Bevan Brittan | Lawyers for the public, private and third sectors

Dated **2019**

UNITAS STOKE-ON-TRENT LIMITED

&

JCT MEASURED TERM CONTRACT 2016
in relation to 3rd Party Asbestos Auditing

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THIS CONTRACT is made on

BETWEEN

(1) **Unitas Stoke-on-Trent Ltd** (company registered number 10669801) whose registered office is at Civic Centre, Glebe Street, Stoke-on-Trent, United Kingdom ST4 1HH (the **Employer**); and

(2) **Company Reg:,** whose registered office is at (the **Contractor**)

BACKGROUND

(A) The Employer wishes to procure the carrying out of certain works.

(B) The Contractor has agreed to carry out those works, or procure that they are carried out, as required by this Contract.

(C) The Employer and Contractor have agreed to incorporate and amend the JCT Measured Term Contract, 2016 edition as set out in this Contract.

RECITALS

Whereas

First — The Employer requires **3rd Party Asbestos Auditing to be carried out within the boundaries of Stoke on Trent** (the Contract Area) in accordance with the details set out in the Contract Particulars.

Second — The Contractor has offered to carry out the required works at specified rates or as otherwise determined in accordance with the Conditions and the Employer has accepted that offer.

Third — The Employer has appointed a Contract Administrator to issue Orders for the required works and carry out the functions ascribed to the Contract Administrator by the Conditions.

Fourth — The Contractor has supplied to the Employer the Contractor's safety policy complying with the Statutory Requirements, a copy of which is annexed.

Fifth — Whether any of Supplemental Provisions 1 to 6 apply is stated in the Contract Particulars.

ARTICLES

Now it is hereby agreed as follows

Article 1 — Contractor's obligations

The Contractor shall carry out all Orders that are placed with him during the Contract Period in accordance with the Contract Documents.

Article 2 — Payment

The Employer shall pay the Contractor at the times and in the manner specified in the Conditions amounts calculated by reference to the Schedule of Rates identified in the Contract Particulars (item 12) and, if appropriate, revised as therein mentioned, or (where applicable and appropriate) calculated by reference to a Schedule of Hourly Charges (subject to items 13 and 14).

Article 3 — Contract Administrator

For the purposes of this Contract the Contract Administrator is **To Be Confirmed (TBC)** of **Unitas Stoke-on-Trent Limited** or, if he ceases to be the Contract Administrator, such other person as the Employer nominates in accordance with clause 3.10 of the Conditions.

Article 4 Principal Designer

The Principal Designer for the purposes of the CDM Regulations is the Contract Administrator or such other person as the Employer at any time appoints to fulfil that role either in relation to all Orders or for specific Orders.

Article 5 Principal Contractor

The Principal Contractor for the purposes of the CDM Regulations is the Contractor or such other contractor as the Employer at any time appoints to fulfil that role either in relation to all Orders or specific Orders.

Article 6 Adjudication

If any dispute or difference arises under this Contract wither Party may refer it to adjudication in accordance with clause 9.2.

Article 7 Arbitration

Arbitration shall not apply to any dispute or difference under or in connection with this Contract.

Article 8 Legal proceedings

Subject to Article 6, the courts of England and Wales shall have jurisdiction over any dispute or difference arising out of or in connection with this Contract (including non-contractual matters) and the terms of this Contract shall be governed by and interpreted in accordance with the laws of England and Wales.

Contract Particulars

1 Properties and description of the types of work (First Recital)

List of properties in the Contract Area in respect of which Orders may be issued:

As set out in the Specification.

Description of the types of work for which Orders may be issued:

As set out in the Specification.

2 Supplemental Provisions (Fifth Recital and Schedule)

Collaborative working

Supplemental Provision 1 applies / ~~does not apply~~

Health and safety

Supplemental Provision 2 applies / ~~does not apply~~

Cost savings and value improvements

~~Supplemental Provision 3 applies~~ / does not apply

Sustainable development and environmental considerations

~~Supplemental Provision 4 applies~~ / does not apply

Performance indicators and monitoring

~~Supplemental Provision 5 applies~~ / does not apply

Notification and negotiation of disputes

~~Supplemental Provision 6 applies~~ / does not apply

Where Supplemental Provision 6 applies, the respective nominees of the Parties are:

Employer's nominee: **Mark McGill**

Contractor's nominee: [ ]

or such replacement as each Party may notify to the other from time to time.

3 Contract Period (Article 1 and clause 7.1

Subject to clause 7.1, the Contract Period will be **Monday 15th July 2019** to **Tuesday 14th July 2020.**

There is an option to extend for a further 2 x 12 months if both parties agree to continue.

Total potential contract duration: 3 years

4 Arbitration (Article 7)	Not used
5 BIM Protocol (clause 1.1)	Not applicable
6 Orders – minimum and maximum value (Clause 2.4)	~~Provided the scope of the relevant Works falls within the Specification, there shall be no minimum or maximum value of Orders which may be placed pursuant to this Contract.~~
7 Orders – value of work to be carried out (clause 2.5)	The Employer makes no warranty or undertaking as to the anticipated value of work to be carried out pursuant to the Contract.
8 Orders – priority coding (clause 2.6)	~~Orders which fall within category P1 (Emergency) must be attended the same day.~~ ~~Orders which fall within category P2 (Routine) must be completed and the Contractor's application made under clause 4.5 within 28 days~~
9 Construction Industry Scheme (clause 4.2)	The Employer at the commencement of the Contract Period is a "contractor" for the purposes of the CIS.
10 Payments (clauses 4.3, 4.4 and 4.5)	Estimated value of an Order above which progress payments can be applied for (if none is stated, it is £2,500) Not applicable Valuation Dates (If no date is stated, the Valuation Date is the last day of each month) The Valuation Date in each month is the last day of each month
11 Responsibility for measurement and valuation (clause 5.2)	The Contractor[1] shall measure and value all Orders
12 Schedule of	

[1] We understand from the Specification that the Contractor will be responsible for valuing Orders, with the Employer inspecting a small proportion of the work

Rates (clauses 5.3, 5.6.1 and 5.6.2)

1. The Schedule of Rates is:

The schedule of rates set out at Appendix 5.

~~2. Not used.~~

~~3. Rates – fluctuations~~

~~Does not apply.~~

~~4. Basis and dates and revision~~

~~Clause 5.6.1 does not apply.~~

13 Daywork (clauses 5.4, 5.6.3 and 5.6.4)

1. Valuation – percentage additions

2. Revision of Schedule of Hourly Charges

14 Overtime work (clause 5.7)

The percentage in respect of overheads and profit on non-productive overtime rates is:

Not applicable

15 Insurance (clauses 6.4.1, 6.7A, 6.7B, 6.8 and 6.11)

1. Contractor's Public Liability insurance: injury to persons or property – the required level is not less than:

Five million pounds (£5,000,000) for any one occurrence or series of occurrences arising out of one event.

2. Percentage to cover professional fees:

15 per cent

3. Insurance of existing structures – clause 6.7A:

Clause 6.7A applies

4. Not applicable

5. Not applicable

6. Terrorism cover – details of the required cover

Pool Re Cover is required.

16 Break Provisions – Not applicable

Employer or Contractor (clause 7.1)	
17 Settlement of Disputes	
	Adjudication
	The Adjudicator is as agreed between the parties or as nominated by the nominating body.
	The nominating body is the Royal Institute of Chartered Surveyors

EXECUTED AS A DEED

UNITAS STOKE-ON-TRENT LIMITED acting by:

Director: ……

Director/Company Secretary: ……

acting by:

Director: ……

Director/Company Secretary: ……

APPENDIX 1 – AMENDMENTS TO THE CONDITIONS

Clause 1.1

Definition of Interest Rate

Delete "5%" and insert "8%"

Clause 1.1

Insert the following additional definitions:

"Beneficiary"
means Stoke City Council;

"Commercially Sensitive Information"
any information of a commercially sensitive nature relating to the Contractor, its intellectual property rights or its business, or which the Contractor has indicated to the Employer that, if disclosed by the Employer, would cause the Contractor significant commercial disadvantage or material financial loss;

"Confidential Information"
any information, however conveyed or presented, that relates to the business, affairs, operations, processes, budgets, pricing policies, product information, strategies, developments, trade secrets, know-how, personnel and suppliers of the disclosing party, together with all information derived by the receiving party from any such information and any other information clearly designated by a party as being confidential to it (whether or not it is marked "confidential"), or which ought reasonably be considered to be confidential (for the avoidance of doubt, in relation to the Employer, "Confidential Information" comprises but is not limited to information which is subject to the Data Protection Legislation or any information which relates to any tenant and such information, data and material includes, but is not limited to, all of the Employer's Standards and Policies and such other documents which the Contractor may obtain or have access to through the Employer's systems);

"**Contractor Staff**"
means all persons employed by the Contractor together with the Contractor's servants, agents, suppliers, consultants and sub-contractors (and all persons employed by any sub-contractor together with the sub-contractors' servants, consultants, agents and suppliers) used in the performance of its obligations under this Contract;

"**DBS Check**"
means Disclosure and Barring Service checks;

"**Good Industry Practice**"
means that degree of skill, care, prudence and foresight which would reasonably and ordinarily be expected from time to time of a skilled and experienced contractor under the same or similar circumstances;

"**Management Agreement**"
means the agreement dated [ ] entered into between the Beneficiary and the Employer for the management of the Properties;

"**Method Statements**"
means the method statements for the carrying out of the Works set out at Appendix 8;

"**Policies**"
means the Employer's policies listed at Appendix 7;

"**Properties**"
means the properties referred to in Appendix 3 as this list may be updated from time to time;

"**Specification**"
means the specification for the Works annexed at Appendix 2;

"**TUPE**"
means the Transfer of Undertakings (Protection of Employment) Regulations 2006 and/or any other regulations enacted for the purpose of implementing the EC Acquired Rights Directive 77/187 as amended;

"**Works**"
means the works described or referred to in the Specification, including any changes to those works in accordance with this Contract.

Clause 1.5

Delete clause 1.5 and replace with:

"The parties acknowledge that the Beneficiary is the owner of the Properties and is relying on the provision of the Works by the Contractor. The parties acknowledge and agree that under this Contract the Beneficiary is granted the rights set out in Appendix 9. Save as provided above, nothing in this Contract shall confer any right to enforce any of its terms on any person who is not a party to it.

Clause 1.7

Delete clause 1.7 and replace with:

"1.7.1 This Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

1.7.2 Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims)."

Clause 1.8

1.8.1 In the event of any inconsistency or discrepancy between the provisions of the body of this Agreement and the appendices or any Order, or between any of the appendices, the party identifying the inconsistency or discrepancy shall notify the other at the earliest opportunity. Upon notification of a discrepancy, the Employer shall instruct the Contractor as to which document shall take precedence. The Contractor shall carry out the works in accordance with the instruction, at no additional cost to the Employer, and the parties shall work together to remove the inconsistency or discrepancy.

1.8.2 By way of guidance only, the presumption will be that the inconsistency or discrepancy shall be resolved in accordance with the following descending order of priority:

1.8.2.1 the main body of this Agreement

1.8.2.2 Appendix 2, the Specification

1.8.2.3 Appendix 5, the Schedule of Rates

1.8.2.5 all other Appendices except Appendix 8;

1.8.2.6 Appendix 8, the Method Statements

Clause 1.9

Insert new clause 1.9 as follows:

"1.9.1 The Contractor shall take appropriate steps to ensure that neither the Contractor nor any employees of the Contractor are placed in a position where (in the reasonable opinion of the Employer) there is or may be an actual conflict or a potential conflict, between the pecuniary or personal interests of the

Contractor or its employees and the duties owed to the Employer under the provisions of this Contract or any Order.

1.9.2 The Contractor shall promptly notify the Employer (and provide full particulars) if a conflict as referred to in clause 1.9.1 arises or is reasonably foreseeable to arise. The parties shall seek to agree such actions as may be necessary to remedy or avoid the relevant conflict or potential conflict (both parties acting reasonably).

1.9.3 In the event that the parties are unable to reach agreement in accordance with clause 1.9.2 or, in the Employer's opinion (acting reasonably) the relevant conflict or potential conflict cannot be resolved by the taking of reasonable steps, the Employer may terminate this Agreement pursuant to clause 8.4.1."

Clause 2.2.5

Insert the following text as a new clause 2.2.5:

"The Contractor shall use the level of skill care and diligence reasonably to be expected of a skilled and professional person holding themselves out as competent to carry our works and services of a similar scope nature, value and complexity to the Works to carry these out in accordance with, and shall fully comply with and meet all the requirements of, this Contract, Good Industry Practice, all necessary consents, all applicable Policies and all applicable legislation."

Clause 2.5

At the end of the clause insert the following:

"The Contractor acknowledges that the Employer has entered into agreements on comparable terms with other contractors and further acknowledges that, in the event of termination of one or more of those arrangements the Employer may (but shall not be obliged) award Orders to the Contractor which would otherwise have been awarded to such other contractors."

Clause 2.7

Delete "Where" at the start of line 1 and replace with:

"Within one (1) month of the date of the Order and in addition where"

Clause 2.10

Insert the following text at the end of the existing 2.10.2 as clause 2.10.3:

"For the purposes of clause 2.10.2, acts or defaults of any person, firm or company employed or engaged by the Contractor, or any supplier of goods or materials, shall be deemed to be within the control of the Contractor."

Clause 2.11

Insert the following new clause at the end of existing clause 2.11.2 as 2.11.3:

"Where the Specification sets out documentation to be delivered by the Contractor at the completion of an Order, an Order shall not be completed until the Contractor has provided the Employer with such documents."

Clause 2.13

Insert new clause 2.13 as follows:

"In the event that TUPE applies the Contractor shall comply with the provisions of Appendix 6."

Clause 2.14

Insert new clause 2.14 as follows:

"The Contractor shall comply, and shall procure that the Contractor's Persons comply, with the provisions of Appendix 4."

Clause 2.15

Insert new clause 2.15 as follows:

2.15.1 Subject to clause 2.15.2, the parties shall keep confidential all Confidential Information received by one party from the other relating to the Works or any Order and shall use all reasonable endeavours to prevent their employees and agents making any disclosure to any person of any such Confidential Information.

2.15.2 Clause 2.15.1 shall not apply to:

2.15.2.1 any disclosure of information that is reasonably required by any persons engaged in the performance of their obligations under this Contract for the performance of those obligations;

2.15.2.2 any matter which a party can demonstrate is already or becomes generally available and in the public domain otherwise than as a result of a breach of this clause 2.15;

2.15.2.3 any disclosure to enable a determination to be made in connection with a dispute between the Contractor and any of its supply chain;

2.15.2.4 any disclosure which is required pursuant to any statutory, legal (including any order of a court of competent jurisdiction) or Parliamentary obligation placed upon the party making the disclosure or the rules of any stock exchange or governmental or regulatory authority having the force of law or if not having the force of law, compliance with which is in accordance with the general practice of persons subject to the stock exchange or governmental or regulatory authority concerned;

2.15.2.5 any disclosure of information which is already lawfully in the possession of the receiving party, prior to its disclosure by the disclosing party;

2.15.2.6 any provision of information to the parties' own professional advisers or insurance advisers or, where it is proposed that a person should or may provide funds (whether directly or indirectly and whether by loan, equity participation or otherwise) to the Contractor in connection with carrying out its obligations under this Contract, or may wish to acquire shares in the Contractor in accordance with the provisions of this Contract to that person or their respective professional advisers but only to the extent reasonably necessary to enable a decision to be taken on the proposal;

2.15.2.7 any disclosure by the Employer, of information relating to the services and such other information as may be reasonably required for the purpose of conducting a due diligence exercise (but excluding Commercially Sensitive Information) to any proposed replacement contractor, its advisers and lenders should the Employer decide to re-tender this Contract.

2.15.2.8 any disclosure of information by the Employer to any department, office or agency of the Government, or their respective advisors or to any person engaged in providing services to the Employer for any purpose related to or ancillary to this Contract; and

2.15.2.9 any disclosure for the purpose of:

(a) the examination and certification of the Employer's or the Contractor's accounts; or

(b) complying with a proper request from either party's insurance adviser, or insurer on placing or renewing any insurance policies;

Clause 2.16

Insert new clause 2.16 as follows:

"2.16.1 The Employer shall review the Contractor's performance in relation to this Contract and any Order on a quarterly basis.

2.16.2 In the event that the Contractor fails to properly perform its obligations under this Contract or any Order to the Employer's reasonable satisfaction (which shall include, for the avoidance of doubt, a failure by the Contractor to comply with any of the provisions of clause 2.2), the Employer may (but is not obliged) to issue a Yellow Card to the Contractor, together with the Employer's reasons for doing so and details of the additional monitoring which the Employer considers to be reasonably necessary in order to ensure the proper performance of the Works by the Contractor. The Contractor shall comply with such additional monitoring at its own cost. A Yellow Card shall continue until the Employer is satisfied, acting reasonably, that the circumstances leading to the issue of the Yellow Card no longer apply.

Clause 3.1

Delete and substitute:

"The Employer may at any time assign and/or charge the benefits of this Contract to any successor body fulfilling the same function as the Employer and shall give written notice of such assignment to the Contractor. The Contractor shall not assign and/or charge the benefit of this Contract without the written consent of the Employer."

Clause 3.2

Delete and substitute:

"The Contractor shall not without the prior consent of the Employer sub-contract any Order or part of an Order. The Employer's consent to the subletting of any Order shall be contingent on the Employer being satisfied that the proposed Subcontractor and/or Consultant is:

3.2.1 engaged upon the same or substantially the same terms as this Contract; and

3.2.2 able to demonstrate that they have the skills and experience necessary to carry out the Works comprised in the Order."

Clause 3.4.1

Delete and substitute with the following clause:

"The Employer shall grant a non-exclusive and revocable licence to the Contractor, subject to compliance with the Specification, to enter upon the Properties for the sole purpose of providing the Works for the term of the Contract. The licence thereby granted shall be subject to the conditions of the Contract and shall not be deemed to create a relationship of Landlord and Tenant as between the Employer and the Contractor. Except to the extent that the Schedule of Works requires otherwise, the Contract Administrator shall arrange access to each unit within the Contract Area. The Contract Administrator shall be responsible for ensuring that the Contractor is not unnecessarily impeded or prevented from carrying out the Works required under the Order."

Clause 3.4

Insert new sub-clauses as follows:

"3.4.4 The Contractor shall use the Properties only in connection with the provision of the Works and shall ensure that the Contractor Staff use the Properties only for that purpose.

3.4.5 The Contractor shall ensure that the Properties have a clean, tidy and professional appearance at all times and shall keep the said Properties clean, tidy and properly secure.

3.4.6 The permission given to the Contractor to use the said Properties is personal to the Contractor and the Contractor Staff and shall cease immediately upon the Contract ceasing to be in force and/or upon completion, termination or expiry of this Contract. Only the Contractor Staff and persons making deliveries to the Contractor in connection with the provision of the Works may enter or use any part of the Properties without the prior written approval of the Contract Administrator.

3.4.7 For the avoidance of doubt it is hereby declared that the permission to enter and use the said Properties is not the grant of a tenancy of any part of the Properties. The Employer retains full possession and control over such Properties at all times and the Contractor shall not receive exclusive possession of, or any estate or interest in, any such Properties.

3.4.8 Whilst at the Properties the Contractor shall procure that all Contractor's Persons comply with all Statutory Requirements in relation to health and safety together with the Policies.

3.4.9 The Employer reserves the right at all times to permit third parties to use the Properties, subject to the rights granted to the Contractor pursuant to this Contract.

Clause 3.8A

Insert the following new clause 3.8A:

"The Contract Administrator may issue written instructions which the Contractor shall forthwith comply with. If instructions are given orally they shall, within 2 days, be confirmed in writing by the Contract Administrator."

Clause 3.11

Insert new clause 3.11 as follows:

"**Contractor's Persons**

3.11.1 The Contractor shall, to the extent permitted by law, carry out appropriate DBS Checks in relation to any Contractor Staff carrying out the Works at the Properties and provide details to the Employer of the results of such checks. The Contractor shall not permit any member of the Contractor Staff who does not hold a current "clean" DBS Check to carry out any of the Works within any of the Properties.

3.11.2 The Contractor shall provide the Employer with the information required under section 2.15 of the Specification and shall update that information as required in that section.

3.11.3 The Contractor shall at all times ensure that, in respect of its staff, employees and/or personnel engaged in the provision of the Works:

3.11.3.1 each of such Contractor's Persons is suitably qualified, adequately trained and capable of providing the applicable Works in respect of which they were engaged;

3.11.3.2 there is an adequate number of Contractor's Persons to properly provide the Works;

3.11.3.3 all of the Contractor's Persons comply with the Police Act 1997; and

3.11.3.4 all of the Contractor's Persons who require access to the Properties in connection with the provision of the Works comply with the Employer's Policies relating to access to and/or use of the Properties."

3.11.4 The Employer reserves the right to refuse to admit (acting reasonably) to the Properties any Contractor's Person (including any subcontractor) where admission would, in the reasonable opinion of the Employer:

3.11.4.1 present a risk to the Employer or to the occupiers of the Properties; or

3.11.4.2 would be a threat to the security or operations of the Employer or occupiers of the Properties.

Clause 4.3.1

Delete clause 4.3.1 and replace with:

"Where at the date of issue of an Order or of any Variation to it (after adjustments for the effects of the relevant Variations) the duration of the work comprised in that Order is estimated to be 45 days or more the Contractor may not later than each subsequent Valuation Date make an application to the Contract Administrator for a progress payment of the amount he considers due for the work carried out or supplies made pursuant to the Order calculated as at the relevant Valuation Date. The application shall state the basis on which that sum has been calculated and shall be accompanied by such further information as may be specified in the Contract Documents."

Clause 4.3.2

Delete "7 days after the relevant Valuation Date" and replace with "of receipt by the Contract Administrator of the Contractor's application for payment in accordance with clause 4.3.1".

Clause 4.5.2

Delete "7 days after the next monthly Valuation Date following" and insert "of"

Clause 4.6.1

Delete "14 days" and replace with "30 days".

Clause 4.6.5

In line two delete "5 days" and replace with "3 days".

Clause 6.1

In line 3 insert the following after "Order"

"including the performance of the Contractor's obligations under clause 2.12 and/or out of the presence on site of any Contractor's Persons"

Clause 6.2

In line 4 insert the following after "Order"

"including the performance of the Contractor's obligations under clause 2.12 and/or out of the presence on site of any Contractor's Persons."

Clause 6.7.4

Insert new clause 6.7.4 as follows:

"If the Employer is obliged to make a claim against its insurers under this clause 6.7 and such claim is caused by any act, omission, default, breach of contract by the Contractor (including without limitation failure by the Contractor to provide proper security) the Contractor shall pay (and/or the Employer shall recover as a debt from the Contractor) the Employer within 7 days of a written request by the Employer, any excess on the insurance policy maintained by the Employer pursuant to this clause 6.7."

Clause 6.16

Insert new clause 6.16 as follows:

"**Professional Indemnity Insurance"**:

"6.16.1 The Contractor shall:

6.16.1.1 forthwith after this Contract has been entered into, take out (unless he has already done so) a Professional Indemnity insurance policy with a limit of indemnity of not less than £2,000,000 (two million) for any one claim;

6.16.1.2 provided it remains available at commercially reasonable rates to members of the Contractor's profession, maintain such insurance until the expiry of 12 years from the Order Completion Date; and

6.16.1.3 as and when reasonably requested to do so by the Employer, produce for inspection documentary evidence that such insurance has been effected and/or is being maintained.

6.16.2 If the insurance referred to in clause 6.16.1 ceases to be available at commercially reasonable rates to members of the Contractor's profession, the Contractor shall immediately give notice to the Employer so that the Contractor and the Employer can discuss the means of best protecting the respective positions of the Employer and the Contractor in the absence of such insurance."

Clause 8.4

Delete clause 8.4 and replace with:

"8.4 The Employer may terminate the Contractor's engagement under this Contract including any Order which has been issued to the Contractor but not yet completed:

8.4.1 in the event of termination of the Management Agreement or the application of clauses 1.9.3, 8.6 or 8.9, immediately on written notice; and

8.4.2 in the event of a material breach by the Contractor of this Contract where such breach has not been remedied within ten (10) Working Days' notice of such breach, on thirty (30) days' written notice.

Clause 8.7

Delete the references to "14 days" and replace with "ten (10) Working Days".

Delete the reference to "21 days" and replace with "30 days".

Delete clause 8.6.3.

Clause 9

Delete clauses 9.3 to 9.8 inclusive.

APPENDIX 2 – SPECIFICATION

APPENDIX 3 – PROPERTIES

[details of the properties covered or an area map and approximate numbers]

APPENDIX 4 - DATA PROTECTION

Part 1 – Data Protection Legislation

Definitions

1.1 In this Appendix 4 the following terms have the meanings given below:

Data Controller - has the meaning as set out in the Data Protection Legislation;

Data Processor - has the meaning as set out in the Data Protection Legislation;

Data Protection Legislation - for the periods in which they are in force in the United Kingdom, the Data Protection Act 1998, the EU Data Protection Directive 95/46/EC, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000, the Electronic Communications Data Protection Directive 2002/58/EC, the Privacy and Electronic Communications (EC Directive) Regulations 2003, the GDPR and all applicable Laws and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner, in each case as amended or substituted from time to time;

Data Subject - has the meaning as set out in the Data Protection Legislation;

GDPR - (a) the General Data Protection Regulations (Regulation (EU) 2016/679) which comes into force on 25 May 2018; and (b) any equivalent legislation amending or replacing the General Data Protection Regulations (Regulation (EU) 2016/679);

Personal Data – has the meaning as set out in the Data Protection Legislation;

Personal Data Breach - has the meaning as set out in the Data Protection Legislation;

Processing - has the meaning as set out in the Data Protection Legislation and "Process" and "Processed" shall be construed accordingly;

Special Categories of Personal Data - Sensitive Personal Data or Special Categories of Personal Data, as defined in the Data Protection Legislation, which is Processed by any Alliance Member on behalf of the Employer pursuant to or in connection with this Contract;

General

1.2 The parties acknowledge that the Employer is the Data Controller and that the Contractor is a Data Processor in respect of any Personal Data processed under this Contract, including without limitation all Personal Data regarding tenants.

1.3 The subject-matter and duration of the Processing, nature and purpose of the Processing, types of Personal Data, and categories of Data Subjects are set out in Part 2 of this Appendix 4 to this Agreement.

1.4 The Employer may make reasonable amendments to Part 2 of Appendix 4 by written notice to the Contractor from time to time as the Employer considers necessary to meet the requirements of the Data Protection Legislation.

Obligations and rights of the Employer

1.5 The Employer shall comply at all times with the Data Protection Legislation and shall not perform its obligations under this Contract in such a way as to cause the Contractor to breach any of its obligations under the Data Protection Legislation.

1.6 The Employer shall not disclose any Personal Data to the Contractor save where it is lawful and in a form which is lawful.

1.7 The Employer acknowledges that the Contractor is reliant on the Employer alone for direction as to the extent the Contractor is entitled to use and process the Personal Data. Consequently, the Contractor shall be entitled to relief from liability in circumstances where a Data Subject makes a claim or complaint with regards to an Alliance Member's actions to the extent that such actions directly result from instructions received from the Employer.

Obligations of the Contractor

1.8 In so far as the Contractor processes any Personal Data on behalf of the Employer, the Contractor shall:

Authority

1.8.1 process the Personal Data only on behalf of the Employer, only for the purposes of performing this Contract and only in accordance with instructions contained in this Contract or received from the Employer from time to time and subject to the overriding requirements of the Data Protection Legislation. Where an Alliance Member is required to process Personal Data by Applicable Law to which the Alliance Member is subject, the Alliance Member shall inform the Employer of that legal requirement before Processing unless that Applicable Law prohibits such information on important grounds of public interest;

1.8.2 not otherwise modify, amend or alter the contents of the Personal Data or disclose or permit the disclosure of any of the Personal Data to any third party unless specifically authorised in writing by the Employer;

1.8.3 not publish, disclose or divulge any of the Personal Data to any third party (including for the avoidance of doubt the Data Subject itself) unless directed to do so in writing by the Employer;

The Contractor's Personnel

1.8.4 take reasonable steps to ensure the reliability of any of the Alliance Member's Personnel who have access to the Personal Data;

1.8.5 ensure that only those of the Alliance Member's Personnel who need to have access to the Personal Data are granted access to such data and only for the purposes of the performance of this Contract and all of the Alliance Member's Personnel required to access the Personal Data are informed of the confidential nature of the Personal Data and are subject to confidentiality undertakings or professional or statutory obligations of confidentiality;

Security of Processing

1.8.6 taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of Processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, each Alliance Member shall, in relation to the Personal Data, implement appropriate technical and organisational measures to ensure a level of security appropriate to that risk, including, as appropriate:

(a) the pseudonymisation and encryption of Personal Data;

(b) the ability to ensure the ongoing confidentiality, integrity, availability and resilience of Processing systems and services;

(c) the ability to restore the availability and access to Personal Data in a timely manner in the event of a physical or technical incident; and

(d) a process for regularly testing, assessing and evaluating the effectiveness of technical and organisational measures for ensuring the security of Processing;

1.8.7 in assessing the appropriate level of security, take account in particular of the risks that are presented by Processing, in particular from a Personal Data Breach;

1.8.8 provide the Employer with a written description of those technical and organisational measures employed by the Alliance Member for processing Personal Data as described in 1.8.6 (within the timescales required by the Employer);

Supply Chain

1.8.9 not engage a supply chain member in connection with the provision of activities relating in whole or in part to the Works or any Order, without prior specific or general written authorisation of the Employer;

1.8.10 inform the Employer of any intended changes concerning the addition or replacement of supply chain members, thereby giving the Employer sufficient opportunity to object to such changes;

1.8.11 impose at least the same data protection obligations as set out in this Contract on any supply chain member including sufficient guarantees to implement appropriate technical and organisational measures in such a manner that the Processing will meet the requirements of the Data Protection Legislation;

1.8.12 remain liable to the Employer for the supply chain member's compliance with the data protection provisions in this Contract to the extent to which they apply to the Processing of Personal Data carried out by the supply chain member;

Data Subject rights

1.8.13 assist the Employer by appropriate technical and organisational measures, insofar as possible, for the fulfilment of the Employer's obligations to respond to requests for exercising the Data Subject's rights laid down in the Data Protection Legislation;

1.8.14 notify the Employer within five (5) Working Days if it receives a request from a Data Subject under the Data Protection Legislation in respect of the Personal Data;

1.8.15 ensure that it does not respond to any such request except on the written instructions of the Employer or as required by the Data Protection Legislation to which the Contractor is subject but only after informing the Employer of such legal requirement before responding to the request;

Personal Data Breach

1.8.16 notify the Employer without undue delay upon becoming aware of a Personal Data Breach, providing the Employer with sufficient information to allow it to meet its obligations under the Data Protection Legislation and assisting the Employer, as directed, in the investigation, mitigation and remediation of such Personal Data Breach;

Assisting with the Employer's compliance

1.8.17 assist the Employer in ensuring compliance with the obligations pursuant to the Data Protection Legislation taking into account the nature of the Processing for the purposes of this Contract and the information available to the Contractor, including but not limited to those obligations relating to:

(a) security of processing;

(b) notification of a Personal Data breach to the Information Commissioner's Office;

(c) communication of a Personal Data Breach to the Data Subject; and

(d) Data Protection impact assessments and any subsequent consultations with the Information Commissioner's Office;

1.8.18 procure that each of its supply chain members shall, and shall itself, comply at all times with the Data Protection Legislation and shall not perform its obligations under this Contract in such a way as to cause the Employer to breach any of its obligations under the Data Protection Legislation. The Contractor shall immediately notify the Employer in the event that it becomes aware of any breach of the Data Protection Legislation by the Contractor, any member of the supply chain in connection with this Contract;

Deletion or return of Personal Data

1.8.19 on the termination or expiry of this Contract shall promptly upon request from the Employer (at the Employer's discretion) either:

(a) return all Personal Data to the Employer, including without limitation documents and records (whether stored electronically or otherwise) relating in whole or in part to the Works or any Order, including data relating to tenants, and all other items provided on loan or otherwise to the Contractor by the Employer, and delete all existing copies, or procure such deletion; or

(b) securely destroy such Personal Data, unless an Applicable Law requires storage of the Personal Data but only to the extent and for such period as required by such Law;

1.8.20 notify the Employer of the deletion of Personal Data in accordance with paragraph 1.8.19 within 21 days of the termination or expiry of this Contract;

Transferring Personal Data outside the EEA

1.8.21 not transfer Personal Data outside the European Economic Area (EEA) without the prior written consent of the Employer; and

1.8.22 where the Employer consents to the transfer of Personal Data outside the EEA, comply with the following:

(a) the obligations of both a Data Controller and a Data Processor under Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred;

(b) if required by the Employer, to ensure that any entity located outside the EEA to which Personal Data is transferred to enters into the standard contractual clauses for the transfer of personal data from the EU to processors in third countries; and

(c) any other reasonable instructions notified to it by the Employer.

Audits

1.9 The Contractor shall make available to the Employer all information necessary to demonstrate compliance with the obligations laid down in the Data Protection Legislation and allow for and contribute to audits, including inspections, conducted by the Employer or another auditor mandated by the Employer including to permit the Employer or its external advisers (subject to reasonable and appropriate confidentiality undertakings) to inspect and audit the Contractor's data processing activities and those of its agents, subsidiaries and sub-contractors and comply with all reasonable

requests or directions by the Employer to enable the Employer to verify and procure that the Contractor is in full compliance with its obligations under this Contract;

1.10 The Employer or any auditor mandated by the Employer undertaking an audit shall give the Contractor reasonable notice of any audit or inspection to be conducted under paragraph 1.8 and shall make (and ensure that each of its mandated auditors makes) reasonable endeavours to avoid causing (or, if it cannot avoid, to minimise) any damage, injury or disruption to the Contractor's premises, equipment, personnel and business while its personnel are on those premises in the course of such an audit or inspection. The Contractor need not give access to its premises for the purposes of such an audit or inspection:

1.10.1 to any individual unless he or she produces reasonable evidence of identity and authority; or

1.10.2 outside normal business hours at those premises, unless the audit or inspection needs to be conducted on an emergency basis and the Employer undertaking an audit has given notice to the Contractor that this is the case before attendance outside those hours begins.

Indemnity and liability

1.11 The Contractor shall, at all times during and after the term of the Contract, indemnify the Employer and keep the Employer indemnified against all losses, damages, costs or expenses and other liabilities (including legal fees) incurred by, awarded against or agreed to be paid by the Employer arising from any breach of that the Contractor's obligations under this Appendix 4 except and to the extent that such liabilities have resulted directly from the Employer's instructions.

1.12 The Contractor shall remain fully liable to the Employer for the fulfilment of the data protection obligations imposed on any supply chain member engaged by the Contractor in relation to the performance of the Contract.

Part 2 – Data Processing

This Appendix includes certain details of the Processing of Personal Data as required by the Data Protection Legislation.

1 THE SUBJECT-MATTER AND DURATION OF THE PROCESSING

1.1 The subject-matter and duration of the Processing of Personal Data in accordance with this Agreement shall consist of:

1.1.1 [*Description of the subject-matter and duration of the Processing*].

2 THE NATURE AND PURPOSE OF THE PROCESSING

2.1 The subject-matter and duration of the Processing of Personal Data in accordance with this Agreement shall consist of:

2.1.1 [*Description of the nature and purpose of the Processing*].

3 THE TYPES OF PERSONAL DATA TO BE PROCESSED

3.1 The types of Personal Data that shall be processed in accordance with this Agreement will be:

3.1.1 [*Description of types of Personal Data (i.e. information identifying a living individual). May include names, telephone numbers, email address, postal address, specific job title, etc*]

3.2 [To be included if applicable] The types of Special Categories of Personal Data that shall be processed in accordance with this Agreement will be:

3.2.1 [Special categories of personal data are information revealing: racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, and the processing of genetic data, biometric data for the purpose of uniquely identifying a natural person, data concerning health or data concerning a natural person's sex life or sexual orientation]

4 CATEGORIES OF DATA SUBJECTS TO WHOM PERSONAL DATA RELATES

4.1 The categories of individuals whose Personal Data is processed in accordance with this Agreement will be:

4.1.1 [*e.g. Patients, employees, etc*].

APPENDIX 5 – SCHEDULE OF RATES

APPENDIX 6- TUPE

1 DEFINITIONS

Assigned Employees has the meaning given to it in paragraph 3.1.1;

Direct Losses means all damages, losses, liabilities, claims, actions, costs, expenses (including legal or professional services, legal costs being on an agent/employer paying basis) proceedings, demands and charges whether arising under statute, contract or at common law, but to avoid doubt, excluding Indirect Losses;

Directive means the EC Acquired Rights Directive 77/187 as amended;

Employee Liability Information has the meaning given to it in Regulation 11 of TUPE;

Incoming Contractor means the organisation appointed by the Employer to provide the activities covered by the Works after the expiry or earlier termination of the Contract;

Indirect Losses means loss of profits, loss of use, loss of production, loss of business, loss of business opportunity, or any claim for consequential loss or for indirect loss of any nature but excluding any of the same that relates to loss of revenue under the Contract;

New Employees means those new employees employed by the Contractor to provide the Works who will be working alongside the Transferring Employees;

Relevant Employees means the employees who are the subject of a Relevant Transfer;

Relevant Transfer means a relevant transfer for the purposes of TUPE;

Relevant Transfer Date means the date on which a Transferring Employee transfers to the Contractor and/or one or more supply chain members by virtue of a Relevant Transfer;

Retendering Information has the meaning given to it in paragraph 3.1.1;

Return Date has the meaning set out in paragraph 3.5;

Returning Employees has the meaning set out in paragraph 3.5;

Transfer Date means the date the Transferring Employees are transferred to the employment of the Contractor;

TUPE means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (246/2006) and or any other regulations enacted for the purpose of implementing the Directive into English law.

2 COMMENCEMENT OF THE CONTRACT

Relevant Transfers

2.1 The Employer and the Contractor agree that the following events:

2.1.1 the Relevant Transfer Date; and

2.1.2 where the identity of a contractor (including the Employer) of any works or services which constitutes or which will constitute part of the Works is changed whether in anticipation of changes pursuant to the contract or not;

constitute a Relevant Transfer and that the contracts of employment of any Relevant Employees will have effect (subject to Regulation 4(7) of TUPE) thereafter as if originally made between those

employees and the Contractor and/or a member of its Supply Chain except insofar as such contracts relate to those parts of an occupational pension scheme relating to the old age, invalidity and survivors' benefits (save as required under section 257 and 258 of the Pensions Act 2004). On the occasion of a Relevant Transfer (save on expiry or termination of the contract) the Contractor will procure that the former and the new Supply Chain member will both comply with their obligations under TUPE.

2.2 The Contractor will comply and will procure that each member of the Supply Chain will comply with its obligations (including without limitation the obligation under Regulation 13(4) of TUPE) in respect of each Relevant Transfer pursuant to the Contract and the Contractor will indemnify the Employer against any Direct Losses sustained as a result of any breach of this paragraph 2.2.

Emoluments and outgoings

2.3 The Contractor will be responsible or will procure that any relevant Supply Chain member is responsible for all remuneration, benefits, entitlements and outgoings in respect of the Relevant Employees and any other person who is or will be employed or engaged by the Contractor or any Supply Chain member in connection with the provision of the Term Programme, including without limitation all wages, holiday pay, bonuses, commission, payment of PAYE, national insurance contributions, pension contributions and otherwise, from and including the Relevant Transfer Date.

Employment costs

2.4 The Employer will pass to the Contractor all information it receives from the Outgoing Contractor in relation to each of those employees of the Outgoing Contractor who it is expected, if they remain in the employment of the Outgoing Contractor (as the case may be) until immediately before the Relevant Transfer Date, would be Relevant Employees but the Employer gives no warranty as to the accuracy or completeness of this information.

2.5 Without prejudice to paragraph 2.4, the Employer will procure if it has the contractual or legal powers to do so, and will otherwise use all reasonable endeavours to procure that the Outgoing Contractor will:

2.5.1 provide the Employee Liability Information to the Contractor at such time or times as are required by TUPE; and

2.5.2 update the Employee Liability Information to take account of any changes as required by TUPE. The Employer gives no warranty as to the accuracy or completeness of the Employee Liability Information supplied by the Outgoing Contractor.

2.6 The Contractor will, and will procure that each and every Supply Chain member will take all reasonable steps, including co-operation with reasonable requests for information, to ensure that each and every Relevant Transfer pursuant to the Contract takes place smoothly with the least possible disruption to the service being provided to the Employer under the contract and to the employees who transfer.

Union recognition

2.7 The Employer will procure if it has the contractual or legal powers to do so and will otherwise use all reasonable endeavours to procure that the Outgoing Contractor will supply to the Contractor no later than 20 Working Days prior to the Relevant Transfer Date true copies of its union recognition agreement(s) and the Contractor will and will procure that each and every Supply Chain member will in accordance with TUPE recognise the trade unions representing Relevant Employees (as relevant to each Supply Chain member) after the transfer to the same extent as they were recognised by the Outgoing Contractor before the Relevant Transfer Date.

2.8 The Contractor will procure that, on each occasion on which the identity of a Supply Chain member changes pursuant to the Contract, in the event that there is a Relevant Transfer, the new Supply Chain member will in accordance with TUPE recognise the trade unions representing the employees whose contracts of employment transfer to the new Supply Chain member to the same extent as

they were recognised before the change of identity of the Supply Chain member in respect of the provision of any works or services in connection with the Term Programme.

Indemnities

2.9 The Contractor will indemnify and keep indemnified in full the Employer, and at the Employer's request each and every Incoming Contractor against:

2.9.1 all Direct Losses incurred by the Employer or any Incoming Contractor in connection with or as a result of any claim or demand against the Employer or any Incoming Contractor by (i) any person who is or has been employed or engaged by the Contractor or any Supply Chain member in connection with the provision of any works or services as part of the Term Programme or (ii) any trade union or staff association or employee representative in respect of such person, in either case where such claim arises as a result of any act, fault or omission of the Contractor and/or any Supply Chain member after the Relevant Transfer Date;

2.9.2 all Direct Losses incurred by the Employer or any Incoming Contractor in connection with or as a result of a breach by the Contractor of its obligations under paragraph 2.5 above; and

2.9.3 all Direct Losses incurred by the Employer or any Incoming Contractor in connection with or as a result of any claim by any Relevant Employee, trade union or staff association or employee representative (whether or not recognised by the Contractor and/or the relevant Supply Chain member in respect of all or any of the Relevant Employees) arising from or connected with any failure by the Contractor and/or any Supply Chain member to comply with any legal obligation to such trade union, staff association or other employee representative whether under Regulation 13 of TUPE, under the Directive or otherwise and, whether any such claim arises or has its origin before or after the Relevant Transfer Date.

2.10 The Contractor will indemnify and keep indemnified in full the Employer, against all Direct Losses incurred by the Employer in connection with or as a result of:

2.10.1 the change of identity of employer occurring by virtue of TUPE to the Contractor or the relevant Supply Chain member being significant and detrimental to any of the Relevant Employees or to any person who would have been a Relevant Employee but for their resignation (or decision to treat their employment as terminated under Regulation 4(9) of TUPE) on or before the Relevant Transfer Date as a result of the change in employer and whether such claim arises before or after the Relevant Transfer Date;

2.10.2 any proposed or actual change by the Contractor or any Supply Chain member to the Relevant Employees' working conditions, terms or conditions or any proposed measures of the Contractor or the relevant Supply Chain member which are to any of the Relevant Employee's material detriment or to the material detriment of any person who would have been a Relevant Employee but for their resignation (or decision to treat their employment as terminated under Regulation 4(9) of TUPE) on or before the Relevant Transfer Date as a result of any such proposed changes or measures and whether such claim arises before or after the Relevant Transfer Date; and

2.10.3 any claim arising out of any misrepresentation or mis-statement whether negligent or otherwise made by the Contractor or Supply Chain member to the Relevant Employees or their representatives whether before on or after the Relevant Transfer Date and whether liability for any such claim arises before on or after the Relevant Transfer Date.

Provision of details and indemnity

2.11 The Contractor will immediately upon request by the Employer provide to the Employer details of any measures (as referred to in Regulation 13 of TUPE) which the Contractor or any Supply Chain member envisages it or they will take in relation to any employees who are or who will be the subject

of a Relevant Transfer, and if there are no measures, confirmation of that fact, and will indemnify the Employer against all Direct Losses resulting from any failure by the Contractor to comply with this obligation.

3 RETENDERING

3.1 The Contractor will (and will procure that any member of the Supply Chain will) within the period of 12 months immediately preceding the expiry of this Contract or following notification by the Employer to the Contractor of its intention to re-tender this Contract:

3.1.1 on receiving a request from the Employer provide in respect of any person engaged or employed by the Contractor or any member of the Supply Chain in the provision of any service which is part of the *service* (the **"Assigned Employees"**) full and accurate but anonymized details regarding the identity, number, age, sex, length of service, job title, grade and terms and conditions of employment of and other matters affecting each of those Assigned Employees who it is expected, if they remain in the employment of the Contractor or of any member of the Supply Chain as the case may be until immediately before the termination date, would be Returning Employees (the **"Retendering Information"**) provided always Retendering Information excludes Confidential Information;

3.1.2 provide the Retendering Information promptly and at no cost to the Employer;

3.1.3 notify the Employer forthwith in writing of any material changes to the Retendering Information promptly as and when such changes arise;

3.1.4 be precluded from making any material increase or decrease in the numbers of Assigned Employees other than in the ordinary course of business and with the Employer's prior written consent (not to be unreasonably withheld or delayed);

3.1.5 be precluded from making any increase in the remuneration or other change in the terms and conditions of the Assigned Employees other than in the ordinary course of business and with the Employer's prior written consent (not to be unreasonably withheld or delayed); and

3.1.6 be precluded from transferring any of the Assigned Employees to another part of its business or moving other employees from elsewhere in its or their business who have not previously been employed or engaged in providing any part of the service to provide any such works and services save with the Employer's prior written consent (not to be unreasonably withheld or delayed).

3.2 Without prejudice to paragraphs 3.1 and 3.3, the Contractor will provide and will procure that any member of the Supply Chain will provide the Employee Liability Information to the Employer at such time or times as are required by TUPE, and will warrant at the time of providing such Employee Liability Information, that such information will be updated to take account of any changes to such information as is required by TUPE.

3.3 The Contractor will and will keep indemnified in full the Employer and at the Employer's request any Incoming Contractor against all Direct Losses arising from any claim by any party as a result of the Contractor or member of the Supply Chain failing to provide or promptly to provide the Employer and/or any Incoming Contractor where requested by the Employer with any Retendering Information and/or Employee Liability Information or to provide full Retendering Information and/or Employee Liability Information or as a result of any material inaccuracy in or omission from the Retendering Information and/or Employee Liability Information provided that this indemnity will not apply in respect of the Retendering Information to the extent that such information was originally provided to the Contractor by the Employer and was materially inaccurate or incomplete when originally provided.

Termination of agreement

3.4 On the expiry or earlier termination of this Contract, the Employer and the Contractor agree that it is their intention that TUPE will apply in respect of the provision thereafter of any works and services equivalent to one or more of the works and services which are part of the Term Programme but the position will be determined in accordance with the law at the date of expiry or termination as the case may be and this paragraph is without prejudice to such determination.

3.5 For the purposes of this paragraph 3.5, **"Returning Employees"** will mean those employees wholly or mainly engaged in the provision of the Term Programme as the case may be as immediately before the expiry or termination of this Contract whose employment transfers to the Employer or an Incoming Contractor pursuant to TUPE. Upon expiry or termination of the Contract for whatever reason (such date being termed the **"Return Date"**), the provisions of this paragraph 2.8 will apply:

3.5.1 The Contractor will or will procure that all wages, salaries and other benefits of the Returning Employees and other employees or former employees of the Contractor or the relevant member of the Supply Chain (who had been engaged in the provision of the service) and all PAYE tax deductions, pension contributions and national insurance contributions relating thereto in respect of the employment of the Returning Employees and such other employees or former employees of the Contractor or members of the Supply Chain up to the Return Date are satisfied;

3.5.2 Without prejudice to paragraph 3.5.1, the Contractor will:

3.5.3 remain (and procure that Supply Chain members will remain) (as relevant) responsible for all the Contractor's or Supply Chain member's employees (other than the Returning Employees) on or after the time of expiry or termination of this Contract and will indemnify the Employer and any Incoming Contractor against all Direct Losses incurred by the Employer or any Incoming Contractor resulting from any claim whatsoever whether arising before on or after the Return Date by or on behalf of any of the Employer's or Supply Chain member's employees who do not constitute the Returning Employees;

3.5.4 in respect of those employees who constitute Returning Employees the Contractor will indemnify the Employer and any Incoming Contractor against all Direct Losses incurred by the Employer or any Incoming Contractor resulting from any claim whatsoever by or on behalf of any of the Returning Employees in respect of the period on or before the Return Date (whether any such claim, attributable to the period up to and on the Return Date, arises before, on or after the Return Date) including but not limited to any failure by the Contractor or any Supply Chain member to comply with its or their obligations under Regulation 13 of TUPE and/or Article 6 of the Directive as if such legislation applied, even if it does not in fact apply save to the extent that any such failure to comply arises as a result of an act or omission of the Employer or any Incoming Contractor.

3.5.5 The Employer will be entitled to assign the benefit of this indemnity to any Incoming Contractor.

Subcontractors

3.6 In the event that the Contractor enters into any subcontract in connection with this Contract, it will impose obligations on such Supply Chain member in the same terms as those imposed on it pursuant to this paragraph 3 and Part 2 (Pensions) and will endeavour to procure that the relevant Supply Chain member complies with such terms. The Contractor will indemnify and keep the Employer indemnified in full against all Direct Losses, incurred by the Employer or any Incoming Contractor as a result of or in connection with any failure on the part of the Contractor to comply with this paragraph.

Data protection

3.7 Where the Employer holds information in respect of any of the Contractor's employees, the Employer will comply with (and ensure that all its employees comply with) any notification requirements under the Data Protection Legislation and will observe its obligations under the Data Protection Legislation which arise in connection with the Contract.

APPENDIX 7 – POLICIES

Financial Regulations

Freedom of Information Policy

Corrupt Practices Policy

Equal Opportunities Policy

[details of most up to date versions of policies to be inserted, as per tender information]

APPENDIX 8– METHOD STATEMENTS

Risk assessments & Method Statements to be provided to Unitas Project Management prior to starting work on site.

APPENDIX 9 – SCHEDULE OF THIRD PARTY RIGHTS

1 INTERPRETATION

1.1 In this Schedule:

Beneficiary means Stoke City Council;

Contract means the contract dated [ ] based on the form of JCT Measured Term Contract 2016 entered into between the Employer and the Contractor;

Contractor means [ ];

Employer means Unitas Stoke-on-Trent Limited

Management Agreement means the agreement dated [ ] entered into between the Beneficiary and the Employer for the management of the Properties;

Materials means all plans, drawings, specifications, calculations, models, records and other documents (including information technology material and computer assisted design material) prepared or to be prepared by or on behalf of the Contractor in relation to the Works and/or the Properties and all revisions and additions whether in existence or still to be made;

Order means an instruction to carry out the Works issued pursuant to the Contract;

Properties means approximately 19,500 properties, which include 340 residential leaseholders and approximately 200 properties which are let to commercial tenants;

Specification means the specification for the Works set out in Appendix 2 to the Contract;

Third Party Rights means the rights contained in this Schedule

Works means the as more particularly described in the Contract.

1.2 In interpreting these Third Party Rights:

1.2.1 if any party to this identified in this Schedule is a partnership then the provisions of this Schedule will bind each and every such partner jointly and severally;

1.2.2 references to the singular shall be deemed to include the plural (and vice versa) and reference to a "person" shall be deemed to include any individual firm unincorporated association or body corporate;

1.2.3 references to the Beneficiary shall be deemed to include their successors in title and assigns;

1.2.4 any reference to any enactment includes any consolidation, re-enactment, amendment or replacement of it and any subordinate legislation under it;

1.2.5 headings to paragraphs shall be disregarded.

2 WARRANTY

2.1 The Contractor undertakes with and warrants to the Beneficiary that:

2.1.1 it has and shall continue to:

(a) carry out and complete the Works in conformity with the Contract and the relevant Order;

(b) comply with the obligations on the part of the Contractor contained in the Contract and the relevant Order;

2.1.2 without derogation from paragraph 2.1.1, in carrying out the Works the Contractor warrants that the same have been or will be carried out with the level of skill, care and diligence reasonably to be expected of an appropriately skilled and qualified Contractor experienced in carrying out works similar in scope, complexity and value to the Works.

2.2 The Contractor shall have no greater liability or obligation under this Schedule than it would have had if the Beneficiary had been a party to the Contract and/or relevant Order as joint employer and the Contractor shall be entitled in any claim, action or proceedings brought by the Beneficiary under this agreement to rely on any term or limitation in the Contract and/or relevant Order and to raise any equivalent rights in defence of liability as it would have against the employer under the terms of the Contract and/or the relevant Order (for this purpose not taking into account any set-off or counterclaim against the actual employer under the Contract and/or relevant Order).

2.3 The Contractor shall have no liability to the Beneficiary in respect of any delay in the completion of the Works howsoever caused except to the extent that the liability arises under the Contract or an Order and the Beneficiary has exercised its right under paragraph 3 or 4.

3 OBLIGATIONS PRIOR TO TERMINATION OF THE CONTRACT

3.1 The Contractor agrees with the Beneficiary that it will not exercise nor seek to exercise any right to terminate its employment under the Contract or to discontinue the provision of the Works for any reason whatsoever (including any breach by the Employer) without giving not less than thirty (30) days' notice of his intention to do so to the Beneficiary specifying the grounds for the proposed termination or discontinuance.

3.2 The right of the Contractor to terminate is employment under the Contract or the discontinuance of the delivery of the Works shall cease if during the period specified in paragraph 3.1 the Beneficiary gives notice to the Contractor:

3.2.1 requiring the Consultant to continue its obligations under the Contract with the Beneficiary (or its nominee);

3.2.2 acknowledging that the Beneficiary (or its nominee) will assume all of the obligations of the Employer under the Contract; and

3.2.3 undertaking that the Beneficiary (or its nominee) will discharge all payments which may subsequently become due to the Contractor under the terms of the Contract or any Order and will pay to the Contractor any sums which have become due and payable to it under the Contract but which remain unpaid.

3.3 Upon service of a notice by the Beneficiary pursuant to paragraph 3.2 the Contract will continue in full force and effect as if the same had been entered into between the Contractor and the Beneficiary (or its nominee) to the exclusion of the Employer.

3.4 Compliance by the Contractor with the provisions of this paragraph 3 will not be treated as a waiver of any breach on the part of the Employer giving rise to the right of termination nor otherwise prevent the Contractor from exercising its tights after expiration of the notice period referred to in paragraph 3.1 unless the Beneficiary has served a notice pursuant to paragraph 3.2.

4 BENEFICIARY'S RIGHTS IN RELATION TO THE CONTRACT

4.1 Notwithstanding that as between the Employer and the Contractor, the Contractor's right of termination of its employment under the Contract may not have arisen, the provisions of paragraph 3.3 shall also apply if the Beneficiary gives notice to the Employer of their intention to step-in to the Contract pursuant to their rights under the Management Agreement, and to the Contractor to the effect that the Beneficiary wishes the provisions of paragraph 3.3 to apply and the Beneficiary (or its nominee) complies with the requirements of paragraph 3.2.

4.2 The Contractor shall not be concerned, or required to enquire whether, and shall be bound to assume that as between the Employer and the Beneficiary the circumstances have arisen permitting the Beneficiary to give notice under paragraph 4.1.

5 CONTRACTOR'S POSITION

By acting in accordance with paragraphs 3 and 4 the Contractor shall not incur any liability to the Employer.

6 COPYRIGHT

6.1 The copyright in all Materials shall remain vested in the Contractor (in so far as the ownership is vested in the Contractor) but the Contractor grants (or, where copyright is not vested in the Contractor, shall procure the grant) to the Beneficiary and its nominees a non-exclusive irrevocable royalty free licence to copy, use and reproduce the Materials for any purpose related to the Works and/or the Properties including (but without limitation) the construction, completion, maintenance, letting, promotion, advertisement, reinstatement, extension and repair of the Properties. This licence allows the Beneficiary to use the Materials in connection with any extension of any of the Properties, but not to reproduce the designs contained in the Materials in any such extension. Such licence shall include a licence to grant sub-licences and to transfer the same to third parties.

6.2 The Contractor shall not be liable for any such use by the Beneficiary or its nominees of any Materials for any purpose other than that for which the same were prepared by the Contractor.

6.3 The Beneficiary shall on written request, and upon paying a reasonable copying charge therefore, be entitled to be supplied by the Contractor with copies of any Materials.

6.4 The Contractor unconditionally and irrevocably waives (and shall ensure that any sub-Contractors waive), in respect of the Materials and the Works, all moral rights to which the Contractor (or any relevant sub-contractors) may now or at any future time be entitled under the Copyright, Designs and Patents Act 1988 as amended from time to time or under any other applicable laws.

6.5 This waiver is made in favour of the Beneficiary and shall extend to the Third Party's sub-licensees, assignees and successors in title in accordance with this Schedule.

6.6 The Contractor warrants that the Materials (save to the extent that duly authorised sub-Contractors have been used to prepare the same) are the Contractor's own original work and that in any event their use in connection with the Works and/or the Properties will not infringe the rights of any third party.

7 INSURANCE

7.1 The Contractor shall take out any maintain for the Term of the Contract or, if later, completion of the Contractor's obligations under any Order issued pursuant to the Contract:

7.1.1 Public liability (Third Party) Insurance of at least £5 million in respect of any one claim or series of claims arising out of the same original cause; and

7.1.2 [Employers' liability insurance in accordance with the applicable law][2]

save where the Contractor can demonstrate to the Employer's reasonable satisfaction that such insurances are not generally available on the market to Contractors of similar size and carrying out similar works to the Contractor.

7.2 The Contractor shall take out and maintain for the Term of the Contract until the date which is twelve (12) years after completion of the Works under any Orders issued professional indemnity insurance of not less than £2,000,000 (two million pounds) in respect of each and every claim.

[2] If Contractor is self-employed and does not employ anyone, this may be removed.

7.3 As and when reasonably requested to do so by the Beneficiary, but not more than once in each period of cover, the Contractor shall produce for inspection documentary evidence that the required insurance is being maintained.

8 LIABILITY PERIOD

The obligations of the Contractor under this Schedule shall cease 12 years from the date of completion of the final live Order pursuant to the Contract save in relation to any claims made by the Beneficiary against the Contractor and notified by the Beneficiary to the Contractor in writing prior thereto.

9 ASSIGNMENT

9.1 The Beneficiary shall be entitled to assign the benefit of the Third Party Rights without the consent of the Contractor to any person taking the Beneficiary's interest in the Properties. The Contractor shall not be entitled to contend that any person to whom the Third Party Rights are assigned is precluded from recovering under this Schedule any losses incurred by such assignee resulting from a breach of the Third Party Rights (howsoever happening) by reason that such person is an assignee and not a named party under this Schedule.

9.2 The Contractor may not assign, transfer or sublet, whether in whole or in part, any of its obligations under this Schedule without the prior written consent of the Beneficiary.

10 NOTICES

Any notice to be served under this Schedule must be in writing and must be served by hand or by registered post or recorded delivery, and in the case of a corporation must be served at its registered office for the time being. In any other case notice may be served at any address for the time being of the person to be served. Service shall take effect, if given by hand, on the date of delivery. If given by post, it shall take effect two days after posting, excluding Saturdays, Sundays and statutory holidays.

11 MISCELLANEOUS

11.1 No approval or review of the Works by or on behalf of the Beneficiary and no omission to inspect or test shall negate or diminish any duty or liability of the Contractor arising under this Schedule, provided that nothing in this paragraph shall modify or affect any rights which the Contractor might have but for the existence of this paragraph to claim a contribution from any third party whether under statute or at common law.

11.2 This Schedule does not create any right enforceable by any person not a party to it (whether pursuant to the Contracts (Rights of Third Parties) Act 1999 or otherwise) except that a person who is the successor to or the permitted assignee of the rights of the Beneficiary is deemed to be a party to this Schedule.

11.3 If any term or condition of this Schedule is for any reason held to be illegal, invalid, ineffective, inoperable or otherwise unenforceable, it shall be severed and deemed to be deleted from this Schedule and the validity and enforceability of the remainder of this Schedule shall not be affected or impaired thereby.

12 GOVERNING LAW

This Schedule and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of England and Wales.