

Date _____

18th December 2025

**INSTALLATION AND MAINTANCE OF ROAD LIGHTING, TRAFFIC
SIGNS AND BOLLARDS TERM *SERVICE* CONTRACT**

Incorporating the NEC4 Term *Service* Contract

June 2017

Between

NORTH EAST LINCOLNSHIRE BOROUGH COUNCIL

And

J MCCANN & CO LIMITED

THIS AGREEMENT is made the 18th day of
November 2025

BETWEEN

- (1) NORTH EAST LINCOLNSHIRE COUNCIL whose address is Municipal Offices, Town Hall Square, Grimsby, North East Lincolnshire, DN31 1HU ("**Client**"); and
 - (2) J MCCANN & CO LIMITED (Company Number 08326109) whose registered office is at Mccann House, 110 Nottingham Road, Chilwell, Nottinghamshire, England, NG9 6DQ ("**Contractor**")
- together "**the Parties**".

BACKGROUND

- A. The *Client* wishes to appoint the *Contractor* on the terms of the contract.

IT IS AGREED:

1 Definitions and Interpretation

- 1.1 This agreement incorporates the terms and conditions of the NEC4 Term *Service Contract June 2017* which is supplemented and amended in accordance with such information and supplementary provisions as are provided in the Contract Schedules.
- 1.2 The "Contract Schedules" means any one of or all of the contract schedules appended to this agreement.

2 Entire Agreement

- 2.1 This agreement is the entire agreement between the Parties in relation to the *service* and supersedes and extinguishes all prior arrangements, understandings, agreements, statements, representations or warranties (whether written or oral) relating thereto.
- 2.2 Neither party has been given, nor entered into this agreement in reliance on any arrangements, understandings, agreements, statements, representations or warranties other than those expressly set out in this agreement.
- 2.3 Nothing in this clause 2 shall exclude any liability in respect of misrepresentations made fraudulently.

IN WITNESS WHEREOF the Parties have caused this agreement to be executed as a deed by their duly authorised representatives and delivered on the date first above written.

Executed as a Deed for and on behalf of the *Client*

THE COMMON SEAL OF

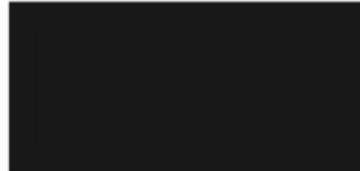
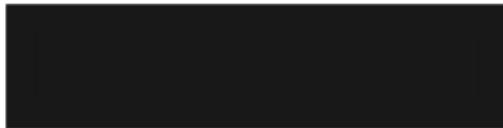
NORTH EAST LINCOLNSHIRE BOROUGH COUNCIL)

ES1172

Was affixed to this deed)

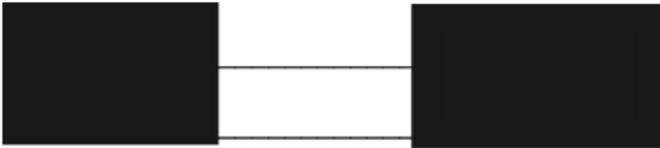
in the presence of:)

Authorised Officer



Executed as a Deed for and on behalf of the *Contractor*

By:



Name:

Title: Director

Witnessed by: _____

Printed name: _____

Address: _____

Contract Schedule A

CONTRACT DATA - PART ONE – DATA PROVIDED BY THE *CLIENT*

1 General

The *conditions of contract* are the core clauses and the clauses for the following main Option, the Option for resolving and avoiding disputes and secondary Options of the NEC4 Term *Service Contract* June 2017.

Main Option: Option A: Priced contract with Price List

Option for Resolving and Avoiding Disputes: Option W2: Housing Grants, Construction and Regeneration Act 1996 applies

Secondary Options: Option X1: Price Adjustment for Inflation

Option X2: Changes in Law

Option X8: Undertakings to the *Client* or Others

Option X11: Termination by the *Client*

Option X13: Performance Bond

Option X18: Limitation of Liability

Option X20: Key Performance Indicators

Option X21: Whole Life Cost

Option X23: Extending the *Service* Period

Option X24: The Accounting Periods

Option Y(UK)2: The Housing Grants, Construction and Regeneration Act 1996

Option Z: *Additional Conditions of Contract*

The *service* is the Installation and Maintenance of Road Lighting, Traffic Signs and Bollards.

The *Client* is:

Name: North East Lincolnshire Council

Address for communications: Municipal Offices, Town Hall Square, Grimsby, North East Lincolnshire, DN31 1HU

Address for electronic communications: legaladmin@nelincs.gov.uk

The *Service Manager* is:

Name: North East Lincolnshire Council Street Lighting Department

Address for communications: : Municipal Offices, Town Hall Square, Grimsby, North East Lincolnshire, DN31 1HU

Address for electronic communications: [REDACTED]

The Affected Property is the public highway and any *Client* Carparks within the boundary defined in Contract Schedule D – Scope Appendix A NELC

The Scope is as per the Contract Schedule D Scope.

The *shared services* which may be carried out outside the *Service Areas* are Not Applicable.

The *language of the contract* is English.

The *law of the contract* is the law of England and Wales, subject to the jurisdiction of the courts of England and Wales.

The *period for reply* is: 14 working days except that:

- The *period for reply* for Complaints instigated by the *Client* or *Service Manager* is One week.
- The *period for reply* for Any other urgent correspondence is as requires by the *Client* or *Service Manager*

The following matters will be included in the Early Warning Register:

- Price adjustment under X1 provides lower/higher recovery than that experienced by the *Contractor*;
- Materials shortages due to shipping, tariff changes and embargos/sanctions;
- Resourcing due to increases or decreases in *service* levels.

Early warning meetings are to be held at intervals no longer than Generally monthly, or lesser depending on the early warnings and nature of the *services* and Task Orders

2 The Contractor's main responsibilities

3 Time

The *starting date* is 01 December 2025.

The *service period* is 4 years.

The *Contractor* submits revised plans at intervals no longer than a month.

The period within which the *Contractor* is to submit a Task Order programme for acceptance is 1 week.

4 Quality management

The period after the Contract Date within which the *Contractor* is to submit a quality policy statement and quality plan is one month following the contract mobilisation.

5 Payment

The *currency of the contract* is the pound sterling.

The *assessment interval* is monthly.

The *interest rate* is 2% per annum above the base rate of the Bank of England.

The period within which payments are made is as set out in Y(UK)

The period for certifying a final assessment is 13 weeks.

6 Compensation Events

The *value engineering percentage* is 50%.

7 Use of equipment, Plant and Materials

8 Liabilities and insurance

These are additional *Client's* liabilities: None

The minimum amount of cover for insurance against loss of or damage to property (except Plant and Materials and Equipment) and liability for bodily injury to or death of a person (not an employee of the *Contractor*) arising from or in connection with the *Contractor* Providing the *Service* in any one event is £10 Million.

The minimum amount of cover for insurance against death and of or bodily injury to employees of the *Contractor* arising out of and in the course of their employment in connection with the contract for any one event is £5 Million.

.The *Client* does not provide any insurances.

9 Termination

Resolving and avoiding disputes

The *tribunal* is Arbitration.

The *arbitration procedure* is the current version of the Construction Industry Model Arbitration Rules that is in use as at the Contract Date.

The place where the arbitration is to be held is Grimsby, North East Lincolnshire.

The person or organisation who will choose an arbitrator if the Parties cannot agree a choice or if the *arbitration procedure* does not state who selects an arbitrator is the Chartered Institute of Arbitrators.

The *Senior Representatives* of the *Client* are¹:

Name (1): Assistant Director Law and Governance

Address for communications: Municipal Offices, Town Hall Square, Grimsby, North East Lincolnshire, DN31 1HU

Address for electronic communications: [REDACTED]

Name (2): Solicitor

Address for communications: Municipal Offices, Town Hall Square, Grimsby, North East Lincolnshire, DN31 1HU

Address for electronic communications: [REDACTED]

The *Adjudicator* is to be nominated by the *Adjudicator nominating body*.

The *Adjudicator nominating body* is the Institution of Civil Engineers.

X1: Price adjustment for inflation

The proportions used to calculate the Price Adjustment Factor are:

0.9 linked to the index for Repair and Maintenance

0.1 non-adjustable

1.00

The *base date* for indices is December 2025.

The *inflation adjustment dates* are the twelfth calendar month anniversaries of the *starting date*.

These indices are UK Office for National Statistics (ONS) under the title "Construction Output Price Indices (COPI)" for the Repair and Maintenance sector. The latest inflation figure stated in the [UK Office \(ONS\)](#) is to be used for the Price Adjustment Factor for the annual adjustment.

X13: Performance Bond

The amount of the performance bond is 10% of the Contract Value.

X18: Limitation of liability

The *Contractor's* liability to the *Client* for indirect or consequential loss is limited to 125% of the Contract Value.

For any one event, the *Contractor's* liability to the *Client* for loss of or damage to the *Client's* property is limited to £ 10 Million

The *Contractor's* liability for Defects due to its design of an item of Equipment is limited to £ 5 Million

The *Contractor's* total liability to the *Client* for all matters arising under or in connection with the contract, other than excluding matters, is limited to £10 Million.

The *end of liability date* is 12 years after the end of the *Service Period*.

X20: Key Performance Indicator

The *incentive schedule* for the Key Performance Indicators is in Contract Schedule F Key Performance Indicators.

A report of performance against each Key Performance Indicator is provided at intervals of 6 months.

X23: Extending the Service Period

The *maximum service period* is 4 years after the *starting date*.

The *periods for extension* are:

| Order | <i>period for extension</i> (months) | <i>notice date</i> |
|--------|---|--------------------|
| Year 5 | 12 months | 3 months prior |
| Year 6 | 12 months | 3 months prior |
| Year 7 | 12 months | 3 months prior |
| Year 8 | 12 months | 3 months prior |

X24: The accounting periods

The *accounting periods* are 1st April to 31st March each year.

Y(UK)2: The Housing Grants, Construction and Regeneration Act 1996

The period is 13 weeks after the end of *Service Period*.

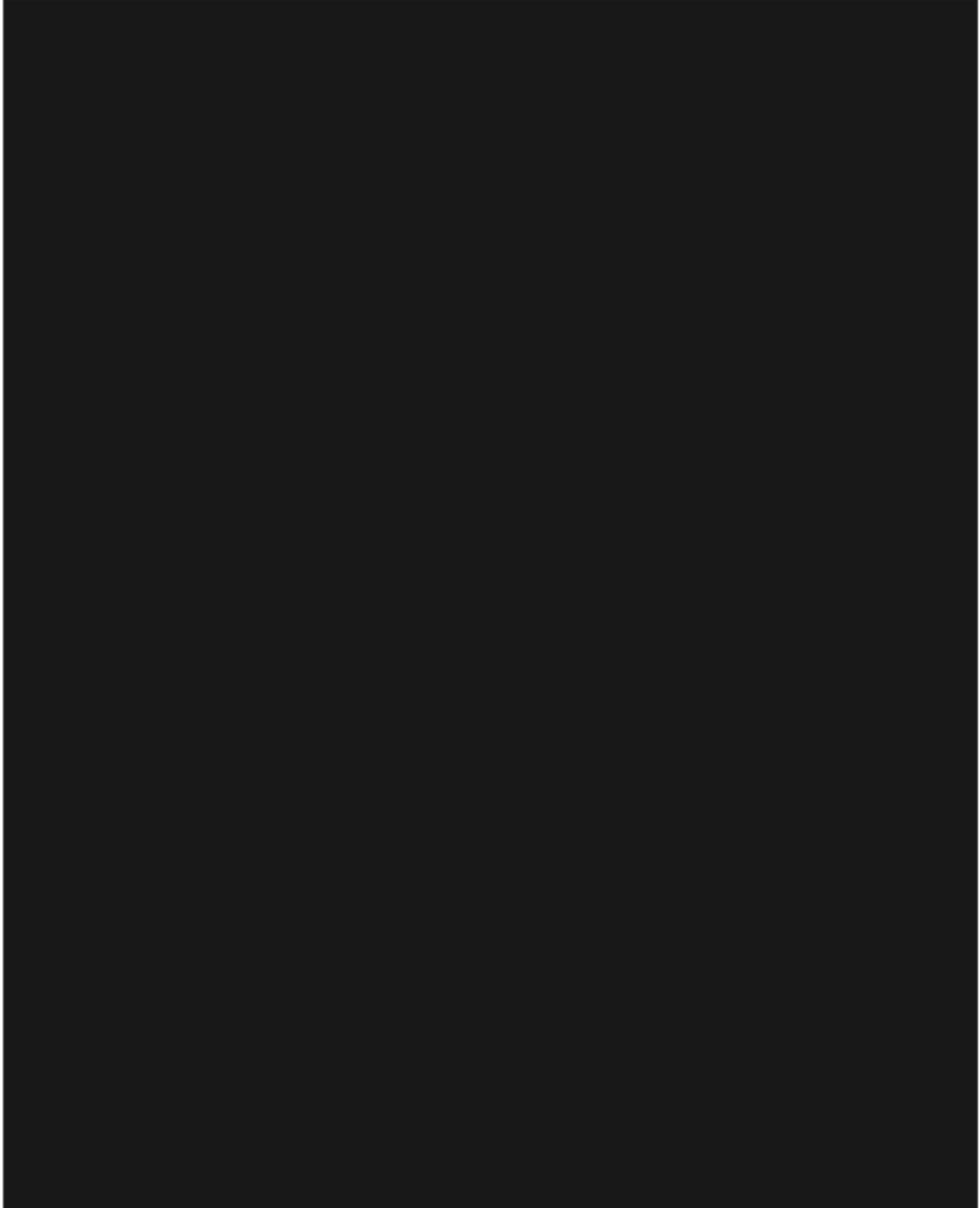
The period for payment is 30 days after the date on which the payment becomes due.

Z: Additional conditions of contract

The *additional conditions of contract* are contained in Contract Schedule C.

Contract Schedule B

CONTRACT DATA PART TWO – DATA PROVIDED BY THE *CONTRACTOR*



The following matters will be included in the Early Warning Register: To be developed during mobilisation

2 The Contractor's main responsibilities

The Scope provided by the Contractor for its plan is in the framework agreement Schedule 6. The Contractor warrants that its Scope complies in all respects with the requirements of the Client's Scope annexed at Contract Schedule D (Scope).

3 Time

The plan identified in the Contract Data is in Schedule D.

4 Quality Management

5 Payment

The Price List is in Schedule 6 Suppliers Tender located in the J MCCANN & CO LIMITED- Lot 1 and Lot 2 Framework Ageement.

The tendered total of the Prices is 



6 Compensation Events

7 Use of equipment, Plant and Materials

8 Liabilities and insurance

9 Termination

Resolving and avoiding disputes

The Senior Representatives of the Contractor are:

Name (1):

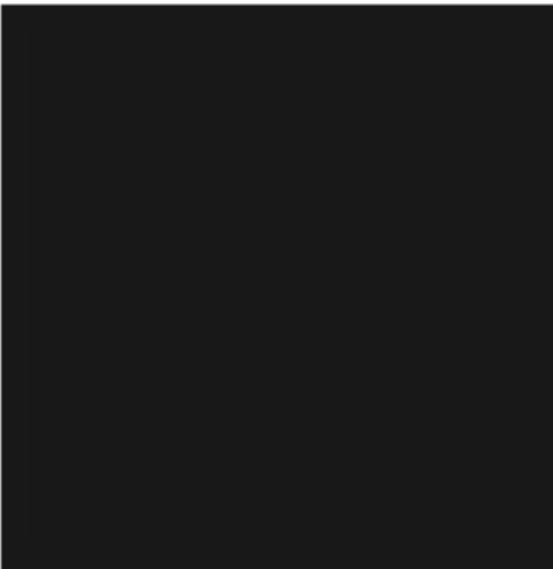
Address for communications:

Address for electronic communications:

Name (2):

Address for communications:

Address for electronic communications:



Contract Schedule C

Option Z: Additional conditions of contract

The following provisions supplement, modify or replace the published provisions of the NEC4 Term Service Contract June 2017 (“**NEC4 TSC**”)

| Option Z1 | | Amendments to Core Clauses Section 1: General |
|-----------------------|----------|--|
| Amend clause 11.2(4) | 11.2(4) | Within the definition of “Corrupt Act” insert an additional bullet below the existing two bullets as follows: <ul style="list-style-type: none"> • any offence under the Bribery Act 2010 |
| Amend clause 11.2(5) | 11.2(5) | Delete the wording in the first bullet and replace with: <p style="text-align: center;">a part of the <i>service</i> which is not in accordance with the Scope and/or the Contract or</p> |
| Amend clause 11.2(17) | 11.2(17) | Delete the definition of <i>Sub-Contractor</i> at clause 11.2(17) and replace with: <p style="text-align: center;">A <i>Sub-Contractor</i> is a person or organisation who has a contract with the <i>Contractor</i> (or with a <i>sub-Contractor</i> (of any tier) to the <i>Contractor</i>) to:</p> <ol style="list-style-type: none"> 1. provide a part of the <i>service</i>; or 2. supply Plant and Materials which the person or organisation has wholly or partly designed specifically for the <i>service</i>. |
| New Clause 11.2(29) | 11.2(30) | Inset a new clause 11.2(30) as follows: <p style="text-align: center;">11.2(30) Asset means a piece of plant or equipment within the Affected Property to be maintained and repaired as part of the <i>service</i>, and listed in the Contract Schedule E (Asset Register)</p> |
| New Clause 11.2(30) | 11.2(30) | Inset a new clause 11.2(30) as follows: <p style="text-align: center;">11.2(30) CDM Regulations means the Construction (Design and Management) Regulations 2015.</p> |
| New Clause 11.2(31) | 11.2(31) | Insert new clause 11.2(31) as follows: <p style="text-align: center;">11.2(31) <i>Client Data</i> is:</p> <ul style="list-style-type: none"> • the data, text, drawings, diagrams, images or sounds (together with any database made up of |

| | | |
|---------------------|----------|---|
| | | <p>any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which are:</p> <ul style="list-style-type: none"> • supplied to the <i>Contractor</i> by or on behalf of the <i>Client</i>; or • which the <i>Contractor</i> is required to generate, process, store or transmit pursuant to this Contract. |
| New Clause 11.2(32) | 11.2(32) | <p>Insert new clause 11.2(32) as follows:</p> <p>11.2(32) Confidential Information means any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information which would or would be likely to prejudice the commercial interests of any person, trade secrets, Intellectual Property Rights, know-how of either Party save for any information:</p> <ol style="list-style-type: none"> (1) which was public knowledge at the time of disclosure; (2) which was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party; (3) which is received from a third party (who lawfully acquired it) without restriction as to its disclosure; or (4) is independently developed without access to the Confidential Information. |
| New clause 11.2(33) | 11.2(33) | <p>Insert new clause 11.2(33) as follows:</p> <p>11.2(33) Contract Records will mean all records, agreements, specifications, drawings, manufacturing data, information, documents and Control Copies that are produced in connection with the <i>service</i>.</p> |
| New clause 11.2(34) | 11.2(34) | <p>Insert new clause 11.2(34) as follows:</p> <p>11.2(34) Control has the meaning set out in clause 19A.</p> |

| | | |
|------------------------|----------|--|
| New clause 11.2(35) | 11.2(35) | Insert new clause 11.2(35) as follows: 11.2(35) Control Copy means a copy of all deliverable technical data relating to Plant and Materials to be maintained in accordance with clause 29C. |
| New clause 11.2(36) | 11.2(36) | Insert new clause 11.2(36) as follows: 11.2(36) Demobilisation Period is the period of the last three calendar months of the <i>Service Period</i> during which the <i>Client</i> may specify demobilisation activities to be undertaken by the <i>Contractor</i> as specified in the Scope. |
| New clause 11.2(37) | 11.2(37) | Insert new clause 11.2(37) as follows: 11.2(37) Data Protection Legislation means the Data Protection Act 2018 as amended or re-enacted; 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. |
| New clause 11.2(38) | 11.2(38) | Insert new clause 11.2(38) as follows: 11.2(38) EIRs means the Environmental Information Regulations 2004 (SI 2004/3391) together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations. |
| New clause 11.2(39) | 11.2(39) | Insert new clause 11.2(39) as follows: 11.2(39) FOIA means the Freedom of Information Act 2000, and any subordinate legislation made under the Act from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation. |
| New clause 11.2(40) | 11.2(40) | Insert new clause 11.2(40) as follows: 11.2(40) Information has the meaning given under section 84 of FOIA. |
| New clause 11.2(41) | 11.2(41) | Insert new clause 11.2(41) as follows: 11.2(41) Personal Data shall have the same meaning as set out in the Data Protection Legislation. |

| | | |
|--------------------------------|-----------------|---|
| <p>New clause 11.2(42)</p> | <p>11.2(42)</p> | <p>Insert new clause 11.2(42) as follows:</p> <p>11.2(42) Requests for Information means a request for information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the EIRs.</p> |
| <p>New clause 11.2(43)</p> | <p>11.2(43)</p> | <p>Insert new clause 11.2(43) as follows:</p> <p>11.2(43) Anti-slavery Policy means the <i>Client's</i> anti-slavery policy, as amended by notification to the <i>Contractor</i> from time to time.</p> |
| <p>New clause 11.2(44)</p> | <p>11.2(44)</p> | <p>Insert new clause 11.2(44) as follows:</p> <p>11.2(44) Prevent Duty means the duty under the Counter Terrorism and Security Act 2015 to have due regard to the need to prevent people from being drawn into terrorism;</p> |
| <p>New clause 11.2(45)</p> | <p>11.2(45)</p> | <p>Insert new clause 11.2(43) as follows:</p> <p>11.2(45) Guarantor means the ultimate holding company of the <i>Contractor</i> who is required provide an ultimate holding company guarantee in accordance with Option X4.</p> |
| <p>New clause 11.2(46)</p> | <p>11.2(46)</p> | <p>Insert new clause 11.2(46) as follows:</p> <p>11.2(46) Intellectual Property Rights (“IPRs”) means patents, inventions, design rights (whether registrable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registrable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off.</p> |
| <p>New clause 11.2(47)</p> | <p>11.2(47)</p> | <p>Insert new clause 11.2(47) as follows:</p> <p>11.2(47) IP Materials means any guidance, specifications, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models, designs or other material except for Records.</p> |

| | | |
|--------------------------------|-----------------|--|
| <p>New clause 11.2(48)</p> | <p>11.2(48)</p> | <p>Insert new clause 11.2(48) as follows:</p> <p>11.2(48) Material Change of Control has the meaning given in clause 19A.</p> |
| <p>New clause 11.2(49)</p> | <p>11.2(49)</p> | <p>Insert new clause 11.2(49) as follows:</p> <p>11.2(49) Mobilisation Period means the first three calendar months of the <i>Service Period</i> commencing from the <i>starting date</i> during which the <i>Contractor</i> undertakes the mobilisation activities detailed in the <i>Scope</i>.</p> |
| <p>New clause 11.2(50)</p> | <p>11.2(50)</p> | <p>Insert new clause 11.2(50) as follows:</p> <p>11.2(50) Personnel means all employees, agents, <i>Contractors</i> and sub-<i>Contractors</i> (including Sub-<i>Contractors</i> in the case of the <i>Contractor</i>) of either Party as the case may be.</p> |
| <p>New clause 11.2(51)</p> | <p>11.2(51)</p> | <p>Insert new clause 11.2(51) as follows:</p> <p>11.2(51) Records means any guidance, specifications, instructions, toolkits, plans, data, drawings, databases, patents, patterns, models, designs or other material created by the <i>Contractor</i> in order to comply with statutory requirements or s applicable to the <i>service</i> or to provide to the <i>Client</i> as a record of activities undertaken in order to comply with the <i>Scope</i>.</p> |
| <p>New clause 11.2(52)</p> | <p>11.2(52)</p> | <p>Insert a new clause 11.2(52) as follows:</p> <p>11.2(52) Specific Change in Law means any change in law which specifically refers to the provision of <i>services</i> the same as or similar to the <i>service</i> or to the holding of shares in the companies whose main business is providing <i>services</i> the same as or similar to the <i>service</i>.</p> |
| <p>New clause 11.2(53)</p> | <p>11.2(53)</p> | <p>Insert a new clause 11.2(53) as follows:</p> <p>11.2(53) <i>Client Data</i> is:</p> <p>the data, text, drawings, diagrams, images or sounds (together with any database made up of any of these) which are embodied in any electronic, magnetic, optical or tangible media, and which are:</p> |

| | | |
|------------------------|----------|--|
| | | <ul style="list-style-type: none"> • supplied to the <i>Contractor</i> by or on behalf of the <i>Client</i>; or • which the <i>Contractor</i> is required to generate, process, store or transmit pursuant to this Contract. |
| New clause 11.2(54) | 11.2(54) | <p>Insert a new clause 11.2(54) as follows:</p> <p>11.2(53) Qualifications are any qualification the <i>Client</i> requires the <i>Contractor</i> to hold or maintain as specified in the Scope.</p> |
| New clause 12.5 | 12.5 | <p>Insert a new clause 12.5 as follows:</p> <p>12.5 References to any statutes or statutory provisions will be construed as references to the same as they may be amended from time to time amended, modified or re-enacted.</p> |
| New clause 12.6 | 12.6 | <p>Inset a new clause 12.6 as follows:</p> <p>12.6 Any works undertaken by the <i>Contractor</i> prior to the date of this Contract will be deemed to have been undertaken pursuant to the terms of this Contract.</p> |
| Amend clause 13.2 | 13.2 | <p>Delete the second paragraph of clause 13.2 and replace with:</p> <p>If the Scope does not specify a communication system, a communication shall be sufficiently given or made if it is:</p> <ol style="list-style-type: none"> (1) delivered by hand to the last address notified by the recipient for receiving communications or, if none is notified, the address of the recipient stated in the Contract Data and the communication has effect from the time of actual delivery; (2) sent by post in a prepaid letter addressed to the recipient by name at the last address notified by the recipient for receiving communications or, if none is notified, the address of the recipient stated in the Contract Data and if that letter is not returned through the post undelivered, that communication will be deemed for the purposes of this Contract to have been given or made at the time at which the letter would in the ordinary course of post be delivered; (3) sent by email to the recipient at the email address listed in the Contract Data or, if none listed, the email address provided by the recipient or made |

| | | |
|-------------------|------|---|
| | | <p>available via the website for the organisation at which the recipient works. Such emails shall be deemed to be received, as follows:</p> <ul style="list-style-type: none"> a. if sent before 4pm, on the day of sending; b. if sent after 4pm, on the next business day after sending; c. provided always that if the sender receives an out of office reply from the recipient or any other notice indicating that the recipient will not receive the email on the day of sending, the sender shall forward the email to the Senior Representative of the other Party within one hour of receiving the out office reply and, if so, it is deemed to have been received in accordance with this clause. If the email is not so forwarded within one hour, the communication shall not be deemed to be received until the email is forwarded to the Senior Representative and deemed receipt by the Senior Representative is determined by this clause. |
| Amend clause 15.4 | 15.4 | <p>At the end of clause 15.4 add the following:</p> <p>No decision taken at an early warning meeting and/or change to the Early Warning Register will operate to change the contractual allocation of risk hereunder or the obligations of the <i>Client</i> or the <i>Service Manager</i>, unless specifically instructed otherwise in writing by the <i>Service Manager</i>.</p> |
| Amend clause 17.1 | 17.1 | <p>Within clause 17.1:</p> <p>At the end of the first sentence insert:</p> <p>or any mistake, inaccuracy, discrepancy or omission in the design of the <i>service</i> or in the Scope.</p> <p>In the second sentence, after “ambiguity or inconsistency” insert:</p> <p>or the mistake, inaccuracy, discrepancy or omission</p> |
| New clause 17.3 | 17.3 | <p>Insert a new clause 17.3 as follows:</p> <p>17.3 Compliance by the <i>Contractor</i> with an instruction given by the <i>Service Manager</i> pursuant to clause 17.1 or 17.2 shall not constitute a compensation event.</p> |

| | | |
|--|--------------|--|
| <p>New clause 19.9</p> | <p>19.9</p> | <p>Insert a new clause 19.9 as follows:</p> <p>19.9 The <i>Contractor</i> complies and ensures that its <i>SubContractors</i> comply with the requirements of the CDM Regulations, as applicable to any Task Order. The <i>Contractor</i> notifies the Health and Safety Executive as required under the CDM Regulations. The <i>Contractor</i> informs the <i>Client</i> of any notification it is required to make under the CDM Regulations at least one week before the <i>Client</i> is required to make any such notification.</p> |
| <p>New clause 19.10</p> | <p>19.10</p> | <p>Insert a new clause 19.10 as follows:</p> <p>19.10 In relation to any Task Order where Task Completion occurs less than twelve months before end of the <i>Service Period</i>, the period within which the <i>Service Manager</i> and the <i>Contractor</i> notifies the other of Defects (pursuant to clause 43.1) in respect of the works under the Task Order, shall be twelve months from Task Completion and the other provisions of clauses 43 and 44 shall apply accordingly.</p> |
| <p>New clause 19A</p> <p>Change of Control</p> | <p>19A</p> | <p>Insert a new clause 19A as follows:</p> <p>19A.1 The <i>Contractor</i> will inform the <i>Client</i>, as soon as practicable, in writing of any Material Change of Control of the <i>Contractor</i> and/or the Guarantor. The <i>Contractor</i> will not be required to submit any advice which is unlawful or is in breach of either any pre-existing non-disclosure agreement or any regulations governing the conduct of the <i>Contractor</i> and/or the Guarantor in the UK or other jurisdictions where the <i>Contractor</i> and/or the Guarantor may be subject to legal sanction arising from issue of such advice.</p> <p>19A.2 For the purposes of this clause 'Control' means the power of a person to secure that the affairs of the <i>Contractor</i> and/or the Guarantor are conducted in accordance with the wishes of that person:</p> <p>(1) by means of the holding of shares, or the possession of voting powers in, or in relation to, the <i>Contractor</i> and/or the Guarantor; or</p> <p>(2) by virtue of any powers conferred by the constitutional or corporate documents, or any other document, regulating the <i>Contractor</i> and/or the Guarantor</p> <p>and a Material Change of Control occurs if a person who controls the <i>Contractor</i> or Guarantor ceases to do</p> |

| | | |
|---|------------|---|
| | | <p>so or if another person acquires control of the <i>Contractor</i> and/or any Guarantor.</p> <p>19A.3 The <i>Contractor</i> will inform the <i>Client</i> on each occurrence of a Material Change of Control. Each advice will be taken to be in respect of all contracts with the <i>Client</i>. The advice is submitted to the <i>Service Manager</i></p> <p>19A.4 Where the <i>Contractor</i> is in breach of the provisions of this clause 19A, the <i>Client</i> may terminate the <i>Contractor's</i> employment under clause 90 of this Contract at any time during the <i>Service Period</i>.</p> <p>19A.5 Advice by the <i>Contractor</i> of any Material Change of Control will not prejudice the existing rights of the <i>Client</i> or the <i>Contractor</i> under the Contract nor create or imply any rights of either the <i>Contractor</i> or the <i>Client</i> additional to the <i>Client's</i> right to receive that information.</p> |
| <p>New clause 19B Waiver</p> | <p>19B</p> | <p>Insert a new clause 19B as follows:</p> <p>19B.1 No act or omission of either Party will by itself amount to a waiver of any right or remedy unless expressly stated by that Party in writing. In particular, no reasonable delay in exercising any right or remedy will by itself constitute a waiver of that right or remedy.</p> <p>19B.2 No waiver in respect of any right of remedy will operate as a waiver in respect of any other right or remedy.</p> |
| <p>New clause 19C Severability</p> | <p>19C</p> | <p>Insert a new clause 19C as follows:</p> <p>19C.1 If any provision of this Contract is held to be invalid, illegal or unenforceable to any extent then:</p> <p>(1) such provision will (to the extent it is invalid, illegal or unenforceable) be given no effect and will be deemed not to be included in the Contract but without invalidating any of the remaining provisions of the Contract; and</p> <p>(2) the Parties will use all reasonable endeavours to replace the invalid, illegal or unenforceable provision by a valid, legal and enforceable substitute provision the effect of which is as close as possible to the intended effect of the invalid, illegal or unenforceable provision.</p> |

| | | |
|---|------------|--|
| <p>New clause 19D</p> <p>Third Party Rights</p> | <p>19D</p> | <p>Insert a new clause 19D as follows:</p> <p>19D.1 Notwithstanding anything to the contrary elsewhere in the Contract, no right is granted to any person who is not a party to the Contract to enforce any term of the Contract in his own right and the Parties to the Contract declare that they have no intention to grant any such right.</p> |
| <p>New clause 19E</p> <p>Recovery of Sums Due</p> | <p>19E</p> | <p>Insert a new clause 19E as follows:</p> <p>19E.1 Whenever under the Contract any sum of money will be recoverable from or payable by the <i>Contractor</i>, the same may be deducted from any sum then due or which at any time thereafter may become due to the <i>Contractor</i> under the Contract, or under any other contract with the <i>Client</i> or with any government department and/or such sum may be recoverable by the <i>Client</i> from the <i>Contractor</i> as a debt.</p> |
| <p>New clause 19F</p> <p>Publicity</p> | <p>19F</p> | <p>Insert a new clause 19F as follows:</p> <p>19F.1 The <i>Contractor</i> does not publicise any information about the <i>service</i> (including the fact of its engagement to Provide the <i>Service</i>) without the <i>Client's</i> written agreement.</p> <p>19F.2 The <i>Contractor</i> ensures that the <i>Contractor's</i> Personnel do not publicise details of the <i>service</i> without the <i>Client's</i> written agreement.</p> |
| <p>New clause 19G</p> <p>Audit</p> | <p>19G</p> | <p>Insert a new clause 19G as follows:</p> <p>19G.1 In addition to any other rights under the Contract, the <i>Client</i> and its agents may at any time and without notice audit the books and records being maintained by the <i>Contractor</i> during the <i>Service</i> Period and up to one year after expiry of the <i>Service</i> Period, including those books and records relating to any costs and expenses incurred by the <i>Contractor</i> or charged to the <i>Client</i> and including those books and records being maintained by the <i>Contractor's</i> Sub-Contractors.</p> |
| <p>New clause 19H</p> <p>Timescales</p> | <p>19H</p> | <p>Insert a new clause 19J as follows:</p> <p>19J.1 If the Contract and/or the Scope does not provide for a specific timescale for any action or communication, the</p> |

| | | |
|--|------|--|
| | | Parties act within such timescales as are reasonable in all the circumstances. |
| New clause 19I Amendments to Contract | 19I | <p>Insert a new clause 19I as follows:</p> <p>19I.1 The terms and conditions of this Contract may not be amended except by the written agreement of the duly authorised representatives of the Parties.</p> <p>19I.2 Any purported amendment to the terms and conditions of this Contract which does not satisfy the terms of this Condition will be of no effect.</p> <p>19I.3 If the Scope is reduced (for whatever reason, including but not limited to at the <i>Client's</i> discretion) the <i>Client</i> shall be free to appoint another <i>Contractor</i> to carry out any part of the <i>service</i> that has been so removed and the <i>Contractor</i> shall not be entitled to claim any loss arising from the same.</p> |
| Option Z2 | | Amendments to Core Clauses Section 2: The <i>Contractor's</i> main responsibilities |
| New clause 20.3 | 20.3 | <p>Insert new clause 20.3 as follows:</p> <p>20.3 The <i>Contractor</i> warrants that he has the experience and resources To provide the <i>Service</i> and has experience of, and has provided <i>services</i> of a similar in size, scope, duration and complexity as the <i>service</i>.</p> |
| New clause 20.4 | 20.4 | <p>Insert new clause 20.4 as follows:</p> <p>20.4 The <i>Contractor</i> ensures that it understands the complexity of the <i>service</i> and the applicable requirements for the performance of the <i>service</i>, including but not limited to statutory requirements (both UK and European) requirements, requirements applicable to the <i>Client</i> as a pharmaceutical manufacturer and distributor and the <i>Client's</i> own standards and requirements. The <i>Contractor</i> complies with all such requirements.</p> |
| New clause 20.5 | 20.5 | <p>Insert new clause 20.5 as follows:</p> <p>20.5 The <i>Contractor</i> is deemed to have fully acquainted himself with the Affected Property and to have obtained all the same information as to risks, contingencies and all other circumstances which may influence or affect the <i>service</i> (including but not limited to means of access to the Affected Property) and no failure on the part of the <i>Contractor</i> to discover or foresee any such</p> |

| | | |
|-----------------|------|--|
| | | condition, risk, contingency or circumstances (whether the same ought reasonably to have been discovered or foreseen or not) will entitle the <i>Contractor</i> to an addition to the Prices or to claim indemnities or to claim any entitlement to a compensation event or otherwise to claim any additional sum. |
| New clause 20.6 | 20.6 | <p>Insert new clause 20.6 as follows:</p> <p>20.6 Unless another provision of the Contract expressly provides otherwise, the <i>Contractor</i> is not entitled to rely upon any survey, report or other document prepared by or on behalf of the <i>Client</i>, which it provides to the <i>Contractor</i> in relation to the <i>service</i>. The <i>Client</i> makes no representation or warranty as to the accuracy or completeness of any such survey, report or document or any representation or statement whether negligently or otherwise made therein.</p> |
| New clause 20.7 | 20.7 | <p>Insert new clause 20.7 as follows:</p> <p>20.7 Without prejudice to any obligation of the <i>Contractor</i>, the <i>Contractor</i> warrants and undertakes that:</p> <ul style="list-style-type: none"> • the <i>service</i> has been or will be carried out and completed in a good and workmanlike manner and using only good quality and sound materials of satisfactory quality and consistent with the intended use of the Affected Property; • the <i>service</i> comprises or will comprise only materials and goods which are new and of good and satisfactory quality and all workmanship, manufacture or fabrication will be to the standards necessary for completion of the <i>service</i> in accordance with this Contract; • the <i>service</i> will comply with all appropriate requirements of any public authority and any relevant statutory and industry requirements, including but not limited to those referred to in the Scope; • in respect of any design or other professional <i>services</i> undertaken to Perform the <i>Service</i>, the <i>Contractor</i> has exercised and shall continue to exercise all the reasonable skill and care of an architect, mechanical & electrical engineer or other designer or professional of the relevant discipline experienced in providing <i>services</i> of a similar size, scope, complexity and nature to the <i>service</i>. |

| | | |
|------------------------------|-------------|---|
| <p>New clause 21.4</p> | <p>21.4</p> | <p>Insert new clause 21.4 as follows:</p> <p>21.4 The <i>Contractor</i> responds to any comments made or questions raised by the <i>Service Manager</i> in relation to any design particulars submitted by the <i>Contractor</i> within the <i>period for reply</i>.</p> |
| <p>New clause 22.3</p> | <p>22.3</p> | <p>Insert new clause 22.3 as follows:</p> <p>22.3 The <i>Contractor</i> provides details of the name, relevant qualifications and experience of its Personnel and SubContractors' staff engaged in order to Provide the <i>Service</i> on or before the <i>starting date</i> and provides such details of any new Personnel or SubContractor staff so engaged after the <i>starting date</i> prior to them starting work in relation to Providing the <i>Service</i>. The <i>Client</i> and/or the <i>Service Manager</i> may instruct the <i>Contractor</i> to remove any such person who fails to meet the <i>Client's</i> requirements (as stated in the Scope) and upon such instruction, the <i>Contractor</i> arranges that the person is removed within one day and has no further connection with the work to Provide the <i>Service</i>.</p> |
| <p>Amend clause 24.3</p> | <p>24.3</p> | <p>At the end of clause 24.3 insert a new bullet as follows:</p> <ul style="list-style-type: none"> • they do not operate so as to allow the <i>Client</i> step-in rights as set out below |
| <p>New clause 24.4</p> | <p>24.4</p> | <p>Insert a new clause 24.4 as follows:</p> <p>24.4(1) The <i>Contractor</i> ensures that its subcontracts with any Sub-Contractors are 'back to back' with the Contract and to the extent that they are applicable that the <i>conditions of contract</i> are included in any subcontracts placed for any part of the <i>service</i>. The <i>Contractor</i> ensures that any such subcontract incorporates the requirements of the Scope insofar as it relates to the <i>services</i> to be provided under the Sub-Contract. The <i>Contractor</i> does not place subcontracts with any party unless that party agrees to assume the same obligations, insofar as relevant to the <i>services</i> to be performed under the subcontract, corresponding to those imposed on the <i>Contractor</i> in the Contract.</p> <p>24.4(2) In relation to any subletting of any portion of the <i>service</i>, the <i>Contractor</i>:</p> <ul style="list-style-type: none"> • procures that the relevant subcontract is, in all respects, compatible with the terms of this Contract and that all applicable obligations are contained |

| | | |
|----------------------------|-------------|---|
| | | <p>within the terms and conditions of the relevant subcontract;</p> <ul style="list-style-type: none"> • procures that all relevant subcontracts are executed and delivered as deeds; • provides certified copies of the subcontracts to the <i>Client</i> within two months of the <i>Sub-Contractor</i> starting works in relation to the <i>service</i>. <p>24.4(3) The <i>Contractor</i> procures that the conditions of the subcontracts prohibit the <i>Sub-Contractors</i> from sub-letting the whole or any part of the <i>services</i> under the subcontract without prior permission from the <i>Client</i>.</p> <p>24.4(4) The <i>Contractor</i> procures that the payment terms of its subcontracts are no more onerous upon its <i>Sub-Contractors</i> than the payment terms under this Contract are to the <i>Contractor</i> including (but not limited to) with regard to:</p> <ul style="list-style-type: none"> • payment periods (i.e. between the due date and final date for payment); • frequency of interim payments; • requirements with regard to the details and provision of payment applications and/or invoices; • the value/percentage of any retention; • period within which any pay less notices are required; • remedies for non-payment. |
| <p>New clause 24.5</p> | <p>24.5</p> | <p>Insert a new clause 24.5 as follows:</p> <p>24.5 The <i>Contractor</i>:</p> <p>24.5(1) procures (by way of inclusion of relevant provisions in the collateral warranties to be given to the <i>Client</i> by the <i>Sub-Contractors</i>) that in the event of determination of this Contract then its <i>Sub-Contractors</i> will, if so required by notice in writing given by the <i>Client</i>, accept the instructions of the <i>Client</i> or his appointee to the exclusion of the <i>Contractor</i> in respect of the <i>service</i> upon the terms and conditions of the relevant subcontracts. The <i>Contractor</i> acknowledges that the <i>Sub-Contractors</i> will be entitled to rely on a notice from the <i>Client</i> as conclusive evidence for the purposes of the relevant sub-contract/warranty of this Contract of the determination of the <i>Contractor's</i> employment</p> |

| | |
|--|---|
| | <p>under this Contract – and further acknowledges that such acceptance of the instructions of the <i>Client</i> to the exclusion of the <i>Contractor</i> will not constitute any breach of a <i>Sub-Contractor's</i> obligations to the <i>Contractor</i> under its subcontract.</p> <p>24.5(2) ensures that it is a term of his subcontracts that his <i>Sub-Contractors</i> do not exercise any right of determination of their employment under the subcontracts without having first:</p> <ul style="list-style-type: none"> • copied to the <i>Client</i> any written notices required to be sent prior to there being an entitlement to give notice that such employment is to be determined; and • given to the <i>Client</i> two weeks' prior written notice that it has the right under its subcontract to determine its employment thereunder; <p>24.5(3) ensures that it is a term of its subcontracts that the <i>Client</i> may, not later than the expiry of the two week notice period, require the <i>Sub-Contractor</i> by notice in writing to accept the instructions of the <i>Client</i> or his appointee to the exclusion of the <i>Contractor</i> in respect of the <i>service</i> on the terms and conditions of the subcontract.</p> <p>24.5(4) Provided always that, within the collateral warranties to be given by the <i>Sub-Contractor</i> to the <i>Client</i>, it will be a condition of any notice to step in given by the <i>Client</i> as provided for in these Step In Requirements that the <i>Client</i> or its appointee accepts liability for payment of the sums certified as due/properly due to the <i>Sub-Contractor</i> under the subcontract and for the performance of the <i>Contractor's</i> obligations thereunder, including for the avoidance of doubt, payment for any sums outstanding at the date of such notice. The <i>Contractor</i> will ensure that the subcontracts provide that upon the issue of any step-in notice by the <i>Client</i>, the subcontracts will continue in full force and effect as if they had been made between the <i>Client</i> and the <i>Sub-Contractor</i> ab initio and no right of determination had arisen and that where the <i>Client</i> steps in to the subcontracts, the <i>Sub-Contractors</i> will be liable to the <i>Client</i> in lieu of the <i>Contractor</i>.</p> <p>24.5(4) The <i>Contractor</i> informs the <i>Client</i> within five working days of any <i>Sub-Contractor</i> who ceases to be engaged in relation to the <i>service</i> for any reason and of any other change or variation to the existing subcontracts.</p> |
|--|---|

| | | |
|----------------------|------|---|
| New clause 24.6 | 24.6 | <p>Insert a new clause 24.6 as follows:</p> <p>24.6 The <i>Contractor</i> procures collateral warranties from each <i>Sub-Contractor</i> in the form attached at Schedule 2</p> |
| Amend clause 25.4 | 25.4 | <p>At the end of clause 25.4 insert the following:</p> <p>The <i>Contractor</i> indemnifies and keeps the <i>Client</i> indemnified from and against any direct claims, actions, liabilities, losses, costs, expenses and damages arising as a result of the <i>Contractor's</i> negligence in complying with its obligations under this clause 25.4 and clause 29D.</p> |
| New clause 25.5 | 25.5 | <p>Insert new clause 25.5 as follows:</p> <p>25.5 The <i>Contractor</i> indemnifies the <i>Client</i> from and against any and all expenses, liabilities, losses, claims and proceedings resulting from any failure or default by the <i>Contractor</i> to prevent nuisance or other interference with the rights of any adjoining landowner, tenant or occupier or any statutory undertaker and/or from trespass by the <i>Contractor</i> or its Personnel on or over any adjoining or neighbouring property arising out of, or in the course of, or caused by Providing the <i>Service</i>.</p> |
| Amend clause 26 | 26 | <p>Delete clause 26.1 and replace with the following:</p> <p>26.1 The <i>Contractor</i> does not give, bargain, sell, assign, or otherwise dispose of the Contract or any part thereof, or the benefit or advantage of the Contract or any part thereof, without the previous consent in writing of the <i>Client</i>. The <i>Client</i> may assign the benefit of the whole or any part of the Contract at any time without the prior consent of the <i>Contractor</i>.</p> |
| Amend clause 27 | 27 | <p>At the end of clause 27 (after clause 27.2) insert the following sub-clauses:</p> <p>27.3 Subject to clauses 27.6, 27.7 and 27.8:</p> <p>(1) each Party treats in confidence all information it receives from the other;</p> <p>(2) each Party does not disclose any information received from the other to any third party without the prior written consent of the other Party, which consent will not unreasonably be withheld, except that the <i>Contractor</i> may disclose information in confidence, without prior consent, to such persons</p> |

| | | |
|--|--|---|
| | | <p>and to such extent as may be necessary to Provide the <i>Service</i> or to comply with the Contract;</p> <p>(3) each Party does not use any of information received from the other otherwise than to Provide the <i>Service</i> or to comply with the Contract; and</p> <p>(4) each Party does not copy any information received from the other except to the extent necessary to Provide the <i>Service</i> or for the purpose of exercising its rights of use and disclosure under this Contract.</p> <p>27.4 The <i>Contractor</i> hereby gives irrevocable consent for the <i>Client</i> to disclose any information it receives from the <i>Contractor</i> (including Confidential Information) and the details of this Contract to any party appointed as <i>Service Manager</i> in respect of this Contract so far as necessary for the purpose of enabling the <i>Service Manager</i> to carry out the activities and tasks to be undertaken by the <i>Service Manager</i> under this Contract.</p> <p>27.5 The <i>Contractor</i> hereby agrees upon receipt of notice from the <i>Client</i> to disclose any information (including Confidential Information) which the <i>Contractor</i> is required to disclose to the <i>Client</i> under the terms of this Contract to any party appointed as <i>Service Manager</i> in respect of this Contract so far as necessary for the purpose of enabling the <i>Service Manager</i> to carry out the activities and tasks to be undertaken by the <i>Service Manager</i> under this Contract.</p> <p>27.6 The <i>Contractor</i> ensures that all information disclosed to the <i>Contractor</i> by or on behalf of the <i>Client</i> under or in connection with this Contract:</p> <p>(1) is disclosed to Personnel only to the extent necessary to Provide the <i>Service</i> and to comply with this Contract; and</p> <p>(2) is treated in confidence by them and not disclosed except with prior written consent or used otherwise than for the purpose of performing the <i>service</i> or having work performed for the <i>Client</i> under this Contract or any sub-contract under it.</p> <p>27.7 The <i>Contractor</i> ensures that its Personnel are aware of the confidentiality obligations under this clause before they receive of the <i>Client's</i> information and enforces such confidentiality obligations and arrangements against its Personnel to ensure that the <i>Client's</i> information remains confidential to the extent required under this clause..</p> |
|--|--|---|

| | |
|--|---|
| | <p>27.6 The obligations to maintain confidentiality of the other Party's information does not apply to any information to the extent that either Party:</p> <ul style="list-style-type: none"> (1) exercises rights of use or disclosure granted otherwise than in consequence of, or under, this Contract; (2) has the right to use or disclose the information in accordance with other conditions of the Contract; or (3) can show: <ul style="list-style-type: none"> a. that the information was or has become published or publicly available for use otherwise than in breach of any provision of this Contract or any other agreement between the Parties; b. that the information was already known to it (without restrictions on disclosure or use) prior to it receiving it under or in connection with this Contract; c. that the information was received without restriction on further disclosure from a third party who lawfully acquired it and who is himself under no obligation restricting its disclosure; or d. from its records that the same information was derived independently of that received under or in connection with this Contract; <p>provided the relationship to any other information is not revealed.</p> <p>27.7 If a Party can show that any disclosure of the other Party's information was made solely and to the extent necessary to comply with a statutory, judicial or parliamentary obligation or the rules of any 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 governmental or regulatory authority concerned, then that Party making the disclosure is not in breach of the confidentiality obligations under this clause. Where such a disclosure is made, the Party making the disclosure ensures that the recipient of the information is made aware of and asked to respect the confidentiality of the information and the confidentiality obligations under this clause. Such disclosure in no way diminishes the confidentiality obligations of the Parties under this clause.</p> |
|--|---|

| | |
|--|---|
| | <p>27.8 If any disclosure of information by the <i>Client</i> is made solely and to the extent necessary to comply with the FOIA or the Environmental Information Regulations, the <i>Client</i> is not in breach of the confidentiality obligations under this clause or otherwise in breach of this Contract. To the extent permitted by the time for compliance under the FOIA or the Environmental Information Regulations, the <i>Client</i> consults the <i>Contractor</i> where the <i>Client</i> is considering the disclosure of Information under the FOIA or the Environmental Information Regulations and, in any event, provides prior notification to the <i>Contractor</i> of any decision to disclose the information. The <i>Client</i> acknowledges and accepts that its representations on disclosure during consultation may not be determinative and that the decision whether to disclose Information in order to comply with the FOIA or the Environmental Information Regulations is a matter in which the <i>Client</i> exercises its own discretion, subject always to the provisions of the FOIA or the Environmental Information Regulations.</p> <p>27.9 Nothing in this clause affects the Parties' obligations of confidentiality where information is disclosed orally in confidence.</p> <p>27.10 The <i>Contractor</i> takes every precaution to ensure that information about the Contract, or arising from or connected with this Contract, is divulged only to the minimum number of employees and then only to the extent essential to each person's action in carrying out this Contract. No information regarding the <i>service</i> or facilities to photograph or film will be given or permitted by the <i>Contractor</i> except with prior written permission of the <i>Client</i>.</p> <p>27.11 The <i>Contractor</i> does not communicate with representatives of the general and technical press, radio, television or other communications media unless specifically granted permission to do so in writing by the <i>Client</i>.</p> <p>27.12 The <i>Contractor</i> fully indemnifies the <i>Client</i>, his servants and agents against all or any claims, proceedings, costs or expenses, losses to which the <i>Client</i> may be or become liable at the suit of any third party, or may itself incur, arising out of or in connection with the <i>Contractor</i>, any <i>Sub-Contractor</i>, or any <i>Contractor's</i> Personnel, either directly or indirectly discloses or copies to a third party or makes improper use of, or allows a third party unauthorised access to, or otherwise causes loss,</p> |
|--|---|

| | | |
|--|----|---|
| | | damage or destruction of all or any Confidential Information of the <i>Client</i> or Others. |
| New clause 28 Anti-Discrimination | 28 | <p>Insert a new clause 28 as follows:</p> <p>28.1 The <i>Contractor</i> does not unlawfully discriminate within the meaning and scope of the provisions of the Equality Act 2010.</p> <p>28.2 The <i>Contractor</i> ensures the observance of the provisions of the clause 28.1 by all of the <i>Contractor's</i> Personnel and all other persons under his control employed in the execution of the Contract.</p> <p>28.3 The <i>Contractor</i> notifies the <i>Client</i> forthwith, of any prosecution or proceedings, brought under the Equality Act 2010, against the <i>Contractor</i>, his Personnel and all other persons under his control employed in the execution of the Contract.</p> <p>28.4 Notification by the <i>Contractor</i> of such information will not prejudice any rights of the <i>Client</i> or the <i>Contractor</i> under the Contract.</p> |
| New clause 29 Conflicts of Interest | 29 | <p>Insert a new clause 29 as follows:</p> <p>29.1 The <i>Contractor</i> ensures that neither the <i>Contractor</i> nor any of the <i>Contractor's</i> Personnel is placed in a position where:</p> <ul style="list-style-type: none"> • there is or may be an actual conflict or potential conflict, between the pecuniary or personal interests of the <i>Contractor</i> and the duties owed to the <i>Client</i> under the provisions of the Contract; or • the behaviour of the <i>Contractor</i> or the <i>Contractor's</i> Personnel is not in the <i>Client's</i> best interest or might adversely affect the <i>Client's</i> reputation. <p>29.2 If the <i>Contractor</i> becomes aware of any behaviour or circumstance that might give rise to an actual or potential conflict, it discloses to the <i>Client</i> full particulars of the same forthwith.</p> <p>29.3 The <i>Client</i> may, in accordance with clause 90 (Termination), terminate all or part of the <i>Contractor's</i> employment under the Contract and/or take such other steps it deems necessary where, if in the reasonable opinion of the <i>Client</i>, there is or may be an actual conflict or potential conflict, between the financial or personal interests of the <i>Contractor</i> or the <i>Contractor's</i> Personnel and the duties owed to the <i>Client</i> under the provisions of the Contract. The actions of the <i>Client</i></p> |

| | | |
|---|------------|---|
| | | <p>pursuant to this clause do not prejudice or affect any right of action or remedy which has accrued or will accrue to the <i>Client</i>.</p> <p>29.4 In exercising its rights or remedies under this clause 29, the <i>Client</i> will:</p> <p>(1) act in a reasonable and proportionate manner having regard to such matters as the gravity of, and the nature of the interests that is or may be an actual conflict or potential conflict;</p> <p>(2) give all due consideration, where appropriate, to action other than termination of the Contract, including (without being limited to):</p> <ul style="list-style-type: none"> • requiring the <i>Contractor</i> to procure the termination of the interest or activity that is or may be an actual conflict or potential conflict (including, but not limited to, terminating any relevant <i>Sub-Contractor</i> or procuring the dismissal of any relevant employee); • requiring the <i>Contractor</i> to put in place appropriate and reasonable procedures (including, but not limited to, ethical walls) for the purposes of managing the interest or activity that is or may be an actual conflict or potential conflict. |
| <p>New clause 29A</p> <p>Intellectual Property Rights</p> | <p>29A</p> | <p>Insert new clause 29.A as follows:</p> <p>29A.1 The <i>Contractor</i> grants, and ensures that each third party owner of IP Materials that are created by or on behalf of the <i>Contractor</i> in Providing the <i>Service</i>, to the <i>Client</i> a non-exclusive licence or, if itself a licensee of those rights, grants to the <i>Client</i> an authorised sub-licence, to use, reproduce, modify, develop and maintain the Intellectual Property Rights in the IP Materials created in Providing the <i>Service</i>. Such licence or sub-licence is non-exclusive, perpetual, royalty free and irrevocable and includes the right for the <i>Client</i> to sub-licence, transfer, novate or assign to any replacement <i>Contractor</i> or to any other third party.</p> <p>29A.2 The <i>Contractor</i> waives or procures a waiver of any moral rights subsisting in copyright produced to Provide the <i>Service</i>.</p> <p>29.A.3 The <i>Contractor</i> does not infringe any Intellectual Property Rights of any third party in Providing the <i>Service</i> and indemnifies and keeps indemnified and holds the <i>Client</i> harmless from and against all actions,</p> |

| | |
|--|---|
| | <p>suits, claims, demands, losses, charges, damages, costs and expenses and other liabilities which the <i>Client</i> may suffer or incur as a result of or in connection with any breach of Intellectual Property Rights of third parties arising from the <i>Contractor</i> Providing the <i>Service</i>.</p> <p>29A.4 The <i>Client</i> notifies the <i>Contractor</i> in writing of any claim or demand brought against the <i>Client</i> for infringement or alleged infringement of any Intellectual Property Right in materials supplied or licensed by the <i>Contractor</i>.</p> <p>29A.8 The <i>Contractor</i> at its own expense conducts all negotiations and any litigation (or other dispute resolution process) arising in connection with any claim for breach of Intellectual Property Rights in materials supplied or licensed by the <i>Contractor</i>, provided always that the <i>Contractor</i>:</p> <ol style="list-style-type: none"> (1) consults the <i>Client</i> on all substantive issues which arise during the conduct of such litigation (or other dispute resolution proceedings) and negotiations; (2) takes due and proper account of the interests of the <i>Client</i>; and (3) does not settle or compromise any claim without the <i>Client's</i> prior written consent (not to be unreasonably withheld or delayed). <p>29A.5 If the <i>Contractor</i> requests assistance from the <i>Client</i> with contesting any claim or demand made or action brought against the <i>Contractor</i> by a third party for infringement or alleged infringement of any third party Intellectual Property Rights in connection with the performance of the <i>Contractor's</i> obligations under this Contract, the <i>Client</i> may (at its sole discretion) provide assistance to the <i>Contractor</i>. The <i>Contractor</i> indemnifies the <i>Client</i> for all reasonable costs and expenses (including, but not limited to, legal costs and disbursements) incurred in doing so.</p> <p>29A.6 If the <i>Client</i> requests assistance from the <i>Contractor</i> with contesting any claim or demand made or action brought against the <i>Client</i> by a third party for infringement or alleged infringement of any third party Intellectual Property Rights in connection with the performance of the <i>Contractor's</i> obligations under this Contract, the <i>Contractor</i> provides such assistance as required by the <i>Client</i>. The <i>Contractor</i> indemnifies the <i>Client</i> for all reasonable costs and expenses (including,</p> |
|--|---|

| | | |
|--|------------|--|
| | | <p>but not limited to, legal costs and disbursements) incurred in contesting any such claim or demand.</p> <p>29A.7 The <i>Contractor</i> does not make any admissions which may be prejudicial to the defence or settlement of any claim, demand or action for infringement or alleged infringement of any Intellectual Property Right by the <i>Client</i> or the <i>Contractor</i> in connection with Providing the <i>Service</i>.</p> <p>29A.8 If a claim, demand or action for infringement or alleged infringement of any Intellectual Property Right by the <i>Contractor</i> is made in connection with the <i>service</i> or if a third party purports to have grounds for such a claim, the <i>Contractor</i> notifies the <i>Client</i> and the <i>Service Manager</i> forthwith. The <i>Service Manager</i> enters the issue into the Early Warning Register and schedules an early warning meeting and instructs the <i>Contractor</i> and any <i>SubContractor</i> that is involved in the claim (or purported claim) regarding Intellectual Property Rights to attend the early warning meeting. The early warning meeting is conducted in accordance with the Contract.</p> <p>29A.9 If the <i>Contractor</i> obtains a licence from a third party in any software to Provide the <i>Service</i>, then it procures a licence in the name of the <i>Client</i> in perpetuity with the right to sublicense to any third party nominated by the <i>Client</i> for the purposes of performing any part of the <i>service</i> which is provided at any time pursuant to this Contract.</p> <p>29A.10 If the <i>Contractor</i> uses any of its own software to Provide the <i>Service</i> it grants a free irrevocable licence to the <i>Client</i> in perpetuity with the right to sublicense to any third party nominated by the <i>Client</i> to use the software for the purposes of continuing to operate any part of the <i>service</i> provided at any time under this Contract.</p> <p>29A.11 The <i>Client</i> is the owner of any Intellectual Property Rights in the Records produced by the <i>Contractor</i> to Provide the <i>Service</i>. The <i>Contractor</i> hereby assigns any Intellectual Property Rights it has or might have (now or in the future) in the Records to the <i>Client</i>.</p> |
| <p>New clause 29B</p> <p>Access and Facilities Provided by the <i>Contractor</i></p> | <p>29B</p> | <p>Insert a new clause 29B as follows:</p> <p>29B.1 The <i>Contractor's</i> progress and quality standards in performing the <i>service</i> under the Contract is monitored by the <i>Client</i>. The <i>Contractor</i> provides the <i>Service Manager</i> with access to its premises and all books and records for these purposes and those in connection with any audit permitted by this Contract.</p> |

| | | |
|---|------------|---|
| | | <p>29B.2 The <i>Contractor</i> provides, at no additional cost to the <i>Client</i>, accommodation and facilities for representatives of the <i>Client</i> as the <i>Client</i> requires to undertake monitoring of progress and standards. The <i>Contractor</i> procures that such accommodation is adequately furnished, lit, heated and ventilated and will include suitable cloakroom and communication facilities.</p> <p>29B.3 The <i>Contractor</i> procures that the subcontracts with the <i>SubContractors</i> engaged to perform part of the <i>service</i> include provisions for access to the <i>SubContractor's</i> premises and all books and records as is prescribed for the audit of the <i>Contractor's</i> premises.</p> |
| <p>New clause 29C</p> <p>Retention and Supply of Records and Data</p> | <p>29C</p> | <p>Insert a new clause 29C as follows:</p> <p>29C.1 The <i>Contractor</i> stores and maintains the Contract Records and makes them available to the <i>Client</i> as required by the <i>Client</i>, when requested upon not less than 3 days' notice from the <i>Client</i>.</p> <p>29C.2 The <i>Contractor</i> permits all Contract Records to be examined and if necessary copied, by or on behalf of the <i>Client</i> or provides copies to the <i>Client</i> at the <i>Client's</i> reasonable cost.</p> <p>29C.3 The <i>Contractor</i> retains the Contract Records for a period of at least six (6) years after the expiry of the <i>Service Period</i> PROVIDED ALWAYS THAT notwithstanding the generality of this clause 29C.3 all Contract Records executed under seal or expressed to be executed as deeds will be retained by the <i>Contractor</i> for a minimum period of twelve (12) years following expiry of the <i>Service Period</i>.</p> <p>29C.4 The <i>Client</i> may at any time make copies of Contract Records (at its discretion) and may use such Contract Records (or copies of them) for any purpose in connection with this Contract.</p> <p>29C.5 The <i>Contractor</i> maintains Control Copies in such media and formats as the <i>Client</i> may reasonably require. The <i>Contractor</i> does not alter Control Copies in any way which changes the build standard except as authorised in writing by the <i>Client</i>. Control Copies are deemed to be the Property of the <i>Client</i>, and the <i>Client</i> may take possession of any or all Control Copies notwithstanding any administration, receivership, winding-up or liquidation of the <i>Contractor</i> or any transfer of its assets to any third party.</p> |

| | | |
|--|------------|--|
| <p>New clause 29D</p> <p>Health & Safety and the Environment</p> | <p>29D</p> | <p>Inset a new clause 29D as follows:</p> <p>29D.2 The <i>Contractor</i> notifies the <i>Service Manager</i> of any health and safety hazards of which it is aware or ought reasonably to be aware, which may arise in connection with the performance of this Contract. The <i>Contractor</i> will also draw these hazards to the attention of the <i>Client</i> and Others and any other persons engaged by the <i>Contractor</i> in the performance of the <i>service</i> at any Affected Property, or any other person who may be affected by these hazards. The <i>Service Manager</i> enters such health and safety hazards in the Early Warning Register and they are dealt with as an early warning matter.</p> <p>29D.3 The <i>Contractor</i> procures that its Personnel familiarises themselves with the emergency procedures laid down by the <i>Service Manager</i> and the <i>Contractor</i> and any other relevant Health and Safety policies and procedures adopted by the <i>Contractor</i>, in addition to the health and safety requirements stated in the Scope.</p> <p>29D.4 The <i>Contractor</i> procures that its Personnel at all times comply with all legal requirements including but not limited to the "Duty of Care" provisions contained in part II of the Environmental Protection Act 1990 (as amended by the Environment Act 1995) and any relevant regulations made under that Act.</p> <p>29D.5 All property of the <i>Contractor</i> and his Personnel will be at the risk of the <i>Contractor</i> whilst it is on any Affected Property, and the <i>Client</i> is not responsible or liable for any loss or damage howsoever occurring thereto or caused thereby, except where (and only to the extent that) any such loss or damage was caused or contributed to by any act, neglect or default of any of the <i>Client</i> or the <i>Client's</i> Personnel then the <i>Client</i>.</p> <p>29D.6 The <i>Contractor</i> reports any injury, disease or dangerous occurrence at any Affected Property arising out of the performance of this Contract, which is required to be reported under the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995 ("RIDDOR") to the <i>Service Manager</i>. This is in addition to any report, which the <i>Contractor</i> may be required to submit under RIDDOR to the relevant enforcing authority (e.g. Health and Safety Executive or Local Authority).</p> |
|--|------------|--|

| | | |
|--|------------|---|
| <p>New clause 29E</p> <p>TUPE</p> | <p>29E</p> | <p>Insert new clause 29E as follows:</p> <p>29E.1 The provisions of Schedule 1 relating to TUPE shall apply at the start of the <i>service</i> and on termination of the <i>service</i>.</p> <p>29E.2 The <i>Contractor</i> is responsible for and fully indemnifies and keeps indemnified the <i>Client</i> from and against all and any costs, claims, expenses, demands, actions and liabilities arising from any claim in respect of any person which arises or is alleged to arise by reason of the operation fo the Transfer of Undertaking (Protection of Employment) Regulations 2006 as amended or re-enacted from time to time.</p> |
| <p>New clause 29F</p> <p>Data Protection</p> | <p>29F</p> | <p>Insert new clause 29F as follows:</p> <p>29F.1 The <i>Contractor</i> must ensure that all Personal Data processed by the <i>Contractor</i> in connection with the Agreement is processed in accordance with the <i>Contractor's</i> obligations under the Data Protection Legislation. The <i>Contractor</i> shall ensure that it does not process Personal Data in a manner that would cause the <i>Client</i> to breach the Data Protection Legislation.</p> <p>29F.2 The Parties acknowledge their respective obligations arising under the Data Protection Legislation and must assist each other as necessary to enable each other to comply with these obligations.</p> <p>29F.3 The <i>Contractor</i> will immediately notify the <i>Client</i> of any breach of security in relation to Confidential Information, Personal Data and all data obtained in the course of the delivery of the Agreement and will keep a record of such breaches. The <i>Contractor</i> will use its best endeavours to recover such Confidential Information, Personal Data or data however it may be recorded. For the avoidance of doubt, this clause applies even if a notification is not required under the GDPR.</p> <p>29F.4 The Parties acknowledge that:</p> <ul style="list-style-type: none"> • in relation to Personal Data, the processing of which may be required by the <i>Client</i> in connection with this Agreement and for purposes including but not limited |

| | | |
|--|--|--|
| | | <p>to quality assurance, performance management, contract management, safeguarding, commissioning <i>services</i> or the provision of <i>services</i> (either by the <i>Client</i> or by partnering organisations), that the <i>Client</i> and the <i>Contractor</i> will:</p> <ul style="list-style-type: none"> - (unless it is specifically agreed that the <i>Contractor</i> will be the “data processor”, in which case sub-clause 29C.10 applies) or if the parties shall be joint ‘data controllers’ (as in both cases defined by the Data Protection Legislation); - in relation to any other Personal Data processed by the <i>Contractor</i> for the purpose of delivering the Agreement the <i>Contractor</i> will be sole data controller; and - they will each notify the other party if they consider that an instruction from the other would potentially cause a breach of Data Protection Legislation. <p>29F.5 The <i>Contractor</i> shall be liable for any losses arising out of the processing of Personal Data for which it is responsible.</p> <p>29F.6 Where relevant, the <i>Contractor</i> must ensure that all <i>service</i> users and potential <i>service</i> users have given their consent to the processing of their information in accordance with this Agreement which includes but is not limited to sharing information with the <i>Client</i> or third party organisations. This consent must be documented.</p> <p>29F.7 Where relevant, if a <i>service</i> user does not give their explicit consent to the <i>Contractor</i> sharing information about them, the <i>Contractor</i> must still share that information where to do so would be lawful under the Data Protection Legislation.</p> <p>29F.8 The <i>Contractor</i> must comply with all obligations relating to information governance, provision of information, data sharing and data protection set out in the Specification.</p> <p>29F.9 The <i>Contractor</i> shall provide all reasonable assistance to the <i>Client</i> in the preparation of any Data Protection Impact Assessment in connection</p> |
|--|--|--|

| | | |
|--|--|--|
| | | <p>with this Agreement. Such assistance may, at the discretion of the <i>Client</i>, include:</p> <ul style="list-style-type: none"> • a systematic description of the envisaged operations and their purpose; • an assessment of the necessity and proportionality of the proposed operations in relation to the <i>Service</i>; • an assessment of the risks to the rights and freedoms of Data Subjects; and • the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data. <p>29F.10 Notwithstanding the general obligation in clause 29F.1, where the <i>Contractor</i> is processing Personal Data for the <i>Client</i> as a 'data processor' (as defined by the Data Protection Legislation) the <i>Contractor</i> shall:</p> <ul style="list-style-type: none"> • ensure that it has in place appropriate technical and organisational measures to ensure the security of the Personal Data (and to guard against unauthorised or unlawful processing of the Personal Data and against accidental loss or destruction of, or damage to, the Personal Data), taking account of: <ul style="list-style-type: none"> - the nature of the data to be protected; - harm that might result from a Data Loss Event; - state of technological development; and - cost of implementing any measures. <p>29F.11 The <i>Contractor</i> will take all reasonable steps to ensure the reliability and integrity of any <i>Contractor</i> personnel who have access to the Personal Data and ensure that they:</p> <ul style="list-style-type: none"> • are aware of and comply with the duties of a data processor under this paragraph and generally; • are subject to appropriate confidentiality undertakings; • are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any Third Party unless directed in writing to do so by the |
|--|--|--|

| | | |
|--|--|--|
| | | <p>Controller or as otherwise permitted by this Agreement;</p> <ul style="list-style-type: none"> • have undergone adequate training in the use, care, protection and handling of Personal Data; and • not transfer Personal Data outside of the United Kingdom unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled: <ul style="list-style-type: none"> - have provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or DPA 2018 Section 75) as determined by the <i>Client</i>; - the Data Subject has enforceable rights and effective legal remedies; - the <i>Client</i> will comply with the obligations of a Processor under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the <i>Contractor</i> in meeting its obligations); and - comply with any reasonable instructions notified to it in advance by the <i>Client</i> with respect to the processing of the Personal Data; • data used for the delivery of the <i>Service</i> must be stored within the United Kingdom in a secure and auditable location at no cost to the <i>Client</i>; • at the written direction of the <i>Client</i>, delete or return Personal Data (and any copies of it) to the <i>Contractor</i> on termination of this Agreement unless the <i>Contractor</i> is required by law to retain it. <p>29F.12 Subject to clause 29F.11, the <i>Contractor</i> shall notify the <i>Client</i> immediately if it:</p> <ul style="list-style-type: none"> • receives a Data Subject Request (or purported Data Subject Request); • receives a request to rectify, block or erase any Personal Data; • receives any other request, complaint or communication relating to either party's obligations under the Data Protection Legislation; • receives any communication from the Information Commissioner or any other |
|--|--|--|

| | | |
|---|------------|--|
| | | <p>regulatory authority in connection with Personal Data processed under this Agreement;</p> <ul style="list-style-type: none"> • receives a request from any Third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Legislation; or • becomes aware of a Data Loss Event. <p>29F.13 The Processor’s obligation to notify under clause 29F.12 shall include the requirements to:</p> <ul style="list-style-type: none"> • provide the <i>Client</i> with such information as the <i>Client</i> may reasonably request to satisfy itself that the <i>Contractor</i> is complying with its obligations under the Data Protection Legislation; • promptly notify the <i>Client</i> of: • any request for Personal Data; and • not respond directly to any request for Personal Data without the prior written consent of the <i>Client</i>; and • delete or return all the Personal Data to the <i>Contractor</i> after the end of the Agreement relating to processing, and deletes existing copies unless the Law otherwise requires. <p>29F.14 The parties agree to take account of any guidance issued by the Information Commissioner’s Office. The <i>Client</i> may on not less than thirty (30) Business Days’ notice to the <i>Service Provider</i> amend this Agreement to ensure that it complies with any guidance issued by the Information Commissioner’s Office.</p> <p>29F.15 The <i>Contractor</i> shall ensure it has sufficient policies and procedures in place to ensure any <i>Client</i> Data is not accessed, disclosed or view by any third parties.</p> |
| <p>New clause 29G</p> <p>Modern Slavery Act</p> | <p>29G</p> | <p>Insert a new clause 29G as follows:</p> <p>29G In performing its obligations under this Agreement, the <i>Contractor</i> shall:</p> <ul style="list-style-type: none"> • comply with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force including but not limited to the Modern Slavery Act 2015; • not engage in any activity, practice or conduct that would constitute an offence under sections 1, 2 or 4, of the Modern Slavery Act 2015 if such |

| | | |
|---|-----|--|
| | | <p>activity, practice or conduct were carried out in the UK; and</p> <p>require that each of its sub-Contractors and providers shall comply with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force including but not limited to the Modern Slavery Act 2015.</p> |
| <p>New clause 29H</p> <p>Corrupt Gifts and Payments of Commission</p> | 29H | <p>Insert a new clause 29H as follows:</p> <p>29H The <i>Contractor</i> or anyone employed by him or acting on his behalf shall not:</p> <ul style="list-style-type: none"> • offer or give or agree to the giving to any person in the <i>service</i> of the <i>Client</i> any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any act in relation to the obtaining or execution of this or any other contract with the <i>Client</i> or for showing or forbearing to show favor or disfavor of any person in relation to this or any other contract with the <i>Client</i>; or • enter into this or any other contract with the <i>Client</i> in connection with which commission has been paid or agreed to be paid by him or on his behalf or to his knowledge, unless before the contract is made particulars of any such commission and of the terms and conditions of any agreement for the payment thereof have been disclosed in writing to the <i>Client</i>.” |
| <p>New clause 29I</p> <p>Environmental Requirements</p> | 29I | <p>Insert new Clause 29I:</p> <p>29I.1 The <i>Contractor</i> shall perform its obligations under the contract in accordance with the <i>Client</i>'s Environmental policy which is to conserve energy water wood paper and other resources, reduce waste, 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.</p> <p>29I.2 The <i>Contractor</i> shall comply with any reasonable request from the <i>Client</i> to produce data to enable the <i>Client</i> to comply with any requirements of the Environmental Policy.</p> |

| | | |
|---|------------|--|
| <p>New clause 29J</p> <p>Freedom of Information</p> | <p>29J</p> | <p>Insert a new clause 29J as follows:</p> <p>29J.1 The <i>Contractor</i> acknowledges that the <i>Client</i> is subject to the requirements of the FOIA and the EIRs. The <i>Contractor</i> shall:</p> <ul style="list-style-type: none"> • provide all necessary assistance and cooperation as reasonably requested by the <i>Client</i> to enable the <i>Client</i> to comply with its obligations under the FOIA and EIRs; • transfer to the <i>Client</i> all Requests for Information relating to this agreement that it receives as soon as practicable and in any event within 2 working days of receipt; • provide the <i>Client</i> with a copy of all Information belonging to the <i>Client</i> requested in the Request For Information which is in its possession or control in the form that the <i>Client</i> requires within 5 working days (or such other period as the <i>Client</i> may reasonably specify) of the <i>Client's</i> request for such Information; and • not respond directly to a Request For Information unless authorised in writing to do so by the <i>Client</i>. <p>29J.2 The <i>Contractor</i> acknowledges that the <i>Client</i> may be required under the FOIA and EIRs to disclose information (including commercially sensitive information) without consulting or obtaining consent from the <i>Contractor</i>. The <i>Client</i> shall take reasonable steps to notify the <i>Contractor</i> of a Request For Information (in accordance with the Secretary of State's section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this agreement) the <i>Client</i> shall be responsible for determining in its absolute discretion whether any commercially sensitive information and/or any other information is exempt from disclosure in accordance with the FOIA and/or the EIRs."</p> |
| <p>New clause 29K</p> | <p>29K</p> | <p>Not used</p> |
| <p>New clause 29L</p> | <p>29L</p> | <p>Insert a new clause 29L as follows:</p> <p>29L.1 The <i>Contractor</i> shall take all reasonable precautions in connection with any underground resources including percolating water, any rivers,</p> |

| | | |
|-----------------------|------------|--|
| | | <p>streams, waterways, drains and watercourses, lakes, ditches, reservoirs and the like to prevent:</p> <ul style="list-style-type: none"> a) any interference with the supply to or abstraction from such sources b) silting c) erosion of their beds or banks d) pollution of the water so as to affect adversely the quality or appearance thereof or cause injury or death to animal and plant life <p>29L.2 The <i>Contractor</i> shall take all necessary measures to prevent damage, loss, injury or nuisance caused by mud, dirt, stones or other material used or generated in the performance of the <i>service</i>. This shall include but not limited to ensuring that no fuel or lubricant, mud, dirt, stones or other material spilled or deposited in the highway whether open to traffic.</p> <p>29L.3 The <i>Contractor</i> shall take all necessary measures to prevent damage, loss, injury or nuisance caused by smoke or dust in the performance of the <i>service</i>.</p> <p>29L.4 The <i>Contractor</i> shall take all reasonable steps to prevent damage to all highways and public roads within the Affected Property and in connection with the <i>service</i> and shall forthwith notify and repair any damage caused to such roads arising out of the performance of the <i>service</i> thereof by the <i>Contractor</i>, his servants or agents, consultants and sub<i>Contractors</i>. The <i>Contractor</i> shall be responsible for any shall indemnify the <i>Client</i> from and against any and all expenses, liabilities, losses, claims and proceedings resulting from any failure or default by the <i>Contractor</i> in performing his obligations under this clause 29K.4 and shall assist the <i>Client</i> in defence of any such action, claim or proceedings.</p> |
| <p>New clause 29M</p> | <p>29M</p> | <p>Insert a new clause 29M as follows:</p> <p>29M The <i>Contractor</i> shall confirm and comply with any requirements of any statutory bodies, including but not limited to British Telecommunications, Virgin Media, National Rivers Authority, Water Authorities, British Gas, Electricity Generating and Distribution Companies and Petrochemical Companies.</p> |

| | | |
|-------------------|------|---|
| | | Compliance with such requirements shall not relieve the <i>Contractor</i> of any its other obligations and liabilities under the Contract and fulfilment of such other obligations and liabilities shall not relieve the <i>Contractor</i> of its responsibilities to comply with the said requirements. |
| New clause 29N | 29N | <p>Insert a new clause 29N as follows:</p> <p>29N The <i>Contractor</i> shall ensure compliance with the Prevent Duty under the Counter Terrorism and Security Act 2015 and if requested, shall as soon as practicable and no later than ten 10 Working Days following receipt of such request, provide the <i>Client</i> with evidence of such compliance.</p> |
| New clause 29O | 29O | <p>Insert a new clause 29O as follows:</p> <p>29O The <i>Contractor</i> warrants that it holds and will maintain any Qualifications required by the <i>Client</i> for the duration of the <i>service</i> and whenever the <i>Client</i> reasonably requests, the <i>Contractor</i> shall send the <i>Client</i> evidence that the <i>Contractor</i> holds the required Qualifications.</p> |
| Option Z3 | | Amendments to Core Clauses Section 3: Time |
| New clause 35.2 | 35.2 | <p>Insert a new clause 35.2 as follows:</p> <p>35.2 The <i>Contractor</i> obtains all other consents needed to Provide the <i>Service</i> and any failure to gain access, otherwise than by the <i>Client</i> removing the <i>Contractor's</i> right of access and/or by reason of defects in the <i>Client's</i> title to the Affected Property, is not be a compensation event.</p> |
| Amend clause 36.1 | 36.1 | <p>Delete clause 36.1 and replace with the following:</p> <p>36.1 The <i>Service Manager</i> may instruct the <i>Contractor</i> to stop or not to start any work and, subject to clause 91.6 (where the postponed work is substantial or is all of the work required to Provide the <i>Service</i>) may at any time within the next six (6) months instruct him that he may re-start or start it. During any period in which any work is so stopped or not started, the <i>Contractor</i> keeps secure and protects the Affected Property and the <i>service</i> and all Equipment, Plant and Materials against any deterioration, loss, damage or theft.</p> <p>36.2 If within 6 months from the date of postponement the <i>Service Manager</i> instructs the <i>Contractor</i> to resume</p> |

| | | |
|--|------|--|
| | | <p>work, then any payments made shall be considered as payments on account towards the total of the Prices.</p> <p>36.3 If the <i>Service Manager</i> has not instructed the <i>Contractor</i> to resume work which has been postponed at a date six months from the date of postponement, the <i>Service Manager</i> will be deemed to have given an instruction under clause 14.3 changing the Scope to remove the postponed work from the <i>service</i>.</p> |
| Option Z4 | | Amendments to Core Clauses Section 4: Quality Management |
| Amend clause 43.1 | 43.1 | <p>At the end of clause 43.1 add:</p> <p>Additionally, for a period of 12 months after the end of the <i>Service Period</i> the <i>Service Manager</i> notifies the <i>Contractor</i> as and when it becomes aware of a Defect.</p> |
| Amend clause 43.2 | 43.2 | <p>At the end of clause 43.2 add (before the full stop):</p> <p>and, in any event, at no cost to the <i>Client</i>.</p> |
| Amend clause 44.2 | 44.2 | <p>Within clause 44.2, in the second sentence, after "If the quotation is accepted" insert:</p> <p>(such acceptance or rejection to be at the <i>Client's</i> sole discretion)</p> |
| New clause 45 Delayed delivery of service | 45 | <p>Insert a new clause 45 as follow:</p> <p>45.1 The <i>Contractor</i> notifies the <i>Service Manager</i> when delivery of any part of the <i>service</i> is not provided within the timescale and/or by any date required in the Scope. If any part of <i>service</i> is not delivered within the timescale and/or by any date required in the Scope (whether or not notified by the <i>Contractor</i>), the <i>Service Manager</i> determines if the <i>Contractor</i> has already received payment for the relevant part of the <i>service</i>. If payment has been received the <i>Service Manager</i> instructs the <i>Contractor</i> to calculate the value of the undelivered (late) <i>service</i> using the pricing information in the Price List and the next payment application is reduced by the calculated amount or (if the <i>Service Manager</i> does not agree with the <i>Contractor's</i> calculation) such other amount as the <i>Service Manager</i> certifies together with (save where such delay is attributable to the failure or default of the <i>Client</i>) any additional costs or losses incurred by the <i>Client</i> by reason of the undelivered (late) part of the <i>service</i> being delivered by another <i>Contractor</i>. If and when the</p> |

| | | |
|-------------------|------|--|
| | | <p><i>Contractor</i> delivers the outstanding part of the <i>service</i> (subject to the <i>Service Manager's</i> entitlement to decide that the part of the <i>service</i> should not be delivered or is to be delivered by another <i>Contractor</i>), the <i>Contractor</i> is at that time entitled to recover the sum reduced within the next interim payment.</p> <p>45.2 If the <i>Contractor</i> fails to deliver any part of the <i>service</i> within the timescale and/or by any date required in the Scope, the <i>Service Manager</i> may decide (at its sole discretion but taking into account any views communicated by the <i>Client</i>) that the undelivered (late) part of the <i>service</i> should not be delivered or may be delivered by another <i>Contractor</i>. If so, the <i>Service Manager</i> instructs the <i>Contractor</i> to calculate the value of the undelivered part of the <i>service</i> using the pricing information in the Price List and the next payment application is reduced by a corresponding amount or (if the <i>Service Manager</i> does not agree with the <i>Contractor's</i> calculation) such other amount as the <i>Service Manager</i> certifies together with (save where such delay is attributable to the failure or default of the <i>Client</i>) any additional losses or costs incurred by the <i>Client</i> by reason of the undelivered part of the <i>service</i> being delivered by another <i>Contractor</i>. A missed planned maintenance task that has been overtaken by a subsequent planned maintenance task is an example of an instance where the <i>Service Manager</i> may decide not to receive a delayed <i>Service</i>.</p> |
| Option Z5 | | Amendments to Core Clauses Section 5: Payment |
| Amend clause 50.4 | 50.4 | <p>Delete clause 50.4 and replace with the following:</p> <p>50.4 If the <i>Contractor</i> does not submit an application for payment before the assessment date, (or no valid invoice has been received by the <i>Client</i> in accordance with clause 51.1) then the amount due (and the 'notified sum') is nil.</p> |
| Amend clause 50.5 | 50.5 | <p>At the end of clause 50.5 insert the following:</p> <p>The retention of one quarter of the Price for <i>Service Provided to Date</i> provided for under this clause 50.5 is without prejudice to any other remedy the <i>Client</i> may have.</p> |
| Amend clause 51.4 | 51.4 | <p>At the end of clause 51.4 insert the following:</p> <p>Where and to the extent that the debt would otherwise be a 'qualifying debt' under the Late Payment of</p> |

| | | |
|----------------------|---------|---|
| | | <p>Commercial Debts (Interest) Act 1998 (for the purposes of this clause 51, “the Act”):</p> <p>(1) the interest provided for by this clause 51.4 is a contractual remedy and is not a statutory interest. Therefore, to the extent permissible by law, the provisions of the Act relating to statutory interest will not apply to this Contract;</p> <p>(2) no interest will be payable for any period of delay attributable to the conduct of the <i>Contractor</i>;</p> <p>(3) all claims for interest made pursuant to this clause 51.4 will be notified in writing to the <i>Service Manager</i>; and</p> <p>(4) any interest pursuant to this clause 51.4 will not form a part of the Prices and, as a remedy for late payment, will not be subject to VAT.</p> |
| New clause 51.6 | 51.6 | <p>Insert a new clause 51.6 as follows:</p> <p>51.6 Notwithstanding the obligation to make the certified payment in accordance with clause 51.2:</p> <p>(1) if either Party intends to pay less than the certified sum, he notifies the other Party not later than two (2) days before the final date for payment (as determined in accordance with clause 51.2) by stating the lesser amount considered to be due and the basis on which that sum is calculated. A Party does not withhold payment of an amount due under this Contract unless he has notified his intention to pay less than the notified sum as required by the Contract.</p> <p>(2) in relation to giving notices under this clause 51 it is immaterial that the amount then considered to be due may be zero.</p> <p>(3) A pay less notice given by the <i>Client</i> under this clause 51 may be given on its behalf by the <i>Service Manager</i> or any other person who the <i>Client</i> notifies the <i>Contractor</i> as being authorised to do so.</p> |
| Option Z6 | | Amendments to Core Clauses Section 5: Payment |
| Amend clause 60.1(5) | 60.1(5) | <p>At the end of the sentence at clause 60.1(5) insert the following:</p> <p>where that instruction is not due to the default, act or omission of the <i>Contractor</i> or any of his Personnel.</p> |

| | | |
|------------------------|----------|---|
| Amend clause 60.1(7) | 60.1(7) | At the end of the sentence at clause 60.1(7) insert the following: provided that the <i>Contractor</i> has complied with all of its obligations required by this Contract as regards notifications to the <i>Client</i> or to the <i>Service Manager</i> in respect of the failure to reply that this the subject of this compensation event. |
| Delete clause 60.1(10) | 60.1(10) | Delete clause 60.1(10) and insert: Not used. |
| Delete clause 60.1(11) | 60.1(11) | Delete clause 60.1(11) and insert: Not used. |
| | | |
| Amend clause 60.1(15) | 60.1(15) | At the end of the sentence at clause 60.1(15) insert the following: which, after all reasonable mitigation by the <i>Contractor</i> , causes the material increase in its costs by providing the <i>service</i> |
| Delete clause 60.1(16) | 60.1(16) | Delete clause 60.1(16) and insert: Not used. |
| Delete clause 60.1(17) | 60.1(17) | Delete clause 60.1(17) and insert: Not used. |
| Amend clause 61.1 | 61.1 | Delete clause 61.1 and replace with the following: 61.1 For compensation events which arise from the <i>Service Manager</i> giving an instruction or changing an earlier decision, the <i>Contractor</i> notifies the <i>Service Manager</i> of the compensation event at the time of receiving the instruction or the changing of the earlier decision. |
| Amend clause 61.2 | 61.2 | Delete "The <i>Service Manager</i> includes in the notification of a compensation event" and replace with the following: Within one week of the notification of a compensation event in accordance with clause 61.1, the <i>Service Manager</i> issues |

| | | |
|--------------------------|-------------|--|
| <p>Amend clause 61.3</p> | <p>61.3</p> | <p>Delete the second sentence within clause 61.3 and replace with the following:</p> <p>If the <i>Contractor</i> does not notify a compensation event within three weeks of becoming aware of the event, he is not entitled to a change in the Prices and/or the dates for carrying out and completing the <i>service</i> or any part of the <i>service</i> unless the <i>Service Manager</i> should have notified the event to the <i>Contractor</i> but did not.</p> |
| <p>Amend clause 61.4</p> | <p>61.4</p> | <p>Delete clause 61.4 and replace with the following.</p> <p>61.4 If the <i>Service Manager</i> decides that an event notified by the <i>Contractor</i>:</p> <ul style="list-style-type: none"> • arises by reason of any act, omission, breach or default by the <i>Contractor</i> or his Personnel; • has not happened and is not expected to happen; • has no effect upon the Prices, the Defined Cost and/or a Task Completion; • is not one of the compensation events stated in this Contract; or • has not been duly mitigated by the <i>Contractor</i> <p>he notifies the <i>Contractor</i> of his decision that the Prices and/or the Task Completion Date are not to be changed and states the reasons in the notification.</p> <p>Otherwise, the <i>Service Manager</i> notifies the <i>Contractor</i> that the event is a compensation event and includes in the notification an instruction to the <i>Contractor</i> to submit quotations.</p> <p>If the <i>Service Manager</i> does not notify his decision to the <i>Contractor</i> within either:</p> <ul style="list-style-type: none"> • two weeks of the <i>Contractor's</i> notification, or • a longer period to which the <i>Contractor</i> has agreed, or • a longer period specified by the <i>Service Manager</i> (being not more than 4 weeks), <p>the <i>Contractor</i> may notify the <i>Service Manager</i> of that failure. If that failure continues for a further two weeks after the <i>Contractor's</i> notification, at any time after that further two-week period, the <i>Contractor</i> may issue a further notification to the <i>Service Manager</i> with a copy</p> |

| | | |
|-------------------|------|--|
| | | to the <i>Client</i> . If the <i>Service Manager</i> and/or the <i>Client</i> fail to reply within two weeks of this further notification from the <i>Contractor</i> , the particular event claimed by the <i>Contractor</i> is deemed a compensation event and the <i>Service Manager</i> is deemed to forthwith issue an instruction to the <i>Contractor</i> to submit a quotation. |
| Amend clause 61.5 | 61.5 | At the end of the sentence within clause 61.5 insert the following: or, in the event of a deemed instruction to the <i>Contractor</i> to submit a quotation (pursuant to clause 61.4), the <i>Service Manager</i> states this in a separate notice to the <i>Contractor</i> , to be given no later than four weeks from the <i>Contractor's</i> (first) notification to the <i>Service Manager</i> of its failure to notify its decision. |
| Amend clause 61.8 | 61.8 | Insert a new clause 61.8 as follows: 61.8 Notwithstanding any other provision of this Contract, the <i>Contractor</i> has no entitlement to a compensation event where the reason for the event arises from any act, omission or other default of the <i>Contractor</i> or his Personnel. |
| Amend clause 62.6 | 62.6 | Delete the final sentence within clause 62.6 and replace with the following: If the <i>Service Manager</i> fails to reply within two weeks of this notification the <i>Contractor</i> will be entitled to issue a further notification to the <i>Service Manager</i> with a copy to the <i>Client</i> . A failure by the <i>Service Manager</i> or the <i>Client</i> to reply within two weeks of this further notification is treated as acceptance of the quotation by the <i>Service Manager</i> . |
| Amend clause 63.7 | 63.7 | At the end of the sentence within clause 63.7 insert the following: PROVIDED THAT a compensation event under the grounds of clauses 60.1(2), 60.1(3), 60.1(5) and 60.1(7) shall not entitle the <i>Contractor</i> to any rights or remedies otherwise than as set out in clause 63.6 of this Contract and so that in the case of those compensation events the provisions of clauses 62 and 63 allowing for any increase to the Prices shall not apply. |
| Amend clause 63.8 | 63.8 | At the end of the sentence within clause 63.8 insert the following: |

| | | |
|-------------------|------|---|
| | | and had taken such actions as the <i>Service Manager</i> (acting reasonably) decided should have been taken to mitigate, avoid or reduce any increase to the total of the Prices or any delay in carrying out and completing the <i>service</i> or any part of the <i>service</i> or any impairment of the performance of the <i>service</i> in use. |
| Amend clause 64.4 | 64.4 | <p>Delete the final sentence within clause 64.4 and replace with the following:</p> <p>If the <i>Service Manager</i> fails to reply within two weeks of this notification the <i>Contractor</i> will be entitled to issue a further notification to the <i>Service Manager</i> with a copy to the <i>Client</i>. A failure by the <i>Service Manager</i> or the <i>Client</i> to reply within three (3) weeks of this further notification is treated as acceptance of the <i>Contractor's</i> quotation by the <i>Service Manager</i>.</p> |
| Option Z8 | | Amendments to Core Clauses Section 7: Use of Equipment, Plant and Materials |
| New clause 70.2 | 70.2 | <p>Insert a new clause 70.2 as follows:</p> <p>70.2 Notwithstanding the passing of title in any Plant and Materials prior to their incorporation within the Affected Property or as part of the <i>service</i> under the terms of this clause 70, the <i>Contractor</i> shall remain responsible for any loss or damage to them, until such time as incorporated into the Affected Property.</p> |
| New clause 70.3 | 70.3 | <p>Insert a new clause 70.3 as follows:</p> <p>70.3 Neither the <i>Contractor</i> nor his Personnel nor any third party will have a lien on any part of the <i>service</i> (or any goods or Plant and Materials associated thereto), the title of which has passed to the <i>Client</i>, for any sum due to the <i>Contractor</i> his Personnel or any third party. The <i>Contractor</i> will take all reasonable steps necessary to ensure that the provisions of this clause are brought to the notice of all Personnel and any third parties dealing with any such parts of the <i>service</i>.</p> |
| New clause 70.4 | 70.4 | <p>Insert a new clause 70.4 as follows:</p> <p>70.4 Without prejudice to clause 70.1, the <i>Contractor</i> will ensure that from the time when the <i>service</i> begins, or as soon as practicable thereafter, or when any goods or Plant and Materials is acquired specifically for or is allocated for incorporation in any of the <i>service</i>, they are marked or recorded so that they are readily identifiable</p> |

| | | | |
|------------------|--|-------|---|
| | | | as the property of the <i>Client</i> . The <i>Contractor</i> will comply with any direction given by the <i>Client</i> in this respect. |
| New clause 70.5 | | 70.5 | <p>Insert a new clause 70.5 as follows:</p> <p>70.5 Any goods or Plant and Materials which are rejected by the <i>Client</i> will immediately re-vest in the <i>Contractor</i>.</p> |
| New clause 70.6 | | 70.6 | <p>Insert a new clause 70.6 as follows:</p> <p>70.6 If the <i>Client</i> terminates this Contract then, without prejudice to any other right the <i>Client</i> may have, any goods or Plant and Materials which have not been incorporated into the <i>service</i> will re-vest in the <i>Contractor</i> on the expiration of 30 days from the date in which such termination takes affect unless the <i>Client</i> gives the <i>Contractor</i> written notice that the <i>Client</i> elects to retain the property in such goods or Plant and Materials.</p> |
| New clause 70.7 | | 70.7 | <p>Insert a new clause 70.7 as follows:</p> <p>70.7 Any payment made by the <i>Client</i> in respect of any goods or Plant and Materials which re-vests in the under clauses 70.5 and/or 70.6, will be recoverable from the <i>Contractor</i> as a debt.</p> |
| New clause 70.8 | | 70.8 | <p>Insert a new clause 70.8 as follows:</p> <p>70.8 The <i>Contractor</i> will hand over to the <i>Client</i> any goods or Plant and Materials in which the <i>Client</i> has elected to retain the property under clause 70.6. If the <i>Contractor</i> fails to do so, the <i>Client</i> will have the right to enter the <i>Contractor's</i> premises and remove goods or Plant and Materials and recover the cost of doing so from the <i>Contractor</i>.</p> |
| New clause 70.9 | | 70.9 | <p>Insert a new clause 70.9 as follows:</p> <p>70.9 The <i>Client</i> will pay a fair and reasonable price for any goods or Plant and Materials, in which he has elected to retain the property under clause 70.6 and which are handed over to him by the <i>Contractor</i> or otherwise come into his possession.</p> |
| New clause 70.10 | | 70.10 | <p>Insert a new clause 70.10 as follows:</p> <p>70.10 Where any goods or Plant and Materials in the <i>Client's</i> possession or control has re-vested in the <i>Contractor</i> in accordance with clauses 70.5 or 70.6, the <i>Contractor</i> will bear the cost of resuming possession and control of</p> |

| | | |
|-------------------|------|---|
| | | them from the place of delivery in the UK as specified in this Contract. If the goods or Plant and Materials are on the premises of the <i>Client</i> , the <i>Contractor</i> will remove them within fourteen days of their re-vesting. |
| New clause 71.3 | 71.3 | <p>Insert a new clause 71.3 as follows:</p> <p>The <i>Contractor</i> has full responsibility and liability for all Equipment, Plant and Materials and Materiel provided by or at the cost of the <i>Client</i> during the <i>Service Period</i> and (provided that the same have not been incorporated in the Affected Property) compensates the <i>Client</i> for any loss or damage occurring to them.</p> |
| Option Z8 | | Amendments to Core Clauses Section 8: Liabilities and Insurance |
| Amend clause 80.1 | 80.1 | <p>Within clause 80.1:</p> <p>At the beginning of the clause, insert the following:</p> <p style="padding-left: 40px;">Subject always to clause 82.4,</p> <p>Delete the second bullet point that reads “use or occupation of the Affected Property for the purpose of the <i>service</i> which is the unavoidable results of the <i>service</i> or”.</p> <ul style="list-style-type: none"> • Additional <i>Client’s</i> liabilities stated in the Contract Data. |
| Amend clause 81.1 | 81.1 | <p>At the end of clause 81.1 add the following bullet point:</p> <ul style="list-style-type: none"> • From the <i>starting date</i> until the end of the <i>Service Period</i>, any other liabilities which are not carried by the <i>Client</i>. |
| New clause 82.4 | 82.4 | <p>Insert a new clause 82.4 as follows:</p> <p>82.4 Notwithstanding any other provision of the Contract, the <i>Contractor</i> is liable for and indemnifies the <i>Contractor</i> against any expense, liability, loss, claim or proceedings in respect of any loss, injury or damage, including theft of site materials or vandalism to any property or person including loss or damage by fire, lightning, explosion, storm, torrent, flood, bursting or overflowing of water tanks, apparatus or pipes, earthquakes, aircraft or other aerial devices or articles dropped therefrom, riot and civil commotion (other than injury or damages to any works provided as part of the <i>service</i>) insofar as such loss, injury or damage arises out of or in the course of or by reason of the carrying out of the <i>service</i> and to the extent that the same is due</p> |

| | | |
|-------------------|------|--|
| | | to any negligence, breach of statutory duty, omission or default of the <i>Contractor</i> , its Personnel, servants or agents, or of any person employed or engaged upon or in connection with the <i>service</i> or any part thereof, his servants or agents or any other person who may properly be on site at the Affected Property, his servants or agents, other than the <i>Client</i> , its Personnel, or any person employed, engaged or authorised by him or by any local authority or statutory undertaker executing work solely in pursuant of its statutory rights or obligations. |
| Amend clause 83.3 | 83.3 | <p>At the end of the clause 83.3 insert the following:</p> <p>Save in respect of the third insurance stated, the insurances in the Insurance Table shall provide for:</p> <p>(1) non vitiation and severability of interests protection in respect of any claim made by the <i>Client</i></p> <p>(2) an indemnity to principals clause under which the <i>Client</i> will be indemnified in respect of claims made against the <i>Client</i> arising from the acts or omissions of, or performance of the <i>Contractor</i> under this Contract</p> |
| New clause 83.4 | 83.4 | <p>Insert a new clause 83.4 as follows:</p> <p>83.4 The insurances to be provided by the <i>Contractor</i>, as referred to in clause 83.2, will be taken out and maintained with insurers who (in the reasonable opinion of the <i>Client</i>) are of good financial standing, sound security and of good repute in the United Kingdom insurance market.</p> |
| New clause 83.5 | 83.5 | <p>Insert a new clause 83.4 as follows:</p> <p>83.5 The <i>Contractor</i> will not (and the <i>Contractor</i> will procure that none of its Sub-<i>Contractors</i> of any tier will) take any action, or permit anything to occur in relation to it, which would entitle any insurer to refuse to pay any claim under any insurance policy in which that party is an insured, a co-insured or additional insured person.</p> |
| New clause 84.4 | 84.4 | <p>Insert a new clause 84.4 as follows:</p> <p>84.4 Insurance policies are to maintained by the <i>Contractor</i> from time to time (as far as is reasonably practicable), on terms no less favourable than those generally available to a <i>Contractor</i> in respect of the risks insured</p> |

| | | in the United Kingdom insurance market from time to time. | | | | | | | | | | | | | | | | | | | | | | | | | |
|-----------------------|------------------------------|--|--|--|--|--|-------------------|--------|-----------|------------|-------------------|------------------------------|---------------|------------|------------|-----------|---------------|----------------------------|---------------|--|-----------------------|-----|-----------|---------------|-----|-----------|-----------|
| Option Z9 | | Amendments to Core Clauses Section 9: Termination | | | | | | | | | | | | | | | | | | | | | | | | | |
| Amend clause 90.2 | 90.2 | <p>Delete the Termination Table within clause 90.2 and replace with the following:</p> <table border="1" style="margin-left: 40px;"> <thead> <tr> <th colspan="4">Termination Table</th> </tr> <tr> <th>Terminating Party</th> <th>Reason</th> <th>Procedure</th> <th>Amount Due</th> </tr> </thead> <tbody> <tr> <td rowspan="3"><i>The Client</i></td> <td>R1-R15, R18, R21, R22 or R23</td> <td>P1, P2 and P3</td> <td>A1, A3, A5</td> </tr> <tr> <td>R17 or R20</td> <td>P1 and P4</td> <td>A1, A2 and A5</td> </tr> <tr> <td>A reason other than R1-R22</td> <td>P1, P2 and P4</td> <td>A1, A2, A3 (where <i>Contractor Default</i>) and A5</td> </tr> <tr> <td rowspan="2"><i>The Contractor</i></td> <td>R16</td> <td>P1 and P4</td> <td>A1, A2 and A4</td> </tr> <tr> <td>R17</td> <td>P1 and P4</td> <td>A1 and A2</td> </tr> </tbody> </table> | Termination Table | | | | Terminating Party | Reason | Procedure | Amount Due | <i>The Client</i> | R1-R15, R18, R21, R22 or R23 | P1, P2 and P3 | A1, A3, A5 | R17 or R20 | P1 and P4 | A1, A2 and A5 | A reason other than R1-R22 | P1, P2 and P4 | A1, A2, A3 (where <i>Contractor Default</i>) and A5 | <i>The Contractor</i> | R16 | P1 and P4 | A1, A2 and A4 | R17 | P1 and P4 | A1 and A2 |
| Termination Table | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Terminating Party | Reason | Procedure | Amount Due | | | | | | | | | | | | | | | | | | | | | | | | |
| <i>The Client</i> | R1-R15, R18, R21, R22 or R23 | P1, P2 and P3 | A1, A3, A5 | | | | | | | | | | | | | | | | | | | | | | | | |
| | R17 or R20 | P1 and P4 | A1, A2 and A5 | | | | | | | | | | | | | | | | | | | | | | | | |
| | A reason other than R1-R22 | P1, P2 and P4 | A1, A2, A3 (where <i>Contractor Default</i>) and A5 | | | | | | | | | | | | | | | | | | | | | | | | |
| <i>The Contractor</i> | R16 | P1 and P4 | A1, A2 and A4 | | | | | | | | | | | | | | | | | | | | | | | | |
| | R17 | P1 and P4 | A1 and A2 | | | | | | | | | | | | | | | | | | | | | | | | |
| Amend clause 90.3 | 90.3 | <p>After “R1 to R15, R18 or R21” insert the following:</p> <p style="margin-left: 40px;">,R22 or R23</p> | | | | | | | | | | | | | | | | | | | | | | | | | |
| New clause 90.5 | 90.5 | <p>Insert a new clause 90.5 as follows:</p> <p>90.5 Within thirteen weeks of termination, the <i>Service Manager</i> certifies a final payment to or from the <i>Contractor</i> which is the <i>Service Manager’s</i> assessment of the amount due on termination less the total of previous payments. Payment is made within three weeks of the <i>Service Manager’s</i> certificate.</p> | | | | | | | | | | | | | | | | | | | | | | | | | |
| New clause 91.8 | 91.8 | <p>Insert a new clause 91.8 as follows:</p> <p style="margin-left: 40px;">The <i>Client</i> may also terminate if any event described in clause 91.1 above occurs in respect of any company,</p> | | | | | | | | | | | | | | | | | | | | | | | | | |

| | | |
|-------------------|------|--|
| | | which from time to time has guaranteed the obligations of the <i>Contractor</i> in connection with this Contract (R22) |
| New clause 91.9 | 91.9 | <p>Insert a new clause 91.8 as follows:</p> <p>The <i>Client</i> may terminate this agreement in whole or part with immediate effect if the <i>Client</i> reasonably believes that any of the circumstances set out in section 78(2) of the Procurement Act 2023 apply. (R23)</p> |
| Amend clause 93.1 | 93.1 | <p>At the end of the fourth bullet within clause 93.1 insert the following:</p> <p>excluding deductions made or other amounts withheld by the <i>Client</i> on a permanent basis or to which the <i>Client</i> has subsequently become permanently entitled</p> |
| Amend clause 93.2 | 93.2 | <p>Amend clause 93.2 as follows:</p> <p>At the end of A2 insert the following:</p> <p>“where ownership is vested in and to remain with the <i>Contractor</i> or any of its Sub-<i>Contractors</i>”</p> <p>At the end of A3 insert the following:</p> <p>“In particular, such deduction shall be the forecasted sum as may be reasonably estimated by the <i>Service Manager</i> as the additional cost to the <i>Client</i> of completing or procuring a third party to complete the <i>service</i> to the extent such estimated costs exceed the payment which would otherwise have been payable to the <i>Contractor</i> for carrying out the remaining part of the <i>service</i> and provided that such estimate will be based on the <i>Client</i> using reasonable endeavours to mitigate any additional expenditure in obtaining a replacement <i>service</i>. Any sum estimated as aforesaid which is not recovered by the <i>Client</i> by way of deduction from payments otherwise due to the <i>Contractor</i> shall be payable by the <i>Contractor</i> to the <i>Client</i> as a debt on demand.”</p> <p>Add an additional bullet A5 as follows:</p> <p>A5 “A deduction of any other sums that the <i>Client</i> is entitled to deduct under or in connection with the Contract (whether arising under any term of this</p> |

| | | |
|---------------|----|--|
| | | Contract or under any statute or rule of law or of equity).” |
| New clause 94 | 94 | <p>Insert a new clause 94 as follows:</p> <p>94.1 “For the avoidance of doubt and notwithstanding any other provision of the Contract, the <i>Client</i> will not be liable on termination for any <i>Contractor</i> loss of profits:</p> <p>94.2 Save as otherwise expressly provided in the Contract:</p> <ul style="list-style-type: none"> • termination or expiry of this Contract is without prejudice to any rights, remedies or obligations accrued under the Contract prior to termination or expiration and nothing in the Contract prejudices the right of either Party to recover any amount outstanding at such termination or expiry and • termination of this Contract does not affect the continuing rights, remedies or obligations of the <i>Client</i> or the <i>Contractor</i> under clause 8 (Risks and Insurance) and clause 92 (Procedures on Termination) and clause 29A (IPR) and/or under any other provision of this Contract which is expressed to survive termination or which is required to give effect to such termination or the consequences of such termination. <p>94.3 On the termination of the Contract for any reason, the <i>Contractor</i>:</p> <ul style="list-style-type: none"> • immediately returns to the <i>Client</i> all Confidential Information, Personal Data and IP Materials relating to the Contract in its possession or in the possession or under the control of any Personnel which was obtained or produced in the course of providing the <i>service</i>; • immediately delivers to the <i>Client</i> all property (including materials, documents, information and access keys) provided to the <i>Contractor</i> for the purposes of the Contract. Such property is to be handed back in good working order (allowance to be made for reasonable wear and tear). In instances where property cannot be delivered immediately the <i>Contractor</i> shall deliver the property within a timescale agreed by the <i>Client</i>; • assists and co-operates with the <i>Client</i> to ensure an orderly transition of the <i>service</i> to any replacement <i>Contractor</i> and/or the completion of any work in progress and the provision of information concerning the <i>service</i> which the <i>Client</i> may request free of charge; |

| | | |
|--------------------|--|---|
| | | <ul style="list-style-type: none"> promptly provides all information concerning the <i>service</i> which may reasonably be requested by the <i>Client</i> for the purposes of adequately understanding the provision of the <i>service</i> or for the purpose of allowing the <i>Client</i> or any replacement <i>Contractor</i> to conduct due diligence. <p>94.4 If the <i>Contractor</i> does not immediately return all Confidential Information, IP Materials relating to the Contract and property, the <i>Client</i> may recover possession thereof and the <i>Contractor</i> grants a licence to the <i>Client</i> or its appointed agents to enter (for the purposes of such recovery) any premises of the <i>Contractor</i> or its Personnel.”</p> |
| Option ZX8 | | Option X8 Undertakings to the <i>Client</i> or Other |
| Clause X8.4 | | Amend clause X8.4 as follows: In the second line of clause X8.4 delete “the Scope” and insert “Schedule 2”. |
| Option ZX11 | | Option X11: Termination By The <i>Client</i> |
| Clause X11.2 | | Amend clause X11.2 as follows: On the second line of clause X11.2, after “A1” delete “,” and insert “and”. On the second line of clause X11.2, after “A2” delete “and A4”. |
| Clause X11.3 | | Insert a new clause X.11.3 as follows: “The <i>Client</i> may not terminate under clause X11.1 during the period four years from the <i>starting date</i> , after such a date the <i>Client</i> may terminate under Clause X11.1 providing three months’ notice” |
| Option ZX13 | | Option X13: Performance Bond |
| Clause X13 | | In the second line, after “set out it” delete “the Scope” and insert “Schedule 3 |
| Option ZX20 | | X20 Key Performance Indicators |
| Clause X20 | | Amend clause X20 as follows: At the end of X20.2 insert: |

| | | |
|--|--|--|
| | | <p>“The information in these reports may be used in determine whether an extension of the <i>Service</i> Period under X23 is granted.”</p> <p>Delete X20.4 in its entirety.</p> <p>Renumber X20.5 to X20.4 and amend as follows:</p> <p>“Delete “and associated payment”</p> |
|--|--|--|

Contract Schedule D Scope

Refer to following documents appended to Schedule 1 : Framework Information located in J MCCANN & Co LIMITED – Lot 1 and Lot 2 Framework Agreement

ITT Section B - Part A Scope

Appendix A - Background – NELC

ITT Section B - Part B Scope – NELC

SLCD0005A-Model

SLCD0006A-Model

SLCD0007A-Model

SLCD0009A-Model

SLCD0009-Model

SLCD0010A-Model

SLCD0015A-Model

SLCD0016-Model

SLCD0017-Model

SLCD0018A-Model

SLCD0019A-Model

SLCD0022A-Model

SLCD0023A-Model

SLCD0024-Model

SLCD0025-Model

SLCD0026-Model

SLCD0027A-Model

SLCD0028A-Model

SLCD0029-Model

SLCD0030A-Model

SLCD0031A-Model

SLCD0032A-Model

SLCD0033A-Model

SLCD0034A-Model

SLCD0035A-Model

SLCD0036-Model

SLCD0001-Model

SLCD0002-Model

SLCD0003-Model

SLCD0004-Model

Contract Schedule E Asset Register

Refer to Schedule 1 : Framework Information located in J MCCANN & Co LIMITED – Lot 1 and Lot 2 Framework Agreement.

Lot 1 NELC Asset Register Pages 210 – 427

Contract Schedule F Key Performance Indicators

| KPI Ref | KPI Type | Metric | Who | SLA Target |
|----------------|---|--|------------|--|
| KPI 1 | Customer Service | Average time taken to repair a faulty Street Light (for definition see BVI.215a) | Supplier | Within 2 days |
| KPI 2 | | % of Emergency Call Outs attended within 2 hours of receiving notification | | 100% |
| KPI 3 | Serviceability | % of lights working as planned based on an adaptation of the redundant BVPI.98 | Supplier | 99% |
| KPI 4 | Health and Safety covered under Chapter 8 | <p>Category A – Routine Inspections</p> <p>5% of all live works will be technically inspected by the Client's Service Manager(s) monthly.</p> <p>The Client's Streetworks inspectors will inspect up to 100% of all work.</p> | Supplier | The failure rate shall not exceed 5% of Category A technical inspections carried out monthly throughout the contract |
| | | <p>Category B Routine Inspections</p> <p>5% of all works will be technically inspected by the Client's Service Manager(s) monthly for compliance with the Specification for Reinstatement of Openings (SROH)</p> <p>The Client's Streetworks inspectors will inspect up to 100% of all work.</p> | | The failure rate shall not exceed 5% of Category A technical inspections carried out within the 6 month liability period of the reinstatement. |
| | | <p>Category C Routine Inspections</p> <p>5% of all works will be technically inspected by the Client's Service</p> | | The failure rate shall not exceed 5% of Category A technical inspections carried out within the 2 |

| | | | | |
|--|--|---|-----------------------------|--|
| | | <p>Manager(s) monthly for compliance with the Specification for Reinstatement of Openings (SROH)</p> <p>The Client's Streetworks inspectors will inspect up to 100% of all work.</p> | | <p>year liability period of the reinstatement.</p> |
| | | <p>Site Inspection</p> <ol style="list-style-type: none"> 1. A minimum of 1 live site inspections will be undertaken with the Supplier by the Client's Service Manager's. 2. This may involve unannounced visits. | <p>Client/ Supplier</p> | <p>Pass</p> |

Schedule 1

TUPE Provisions

1. Definitions

In this Schedule, the following definitions shall apply:

Acquired Rights Directive: the Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses, as it applies in England and Wales from time to time including as retained, amended, extended, re-enacted or otherwise given effect on or after 11 pm on 31 January 2020.

Employee Liabilities: all claims, actions, proceedings, orders, demands, complaints, investigations (save for any claims for personal injury which are covered by insurance) and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs, expenses and legal costs reasonably incurred in connection with a claim or investigation related to employment including in relation to the following:

- (a) redundancy payments including contractual or enhanced redundancy costs, termination costs and notice payments;
- (b) unfair, wrongful or constructive dismissal compensation;
- (c) compensation for discrimination on grounds of sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation or claims for equal pay;
- (d) compensation for less favourable treatment of part-time workers or fixed term employees;
- (e) outstanding employment debts and unlawful deduction of wages including any PAYE and national insurance contributions;
- (f) employment claims whether in tort, contract or statute or otherwise;
- (g) any investigation relating to employment matters by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body and of implementing any requirements which may arise from such investigation;

Employment Regulations: the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended or replaced;

Former Provider: a Provider supplying *services* to the *Client* before the Relevant Transfer Date that are the same as or substantially similar to the *Services* (or any part of the *Services*) and shall include any sub-*Contractor* of such Provider (or any sub-*Contractor* of any such sub-*Contractor*);

Notified Sub-Contractor: a Sub-Contractor identified in ANNEX B to whom Transferring Former Provider Employees will transfer on a Relevant Transfer Date;

Provider: Shall mean the Contractor.

Replacement Services: any services which are the same as or substantially similar to the Services following the expiry or termination of Partial Termination of this Agreement, whether those services are provided by the Client internally and/or by any third party;

Replacement Sub-Contractor: a sub-Contractor of the Replacement Provider to whom Transferring Provider Employees will transfer on a Service Transfer Date (or any sub-Contractor of any such Sub-Contractor);

Replacement Provider: any third party service provider of Services appointed by the Client from time to time (or where the Client is providing replacement Services for its own account, the Client);

Relevant Transfer: a transfer of employment to which the Employment Regulations applies;

Relevant Transfer Date: in relation to a Relevant Transfer, the date upon which the Relevant Transfer takes place;

Service Transfer: any transfer of the Services (or any part of the Services), for whatever reason, from the Provider or any Sub-Contractor to a Replacement Provider or a Replacement Sub-Contractor;

Service Transfer Date: the date of a Service Transfer;

Staffing Information: in relation to all persons identified on the Provider's Provisional Personnel List or Provider's Final Personnel List, as the case may be, such information as the Client may reasonably request (subject to all applicable provisions of the Data Protection Legislation, but including in an anonymised format:

- (a) their ages, dates of commencement of employment or engagement and gender;
- (b) details of whether they are employed, self employed Contractors or consultants, agency workers or otherwise;
- (c) the identity of the employer or relevant contracting Party;
- (d) their relevant contractual notice periods and any other terms relating to termination of employment, including redundancy procedures, and redundancy payments;
- (e) their wages, salaries and profit sharing arrangements as applicable;
- (f) details of other employment-related benefits, including (without limitation) medical insurance, life assurance, pension or other retirement benefit schemes, share option schemes and company car schedules applicable to them;

- (g) any outstanding or potential contractual, statutory or other liabilities in respect of such individuals (including in respect of personal injury claims);
- (h) details of any such individuals on long term sickness absence, parental leave, maternity leave or other authorised long term absence;
- (i) copies of all relevant documents and materials relating to such information, including copies of relevant contracts of employment (or relevant standard contracts if applied generally in respect of such employees); and
- (j) any other "employee liability information" as such term is defined in regulation 11 of the Employment Regulations;

Provider's Final Personnel List: a list provided by the Provider of all Provider Personnel who will transfer under the Employment Regulations on the Relevant Transfer Date;

Provider Personnel: all directors, officers, employees, agents, consultants and *Contractors* of the Provider and/or any *Sub-Contractor* engaged in the performance of the Provider's obligations under this Agreement;

Provider's Provisional Personnel List: a list prepared and updated by the Provider of all Provider Personnel who are engaged in or wholly or mainly assigned to the provision of the *Services* or any relevant part of the *Services* which it is envisaged as at the date of such list will no longer be provided by the Provider;

Transferring Former Provider Employees: in relation to a Former Provider, those employees of the Former Provider to whom the Employment Regulations will apply on the Relevant Transfer Date as contained in ANNEX A and accurate as at the date on which this Agreement is signed by both Parties; and

Transferring Provider Employees: those employees of the Provider and/or the Provider's *Sub-Contractors* to whom the Employment Regulations will apply on the *Service Transfer Date*.

2. Interpretation

Where a provision in this Schedule imposes an obligation on the Provider to provide an indemnity, undertaking or warranty, the Provider shall procure that each of its *Sub-Contractors* shall comply with such obligation and provide such indemnity, undertaking or warranty to the *Client*, Former Provider, Replacement Provider or Replacement *Sub-Contractor*, as the case may be.

Transferring Former Provider Employees at commencement of *Services*

3. Relevant Transfers

3.1 The *Client* and the Provider agree that:

- (a) the commencement of the provision of the *Services* or of any relevant part of the *Services* will be a Relevant Transfer in relation to the Transferring Former Provider Employees; and
 - (b) as a result of the operation of the Employment Regulations, the contracts of employment between each Former Provider and the Transferring Former Provider Employees (except in relation to any terms disapplied through the operation of regulation 10(2) of the Employment Regulations) shall have effect on and from the Relevant Transfer Date as if originally made between the Provider and/or Notified Sub-Contractor and each such Transferring Former Provider Employee.
- 3.2 The *Client* shall procure that each Former Provider shall comply with all its obligations under the Employment Regulations and shall perform and discharge all its obligations in respect of all the Transferring Former Provider Employees in respect of the period up to (but not including) the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part in respect of the period up to (but not including) the Relevant Transfer Date) and the Provider shall make, and the *Client* shall procure that each Former Provider makes, any necessary apportionments in respect of any periodic payments.

4. Former Provider indemnities

- 4.1 Subject to paragraph 4.2, the *Client* shall procure that each Former Provider shall indemnify the Provider and any Notified Sub-Contractor against any Employee Liabilities in respect of any Transferring Former Provider Employee (or, where applicable any employee representative as defined in the Employment Regulations) arising from or as a result of:
- (a) any act or omission by the Former Provider arising before the Relevant Transfer Date;
 - (b) the breach or non-observance by the Former Provider arising before the Relevant Transfer Date of:
 - (i) any collective agreement applicable to the Transferring Former Provider Employees; and/or
 - (ii) any custom or practice in respect of any Transferring Former Provider Employees which the Former Provider is contractually bound to honour;
 - (c) any proceeding, claim or demand by HMRC or other statutory *Client* in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:

- (i) in relation to any Transferring Former Provider Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory *Client* relates to financial obligations arising before the Relevant Transfer Date; and
 - (ii) in relation to any employee who is not a Transferring Former Provider Employee and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer their employment from the Former Provider to the Provider and/or any Notified Sub-Contractor as appropriate, to the extent that the proceeding, claim or demand by HMRC or other statutory *Client* relates to financial obligations in respect of the period to (but excluding) the Relevant Transfer Date;
- (d) a failure of the Former Provider to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Former Provider Employees in respect of the period to (but excluding) the Relevant Transfer Date;
- (e) any claim made by or in respect of any person employed or formerly employed by the Former Provider other than a Transferring Former Provider Employee for whom it is alleged the Provider and/or any Notified Sub-Contractor as appropriate may be liable by virtue of this Agreement and/or the Employment Regulations and/or the Acquired Rights Directive; and
- (f) any claim made by or in respect of a Transferring Former Provider Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Provider Employee relating to any act or omission of the Former Provider in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the Provider or any Sub-Contractor to comply with regulation 13(4) of the Employment Regulations.

4.2 The indemnities in paragraph 4.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Provider or any Sub-Contractor (whether or not a Notified Sub-Contractor) whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities:

- (a) arising out of the resignation of any Transferring Former Provider Employee before the Relevant Transfer Date on account of substantial detrimental changes to their working conditions proposed by the Provider or any Sub-Contractor to occur in the period from (and including) the Relevant Transfer Date; or
- (b) arising from the failure by the Provider and/or any Sub-Contractor to comply with its obligations under the Employment Regulations.

4.3 If any person who is not identified by the *Client* as a Transferring Former Provider Employee claims, or it is determined in relation to any person who is not identified by the *Client* as a Transferring Former Provider Employee, that their contract of employment has been transferred from a Former Provider to the Provider and/or any Notified Sub-Contractor pursuant to the Employment Regulations or the Acquired Rights Directive then:

- (a) the Provider shall, or shall procure that the Notified Sub-Contractor shall, within five Working Days of becoming aware of that fact, give notice in writing to the *Client* and, where required by the *Client*, to the Former Provider; and
- (b) the Former Provider may offer (or may procure that a third party may offer) employment to such person within 15 Working Days of the notification by the Provider and/or the Notified Sub-Contractor or take such other reasonable steps as the Former Provider considers appropriate to deal with the matter provided always that such steps are in compliance with applicable Law.

4.4 If an offer referred to in paragraph 4.3(b) is accepted, or if the situation has otherwise been resolved by the Former Provider and/or the *Client*, the Provider shall, or shall procure that the Notified Sub-Contractor shall, immediately release the person from their employment or alleged employment.

4.5 If by the end of the 15 Working Day period specified in paragraph 4.3(b):

- (a) no such offer of employment has been made;
- (b) such offer has been made but not accepted; or
- (c) the situation has not otherwise been resolved,

the Provider and/or any Notified Sub-Contractor may within five Working Days give notice to terminate the employment or alleged employment of such person.

4.6 Subject to the Provider and/or any Notified Sub-Contractor acting in accordance with the provisions of paragraph 4.3 to paragraph 4.5 and in accordance with all applicable proper employment procedures set out in Law, the *Client* shall procure that the Former Provider indemnifies the Provider and/or any Notified Sub-Contractor (as appropriate) against all Employee Liabilities arising out of the termination pursuant to the provisions of paragraph 4.5 provided that the Provider takes, or shall procure that the Notified Sub-Contractor takes, all reasonable steps to minimise any such Employee Liabilities.

4.7 The indemnity in paragraph 4.6:

- (a) shall not apply to:
 - (i) in any case in relation to any alleged act or omission of the Provider and/or any Sub-Contractor, any claim for: (A) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual

orientation, religion or belief; or (B) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees; or

(ii) any claim that the termination of employment was unfair because the Provider and/or Notified Sub-Contractor neglected to follow a fair dismissal procedure; and

(b) shall apply only where the notification referred to in paragraph 4.3(a) is made by the Provider and/or any Notified Sub-Contractor (as appropriate) to the Client and, if applicable, the Former Provider, within six months of the Effective Date.

4.8 If any such person as is described in paragraph 4.3 is neither re-employed by the Former Provider nor dismissed by the Provider and/or any Notified Sub-Contractor within the time scales set out in paragraph 4.5, such person shall be treated as having transferred to the Provider or Notified Sub-Contractor and the Provider shall, or shall procure that the Notified Sub-Contractor shall, comply with such obligations as may be imposed upon it under the Law.

5. Provider indemnities and obligations

5.1 Subject to paragraph 5.2, the Provider shall indemnify the Client and/or the Former Provider against any Employee Liabilities in respect of any Transferring Former Provider Employee (or, where applicable any employee representative as defined in the Employment Regulations) arising from or as a result of:

- (a) any act or omission by the Provider or any Sub-Contractor whether occurring before, on or after the Relevant Transfer Date;
- (b) the breach or non-observance by the Provider or any Sub-Contractor on or after the Relevant Transfer Date of:
 - (i) any collective agreement applicable to the Transferring Former Provider Employee; and/or
 - (ii) any custom or practice in respect of any Transferring Former Provider Employees which the Provider or any Sub-Contractor is contractually bound to honour;
- (c) any claim by any trade union or other body or person representing any Transferring Former Provider Employees arising from or connected with any failure by the Provider or a Sub-Contractor to comply with any legal obligation to such trade union, body or person arising on or after the Relevant Transfer Date;
- (d) any proposal by the Provider or a Sub-Contractor prior to the Relevant Transfer Date to make changes to the terms and conditions of employment or working conditions of any Transferring Former Provider Employees to their material detriment on or after their transfer to the Provider or a Sub-Contractor (as the case may be) on the Relevant Transfer Date, or to change the terms

and conditions of employment or working conditions of any person who would have been a Transferring Former Provider Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Relevant Transfer Date as a result of or for a reason connected to such proposed changes;

- (e) any statement communicated to or action undertaken by the Provider or a Sub-Contractor to, or in respect of, any Transferring Former Provider Employee before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Client and/or the Former Provider in writing;
- (f) any proceeding, claim or demand by HMRC or other statutory Client in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
 - (i) in relation to any Transferring Former Provider Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory Client relates to financial obligations arising on or after the Relevant Transfer Date; and
 - (ii) in relation to any employee who is not a Transferring Former Provider Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer their employment from the Former Provider to the Provider or a Sub-Contractor, to the extent that the proceeding, claim or demand by the HMRC or other statutory Client relates to financial obligations arising on or after the Relevant Transfer Date;
- (g) a failure of the Provider or any Sub-Contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Former Provider Employees in respect of the period from (and including) the Relevant Transfer Date; and
- (h) any claim made by or in respect of a Transferring Former Provider Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Provider Employee relating to any act or omission of the Provider or any Sub-Contractor in relation to obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the Former Provider's failure to comply with its obligations under regulation 13 of the Employment Regulations.

5.2 The indemnities in paragraph 5.1 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Former Provider whether occurring or having its origin before, on or after the Relevant Transfer Date including, without limitation, any Employee Liabilities arising from the Former Provider's failure to comply with its obligations under the Employment Regulations.

- 5.3 The Provider shall comply, and shall procure that each Sub-Contractor shall comply, with all its obligations under the Employment Regulations (including without limitation its obligation to inform and consult in accordance with regulation 13 of the Employment Regulations) and shall perform and discharge, and shall procure that each Sub-Contractor shall perform and discharge, all its obligations in respect of all the Transferring Former Provider Employees, on and from the Relevant Transfer Date (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part to the period from (and including) the Relevant Transfer Date) and any necessary apportionments in respect of any periodic payments shall be made between the Provider and the Former Provider.
- 5.4 The parties agree that the Contracts (Rights of Third Parties) Act 1999 shall apply to this paragraph 5, to the extent necessary to ensure that any Replacement Provider shall have the right to enforce the obligations owed to, and indemnities given to, the Replacement Provider by the Provider or the Client in its own right under section 1(1) of the Contracts (Rights of Third Parties) Act 1999.
- 5.5 Despite paragraph 5.4, it is expressly agreed that the parties may by agreement rescind or vary any terms of this Agreement without the consent of any other person who has the right to enforce its terms or the term in question despite that such rescission or variation may extinguish or alter that person's entitlement under that right.

6. Information

The Provider shall, and shall procure that each Sub-Contractor shall, promptly provide to the Client and/or at the Client's direction, the Former Provider, in writing such information as is necessary to enable the Client and/or the Former Provider to carry out their respective duties under regulation 13 of the Employment Regulations. The Client shall procure that the Former Provider shall promptly provide to the Provider and each Notified Sub-Contractor in writing such information as is necessary to enable the Provider and each Notified Sub-Contractor to carry out their respective duties under regulation 13 of the Employment Regulations.

7. Procurement obligations

Notwithstanding any other provisions of this Schedule, where in this Schedule the Client accepts an obligation to procure that a Former Provider does or does not do something, such obligation shall be limited so that it extends only to the extent that the Client's contract with the Former Provider contains a contractual right in that regard which the Client may enforce, or otherwise so that it requires only that the Client must use reasonable endeavours to procure that the Former Provider does or does not act accordingly.

8. Employer obligation under pensions legislation

- 8.1 The Provider shall comply with the requirements of Part 1 of the Pensions Act 2008 sections 257 and 258 of the Pensions Act 2004 and the Transfer of Undertakings (Pension protection) Regulations 2005.

Employment exit provisions

9. Pre-service transfer obligations

- 9.1 The Provider agrees that within 20 Working Days of the earliest of:
- (a) receipt of a notification from the *Client* of a *Service* Transfer or intended *Service* Transfer;
 - (b) receipt of the giving of notice of early termination or any Partial Termination of this Agreement;
 - (c) the date which is 12 months before the end of the Term; and
 - (d) receipt of a written request of the *Client* at any time (provided that the *Client* shall only be entitled to make one such request in any six month period),

it shall provide in a suitably anonymised format so as to comply with the Data Protection Legislation, the Provider's Provisional Personnel List, together with the Staffing Information in relation to the Provider's Provisional Personnel List and it shall provide an updated Provider's Provisional Personnel List at such intervals as are reasonably requested by the *Client*.

- 9.2 At least 28 Working Days prior to the *Service* Transfer Date, the Provider shall provide to the *Client* or at the direction of the *Client* to any Replacement Provider and/or any Replacement Sub-*Contractor*:
- (a) the Provider's Final Personnel List, which shall identify which of the Provider Personnel are Transferring Provider Employees; and
 - (b) the Staffing Information in relation to the Provider's Final Personnel List (insofar as such information has not previously been provided).
- 9.3 The *Client* shall be permitted to use and disclose information provided by the Provider under paragraph 9.1 and paragraph 9.2 for the purpose of informing any prospective Replacement Provider and/or Replacement Sub-*Contractor*.
- 9.4 The Provider warrants, for the benefit of the *Client*, any Replacement Provider, and any Replacement Sub-*Contractor* that all information provided pursuant to paragraph 9.1 and paragraph 9.2 shall be true and accurate in all material respects at the time of providing the information.
- 9.5 From the date of the earliest event referred to in paragraph 9.1(a), paragraph 9.1(b) and paragraph 9.1(c), the Provider agrees, that it shall not, and agrees to procure that

each Sub-Contractor shall not, assign any person to the provision of the *Services* who is not listed on the Provider's Provisional Personnel List and shall not without the approval of the *Client* (not to be unreasonably withheld or delayed):

- (a) replace or re-deploy any Provider Personnel listed on the Provider Provisional Personnel List other than where any replacement is of equivalent grade, skills, experience and expertise and is employed on the same terms and conditions of employment as the person they replace;
- (b) make, promise, propose or permit any material changes to the terms and conditions of employment of the Provider Personnel (including any payments connected with the termination of employment);
- (c) increase the proportion of working time spent on the *Services* (or the relevant part of the *Services*) by any of the Provider Personnel save for fulfilling assignments and projects previously scheduled and agreed;
- (d) introduce any new contractual or customary practice concerning the making of any lump sum payment on the termination of employment of any employees listed on the Provider's Provisional Personnel List;
- (e) increase or reduce the total number of employees so engaged, or deploy any other person to perform the *Services* (or the relevant part of the *Services*); or
- (f) terminate or give notice to terminate the employment or contracts of any persons on the Provider's Provisional Personnel List save by due disciplinary process,

and shall promptly notify, and procure that each Sub-Contractor shall promptly notify, the *Client* or, at the direction of the *Client*, any Replacement Provider and any Replacement Sub-Contractor of any notice to terminate employment given by the Provider or relevant Sub-Contractor or received from any persons listed on the Provider's Provisional Personnel List regardless of when such notice takes effect.

9.6 During the Term, the Provider shall provide, and shall procure that each Sub-Contractor shall provide, to the *Client* any information the *Client* may reasonably require relating to the manner in which the *Services* are organised, which shall include:

- (a) the numbers of employees engaged in providing the *Services*;
- (b) the percentage of time spent by each employee engaged in providing the *Services*; and
- (c) a description of the nature of the work undertaken by each employee by location.

9.7 The Provider shall provide, and shall procure that each Sub-Contractor shall provide, all reasonable cooperation and assistance to the *Client*, any Replacement Provider and/or any Replacement Sub-Contractor to ensure the smooth transfer of the Transferring Provider Employees on the *Service* Transfer Date including providing sufficient information in advance of the *Service* Transfer Date to ensure that all

necessary payroll arrangements can be made to enable the Transferring Provider Employees to be paid as appropriate. Without prejudice to the generality of the foregoing, within five Working Days following the *Service Transfer Date*, the Provider shall provide, and shall procure that each Sub-Contractor shall provide, to the *Client* or, at the direction of the *Client*, to any Replacement Provider and/or any Replacement Sub-Contractor (as appropriate), in respect of each person on the Provider's Final Personnel List who is a Transferring Provider Employee:

- (a) the most recent month's copy pay slip data;
- (b) details of cumulative pay for tax and pension purposes;
- (c) details of cumulative tax paid;
- (d) tax code;
- (e) details of any voluntary deductions from pay; and
- (f) bank/building society account details for payroll purposes.

10. Employment regulations exit provisions

- 10.1 The *Client* and the Provider acknowledge that subsequent to the commencement of the provision of the *Services*, the identity of the provider of the *Services* (or any part of the *Services*) may change (whether as a result of termination or Partial Termination of this Agreement or otherwise) resulting in the *Services* being undertaken by a Replacement Provider and/or a Replacement Sub-Contractor. Such change in the identity of the Provider of such *services* may constitute a Relevant Transfer to which the Employment Regulations and/or the Acquired Rights Directive will apply. The *Client* and the Provider further agree that, as a result of the operation of the Employment Regulations, where a Relevant Transfer occurs, the contracts of employment between the Provider and the Transferring Provider Employees (except in relation to any contract terms disapplied through operation of regulation 10(2) of the Employment Regulations) will have effect on and from the *Service Transfer Date* as if originally made between the Replacement Provider and/or a Replacement Sub-Contractor (as the case may be) and each such Transferring Provider Employee.
- 10.2 The Provider shall, and shall procure that each Sub-Contractor shall, comply with all its obligations in respect of the Transferring Provider Employees arising under the Employment Regulations in respect of the period up to (and including) the *Service Transfer Date* and shall perform and discharge, and procure that each Sub-Contractor shall perform and discharge, all its obligations in respect of all the Transferring Provider Employees arising in respect of the period up to (and including) the *Service Transfer Date* (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part to the period ending on (and including) the *Service Transfer Date*) and any necessary apportionments in respect of any periodic payments

shall be made between: (i) the Provider and/or the Sub-Contractor (as appropriate); and (ii) the Replacement Provider and/or Replacement Sub-Contractor.

- 10.3 Subject to paragraph 10.4, the Provider shall indemnify the Client and/or the Replacement Provider and/or any Replacement Sub-Contractor against any Employee Liabilities in respect of any Transferring Provider Employee (or, where applicable any employee representative as defined in the Employment Regulations) arising from or as a result of:
- (a) any act or omission of the Provider or any Sub-Contractor whether occurring before, on or after the Service Transfer Date;
 - (b) the breach or non-observance by the Provider or any Sub-Contractor occurring on or before the Service Transfer Date of:
 - (i) any collective agreement applicable to the Transferring Provider Employees; and/or
 - (ii) any other custom or practice with a trade union or staff association in respect of any Transferring Provider Employees which the Provider or any Sub-Contractor is contractually bound to honour;
 - (c) any claim by any trade union or other body or person representing any Transferring Provider Employees arising from or connected with any failure by the Provider or a Sub-Contractor to comply with any legal obligation to such trade union, body or person arising on or before the Service Transfer Date;
 - (d) any proceeding, claim or demand by HMRC or other statutory Client in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
 - (i) in relation to any Transferring Provider Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory Client relates to financial obligations arising on and before the Service Transfer Date; and
 - (ii) in relation to any employee who is not a Transferring Provider Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer their employment from the Provider to the Client and/or Replacement Provider and/or any Replacement Sub-Contractor, to the extent that the proceeding, claim or demand by HMRC or other statutory Client relates to financial obligations arising on or before the Service Transfer Date;
 - (e) a failure of the Provider or any Sub-Contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Provider Employees in respect of the period up to (and including) the Service Transfer Date);

- (f) any claim made by or in respect of any person employed or formerly employed by the Provider or any Sub-Contractor other than a Transferring Provider Employee for whom it is alleged the *Client* and/or the Replacement Provider and/or any Replacement Sub-Contractor may be liable by virtue of this Agreement and/or the Employment Regulations and/or the Acquired Rights Directive; and
 - (g) any claim made by or in respect of a Transferring Provider Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Provider Employee relating to any act or omission of the Provider or any Sub-Contractor in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the *Client* and/or Replacement Provider to comply with regulation 13(4) of the Employment Regulations.
- 10.4 The indemnities in paragraph 10.3 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Replacement Provider and/or any Replacement Sub-Contractor whether occurring or having its origin before, on or after the *Service Transfer Date*, including any Employee Liabilities:
- (a) arising out of the resignation of any Transferring Provider Employee before the *Service Transfer Date* on account of substantial detrimental changes to their working conditions proposed by the Replacement Provider and/or any Replacement Sub-Contractor to occur in the period on or after the *Service Transfer Date*); or
 - (b) arising from the Replacement Provider's failure, and/or Replacement Sub-Contractor's failure, to comply with its obligations under the Employment Regulations.
- 10.5 If any person who is not a Transferring Provider Employee claims, or it is determined in relation to any person who is not a Transferring Provider Employee, that their contract of employment has been transferred from the Provider or any Sub-Contractor to the Replacement Provider and/or Replacement Sub-Contractor pursuant to the Employment Regulations or the Acquired Rights Directive, then:
- (a) the *Client* shall procure that the Replacement Provider shall, or any Replacement Sub-Contractor shall, within five Working Days of becoming aware of that fact, give notice in writing to the Provider; and
 - (b) the Provider may offer (or may procure that a Sub-Contractor may offer) employment to such person within 15 Working Days of the notification by the Replacement Provider and/or any and/or Replacement Sub-Contractor or take such other reasonable steps as it considers appropriate to deal with the matter provided always that such steps are in compliance with Law.
- 10.6 If such offer is accepted, or if the situation has otherwise been resolved by the Provider or a Sub-Contractor, the *Client* shall procure that the Replacement Provider shall, or

procure that the Replacement Sub-Contractor shall, immediately release or procure the release of the person from their employment or alleged employment.

10.7 If after the 15 Working Day period specified in paragraph 10.5(b) has elapsed:

- (a) no such offer of employment has been made;
- (b) such offer has been made but not accepted; or
- (c) the situation has not otherwise been resolved

the *Client* shall advise the Replacement Provider and/or Replacement Sub-Contractor, as appropriate that it may within five Working Days give notice to terminate the employment or alleged employment of such person.

10.8 Subject to the Replacement Provider and/or Replacement Sub-Contractor acting in accordance with the provisions of paragraph 10.5 to paragraph 10.7, and in accordance with all applicable proper employment procedures set out in applicable Law, the Provider shall indemnify the Replacement Provider and/or Replacement Sub-Contractor against all Employee Liabilities arising out of the termination pursuant to the provisions of paragraph 10.7 provided that the Replacement Provider takes, or shall procure that the Replacement Sub-Contractor takes, all reasonable steps to minimise any such Employee Liabilities.

10.9 The indemnity in paragraph 10.8:

- (a) shall not apply to:
 - (i) in any case in relation to any alleged act or omission of the Replacement Provider and/or Replacement Sub-Contractor, any claim for: (A) discrimination, including on the grounds of sex, race, disability, age, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation, religion or belief; or (B) equal pay or compensation for less favourable treatment of part-time workers or fixed-term employees; or
 - (ii) any claim that the termination of employment was unfair because the Replacement Provider and/or Replacement Sub-Contractor neglected to follow a fair dismissal procedure; and
- (b) shall apply only where the notification referred to in paragraph 10.5(a) is made by the Replacement Provider and/or Replacement Sub-Contractor to the Provider within six months of the *Service Transfer Date*.

10.10 If any such person as is described in paragraph 10.5 is neither re-employed by the Provider or any Sub-Contractor nor dismissed by the Replacement Provider and/or Replacement Sub-Contractor within the time scales set out in paragraph 10.5 to paragraph 10.7, such person shall be treated as a Transferring Provider Employee and the Replacement Provider and/or Replacement Sub-Contractor shall comply with such obligations as may be imposed upon it under applicable Law.

- 10.11 The Provider shall comply, and shall procure that each *Sub-Contractor* shall comply, with all its obligations under the Employment Regulations and shall perform and discharge, and shall procure that each *Sub-Contractor* shall perform and discharge, all its obligations in respect of the Transferring Provider Employees before and on the *Service Transfer Date* (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part in respect of the period up to (and including) the *Service Transfer Date*) and any necessary apportionments in respect of any periodic payments shall be made between:
- (a) the Provider and/or any *Sub-Contractor*, and
 - (b) the Replacement Provider and/or the Replacement *Sub-Contractor*.
- 10.12 The Provider shall, and shall procure that each *Sub-Contractor* shall, promptly provide to the *Client* and any Replacement Provider and/or Replacement *Sub-Contractor*, in writing such information as is necessary to enable the *Client*, the Replacement Provider and/or Replacement *Sub-Contractor* to carry out their respective duties under regulation 13 of the Employment Regulations. The *Client* shall procure that the Replacement Provider and/or Replacement *Sub-Contractor*, shall promptly provide to the Provider and each *Sub-Contractor* in writing such information as is necessary to enable the Provider and each *Sub-Contractor* to carry out their respective duties under regulation 13 of the Employment Regulations.
- 10.13 Subject to paragraph 10.14, the *Client* shall procure that the Replacement Provider indemnifies the Provider on its own behalf and on behalf of any Replacement *Sub-Contractor* and its *sub-Contractors* against any Employee Liabilities in respect of each Transferring Provider Employee (or, where applicable any employee representative (as defined in the Employment Regulations) of any Transferring Provider Employee) arising from or as a result of:
- (a) any act or omission of the Replacement Provider and/or Replacement *Sub-Contractor*,
 - (b) the breach or non-observance by the Replacement Provider and/or Replacement *Sub-Contractor* on or after the *Service Transfer Date* of:
 - (i) any collective agreement applicable to the Transferring Provider Employees; and/or
 - (ii) any custom or practice in respect of any Transferring Provider Employees which the Replacement Provider and/or Replacement *Sub-Contractor* is contractually bound to honour;
 - (c) any claim by any trade union or other body or person representing any Transferring Provider Employees arising from or connected with any failure by the Replacement Provider and/or Replacement *Sub-Contractor* to comply

with any legal obligation to such trade union, body or person arising on or after the Relevant Transfer Date;

- (d) any proposal by the Replacement Provider and/or Replacement Sub-Contractor to change the terms and conditions of employment or working conditions of any Transferring Provider Employees on or after their transfer to the Replacement Provider or Replacement Sub-Contractor (as the case may be) on the Relevant Transfer Date, or to change the terms and conditions of employment or working conditions of any person who would have been a Transferring Provider Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the Relevant Transfer Date as a result of or for a reason connected to such proposed changes;
- (e) any statement communicated to or action undertaken by the Replacement Provider or Replacement Sub-Contractor to, or in respect of, any Transferring Provider Employee on or before the Relevant Transfer Date regarding the Relevant Transfer which has not been agreed in advance with the Provider in writing;
- (f) any proceeding, claim or demand by HMRC or other statutory *Client* in respect of any financial obligation including, but not limited to, PAYE and primary and secondary national insurance contributions:
 - (i) in relation to any Transferring Provider Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory *Client* relates to financial obligations arising after the *Service* Transfer Date; and
 - (ii) in relation to any employee who is not a Transferring Provider Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer their employment from the Provider or Sub-Contractor, to the Replacement Provider or Replacement Sub-Contractor to the extent that the proceeding, claim or demand by HMRC or other statutory *Client* relates to financial obligations arising after the *Service* Transfer Date;
- (g) a failure of the Replacement Provider or Replacement Sub-Contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Provider Employees in respect of the period from (and including) the *Service* Transfer Date; and
- (h) any claim made by or in respect of a Transferring Provider Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Provider Employee relating to any act or omission of the Replacement Provider or Replacement Sub-Contractor in relation to obligations under regulation 13 of the Employment Regulations.

10.14 The indemnities in paragraph 10.13 shall not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Provider and/or any Sub-*Contractor* (as applicable) whether occurring or having its origin before, on or after the Relevant Transfer Date, including any Employee Liabilities arising from the failure by the Provider and/or any Sub-*Contractor* (as applicable) to comply with its obligations under the Employment Regulations.

ANNEX A Transferring Former Provider Employees

ANNEX B List of Notified Sub-Contractors

NOT APPLICABLE

Schedule 2

Contractor Collateral Warranties

[DRAFTING NOTE - THIS FORM SHALL BE ADAPTED FOR USE DEPENDANT ON THE BENEFICIARIES AND SHALL ALSO BE USED TO CREATE THE WARRANTIES FROM SUBCONTRACTORS / SUBCONSULTANTS]

DATED _____ 202[]

[CONTRACTOR]

and

[BENEFICIARY]

and

[EMPLOYER]

CONTRACTOR'S COLLATERAL WARRANTY

RELATING TO A PROJECT AT

[SHORT DESCRIPTION OF PROPERTY OR SERVICES]

Contents

| | | |
|----|--|----|
| 1 | Interpretation | 4 |
| 2 | Comply with Building Contract | 7 |
| 3 | [Step-in rights: Contractor may not terminate] | 8 |
| 4 | [Step-in Rights: Beneficiary may step-in] | 10 |
| 5 | [Step-in Rights: Contractor's position and Employer's consent] | 10 |
| 6 | [Step-in Rights: Beneficiary's guarantee] | 10 |
| 7 | No Instructions to Contractor By Beneficiary | 10 |
| 8 | Copyright | 10 |
| 9 | Professional Indemnity Insurance | 11 |
| 10 | Liability Period | 12 |
| 11 | Assignment | 12 |
| 12 | Notices | 12 |
| 13 | Third Party Rights | 13 |
| 14 | Governing Law | 13 |
| 15 | Jurisdiction | 13 |
| 16 | Further warranties | 13 |

THIS AGREEMENT is dated:

PARTIES:

- (1) [FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (**Contractor**);
- (2) [FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (**Beneficiary**);
and
- (3) [[FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (**Client**).]

BACKGROUND:

- A. The Client has engaged the Contractor to carry out [design and] construction work.
- B. The Beneficiary, as [NATURE OF BENEFICIARY'S INTEREST], has an interest in the [design and] construction work.
- C. The Employer requires the Contractor to enter into a collateral warranty in favour of the Beneficiary.
- D. The Contractor has agreed to enter into this agreement with [the Employer and] the Beneficiary for the benefit of the Beneficiary.
- E. The Beneficiary has paid £10 to the Contractor [and the Employer] as consideration under this agreement.

AGREED TERMS:

1 Interpretation

The following definitions and rules of interpretation apply in this agreement.

1.1 Definitions:

| | |
|--|--|
| Building Contract | an agreement in writing dated [DATE] between the Employer and the Contractor. |
| Business Day | a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business. |
| Construction Products Regulations | UK Construction Products Regulation 2011 and the Construction Products Regulations 2013 (SI 2013/1387). |

Deleterious materials, equipment, products or kits that are generally accepted, or generally suspected, in the construction industry at the relevant time as:

- (a) posing a threat to the health and safety of any person; or
- (b) posing a threat to the structural stability, performance or physical integrity of the Services or any part or component of the Services; or
- (c) reducing, or possibly reducing, the normal life expectancy of the Services or any part or component of the Services; or
- (d) not being in accordance with any relevant British Standard, relevant code of practice, good building practice or any applicable agrément certificate issued by the British Board of Agrément; or
- (e) having been supplied or placed on the market in breach of the Construction Products Regulations.

[Client [FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS].]

Funder a person that has provided, or is to provide, finance in connection with:

- (a) the whole or any part of the Service or the completed Services; or
- (b) the site of the Services,

whether that person acts on its own account, as agent for a syndicate of other parties or otherwise.

Material all designs, drawings, models, plans, specifications, design details, photographs, brochures, reports, notes of meetings, CAD materials, calculations, data, databases, schedules, programmes, bills of quantities, budgets and any other materials provided in connection with the Services and all updates, amendments, additions and revisions to them and any works, designs, or inventions incorporated or referred to in them for any purpose relating to the Services.

Permitted Uses the design, construction, completion, reconstruction, modification, refurbishment, development, maintenance,

facilities management, funding, disposal, letting, fitting-out, advertisement, decommissioning, demolition, reinstatement, extension, building information modelling and repair of the Affected Property and the Services.

Affected Property

[DESCRIPTION OF PROPERTY].

Services

the [design,] construction and completion of the works referred to in the Building Contract, carried out by or on behalf of the Contractor under the Building Contract.

- 1.2 Clause headings shall not affect the interpretation of this agreement.
- 1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 A reference to a **company** includes any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural include the singular.
- 1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.7 A reference to any party shall include that party's personal representatives, successors and permitted assigns and references to any party shall include that party's personal representatives, successors and permitted assigns.
- 1.8 A reference to legislation or a legislative provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.9 A reference to legislation or a legislative provision shall include all subordinate legislation made from time to time under that legislation or legislative provision.
- 1.10 Unless the context otherwise requires, any reference to European Union law that was directly applicable or directly effective in the UK at any time is a reference to it as it applies in [England and Wales] from time to time including as retained, amended, extended, re-enacted or otherwise given effect on or after 11 pm on 31 December 2020.
- 1.11 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.
- 1.12 A reference to **writing** or **written** includes fax but not e-mail.

- 1.13 Any reference to an English legal term for any action, remedy, method of judicial proceeding, legal document, legal status, court, official or any legal concept or thing shall, in respect of any jurisdiction other than England, be deemed to include a reference to that which most nearly approximates to the English legal term in that jurisdiction.
- 1.14 A reference to a document is a reference to that document as varied or novated from time to time.
- 1.15 References to clauses are to the clauses of this agreement.
- 1.16 [Unless otherwise expressly provided, the obligations and liabilities of [the persons forming the] [PARTIES] under this agreement are joint and several.]
- 1.17 Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

2 Comply with Building Contract

- 2.1 The Contractor warrants to the Beneficiary that:
 - 2.1.1 it has complied, and shall continue to comply, with its obligations under the Building Contract, including its obligations to:
 - (a) carry out and complete the Services properly; and
 - (b) use workmanship and materials of the quality and standard specified in the Building Contract;
 - 2.1.2 without affecting clause 2.1.1, and to the extent that it takes responsibility for the same under the Building Contract, it:
 - (a) has designed, or will design, the Services; and
 - (b) has selected, or will select, goods, materials, plant and equipment for incorporation in the Services,

with all the reasonable skill, care and diligence to be expected of a qualified and experienced architect (or other appropriate professional designer) undertaking the design of works similar in scope and character to the Services; and
 - 2.1.3 it has used all the reasonable skill, care and diligence to be expected of a qualified and experienced architect (or other appropriate professional designer) undertaking the design of works similar in scope and character to

the Services to not specify or use anything in the Services, which, at the time of specification or use, is Deleterious.

- 2.2 In complying with clause 2.1, the Contractor shall owe no greater duties to the Beneficiary under this agreement than it owes to the Employer under the Building Contract. In proceedings for breach of this clause 2, the Contractor may:
- 2.2.1 rely on any limit of liability or other term of the Building Contract; and
 - 2.2.2 raise equivalent rights of defence as it would have had if the Beneficiary had been named as a joint employer, with the Employer, under the Building Contract (for this purpose not taking into account any set-off or counterclaim against the Employer under the Building Contract).
- 2.3 The Contractor's duties or liabilities under this agreement shall not be negated, diminished or otherwise affected by:
- 2.3.1 any approval or inspection of:
 - (a) the Affected Property; or
 - (b) the Services; or
 - (c) any designs or specifications for the Affected Property or the Services;
or
 - 2.3.2 any testing of any work, goods, materials, plant or equipment; or
 - 2.3.3 any omission to approve, inspect or test,
- by or on behalf of the Beneficiary or the Employer.
- 2.4 Nothing in this agreement shall in any way limit or affect any other rights or remedies (whether under contract, at law, in equity or otherwise) which the Beneficiary would have against the Contractor in the absence of this agreement.

3 [Step-in rights: Contractor may not terminate

- 3.1 Subject to clause 3.6, the Contractor shall not exercise, or seek to exercise, any right to terminate its employment under the Building Contract for any reason (including any breach on the part of the Employer) without giving the Beneficiary at least 28 days' written notice of its intention to do so. Any notice from the Contractor shall specify the grounds for the Contractor's proposed termination.
- 3.2 If the Building Contract allows the Contractor a shorter notice period for the exercise of a right referred to in clause 3.1, the notice period in the Building Contract shall be extended to take account of the notice period required under clause 3.1.

- 3.3 The Contractor's right to terminate its employment under the Building Contract shall cease if, within the period referred to in clause 3.1, the Beneficiary gives notice to the Contractor, copied to the Employer:
- 3.3.1 requiring the Contractor not to terminate its employment under the Building Contract;
 - 3.3.2 acknowledging that the Beneficiary (or its nominee) will assume all the Employer's obligations under the Building Contract; and
 - 3.3.3 undertaking that the Beneficiary or its nominee will pay to the Contractor:
 - (a) any sums that may subsequently become due and payable to the Contractor under the Building Contract; and
 - (b) any sums then due and payable to the Contractor under the Building Contract that are unpaid.
- 3.4 If the Beneficiary (or its nominee) serves notice on the Contractor under clause 3.3, then, from the date of service of the notice, the Building Contract shall continue in full force and effect, as if the Contractor's right to terminate had not arisen and as if it had been entered into between the Contractor and the Beneficiary (to the exclusion of the Employer).
- 3.5 In complying with this clause 3, the Contractor:
- 3.5.1 does not waive any breach of the Building Contract or default under the Building Contract by the Employer; and
 - 3.5.2 may exercise its right to terminate its employment under the Building Contract after the expiry of the notice period referred to in clause 3.1, unless the Contractor's right to terminate has ceased under clause 3.3.
- 3.6 If:
- 3.6.1 the Contractor enters into an agreement with another third party or grants rights to a third party concerning the Services at the request of the Employer; and
 - 3.6.2 that agreement or those third party rights include similar step-in rights to those in clause 3 or clause 4,
- then, on that third party's (or that third party's nominee's) exercise of those step-in rights:
- 3.6.3 the Contractor shall no longer be bound by clause 3.1 and clause 3.3; and

3.6.4 the Beneficiary may no longer exercise its rights under clause 3 or clause 4.]

4 [Step-in Rights: Beneficiary may step-in

4.1 Subject to clause 3.6, and without affecting clause 3.1, if the Beneficiary serves a notice on the Contractor, copied to the Employer, that:

4.1.1 confirms that the Beneficiary wishes to step-in to the Building Contract; and

4.1.2 complies with the requirements for a Beneficiary's notice under clause 3.3,

then, from the date of service of the notice, the Building Contract shall continue in full force and effect, as if it had been entered into between the Contractor and the Beneficiary (to the exclusion of the Employer).

4.2 The Contractor shall assume that, between the Employer and the Beneficiary, the Beneficiary may give a notice under clause 4.1. The Contractor shall not enquire whether the Beneficiary may give that notice.

4.3 In complying with this clause 4, the Contractor does not waive any breach of the Building Contract or default under the Building Contract by the Employer.]

5 [Step-in Rights: Contractor's position and Employer's consent

5.1 The Contractor shall not incur any liability to the Employer by acting in accordance with clause 3 or clause 4.

5.2 The Employer has executed this agreement to confirm its consent to the agreement.]

6 [Step-in Rights: Beneficiary's guarantee

If a Beneficiary's notice under clause 3 or clause 4 refers to the Beneficiary's nominee, the Beneficiary shall be liable to the Contractor, as guarantor, for the payment of any sums due and payable from time to time to the Contractor from the Beneficiary's nominee.]

7 No Instructions to Contractor by Beneficiary

[Unless the Beneficiary has stepped-in under clause 3 or clause 4,] the Beneficiary may not give instructions to the Contractor under this agreement.

8 Copyright

8.1 The Contractor grants to the Beneficiary, with immediate effect, an irrevocable, non-exclusive, non-terminable, royalty-free licence to copy and make full use of any Material prepared by, or on behalf of, the Contractor for any purpose relating to the Services and the Affected Property, including any of the Permitted Uses.

- 8.2 This licence carries the right to grant sub-licences and is transferable to third parties without the consent of the Contractor.
- 8.3 The Contractor shall not be liable for use of the Material for any purpose other than that for which it was prepared and/or provided.
- 8.4 The Beneficiary may request a copy (or copies) of some or all of the Material from the Contractor. On the Beneficiary's payment of the Contractor's reasonable charges for providing the copy (or copies), the Contractor shall provide the copy (or copies) to the Beneficiary.

9 Professional Indemnity Insurance

- 9.1 The Contractor shall maintain professional indemnity insurance for an amount of at least £[SUM] for any one occurrence, or series of occurrences, arising out of any one event for a period beginning on the date of this agreement and ending 12 years after the end of the Service Period under the Building Contract, provided that such insurance is available at commercially reasonable rates and terms. The Contractor shall maintain that professional indemnity insurance:
 - 9.1.1 with reputable insurers lawfully carrying on insurance business in the UK;
 - 9.1.2 on customary and usual terms and conditions prevailing for the time being in the insurance market; and
 - 9.1.3 on terms that:
 - (a) do not require the Contractor to discharge any liability before being entitled to recover from the insurers; and
 - (b) would not adversely affect the rights of any person to recover from the insurers under the Third Parties (Rights Against Insurers) Act 2010.
- 9.2 Any increased or additional premium required by insurers because of the Contractor's claims record or other acts, omissions, matters or things particular to the Contractor shall be deemed to be within commercially reasonable rates.
- 9.3 The Contractor shall immediately inform the Beneficiary if the Contractor's required professional indemnity insurance ceases to be available at commercially reasonable rates and terms, so that the Contractor and the Beneficiary can discuss how best to protect the respective positions of the Beneficiary and the Contractor regarding the Services and the Affected Property, without that insurance.
- 9.4 The Contractor shall fully co-operate with any measures reasonably required by the Beneficiary, including:

- 9.4.1 completing any proposals for insurance and associated documents; or
- 9.4.2 maintaining insurance at rates above commercially reasonable rates, if the Beneficiary reimburses the Contractor for the net cost of that insurance above commercially reasonable rates.

9.5 Whenever the Beneficiary reasonably requests, the Contractor shall send the Beneficiary evidence that the Contractor's professional indemnity insurance is in force, including, if required by the Beneficiary, an original letter from the Contractor's insurers or brokers confirming:

- 9.5.1 the Contractor's then current professional indemnity insurance; and
- 9.5.2 that the premiums for that insurance have been paid in full at the date of that letter.

10 Liability Period

The Beneficiary may not commence any legal action against the Contractor under this agreement after 12 years from the date of the end of the Service Period under the Building Contract.

11 Assignment

11.1 The Beneficiary may assign the benefit of this agreement:

11.1.1 on two occasions to any person; and

11.1.2 without counting as an assignment under clause 11.1.1:

- (a) by way of security to a Funder (including any reassignment on redemption of security); or
- (b) to and from subsidiary or other associated companies within the same group of companies as the Beneficiary.

11.2 The Beneficiary shall notify the Contractor of any assignment.

11.3 The Contractor shall not contend that any person to whom the benefit of this agreement is assigned under clause 11.1 may not recover any sum under this agreement because that person is an assignee and not a named party to this agreement.

12 Notices

12.1 A notice or communication given to a party under or in connection with this agreement shall be in writing and sent to the party at the address or email address

given in this agreement or as otherwise notified in writing to the other party [or in the case of the Beneficiary to [INSERT] marked for the attention of [INSERT]].

12.2 This clause 12.2 sets out the delivery methods for sending a notice to a party under this agreement and, for each delivery method, the date and time when the notice is deemed to have been received (provided that all other requirements of this clause have been satisfied):

12.2.1 if delivered by hand, at the time the notice is left at the address;

12.2.2 if sent by pre-paid first class post or other next working day delivery service providing proof of delivery, at the time of proof of delivery or 9.00am on the second Business Day after posting (as applicable); or

12.2.3 if sent by email, at the time of transmission.

12.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

13 Third Party Rights

This agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement.

14 Governing Law

This agreement 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.

15 Jurisdiction

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 agreement or its subject matter or formation (including non-contractual disputes or claims).

16 Further warranties

The Contractor shall, as the Beneficiary may at any time or times require, promptly execute and deliver a deed or deeds of warranty in favour of Purchasers and/or Tenants and/or Funders (as such terms are defined in the Building Contract) in the terms of this agreement, mutatis mutandis.

IN WITNESS of which the parties have executed this deed on the date set out above.

SIGNED and delivered as a deed by **[CAPITALS]**:

Director

Signature:

Name:

Witness

Signature:

Name:

Address:

Schedule 3

Sub – Contractor’s Collateral Warranties

DATED

202[]

[SUB-CONTRACTOR]

and

[BENEFICIARY]

and

[CONTRACTOR]

SUB-CONTRACTOR'S COLLATERAL WARRANTY []

RELATING TO A PROJECT AT

[SHORT DESCRIPTION OF PROPERTY OR WORKS]

THIS AGREEMENT is dated [DATE]

PARTIES:

- (1) [FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (**Sub-Contractor**);
- (2) [FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (**Beneficiary**); and
- (3) [FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (**Contractor**).

BACKGROUND:

- A. The Client has engaged the Contractor to carry out [design and] construction work.
- B. The Contractor has engaged the Sub-Contractor to carry out part of that [design and] construction work.
- C. The Client and the Contractor require the Sub-Contractor to enter into a collateral warranty in favour of the Beneficiary.
- D. The Sub-Contractor has agreed to enter into this agreement with the Beneficiary [the Contractor and] for the benefit of the Beneficiary.
- E. The Beneficiary has paid £10 to the Sub-Contractor [and the Contractor] as consideration under this agreement.

AGREED TERMS:

1 Interpretation

The following definitions and rules of interpretation apply in this agreement.

1.1 Definitions:

| | |
|--|--|
| Building Contract | an agreement in writing dated [DATE] between the Client and the Contractor. |
| Business Day | a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business. |
| Construction Products Regulations | the Construction Products Regulations 2013 (SI 2013/1387), the Construction Products Regulation (305/2011/EU), the Construction Products Regulations |

1991 (SI 1991/1620) and the Construction Products Directive (89/109/EC).

[Contractor

[FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS].]

Deleterious

materials, equipment, products or kits that are generally accepted, or generally suspected, in the construction industry at the relevant time as:

- (a) posing a threat to the health and safety of any person; or
- (b) posing a threat to the structural stability, performance or physical integrity of the Services or any part or component of the Services; or
- (c) reducing, or possibly reducing, the normal life expectancy of the Services or any part or component of the Services; or
- (d) not being in accordance with any relevant British Standard, relevant code of practice, good building practice or any applicable agrément certificate issued by the British Board of Agrément; or
- (e) having been supplied or placed on the market in breach of the Construction Products Regulations.

[Client

[FULL COMPANY NAME] incorporated and registered in England and Wales with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS]].

Funder

a person that has provided, or is to provide, finance in connection with:

- (a) the whole or any part of the Services or the completed Services; or
- (b) the site of the Services,

whether that person acts on its own account, as agent for a syndicate of other parties or otherwise.

Material

all designs, drawings, models, plans, specifications, design details, photographs, brochures, reports, notes of meetings, CAD materials, calculations, data, databases, schedules, programmes, bills of quantities, budgets and any other materials provided in connection with the Sub-Contract Works and all updates, amendments, additions and revisions to them and any works, designs, or

inventions incorporated or referred to in them for any purpose relating to the Sub-Contract Works.

| | |
|---------------------------|--|
| Permitted Uses | the design, construction, completion, reconstruction, modification, refurbishment, development, maintenance, facilities management, funding, disposal, letting, fitting-out, advertisement, decommissioning, demolition, reinstatement, extension, building information modelling and repair of the Property and the Services. |
| Property | [DESCRIPTION OF PROPERTY]. |
| Sub-Contract | an agreement in writing dated [DATE] between the Contractor and the Sub-Contractor. |
| Sub-Contract Works | the [design,] construction and completion of the building works referred to in the Sub-Contract, carried out by the Sub-Contractor under the Sub-Contract. |
| Services | the [design,] construction and completion of the building works referred to in the Building Contract, carried out by or on behalf of the Contractor under the Building Contract. |

- 1.2 Clause headings shall not affect the interpretation of this agreement.
- 1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's personal representatives, successors and permitted assigns.
- 1.4 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural include the singular.
- 1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.7 This agreement shall be binding on, and enure to the benefit of, the parties to this agreement and their respective personal representatives, successors and permitted assigns.
- 1.8 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.9 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.

- 1.10 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.
- 1.11 A reference to writing or written includes fax but not e-mail.
- 1.12 A reference to a document is a reference to that document as varied or novated (in each case, other than in breach of this agreement) at any time.
- 1.13 Any reference to an English legal term for any action, remedy, method of judicial proceeding, legal document, legal status, court, official or any legal concept or thing shall, in respect of any jurisdiction other than England, be deemed to include a reference to that which most nearly approximates to the English legal term in that jurisdiction.
- 1.14 References to clauses are to the clauses of this agreement.
- 1.15 [Unless otherwise expressly provided, the obligations and liabilities of [the persons forming the] [PARTIES] under this agreement are joint and several.]
- 1.16 Any words following the terms **including, include, in particular**, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

2 Comply with Sub-Contract

- 2.1 The Sub-Contractor warrants to the Beneficiary that:
 - 2.1.1 it has complied, and shall continue to comply, with its obligations under the Sub-Contract, including its obligations to:
 - (a) carry out and complete the Sub-Contract Works properly; and
 - (b) use workmanship and materials of the quality and standard specified in the Sub-Contract;
 - 2.1.2 without affecting clause 2.1.1, and to the extent that it takes responsibility for the same under the Sub-Contract, it:
 - (a) has designed, or will design, the Sub-Contract Works; and
 - (b) has selected, or will select, goods, materials, plant and equipment for incorporation in the Sub-Contract Works,with all the reasonable skill, care and diligence to be expected of a qualified and experienced architect (or other appropriate professional designer) undertaking the design of works similar in scope and character to the Sub-Contract Works; and

- 2.1.3 it has used all the reasonable skill, care and diligence to be expected of a qualified and experienced architect (or other appropriate professional designer) undertaking the design of works similar in scope and character to the Sub-Contract Works to not specify or use anything in the Sub-Contract Works, which, at the time of specification or use, is Deleterious.
- 2.2 In proceedings for breach of this clause 2, the Sub-Contractor may:
 - 2.2.1 rely on any limit of liability or other term of the Sub-Contract; and
 - 2.2.2 raise equivalent rights of defence as it would have had, if the Beneficiary had been named as a joint employer, with the Contractor, under the Sub-Contract (for this purpose not taking into account any set-off or counterclaim against the actual contractor under the Sub-Contract).
- 2.3 The Sub-Contractor's duties or liabilities under this agreement shall not be negated or diminished by:
 - 2.3.1 any approval or inspection of:
 - (a) the Property; or
 - (b) the Services; or
 - (c) the Sub-Contract Works; or
 - (d) any designs or specifications for the Property or the Services; or
 - 2.3.2 any testing of any work, goods, materials, plant or equipment; or
 - 2.3.3 any omission to approve, inspect or test,by or on behalf of the Beneficiary or the Contractor.
- 2.4 This agreement shall not negate or diminish any duty or liability otherwise owed to the Beneficiary, the Client by the Sub-Contractor.

3 [Step-in rights: Sub-Contractor may not terminate

- 3.1 The Sub-Contractor shall not exercise, or seek to exercise, any right to terminate its employment under the Sub-Contract for any reason (including any breach on the part of the Contractor) without giving the Beneficiary at least 20 Business Days' written notice of its intention to do so. Any notice from the Sub-Contractor shall specify the grounds for the Sub-Contractor's proposed termination.

- 3.2 If the Sub-Contract allows the Sub-Contractor a shorter notice period for the exercise of a right referred to in clause 3.1, the notice period in the Sub-Contract shall be extended to take account of the notice period required under clause 3.1.]
- 3.3 The Sub-Contractor's right to terminate its employment under the Sub-Contract shall cease if, within the period referred to in clause 3.1, the Beneficiary gives notice to the Sub-Contractor, copied to the Contractor:
 - 3.3.1 requiring the Sub-Contractor not to terminate its employment under the Sub-Contract;
 - 3.3.2 acknowledging that the Beneficiary (or its nominee) will assume all the Contractor's obligations under the Sub-Contract; and
 - 3.3.3 undertaking that the Beneficiary or its nominee will pay to the Sub-Contractor:
 - (a) any sums due and payable to the Sub-Contractor under the Sub-Contract in future; and
 - (b) any sums then due and payable to the Sub-Contractor under the Sub-Contract that are unpaid.
- 3.4 If the Beneficiary or its nominee serves notice on the Sub-Contractor under clause 3.3, then, from the date of service of the notice, the Sub-Contract shall continue in full force and effect, as if it had been entered into between the Sub-Contractor and the Beneficiary (to the exclusion of the Contractor).
- 3.5 In complying with this clause 3, the Sub-Contractor:
 - 3.5.1 does not waive any breach of the Sub-Contract or default under the Sub-Contract by the Contractor; and
 - 3.5.2 may exercise its right to terminate its employment under the Sub-Contract after the expiry of the notice period referred to in clause 3.1, unless the Sub-Contractor's right to terminate has ceased under clause 3.3.]

4 [Step-in rights: Beneficiary may step-in

- 4.1 Without affecting clause 3.1, if the Beneficiary serves a notice on the Sub-Contractor, copied to the Contractor, that:
 - 4.1.1 confirms that the Beneficiary wishes to step-in to the Sub-Contract; and
 - 4.1.2 complies with the requirements for a Beneficiary's notice under clause 3.3,

then, from the date of service of the notice, the Sub-Contract shall continue in full force and effect, as if it had been entered into between the Sub-Contractor and the Beneficiary (to the exclusion of the Contractor).

4.2 The Sub-Contractor shall assume that, between the Contractor and the Beneficiary, the Beneficiary may give a notice under clause 4.1. The Sub-Contractor shall not enquire whether the Beneficiary may give that notice.

4.3 In complying with this clause 4, the Sub-Contractor does not waive any breach of the Sub-Contract or default under the Sub-Contract by the Contractor.]

5 [Step-in rights: Sub-Contractor's position and contractor's consent

5.1 The Sub-Contractor shall not incur any liability to the Contractor by acting in accordance with clause 3 or clause 4.

5.2 The Contractor has executed this agreement to confirm its consent to the agreement.]

6 [Step-in rights: Beneficiary's guarantee

If a Beneficiary's notice under clause 3 or clause 4 refers to the Beneficiary's nominee, the Beneficiary shall be liable to the Sub-Contractor, as guarantor, for the payment of any sums due and payable from time to time to the Sub-Contractor from the Beneficiary's nominee.]

7 No instructions to Sub-Contractor by Beneficiary

7.1 [Unless the Beneficiary has stepped-in under clause 3 or clause 4,] the Beneficiary may not give instructions to the Sub-Contractor under this agreement.

8 Copyright

8.1 The Sub-Contractor grants to the Beneficiary, with immediate effect, an irrevocable, non-exclusive, non-terminable, royalty-free licence to copy and make full use of any Material prepared by, or on behalf of, the Sub-Contractor for any purpose relating to the Services and the Property, including any of the Permitted Uses.

8.2 This licence allows the Beneficiary to use the Material in connection with any extension of the Project, but not to reproduce the designs contained in the Material in any such extension.

8.3 This licence carries the right to grant sub-licences and is transferable to third parties without the consent of the Sub-Contractor.

8.4 The Sub-Contractor shall not be liable for use of the Material for any purpose other than that for which it was prepared and/or provided.

- 8.5 The Beneficiary may request a copy or copies of (some or all of) the Material from the Sub-Contractor. On the Beneficiary's payment of the Sub-Contractor's reasonable charges for providing the copy (or copies), the Sub-Contractor shall provide the copy (or copies) to the Beneficiary.

9 [Professional indemnity insurance]

- 9.1 The Sub-Contractor shall maintain professional indemnity insurance for an amount of at least £[SUM] [for any one occurrence or series of occurrences arising out of any one event] for a period beginning on the date of this agreement and ending 12 years after the date of practical completion of the Services, provided that such insurance is available at commercially reasonable rates and terms. The Sub-Contractor shall maintain that professional indemnity insurance:
- 9.1.1 with reputable insurers lawfully carrying on insurance business in the UK;
 - 9.1.2 on customary and usual terms and conditions prevailing for the time being in the insurance market; and
 - 9.1.3 on terms that:
 - (a) do not require the Sub-Contractor to discharge any liability before being entitled to recover from the insurers; and
 - (b) would not adversely affect the rights of any person to recover from the insurers under the Third Parties (Rights Against Insurers) Act 2010.
- 9.2 Any increased or additional premium required by insurers because of the Sub-Contractor's claims record or other acts, omissions, matters or things particular to the Sub-Contractor shall be deemed to be within commercially reasonable rates.
- 9.3 The Sub-Contractor shall immediately inform the Beneficiary if the Sub-Contractor's required professional indemnity insurance ceases to be available at commercially reasonable rates and terms, so that the Sub-Contractor and the Beneficiary can discuss how best to protect the respective positions of the Beneficiary and the Sub-Contractor regarding the Services and the Property, without that insurance.
- 9.4 Whenever the Beneficiary reasonably requests, the Sub-Contractor shall send the Beneficiary evidence that the Sub-Contractor's professional indemnity insurance is in force, including, if required by the Beneficiary, an original letter from the Sub-Contractor's insurers or brokers confirming:
- 9.4.1 the Sub-Contractor's then current professional indemnity insurance; and

9.4.2 that the premiums for that insurance have been paid in full at the date of that letter.]

10 Liability period

The Beneficiary may not commence any legal action against the Sub-Contractor under this agreement after 12 years from the date of practical completion of all of the Services.

11 Assignment

11.1 The Beneficiary may assign the benefit of this agreement:

11.1.1 on two occasions to any person ; and

11.1.2 without counting as an assignment under clause 11.1.1:

(a) by way of security to a Funder (including any reassignment on redemption of security); or

(b) to and from subsidiary or other associated companies within the same group of companies as the Beneficiary.

11.2 The Beneficiary shall notify the Sub-Contractor of any assignment. If the Beneficiary fails to do this, the assignment shall still be valid.

11.3 The Sub-Contractor shall not contend that any person to whom the benefit of this agreement is assigned under clause 11.1 may not recover any sum under this agreement because that person is an assignee and not a named party to this agreement.

12 Notices

12.1 For the purposes of this clause, but subject to clause 12.6, notice includes any other communication.

12.2 A notice given to a party under or in connection with this agreement:

12.2.1 shall be in writing;

12.2.2 shall be sent to the party at the address stated above and also in the case of the Beneficiary to [INSERT];

12.2.3 may be sent by a method listed in clause 12.4; and

12.2.4 unless proved otherwise is deemed received as set out in clause 12.4 if prepared and sent in accordance with this clause.

12.3 A party may change its details for service by giving notice, the change taking effect for the party notified of the change at 9.00 am on the later of:

12.3.1 the date, if any, specified in the notice as the effective date for the change; or

12.3.2 the date five Business Days after deemed receipt of the notice.

12.4 This table sets out:

12.4.1 delivery methods for sending a notice to a party under this agreement; and

12.4.2 for each delivery method, the corresponding delivery date and time when delivery of the notice is deemed to have taken place provided that all other requirements in this clause have been satisfied and subject to the provisions in clause 12.5:

| Delivery method | Delivery date and time |
|---|---|
| Delivery by hand. | On signature of a delivery receipt or at the time the notice is left at the address. |
| Pre-paid first class recorded delivery post or other next working day delivery service providing proof of postage or proof of delivery. | 9.00 am on the second Business Day after posting or at the time recorded by the delivery service. |

12.5 For the purpose of clause 12.4 and calculating deemed receipt:

12.5.1 all references to time are to local time in the place of deemed receipt; and

12.5.2 if deemed receipt would occur in the place of deemed receipt on a Saturday or Sunday or a public holiday when banks are not open for business, deemed receipt is deemed to take place at 9.00 am on the day when business next starts in the place of receipt.

12.6 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

12.7 A notice given under or in connection with this agreement is not valid if sent by e-mail.

13 Third party rights

A person who is not a party to this agreement shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement.

14 Governing law

This agreement 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.

15 Jurisdiction

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 agreement or its subject matter or formation (including non-contractual disputes or claims).

16 Further warranties

The Sub-Contractor shall, as the Beneficiary may at any time or times require, promptly execute and deliver a deed or deeds of warranty in favour of purchasers and/or tenants and/or Funders in the terms of this agreement, mutatis mutandis.

IN WITNESS of which the parties have executed this deed on the date set out above.

SIGNED and delivered as a deed by [CAPITALS]:

Director

Signature :

Name :

Witness

Signature :

Name :

Address:

Schedule 4

Performance bond

The Performance bond will be appended to this Schedule following the seal of the contract.

Schedule 5

Company Guarantee

NOT USED