

**Invitation to Tender – WH20015**

**Energy Performance Certificates**

**Conditions of Contract**

|  |  |
| --- | --- |
| **Service Provider Name** | **TBC** |
| **Initial Contract Period** | **01/05/2021 – 30/04/2025** |
| **Extension Period** | **01/05/2025 – 30/04/2026** |

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# GENERAL PROVISIONS

* 1. **Definitions and Interpretation**
		1. In this Contract, unless the context otherwise requires, the interpretation and construction of this Contract shall be subject to the following provisions:
			1. the terms and expressions set out in Schedule 1, Definitions, shall have the meanings ascribed therein;
			2. words importing the singular meaning include where the context so admits the plural meaning and vice versa;
			3. words importing the masculine include the feminine and the neuter;
			4. reference to a clause is a reference to the whole of that clause unless stated otherwise;
			5. 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;
			6. 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; and
			7. the words “include”, “includes” and “including” are to be construed as if they were immediately followed by the words “without limitation”.
		2. Headings are included in the Contract for ease of reference only and shall not affect the interpretation or construction of the Contract.
		3. References to Clauses, Conditions and Schedules are, unless otherwise provided, references to the Clauses and Conditions of and Schedules to this Contract.
		4. In the event and to the extent only of any conflict or inconsistency in the provisions of the Clauses of this Contract and the provisions of the Schedules, the following order of precedence shall prevail:
			1. the Clauses;
			2. Schedule 1, Definitions; and
			3. the remaining Schedules.
	2. **Initial Contract Period**
		1. The Contract shall take effect on the Commencement Date and shall expire automatically on the third anniversary of 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).
	3. **Service Provider’s Status**
		1. At all times during the Contract Period the Service Provider shall be an independent Service Provider 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.

## Client’s Obligations

* + 1. 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 Service Provider.
	1. **Notices**
		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.
		2. Any notice or other communication which is to be given by either Party to the other shall be given by letter (sent by hand, first class post, recorded delivery or special delivery), or by facsimile transmission or electronic mail (confirmed in either case by letter). Such letters shall be addressed to the other Party in the manner referred to in clause A5.3. Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given 4 Working Days after the day on which the letter was posted, or 6 hours, in the case of electronic mail or facsimile transmission or sooner where the other Party acknowledges receipt of such letters, facsimile transmission or item of electronic mail.
		3. For the purposes of clause A5.2, the address of each Party shall be:
			1. For the Client:

Wolverhampton Homes

29 Market Street

Wolverhampton

WV1 3AG

For the attention John Bailey

Email: john.bailey2@wolverhampton.gov.uk

Fax: 01902 55 2012

* + - 1. For the Service Provider: TBA
		1. Either Party may change its address for service by serving a notice in accordance with this clause.
	1. **Mistakes in Information**
		1. The Service Provider shall be responsible for the accuracy of all drawings, documentation and information supplied to the Client by the Service Provider in connection with the supply of the Services and shall pay the Client any extra costs occasioned by any discrepancies, errors or omissions therein.

## Conflicts of Interest

* + 1. The Service Provider shall take appropriate steps to ensure that neither the Service Provider 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 Service Provider and the duties owed to the Client under the provisions of the Contract. The Service Provider will disclose to the Client full particulars of any such conflict of interest which may arise.
		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 Service Provider 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.
1. SUPPLY OF SERVICES
	1. The Services
		1. The Service Provider shall supply the Services during the Contract Period in accordance with the Client’s requirements as set out in the Statement of Requirements and the provisions of the Contract in consideration of the payment of the Contract Price.
		2. The Service Provider shall provide the Services in accordance with the relevant service levels at all times throughout the duration of this Contract.
		3. The Client may inspect and examine the manner in which the Service Provider supplies the Services on reasonable notice.
		4. If the Client informs the Service Provider 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 Service Provider 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.
	2. **Provision and Removal of Equipment**
		1. The Service Provider shall provide all the Equipment necessary for the supply of the Services.
		2. The Service Provider shall not deliver any Equipment nor begin any work on the Premises without obtaining prior Approval.
		3. All Equipment brought onto the Premises shall be at the Service Provider’s own risk and the Client shall have no liability for any loss of or damage to any Equipment unless the Service Provider is able to demonstrate that such loss or damage was caused or contributed to by the Client’s Default. The Service Provider shall provide for the haulage or carriage thereof to the Premises and the removal of Equipment when no longer required at its sole cost. Unless otherwise agreed, Equipment brought onto the Premises will remain the property of the Service Provider.
		4. The Service Provider shall maintain all items of Equipment within the Premises in a safe, serviceable and clean condition.
		5. The Service Provider shall, at the Client’s written request, at its own expense and as soon as reasonably practicable:
			1. remove from the Premises any Equipment which in the reasonable opinion of the Client is either hazardous, noxious or not in accordance with the Contract; and
			2. replace such item with a suitable substitute item of Equipment.
		6. On completion of the Services the Service Provider shall remove the Equipment together with any other materials used by the Service Provider to supply the Services and shall leave the Premises in a clean, safe and tidy condition. The Service Provider is solely responsible for making good any damage to the Premises or any objects contained thereon, other than fair wear and tear, which is caused by the Service Provider or any Staff.

## Manner of Carrying Out the Services

* + 1. The Service Provider 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 Service Provider shall agree the relevant standard of the Services with the Client prior to the supply of the Services and, in any event, the Service Provider shall perform its obligations under the Contract in accordance with the Law and Good Industry Practice.
		2. The Service Provider 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.

## Key Personnel

* + 1. The Service Provider acknowledges that the Key Personnel are essential to the proper provision of the Services to the Client.
		2. The Key Personnel shall not be released from supplying the Services without the agreement of the Client, except by reason of long-term sickness, maternity leave, paternity leave or termination of employment and other extenuating circumstances.
		3. Any replacements to the Key Personnel shall be subject to the agreement of the Client. Such replacements shall be of at least equal status or of equivalent experience and skills to the Key Personnel being replaced and be suitable for the responsibilities of that person in relation to the Services.
		4. The Client shall not unreasonably withhold its agreement under clauses B4.2 or B4.3. Such agreement shall be conditional on appropriate arrangements being made by the Service Provider to minimise any adverse impact on the Contract which could be caused by a change in Key Personnel.
	1. **Service Provider’s Staff**
		1. The Client may, by written notice to the Service Provider, refuse to admit onto, or withdraw permission to remain on, the Client’s Sites:
			1. any member of the Staff; or
			2. any person employed or engaged by any member of the Staff,
			3. whose admission or continued presence would, in the reasonable opinion of the Client, be undesirable.
		2. At the Client’s written request, the Service Provider shall provide a list of the names of all persons who may require admission in connection with the Contract to the Client’s Sites, specifying the capacities in which they are concerned with the Contract and giving such other particulars as the Client may reasonably request.
		3. The Service Provider’s Staff, engaged within the boundaries of the Client’s Sites, 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 Client’s Sites.
		4. The Service Provider shall comply with Staff Vetting Procedures in respect of all persons employed or engaged in the provision of the Services. The Service Provider confirms that all persons employed or engaged by the Service Provider were vetted and recruited on a basis that is equivalent to and no less strict than the Staff Vetting Procedures.
		5. The Client may require the Service Provider to ensure that any person employed in the provision of the Services has undertaken a Disclosure and Barring check as per the Staff Vetting Procedures. The Service Provider shall ensure that no person who discloses that he/she has a Relevant Conviction, or is found by the Service Provider to have a Relevant Conviction (whether as a result of a police check or through the Disclosure and Barring check or otherwise) is employed or engaged in the provision of any part of the Services.
		6. If the Service Provider fails to comply with clause B5.2 within 4 Weeks 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.
		7. The decision of the Client as to whether any person is to be refused access to the Premises and as to whether the Service Provider has failed to comply with clause B5.2 shall be final and conclusive.
	2. **Apprenticeship and Skills**
		1. The Service Provider is required to take all reasonable steps to employ apprentices, and report to the Client the numbers of apprentices employed, and wider Skills training provided, during the delivery of this Contract.
		2. The Service Provider shall provide any appropriate further skills training opportunities for employees delivering the Contract.
		3. The Service Provider is required to comply with current and future revisions to the Government policy for apprenticeship funding in England, introduced in May 2017

## Licence to occupy Premises

* + 1. Any land or Premises made available from time to time to the Service Provider by the Client in connection with the Contract, shall be made available to the Service Provider on a non-exclusive licence basis free of charge and shall be used by the Service Provider solely for the purpose of performing its obligations under the Contract. The Service Provider shall have the use of such land or Premises as licensee and shall vacate the same on completion, termination or abandonment of the Contract.
		2. The Service Provider shall limit access to the land or Premises to such Staff as is necessary to enable it to perform its obligations under the Contract and the Service Provider 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.
		3. The Service Provider shall (and shall ensure that its Staff shall) observe and comply with such rules and regulations as may be in force at any time for the use of such Premises as determined by the Client, and the Service Provider shall pay for the cost of making good any damage caused by the Service Provider or its Staff other than fair wear and tear. For the avoidance of doubt, damage includes damage to the fabric of the buildings, plant, fixed equipment or fittings therein.
		4. 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 Service Provider 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.

## Offers of Employment

* + 1. For the duration of the Contract and for a period of 12 months thereafter neither the Client nor the Service Provider 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.

## TUPE – NOT APPLICABLE ON THIS CONTRACT

1. PAYMENT AND CONTRACT PRICE
	1. **Contract Price**
		1. In consideration of the Service Provider’s performance of its obligations under the Contract, the Client shall pay the Contract Price in accordance with the Pricing Schedule and clause C2 (Payment and VAT).
		2. The Client shall, in addition to the Contract Price and following Receipt of a valid VAT invoice, pay the Service Provider a sum equal to the VAT chargeable on the value of the Services supplied in accordance with the Contract.
		3. The Contract Price shall remain fixed until the second anniversary of the commencement of this Contract. The Service Provider may apply for an increase in the Contract Price by way of indexation in accordance with Clause C4 (Indexation).
	2. **Payment and VAT**
		1. The Client shall pay all sums due to the Service Provider within 30 days of Receipt of a valid invoice, submitted in arrears in accordance with Section 2.16, of Schedule 2, Statement of Requirements.
		2. The Service Provider 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.
		3. Where the Service Provider enters into a sub-contract with a supplier or Service Provider 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 Service Provider to the sub-Service Provider within a specified period not exceeding 30 days from the receipt of a valid invoice.
		4. The Service Provider shall add VAT to the Contract Price at the prevailing rate as applicable.
		5. The Service Provider 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 Service Provider’s failure to account for or to pay any VAT relating to payments made to the Service Provider under the Contract. Any amounts due under this clause C2.5 shall be paid by the Service Provider to the Client not less than 5 Working Days before the date upon which the tax or other liability is payable by the Client.
		6. The Service Provider shall not suspend the supply of the Services unless the Service Provider is entitled to terminate the Contract under clause H2.1 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.
	3. **Recovery of Sums Due**
		1. Wherever under the Contract any sum of money is recoverable from or payable by the Service Provider (including any sum which the Service Provider 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 Service Provider under the Contract or under any other agreement or contract with the Client.
		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.
		3. The Service Provider shall make all payments due to the Client without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise unless the Service Provider has a valid court order requiring an amount equal to such deduction to be paid by the Client to the Service Provider.
		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.

## Indexation

* + 1. Indexation may be applied for by the Service Provider on an annual basis to take effect from 1 June each year. The first date from which indexation may be applied is 1 June 2023.

* + 1. Any increase in the Contract Price pursuant to clause C4.1 shall not exceed the percentage change in the Office of National Statistics’ Consumer Prices Index (CPI) between the Commencement Date and the date 6 Months before the change is applied, on the case of the 1st change, or the Anniversary of the Commencement Date and the date 6 Months before the change is applied for all other changes.
		2. Any indexation adjustment pursuant to paragraph C4.2 shall only be applied where the Service Provider can demonstrate to the reasonable satisfaction of the Client that the need to increase the Charges by indexation is as a direct result of an increase in the Costs incurred by the Service Provider.
	1. **Gainshare**
		1. At any time during the Contract, the Service Provider may make a proposal to the Client for a new or different way of meeting the Statement of Requirements. Any proposal must clearly state that it is submitted for consideration under this Condition and shall include:
			1. A business case for the new or different way the Service Provider intends to provide the Statement of Requirements;
			2. Cost/benefit analysis which will consist of an outline of the costs which might be saved by the Client (both direct and indirect);
			3. The costs which might be incurred by the Service Provider or the Client (both direct or indirect);
			4. The potential benefit(s) (financial or otherwise) to the Client;
			5. Any impact on the Contract; and
			6. The proposed Gainshare ratio.
		2. The parties shall meet to discuss the Proposal and shall attempt to agree the investment (financial or otherwise) to be contributed by both parties, the estimated amount of savings, the Gainshare ratio, the timing of any payments or adjustments and the proportion of the costs and losses to be borne by both parties should the Proposal be aborted or not meet its financial objectives. The Service Provider shall then submit a revised Proposal to the Client.
		3. The Client shall then assess the Proposal and shall, in writing within 30 Days (or such other time as agreed between the parties), either accept it in principle, reject it or offer recommendations or refinements in order for the Service Provider to submit a revised Proposal.
		4. If and when the Proposal is accepted in principle by the Client in writing, the Service Provider shall formulate an implementation plan which shall set out in more detail the way in which the Service Provider intends that the Proposal shall be implemented and the timetable for payments or adjustments to any element of the Contract Price in accordance with the agreed Gainshare ratio (the “Implementation Plan”).
		5. Once the Implementation Plan has been agreed between the parties, the Service Provider shall implement the Proposal in accordance with the Implementation Plan and the Parties shall comply with any obligations they have assumed in the Implementation Plan, including obligations related to adjustments to the Contract Price and obligations to make payments, in each case in accordance with the timetable agreed in the Implementation Plan. Following implementation, the Parties shall meet to discuss the implementation as a whole, including a cost and benefit review.
1. STATUTORY OBLIGATIONS AND REGULATIONS
	1. **Prevention of Corruption**
		1. The Service Provider 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.
		2. The Service Provider 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.
		3. The Service Provider warrants that it, or any person employed by or acting on the Service Provider’s behalf has not committed any offence under the Bribery Act 2010 or has given any fee or reward the receipt of which is an offence under Section117(2) of the Local Government Act 1972.
		4. If the Service Provider, its Staff or anyone acting on the Service Provider’s behalf, engages in conduct prohibited by clauses D1.1, D1.2 or D1.3, the Client may:
			1. terminate the Contract and recover from the Service Provider 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
			2. recover in full from the Service Provider any other loss sustained by the Client in consequence of any breach of those clauses.
	2. **Prevention of Fraud**
		1. The Service Provider shall take all reasonable steps, in accordance with Good Industry Practice, to prevent Fraud by Staff and the Service Provider (including its shareholders, members, directors) in connection with the receipt of monies from the Client.
		2. The Service Provider shall notify the Client immediately if it has reason to suspect that any Fraud has occurred or is occurring or is likely to occur.
		3. If the Service Provider or its Staff commits Fraud in relation to this or any other contract with the Client, the Client may:
			1. terminate the Contract and recover from the Service Provider 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
			2. recover in full from the Service Provider any other loss sustained by the Client in consequence of any breach of this clause.
	3. **Discrimination**
		1. The Service Provider shall not unlawfully discriminate either directly or indirectly on such grounds as age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation (protected characteristics) and without prejudice to the generality of the foregoing the Service Provider shall not unlawfully discriminate within the meaning and scope of the Equality Act 2010 or other relevant or equivalent legislation, or any statutory modification or re-enactment thereof.
		2. The Service Provider shall take all reasonable steps to secure the observance of clause D3.1 by all Staff and to support the advancement of the General Equality Duty with specific regard to the need to:
			1. Eliminate unlawful discrimination, harassment and victimization and other conduct prohibited by the Act.
			2. Advance equality and opportunity between people who share a protected characteristic and those who do not.
			3. Foster good relations between people who share a protected characteristic and those who do not
		3. The Service Provider shall comply with the provisions of the Human Rights Act 1998.
	4. **The Contracts (Rights of Third Parties) Act 1999**
		1. The Council shall retain the right to enforce the provisions of this contract where the in order to protect the properties and their tenants.
		2. All other persons 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.

## Environmental Requirements

* + 1. The Service Provider shall, perform its obligations under the Contract in accordance with the Client’s environmental policy (<https://www.wolverhamptonhomes.org.uk/images/documents/about_us/EnvironmentalPolicy.pdf>), 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.
	1. **Health and Safety**
		1. The Service Provider 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 Service Provider of any health and safety hazards which may exist or arise at the Premises and which may affect the Service Provider in the performance of its obligations under the Contract.
		2. While on the Premises, the Service Provider shall comply with any health and safety measures implemented by the Client in respect of Staff and other persons working there.
		3. The Service Provider 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.
		4. The Service Provider 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.
		5. The Service Provider 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.
	2. **CDM Regulations**
		1. Each Party acknowledges that he is aware of and undertakes to the other that in relation to the works and site he will duly comply with the CDM Regulations. Without limitation, where the project that comprises or includes the works is notifiable:
			1. the Client shall ensure that the Principal Designer carriers out all his duties under those regulations;
			2. where the Service Provider is and while he remains the Principal Service Provider, he shall ensure that:
				+ the Construction Phase Plan is prepared and received by the Client before construction work under this contract is commenced, and that any subsequent amendment to it by the Service Provider is notified to the Client and the Principal Designer.
				+ welfare facilities complying with Schedule 2 of the CDM regulations are provided from the commencement of construction work until the end of the construction phase;
			3. where the Service Provider is not the Principal Service Provider, he shall promptly inform the Principal Service Provider of the identify of each sub-Service Provider that he appoints, and each sub-Service Provider appointment notified to him;
			4. promptly on written request of the Principal Designer, the Service Provider shall provide and shall ensure that any sub-Service Provider, through the Service Provider, provides, to the Principal Designer (or if the Service Provider is not the Principal Service Provider, to the Principal Service Provider) such information as the Principal Designer reasonable requires.
		2. If the Client, by further appointment replaces the Principal Designer or the Principal Service Provider, the Client shall immediately upon the further appointment notify the Service Provider in writing of the name and the address of the new appointee. If the Client appoints a successor to the Service Provider as the Principal Service Provider, the Service Provider shall at no cost to the Client comply with all reasonable requirements of the new Principal Service Provider to the extent necessary for compliance with the CDM Regulations; no extension of time shall be given in respect of such compliance.
1. PROTECTION OF INFORMATION
	1. Data Protection Act
		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.
		2. The Service Provider 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.
		3. Notwithstanding the general obligation in clause E1.2, where the Service Provider is processing Personal Data (as defined by the DPA) as a Data Processor for the Client the Service Provider shall:
			1. Process the Personnel 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;
			2. comply with all applicable laws;
			3. Process the Personal Data only to the extent; and in such manner as is necessary for the provision of the Provider’s obligations under this Contract or as is required by Law or any Regulatory Body;
			4. 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;
			5. take reasonable steps to ensure the reliability of its staff and agents who may have access to the Personal Data;
			6. obtain prior written consent from the Contracting Authority in order to transfer the Personal Data to any sub-Service Provider for the provision of the Services;
			7. not cause or permit the Personal Data to be transferred outside of the European Economic Area without the prior consent of the Client;
			8. 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;
			9. 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
			10. not disclose Personnel 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
			11. notify the Client (within five Working Days) if it receives:
				* a request from a Data Subject to have access to that person’s Personal Data; or
				* a complaint or request relating to the Client’s obligations under the DPA;
		4. The provision of this Clause E1 shall apply during the Contract Period and indefinitely after its expiry.
		5. The Service Provider shall comply with updated Data Protection Act of 2018, detailed further in Schedule 4 – Information to Tenderers, section 13 – GDPR (Data Protection Act 2018 – DPA) and section 14 GDPR (General Data Protection Regulation)
	2. Official Secrets Acts 1911 to 1989, S182 of the Finance Act 1989
		1. The Service Provider shall comply with, and shall ensure that its Staff comply with, the provisions of:
			1. the Official Secrets Acts 1911 to 1989; and
			2. Section 182 of the Finance Act 1989.
		2. In the event that the Service Provider or its Staff fail to comply with this clause, the Client reserves the right to terminate the Contract by giving notice in writing to the Service Provider.
	3. Confidential Information
		1. Except to the extent set out in this clause or where disclosure is expressly permitted elsewhere in this Contract, each Party shall:
			1. treat the other party's Confidential Information as confidential and safeguard it accordingly; and
			2. not disclose the other party's Confidential Information to any other person without the owner's prior written consent.
		2. Clause E3.1 shall not apply to the extent that:
			1. such disclosure is a requirement of Law placed upon the Party making the disclosure, including any requirements for disclosure under the FOIA or the Environmental Information Regulations pursuant to clause E4 (Freedom of Information);
			2. such information was in the possession of the party making the disclosure without obligation of confidentiality prior to its disclosure by the information owner;
			3. such information was obtained from a third party without obligation of confidentiality;
			4. such information was already in the public domain at the time of disclosure otherwise than by a breach of this Contract; or
			5. it is independently developed without access to the other Party's Confidential Information.
		3. The Service Provider 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.
		4. The Service Provider 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.
		5. Nothing in this Agreement shall prevent the Client from disclosing the Service Provider's Confidential Information:
			1. any other Contracting Authority. All Contracting Authorities receiving such Confidential Information shall be entitled to further disclose the Confidential Information to 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 Contracting Authority;
			2. for the purpose of the examination and certification of the Client's accounts; or
			3. 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.
		6. The Client shall use all reasonable endeavours to ensure that any government department, Contracting Client, employee, third party or sub-Service Provider to whom the Service Provider's Confidential Information is disclosed pursuant to clause E3.5 is made aware of the Client's obligations of confidentiality.
		7. Nothing in this clause E3 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 IPR.
		8. In order to ensure that no unauthorised person gains access to any confidential information or any data obtained in the performance of the Contract, the Service Provider undertakes to maintain the security systems approved by the Client.
		9. The Service Provider will immediately notify the Client of any breach of security in relation to confidential information and all data obtained in the performance of the Contract and will keep a record of such breaches. The Service Provider will use its reasonable endeavours to recover such confidential information or data however it may be recorded. This obligation is in addition to the Service Provider’s obligations under Condition E3. The Service Provider will co-operate with the Client in any investigation that the Client considers necessary to undertake as a result of any breach of security in relation to confidential information or data.
	4. Freedom of Information
		1. The Service Provider 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.
		2. The Service Provider shall and shall procure that any sub-Service Providers 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;
			1. 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
			2. 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.
		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
		4. In no event shall the Service Provider respond directly to a Request for Information unless expressly authorised to do so by the Client.
		5. The Service Provider 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 Service Provider or the Services in certain circumstances:
			1. without consulting the Service Provider; or
			2. following consultation with the Service Provider 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 Service Provider advanced notice, or failing that, to draw the disclosure to the Service Provider’s attention after any such disclosure.

* + 1. The Service Provider shall ensure that all Information is retained for disclosure and shall permit the Client to inspect such records as requested from time to time.
		2. The Service Provider acknowledges that the Commercially Sensitive Information listed in the Commercially Sensitive Information Schedule is of indicative value only and that the Client may be obliged to disclose it in accordance with this clause E4.
	1. **Publicity, and Branding**

* + 1. Subject to Clause E5.2, the Service Provider shall not (and shall procure that no SubService Provider shall) make any advertisement, public statement or press announcement in relation to this Agreement or the provision of the Services without the Client’s prior written consent.
		2. The Service Provider may only (and shall procure that each SubService Provider may only):
			1. use the Client’s name for the purposes of internal announcements within their organisations; and:
			2. make public statements or press announcements as are necessary to comply with Clause E3.2 or any other legal, statutory or regulatory obligation applicable to the Service Provider or SubService Providers (as applicable).
	1. Security
		1. The Client shall be responsible for maintaining the security of the Premises in accordance with its standard security requirements. The Service Provider shall comply with all security requirements of the Client while on the Premises and shall ensure that all Staff comply with such requirements.
	2. **Prohibition on Use of Offshore Tax Structures**
		1. Subject to the principle of non-discrimination against undertakings based in member countries of the European Union or in signatory countries of the World Trade Organisation Agreement on Government Procurement, the Service Provider shall ensure, throughout the Term, that neither it nor its Affiliates or Key Sub-Service Providers) has in place any arrangements which:
			1. involve the use of offshore companies or other offshore entities; and
			2. have as their main purpose or one of their main purposes the reduction of any UK taxes which would otherwise be payable by the Service Provider or any Affiliates or Key Sub-Service Providers, on any payments made under this Agreement, or on any other transaction or agreement connected with or resulting from this Agreement,
			3. (a “Prohibited Transaction”), provided that a Prohibited Transaction shall not include transactions on terms which are at arm’s length and are entered into in the ordinary course of the transacting Parties’ business.
		2. The Service Provider may notify the Client of any proposal for it or any Affiliate or Key Sub-Service Provider to enter into any transaction which it believes may be a Prohibited Transaction. The Service Provider shall afford the Client a reasonable period of time in which to consider the proposed Prohibited Transaction before it is due to be affected. The Client and the Service Provider shall consider the proposed transaction and, if the Client believes that it would be a Prohibited Transaction, the Parties shall agree timely and appropriate changes to the terms of such Prohibited Transaction to permit the Service Provider to comply with Clause E7.1
		3. Any failure by the Service Provider to comply with the provisions of Clause E7.1 shall constitute a Material Default for which the Client may terminate this Agreement in accordance with Clause H2 (Termination on Default).
	3. **Drawings and Copyrights**
		1. It shall be a condition of the Contract, except to the extent that the Goods and/or Services incorporate designs furnished by the Client, that nothing done by the Service Provider in the provision of the Goods and/or Services shall infringe any patent, trade mark, registered design, copyright or other right in the nature of intellectual property of any third party and the Service Provider shall indemnify the Client against all actions, claims, demands, costs and expenses which the Client may suffer or incur as a result of or in connection with any breach of this Condition.
		2. All rights (including ownership and copyright) in any reports, documents, specifications, instructions, plans, drawings, patents, models or designs whether in writing or on magnetic or other media:
			1. furnished to or made available to the Service Provider by the Client shall remain vested in the Client absolutely.
			2. prepared by or for the Service Provider for use, or intended use, in relation to the performance of this Contract are hereby assigned to and shall vest in the Client absolutely, and the Service Provider shall not and shall procure that the Service Provider’s servants and agents shall not (except to the extent necessary for the implementation of this Contract) without the prior written consent of the Client use or disclose any such reports, documents, specifications, instructions, plans, drawings, patents, models, designs or other material as aforesaid or any other information (whether or not relevant to this Contract) which the Service Provider may obtain pursuant to or by reason of this Contract, except information which is in the public domain otherwise than by reason of a breach of this provision, and in particular (but without prejudice to the generality of the foregoing) the Service Provider shall not refer to the Client or the contract in any advertisement without the Client's prior written consent.
		3. The provisions of this clause E8 shall apply during the continuance of this Contract and after its termination howsoever arising.
	4. Audit
		1. The Service Provider 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 Service Provider 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.
1. CONTROL OF THE CONTRACT
	1. Transfer and Sub-Contracting
		1. Except where F1.4 and 5 applies, the Service Provider 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 Service Provider of any of its obligations or duties under the Contract.
		2. The Service Provider shall be responsible for the acts and omissions of its sub-Service Providers as though they are its own.
		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 Service Provider to the Client as soon as reasonably practicable.
		4. Subject to clause F1.6, the Client may assign, novate or otherwise dispose of its rights and obligations under the Contract or any part thereof to:
			1. The Council;
			2. any Contracting Authority; or
			3. any other body established under statute in order substantially to perform any of the functions that had previously been performed by the Client; or
			4. 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 Service Provider’s obligations under the Contract.

* + 1. Any change in the legal status of the Client such that it ceases to be a Contracting Authority shall not, subject to clause F1.4, 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.
		2. If the rights and obligations under the Contract are assigned, novated or otherwise disposed of 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 shall be referred to as the“Transferee”):
			1. 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 Service Provider in the event of respectively, the bankruptcy or insolvency, or Default of the Transferee; and
			2. Except where they are assigned, novated to the Council, 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 Service Provider, such consent not to be unreasonably withheld or delayed.
		3. The Client may disclose to any Transferee any Confidential Information of the Service Provider which relates to the performance of the Service Provider’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 Service Provider’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.
		4. 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.
	1. Waiver
		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.
		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).
		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.
	2. **Variation**
		1. Subject to the provisions of this clause F3, the Client may request a variation to the Statement of Requirements provided that such variation does not amount to a material change to the Statement of Requirements. Such a change is hereinafter called a “Variation”.
		2. The Client may request a Variation by notifying the Service Provider in writing of the “Variation” and giving the Service Provider 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 Service Provider shall respond to the request for a Variation. Such time limits shall be reasonable having regard to the nature of the Variation. If the Service Provider accepts the Variation, it shall confirm the same in writing.
		3. Once agreed the Client shall confirm the agreement by issuing a sequentially numbered Variation form.
		4. In the event that the Service Provider is unable to accept the Variation to the Statement of Requirements or where the Parties are unable to agree a change to the Contract Price, the Client may;
			1. allow the Service Provider to fulfil its obligations under the Contract without the variation to the Statement of Requirements;
			2. escalated the matter to the Dispute Resolution procedure detailed at Clause I2.
	3. Severability
		1. If any provision of the Contract is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions of the Contract shall continue in full force and effect as if the Contract had been executed with the invalid, illegal or unenforceable provision eliminated.
	4. Remedies in the event of inadequate performance
		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 Service Provider’s obligations under the Contract, then the Client shall notify the Service Provider, and where considered appropriate by the Client, investigate the complaint. The Client may, in its sole discretion, uphold the complaint and take further action in accordance with clause H2 (Termination on Default) of the Contract.
		2. In the event that the Client is of the reasonable opinion that there has been a material breach of the Contract by the Service Provider, then the Client may, without prejudice to its rights under clause H2 (Termination on Default), do any of the following:
			1. without terminating the Contract, itself supply or procure the supply of all or part of the Services until such time as the Service Provider shall have demonstrated to the reasonable satisfaction of the Client that the Service Provider will once more be able to supply all or such part of the Services in accordance with the Contract;
			2. without terminating the whole of the Contract, terminate theContract in respect of part of the Services only (whereupon a corresponding reduction in the Contract Price shall be made) and thereafter itself supply or procure a third party to supply such part of the Services; and/or
			3. terminate, in accordance with clause H2 (Termination on Default), the whole of the Contract.
		3. Without prejudice to its right under clause C3 (Recovery of Sums Due), the Client may charge the Service Provider 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 Service Provider for such part of the Services and provided that the Client uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Services.
		4. If the Service Provider 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 Service Provider to remedy the failure and the Service Provider 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.
		5. In the event that:
			1. the Service Provider fails to comply with clause F5.4 above and the failure is materially averse to the interests of the Client or prevents the Client from discharging a statutory duty; or
			2. the Service Provider persistently fails to comply with clause F5.4 above,

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

* 1. Remedies Cumulative
		1. 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.
	2. Monitoring of Contract Performance
		1. The Service Provider shall comply with the monitoring arrangements set out in the Statement of Requirements including, but not limited to, providing such data and information as the Service Provider may be required to produce under the Contract.
	3. Extension of Initial Contract Period
		1. Subject to clause C4. (Price adjustment on extension of the Initial Contract Period), the Client may, by giving written notice to the Service Provider not less than 3 Month(s) prior to the last day of the Initial Contract Period, extend the Contract for a further period of up to 12 Month(s).
		2. 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.
		3. Any extension shall be subject to the satisfaction performance of the Service Provider, in accordance with the Key Performance Indicators laid out in the Schedule 2 – Statement of Requirements, during the Initial Contract Period.
	4. **Entire Agreement**
		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.
		2. In the event of, and only to the extent of, any conflict between the clauses of the Contract, any document referred to in those clauses and the Schedules, the conflict shall be resolved in accordance with the following order of precedence:
			1. the clauses of the Contract;
			2. the Schedules; and
			3. any other document referred to in the clauses of the Contract.

# LIABILITIES

* 1. Liability, Indemnity and Insurance
		1. Neither Party excludes or limits liability to the other Party for:
			1. death or personal injury caused by its negligence; or
			2. Fraud; or
			3. fraudulent misrepresentation; or
			4. any breach of any obligations implied by Section 2 of the Supply of Goods and Services Act 1982.
		2. Subject to clauses G1.3, the Service Provider 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 Service Provider of its obligations under the Contract or the presence of the Service Provider 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 Service Provider, or any other loss which is caused directly or indirectly by any act or omission of the Service Provider.
		3. The Service Provider 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.
		4. Subject always to clause G1.1, in no event shall either Party be liable to the other for any:
			1. loss of profits, business, revenue or goodwill; and/or
			2. loss of savings (whether anticipated or otherwise);
		5. The Service Provider shall not exclude liability for additional operational, administrative costs and/or expenses or wasted expenditure resulting from the direct Default of the Service Provider.
		6. The Service Provider 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 Service Provider, arising out of the Service Provider’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 Service Provider. 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.
		7. To comply with its obligations under this clause and as a minimum, the Service Provider shall ensure Public Liability Insurance held by it has a limit of indemnity of not less than £5million for each individual claim or such higher limit as the Client may reasonably require (and as required by law) from time to time. Such insurance shall be maintained for a minimum of 6 (six) years following the expiration or earlier termination of the Contract.
		8. The Service Provider shall hold employer’s liability insurance in respect of Staff in accordance with any legal requirement from time to time in force.
		9. The Service Provider 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.
		10. If, for whatever reason, the Service Provider 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 Service Provider.
		11. The provisions of any insurance or the amount of cover shall not relieve the Service Provider of any liabilities under the Contract. It shall be the responsibility of the Service Provider to determine the amount of insurance cover that will be adequate to enable the Service Provider to satisfy any liability referred to in clause G1.2.

## Warranties and Representations

* + 1. The Service Provider warrants and represents that:
			1. it has full capacity and Client 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 Service Provider;
			2. in entering the Contract, it has not committed any Fraud;
			3. 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;
			4. 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;
			5. 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;
			6. 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 Service Provider 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 Service Provider’s assets or revenue;
			7. 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;
			8. in the three (3) years prior to the date of the Contract:
			9. it has conducted all financial accounting and reporting activities in compliance with all material respects with the generally accepted accounting principles that apply to it in any country where it files accounts;
				- it has been in full compliance with all applicable securities and tax laws and regulations in the jurisdiction in which it is established; and
				- 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.
1. **DEFAULT, DISRUPTION AND TERMINATION**
	1. Termination on insolvency and change of control
		1. The Client may terminate the Contract with immediate effect by notice in writing where the Service Provider is a company and in respect of the Service Provider:
			1. 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
			2. 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
			3. 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
			4. a receiver, administrative receiver or similar officer is appointed over the whole or any part of its business or assets; or
			5. 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
			6. it is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986; or
			7. being a “small company” within the meaning of section 247(3) of the Companies Act 1985, a moratorium comes into force pursuant to Schedule A1 of the Insolvency Act 1986; or
			8. any event similar to those listed in H1.1(a)-(g) occurs under the law of any other jurisdiction.
		2. The Client may terminate the Contract with immediate effect by notice in writing where the Service Provider is an individual and:
			1. 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 Service Provider’s creditors;

 or

* + - 1. a petition is presented and not dismissed within 14 days or order made for the Service Provider’s bankruptcy; or
			2. a receiver, or similar officer is appointed over the whole or any part of the Service Provider’s assets or a person becomes entitled to appoint a receiver, or similar officer over the whole or any part of his assets; or
			3. the Service Provider 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
			4. 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 Service Provider’s assets and such attachment or process is not discharged within 14 days; or
			5. he dies or is adjudged incapable of managing his affairs within the meaning of Part VII of the Mental Capacity Act 2005; or
			6. he suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of his business.
		1. The Service Provider shall notify the Client immediately if the Service Provider undergoes a change of control within the meaning of section 416 of the Income and Corporation Taxes Act 1988 (**“change of control”**). The Client may terminate the Contract by notice in writing with immediate effect within six months of:
			1. being notified that a change of control has occurred; or
			2. 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.

* 1. Termination on Default
		1. The Client may terminate this Agreement by serving a notice on the Service Provider if one or more of the circumstances set out in Clause H2.4 exist, this is without prejudice to the termination options that exist throughout this Contract, including but not limited to clauses D1.3, D2.3, E8.10, F5, H5.4 or H7.1.
		2. Where the Client is terminating this Agreement for a Material Default of this Agreement or one of the specific provisions in Clause H2.4 it may rely on a single Material Default or on a number of Defaults or repeated Defaults that taken together constitute a material Default.
		3. Where a Material Default is capable of remedy, the Service Provider shall remedy the Default to the satisfaction of the Client within 25 Working Days, or other such period as may be specified by the Client, after issue of a written notice specifying the Default and requesting it to be remedied.
		4. The circumstances giving rise to the Client’s right to terminate are:
			1. the Service Provider is in Material Default which it has failed to remedy in accordance with clause H2.3;
			2. the Service Provider is in material Default (whether or not subsequently remedied) of:
				+ Clause A7 (Conflicts of Interest);
				+ Clause E3 (Confidential Information)
				+ Clause E5 (Publicity and Branding);
				+ Clause E7 (Prohibition on Use of Offshore Tax Structures);
			3. the occurrence of:
				+ any breach; or
				+ any event which with the giving of notice, lapse of time, determination of materiality or fulfilment of any other applicable condition or any combination of the foregoing would constitute an event of breach;

which is continuing, unremedied and unwaived, under or in connection with any document or arrangement relating to any obligation (whether present or future, contingent or otherwise) of the Service Provider in respect of money that has been borrowed exclusively for the purposes of financing the provision of the Services by the Service Provider;

* + - 1. the Service Provider committing a Default (other than as a consequence of a Default by the Client) which results in the criminal investigation, prosecution and conviction of the Service Provider or any Sub-Service Provider under the Health and Safety Regime. In determining whether to exercise any right of termination pursuant to this Clause H2.4.6 the Client shall:
				* act in a reasonable and proportionate manner having regard to such matters as the gravity of any offence and the identity of the person committing it; and
				* give all due consideration, where appropriate, to action other than termination of this Agreement;
			2. the Service Provider (including any Service Provider Personnel in all cases whether or not acting with the Service Provider’s knowledge) breaches:
				* Clause D1(Prevention of Corruption); or
				* the Bribery Act 2010 in relation to this Agreement or any other contract with the Client;
		1. The rights of the Client (to terminate or otherwise) under this Clause H2 are in addition (and without prejudice) to any other right or remedy which the Client may have to claim the amount of loss or damage suffered by the Client on account of the acts or omissions of the Service Provider (or to take any action other than termination of this Agreement).
		2. Any termination by the Client under Clause H2 (Termination on Default) shall be deemed to be termination for breach of condition, and the Client shall, subject to Clause G1 (Liabilities, Indemnity and Insurance), be entitled to claim for the loss and damage it has suffered as flowing from such breach of condition.
		3. The Client may exercise any right of termination under Clause H2 (Termination on Default) without first instigating the Dispute Resolution Procedure or, where such Dispute Resolution Procedure is in progress, without awaiting its final outcome. Where the Client does not do so, the Parties’ obligations under Clause I2 (Dispute resolution) shall continue to apply
	1. **Break**
		1. The Client shall have the right to terminate the Contract at any time by giving 6 weeks’ written notice to the Service Provider.
	2. Consequences of Expiry or Termination
		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 Service Provider 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 Service Provider (for Services supplied by the Service Provider 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.
		2. Subject to clause G1, where the Client terminates the Contract under clause H2 (Break), the Client shall indemnify the Service Provider against any commitments, liabilities or expenditure which represent an unavoidable direct loss to the Service Provider by reason of the termination of the Contract, provided that the Service Provider takes all reasonable steps to mitigate such loss. Where the Service Provider holds insurance, the Client shall only indemnify the Service Provider for those unavoidable direct costs that are not covered by the insurance available. The Service Provider 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 Service Provider as a result of termination under clause H3 (Break).
		3. The Client shall not be liable under clause H4.2 to pay any sum which:
			1. was claimable under insurance held by the Service Provider, and the Service Provider 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;
			2. when added to any sums paid or due to the Service Provider under the Contract, exceeds the total sum that would have been payable to the Service Provider if the Contract had not been terminated prior to the expiry of the Contract Period; or
			3. is a claim by the Service Provider for loss of profit, due to early termination of the Contract.
		4. Save as otherwise expressly provided in the Contract:
			1. 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
			2. termination of the Contract shall not affect the continuing rights, remedies or obligations of the Client or the Service Provider under clauses B11 (TUPE), C2 (Payment and VAT), C3 (Recovery of Sums Due), D1 (Prevention of Corruption), E1 (Data Protection Act), E2 (Official Secrets Acts 1911 to 1989, Section 182 of the Finance Act 1989), E3 (Confidential Information), E4 (Freedom of Information), E5 (Publicity and Branding), E8 (Intellectual Property Rights), E9 (Audit), F6 (Remedies Cumulative), G1 (Liability, Indemnity and Insurance), H4 (Consequences of Expiry or Termination), H6 (Recovery upon Termination) and I1 (Governing Law and Jurisdiction).
	3. Disruption
		1. The Service Provider 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 Service Provider employed by the Client.
		2. The Service Provider 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.
		3. In the event of industrial action by the Staff, the Service Provider shall seek Approval to its proposals to continue to perform its obligations under the Contract.
		4. If the Service Provider’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.
		5. If the Service Provider is temporarily unable to fulfil the requirements of the Contract owing to disruption of normal business of the Client, the Service Provider may request a reasonable allowance of time and in addition, the Client will reimburse any additional expense reasonably incurred by the Service Provider as a direct result of such disruption.
	4. Recovery upon Termination
		1. On the termination of the Contract for any reason, the Service Provider shall:
			1. 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-Service Providers, which were obtained or produced in the course of providing the Services;
			2. immediately deliver to the Client all Property (including materials, documents, information and access keys) provided to the Service Provider. Such property shall be handed back in good working order (allowance shall be made for reasonable wear and tear);
			3. assist and co-operate with the Client to ensure an orderly transition of the provision of the Services to the Replacement Service Provider and/or the completion of any work in progress.
			4. 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 Service Provider to conduct due diligence.
		2. If the Service Provider fails to comply with clause H6.1 (a) and (b), the Client may recover possession thereof and the Service Provider grants a licence to the Client or its appointed agents to enter (for the purposes of such recovery) any premises of the Service Provider or its permitted suppliers or sub-Service Providers where any such items may be held.
		3. Where the end of the Contract Period arises due to the Service Provider’s Default, the Service Provider shall provide all assistance under clause H6(c) and (d) free of charge. Otherwise, the Client shall pay the Service Provider’s reasonable costs of providing the assistance and the Service Provider shall take all reasonable steps to mitigate such costs.
	5. Force Majeure
		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.
		2. Any failure or delay by the Service Provider in performing its obligations under the Contract which results from any failure or delay by an agent, sub-Service Provider or supplier shall be regarded as due to Force Majeure only if that agent, sub-Service Provider or supplier is itself impeded by Force Majeure from complying with an obligation to the Service Provider.
		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.
1. DISPUTES AND LAW
	1. Governing Law and Jurisdiction
		1. Subject to the provisions of clause I2, the Client and the Service Provider 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.
	2. Dispute Resolution
		1. The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Contract within 20 Working Days of either Party notifying the other of the dispute and such efforts shall involve the escalation of the dispute to the commercial director (or equivalent) of each Party.
		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.
		3. If the dispute cannot be resolved by the Parties pursuant to clause I2.1 the Parties shall refer it to mediation pursuant to the procedure set out in clause I2.5 unless (a) the Client considers that the dispute is not suitable for resolution by mediation; or (b) the Service Provider does not agree to mediation.
		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 Service Provider and the Staff shall comply fully with the requirements of the Contract at all times.
		5. The procedure for mediation and consequential provisions relating to mediation are as follows:
			1. 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 an appropriate mediation provider to be agreed at the time to appoint a Mediator.
			2. 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 an appropriate mediation provider to be agreed at the time to provide guidance on a suitable procedure.
			3. 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.
			4. 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.
			5. 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 in writing, then any dispute or difference between them may be referred to the Courts unless the dispute is referred to arbitration pursuant to the procedures set out in clause I2.6.
		6. If the dispute cannot be resolved by the Parties pursuant to clause I2.1 and I2.3 the Parties shall refer it to Arbitration in accordance with the Housing Grants, Construction and Regeneration Act 1996
		7. Subject to clause I2.2, the Parties shall not institute court proceedings until the procedures set out in clauses I2.1 and I2.3 have been completed save that:
			1. the Client may at any time before court proceedings are commenced, serve a notice on the Service Provider requiring the dispute to be referred to and resolved by arbitration in accordance with clause I2.7.
			2. if the Service Provider intends to commence court proceedings, it shall serve written notice on the Client of its intentions and the Client shall have 21 days following receipt of such notice to serve a reply on the Service Provider requiring the dispute to be referred to and resolved by arbitration in accordance with clause I2.7.
			3. the Service Provider may request by notice in writing to the Client that any dispute be referred and resolved by arbitration in accordance with clause I2.7, to which the Client may consent as it sees fit.
		8. In the event that any arbitration proceedings are commenced pursuant to clause I2.6:
			1. the arbitration shall be governed by the provisions of the Arbitration Act 1996;
			2. the Client shall give a written notice of arbitration to the Service Provider (the **“Arbitration Notice”**)stating:

that the dispute is referred to arbitration; and

providing details of the issues to be resolved;

* + - 1. the London Court of International Arbitration (“LCIA”) procedural rules in force at the date that the dispute was referred to arbitration in accordance with I2.7(b) shall be applied and are deemed to be incorporated by reference to the Contract and the decision of the arbitrator shall be binding on the Parties in the absence of any material failure to comply with such rules;
			2. the tribunal shall consist of a sole arbitrator to be agreed by the Parties;
			3. if the Parties fail to agree the appointment of the arbitrator within 10 days of the Arbitration Notice being issued by the Client under clause I2.7 (b) or if the person appointed is unable or unwilling to act, the arbitrator shall be appointed by the LCIA;
			4. the arbitration proceedings shall take place in London and in the English language; and
			5. the arbitration proceedings shall be governed by, and interpreted in accordance with, English law.

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

 **SIGNED** for and on behalf of **[*Service Provider*]**

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

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

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

 Date:…………………………………………

**SIGNED** for and on behalf of the Client

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

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

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

 Date:…………………………………………