take reasonable steps to ensure the reliability of its staff and agents who may have access to the Personal Data;
- (f) obtain prior written consent from the Contracting Authority in order to transfer the Personal Data to any sub-contractor for the provision of the Services;
- (g) not cause or permit the Personal Data to be transferred outside of the European Economic Area without the prior consent of the Client;
- (h) ensure that all staff and agents required to access the Personal Data are informed of the confidential nature of the Personal Data and comply with the obligations set out in this clause E1;
- (i) ensure that none of the staff and agents publish disclose or divulge any of the Personal Data to any third parties unless directed in writing to do so by the Client;
- (j) not disclose Personal Data to any third parties in any circumstances other than with the written consent of the Client or in compliance with a legal obligation imposed upon the Client; and

E1.4 notify the Client (within two Working Days) if it receives:

- (a) a request from a Data Subject to have access to that person's Personal Data; or

- (b) a complaint or request relating to the Client's obligations under the DPA;

E1.5 The provision of this Clause E1 shall apply during the Contract Period and indefinitely after its expiry.

E1.6 The Contractor will fully indemnify the Client in respect of any monetary penalty issued by the Information Commissioner's Office and any other claim, loss, liability or costs incurred arising as a result of a data breach or as a result of any negligence or breach of statute or common law in processing the information disclosed to it.

E2 Confidential Information

E2.1 Except to the extent set out in this clause or where disclosure is expressly permitted elsewhere in this Contract, each Party shall:

- (a) treat the other party's Confidential Information as confidential[and safeguard it accordingly]; and
- (b) not disclose the other party's Confidential Information to any other person without the owner's prior written consent.

E2.2 Clause E2.1 shall not apply to the extent that:

- (a) such disclosure is a requirement of Law or legal process placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA or the Environmental Information Regulations pursuant to clause E4 (Freedom of Information);

- (b) such information was in the possession of the Party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
- (c) such information was obtained from a third party without obligation of confidentiality;
- (d) such information was already in the public domain at the time of disclosure otherwise than by a breach of this Contract; or
- (e) it is independently developed without access to the other Party's Confidential Information.

E2.3 The Contractor may only disclose the Client's Confidential Information to the Staff who are directly involved in the provision of the Services and who need to know the information, and shall ensure that such Staff are aware of and shall comply with these obligations as to confidentiality.

E2.4 The Contractor shall not, and shall procure that the Staff do not, use any of the Client's Confidential Information received otherwise than for the purposes of this Agreement.

E2.5 At the written request of the Client, the Contractor shall procure that those members of the Staff identified in the Client's notice signs a confidentiality undertaking prior to commencing any work in accordance with this Agreement.

E2.6 Nothing in this Agreement shall prevent the Client from disclosing the Contractor's Confidential Information:

- (a) to any Crown Body or any other Contracting Authority. All Crown Bodies or Contracting Authorities receiving such

Confidential Information shall be entitled to further disclose the Confidential Information to other Crown Bodies or other Contracting Authorities on the basis that the information is confidential and is not to be disclosed to a third party which is not part of any Crown Body or any Contracting Authority;

- (b) to any consultant, contractor or other person engaged by the Client or any person conducting an Office of Government Commerce gateway review;
- (c) for the purpose of the examination and certification of the Client's accounts; or
- (d) for any examination pursuant to Section 6(1) of the National Audit Act 1983 of the economy, efficiency and effectiveness with which the Client has used its resources.

E2.7 The Client shall use all reasonable endeavours to ensure that any government department, Contracting Authority, employee, third party or sub-contractor to whom the Contractor's Confidential Information is disclosed pursuant to clause E2.6 is made aware of the Client's obligations of confidentiality.

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

E3 Freedom of Information

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

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

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

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

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

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

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

provided always that where E4.5(a) applies the Client shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Contractor advanced notice, or failing that, to draw the disclosure to the Contractor’s attention after any such disclosure.

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

E4 Publicity, Media and Official Enquiries

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

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

E5 Security

- E5.1 The Client shall be responsible for maintaining the security of the Premises in accordance with its standard security requirements. The Contractor shall comply with all security requirements of the Client while on the Premises, and shall ensure that all Staff comply with such requirements.
- E5.2 The Client shall provide the Contractor upon request copies of its written security procedures and shall afford the Contractor upon request with an opportunity to inspect its physical security arrangements.
- E5.3 The Contractor shall hold access keys as required by the Authorised Officer and particularly where any part of the Service is to be provided outside normal hours. In such circumstances the Contractor shall be responsible for the security of any location owned or occupied by the Client and shall ensure that such location is properly secure both whilst the Service is being provided and after any part of the Service has been provided during the Contract Period.
- E5.4 The Contractor shall be responsible for the safekeeping of any keys, passes and other means of access provided to the Contractor by the Client and shall only permit such keys, passes and other means of access to be given to those of the Contractor's Employees whose names and addresses have been supplied to the Client and then only to the extent required for the purposes of providing the Service. In addition, the Contractor shall ensure that the Authorised Officer is informed immediately of any loss of any keys, passes and other means of access and shall reimburse to the Client any cost of replacement and/or any reasonable security measures implemented

as a result of such loss. Upon termination of the Agreement the Contractor shall immediately return all keys and passes to the Client.

E6 Intellectual Property Rights

E6.1 All Intellectual Property Rights in any guidance, specifications, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models, designs or other material (the "**IP Materials**"):

- (a) furnished to or made available to the Contractor by or on behalf of the Client shall remain the property of the Client; and
- (b) prepared by or for the Contractor on behalf of the Client for use, or intended use, in relation to the performance by the Contractor of its obligations under the Contract shall belong to the Client;

and the Contractor shall not, and shall ensure that the Staff shall not, (except when necessary for the performance of the Contract) without prior Approval, use or disclose any Intellectual Property Rights in the IP Materials.

E6.2 The Contractor hereby assigns to the Client, with full title guarantee, all Intellectual Property Rights which may subsist in the IP Materials prepared in accordance with clause E7.1(b). This assignment shall take effect on the date of the Contract or as a present assignment of future rights that will take effect immediately on the coming into existence of the Intellectual Property Rights produced by the Contractor. The Contractor shall execute all documentation necessary to execute this assignment.

- E6.3 The Contractor shall waive or procure a waiver of any moral rights subsisting in copyright produced by the Contract or the performance of the Contract.
- E6.4 The Contractor shall ensure that the third party owner of any Intellectual Property Rights that are or which may be used to perform the Contract grants to the Client a non-exclusive licence or, if itself a licensee of those rights, shall grant to the Client an authorised sub-licence, to use, reproduce, modify, develop and maintain the Intellectual Property Rights in the same. Such licence or sub-licence shall be non-exclusive, perpetual, royalty free and irrevocable and shall include the right for the Client to sub-license, transfer, novate or assign to other Contracting Authorities, the Replacement Contractor or to any other third party supplying services to the Client.
- E6.5 The Contractor shall not infringe any Intellectual Property Rights of any third party in supplying the Services and the Contractor shall, during and after the Contract Period, indemnify and keep indemnified and hold the Client and the Crown harmless from and against all actions, suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the Client or the Crown may suffer or incur as a result of or in connection with any breach of this clause, except where any such claim arises from:
- (a) items or materials based upon designs supplied by the Client; or
 - (b) the use of data supplied by the Client which is not required to be verified by the Contractor under any provision of the Contract.
- E6.6 The Client shall notify the Contractor in writing of any claim or demand brought against the Client for infringement or alleged

infringement of any Intellectual Property Right in materials supplied or licensed by the Contractor.

E6.7 The Contractor shall at its own expense conduct all negotiations and any litigation arising in connection with any claim for breach of Intellectual Property Rights in materials supplied or licensed by the Contractor, provided always that the Contractor:

- (a) shall consult the Client on all substantive issues which arise during the conduct of such litigation and negotiations;
- (b) shall take due and proper account of the interests of the Client; and
- (c) shall not settle or compromise any claim without Approval (not to be unreasonably withheld or delayed).

E6.8 The Client shall at the request of the Contractor afford to the Contractor all reasonable assistance for the purpose of contesting any claim or demand made or action brought against the Client or the Contractor by a third party for infringement or alleged infringement of any third party Intellectual Property Rights in connection with the performance of the Contractor's obligations under the Contract and the Contractor shall indemnify the Client for all costs and expenses (including, but not limited to, legal costs and disbursements) incurred in doing so. The Contractor shall not, however, be required to indemnify the Client in relation to any costs and expenses incurred in relation to or arising out of a claim, demand or action which relates to the matters in clause E7.5(a) or (b).

E6.9 The Client shall not make any admissions which may be prejudicial to the defence or settlement of any claim, demand or action for

infringement or alleged infringement of any Intellectual Property Right by the Client or the Contractor in connection with the performance of its obligations under the Contract.

E6.10 If a claim, demand or action for infringement or alleged infringement of any Intellectual Property Right is made in connection with the Contract or in the reasonable opinion of the Contractor is likely to be made, the Contractor shall notify the Client and, at its own expense and subject to Approval (not to be unreasonably withheld or delayed), use its best endeavours to:

- (a) modify any or all of the Services without reducing the performance or functionality of the same, or substitute alternative Services of equivalent performance and functionality, so as to avoid the infringement or the alleged infringement, provided that the provisions herein shall apply mutates mutandis to such modified Services or to the substitute Services; or
- (b) procure a licence to use and supply the Services, which are the subject of the alleged infringement, on terms which are acceptable to the Client,

and in the event that the Contractor is unable to comply with clauses E7.7(a) or (b) within 20 Working Days of receipt of the Contractor's notification the Client may terminate the Contract with immediate effect by notice in writing.

E6.11 The Contractor grants to the Client a royalty-free, irrevocable and non-exclusive licence (with a right to sub-licence) to use any Intellectual Property Rights that the Contractor owned or developed prior to the Commencement Date and which the Client reasonably requires in order to exercise its rights and take the benefit of this Contract including the Services provided.

E7**Audit**

The Contractor shall keep and maintain until 6 years after the end of the Contract Period, or as long a period as may be agreed between the Parties, full and accurate records of the Contract including the Services supplied under it, all expenditure reimbursed by the Client, and all payments made by the Client. The Contractor shall on request afford the Client or the Client's representatives such access to those records as may be requested by the Client in connection with the Contract.

E8**Transparency**

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

F. CONTROL OF THE CONTRACT**F1****Transfer and Sub-Contracting**

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

shall notify the Client in writing of the assignment and the date upon which the assignment becomes effective.

F1.6 The Contractor shall ensure that the Assignee notifies the Client of the Assignee's contact information and bank account details to which the Client shall make payment.

F1.7 The provisions of clause C2 (Payment and VAT) shall continue to apply in all other respects after the assignment and shall not be amended without the Approval of the Client.

F1.8 Subject to clause F1.10, the Client may assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof to:

- (a) any Contracting Authority; or
- (b) any other body established by the Crown or under statute in order substantially to perform any of the functions that had previously been performed by the Client; or
- (c) any private sector body which substantially performs the functions of the Client,

provided that any such assignment, novation or other disposal shall not increase the burden of the Contractor's obligations under the Contract.

F1.9 Any change in the legal status of the Client such that it ceases to be a Contracting Authority shall not, subject to clause F1.8, affect the validity of the Contract. In such circumstances, the Contract shall bind and inure to the benefit of any successor body to the Client.

F1.10 If the rights and obligations under the Contract are assigned, novated or otherwise disposed of pursuant to clause F1.6 to a body which is not a Contracting Authority or if there is a change in the legal status of the Client such that it ceases to be a Contracting Authority (in the remainder of this clause both such bodies being referred to as the “**Transferee**”):

- (a) the rights of termination of the Client in clauses H1 (Termination on change of control and insolvency) and H2 (Termination on Default) shall be available to the Contractor in the event of respectively, the bankruptcy or insolvency, or Default of the Transferee; and
- (b) the Transferee shall only be able to assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof with the prior consent in writing of the Contractor.

F1.11 The Client may disclose to any Transferee any Confidential Information of the Contractor which relates to the performance of the Contractor’s obligations under the Contract. In such circumstances the Client shall authorise the Transferee to use such Confidential Information only for purposes relating to the performance of the Contractor’s obligations under the Contract and for no other purpose and shall take all reasonable steps to ensure that the Transferee gives a confidentiality undertaking in relation to such Confidential Information.

F1.12 Each Party shall at its own cost and expense carry out, or use all reasonable endeavours to ensure the carrying out of, whatever further actions (including the execution of further documents) the other Party reasonably requires from time to time for the purpose of

giving that other party the full benefit of the provisions of the Contract.

F2 Waiver

F2.1 The failure of either Party to insist upon strict performance of any provision of the Contract, or the failure of either Party to exercise, or any delay in exercising, any right or remedy shall not constitute a waiver of that right or remedy and shall not cause a diminution of the obligations established by the Contract.

F2.2 No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with clause A6 (Notices).

F2.3 A waiver of any right or remedy arising from a breach of the Contract shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of the Contract.

F3 Variation

F3.1 Subject to the provisions of this clause F3, the Client may request a variation to the Specification provided that such variation does not amount to a material change to the Specification. Such a change is hereinafter called a "Variation".

F3.2 The Client may request a Variation by notifying the Contractor in writing of the "Variation" and giving the Contractor sufficient information to assess the extent of the Variation and consider whether any change to the Contract Price is required in order to implement the Variation. The Client shall specify a time limit within which the Contractor shall respond to the request for a Variation. Such time limits shall be reasonable having regard to the nature of

the Variation. If the Contractor accepts the Variation it shall confirm the same in writing.

F3.3 In the event that the Contractor is unable to accept the Variation to the Specification or where the Parties are unable to agree a change to the Contract Price, the Client may;

- (a) allow the Contractor to fulfil its obligations under the Contract without the variation to the Specification;
- (b) terminate the Contract with immediate effect, except where the Contractor has already delivered all or part of the Services or where the Contractor can show evidence of substantial work being carried out to fulfil the requirements of the Specification; and in such case the Parties shall attempt to agree upon a resolution to the matter. Where a resolution cannot be reached, the matter shall be dealt with under the Dispute Resolution procedure detailed at Clause I2.

F4 Severability

If any provision of the Contract is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions of the Contract shall continue in full force and effect as if the Contract had been executed with the invalid, illegal or unenforceable provision eliminated.

F5 Remedies in the event of inadequate performance

F5.1 Where a complaint is received about the standard of Services or about the manner in which any Services have been supplied or work has been performed or about the materials or procedures used or

about any other matter connected with the performance of the Contractor's obligations under the Contract, then the Client shall notify the Contractor, and where considered appropriate by the Client, investigate the complaint. Where such a complaint is received a rectification notice or an incident/instruction form depending on the nature of the complaint will be issued, The Contractor will respond to the notice/form served as instructed by the Authorised Officer. All notices/forms issued are to be completed and returned to the Authorised Officer within 5 working days in any event. In the event of the Contractor failing to respond to a rectification notice within the timescale laid down by the Client the Contractor may be faxed or otherwise sent a non-compliance notice requesting him to respond within 2 hours of receipt.

In the event of the Contractor failing to respond to the non-compliance notice within 2 hours or otherwise satisfactorily, the Contractor may then be served with a Default Notice by the Client.

If the Contractor fails to respond to a non-compliance notice, the Authorised Officer shall be entitled to record in writing a notice of default (hereinafter called a "Default Notice"), provided that the non-compliance notice relates to a failure by the Contractor to comply with any term of the Agreement. The Default Notice shall record the nature of the breach of the Agreement. The Client shall send the Contractor a copy of the Default Notice. Without prejudice to any other rights under the Agreement or otherwise, where more than 5 Default Notices are recorded in any one week or more than 15 in any four week period, the Client may terminate the Agreement in accordance with the provisions herein contained to that effect.

The Client may, in its sole discretion, uphold the complaint and take further action in accordance with clause H2 (Termination on Default) of the Contract.

F5.2 In the event that the Client is of the reasonable opinion that there has been a material breach of the Contract by the Contractor, then the Client may, without prejudice to its rights under clause H2 (Termination on Default), do any of the following:

- (a) without terminating the Contract, itself supply or procure the supply of all or part of the Services until such time as the Contractor shall have demonstrated to the reasonable satisfaction of the Client that the Contractor will once more be able to supply all or such part of the Services in accordance with the Contract;
- (b) without terminating the whole of the Contract, terminate the Contract in respect of part of the Services only (whereupon a corresponding reduction in the Contract Price shall be made) and thereafter itself supply or procure a third party to supply such part of the Services; and/or
- (c) terminate, in accordance with clause H2 (Termination on Default), the whole of the Contract.

F5.3 Without prejudice to its right under clause C3 (Recovery of Sums Due), the Client may charge the Contractor for any costs reasonably incurred and any reasonable administration costs in respect of the supply of any part of the Services by the Client or a third party to the extent that such costs exceed the payment which would otherwise have been payable to the Contractor for such part of the Services and provided that the Client uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Services.

F5.4 If the Contractor fails to supply any of the Services in accordance with the provisions of the Contract and such failure is capable of remedy, then the Client shall instruct the Contractor to remedy the failure and the Contractor shall at its own cost and expense remedy such failure (and any damage resulting from such failure) within 10 Working Days or such other period of time as the Client may direct.

F5.5 In the event that:

- (a) the Contractor fails to comply with clause F5.4 above and the failure is materially adverse to the interests of the Client or prevents the Client from discharging a statutory duty; or
- (b) the Contractor persistently fails to comply with clause F5.4 above,

the Client may terminate the Contract with immediate effect by notice in writing.

F6 Remedies Cumulative

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

F7 Monitoring of Contract Performance

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

F8 Extension of Initial Contract Period

Subject to clause C4. (Price adjustment on extension of the Initial Contract Period), the Client may, by giving written notice to the Contractor not less than 3 Months prior to the last day of the Initial Contract Period, extend the Contract for a further period of up to 12 Month(s). The provisions of the Contract will apply (subject to any Variation or adjustment to the Contract Price pursuant to clause C4 (Price adjustment on extension of the Initial Contract Period)) throughout any such extended period.

F9 Entire Agreement

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

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

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

G LIABILITIES

G1 Liability, Indemnity and Insurance

G1.1 Neither Party excludes or limits liability to the other Party for:

- (a) death or personal injury caused by its negligence; or
- (b) Fraud; or
- (c) fraudulent misrepresentation; or
- (e) any breach of any obligations implied by Section 2 of the Supply of Goods and Services Act 1982.

G1.2 Subject to clauses G1.3 and G1.4, the Contractor shall indemnify the Client and keep the Client indemnified fully against all claims, proceedings, actions, damages, costs, expenses and any other liabilities which may arise out of, or in consequence of, the supply, or the late or purported supply, of the Services or the performance or non-performance by the Contractor of its obligations under the Contract or the presence of the Contractor or any Staff on the Premises, including in respect of any death or personal injury, loss of or damage to property, financial loss arising from any advice given or omitted to be given by the Contractor, or any other loss which is caused directly or indirectly by any act or omission of the Contractor.

G1.3 The Contractor shall not be responsible for any injury, loss, damage, cost or expense if and to the extent that it is caused by the negligence or wilful misconduct of the Client or by breach by the Client of its obligations under the Contract.

- G1.4 The Contractor shall not exclude liability for additional operational, administrative costs and/or expenses or wasted expenditure resulting from the direct Default of the Contractor.
- G1.5 The Contractor shall effect and maintain with a reputable insurance company a policy or policies of insurance providing an adequate level of cover in respect of all risks which may be incurred by the Contractor, arising out of the Contractor's performance of its obligations under the Contract, including death or personal injury, loss of or damage to property or any other loss. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Contractor. Such insurance shall be maintained for the duration of the Contract Period and for a minimum of 6 (six) years following the expiration or earlier termination of the Contract.
- G1.6 The Contractor shall hold employer's liability insurance of not less than £10million in respect of Staff in accordance with any legal requirement from time to time in force.
- G1.7 The Contractor shall give the Client, on request, copies of all insurance policies referred to in this clause or a broker's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.
- G1.8 If, for whatever reason, the Contractor fails to give effect to and maintain the insurances required by the provisions of the Contract the Client may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Contractor.

G1.9 The provisions of any insurance or the amount of cover shall not relieve the Contractor of any liabilities under the Contract. It shall be the responsibility of the Contractor to determine the amount of insurance cover that will be adequate to enable the Contractor to satisfy any liability referred to in clause G1.2.

G2 Professional Indemnity

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

G3 Warranties and Representations

The Contractor warrants and represents that:

- (a) it has full capacity and authority and all necessary consents (including where its procedures so require, the consent of its parent company) to enter into and perform its obligations under the Contract and that the Contract is executed by a duly authorised representative of the Contractor;
- (b) in entering the Contract it has not committed any Fraud;

- (c) as at the Commencement Date, all information contained in the Tender remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Client prior to execution of the Contract;
- (d) no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets which will or might have a material adverse effect on its ability to perform its obligations under the Contract;
- (e) it is not subject to any contractual obligation, compliance with which is likely to have a material adverse effect on its ability to perform its obligations under the Contract;
- (f) no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Contractor or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Contractor's assets or revenue;
- (g) it owns, has obtained or is able to obtain, valid licences for all Intellectual Property Rights that are necessary for the performance of its obligations under the Contract;
- (h) in the three (3) years prior to the date of the Contract:
 - (i) it has conducted all financial accounting and reporting activities in compliance in all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts;

- (ii) it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established; and
- (i) it has not done or omitted to do anything which could have a material adverse effect on its assets, financial condition or position as an ongoing business concern or its ability to fulfil its obligations under the Contract.

H DEFAULT, DISRUPTION AND TERMINATION

H1 Termination on insolvency and change of control

H1.1 The Client may terminate the Contract with immediate effect by notice in writing where the Contractor is a company and in respect of the Contractor:

- (a) a proposal is made for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors; or
- (b) a shareholders' meeting is convened for the purpose of considering a resolution that it be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation); or
- (c) a petition is presented for its winding up (which is not dismissed within 14 days of its service) or an application is

made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to section 98 of the Insolvency Act 1986; or

- (d) a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or
- (e) an application order is made either for the appointment of an administrator or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given; or
- (f) it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986; or
- (g) being a "small company" within the meaning of the Companies Act 2006, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or
- (h) any event similar to those listed in H1.1(a)-(g) occurs under the law of any other jurisdiction.

H1.2 The Client may terminate the Contract with immediate effect by notice in writing where the Contractor is an individual and:

- (a) an application for an interim order is made pursuant to sections 252-253 of the Insolvency Act 1986 or a proposal is made for any composition scheme or arrangement with, or assignment for the benefit of, the Contractor's creditors; or
- (b) a petition is presented and not dismissed within 14 days or order made for the Contractor's bankruptcy; or

- (c) a receiver, or similar officer is appointed over the whole or any part of the Contractor's assets or a person becomes entitled to appoint a receiver, or similar officer over the whole or any part of his assets; or
- (d) the Contractor is unable to pay his debts or has no reasonable prospect of doing so, in either case within the meaning of section 268 of the Insolvency Act 1986; or
- (e) a creditor or encumbrancer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Contractor's assets and such attachment or process is not discharged within 14 days; or
- (f) he dies or is adjudged incapable of managing his affairs within the meaning of Part VII of the Mental Capacity Act 2005; or
- (g) he suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of his business.

H1.3 The Contractor shall notify the Client immediately if the Contractor undergoes a change of control within the meaning of the Corporation Tax Act 2010 ("**change of control**"). The Client may terminate the Contract by notice in writing with immediate effect within six months of:

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

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

H1.4 Without prejudice to any other rights or remedies which the Client may possess, if: -

- (a) the carrying out of the whole or substantially the whole of the uncompleted Service is suspended for a continuous period of one month by Force Majeure, or
- (b) the Contractor without reasonable cause suspends in whole or in part the carrying out of the Service before completion thereof, or
- (c) the Contractor fails to pay any sums due to the Client under the Agreement within 28 days of receipt of a written demand, or
- (d) the Contractor fails to proceed regularly and diligently with the Service, or
- (e) the Contractor receives the requisite number of Default Notices under Condition 25.

then the Client shall be entitled to terminate the Agreement by notice in writing. The Authorised Officer shall determine how much notice is appropriate at his absolute discretion.

H1.5 The Client shall be entitled to terminate the Agreement if the Contractor shall have offered or given or agreed to give to any person any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any action in relation to the obtaining or execution of this or any other Agreement with the

Client, or for showing or forbearing to show favour or disfavour to any person in relation to this or any other Agreement with the Client, or if the like acts shall have been done by any person employed by the Contractor or acting on its behalf (whether with or without the knowledge of the Contractor), or if in relation to this or any other Agreement with the Client the Contractor or any person employed by him or acting on his behalf shall have committed any offence under the Prevention of Corruption Acts, 1889 to 1916, or shall have given any fee or reward the receipt of which is an offence under sub-section (2) of section 117 of the Local Government Act 1972 or any re-enactment thereof.

H1.6 In the event of the Agreement being terminated as aforesaid and so long as it has not been reinstated and continued, then the Contractor shall immediately cease to perform any of the Service and the following shall be the respective rights and duties of the Client and Contractor:-

- (a) the Client may employ other persons to carry out part or all of the Service and recharge that cost to the Contractor and recover the same as a debt without any set-off, abatement, counterclaim or deduction whatsoever;
- (b) the Contractor shall allow or pay to the Client in the manner hereinafter appearing the amount of any loss and/or damage caused to the Client by the determination including, without prejudice to the generality of the foregoing, any costs of re-tendering and any additional costs incurred by using another contractor. Until after completion of the Service the Client shall not be bound by any provision of the Agreement to make any further payment to the Contractor, but within a reasonable time of such completion the Authorised Officer shall determine the amount of any loss and/or damage caused to the Client by the determination and, if such amount when added to the monies paid to the Contractor before the date of determination exceed the total

amount which would have been payable on due completion in accordance with the Agreement, the difference shall be a debt payable to the Client by the Contractor without any set-off, abatement, counterclaim or deduction whatsoever and if the said amount when added to the said monies be less than the said total amount, the difference shall be a debt payable by the Client to the Contractor.

H2 Termination on Default

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

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

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

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

H3 Break

The Client shall have the right to terminate the Contract at any time by giving 3 Months' written notice to the Contractor.

H4 Consequences of Expiry or Termination

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

H4.2 Subject to clause G1, where the Client terminates the Contract under clause H3 (Break), the Client shall indemnify the Contractor against any commitments, liabilities or expenditure which represent

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

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

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

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

- (a) termination or expiry of the Contract shall be without prejudice to any rights, remedies or obligations accrued under the Contract prior to termination or expiration and nothing in the

Contract shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry; and

- (b) termination of the Contract shall not affect the continuing rights, remedies or obligations of the Client or the Contractor under clauses C2 (Payment and VAT), C3 (Recovery of Sums Due), D1 (Prevention of Fraud), E1 (Data Protection Act), E2 (Confidential Information), E3 (Freedom of Information), E6 (Intellectual Property Rights), E7 (Audit), F6 (Remedies Cumulative), G1 (Liability, Indemnity and Insurance), G2 (Professional Indemnity), H4 (Consequences of Expiry or Termination), H6 (Recovery upon Termination) and I1 (Governing Law and Jurisdiction).

H5 Disruption

- H5.1 The Contractor shall take reasonable care to ensure that in the performance of its obligations under the Contract it does not disrupt the operations of the Client, its employees or any other contractor employed by the Client.
- H5.2 The Contractor shall immediately inform the Client of any actual or potential industrial action, whether such action be by their own employees or others, which affects or might affect its ability at any time to perform its obligations under the Contract.
- H5.3 In the event of industrial action by the Staff, the Contractor shall seek Approval to its proposals to continue to perform its obligations under the Contract.
- H5.4 If the Contractor's proposals referred to in clause H5.3 are considered insufficient or unacceptable by the Client acting

reasonably, then the Contract may be terminated with immediate effect by the Client by notice in writing.

- H5.5 If the Contractor is temporarily unable to fulfil the requirements of the Contract owing to disruption of normal business of the Client, the Contractor may request a reasonable allowance of time and in addition, the Client will reimburse any additional expense reasonably incurred by the Contractor as a direct result of such disruption.

H6 Recovery upon Termination

- H6.1 On the termination of the Contract for any reason, the Contractor shall:

- (a) immediately return to the Client all Confidential Information, Personal Data and IP Materials in its possession or in the possession or under the control of any permitted suppliers or sub-contractors, which were obtained or produced in the course of providing the Services;
- (b) immediately deliver to the Client all Property (including materials, documents, information and access keys) provided to the Contractor under clause B11. Such property shall be handed back in good working order (allowance shall be made for reasonable wear and tear);
- (c) assist and co-operate with the Client to ensure an orderly transition of the provision of the Services to the Replacement Contractor and/or the completion of any work in progress.
- (d) promptly provide all information concerning the provision of the Services which may reasonably be requested by the Client for the purposes of adequately understanding the

manner in which the Services have been provided or for the purpose of allowing the Client or the Replacement Contractor to conduct due diligence.

H6.2 If the Contractor fails to comply with clause H6.1 (a) and (b), the Client may recover possession thereof and the Contractor grants a licence to the Client or its appointed agents to enter (for the purposes of such recovery) any premises of the Contractor or its permitted suppliers or sub-contractors where any such items may be held.

H6.3 Where the end of the Contract Period arises due to the Contractor's Default, the Contractor shall provide all assistance under clause H6(c) and (d) free of charge. Otherwise, the Client shall pay the Contractor's reasonable costs of providing the assistance and the Contractor shall take all reasonable steps to mitigate such costs.

H7 Force Majeure

H7.1 Neither Party shall be liable to the other Party for any delay in performing, or failure to perform, its obligations under the Contract (other than a payment of money) to the extent that such delay or failure is a result of Force Majeure. Notwithstanding the foregoing, each Party shall use all reasonable endeavours to continue to perform its obligations under the Contract for the duration of such Force Majeure. However, if such Force Majeure prevents either Party from performing its material obligations under the Contract for a period in excess of 6 Months, either Party may terminate the Contract with immediate effect by notice in writing.

H7.2 Any failure or delay by the Contractor in performing its obligations under the Contract which results from any failure or delay by an agent, sub-contractor or supplier shall be regarded as due to Force

Majeure only if that agent, sub-contractor or supplier is itself impeded by Force Majeure from complying with an obligation to the Contractor.

- H7.3 If either Party becomes aware of Force Majeure which gives rise to, or is likely to give rise to, any failure or delay on its part as described in clause H7.1 it shall immediately notify the other by the most expeditious method then available and shall inform the other of the period for which it is estimated that such failure or delay shall continue.

I DISPUTES AND LAW

I1 Governing Law and Jurisdiction

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

I2 Dispute Resolution

- I2.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Contract within 20 Working Days of either Party notifying the other of the dispute and such efforts shall involve the escalation of the dispute to relevant director (or equivalent) of each Party.
- I2.2 Nothing in this dispute resolution procedure shall prevent the Parties from seeking from any court of competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.

- 12.3 If the dispute cannot be resolved by the Parties pursuant to clause 12.1 the Parties shall refer it to mediation pursuant to the procedure set out in clause 12.5 unless (a) the Client considers that the dispute is not suitable for resolution by mediation; or (b) the Contractor does not agree to mediation. For the avoidance of doubt no matter that relates to a dispute between the Contractor and the workforce (or any member of it) employed or retained by it for the purposes of the performance of the services to be provided by it under this agreement shall be a matter that is suitable for mediation
- 12.4 The obligations of the Parties under the Contract shall not cease, or be suspended or delayed by the reference of a dispute to mediation (or arbitration) and the Contractor and the Staff shall comply fully with the requirements of the Contract at all times.
- 12.5 The procedure for mediation and consequential provisions relating to mediation are as follows:
- (a) a neutral adviser or mediator (the “**Mediator**”) shall be chosen by agreement between the Parties or, if they are unable to agree upon a Mediator within 10 Working Days after a request by one Party to the other or if the Mediator agreed upon is unable or unwilling to act, either Party shall within 10 Working Days from the date of the proposal to appoint a Mediator or within 10 Working Days of notice to either Party that he is unable or unwilling to act, apply to the Centre for Effective Dispute Resolution (CEDR) 70 Fleet Street London EC4Y 1EU to appoint a Mediator.
 - (b) The Parties shall within 10 Working Days of the appointment of the Mediator meet with him in order to agree a programme for the exchange of all relevant information and the structure

to be adopted for negotiations to be held. If considered appropriate, the Parties may at any stage seek assistance from CEDR to provide guidance on a suitable procedure.

- (c) Unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the Parties in any future proceedings.
- (d) If the Parties reach agreement on the resolution of the dispute, the agreement shall be recorded in writing and shall be binding on the Parties once it is signed by their duly authorised representatives.
- (e) If the Parties fail to reach agreement in the structured negotiations within 60 Working Days of the Mediator being appointed, or such longer period as may be agreed by the Parties, then any dispute or difference between them may be referred to the Courts.

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

SIGNED for and on behalf of [**Client**]

SIGNED for and on behalf of
[**Contractor**]

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

Name Name.....

Position

Position.....

DRAFT