

Wythenshawe Community Housing Group

and

Icon Group Services

Standard Consultancy Services Contract

Contract Start and End Date: 1st July 2025 - 30th June 2028

CONTENTS

CONTRACT

SCHEDULE 1 SERVICES AND PAYMENT

SCHEDULE 2 CONTRACT PARTICULARS

SCHEDULE 3 CONTRACT CONDITIONS

1. INTERPRETATION
2. REPRESENTATIVES
3. PROVIDER'S OBLIGATIONS
4. REGULATORY REQUIREMENTS
5. STAFF
6. MONITORING AND COMPLAINTS
7. PAYMENT
8. INTELLECTUAL PROPERTY
9. PUBLICITY AND REPUTATION
10. CONFIDENTIALITY AND SECURITY OF INFORMATION
11. DATA PROTECTION
12. CLIENT DATA
13. RECORDS AND AUDIT
14. EQUALITY AND DIVERSITY
15. SUBCONTRACTING & ASSIGNMENT
16. LIABILITY
17. INSURANCE
18. FORCE MAJEURE
19. CORRUPTION, BRIBERY AND CONFLICTS
20. TERMINATION
21. WAIVER AND SEVERABILITY
22. EXTENT OF OBLIGATIONS AND FURTHER ASSURANCE
23. VARIATIONS
24. ENTIRE AGREEMENT
25. THIRD PARTIES
26. NO PARTNERSHIP OR AGENCY
27. NOTICES

- 28. DISPUTE ESCALATION PROCEDURE
 - 29. GOVERNING LAW AND ENFORCEMENT
 - 30. COUNTERPARTS
- SCHEDULE 4 KPI SCHEDULE

CONTRACT ("this Contract") dated

20[]

PARTIES:

- (2) Wythenshawe Community Housing Group **LIMITED** a registered number 08198590 whose registered office is at 8 Poundswick Lane, Wythenshawe, Manchester M22 9TA contracting on its own behalf and on behalf of each organisation within the Client's Group as defined in Paragraph **Error! Reference source not found.** of Schedule 3 [*Contract Conditions*] ("**Client**"); and
- (3) Icon Services Ltd. whose registered office is at Unit 224 Europa Trade Park, Warrington, WA5 7TN.

Commented [SP1]: Can you confirm your address?

INTRODUCTION:

Client wishes to engage the Provider to provide Services, in accordance with this Contract.

IT IS AGREED THAT:

1. The Provider shall provide the Services set out in Schedule 1 [*Services and payment*] (subject, where that Schedule states that Services are to be instructed by Orders, to the issue of an Order for those Services), in accordance and in compliance with the Contract Conditions set out in Schedule 3 [*Contract Conditions*] completed in accordance with Schedule 2 [*Contract Particulars*].
2. In consideration of the Provider's obligations under Clause 1 Client shall pay the Price(s) set out in Schedule 1 [*Services and payment*].
3. Where the Contract Particulars so state, the Provider's performance of the Services shall be measured according to the KPIs set out in Schedule 4 [*KPI Schedule*].

AS WITNESS of the above both Parties have signed this Contract on the date set out at the start of it.

SCHEDULE 1 SERVICES AND PAYMENT

1. SERVICES

The Services to be provided comprise:

- Ad-hoc Neighborhood Removals and Clearing:
 - Removal of fire risk and non-fire risk waste
 - Management of excessive waste in a garden or fly-tipped waste in bin rooms or on green areas.
 - This service would potentially be estate-wide and could cover every postcode that WCHG own/manage, as well as green spaces owned and managed by WCHG. Therefore, the majority of M22 and M23 postcodes would need to be included and occasionally several owned properties our in Knutsford, Macclesfield, and Poynton.
 - The waste can vary from sofas, fridge freezers, household waste, garden waste, flammable items such as paint and clearing the occasional unoccupied zone. We also sometimes need to request that dog foul is collected to allow a communal garden service to be completed by our in-house team.
 - All waste is to be disposed of in a responsible manner.
 - WCHG would need multiple ways to contact the contractor, for an emergency we would want the ability to make a direct phone call.
 - For general waste removal/collection we would want a contact at head office that we could email direct to arrange removal.

2. PAYMENT

The basis on which the Provider is to be paid for the Services is by reference and is subject to the document entitled "677 - Pricing Schedule - Waste Management - Appendix C Icon Services

The Fee (as set out above) covers performance of all the Provider's obligations under this Contract. No payment is to be made by Client for any Services provided under it other than in accordance with the Fee set out above.

**SCHEDULE 2
CONTRACT PARTICULARS**

Condition 1: Definitions

"Commencement Date"	1 st July 2025
"Expiry Date"	30 th June 2028
"Inflation Adjustment Date"	1 st July with the first adjustment on 1 st July 2026
"Inflation Index"	the Consumer Prices Index (all items) United Kingdom (Table 20a D7BT) produced by the Office of National Statistics] or such other inflation index as Client specifies under Condition 7.11 [<i>Payment</i>];
"Inflation Index Period"	the 12 (twelve) months up to and including September immediately preceding the Inflation Adjustment Date
"Normal Business Hours"	9am to 5pm on each Working Day] OR [as specified in the Order.

Condition 2: Representatives

The Representatives of the Parties under this Contract are:

- for Client: the holder for the time being of the post Neighbourhoods Manager (currently Emma Atkin of Wythenshawe Community Housing Group, 8 Poundswick Lane
- for ICON Group: (Brendan Walsh)

In accordance with Condition 2.6 [*Representatives*], the Provider's Representative must be contactable outside Normal Business Hours

- No

Condition 3.4.4: Provider's obligations

In accordance with Condition 3.4.4 [*Provider's obligations*], Client's policies applicable to the Services are the following policies (as updated by Client from time to time, subject to Client giving the Provider a copy of any updated policy):

- [*list*];
- [*list*]; and
- such other policies as Client notifies to the Provider from time to time.

Condition 5 Staff

In accordance with Condition 5.3 *[Staff]* the Key Persons: Brendan Walsh, Chris Roddy, Samantha Wakefield.

In accordance with Condition 5.8 *[Staff]*, the social value activities the Provider must deliver are listed in the KPIs

In accordance with Condition 5.14 *[Staff]* the Off-Payroll Working Rules apply to this Contract (such that Client is responsible for making status determinations and notifying the Provider and Subcontractors of the outcomes):

- YES

Condition 6: Monitoring and complaints

In accordance with Condition 6.5 *[Monitoring and complaints]*, the Provider's delivery of the Services under this Contract will be monitored through KPIs.

In accordance with Condition 6.9 *[Monitoring and complaints]*, achievement of the KPI Targets will not be incentivised.

Condition 7: Payment

Where the Contract Particulars for Condition 6.7 *[Monitoring and complaints]* provide that achievement of the KPI Targets is incentivised, the KPI Incentivisation Percentage under Condition 7.1 *[Payment]* is:

- N/A

[*Insert percentage where KPI performance is incentivised by payments]

In accordance with Condition 7.10 *[Payment]*, the Fees set out in Schedule 1 *[Services and payment]* and any monetary amounts in that Schedule:

- [are to be adjusted by Inflation on the Inflation Adjustment Date each year with effect from *[insert date]*]. *
- [not to be subject to Inflation adjustments].*

[*delete as applicable and if Inflation is to be added specify the year in which this is first to be done]

Condition 8: Intellectual Property

The Provider assigns Intellectual Property Rights in the following Documents and Data created specifically for the Services as referred to in Condition 8.1 *[Intellectual Property]*:

- ***[List items in which ownership of the Intellectual Property Rights is to be transferred]***

Condition 11: Data Protection

In accordance with Condition **Error! Reference source not found.** *[Data Protection]*, the subject matter, nature, purpose and duration of Personal Data Processing under

this Contract by the Provider as Data Processor is set out in the Data Processing Table below:

Identity of the Data Controller and Data Processor	<p>The Parties acknowledge that under this Contract for the purposes of Data Protection Law:</p> <ul style="list-style-type: none"> the Employer is the Data Controller of Personal Data concerning Residents and the Provider will be Processing that Personal Data as Data Processor on behalf of the Employer; and the Provider is the Data Controller of Personal Data concerning Staff, but the Employer will be Data Controller of any such Personal Data that is processed by them.
Subject matter of Processing (including types of Personal Data that may be Processed and categories of Data Subject):	<p>Personal Data including names, addresses and contact details, Property access requirements and special requirements in relation to access or carrying out the Services which may necessitate Processing of Special Category Data and personal data relating to criminal convictions and offences.</p>
Nature and purpose of Processing:	<p>Interrogation of the Personal Data for the purpose of carrying out the Services, including arranging appointments and access, ensuring the health and safety of both Residents and Staff carrying out the Services by complying with CDM Regulations and any other applicable regulatory or legal requirements, monitoring Resident satisfaction and correcting any Personal Data found to be incorrect whilst carrying out the Services.</p>
Security measures	[]
International transfers and legal gateway	<p>[No international transfers of Personal Data are permitted].</p> <p>OR</p> <p>[All international transfers of Personal Data under this Contract must be carried out in compliance with Data Protection Law.] [The legal gateway for such transfers is the use of an International Data Transfer Agreement as approved by the Information Commissioner's Office.].</p>

Duration of Processing and plan for return or destruction of Personal Data once the Processing is complete:	During the Contract Period and the Defects Liability Period and for 20 (twenty) Working Days from its end (within which it is to be returned or destroyed.)
Data Protection Officers	<p>Contact details for the Parties' Data Protection Officers are:</p> <ol style="list-style-type: none"> for the Employer: Jovian Smalley – Information Governance Manager Email: jovian.smalley@wchg.org.uk for the Provider

Commented [SP2]: Icon to complete

Condition Error! Reference source not found.: Client Data

In accordance with Condition 12.1 WCHG Data the Provider is required to store Client Data on the Provider's IT System.

In accordance with Condition 12.2 [*Client Data*], the Provider is not required to access Client's IT System.

Condition 16: Liability

The Liability Cap under Condition 16.4 [*Liability*] is £[*insert amount*] per Financial Year.

The maximum amount of Insurance excesses that may be included in the Liability Cap in accordance with Condition 16.5 [*Liability*] are:

- **** per claim for employer's liability;
- **** per claim for public liability; and
- **** per claim for professional indemnity.

[*insert amounts*]

Condition 17: Insurance

The Insurances required to be maintained by the Provider and the minimum cover levels for those Insurances are:

- public liability cover – [£5 million (five million pounds)] [for each and every claim] [in the aggregate over any period of 12 (twelve) months]*;
- employer's liability [£5 million (five million pounds) for each and every claim];;
- professional indemnity insurance – [£2 million (two million pounds)] [for each and every claim] [in the aggregate over any period of 12 (twelve) months]*; and
- motor insurance - as required by Law

[**delete and/or amend amounts and basis of cover as applicable*]

Condition 18: Force Majeure

The Provider must maintain a Disaster Recovery Plan for the Services

- Yes

Condition 20: Termination

In accordance with Condition 20.2 [Termination] the period of written notice for Client to terminate this Contract on a "no fault" basis is:

- [7 (seven) calendar days] [expiring any time after] *[amend notice period if required and insert details of any initial "no break" period (if any)]*.

The Provider may [not]* terminate this Contract on a "no fault" basis [by giving the following period of written notice]:

- [1 (one) month] [expiring any time after] *[amend notice period if required and insert details of any initial "no break" period (if any)]*.

**delete "not" where there is a Provider "no fault" break clause.*

Condition 27: Notices

Email addresses for service under Condition 27.3 [Notices] are:

- for Client: emma.atkin@wchg.org.uk and

- for the Provider: b.walsh@icongroup-uk.com

B. Walsh

Condition 28: Dispute Escalation Procedure

The Dispute Escalation Table under Condition 28.3 [Dispute Escalation Procedure] is as follows:

Client	Provider	Time to reach agreement
Emma Atkin	Provider's Representative	[5 (five)] Working Days*

**SCHEDULE 3
CONTRACT CONDITIONS**

1. INTERPRETATION

1.1 In this Contract (unless the context requires otherwise):

"Agreed"	means agreed in writing by both Parties and "Agree" shall be construed accordingly;
"Apprenticeship"	means an apprenticeship approved under the Law governing apprenticeships;
"Client Data"	means all data, information, records and documentation in any electronic or tangible form relating to Customers (where applicable) or the Services (including the identity of the member of Staff carrying out each Order) that is held on Client's IT System, the Provider's IT System or in paper form;
"Client's Group"	<p>means:</p> <ul style="list-style-type: none">• Client;• all (if any) of Client's subsidiaries, holding companies or societies of which it is a subsidiary together with all subsidiaries of such holding companies or societies (in each case as defined in section 1159 of the Companies Act 2006 or sections 100 and 101 of the Co-operative and Community Benefit Societies Act 2014); and• their successors in title;
"Client's IT System"	means the information, communications and technology systems used by Client (including any web portal) and in particular any such system used for monitoring and coordinating Orders and the Services;
"Client's Requirements"	means any specific rules or requirements for the Services supplied by Client to the Provider from time to time including the requirements set out in these Conditions;

"Code of Practice"	means any code of recommended practice produced by a Regulatory Body (including the Information Commissioner);
"Commencement Date"	means the date stated in the Contract Particulars as either the date on which the Services are to commence or, where the Services are to be instructed through Orders, the date from which Orders may be issued under this Contract;
"Confidential Information"	means any information communicated by either Party to the other on the basis that it is confidential including any Personal Data;
"Contract Conditions"	means the conditions of this Contract set out in this Schedule 3;
"Contract Particulars"	means the details of how the "variables" in the Contract Conditions are to be completed as set out Schedule 2 [<i>Contract Particulars</i>];
"Contract Period"	means the period from the Commencement Date to the Termination Date;
"Customer"	means a recipient of services which comprise the Services or in connection with which the Services are provided);
"Data Controller"	has the meaning given under Data Protection Law;
"Data Loss Event"	any event that results or may result in any unauthorised or unlawful access to Personal Data held by the Provider under this Contract, actual potential loss and/or destruction of Personal Data in breach of this Contract including any personal data breach (as defined under Data Protection Law);
"Data Processing Table"	the table set out Condition Error! Reference source not found. [<i>Data Protection</i>];
"Data Processor"	has the meaning given under Data Protection Law;

"Data Protection Impact Assessment"	has the meaning given under Data Protection Law;
"Data Protection Law"	all Law relating to the processing of personal data, including all applicable guidance and codes of practice issued by the Information Commissioner's Office or any replacement data protection or related privacy Law in force in England and Wales;
"Data Protection Officer"	has the meaning given under Data Protection Law;
"Data Protection Principles"	means the principles applicable to the protection of Personal Data under Data Protection Law;
"Data Subject"	has the meaning given under Data Protection Law;
"Data Subject Access Request"	means a request by a Data Subject under Data Protection Law to access their Personal Data;
"Disaster"	means Force Majeure or any other circumstances defined as a Disaster in the Disaster Recovery Plan;
"Disaster Recovery Plan"	has the meaning given in Condition 18.3 [<i>Force Majeure</i>];
"Dispute"	means either a dispute concerning this Contract or an allegation by a Party that the other has committed a breach of this Contract;
"Dispute Escalation Table"	means the dispute escalation table set out in the Contract Particulars in accordance with Condition 28 [<i>Dispute Escalation Procedure</i>];
"Dispute Resolution Procedure"	means the procedure set out in Conditions 28 [<i>Dispute Escalation Procedure</i>] and 29 [<i>Governing Law and Enforcement</i>];
"Documents and Data"	means all documents, data, information, text, drawings, diagrams, images, records or sound embodied in any electronic or tangible

	medium used or created in connection with this Contract or the Services;
"Equality and Diversity Law"	means all Law preventing unlawful discrimination including unlawful discrimination on the basis of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, paternity, race, religion or belief, sex or sexual orientation or part time or temporary status or any other protected status;
"Expiry Date"	means the date (if any) stated in the Contract Particulars as the date on which this Contract will expire;
"Financial Year"	means each period from 1 April to 31 March next (inclusive);
"Fee"	means the Fee payable for Services calculated as set out in Schedule 1 [<i>Services and payment</i>];
"FOIA"	means the Freedom of Information Act 2000;
"Force Majeure"	has the meaning given in Condition 18 [<i>Force Majeure</i>];
"Freedom of Information Law"	means FOIA, the Environmental Information Regulations 2004 and any equivalent freedom of information Law (including where limited to Customers) to the extent that Client becomes a designated body under that Law or subject to such freedom of information Law during the Contract Period;
"General Principles of Risk Prevention"	means the general principles of risk prevention as set out in Schedule 1 to the Management of Health and Safety at Work Regulations 1999;
"Good Professional Practice"	means those standards, practices, methods and procedures and exercising that degree of skill, care and diligence which would reasonably and ordinarily be expected from a skilled and experienced Provider of the same

	discipline or profession as the Provider engaged in providing similar services and under similar circumstances to the Services being provided under this Contract;
"Health and Safety Law"	means all Law related to the protection of health and safety including the protection of the environment, the prevention of disease and the avoidance of industrial accidents;
"Inflation"	means the percentage change in the Inflation Index over the Inflation Period;
"Inflation Adjustment Date"	means the date set out in the Contract Particulars on which the Prices are to be adjusted by Inflation (where applicable);
"Inflation Index"	means (subject to Condition 7.11 [<i>Payment</i>]) the inflation index specified in the Contract Particulars;
"Inflation Index Period"	means the period over which the Inflation Index is measured for the purpose of calculating Inflation;
"Insurances"	means the insurances the Provider is required to maintain under Condition 17 [<i>Insurance</i>] at the minimum levels set out in the Contract Particulars;
"Intellectual Property Rights"	means all intellectual property rights including patents, inventions, trade marks, service marks, logos, designs, design rights (registered or not) and all applications for any of them, 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 the UK) and the right to sue for passing off and all renewals and extensions of such rights.
"Interest Rate"	means 5% (five per cent) above the base rate of Bank of England from time to time;

"IT System"	means Client's IT System or the Provider's IT System (as applicable);
"KPI"	means a key performance indicator for measuring the Provider's performance under this Contract as set out in Schedule 4 [<i>KPI Schedule</i>];
"KPI Improvement Notice"	means a notice served under Condition 6.10 [<i>Monitoring and complaints</i>];
"KPI Incentivisation Percentage"	means the percentage stated in the Contract Particulars that is deducted from each invoice under Condition 7.1 [<i>Payment</i>] and used to finance the KPI Payment;
"KPI Measurement Period"	means the period over which the Provider's performance in relation to a KPI is assessed as set out in Schedule 4 [<i>KPI Schedule</i>];
"KPI Payment"	means the payment to be made by Client to the Provider for achieving the KPI Target for a KPI in accordance with Schedule 4 [<i>KPI Schedule</i>] which comprises the percentage stated alongside that KPI in Schedule 4 [<i>KPI Schedule</i>] of the sum of the KPI Incentivisation Percentage deductions from each invoice for Services completed in the KPI Measurement Period for which the KPI Payment is made;
"KPI Target"	means the target level of performance as measured by a KPI, such that [if the Provider meets the KPI Target specified in Schedule 4 [<i>KPI Schedule</i>] for that KPI for a KPI Measurement Period Client will pay the Provider the KPI Payment for that KPI for that KPI Measurement Period] [if the Provider's performance falls below this level and does not improve following the service of a KPI Improvement Notice, this Contract may be terminated under Condition 20.1.13 [<i>Termination</i>];
"Law"	means any and all of the following;

- any Act of Parliament or legislation;
- any subordinate legislation (as defined in section 21(1) of the Interpretation Act 1978);
- any exercise of the royal prerogative;
- any retained European Union law in force in England under the European Union (Withdrawal) Act 2018 (whilst applicable);
- the EU/UK Trade and Co-operation Agreement (so far as directly applicable under the European Union (Future Relationship) Act 2020);
- any applicable judgement of a relevant court of law which is a binding precedent in England; and
- any determination, direction, statutory guidance or Code of Practice having the force of law;

"Liability"

means all demands, actions, claims, proceedings, liability, losses, judgements, settlements, costs (including legal costs on a "professional and own client" basis), charges, taxes, interest, duties, payments and expenses;

"Liability Cap"

means the amount set out in the Contract Particulars for Condition 16 [*Liability*] as the maximum Liability of the Provider to Client for a breach of this Contract or other circumstances described in that Condition;

"Normal Business Hours"

means those hours specified as such in the Contract Particulars;

"Off-Payroll Working Rules"

means the rules in Chapter 10 of Part 2 of the Income Tax (Earnings and Pensions) Act 2003;

"Order"	means an instruction from Client (in the form of a purchase order) to provide particular Services;
"Parties"	means Client and the Provider and their successors and permitted assignees and "Party" shall be construed accordingly;
"Personal Data"	means personal data, within the meaning given by Data Protection Law, which is obtained or Processed in connection with the Services or this Contract;
"Personal Data Breach"	means any event that results or may result in any unauthorised or unlawful access to, Processing, loss and/or destruction of Personal Data in breach of this Contract including any personal data breach (as defined under Data Protection Law);
"Person-week"	is the equivalent of one person being employed for one normal working week in providing the Services;
"Policies"	means Client's policies applicable to the Services as set out in the Contract Particulars for Condition 3.4.4 [<i>Provider's obligations</i>];
"Processing"	has the meaning given under Data Protection Law and "Process" and "Processed" shall be construed accordingly;
"Proposal"	means the proposal or other information submitted by the Provider in relation to this Contract as set out in Paragraph Error! Reference source not found. of Schedule 1 [<i>Services and payment</i>];
"Protective Measures"	appropriate technical and organisational measures designed to ensure compliance with the obligations of the Parties under Data Protection Law and this Contract and which may include:

	<ul style="list-style-type: none"> • pseudonymising and encrypting Personal Data; • ensuring confidentiality, integrity, availability, and resilience of the Provider's IT System, • ensuring that the availability of and access to Personal Data can be restored in a timely manner after an incident; and <p>regularly testing, assessing and evaluating the effectiveness of such measures adopted by the Provider including any outlined in the Data Processing Table;</p>
"Provider's IT System"	means the information technology system (being software, hardware, any interfaces, and any combination of them) used by the Provider in connection with the Services;
"Regulatory Body"	means any governmental, local government, administrative or regulatory body (including the Regulator of Social Housing and the Information Commissioner) with oversight over the Services, Data Protection Laws, Client, any organisation in the Client's Group or the Provider or from whom permission is required to provide the Services;
"Regulatory Requirements"	means the requirements of the Law and of all Regulatory Bodies in relation to the Services including the requirements of any Regulatory Body regulating the Services and/or the way in which they are provided;
"Representative"	means the representative of a Party appointed under Condition 2 [Representatives] and "Client's Representative" and "Provider's Representative" shall be construed accordingly;
"Request for Information"	means a request for information made under Freedom of Information Law;

"Resident"	means a tenant, leaseholder or occupier of a Property;
"Services"	means any of the services listed in Schedule 1 [<i>Services and payment</i>];
"Special Category Data"	means special category data, within the meaning given by Data Protection Law, obtained or Processed in connection with the Services or this Contract;
"Specification"	means: <ul style="list-style-type: none"> • the specification and requirements for the Services set out in Schedule 1 [<i>Services and payment</i>]; and • all instructions (if any) given to the Provider by Client as to how the Services are to be provided;
"Staff"	means all persons employed or used by the Provider or a Subcontractor in providing the Services or performing the Provider's obligations under this Contract;
"Standards"	means all quality standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardisation or other equivalent body (and their successor bodies) that are relevant to the Services;
"Statutory Permissions"	means those permissions, consents, approvals, licences, certificates and permits (if any) in legally effective form that are necessary from any Regulatory Body lawfully to commence, carry out and complete the Services in accordance with this Contract;
"Subcontract"	means a contract between the Provider and a Subcontractor or between two or more Subcontractors, at any stage of remoteness from Client in the Provider's supply chain, made wholly or substantially for the purpose

	of performing (or contributing to the performance of) the Services;
"Subcontractor"	means any subcontractor of or supplier to the Provider of any tier;
"Successor Provider"	means a service provider (or Client) that provides services equivalent to the Services after the Termination Date;
"Tax"	means any form of taxation or social security contributions including corporation tax, national insurance, income tax, VAT, and all forms of tax collection including IR35;
"Termination Date"	means (as applicable): <ul style="list-style-type: none"> • the date on which all the Services to be provided under this Contract are completed; • the Expiry Date; or • the date on which this Contract is terminated under Condition 20 [Termination];
"TUPE"	means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended);
"VAT"	means Value Added Tax payable under the Value Added Tax Act 1994 or any tax which is substituted for it; and
"Working Day"	means any day other than a Saturday, Sunday or a bank or local government or public holiday in England.

1.2 In this Contract:

- 1.2.1 references to Conditions are (unless stated otherwise) to the Conditions set out in this Schedule 3 to this Contract.
- 1.2.2 references to Clauses and Schedules are (unless stated otherwise) references to Clauses of and Schedules to this Contract;
- 1.2.3 the contents section, headings and references to them are not to affect its interpretation;

- 1.2.4 references to a gender include the other gender and neuter and to the singular include the plural and vice versa;
- 1.2.5 any references to Law, shall be construed as references to that Law as amended, replaced, consolidated or re-enacted and in relation to Acts of Parliament shall include all regulations, determinations, directions and statutory guidance having the force of Law made or given under it;
- 1.2.6 references to "**consent**" or "**approval**" are to the prior written consent of the consenting or approving Party and any breach of the terms of any consent given is to be a breach of this Contract;
- 1.2.7 the terms "**including**" and "**in particular**" are illustrative only and are not intended to limit the meaning of the words which precede them and neither the ejusdem generis rule of construction nor any similar rule or approach shall apply to the construction of this Contract;
- 1.2.8 references to a legal entity include a firm, partnership, company, cooperative and community benefit society, corporation, association, organisation, government, state, agency, foundation, trust, unincorporated body and any organisation having legal capacity (in each case whether or not having separate legal personality) and its successors (including any that takes over responsibility for its functions), permitted assignees and transferees;
- 1.2.9 references to a person include an individual and any of the bodies referred to in Condition 1.2.8;
- 1.2.10 references to "**writing**" include electronic communications and other modes of representing words in visible and recordable form except where this Contract states otherwise;
- 1.2.11 if there is any conflict between the Schedules and the Conditions the Schedules shall prevail;
- 1.2.12 references to any document are (unless specified) references to such document as amended or supplemented from time to time; and
- 1.2.13 where a Party consists of more than one person the obligations of each of them are joint and several. The other Party may release or compromise the liability of any of them without affecting that of the others.
- 1.3 The Schedules to this Contract are an integral part of this Contract and are to have effect as if set out in full in the body of this Contract. References to this Contract include the Schedules.
- 1.4 Where this Contract requires something to be done:
 - 1.4.1 it must be done in accordance with this Contract;

- 1.4.2 if it is to be done within a period after an action is taken, the day on which that action is taken does not count in the calculation of that period; and
- 1.4.3 if the last day of the period within which it must be done is not a Working Day, the period shall be extended to include the following Working Day.
- 1.5 All obligations, duties and responsibilities of the Provider under this Contract are separate obligations, duties and responsibilities owed to Client.
- 1.6 This Contract will commence on the Commencement Date (or will be deemed to have done so). Where there is an Expiry Date this Contract will continue until midnight on the Expiry Date unless terminated earlier under Condition 20 [Termination].
- 1.7 The Provider confirms that the Provider has:
 - 1.7.1 taken such steps as the Provider wishes to take to verify the accuracy of any information provided by Client and has not relied on any information provided by Client;
 - 1.7.2 made its own assessment of the costs of and risks of providing the Services;
 - 1.7.3 made all due allowances for its costs of providing the Services within the Fee set out in Schedule 1 [Services and payment]; and
 - 1.7.4 obtained or will obtain all necessary permissions and rights from all Regulatory Bodies necessary or desirable for providing the Services.

2. REPRESENTATIVES

- 2.1 The Representatives of each Party for the purposes of this Contract shall be the persons set out in the Contract Particulars.
- 2.2 Each Party may replace their Representative at any time and must notify the other Party in writing within 2 (two) Working Days of the appointment of a new Representative. This notification must include:
 - 2.2.1 the identity of the new Representative;
 - 2.2.2 the post held by the new Representative; and
 - 2.2.3 contact details for the new Representative.
- 2.3 A person appointed as the Client's Representative may not disregard or overrule any instruction given by a previous Client's Representative unless the previous Client's Representative would have been entitled to do so.
- 2.4 The Client's Representative may exercise all functions and rights of Client under this Contract.
- 2.5 The Client's Representative may delegate some or all of their duties to one or more deputy Client's Representatives. The Client's Representative must give

notice of any delegation under this Condition 2.5 to the Provider. The notification must state:

- 2.5.1 the identity of the deputy Client's Representative;
 - 2.5.2 contact details for the deputy Client's Representative; and
 - 2.5.3 the duties delegated (which may be all or any of the Client's Representatives duties).
- 2.6 The Provider must ensure that the Provider's Representative or a nominated deputy is contactable by Client at any time during the Contract Period. Where the Contract Particulars so provide, this includes contact outside Normal Business Hours at any time of the day or night.
- 2.7 Any communication given by Client or the Client's Representative to the Provider's Representative will be deemed to have been given to the Provider.
- 2.8 The Provider must ensure that their Representative informs the Client's Representative promptly in writing of any act or omission by Client that stops the Provider from complying with this Contract.
- 2.9 If there is any ambiguity, discrepancy or matters requiring clarification in this Contract, the Client's Representative (acting reasonably) may issue an instruction which shall be binding on the Provider and determinative of the meaning of this Contract.

3. PROVIDER'S OBLIGATIONS

- 3.1 In consideration of the Fee the Provider agrees (subject, where the Services are to be instructed by Orders under Schedule 1 [*Services and payment*] to the issue of an Order) to provide the Services from the Commencement Date in accordance with the Specification.
- 3.2 Client gives no representations or warranties to the Provider about the precise amount or value of Services Client will instruct the Provider to provide under this Contract [but confirms that subject to Condition 4.4 [*Regulatory Requirements*] Client will continue to issue some Orders during the Contract Period unless this Contract is terminated]. No Orders are to be issued after the Expiry Date. The Provider is not entitled to claim for any loss of profit, loss of business or otherwise if the volume or timing of Services under this Contract is different in amount, value or scope than anticipated.
- 3.3 Client may provide services similar to the Services through using either its own employees or by engaging other service providers.
- 3.4 The Provider must provide the Services:
- 3.4.1 in accordance with all applicable Law, Regulatory Requirements, Statutory Permissions and Standards;
 - 3.4.2 in accordance with this Contract;

- 3.4.3 in accordance with Good Professional Practice (and Client relies on the skill, judgement and expertise of the Provider in relation to this);
- 3.4.4 in accordance with Client's Requirements, the Policies and the Provider's Proposal;
- 3.4.5 by any specific deadline set out in the Specification, stated in an Order or agreed with Client;
- 3.4.6 in a manner that causes the minimum inconvenience and nuisance to others;
- 3.4.7 within a culture and working environment in which health and safety is paramount to everybody involved with the Services;
- 3.4.8 using environmentally sustainable methods of working;
- 3.4.9 using technology that is compatible with and interfaces with Client's IT System to the extent required by the Contract Particulars and/or the Specification;
- 3.4.10 in accordance with a properly documented system of quality control designed to ensure that Good Professional Practice is followed; and
- 3.4.11 in accordance with any reasonable requests made by the Client's Representative.
- 3.5 The Provider warrants that it has the competence, resources and capacity to comply with, and will comply with any guidance (including any Code of Practice) applying to the Services issued by any Regulatory Body.
- 3.6 When providing the Services the Provider must ensure that:
 - 3.6.1 at all times safe systems of work are adopted and all appropriate risk assessments are available; and
 - 3.6.2 the Services are planned and delivered in accordance with the General Principles of Risk Prevention;
- 3.7 The Provider must inform Client immediately:
 - 3.7.1 if the Provider becomes aware of any matter affecting or likely to affect the provision or performance of the Services; or
 - 3.7.2 of any circumstances concerning the Services which might justify Client taking action to protect its interests (including its reputation) or which may lead to a Dispute.

4. REGULATORY REQUIREMENTS

- 4.1 The Provider must obtain and maintain any Statutory Permissions necessary to provide the Services. The Provider must pay all fees and charges in connection with this.

- 4.2 The Provider shall comply with any direction that Client gives in relation to the Services in order:
- 4.2.1 to enable Client to comply with the Human Rights Act 1998;
 - 4.2.2 to prevent a breach of Health and Safety Law;
 - 4.2.3 to comply with the requirements of any Regulatory Body; or
 - 4.2.4 to secure that the Services are provided in accordance with this Contract.
- 4.3 The Provider shall notify Client immediately of any:
- 4.3.1 breach of Law, Regulatory Requirements or this Contract by the Provider (including where due to the actions or omissions of a Subcontractor); or
 - 4.3.2 investigation by a Regulatory Body in connection with the Services or the Provider.
- 4.4 Client may suspend the provision of the Services by the Provider if Client considers the Provider may have breached this Contract.
- 4.5 The Provider warrants that all representations and answers given in any due diligence or selection questionnaire completed by the Provider in relation to the procurement of this Contract by Client were true, complete and accurate when given and will continue to be true, complete and accurate throughout the Contract Period.

5. STAFF

- 5.1 The Provider shall ensure all Staff providing the Services:
- 5.1.1 are recruited in accordance with safer workforce practices which include background checks on all new recruits;
 - 5.1.2 are appropriately qualified and experienced;
 - 5.1.3 are properly trained and (where appropriate) properly supervised;
 - 5.1.4 act in the best interests of Client;
 - 5.1.5 comply with all applicable Health and Safety Law;
 - 5.1.6 comply with Equality and Diversity Law;
 - 5.1.7 are paid in accordance with the Law (including having such deductions as are required to be made under Tax and social security Laws made from their pay and accounted for to HMRC);
 - 5.1.8 comply with the Policies;
 - 5.1.9 comply with any instruction given by the Client's Representative in accordance with this Contract; and

- 5.1.10 maintain the highest standards of courtesy and behaviour.
- 5.2 The Provider shall supply sufficient Staff to provide the Services in accordance with this Contract. As far as practicable, the Provider shall maintain continuity of Staff delivering the Services.
- 5.3 Where the Contract Particulars identify Key Persons the Provider shall ensure that the Services are provided by or that their provision is overseen and managed by those Key Persons. Subject to this and subject to complying with this Condition 5, the recruitment, allocation of Staff to the Services shall be in the discretion of the Provider.
- 5.4 Immediately on becoming aware of a need to replace any of the Key Persons, including where the Key Person resigns from the Provider's employment, or is long term absent due to illness or incapacity, maternity or paternity leave or for any other reason, the Provider shall propose an alternative with equivalent seniority and experience as the Key Person they are replacing. If approved by Client such person will then become a Key Person.
- 5.5 The Provider shall not remove any of the Key Persons from the provision of the Services without the consent of Client other than due to resignation, dismissal for gross misconduct, long term illness or incapacity, pregnancy, or other circumstances outside the Provider's control.
- 5.6 Other than in an emergency (including where the Key Person is unexpectedly no longer employed by the Provider) the Provider shall ensure that (at the Provider's own cost) there is a handover period between an outgoing Key Person and their replacement.
- 5.7 The Provider must not employ any person who is a board member or employee of Client or a close relative of any such person without the written consent of Client.
- 5.8 The Provider shall deliver the apprenticeships, work experience placements and social value activities (if any) set out in the Contract Particulars. The Provider shall report to Client on those social value activities as and when required by Client.
- 5.9 The Provider must maintain accurate records of the Staff providing the Services and the Orders each of them undertake. The Provider must give Client a list of all Staff who are delivering the Services within 10 (ten) Working Days of a request by Client.
- 5.10 Client may require the Provider to remove any member of Staff from providing the Services if Client is not satisfied in any way with that Staff member's conduct, manner, professionalism or ability.
- 5.11 The Provider shall not solicit, employ or engage any of Client's employees at any time during the Contract Period or within the 6 (six) months after the

Termination Date other than through an open advertisement which is responded to by them.

- 5.12 The Provider warrants that neither the Provider nor any of its officers or employees:
- 5.12.1 have been convicted of any offence involving slavery or human trafficking; and
 - 5.12.2 have, to the best of the Provider's knowledge, been the subject of any investigation, inquiry or enforcement proceedings by any Regulatory Body regarding any offence or alleged offence of or in connection with slavery or human trafficking.
- 5.13 The Provider shall notify Client promptly in writing if the Provider becomes aware of or has any reason to believe that the warranty in Condition 5.12 is or may become untrue. The notice must set out full details of the circumstances making the warranty untrue or potentially untrue.
- 5.14 This Contract is a contract for services and not a contract of employment. Unless the Contract Particulars state that the Off-Payroll Working Rules apply to this Contract (in which case Client shall be responsible for making status determinations and notifying the Provider and Subcontractors of the outcomes) the Parties intend that either:
- 5.14.1 this Contract falls outside of the Off-Payroll Working Rules, on the basis that neither the Provider nor any Subcontractors are intermediaries for the purposes of the Off-Payroll Working Rules; or
 - 5.14.2 the Services to be provided under this Contract are fully outsourced services and therefore the Provider is the "client" for the purposes of the Off-Payroll Working Rules and is responsible for compliance with the Off-Payroll Working Rules, including making any status determinations and notifying the relevant persons of the outcomes.
- 5.15 Where the Contract Particulars state that the Off-Payroll Working Rules apply to this Contract, the Contract Particulars also state whether Client is responsible for making deductions from the Fee as appropriate to comply with the Off-Payroll Working Rules.
- 5.16 The Provider shall :
- 5.16.1 take all reasonable steps to ensure compliance with the Off-Payroll Working Rules (to the extent applicable to the Services) for itself and any Subcontractors;
 - 5.16.2 regularly check to ensure that any Subcontractors do not fall within the definition of "intermediary" under the Off-Payroll Working Rules and notify Client immediately of any that do;

- 5.16.3 promptly provide and ensure that its Subcontractors promptly provide all information and documentation that is relevant to determining whether the Off-Payroll Working Rules apply to this Contract and whether Client needs to make any status determinations to identify if there are any "deemed employment" relationships (as defined in the Off-Payroll Working Rules).
- 5.16.4 inform Client promptly:
- (a) if the Provider believes that circumstances are about to change or have changed, such that the Provider or a Subcontractor would be classed as an intermediary under the Off-Payroll Working Rules;
 - (b) if, where the Services are "fully outsourced", the Provider has reason to believe that the Services would no longer be classed as fully outsourced under the Off-Payroll Working Rules and/or that it no longer considers itself to be the "client" for these purposes;
 - (c) if the Provider or a Subcontractor is proposing to engage a member of Staff via an intermediary; and
 - (d) of any material change to any information or documentation previously provided to Client under this Condition.
- 5.17 The Provider warrants that there will be no Staff who transfer to Client or any Successor Provider under TUPE from the Provider or any Subcontractor on or around the Termination Date. If any such Staff do transfer, the Provider shall indemnify Client and any Successor Provider against all Liability arising from:
- 5.17.1 all costs of dismissing any such person (on any basis) at any time within the 3 (three) months following the last day of the Contract Period or, if later, from the date on which it was discovered they transferred to Client or Successor Provider under TUPE;
 - 5.17.2 all costs of Client or the Successor Provider employing such person up to the point of their dismissal; and
 - 5.17.3 where an Employment Tribunal orders the reinstatement of any such person, all costs of Client or the Successor Provider employing them for a period of 12 (twelve) months from the last day of the Contract Period.

6. MONITORING AND COMPLAINTS

- 6.1 Client may monitor the performance of the Services and any activities undertaken by the Provider in connection with this Contract as Client considers appropriate. Such monitoring may include auditing the Provider's operations.

facilities and working conditions and the Provider's quality, environmental, ethical and health and safety procedures and systems.

- 6.2 The Provider must grant access to Client to any premises from which the Contract is undertaken or administered.
- 6.3 The Provider shall undertake appropriate remedial actions to address any issues or failures identified by an inspection or audit under Condition 6.1 to the reasonable satisfaction of Client.
- 6.4 The Provider must:
 - 6.4.1 deal with any complaints received in connection with the Services in a prompt, courteous and efficient manner;
 - 6.4.2 keep written records of all complaints received and of the action taken in relation to each of them;
 - 6.4.3 keep those records available for inspection by Client at any reasonable time;
 - 6.4.4 promptly provide all information Client requires in order to deal with any complaints Client receives in connection with the Services or the Provider; and
 - 6.4.5 co-operate with Client in responding to ombudsman enquiries in relation to the Services and reimburse Client any compensation recommended to be paid as a result of the Provider's default.
- 6.5 Where the Contract Particulars so specify, the Provider's delivery of the Services under this Contract will also be monitored through the KPIs.
- 6.6 If Client is concerned about the accuracy of any KPI monitoring data Client may arrange for independent monitoring or verification of such data. If monitoring data obtained by the Provider is found to have been inaccurate Client may recover the costs of the independent monitoring from the Provider.
- 6.7 Client may at any time monitor or direct the Provider to monitor the Provider's performance in relation to any KPI over such period of no less than 1 (one) month as Client determines.
- 6.8 If there is any dispute over the data collected to monitor the Provider's KPI performance or any discrepancy between the KPI data collected by Client and that collected by the Provider, the decision of Client over which data is valid is to be final and binding.
- 6.9 Where the Contract Particulars state that the achievement of the KPI Targets for a KPI is incentivised and the Provider's performance of the Services as measured by a KPI for a KPI Measurement Period meets the KPI Target for that KPI set out in Schedule 4 [*KPI Schedule*], subject to Condition 7.8[*Payment*] Client shall pay the percentage of the KPI Payment attributable to that KPI to the Provider for that KPI Measurement Period.

- 6.10 If the Provider fails over any period of 3 (three) months to meet the KPI Targets for any one or more of the KPIs, Client may serve on the Provider a notice specifying the improvement in performance that Client requires ("**a KPI Improvement Notice**").
- 6.11 If following the service of a KPI Improvement Notice, the Provider does not improve performance above the KPI Targets throughout 2 (two) of the 3 (three) months following that month in which the KPI Improvement Notice is served or fails to sustain performance above the KPI Targets for 9 (nine) of the 12 (twelve) months after service of a KPI Improvement Notice, Client shall be entitled to terminate this Contract under Condition 20.1.13 [*Termination*].

7. PAYMENT

- 7.1 The Fee payable for the Services is to be calculated in accordance with Schedule 1 [*Services and payment*]. Where the Contract Particulars provide that achievement of the KPI Targets is incentivised, the KPI Incentivisation Percentage shall be deducted from the amount that would otherwise be payable.
- 7.2 Unless provided otherwise in Schedule 1 [*Services and payment*] the Fee is to be payable on a monthly basis based on the Services provided in each month. Within 5 (five) Working Days of the end of each month, the Provider shall submit a VAT (where applicable) invoice to Client for all Services provided in that month. The invoice shall be accompanied by such information as Client reasonably requires from time to time to verify the amount due in relation to that month. Such invoice may be in the form of an electronic invoice complying with the Public Procurement (Electronic Invoices etc.) Regulations 2019. Client shall accept and process such an electronic invoice, subject to that invoice being undisputed and subject to it complying with this Condition 7.2 and Conditions 7.3 and 7.4 (as applicable).
- 7.3 Where the Services are instructed through Orders each invoice must include the correct Client Order numbers for the Services provided in that month. The invoice shall be accompanied by such information as Client reasonably requires from time to time to verify the amount due for that month.
- 7.4 The Fee is exclusive of VAT which shall be added at the prevailing rate and paid by Client following delivery of a valid VAT invoice that includes the correct Client Order numbers as set out in Condition 7.3 (where applicable).
- 7.5 Client shall:
- 7.5.1 consider and verify any invoices submitted by the Provider promptly and in any event within 7 (seven) calendar days; and
 - 7.5.2 process and pay undisputed invoices within 30 (thirty) calendar days of the date on which they are regarded as valid and undisputed.

- 7.6 Client may set off any money Client is owed by the Provider against any amounts due to the Provider under this Contract.
- 7.7 Interest is payable at the Interest Rate on any undisputed amounts which are not paid by the date 37 (thirty-seven) calendar days after the date of the Provider's invoice from that date to the actual date of payment (inclusive of both dates).
- 7.8 Where the Contract Particulars for Condition 6.7 *[Monitoring and complaints]* state that the achievement of the KPI Targets is incentivised for one or more KPIs the Provider shall submit separate invoices for the KPI Payments at the end of each KPI Measurement Period. This invoice shall show clearly those KPIs for which the KPI Targets were achieved and the percentage and total of the KPI Incentivisation Percentage deductions during that period that is payable for each of those KPIs.
- 7.9 The Fee is paid for the performance of all the Provider's obligations under this Contract and no payment or reimbursement of expenses is to be made by Client other than as set out in Schedule 1 *[Services and payment]*.
- 7.10 Where the Contract Particulars so state, the Prices and monetary amounts (if any) set out in Schedule 1 *[Services and payment]* shall be adjusted by Inflation on the Inflation Adjustment Date. The Inflation adjustment shall apply to all the Prices for all Services in respect of which an Order is placed after the Inflation Adjustment Date. For Services that do not require the issue of an Order, the Inflation adjustment shall apply to the Prices for all Services performed after the Inflation Adjustment Date.
- 7.11 If the basis of computing the Inflation Index changes during the Contract Period, any official reconciliation between the two bases of calculation is to be used in calculating Inflation. If there is no reconciliation or no replacement index, Inflation is to be calculated by reference to such other index as Client (acting reasonably) specifies (as the index Client considers most closely replaces the Inflation Index), with such adjustments as are appropriate to reflect the differences between that index and the Inflation Index.
- 7.12 This Contract is a contract for services and not a contract of employment. Accordingly the Provider shall be fully responsible for and shall indemnify Client for and in respect of:
- 7.12.1 any Tax, National Insurance and social security contributions and any other Liability arising from or made in connection with the provision of the Services (to the extent that such recovery is not prohibited by Law);
 - 7.12.2 all reasonable costs, expenses and any penalty, or interest incurred or payable by Client in connection with or in consequence of any such Liability as is referred to in Condition 7.12.1;

- 7.12.3 any Liability arising from any employment-related claim or any claim based on worker status (including costs and expenses) brought by any person (including the Provider) against Client arising out of or in connection with the Services.
- 7.13 Any amounts due under Condition 7.12 shall be paid in cleared funds by the Provider to Client not less than 5 (five) Working Days before the date upon which the Tax or other Liability is payable by Client.

8. INTELLECTUAL PROPERTY

- 8.1 Where the Contract Particulars so state, the Provider assigns to Client all Intellectual Property Rights in any Documents and Data which are produced or developed by the Provider specifically for the Services and waives all moral rights to be identified as author and to object to derogatory treatment in relation to such Documents and Data.
- 8.2 Subject to Condition 8.1, all Intellectual Property Rights in any Documents and Data or any other materials which are produced or developed for or in connection with the Services are to belong to the Party that developed them.
- 8.3 Each Party grants the other Party an irrevocable, non-exclusive, royalty free licence to copy and use (including the right to licence others to do so) all Documents and Data in which it has Intellectual Property Rights (including any Documents and Data in relation to which Intellectual Property Rights are assigned to Client under Condition 8.1) in connection with the Services but this licence is not to extend to:
 - 8.3.1 copying or using those Documents and Data other than in connection with the Services; or
 - 8.3.2 selling, transferring or otherwise disposing of or granting any ownership rights in those Documents and Data.
- 8.4 Each Party agrees promptly to notify the other Party in writing of any infringement or potential infringement of that Party's Intellectual Property Rights in connection with the Services of which it becomes aware.
- 8.5 The Provider shall indemnify and hold Client harmless against any Liability because of a claim or action that the normal operation, possession or use of any Documents and Data made available by the Provider to Client infringes the Intellectual Property Rights of the third party.
- 8.6 The Provider shall be responsible for the accuracy of all Documents and Data supplied to Client in connection with the Services and shall indemnify Client in respect of any Liability caused by any errors or omissions in those Documents and Data.

9. PUBLICITY AND REPUTATION

- 9.1 The Provider must not advertise, publicly announce or provide any publicity stating that it is providing the Services or working for Client without the prior written consent of Client on each occasion the Provider does so.
- 9.2 All press releases and media communications (including via social media) relating to this Contract or the Services must be approved by Client. Client must be given a reasonable opportunity to provide a quote in any press release or media communication.
- 9.3 The Provider shall perform its obligations under this Contract in a way that enhances the reputation of Client. The Provider shall not do anything that embarrasses Client or undermines the reputation of Client either with Customers or generally.

10. CONFIDENTIALITY AND SECURITY OF INFORMATION

- 10.1 Subject to Condition 10.3 each Party shall keep confidential and secure from disclosure any Confidential Information communicated to it by the other on the basis that it is confidential.
- 10.2 Neither Party shall use or exploit the other Party's Confidential Information for any purpose other than as set out in this Contract.
- 10.3 Confidential Information may be disclosed:
 - 10.3.1 to the extent reasonably required by either Party to perform its obligations under this Contract on a confidential basis to persons performing those obligations;
 - 10.3.2 if it is in the public domain other than as a result of a breach of this Condition 10;
 - 10.3.3 where its disclosure is required by any court order or legal or regulatory obligation of the Party making the disclosure (including under Data Protection Law) or required by any Regulatory Body (including, in relation to Freedom of Information Law, a disclosure made in accordance with this Condition 10);
 - 10.3.4 if it is already lawfully in the possession of the receiving Party, before its disclosure by the disclosing Party;
 - 10.3.5 to a Party's professional advisers for the purposes of taking advice on this Contract;
 - 10.3.6 under the Dispute Resolution Procedure; and/or
 - 10.3.7 by any Party for the purpose of the examination, certification and/or audit of that Party's accounts.

- 10.4 Where a disclosure of Confidential Information is made under Condition 10.3 (other than under Conditions 10.3.2, 10.3.3 or 10.3.4) the Party disclosing the Confidential Information shall use reasonable endeavours to impose a similar duty of confidentiality on the recipient of the information as that contained in this Condition 10.
- 10.5 Each Party must notify the other Party promptly and in any event within 2 (two) Working Days of becoming aware of any unauthorised access, copying use or disclosure of the other Party's Confidential Information.
- 10.6 The Provider shall provide such assistance as Client reasonably requires to enable Client to comply with Freedom of Information Law.
- 10.7 Where the Provider receives a Request for Information relating to information held on behalf of Client the Provider shall:
- 10.7.1 transfer the Request for Information to Client as soon as practicable and in any event within 5 (five) Working Days of receiving the Request for Information; and
 - 10.7.2 provide Client with a copy of all such information in such form as may be required within 10 (ten) Working Days of the notification under Condition 10.7.1.
- 10.8 The Provider acknowledges that Client is responsible for determining in its absolute discretion (but having regard to any guidance or Codes of Practice issued by the Information Commissioner or the Ministry of Justice):
- 10.8.1 whether any information is exempt from disclosure under Freedom of Information Law
 - 10.8.2 in the case of a qualified exemption, whether the public interest in disclosing the information is greater than the public interest in maintaining the exemption; and
 - 10.8.3 whether any information is to be disclosed in response to a Request for Information.
- 10.9 The Provider shall not respond directly to a Request for Information unless expressly authorised to do so by Client.
- 10.10 Where it receives a Request for Information relating to any Confidential Information, Client shall (unless it has decided not to disclose that information either because Freedom of Information Law does not apply or because it is exempt from disclosure under Freedom of Information Law) use reasonable endeavours to:
- 10.10.1 notify the Provider of that Request for Information in accordance with Part VII of the Code of Practice issued by the Secretary of State under Section 45 of FOIA; and

- 10.10.2 consider any representations made by the Provider before disclosing that Confidential Information under Freedom of Information Law.
- 10.11 If Client decides to disclose any Confidential Information under Freedom of Information Law, Client shall use reasonable endeavours to notify the Provider of this decision before making the disclosure.
- 10.12 Where the Provider holds information on behalf of Client, the Provider shall:
 - 10.12.1 have regard to any Code of Practice issued under Section 46 of FOIA or equivalent provisions under Freedom of Information Law;
 - 10.12.2 comply with any practice recommendation issued to it under Section 48 of FOIA or equivalent provisions under Freedom of Information Law; and
 - 10.12.3 comply with any retention and destruction of information policy which Client notifies to it.

11. DATA PROTECTION

- 11.1 Each Party shall comply with Data Protection Law when Processing Personal Data under this Contract. This includes complying with the Data Protection Principles and upholding the rights of Data Subjects under Data Protection Law.
- 11.2 Each Party shall ensure they have all necessary and appropriate legal bases required for the lawful Processing of Personal Data under this Contract (including any transfer of Personal Data to the other Party).
- 11.3 Each Party shall designate its own Data Protection Officer if Data Protection Law so requires.
- 11.4 The subject-matter, nature and purpose and the duration of Processing and the types of Personal Data and categories of Data Subject in relation to which Personal Data may be Processed under this Contract are set out in the Data Processing Table in the Contract Particulars:
- 11.5 Where the Provider Processes Personal Data of which the Employer is the Data Controller the Provider shall:
 - 11.5.1 do so only on written instructions from the Employer (the first such instructions being those set out in this Contract) as revised by the Employer from time to time (where applicable) in accordance with clause 11.13;
 - 11.5.2 do so only as authorised by this Contract (and not as determined by the Provider);
 - 11.5.3 promptly comply with the Employer's written instructions and requirements from time to time, including any requests to amend, delete or transfer Personal Data;

- 11.5.4 immediately inform the Employer if the Provider thinks that it has been given an instruction which does not comply with Data Protection Law;
- 11.5.5 take all reasonable steps to ensure the reliability and integrity of all persons (including Staff) whom the Provider authorises to Process the Personal Data and ensure that those persons:
 - (a) are aware of and comply with the Provider's obligations under this clause 11;
 - (b) have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality;
 - (c) are informed of the confidential nature of the Personal Data and do not Process, publish, disclose or divulge any of the Personal Data other than in accordance with this Contract or the written instructions of the Employer; and
 - (d) have undergone adequate training in Data Protection Law, the confidentiality, security, use, care, protection and handling of Personal Data and the Provider's obligations as Data Processor under this Contract.
- 11.5.6 fully cooperate with and assist the Employer, by having appropriate technical and organisational measures in place, to give effect to the rights of Data Subjects and respond to requests for exercising the Data Subject's rights including Data Subject Access Requests;
- 11.5.7 Process the Personal Data in such a manner that ensures that at all times the Employer complies with Data Protection Law;
- 11.5.8 maintain complete and accurate records and information of any Processing of Personal Data it carries out on behalf of the Employer which are sufficient to demonstrate compliance by the Employer and the Provider with Data Protection Law and this clause 11.
- 11.5.9 on request, provide the Employer promptly with all information that the Employer needs to show that both the Employer and Provider have complied with their data protection obligations under this Contract; and
- 11.5.10 at the option of the Employer, either irretrievably delete or return all Personal Data to the Employer by the date set out in the Data Processing Table (unless the Provider is required by Law to retain that Personal Data).
- 11.6 The Provider shall maintain appropriate Protective Measures (which the Employer may reasonably reject) which are appropriate to protect against a Data Loss Event. If the Employer reasonably rejects Protective Measures put in place by the Provider, the Provider must propose alternative Protective

Measures to the satisfaction of the Employer. Failure to reject shall not amount to approval by the Employer of the adequacy of the Protective Measures. Protective Measures must take account of

- 11.6.1 the nature of the Personal Data to be protected;
 - 11.6.2 the harm that might result from any Data Loss Event including the risk (which may be of varying likelihood and severity) for the rights and freedoms of natural persons.,
 - 11.6.3 the scope, context and purpose of the Processing of the Personal Data concerned;
 - 11.6.4 the state of technological development; and
 - 11.6.5 the cost of implementing any measures;
- 11.7 The Provider shall not transfer any Personal Data outside of the United Kingdom unless the prior written consent of the Employer has been obtained and the following conditions are fulfilled:
- 11.7.1 the destination country has been recognised as adequate by the UK government in accordance with Data Protection Law;
 - 11.7.2 the Provider has provided appropriate safeguards in relation to the transfer (in accordance with Data Protection Law) as determined by the Employer;
 - 11.7.3 Data Subjects have enforceable rights and effective legal remedies;
 - 11.7.4 the Provider complies with the Provider's obligations under Data Protection Law by providing an appropriate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Employer in the meeting its obligations); and
 - 11.7.5 the Provider complies with any instructions notified to the Provider by the Employer with respect to the Processing of that Personal Data.
- 11.8 The Provider shall notify the Employer immediately (and provide further information as details become available) if the Provider:
- 11.8.1 receives a Data Subject Request (or purported Data Subject Request);
 - 11.8.2 receives a request to rectify, block or erase any Personal Data;
 - 11.8.3 receives any other request, complaint or communication relating to either Party's obligations under Data Protection Law;
 - 11.8.4 receives any communication from the Information Commissioner or any other Regulatory Body in connection with Personal Data processed under this Contract;

- 11.8.5 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 Law; or
- 11.8.6 becomes aware of a Data Loss Event, in which case the notification shall:
 - (a) describe the nature of the Data Loss Event including the categories and number of Data Subjects and records concerned;
 - (b) communicate the name and contact details of all persons from whom more information can be obtained about the Data Loss Event;
 - (c) describe the likely consequences of the Data Loss Event; and
 - (d) describe the measures taken by the Provider and the measures which the Provider wishes the Employer (at the expense of the Provider) to take to address the Data Loss Event and mitigate its possible adverse effects.
- 11.9 The Provider shall give the Employer immediate and full co-operation and assistance in relation to any Data Loss Event including:
 - 11.9.1 taking all reasonable steps the Employer requires to assist in the containment, mitigation, remediation and investigation of such Data Loss Event;
 - 11.9.2 providing assistance with notifying the Information Commissioner's Office or affected Data Subjects of any breach of Data Protection Law;
 - 11.9.3 providing the Employer promptly with all relevant information in the Provider's possession; and
 - 11.9.4 where the Data Loss Event involves Personal Data being lost, damaged, corrupted or unusable, promptly restoring that Personal Data at the Provider's expense.
- 11.10 Taking into account the nature of the Processing, the Provider shall provide the Employer with full assistance in relation to either Party's obligations under Data Protection Law and any complaint, communication or request made under clause **Error! Reference source not found.** (and insofar as possible within the timescales reasonably required by the Employer), promptly providing the Employer with:
 - 11.10.1 full details and copies of the complaint, communication or request;
 - 11.10.2 such assistance as the Employer reasonably requests to enable the Employer to comply with a Data Subject Access Request within the relevant timescales set out in Data Protection Law;

- 11.10.3 at the Employer's request, any Personal Data it holds in relation to a Data Subject Access Request; and
 - 11.10.4 such assistance as the Employer requests with respect to any request from the Information Commissioner's Office, or any consultation by the Employer with the Information Commissioner's Office.
- 11.11 The Provider shall provide reasonable assistance to the Employer in the preparation of any Data Protection Impact Assessment before commencing any Processing and whenever reasonably required by the Employer. Such assistance may include (at the discretion of the Employer):
- 11.11.1 a systematic description of the envisaged Processing operations and the purpose of the Processing;
 - 11.11.2 an assessment of the necessity and proportionality of the Processing operations in relation to the Services;
 - 11.11.3 an assessment of the risks to the rights and freedoms of Data Subjects; and / or
 - 11.11.4 the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 11.12 The Employer or an auditor designated by the Employer may inspect and audit the Provider's facilities for Processing the Personal Data of which the Employer is Data Controller to ensure they comply with this Contract and Data Protection Law.
- 11.13 The Employer may revise their instructions to the Provider on the Processing of Personal Data at any time if this is necessary or desirable to comply with Data Protection Law. Such revision shall not entitle the Provider to any additional payment, be a compensation event, lead to any paid or unpaid extension of time or be treated as a variation to this Contract. The Employer shall use reasonable endeavours to give the Provider as much notice of the revision as possible, consistent with their obligation to comply with Data Protection Law and protect against any Data Loss Event.
- 11.14 Nothing in this Contract requires either Party to disclose any information to the other Party or any third party if to do so would breach Data Protection Law. If any part of this clause 11 does not comply with Data Protection Law, the Employer may amend that part (to the minimum necessary to ensure such compliance) by giving the Provider at least 30 (thirty) Working Days' notice. The Parties agree that such amendment shall not entitle the Provider to any additional payment, be a compensation event, lead to any paid or unpaid extension of time or be treated as a variation to this Contract.

- 11.15 The Employer may replace this clause 11 with any applicable Data Controller to Data Processor standard clauses forming part of an applicable certification scheme (as defined under Data Protection Law) at any time by giving the Provider at least 30 (thirty) Working Days' notice. The Parties agree that such amendment shall not entitle the Provider to any additional payment, be a compensation event, lead to any paid or unpaid extension of time or be treated as a variation to this Contract.
- 11.16 The Parties shall take account of any guidance issued by the Information Commissioner's Office. The Employer may amend this Contract to ensure that it complies with any guidance issued by the Information Commissioner's Office by giving the Provider at least 30 (thirty) Working Days' notice. The Parties agree that such amendment shall not entitle the Provider to any additional payment, be a compensation event, lead to any paid or unpaid extension of time or be treated as a variation to this Contract.

Subcontractor clauses

- 11.17 The Provider shall not allow a Subcontractor to Process any Personal Data of which the Employer is Data Controller without the prior written consent of the Employer to that Subcontractor doing so. Where the Provider wishes a Subcontractor to be able to do so the Provider shall provide the Employer with such evidence as the Employer requires in order to be satisfied that the proposed Subcontractor is capable of complying with the Provider's obligations under this Contract and under Data Protection Law in relation to that Personal Data.
- 11.18 Where the Employer allows a Subcontractor to Process Personal Data in accordance with clause 11.1 the Provider shall:
- 11.18.1 include provisions identical to those in clause 11 in the subcontract with that Subcontractor; and
 - 11.18.2 provide in the subcontract that the Employer may enforce such obligations directly against the Subcontractor under the Contracts (Rights of Third Parties) Act 1999.

The appointment of a Subcontractor shall not relieve the Provider from any of its obligations under this Contract and the Provider shall be liable to the Employer for the performance of the Subcontractor's obligations in relation to Personal Data under this Contract.

12. CLIENT DATA

- 12.1 Where the Contract Particulars state that the Provider is to store Client Data on the Provider's IT System the Provider:
- 12.1.1 acknowledges that Client Data belongs solely to Client;

- 12.1.2 shall not remove any copyright or proprietary notices contained in or relating to that Client Data;
 - 12.1.3 shall provide, maintain and update the Provider's IT System so that, throughout the Contract Period, it is suitable for managing and monitoring the provision of the Services and, where applicable, for keeping that Client Data up to date in connection with this;
 - 12.1.4 shall grant Client access to the Provider's IT System during Normal Business Hours (other than when it is necessary to close down the Provider's IT System to rectify a fault or undertake maintenance and Client is given reasonable notice of this "down time", other than in an emergency, where Client must be notified as soon as the "down time" occurs);
 - 12.1.5 warrants that granting Client access to the Provider's IT System to the extent required by this Contract does not breach any Intellectual Property Rights of any third party;
 - 12.1.6 shall store that Client Data safely and separately from any data not relating to Client or the Services;
 - 12.1.7 shall preserve the integrity of that Client Data and prevent it from corruption or loss;
 - 12.1.8 shall not modify, alter, delete or overwrite any Client Data otherwise than in accordance with this Contract without the prior written consent of Client;
 - 12.1.9 shall maintain a back-up and records of any Client Data it has so modified, deleted or added to for a minimum of 3 (three) months after the modification or deletion; and
 - 12.1.10 shall reconstitute or recover any Client Data that is lost, corrupted or degraded whilst it is maintained on the Provider's IT System to its state immediately before the corruption or loss and meet any costs Client incurs in connection with this.
- 12.2 Where the Contract Particulars state that the Provider will access Client's IT System or interface the Provider's IT System with Client's IT System, the Provider shall:
- 12.2.1 regularly check any software and transfer media used in connection with this Contract (including any software and transfer media used on or connected to Client's IT System) with an up-to-date virus checker from an industry accepted anti-virus software vendor;
 - 12.2.2 not introduce any virus, Trojan horse, malware, keylogger or other harmful software into Client's IT System;

- 12.2.3 access and use Client's IT System only for the purpose of and to the extent required for the Services; and
 - 12.2.4 if any of Client Data is lost or corrupted as a result of the Provider's acts or omissions, meet all costs of Client in restoring or procuring the restoration of that Client Data to its state immediately before the corruption or loss.
- 12.3 The Provider must notify Client promptly and, in any event, within 2 (two) Working Days if it becomes aware of any actual, potential or threatened breach of either Condition 12.1 or Condition 12.2.

13. RECORDS AND AUDIT

- 13.1 Throughout the Contract Period the Provider shall maintain full and accurate records of all Services provided under this Contract, all payments made by Client and all costs incurred by the Provider in relation to it.
- 13.2 The Provider shall retain the records referred to in Condition 13.1 throughout the Contract Period and for 7 (seven) years after the Termination Date.
- 13.3 Whenever requested by Client, the Provider shall make any records it maintains under Condition 13.1 available for inspection and analysis by Client, Client's internal or external auditors or representatives of any Regulatory Body to which Client is subject.
- 13.4 The Provider shall permit Client, its auditors, representatives of its Regulatory Body and all persons authorised by Client on reasonable notice during Normal Business Hours, but without notice in case of any reasonably suspected fraud, bribery or other breach of Law:
- 13.4.1 to access and take copies of the Provider's records maintained under Condition 13.1 and any other relevant information held at the Provider's premises; and
 - 13.4.2 to meet with Staff to audit the Provider's compliance with its probity obligations under this Contract.
- 13.5 The audit rights under Condition 13.4 shall continue for 7 (seven) years after the termination of this Contract. The Provider shall give all necessary assistance to the conduct of such audits during the Contract Period and for a period of 7 (seven) years after the Termination Date.
- 13.6 If an audit under Condition 13.4 reveals that:
- 13.6.1 the Provider has overcharged Client for the Services, the Provider shall pay to Client the amount overpaid within 20 (twenty) Working Days of Client notifying the Provider of the overpayment. Client may deduct the relevant amount from any other amount due to the Provider or recover such amount from the Provider as a debt if the Provider fails to make this payment; or

13.6.2 Client has underpaid the Provider for the Services, Client shall pay the Provider the shortfall (less the cost of audit incurred by Client if the underpayment is the Provider's fault) in the next payment under Condition 7 [Payment] or (if no further payments are due to the Provider), within 20 (twenty) Working Days of Client notifying the Provider of the amount of the underpayment.

13.7 Each Party shall bear their own costs of an audit under Condition 13.4 unless the audit identifies a fault by the Provider leading to a correction under Condition 13.6. Where the audit identifies the underpayment or overpayment is the Provider's fault, the Provider shall reimburse Client's reasonable costs and expenses of the audit to Client.

14. EQUALITY AND DIVERSITY

14.1 The Provider shall comply with its obligations under Equality and Diversity Law and use all reasonable endeavours to assist Client to fulfil its duties under Equality and Diversity Law in relation to the delivery of the Services.

14.2 The Provider shall, as far as possible comply with all applicable guidance issued by the Equalities and Human Rights Commission and its predecessors.

14.3 The Provider must set out its policy on equality and diversity:

14.3.1 in instructions to those concerned with recruitment, training and promotion;

14.3.2 in documents available to Staff, recognised trade unions or other representative groups; and

14.3.3 in recruitment advertisements or other literature.

14.4 The Provider must, on request, provide Client with examples of the instructions and other documents, recruitment advertisements or other literature.

14.5 The Provider must notify Client within 2 (two) Working Days of first becoming aware of any investigations or proceedings brought against the Provider for a breach of Equality and Diversity Law.

14.6 If a finding of unlawful discrimination is made against the Provider by any court or employment tribunal, or an adverse finding is made in any formal investigation under any body responsible for enforcing Equality and Diversity Law the Provider must take appropriate steps to prevent repetition of the unlawful discrimination.

14.7 The Provider shall, on request, provide Client with details of any steps taken under Condition 14.6.

14.8 Client may from time to time require the Provider to monitor its workforce according to such categories as Client reasonably specifies in writing to the Provider.

- 14.9 In providing the Services, the Provider shall undertake and require Subcontractors to undertake measures to improve the representation of groups that are under-represented amongst Staff compared to their representation in the population (either generally or in the areas in which the Services are being undertaken), so as to minimise any imbalance in the composition of the workforce.
- 14.10 In providing the Services, the Provider shall undertake and shall require Subcontractors to undertake measures to:
- 14.10.1 eliminate unlawful discrimination (including harassment and victimisation) or any other conduct prohibited by Equality and Diversity Law by Staff;
 - 14.10.2 deliver equality of opportunity particularly for people from groups that are under-represented amongst Staff delivering the Services in recruitment, pay, training and transfer and promotion to and within the workforce; and
 - 14.10.3 promote and foster good relations between Staff delivering the Services who share a protected characteristic under Equality and Diversity Law and Staff who do not have that characteristic.

15. SUBCONTRACTING & ASSIGNMENT

- 15.1 The Provider may not assign, transfer, subcontract or deal in any other manner with its rights and obligations under this Contract or any part, share or interest in this Contract without the prior written consent of Client but this does not prevent the Provider exercising its legal right to factor its right to payment under this Contract. Subcontracting shall not relieve the Provider from Liability for the performance of its obligations to Client under this Contract and the Provider shall be liable to Client for the performance of its Subcontractors.
- 15.2 Client may assign or transfer the benefit of all or any of its rights under this Contract. An assignment by Client (or by the Provider following Client's prior written consent) will be effective when written notice of it is served on the Provider (or Client, as applicable).
- 15.3 Client may require the Provider to enter into a deed of novation to transfer or extend both Client's rights and obligations under this Contract to any registered provider of social housing. The deed of novation must be in such form as Client reasonably requires.
- 15.4 Where the Provider enters into a Subcontract, the Provider shall include in that Subcontract provisions:
- 15.4.1 requiring invoices to be considered and verified in a timely fashion;
 - 15.4.2 requiring the payment of valid and undisputed invoices within 30 (thirty) calendar days;

- 15.4.3 providing that where there is an undue delay in considering and verifying an invoice, that invoice is to be regarded as valid and undisputed after a reasonable time has passed;
 - 15.4.4 enabling the Subcontract to be terminated if the Subcontractor fails to comply with any obligations under any environmental, social or employment Law in performing the Subcontract; and
 - 15.4.5 requiring the Subcontractor to include provisions having the same effect as this Condition 15.4 in any Subcontract the Subcontractor enters into relating to the Services.
- 15.5 The Provider shall not allow a Subcontractor to Process any Personal Data of which Client is Data Controller without the prior written consent of Client to that Subcontractor doing so. Where the Provider wishes a Subcontractor to be able to do so the Provider shall provide Client with such evidence as Client requires in order for Client to be satisfied that the proposed Subcontractor is capable of complying with the Provider's obligations under this Contract and under Data Protection Law in relation to that Personal Data.
- 15.6 Where Client allows a Subcontractor to Process Personal Data in accordance with Condition 15.5, the Provider shall:
- 15.6.1 include provisions identical to those in Condition 11 [*Data Protection*] in the Subcontract with that Subcontractor; and
 - 15.6.2 provide in the Subcontract that Client may enforce such obligations directly against the Subcontractor under the Contracts (Rights of Third Parties) Act 1999.
- 15.7 Where Staff need to access Client's premises to provide the Services the Provider must notify Client in writing within 5 (five) Working Days of the Commencement Date of the names, contact details and (if known) details of legal representatives of each of its proposed Subcontractors. The Provider shall notify Client within 5 (five) Working Days of:
- 15.7.1 any change to that information; and
 - 15.7.2 the names, contact details and (if known) details of legal representatives of any new Subcontractors.
- 15.8 The Provider shall take appropriate steps to ensure that there is no slavery or human trafficking in its supply chains and in connection with this the Provider shall:
- 15.8.1 implement due diligence procedures for its Subcontractors;
 - 15.8.2 require all Subcontractors to warrant that, neither the Subcontractor nor any of the Subcontractor's officers or employees:
 - (a) have been convicted of any offence involving slavery or human trafficking; or

- (b) have, to the best of the Subcontractor's knowledge, been the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence of or in connection with slavery and human trafficking;
- 15.8.3 require all Subcontractors to notify them promptly in writing if the Subcontractor becomes aware of or has any reason to believe that the warranty in Condition 15.8.2 is or may become untrue. The notice must set out full details of the circumstances making the warranty untrue or potentially untrue;
- 15.8.4 require all Subcontractors to include provisions having the same effect as this Condition 15.8 in all Subcontracts (at any stage of remoteness from Client in the supply chain) relating to the Services; and
- 15.8.5 promptly pass to Client a copy of any notice from a Subcontractor under Condition 15.8.3.
- 15.9 The Provider shall maintain control over and ensure adequate liaison with Subcontractors and Staff to ensure compliance with this Contract. Any obligation on the Provider not to do anything in this Contract is to include an obligation on the Provider to procure that all Subcontractors and Staff do not do it.
- 15.10 The Provider shall terminate a Subcontract within 20 (twenty) Working Days of being requested to do so by Client if:
 - 15.10.1 the actions or omissions of the Subcontractor have led to the Provider being in material breach of this Contract;
 - 15.10.2 the Subcontractor or anyone for whom the Subcontractor is responsible has acted fraudulently or made a fraudulent misrepresentation in connection with the Services or this Contract;
 - 15.10.3 the Subcontractor or anyone for whom the Subcontractor is responsible has offered or agreed to give any person working for or engaged by Client any gift or consideration in relation to this Contract as set out in Condition 19.1 [*Corruption, Bribery and Conflicts*];
 - 15.10.4 there is (in the reasonable opinion of Client) an actual or potential conflict between the interests of the Subcontractor and those of Client;
 - 15.10.5 the Subcontractor is in breach of Health and Safety Law or is considered by Client to be working or to have worked in a way that does not fully comply with Health and Safety Law or any guidance or best practice approved in relation to Health and Safety Law;
 - 15.10.6 the Subcontractor commits a material breach of Data Protection Law (including any Personal Data Breach or any breach which Client, as Data Controller, is required to report to the Information Commissioner);

15.10.7 there is a change of control of the Subcontractor (as defined in section 1124 Corporation Tax Act 2010) which Client has not approved in advance; or

15.10.8 the Subcontractor is found to have committed any offence involving slavery or human trafficking or to have breached environmental, social or labour laws.

16. LIABILITY

16.1 Neither Party excludes or limits liability to the other Party for:

16.1.1 death or personal injury caused by its negligence;

16.1.2 fraud or fraudulent misrepresentation; or

16.1.3 any other Liability which cannot be limited or excluded by Law.

16.2 Subject to Conditions 16.3 to 16.6 (inclusive) the Provider shall pay to Client a sum equal to the amount of any Liability which Client may suffer in connection with a breach of this Contract by the Provider or its Subcontractor.

16.3 The Provider shall not be responsible for any Liability to the extent that it is caused by the negligence or wilful misconduct of Client or by breach by Client of its obligations under this Contract.

16.4 The maximum Liability of the Provider under this Contract (including where there is a requirement to indemnify Client under it) in any Financial Year (other than as set out in Condition 16.1) shall not exceed the Liability Cap set out in the Contract Particulars for that Financial Year but such Liability Cap shall not include or apply to:

16.4.1 any sums that are recovered under any of the Insurances (but on the basis that excesses borne by the Provider are to be treated as being recoverable under the Insurances;

16.4.2 any sums (other than excesses as provided in the Contract Particulars for Condition 16.5) that would have been recovered under the Insurances had the Provider taken out and maintained those Insurances as required by this Contract and made and diligently pursued a claim under them; and

16.4.3 any sums that are payable by the Provider to Client under Condition 5.17 [Staff] or Condition 8.5 [Intellectual Property].

16.5 The maximum amount of Insurance excesses that may be included in the Liability Cap are as set out in the Contract Particulars. Any excesses on any of the Insurances up to these amounts will therefore be included in calculating whether the Liability Cap in any Financial Year has been reached.

16.6 Neither Party shall be liable to the other for pure economic loss, loss of business, depletion of goodwill or loss of anticipated savings other than as expressly

provided in this Contract in each case whether direct, indirect or consequential (but this shall not apply in relation to Condition 5.17 [*Staff*] and Condition 8.5 [*Intellectual Property*]).

- 16.7 No action or proceedings for any breach of this Contract may be commenced at any time after the expiry of 6 (six) years after the date the Services were last provided.

17. INSURANCE

- 17.1 Subject to such Insurances being available in the market at commercially reasonable rates and on commercially reasonable terms the Provider shall maintain the Insurances with the minimum levels of cover set out in the Contract Particulars. Such Insurances shall be maintained with a substantial and reputable insurance company. Any increased or additional premium or adverse terms required by insurers because of the Provider's own claims record or other acts, omissions or matters specific to the Provider shall be deemed to be within commercially reasonable rates and terms.
- 17.2 Whenever required to do so by Client, the Provider shall provide Client with documentary evidence that the Insurances referred to in Condition 17.1 are being properly maintained and that premium payments are up to date.
- 17.3 If any of the Insurances required by this Contract cease to be available at commercially reasonable rates and on commercially reasonable terms, the Provider shall notify Client immediately and the Parties shall discuss the best way to protect their respective positions. In these circumstances Client may terminate this Contract under Condition 20.1 [*Termination*].
- 17.4 If the Provider fails to maintain any of the Insurances (except following a notification under Condition 17.3) Client may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Provider.
- 17.5 The Provider shall not do anything or omit to do anything, which could make the Insurances under Condition 17.1 void, voidable or unenforceable.

18. FORCE MAJEURE

- 18.1 Subject to the Provider complying with Conditions 18.2 and 18.3, neither Party is to be liable to the other for any failure or delay in performing its obligations under this Contract due to any cause beyond its reasonable control ("Force Majeure") including governmental actions, war, riots, terrorist attacks, civil commotion, fire, flood, epidemic, pandemic, labour disputes (other than labour disputes involving employees of that Party or its Subcontractor's employees), currency restrictions and Act of God.

- 18.2 The Provider shall inform Client immediately of any actual or potential industrial action, by Staff or others, which might affect its ability at any time to perform its obligations under this Contract.
- 18.3 Where the Contract Particulars so require, the Provider shall maintain a disaster recovery plan ("**the Disaster Recovery Plan**") setting out the procedures to be followed if any Force Majeure or other circumstances outside the Provider's control mean that the Provider is not able to provide the Services in accordance with this Contract. The Provider shall test and refresh its Disaster Recovery Plan at least once every 12 (twelve) months.
- 18.4 If a Disaster occurs the Provider shall:
- 18.4.1 implement the procedures in the Disaster Recovery Plan (where maintained under Condition 18.3);
 - 18.4.2 as far as practicable, continue to provide the Services in accordance with the Disaster Recovery Plan (where applicable) and this Contract; and
 - 18.4.3 restore the provision of the Services to normal as soon as practicable and within any period set out in the Disaster Recovery Plan (where applicable).
- 18.5 The Party seeking to exempt itself from Liability because of this Condition 18 must give written notice to the other Party within 2 (two) Working Days of becoming aware of Force Majeure and must use all reasonable endeavours to mitigate its severity.
- 18.6 The Party seeking to exempt itself from Liability because of this Condition 18 is not entitled to payment from the other Party for extra costs and expenses incurred because of Force Majeure. The Fee payable for the Services shall also be reduced by such amount as is fair and reasonable to reflect the reduction in the Services undertaken or their performance during the period of Force Majeure.
- 18.7 The date for performance of an obligation which has been delayed by Force Majeure is to be suspended only for the period of delay caused by Force Majeure. The Party notifying the other Party of Force Majeure must notify that Party as soon as it considers the Force Majeure no longer applies.
- 18.8 Either Party may terminate this Contract by giving immediate notice to the other Party if Force Majeure which completely prevents that other Party from complying with its obligations under this Contract continues for a period of 3 (three) months or more.

19. CORRUPTION, BRIBERY AND CONFLICTS

- 19.1 Client may terminate this Contract for default by the Provider immediately by written notice and recover from the Provider the amount of any loss resulting from such termination if:
- 19.1.1 the Provider commits an offence under the Bribery Act 2010 or any Law concerning fraudulent or corrupt acts in relation to this Contract or any other contract with Client;
 - 19.1.2 the Provider has offered or given or agreed to give Client, or any person connected with any gift or consideration of any kind as an inducement or reward for:
 - (a) doing or not doing or having done or not having done any action in relation to the obtaining or execution of this Contract or any other contract with Client; or
 - (b) showing or not showing favour or disfavour to any person in relation to this Contract or any other contract with Client; or
 - 19.1.3 the acts referred to in Conditions 19.1.1 or 19.1.2 have been done by any person employed by the Provider or acting on the Provider's behalf (whether without or with the Provider's knowledge).
- 19.2 The Provider shall not do anything which would place Client in breach of the prohibition in Section 122 of the Housing and Regeneration Act 2008 or Client's Probity Policy or Code of Conduct.
- 19.3 The Provider shall take and require all Subcontractors to take all reasonable steps, in accordance with Good Professional Practice, to prevent fraud and bribery in connection with this Contract. The Provider shall notify Client immediately if it has reason to suspect that any fraud or bribery (including any breach of Condition 19.1) has occurred, is occurring or is likely to occur.
- 19.4 If the Provider or any of its Staff commits any fraud or bribery (including any breach of Condition 19.1) in relation to this or any other contract with Client, Client may recover in full from the Provider any loss sustained by Client in consequence of such fraud.
- 19.5 The Provider shall cooperate fully with Client, its auditors and/or any Regulatory Body in relation to any investigation into fraud or bribery in connection with this Contract
- 19.6 The Provider shall take appropriate steps to ensure that they are not placed in a position where (in the reasonable opinion of Client) there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Provider and the obligations owed to Client under this Contract.

- 19.7 The Provider shall promptly notify and provide full particulars to Client if any conflict referred to in Condition 19.6 above arises or is reasonably foreseeable to arise.

20. TERMINATION

- 20.1 Client may terminate this Contract either with immediate effect or with effect from a future date specified by Client by giving the Provider written notice if:

- 20.1.1 the Provider commits a material breach of this Contract which is not remedied to the satisfaction of Client within 10 (ten) Working Days of written notice from Client notifying the Provider of the breach and stating that if it is not remedied this Contract may be terminated for the Provider's material breach;
- 20.1.2 the Provider or anyone for whom the Provider is responsible has acted fraudulently or made a fraudulent misrepresentation or fraudulent claim for payment in connection with the Services;
- 20.1.3 the Provider or anyone for whom the Provider is responsible has offered or agreed to give any person working for or engaged by Client any gift or consideration in relation to this Contract or any other contract between the Provider and Client as set out in Condition 19.1 [*Corruption, Bribery and Conflicts*];
- 20.1.4 there is (in the reasonable opinion of Client) an actual or potential conflict between the interests of the Provider and the duties owed to Client under this Contract;
- 20.1.5 the Provider is in breach of Health and Safety Law or is considered by Client to be working or to have worked in a way that does not fully comply with Health and Safety Law or any guidance or best practice approved in relation to Health and Safety Law;
- 20.1.6 the Provider is the subject of any insolvency related procedure including:
 - (a) suspending or threatening to suspend, payment of its debts or being unable or deemed unable to pay its debts within section 123 of the Insolvency Act 1986;
 - (b) commencing negotiations with any of its creditors with a view to rescheduling any of its debts, or making a proposal for or entering into any compromise or arrangement with any or all of its creditors;
 - (c) applying to court for, or obtaining, a moratorium under the Insolvency Act 1986;

- (d) having a petition filed, passing a resolution, or having an order made for its winding up (except for the purposes of an amalgamation or reconstruction of a solvent company);
 - (e) giving or receiving notice of any intention to appoint or appointing or having appointed an administrator, receiver, receiver and manager or administrative receiver or applying for or being the subject of an administration order;
 - (f) having a creditor take possession of, or distress, execution, sequestration or other such process levied or enforced on or sued against, the whole or any part of its assets and such attachment or process not being discharged within 10 (ten) Working Days;
 - (g) ceasing to trade or threatening to cease to trade;
 - (h) failing within the time provided for payment to honour any guarantee or indemnity it has given which has fallen due and been called upon;
 - (i) (where the Provider is an individual):
 - (i) being the subject of a bankruptcy petition or order;
 - (ii) having a receiver appointed over his/her assets;
 - (iii) making an arrangement with creditors; or
 - (iv) being deemed unable to pay his/her debts within section 268 of the Insolvency Act 1986;
 - (j) (where the Provider is a partnership, other than a limited liability partnership) having one of its partners subject to any of the insolvency events in Condition 20.1.6(h) applying to individuals;
 - (k) having a debt relief order made in respect of them; or
 - (l) being the subject of any equivalent or similar event in England & Wales or in any other legal jurisdiction
- 20.1.7 any of the Insurances ceases to be available at commercially reasonable rates;
- 20.1.8 the Provider purports to assign, subcontract, novate or create any form of security over its rights under this Contract without Client's written consent;
- 20.1.9 the warranty in Condition 4.5 [*Regulatory Requirements*] is or becomes untrue in any material respect;

- 20.1.10 the Provider commits a material breach of Data Protection Law (including any Personal Data Breach) or any breach which Client, as Data Controller, is required to report to the Information Commissioner;
 - 20.1.11 the Provider commits or is found to have committed any of the offences listed in Regulation 57(1) of the Public Contracts Regulations 2015, any of the Provider's directors, officers or senior managers commit or are found to have committed any of those offences or a Court orders that this Contract is set aside because it has been subject to a substantial modification;
 - 20.1.12 there is a change of control of the Provider (as defined in section 1124 Corporation Tax Act 2010) which Client has not approved in advance;
 - 20.1.13 the Provider fails to improve or sustain improved performance in accordance with Condition 6.11 [*Monitoring and Complaints*] following the service of a KPI Improvement Notice under Condition 6.10 [*Monitoring and Complaints*]; or
 - 20.1.14 the Provider or a Subcontractor is found to have committed any offence involving slavery or human trafficking or to have breached environmental, social or labour Laws.
- 20.2 Client may terminate this Contract by giving the Provider not less than the period of written notice to do so set out in the Contract Particulars. Where the Contract Particulars so state, the Provider may terminate this Contract by giving Client not less than the period of written notice to do so set out in the Contract Particulars. Where the Contract Particulars specify a date before which such notices may not take effect, such a notice may not take effect before that date.
- 20.3 The Provider may terminate this Contract either with immediate effect or with effect from a future date specified by the Provider by giving Client written notice if:
- 20.3.1 Client fails to pay any undisputed amount due to the Provider under this Contract (in respect of which payment is due) within 30 (thirty) calendar days of a written notice from the Provider served on Client notifying Client of the non-payment and stating that if it is not remedied this Contract will be terminated for non payment by Client; or
 - 20.3.2 Client, without good reason, commits a material breach of this Contract which substantially prevents the Provider from complying with the Provider's obligations under this Contract and fails to remedy that material breach within 20 (twenty) Working Days of written notice from the Provider served on Client stating that if it is not remedied this Contract will be terminated for material breach by Client.

- 20.4 Termination of this Contract is without prejudice to the rights and duties of either Party accrued due before termination or to any provisions which are intended to survive termination, including:
- 20.4.1 Condition 8 [*Intellectual Property*];
 - 20.4.2 Condition 9 [*Publicity and Reputation*];
 - 20.4.3 Condition 10 [*Confidentiality and Security of Information*];
 - 20.4.4 Condition 11 [*Data Protection*]; and
 - 20.4.5 Condition 13 [*Records and Audit*].
- 20.5 The Dispute Resolution Procedure shall not apply to any issues concerning termination of this Contract.
- 20.6 On termination of this Contract the Provider must co-operate fully with Client and / or any Successor Provider in relation to the legal and operational handover of responsibilities between the Provider and Client or Successor Provider.
- 20.7 Within 5 (five) Working Days of the Termination Date, the Provider must:
- 20.7.1 return all Client Data and Documents and Data provided by Client and ensure no electronic copies are maintained; and
 - 20.7.2 provide copies of all other Client Data and Documents and Data used in connection with the Services to Client and delete any Client Data from the Provider's IT System (other than as required by Condition 13.2 [*Records and Audit*]).
- 20.8 Where this Contract has been terminated under Condition, 20.1 or the Provider has been the subject of any insolvency related procedure as set out in Condition 20.1.6, any provision of this Contract which requires any payment to be made to the Provider in respect of the Services will cease to apply until Client has quantified its costs and losses resulting from termination. Those costs and losses may include Client's reasonable internal costs as well, as the costs of employing others to complete the Services (including any Services Client reasonably expected to Order during the 6 (six) months following the Termination Date).
- 20.9 Where this Contract is terminated in accordance with Conditions 20.2 or 20.3, Client shall pay all Fees due for Services provided by the Provider in accordance with this Contract up to the Termination Date but no other payment shall be due on termination.

21. WAIVER AND SEVERABILITY

- 21.1 A failure or delay in exercising any rights, powers or privileges under this Contract will not operate as a waiver of them.
- 21.2 All remedies available to either Party for breach of this Contract are cumulative and may be exercised concurrently or separately. The exercise of any one

remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

21.3 The single or partial exercise of any right, power or privilege does not prevent any other exercise of that right, power or privilege or the exercise of any other right, power or privilege (whether arising out of the same factual situation or otherwise).

21.4 Any waiver of a breach of this Contract is not to be effective unless given in writing signed by the Party waiving its entitlement.

21.5 No waiver is to be deemed a waiver of any subsequent breach or default nor is it to affect the other terms of this Contract.

21.6 The receipt of money does not prevent the Party receiving it questioning the correctness of the amount or any other statement in respect of money.

21.7 If any term of this Contract is illegal, void or unenforceable, it shall be deemed to have been modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, such term shall be deemed to have been deleted and the remainder of this Contract will continue in force as though that term had not been included in it.

22. EXTENT OF OBLIGATIONS AND FURTHER ASSURANCE

22.1 Nothing in this Contract requires Client to act in any way which is outside its legal powers or inconsistent with its legal or regulatory obligations as a [charitable] [registered provider of social housing] or its obligations under the Law generally.

22.2 Subject to Condition 22.1, each Party undertakes to do all things and execute all further documents that the other may reasonably require to give effect to this Contract.

23. VARIATIONS

23.1 No variation of this Contract is to bind any Party and no person has authority on behalf of any Party to agree to any variations to this Contract except where the amendment is agreed to by a formal "variation agreement" in writing that is described as such and is signed by both Parties.

No consents to any variation to this Contract are required from any person who is not a Party to it.

24. ENTIRE AGREEMENT

24.1 Subject to Condition 24.2 this Contract sets out the whole agreement between the Parties in relation to the Services. It supersedes and extinguishes all prior negotiations, commitments, representations and warranties relating to its subject matter which any Party has made orally or in writing.

- 24.2 Each Party warrants that it has not entered into this Contract on the basis of any representation made by the other except to the extent that such representation is expressly included in it (but nothing in this Condition 24 excludes any liability for fraudulent misrepresentation).

25. THIRD PARTIES

- 25.1 Any organisation within the Client's Group on whose behalf the Services are procured under this Contract may enforce this Contract against the Provider.
- 25.2 Other than as set out in Condition 25.1, nothing in this Contract shall confer any benefit on a person who is not a Party to it or give any such third party a right to enforce any of its terms.

26. NO PARTNERSHIP OR AGENCY

- 26.1 Nothing in this Contract is to constitute or be deemed to create any joint venture or any partnership under the Partnership Act 1890, the Limited Partnerships Act 1907, the Limited Liability Partnerships Act 2000 or any other law concerning partnerships or limited liability partnerships.
- 26.2 No Party shall hold itself out as the agent of any other or have any authority to bind the other except to the extent that this Contract expressly provides otherwise.

27. NOTICES

- 27.1 Subject to Condition 27.4, notices or other communications under this Contract will be duly served if given by and sent to the Party to be served in accordance with the following table with the date of service and method of proof being as set out in it:

Method of Service	Date of Service	Proof of Service
Personal delivery of a letter addressed to the Party to be served at the address for service.	Day of delivery if before 16.00 on a Working Day otherwise 10.00 on the next Working Day thereafter.	Proof of delivery.
First class letter addressed to the Party to be served at its address for service.	48 (forty eight) hours after posting if that is a Working Day otherwise 10.00 on the next	Proof of posting unless returned through the Post Office undelivered service within 21

Method of Service	Date of Service	Proof of Service
	Working Day thereafter.	(twenty one) days of posting.
Email (requesting a "read receipt") addressed to the Party to be served and sent to its email address for service.	Day of transmission if before 16.00 on a Working Day otherwise 10.00 on the next Working Day thereafter.	Proof of sending email to the correct email address plus proof of read receipt.

- 27.2 Each Party's address for service is its registered office where it has one. Where the Provider does not have a registered office the Provider's address for service is the address set out at the start of this Contract or such other address as it notifies to Client in writing.
- 27.3 Each Party's email address for service is as set out in the Contract Particulars.
- 27.4 This Condition 27 does not apply to the service of legal proceedings or to notices served in legal proceedings.

28. DISPUTE ESCALATION PROCEDURE

- 28.1 Each Party must attempt to resolve any Disputes which it has with the other amicably.
- 28.2 If a Party considers that a Dispute has arisen it may write a letter to the other Party specifying:
- 28.2.1 what the Dispute is alleged to be;
 - 28.2.2 what steps should be taken to resolve the Dispute; and
 - 28.2.3 within what reasonable period such steps should be taken.
- 28.3 If the breach is not remedied or the Dispute is not resolved within the period set out in the letter, the representatives of the Parties must seek to resolve the Dispute in accordance with the Dispute Escalation Table set out in the Contract Particulars.
- 28.4 The individuals/postholders named in the Dispute Escalation Table shall have the period stated in the Schedule 2 [*Contract Particulars*] to agree a solution with the individual/postholder stated alongside their respective names, failing which the Dispute is to be escalated to the next named individuals/postholders (if any).
- 28.5 Conditions 28.1 to 28.4 do not apply to any Disputes over a decision to terminate this Contract or over any Party's entitlement to do so.

28.6 The Parties shall continue to comply with all their obligations under this Contract regardless of the nature of the Dispute and despite the referral of the Dispute for resolution under this Condition 28.

28.7 Any compromise of a Dispute which is certified in writing by solicitors advising Client on that Dispute as a settlement which is based on a permissible interpretation of the respective rights and obligations of the Parties under it this Contract is to be regarded as having been derived from the terms of this Contract and is not to be regarded as a variation to it.

29. GOVERNING LAW AND ENFORCEMENT

29.1 The formation, construction, performance, validity and all aspects of this Contract are to be governed by English law.

29.2 The Parties agree to submit to the exclusive jurisdiction of the courts of England and Wales in relation to any dispute under this Contract.

30. COUNTERPARTS

30.1 This Contract may be executed in two or more counterparts each of which shall be deemed to be an original but the counterparts shall together constitute one and the same contract.

**SCHEDULE 4
KPI SCHEDULE**

KPI No.	Indicator	Definition	KPI Measurement Period (e.g., monthly)	KPI Target	Percentage of KPI Payment for this KPI
Time	Adhere to agreed SLAs		Monthly	100%	N/A
Cost	Price Transparency		Monthly reviews and audit	100%	N/A
Customer	Evidence Completion on		Every job where appropriate	100%	N/A
Social Value	Completion of SV commitments		Completion of SV by first anniversary of the contract	100%	None
Total					100%

CLIENT

SIGNED



BY [print name]

Simon Melloy

(HEAD OF HOUSING SERVICES)

for and on behalf of [insert Client] [or insert name of the other Client Group
organisation that is entering into the Contract]

PROVIDER

SIGNED

B. Walsh

by [print name] Brendan Walsh

for and on behalf of: ICON Group Services LTD
[insert name of the Provider]