



**THE CITY OF LONDON
STANDARD CONDITIONS
FOR THE PURCHASE OF
GOODS, SERVICES AND WORKS**

NOTE: The Conditions applicable to an Order will vary depending upon whether it is a Commission for goods, services or works. Check the specific terms of your Order to identify which of the Conditions apply.

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MODULE A: GENERAL CONDITIONS

1. Definitions & Interpretation

1.1. In these Conditions, unless the context in which the words appear requires otherwise, the following words and expressions will have the following meanings:

- **Achieved KPIs** means the standard of performance actually achieved by the Provider in the provision of the Commission in the measurement period in question;
- **Annual Uplifts** means increases in the Living Wage published annually by the Living Wage Foundation;
- **Beneficiary** means any third-party: (a) named in the Order as a Beneficiary, and/or (b) a Funder, Purchaser and/or a Tenant named in a written notice issued by the Client under **Condition 43.3**, and/or (c) who is a permitted assignee under **Condition 47**;
- **Client**, unless stated otherwise in the Order, means the Mayor and Commonalty and Citizens of the City of London of PO Box 270, Guildhall, London EC2P 2EJ, and its permitted assignees pursuant to **Condition 9.4**;
- **Client's Policies** means the Living Wage Policy Statement and any other policies of the Client (if any) identified in the Order;
- **Commission** means all the works, services, materials and/or Goods set out, described in, referred to, or implied by the Specification and Contract Drawings (if any), together with any Variation to the Commission;
- **Confidential Information** means all information obtained under the Order or relating to the Commission;
- **Connected Person** has the meaning given in paragraph 45, Part 3, Schedule 6 of Procurement Act;
- **Contract Drawings** means any drawings, plans or diagrams referred to in the Order illustrating the Commission;
- **Debarment List** means the list of suppliers referred to in section 62 of the Procurement Act;
- **Deliverable** means any data, report, drawing, specification, design, invention, plan, program, document, contract, and/or other similar submissions produced, or acquired, and provided by the Provider during the performance of the Commission, but excluding the Goods;
- **Deprived Area** means any borough, district or other local government area defined as "most deprived" in the English Indices of Deprivation, as published from time to time by the Department of Housing, Communities and Local Government;
- **Excepted Risks** means damage, loss or injury caused by the effects of ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste, from the combustion of nuclear fuel, radioactive, toxic explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof, pressure wave caused by aircraft or other aerial devices travelling at sonic or supersonic speeds;

- **Force Majeure Event** means any circumstance not within a party's reasonable control including:
 - acts of God, flood, drought, earthquake, or other natural disaster,
 - epidemic or pandemic,
 - terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off diplomatic relations,
 - Excepted Risks,
 - any law or any action taken by a government or public authority, including imposing an export or import restriction, quota, or prohibition, or failing to grant a necessary licence or consent,
 - collapse of buildings, fire, explosion, or accident, and
 - any labour or trade dispute, strikes, industrial action or lockouts (other than in each case by the party seeking to rely on **Condition 11**, or companies in the same group as that party);
- **Funder** means a person that has provided, or is to provide, finance in connection with the whole or any part of the Commission or the completed Commission, or the Site, whether that person acts on its own account, as agent for a syndicate of other parties or otherwise;
- **Goods**, where Module C (*Conditions Applicable to Supply of Goods*) applies, means the material, articles, items or things or any part of any of them described in the Order and, where appropriate, such packaging as may be necessary for the immediate safe and secure containment or handling of the Goods, but excluding additional cartons, cases and other similar containers used for convenience of distribution;
- **Insured Risks** means loss and damage by fire, lightning, explosion, storm, flood, escape of water from any water tank, apparatus or pipes, earthquake, aircraft or other aerial devices or articles dropped therefrom, riot and civil commotion, excluding the Excepted Risks;
- **KPIs** means the key performance indicators for the whole or any part of the Commission (if any) as specified in the Order;
- **Limitation Period** unless stated otherwise in the Order means the period of:
 - 12 years (where the Order is executed as a Deed), or
 - 6 years (where the Order is not executed as a Deed),commencing from either the date of completion of the whole of the Commission, or (if earlier) the date upon which the Provider's engagement under the Order is terminated Provided always that this does not apply to limit either party's:
 - right to commence an action or proceedings against the other in accordance with sections 1 or 2A of the Defective Premises Act 1972 or section 38 of the Building Act

1984, or to claim a contribution in relation to any liability under that legislation in accordance with the Civil Liability (Contribution) Act 1978, or

- obligation to maintain insurance for the periods specified in the Order or rights in relation to any failure to maintain insurance for such periods;
- **Living Wage** is the hourly rate for:
 - Greater London (i.e., the 32 London Boroughs and the City of London) set annually as the 'London Living Wage' by the Living Wage Foundation and calculated by the Greater London Authority, and
 - outside Greater London set annually as the 'UK Living Wage' by the Living Wage Foundation and calculated by the Centre for Research in Social Policy at Loughborough University;
- **Living Wage Policy Statement** can be viewed at:
<https://www.cityoflondon.gov.uk/assets/Business/external-living-wage-policy-statement-march-20.pdf>;
- **Materials** means all background and third-party information and materials including, database rights, patents, registered and unregistered designs, logos, internet domain names, business or trade names and registrations, and all registered and unregistered trademarks, (and any applications for registration therefor, if any) in any way used by the Provider in preparation of the Goods or the Deliverables;
- **Offsite Goods**, where Module D (*Conditions Applicable to Construction Operations*) applies, means any goods and materials intended for incorporation into the Commission which are not stored at the Site;
- **Order** means the order form, deed, or other form of written agreement issued by the Client instructing the Provider to perform the Commission (into which any part of these Conditions is expressly incorporated by reference), together with the Specification, Contract Drawings (if any) and any further documents referenced in or attached to such Order;
- **Payment Notice** means the written notice issued by the Client in accordance with **Condition 26.2**;
- **Payment Period** means (unless otherwise specified in the Order) 30 calendar days from the Client's receipt of an invoice complying with **Condition 3** and (where applicable) **Condition 26.5**;
- **Price** means the sum indicated in the Order to be paid by the Client in consideration of the Provider conducting and completing the Commission to the Client's reasonable satisfaction;
- **Procurement Act** means the Procurement Act 2023 and and/or any statutory instrument, regulation, rule, order, code of practice or guideline issued pursuant to that Act;
- **Provider** means the firm, company, or individual being the counterparty to the Client named in the Order;

- **Provider's Representative** means a nominated representative of the Provider, who will be authorised to receive instructions on behalf of the Provider;
- **Purchaser** means a person to whom the Client transfers, or agrees to transfer its interest in the whole or any part of the Site;
- **Retention** means the percentage identified in the Order of the total of the prices for the elements of work separately identified and properly executed and completed in accordance with the Order, which the Client is entitled to retain from interim payment under **Condition 26.2**;
- **Site** means the location in which the Commission is to be constructed, delivered, or performed (as the case may be) as identified in the Order;
- **Specification** means the description, standards, methods, and techniques to be used in executing the Commission as specified in any specification, scope or work schedule, or other document forming part of the Order;
- **Supervising Officer** means the person named in the Order or any person designated or nominated by the Client in writing as its representative, in relation to instructions to, and receipt of information, documents, etc. from the Provider under the Order;
- **Target KPI**, where applicable to the Order, means the minimum level of performance for a KPI which is required by the Client as set out against the relevant KPI in the Order;
- **Tenant** means a person to whom the Client transfers, or agrees to transfer a leasehold interest in the whole or any part of the Site;
- **Variation** means an alteration or modification in the design quality or quantity of the Commission or work, services or goods set out, described in, referred to, or implied by the Specification and Contract Drawings and includes any addition to or omission or substitution of:
 - any work, services, or goods, or
 - any obligation or restriction specified in the Order in relation to access to or egress from the Site, the use of any part of the Site or the sequence, times, and period for the execution of the whole or any part of the Commission;
- **Working Day** means Monday to Friday inclusive, excluding Christmas Day, Good Friday, or a day which under the Banking and Financial Dealings Act 1971 is a bank holiday in England; and
- **Working Hours** means the period from 9.00 am to 5.00 pm on any Working Day.

1.2. In Module E (*Conditions Applicable to Works*), unless the context in which the words appear requires otherwise, the following words and expressions will have the following meanings:

- **Building Regulations** means the Building Regulations 2010;
- **CDM Regulations** mean the Construction (Design and Management) Regulations 2015;
- **Completion Date** means the date (or, where the Commission is divided into Sections, the dates) by which the Client required the Commission to be complete specified in the Order, subject to such extensions as may be awarded pursuant to **Condition 30.6**;

- **Construction Phase Plan** means the plan prepared by the Provider in its capacity as Principal Contractor under the CDM Regulations prior to the commencement of the Commission, and refined and revised by him during the execution of the Commission in accordance with regulation 12 of the CDM Regulations;
- **Date of Possession** means the date(s) specified in the Order for the start of the whole Commission, or (where the Commission is divided into Sections) for each Section, on site, subject to such deferment as may be made in accordance with **Condition 30.2** by the Supervising Officer;
- **Defect** means any defects, shrinkages or other faults in the Commission appearing within the Defects Correction Period due to material or workmanship not in accordance with the Order;
- **Defects Correction Period** means the period specified in the Order commencing from the date of the Practical Completion Certificate, or (where the Commission is to be completed in Sections) commencing from the date of the Section Completion Certificate for the last Section of the Commission to be completed;
- **Delay Application** means a written notification from the Provider pursuant to **Condition 30.5** setting out the reasons for the delay and giving an estimate of the extra time that the Provider will need to complete the Commission or the relevant Section. In the case of a Time and Money Event this time estimate must also be accompanied by an assessment of the loss and expense likely to be caused to the Provider because of the delay;
- **Final Certificate** means a certificate issued pursuant to **Condition 34.7** stating the total sum paid under all Payment Notices and any valid notice issued pursuant to **Condition 26.4** and the full value of the final account (as agreed or finally determined);
- **Making Good Defects Certificate** means the certificate issued by the Supervising Officer pursuant to **Condition 33.4**;
- **Practical Completion Certificate** means a certificate issued by the Supervising Officer pursuant to **Condition 33.1** in respect of practical completion of the whole of the Commission, or (where applicable) the last Section or part of the Commission to be completed;
- **Principal Designer** means the person or persons appointed by the Client to act in that capacity pursuant to (i) regulation 5 of the CDM Regulations, and (ii) regulation 11A or 11D(1)(a) of the Building Regulations;
- **Section** means each portion of the Commission (if any) identified as such in the Specification to which a separate Date of Possession and Completion Date may be allocated in the Order;
- **Section Completion Certificate** means a certificate issued by the Supervising Officer pursuant to **Condition 32.1** or **Condition 33.1** in respect of practical completion of a Section or part of the Commission, other than the last Section or part of the Commission to be completed;

- **Time Event** means any of the following:
 - the issue of an instruction by the Supervising Officer pursuant to **Condition 30.2** deferring the giving of possession of the Site or relevant part of it for a period of not more than two weeks,
 - exceptionally adverse weather conditions,
 - ancient relics being discovered on the Site,
 - delay on the part of a local authority or statutory undertaker in conducting work pursuant to its statutory obligations, or failing to carry out such work,
 - the Commission (or any part) being damaged by an Insured Risk or Excepted Risk, or
 - a Force Majeure Event;
- **Time and Money Event** means any of the any of the following:
 - the issue of an instruction by the Supervising Officer pursuant to **Condition 2.4** or **4.1**,
 - the issue of an instruction by the Supervising Officer pursuant to **Condition 30.2** deferring the giving of possession of the Site or relevant part of it for a period of more than two weeks,
 - delay on the part of the Supervising Officer in supplying information, drawings or instructions required under the Order not occasioned by the Provider,
 - any valid suspension by the Provider of performance of its obligations under the Order under **Condition 26.9**, or
 - any impediment, prevention, or default, whether by act or omission, by the Client or any person for whom the Client is responsible except to the extent that it is caused or contributed to by any default, whether by act or omission, of the Provider, its employees, agents, or sub-contractors.

1.3. In Modules B (*Conditions Applicable to a Service*) and I (*Staff Transfers*), unless the context in which the words appear requires otherwise, the following words and expressions will have the following meanings:

- **Administering Authority** means the Mayor and Commonalty and Citizens of the City of London in its capacity as an administering authority of the LGPS as defined in Schedule 1 of the LGPS Regulations;
- **Admission Agreement** has the meaning given to it under Schedule 1 of the LGPS Regulations;
- **Admission Body** means a person who enters into an Admission Agreement with the Administering Authority in accordance with Part 3 of Schedule 2 to the LGPS Regulations;
- **Affected Employee** means an employee of the Provider (or, if relevant, a Notified Sub-Contractor) who is at risk of redundancy because of the Client making a change to the

- Commission which results in the removal of any services or closure of any of the Client's premises falling within the scope of the Commission;
- **Eligible Employee** means the Transferring Original Employees who are active members of or eligible to join the LGPS immediately before the Transfer, for so long as such employees are employed in connection with the provision of the Commission or any part of the Commission;
 - **Employee Liabilities** means all claims, actions, proceedings, orders, demands, complaints, investigations (save for any claims for personal injury which are covered by insurance) and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs, expenses and legal costs reasonably incurred in connection with a claim or investigation including in relation to the following:
 - redundancy payments, including contractual or enhanced redundancy costs, termination costs and notice payments,
 - unfair, wrongful or constructive dismissal compensation,
 - compensation for discrimination on grounds of sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy and maternity or sexual orientation or claims for equal pay,
 - compensation for less favourable treatment of part-time workers or fixed term employees,
 - outstanding debts and unlawful deduction of wages, including any PAYE and National Insurance Contributions,
 - claims whether in tort, contract or statute or otherwise, and
 - any investigation by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body and of implementing any requirements which may arise from such investigation;
 - **Employment Regulations** means the Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended and replaced from time to time;
 - **Fund** means the Administering Authority's pension fund within the LGPS;
 - **Former Contractor** means any person or body carrying out the Commission and employing the Transferring Former Contractor Employees immediately prior to the date of the Relevant Transfer;
 - **LGPS** means the Local Government Pension Scheme governed either in accordance with the LGPS Regulations or in accordance with the Local Government Pension Scheme (Administration) Regulations 2008, the Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007 and the Local Government Pension Scheme (Transitional Provisions); Regulations 2008;
 - **LGPS Regulations** means the Local Government Pension Scheme Regulations 2013 and, where appropriate, the Local Government Pension Scheme (Transitional Provisions, Savings and Amendment) Regulations 2014;

- **Notified Sub-Contractor** means a sub-contractor identified into whom Transferring Former Contractor Employees will transfer on a date of the Relevant Transfer;
- **Provider's Final Personnel List** means a list provided by the Provider of all staff who will transfer under the Employment Regulations on the date of the Relevant Transfer;
- **Provider's Provisional Personnel List** means a list prepared and updated by the Provider of all staff who are engaged in or wholly or mainly assigned to the provision of the Commission or any relevant part of the Commission which it is envisaged as at the date of such list will no longer be provided by the Provider;
- **Redundancy Payment** means any and all of the following payments which may be made by the Provider (or, if relevant, the Notified Sub-Contractor) to any Affected Employee:
 - statutory redundancy payments made in accordance with section 162 of the Employment Rights Act 1996;
 - contractual redundancy payments (which for this purpose mean redundancy payments made in accordance with the terms and conditions of employment to which the relevant Affected Employee was entitled at the Reference Date, in each employee's case excluding any ex gratia payment, payment for accrued holiday or any other payment made as compensation for the termination of employment);
 - where it is not reasonably practicable to require the Affected Employee to work their notice period, in respect of each Affected Employee, either:
 - payment of damages for breach of the applicable statutory notice entitlement or, if higher, the notice entitlement under the terms and conditions of employment to which the relevant employee was entitled at the Reference Date; or
 - payment in lieu of any such notice entitlement, made pursuant to such terms and conditions of employment, but excludes any payment of salary or wages or of any benefit in respect of any period of continuing employment, whether during a notice period or otherwise;
 - any payment made in satisfaction of any right to retirement benefit arising on termination for redundancy, whether such benefit is reduced or otherwise and whether such right arises on retirement or otherwise to which the relevant employee was entitled under their terms and conditions of employment on the Reference Date;
- **Redundancy Surcharge** means a lump sum price equal in amount to each relevant Redundancy Payment;
- **Reference Date** means either:
 - the date of the Relevant Transfer, or
 - the date of commencement of employment, if the Affected Employee became employed by the Provider (or, if relevant, Notified Sub-contractor) after the date of the Relevant Transfer,

save that where the Provider (or, if relevant, Notified Sub-contractor) and Former Contractor are the same entity, such that the Employment Regulations do not apply to transfer staff, the '**Relevant Date**' is either:

- the date upon which the Provider's performance of the Commission commences under the Order, or
- if the Affected Employee became employed by the Provider (or, if relevant, Notified Sub-contractor) after such date, the date of commencement of employment;
- **Relevant Transfer** means a transfer within the meaning of the Employment Regulations;
- **Replacement Contractor** means any third-party provider of Replacement Services appointed by or at the direction of the Client from time to time and any sub-contractor of such third party provider to whom Transferring Provider Employees will Transfer (or any sub-contractor of any such sub-contractor) and also includes the Client if the Client is providing Replacement Services for its own account;
- **Replacement Services** means any services which are substantially similar to any part of the Commission and which the Client receives in substitution for any part of the Commission following the expiry or termination of the Provider's engagement under the Order, whether those services are provided by the Client internally and/or by any third party;
- **Staffing Information** means, in relation to all persons identified on the Provider's Provisional Personnel List or the Provider's Final Personnel List (as the case may be), such information as the Client may reasonably request (subject to all applicable provisions of the Data Protection Law), but including in an anonymised format:
 - their ages, dates of commencement of employment or engagement and gender,
 - identification of which part of the Commission they are assigned to,
 - details of whether they are employed, self-employed contractors or consultants, agency workers or otherwise,
 - details of contracted working hours,
 - the identity of the employer or relevant contracting party,
 - their relevant contractual notice periods and any other terms relating to termination of employment, including redundancy procedures, and redundancy payments,
 - their wages, salaries and profit-sharing arrangements as applicable,
 - details of other employment-related benefits, including (without limitation) medical insurance, life assurance, pension or other retirement benefit schemes, share option schemes and company car schedules applicable to them,
 - any outstanding or potential contractual, statutory or other liabilities in respect of such individuals (including in respect of personal injury claims),

- details of any such individuals on long term sickness absence, parental leave, maternity leave or other authorised long-term absence,
 - copies of all relevant documents and materials relating to such information, including copies of relevant contracts of employment (or relevant standard contracts if applied generally in respect of such employees), and
 - any other “employee liability information” as such term is defined in regulation 11 of the Employment Regulations;
- **Transfer** means any transfer of the Commission (or any part of the Commission), for whatever reason, from the Provider or any sub-contractor to a Replacement Contractor;
 - **Transferring Former Contractor Employees** means employees of a Former Contractor (or of Former Contractor’s sub-contractors) who will transfer to the Provider (or a Notified sub-contractor at the date of the Relevant Transfer);
 - **Transferring Original Employees** means any employee engaged in the provision of the Commission who was, immediately before the Client first contracted out the Commission, employed by the Client and whose contract of employment has transferred between all subsequent providers of the Commission in accordance with the Employment Regulations and who will transfer on the date of the Relevant Transfer to the Provider; and
 - **Transferring Provider Employees** means employees of the Provider or its sub-contractors who will transfer to a Replacement Contractor at the date of the Transfer.
- 1.4.** Headings are for information only and do not form part of the Order.
- 1.5.** A reference to any Act of Parliament or to any Order, Regulation, Statutory Instrument, enforceable European Union law, Code of Practice, or the like includes reference to any amendment or re-enactment of the same.
- 1.6.** Words importing the masculine gender include the feminine gender; words in the singular include the plural and vice versa and words importing individuals will be treated as importing corporations, companies and/or partnerships and vice versa.
- 1.7.** These Conditions are the sole terms applying to the Order and all other conditions of contract, or terms of trade, supplied by the Provider are excluded and do not amend, or in any way displace these Conditions unless expressly indicated otherwise in the Order.
- 1.8.** The words **including** and **include** are not to be interpreted as being exclusive or limiting to the scope of the preceding statement to which it applies.
- 2. Supervising Officer**
- 2.1.** The Client has appointed the Supervising Officer as its representative to exercise all the functions ascribed to the Client under the Order, except for:
- issuing a notice terminating the Provider's engagement;
 - commencing proceeding under **Condition 19** and (where applicable) **Condition 27**; or
 - any other exception notified in writing by the Client to the Provider from time to time.

The Client may by notice terminate such appointment and/or appoint a replacement.

- 2.2. The Provider will comply immediately with all reasonable instructions issued by the Supervising Officer. Such instructions will either be in writing or, if given orally, are to be confirmed in writing by the Supervising Officer within 5 Working Days.
- 2.3. The Supervising Officer may instruct the Provider to remove from Site an employee, agent, or sub-contractor of the Provider.
- 2.4. The Supervising Officer may instruct the Provider to suspend the execution of the Commission (or any part) for a specified period.
- 2.5. No certificate or notice issued by the Supervising Officer under the Order, (including any certificate to be issued under **Condition 33.1**) will be conclusive evidence that any work, service or materials to which it relates are in accordance with the Order.

3. Payment

- 3.1. The Client will pay to the Provider and the Provider will accept in full satisfaction for the execution of the Commission the Price, or such other such sums as may become payable to the Provider in accordance with, at the times and in the proportions set out in, the Order, together with any correctly charged V.A.T. that is applicable.
- 3.2. In respect of works and services only, unless stated otherwise in the Order:
 - the Price is inclusive of Living Wage and all Annual Uplifts which the Provider must absorb for the duration of the Commission under the Order; and
 - the Provider must implement any Annual Uplifts within one month following the announcement of the increases in the Living Wage from the Living Wage Foundation.
- 3.3. This **Condition 3.3** will not apply to Orders where Module D (*Conditions Applicable to Construction Operations*) apply. Where it is agreed that stage payments are to be made to the Provider by the Client, these payments will be made at intervals, or on the dates set out in the Order which will be the payment due date in the Order. Payment for the Commission and any agreed Variation will, unless otherwise agreed in writing, be made by the Client before the expiry of the Payment Period which will be the final date for payment under the Order.
- 3.4. As a condition precedent to payment the Client's Purchase Order number must be indicated on any invoice submitted by the Provider relating to the Order. The Client will be entitled to reject any invoice submitted by the Provider if the Client's relevant Purchase Order number is not stated on the invoice. Invoices submitted by the Provider will be considered and verified by the Client in a timely fashion and undue delay in doing so will be insufficient justification for failing to regard an invoice as valid and undisputed.
- 3.5. The Client will accept and process for payment any electronic invoice submitted by the Provider if it is undisputed and in a form that complies with requirements set out in section 67(3) of the Procurement Act.
- 3.6. Without waiver, or limitation, of any rights or remedies the Client will be entitled to withhold, deduct or set-off from any amounts due or owing by the Client to the Provider any losses, costs or damages arising from the Provider's breach of the terms of the Order,

or of any other agreement between the parties, subject always to the Client giving the Provider written notice not later than 5 Working Days before the final date for payment of the amount due, which will specify any amount proposed to be withheld, deducted or set-off, the ground or grounds for such withholding and/or deduction.

4. Variations

- 4.1.** The Supervising Officer may issue instructions requiring a Variation or sanctioning a Variation made by the Provider. No such Variation will vitiate the Order. The value of Variations will be assessed in accordance with the Order (including, where stated, any applicable rates or prices indicated in the Order) and added or deducted from the Price.
- 4.2.** If any instruction issued under the Order requires the Provider to undertake work not provided for in, or to be reasonably inferred from the Order and provided that such instruction has not arisen from, and compliance with it does not reveal, any negligence omission or default of the Provider, its employees, agents or sub-contractors, the Price will be adjusted in accordance with any valuation rules specified in the Order (and in the absence of such rules by a fair and reasonable additional amount) and agreed with the Client in writing. Otherwise, the Provider will not be entitled to any additions to the Price nor to claim, whether as damages or otherwise, any additional payment in respect of compliance by the Provider with any such instruction.
- 4.3.** The Supervising Officer may issue instructions regarding the expenditure of any prime cost or provisional sums identified in the Order or arising out of an instruction issued under **Condition 4.1**. The value of work executed by the Provider for which a provisional sum is indicated in the Order will be substituted for such provisional sum and the Price will be adjusted accordingly.

5. Insurance

- 5.1.** The Provider will be liable to the Client for all direct, reasonably foreseeable and properly mitigated loss, debt, damage, interest, cost and expense (including legal fees and expenses of litigation) incurred by the Client whatsoever arising under any statute or at common law in respect to:
 - personal injury to, or the death of, any person whomsoever; and
 - any loss of, or damage to, property (real or personal),to the extent that it is due to the negligence, or a breach of statutory duty, on the part of the Provider, its servant or agents and arises out of, or during, or caused by, the conduct of the Commission.
- 5.2.** Without prejudice to the Provider's liability to the Client under **Condition 5.1**, the Provider will take out and maintain for the duration of the Commission (and thereafter use reasonable endeavours to maintain until the expiry of the Limitation Period) any insurances specified in the Order in each case with a limit of indemnity of not less than the amount indicated in the Order.
- 5.3.** When requested to do so, the Provider will produce documentary evidence to the Client that all insurances required under the Order are being properly maintained. If the Provider fails to maintain such insurances, without limitation to any other remedy, the Client may

take out and arrange such insurances and the cost of any premiums it incurs will be deducted from any money which is, or becomes, due to the Provider from the Client, or may be claimed as a debt due from the Provider to the Client.

6. Intellectual Property Rights

6.1. Where the Order states that **Condition 6.1** applies:

- all Deliverables will be the property of the Client in all respects and the Provider hereby assigns full copyright and future copyright and all other intellectual property rights in the Deliverables to the Client.
- upon completion of the Commission or earlier termination of the Provider's engagement under **Condition 18**, all Deliverables will immediately be delivered to the Client.
- the Provider is not liable for any use of the Deliverables for any purpose other than that for which they were prepared or provided.
- notwithstanding any other provision of the Order, the Provider:
 - will on completion of the Commission or earlier termination of the Provider's engagement under **Condition 18**, assign and transfer all database rights, patents, registered and unregistered designs, logos, internet domain names, business or trade names and registrations, and all registered and unregistered trademarks, (and any applications for registration therefor if any) specifically prepared for the Client under the Order or for the purposes of entering into the Order.
 - hereby grants to (or will procure for the benefit of) the Client, a non-exclusive licence to use the Materials for whatever purpose and in whatever medium the Client deems appropriate and will immediately deliver copies of such Materials to the Client.
- To the extent necessary for the on-going use of the delivered product or the Commission, the Provider grants to (or procures for the benefit of) the Client an irrevocable non-fee paying non-exclusive licence to use their or appropriate third-party logos, trademarks and other intellectual property together with all appropriate hosting agreements, websites and other software in accordance with agreed guidelines or conditions for the purposes of the Commission and any on-going project as set out or referred to in the Specification.

6.2. Where the Order states that **Condition 6.2** applies:

- The Provider grants to the Client an irrevocable, non-exclusive, non-terminable, royalty-free licence to copy and make full use of the Deliverables prepared by, or on behalf of, the Provider for any purpose relating to the Commission or the property to which they relate, including the design, construction, completion, reconstruction, modification, refurbishment, development, maintenance, funding, disposal, letting, fitting-out, advertisement, demolition, reinstatement, extension, building information modelling and repair of such property.

- The licence granted pursuant to **Condition 6.2**:
 - allows the Client to use the Deliverables relating to any extension of the property, but not to reproduce the designs contained in the Deliverables in any such extension; and
 - carries the right to grant sub-licences and is transferable to third parties without the consent of the Provider,

provided always that the Provider will not be liable for use of the Deliverables for any purpose other than that for which it was prepared and/or provided. Insofar as the Provider is the author (as referred to in the Copyright, Designs and Patents Act, 1988) of the Deliverables, the Provider waives any moral rights which it might otherwise be deemed to possess under Chapter IV of such Act in respect of the same. The Provider must procure for the Client a corresponding waiver from the author (as referred to in such Act) of the remainder of the Deliverables in respect of the same.

6.3. Where the Order states that **Condition 6.3** applies:

- The Provider warrants that all royalties and fees on patented articles, processes and registered designs have been paid and will be liable to the Client for all direct, reasonably foreseeable and properly mitigated loss, debt, damage, interest, cost and expense (including legal fees and expenses of litigation) incurred by the Client by reason any breach of such warranty.
- The Client will promptly notify the Provider of any claim being made or action brought against the Client arising out of the matters referred to in this **Condition 6.3**, and the Provider may (at its own expense) conduct all negotiations for the settlement of the same and any litigation that may arise therefrom.

6.4. The Provider acknowledges that copyright and all other intellectual property rights in the Order (including the Client's requirement/specification/design brief as referred to in the Specification, all documents and materials together with any images, designs, logos and layouts and all patents, domain names, business or trade names and trademarks (whether registered, unregistered, applied for or pending or otherwise) and all other intellectual property rights included therein), remains at all times vested in the Client or other owners and the Client hereby grants to the Provider a limited licence to use such Client's requirement/specification/design brief documents and materials etc. solely for the purposes of providing the Commission to the Client and for no other purpose whatsoever.

6.5. The Provider acknowledges that the Client may withhold any sums due under the Order if the Provider fails to comply with the provisions of this **Condition 6** until the Provider so complies.

6.6. The Provider warrants that it has power and necessary authority to enter into the Order and to grant the rights and licences in the Deliverables and Materials and that the use of the Deliverables and Materials will not breach any third-party intellectual property rights.

7. Confidentiality & Publicity

7.1. The Provider will only divulge Confidential Information to those employees, agents and sub-contractors who are directly involved in the Commission or are engaged in support of them

and will ensure that such employees, agents, and sub-contractors are aware of, and will comply with, these obligations as to confidentiality.

- 7.2.** The Provider will not advertise, or publicly announce that it undertakes work for the Client, nor will it make any press release, or statement, without the prior written consent of the Supervising Officer.
- 7.3.** The Provider agrees and warrants that it will not without the prior express written consent of the Client:
- use for its own benefit or otherwise exploit any Confidential Information nor divulge to any other party that the Provider is intending to, or has tendered for, or been appointed to perform, the Commission;
 - disclose any Confidential Information, in whole or in part, to any third person, firm, company or other such similar entity or otherwise use such information to the detriment of the Client for example, but not limited to, the pursuit of a business opportunity;
 - use the Confidential Information for any purpose whatsoever other than that for which the Provider is specifically given access; or
 - use the Confidential Information for any illegal or immoral purposes.
- 7.4.** The Provider will take reasonable precautions necessary to safeguard the personal nature of the Confidential Information and will advise and inform its personnel and agents to observe such obligations.
- 7.5.** All notes, data, reference materials in any way incorporating, or reflecting, any of the Confidential Information will belong exclusively to the Client and the Provider agrees to turn over all copies of such materials in its control to the Client upon request, or upon completion of the Commission, or upon termination of the Provider's engagement under the Order.

8. Electronic Communications

- 8.1.** Where the Commission entails the Provider producing any form of digital or printed communications, such materials must comply with accessibility requirements under [The Public Sector Bodies \(Websites and Mobile Applications\) \(No.2\) Accessibility Regulations 2018](https://www.gov.uk/guidance/accessibility-requirements-for-public-sector-websites-and-apps). For further information, please refer to:<https://www.gov.uk/guidance/accessibility-requirements-for-public-sector-websites-and-apps>.
- 8.2.** The Client requires all its contractors to be cognisant of the risk of unauthorised access and/or corruption of data stored or transferred by electronic means. Each party will be responsible for maintaining the integrity and security of its own data storage and transmission systems, taking into consideration current applicable guidance issued by the National Cyber Security Centre (**NCSC**).
- 8.3.** Each party will:
- follow the NCSC Cloud Security Principles to keep confidential the passwords or other security information relating to its data storage and transmission systems The principles and other guidance can be accessed via www.ncsc.gov.uk;

- regularly review its security policies and the actual security of data storage and transmission systems, ensuring that adequate and appropriate security protections are in place; and
- notify the other party promptly of any unauthorised access or use of its data or other security incident affecting its data storage and transmission systems that could affect the other party, and promptly take all remedial action reasonably necessary to address the consequences of the incident and to avoid its reoccurrence.

9. Delegation & Third-Party Rights

9.1. The Provider may sublet to, or sub-contract with any third-party for all, or any part, of the Commission provided that:

- prior written permission has been obtained by the Provider from the Supervising Officer;
- the proposed terms and conditions of the sub-contract are approved by the Supervising Officer, which approval will not be unreasonably withheld or delayed; and
- the Provider makes such third-party aware of the requirement for the third-party to comply with the Living Wage Policy Statement in respect of that part of the Commission which is sub-let or sub-contracted to the third-party.

9.2. Where the Order is subject to the Procurement Act, unless the Client confirms otherwise:

- the Provider must include in any sub-contract it enters into in relation to the Commission suitable provisions:
 - to impose the requirements of Section 73 of the Procurement Act,
 - entitling the Provider to terminate the sub-contractor's employment where the sub-contractor is an excluded or excludable supplier under section 57(1) or (2) of the Procurement Act, and
 - requiring the sub-contractor to include in any sub-subcontract it in turn enters into provisions to the same effect as the forgoing provisions of **Condition 9.2**;
- the Provider must not appoint a sub-contractor if it is placed on the Debarment List;
- the Provider must promptly notify the Client if, at any time prior to the completion of the Commission:
 - the Provider, the Provider's Connected Persons or any sub-contractor is placed on the Debarment List, or
 - a mandatory exclusion ground or discretionary exclusion ground applies to the Provider's Connected Persons or any sub-contractor; and
- The Provider will promptly notify the Client in writing within 10 Working Days of any changes to the Provider's Connected Persons together with information regarding the identity of the new Connected Persons.

- the Client will not consent to any proposed sub-contracting if the Sub-Contractor (or any Connected Person of the sub-contractor) is on the Debarment List for a mandatory exclusion ground.

The Provider must include in any sub-contract awarded by it in relation to the Commission provisions requiring that:

- payment due to the sub-contractor under the sub-contract is made no later than 30 days after receipt of a valid and undisputed invoice, unless the Order requires the Provider to make earlier payment to the sub-contractor;
- invoices for payment submitted by the sub-contractor are considered and verified by the Provider in a timely fashion;
- undue delay in considering and verifying invoices is not sufficient justification for failing to regard an invoice as valid and undisputed; and
- any contract awarded by the sub-contractor in relation to the Commission includes provisions to the same effect as **Condition 9.2**.

9.3. The Provider may not assign, or otherwise purport to transfer, any rights or obligations under the Order, or any part of them.

9.4. The Client may assign the benefit or any right or any other interest in the Order by way of absolute legal assignment only provided that not more than two successive assignments will be permitted without the Provider's prior written consent.

9.5. Except as provided in **Condition 41.16** and **Condition 43** (where applicable):

- nothing in the Order confers or purports to confer any rights to enforce any of its terms pursuant to the Contracts (Rights of Third Parties) Act 1999 on any person who is not a party to the Order; and
- The rights of the parties to rescind or vary the Order are not subject to the consent of any other person.

10. Status of the Provider

10.1. Nothing contained in the Order, or elsewhere, is to be read, or construed, as a contract of employment to place the parties in the position of employer or employee. Nothing contained in the Order is to be so construed as to constitute either party to be the agent of the other. The Order does not operate to create a partnership or joint venture of any kind between the parties.

11. Force Majeure

11.1. Provided it has complied with **Condition 11.3**, if a party is prevented, hindered or delayed in or from performing any of its obligations under the Order by a Force Majeure Event (**Affected Party**), the Affected Party will not be in breach of the Order or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations will be extended accordingly.

11.2. The corresponding obligations of the other party will be suspended, and the time for performance of such obligations extended, to the same extent as those of the Affected Party.

11.3. The Affected Party must:

- as soon as reasonably practicable after the start of the Force Majeure Event, notify the other party in writing of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under the Order; and
- use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.

11.4. If the Force Majeure Event prevents, hinders, or delays the Affected Party's performance of its obligations for a continuous period of more than six weeks, the party not affected by the Force Majeure Event may terminate the engagement of the Provider under the Order by giving two weeks' written notice to the Affected Party.

12. Notices

12.1. Any notice given to a party under or in connection with the Order is to be in writing and be:

- delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
- sent by email to the Provider's notified representative or (in the case of the Client) to the Supervising Officer.

12.2. Any notice is deemed to have been received:

- if delivered by hand, at the time the notice is left at the proper address;
- if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Working Day after posting; or
- if sent by email, at the time of transmission, or, if this time falls outside Working Hours in the place of receipt, when Working Hours resume.

12.3. This **Condition 11.1** does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

13. Waiver & Severance

13.1. Failure by the Client at any time to enforce the provisions of the Order, or to require performance by the Provider of any of the provisions of the Order, will not be construed as a waiver of any such provision and will not affect the validity of the Order, or any part of the Order, or the right of the Client to enforce any provision in accordance with its terms, at any time.

13.2. If any provision in the Order becomes void, voidable, or unenforceable by the coming into force of any statute or other mandatory legislation or in the event of any provision being

declared by any court of competent jurisdiction to be such, then and in such event, the balance of the Order will remain in full force and effect.

14. Compliance

14.1. The Provider will in the performance of the Commission take account of any Statute, Statutory Instrument, Byelaw, relevant British Standard (or equivalent E.U. standard) or other mandatory requirement or Code of Practice and the Client's Policies, which may be in force, or come into force, during the performance of the Commission.

14.2. Without limitation to **Condition 14.1**, the Provider must:

- comply with the provisions of the Bribery Act 2010 and, in particular, Section 7 of that Act in relation to the conduct of its employees, agents and sub-contractors;
- not unlawfully discriminate within the meaning and scope of the Equality Act 2010;
- comply with applicable requirements of the Modern Slavery Act 2015;
- comply with any Responsible Procurement or Social Value targets, objectives or commitments identified in the Orders; and
- comply with the Living Wage Policy Statement.

14.3. The Provider will take all reasonable steps to secure the observance of the provisions of **Condition 14.2** by any third party to whom it sub-lets or sub-contracts any part of the Commission and, upon request from time to time, provide to the Client documentary evidence of compliance with the provisions of **Condition 14.2** by both the Provider and such third parties.

14.4. The Provider warrants that it has and will maintain in place adequate procedures designed to prevent acts of bribery from being committed by its employees, agents, and sub-contractors, and must provide to the Client at its request, within a reasonable time, proof of the existence and implementation of those procedures.

15. Freedom of Information

15.1. If the Client receives a request in connection with the Freedom of Information Act 2000 or the Environmental Information Regulations 2004:

- the Provider will use reasonable endeavours to assist the Client, at no additional charge and within such timescales as the Client may reasonably specify, in meeting any requests for information in relation to the Order which are made to the Client; and
- the Client will, wherever reasonably practical, consult with the Provider before disclosing information that relates to the Provider.

15.2. All information provided, or assistance rendered by the Provider under **Condition 15** is part of the Provider's general obligations to the Client and will be at no cost to the Client.

16. Key Performance indicators

16.1. Where any Commission is stated in the Order to be subject to a specific KPI, the following provisions of **Condition 16** will apply to the Order and the Provider will perform the

Commission in such a manner as will result the Achieved KPI is equal to or higher than the corresponding Target KPI to such specific KPI.

- 16.2.** If the existing Commission is varied, Target KPIs for the same will be determined by the parties as part of the Variation.
- 16.3.** The Provider is to provide to the Client monthly reports summarising the Achieved KPIs. The parties will meet at not less than monthly intervals to monitor and review the performance of the Commission, including the achievement of the Target KPIs.
- 16.4.** The Client may increase the extent to which it monitors the performance of the Commission if the Provider fails to meet the Target KPIs or fails to fulfil its other obligations under the Order. The Client will give the Provider prior notice of its intention to increase the level of its monitoring. The Provider will bear its own costs in complying with such enhanced monitoring.

17. Audit

- 17.1.** The Client may conduct or be subject to an audit for the following purposes:
- to verify the accuracy of the Price (and proposed or actual variations to it in accordance with the Order) and/or the costs of all agents and sub-contractors for the Commission;
 - to review the integrity, confidentiality and security of any data relating to the Client;
 - to review the Provider's compliance with the Data Protection Law (as defined in **Condition 39.1**) or any other applicable law;
 - to review any records created for the Commission;
 - to review any books of account kept by the Provider relating to the provision of the Commission;
 - to carry out the audit and certification of the Client's accounts;
 - to carry out an examination pursuant to any legislation applicable to the economy, efficiency and effectiveness with which the Client has used its resources;
 - to verify the accuracy and completeness of any reports delivered or required by the Order; or
 - to verify the Provider's compliance with any Responsible Procurement or Social Value targets, objectives or commitments identified in the Order.
- 17.2.** Except where an audit is imposed on the Client by a regulatory body, the Client may not conduct an audit under **Condition 17** for each of the purposes identified in **Condition 17.1** more than once in any calendar year and will use reasonable endeavours to ensure that the conduct of each audit does not unreasonably disrupt the Provider or delay the provision of the Commission.
- 17.3.** Subject to the Client's obligations of confidentiality, the Provider must on demand provide the Client and any relevant regulatory body (and/or their agents or representatives) with reasonable co-operation and assistance in relation to each audit, including:
- all information requested by the above persons within the permitted scope of the audit;

- reasonable access to any sites controlled by the Provider and to any equipment used (whether exclusively or non-exclusively) in the performance of the Commission; and
 - access to the Provider's personnel.
- 17.4.** The Client will endeavour (but is not obliged) to provide at least 10 Working Days' notice of its or, where possible, a regulatory body's, intention to conduct an audit.
- 17.5.** Without limitation to the foregoing, annually for the duration of the Commission, the Provider will within 10 Working Days of written demand provide to the Client the Provider's reasonable estimate of the value of unbilled work in progress under the Order as of 31st March, to allow the Client to make appropriate adjustments to the Client's annual accounts before their closure.
- 17.6.** The parties agree to bear their own respective costs and expenses incurred in respect of compliance with their obligations under **Condition 17**.
- 18. Termination**
- 18.1.** Either party may terminate the engagement of the Provider under the Order with immediate effect by giving written notice to the other party if:
- the other party fails to pay an amount due under the Order on the due date for payment and remains in default not less than 30 days after being notified in writing to make such payment;
 - the other party commits a material breach of any term of the Order and (if such breach is remediable) fails to remedy that breach within a period of 10 Working Days after being notified in writing to do so;
 - the other party takes or has taken against it (other than in relation to a solvent restructuring) any step or action towards its entering bankruptcy, administration, provisional liquidation or any composition or arrangement with its creditors, applying to court for or obtaining a moratorium under Part A1 of the Insolvency Act 1986, being wound up (whether voluntarily or by order of the court), being struck off the register of companies, having a receiver appointed to any of its assets, or its entering a procedure in any jurisdiction with a similar effect to such procedures;
 - the other party suspends or ceases, or threatens to suspend or cease, carrying on business;
 - the other party's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of the Order is in jeopardy; or
 - the other party (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing their own affairs or becomes a patient under any mental health legislation;
 - there is a change of control of the other party within the meaning of section 1124 of the Corporation Tax Act 2010.
- 18.2.** For the purposes of **Condition 18.1**, a material breach means:

- a breach of any of the obligations set out in **Conditions 14.2, 14.3, 14.4, 42.2** or any of the Conditions within Module G (*Conditions relating to Data Protection*) applying to the Order; or
 - a breach that has a serious effect on the benefit the terminating party would otherwise derive from the Order.
- 18.3.** Unless stated otherwise in the Order, the Client may terminate the engagement of the Provider under the Order at will on giving not less than two months' written notice to the Provider.
- 18.4.** The Client may by written notice also terminate the engagement of the Provider under the Order immediately on the occurrence of any of the following:
- the Provider fails to comply with the Client's Policies, or any provisions of such policies, or commits any breach of any obligation imposed upon the Provider by the Client's Policies, or does not comply within a reasonable time with any lawful instructions given to the Provider by the Supervising Officer regarding such policies;
 - in the event of loss or damage being occasioned by one or more of the Excepted Risks;
 - where **Condition 16** is stated in the Order to apply and an Achieved KPI is less than the Target KPI for that KPI in three successive measurement periods; or
 - in the circumstances specified in section 78 of the Procurement Act.
- 18.5.** The Provider may by written notice terminate its engagement under the Order if the conduct of the whole of a substantial part of the Commission is suspended or postponed for a continuous period exceeding three months because of:
- loss or damage occasioned by one or more of the Insured Risks, unless caused by the negligence of the Provider or anyone for whom the Provider is responsible;
 - loss or damage occasioned by one or more of the Excepted Risks; or
 - instructions issued by the Supervising Officer under **Condition 2.4** or **Condition 30.10**, unless caused by the negligence of the Provider or anyone for whom the Provider is responsible.

18A Consequences of Termination

- 18A.1** Termination of the Provider's engagement under the Order will not prejudice the rights of either party to sue for and recover any damage, loss or expense suffered or incurred and arising out of or relating to any breach of the Order by the other party prior to such termination and generally to enforce any rights and remedies in relation to anything done prior to such termination.
- 18A.2** On termination of the Provider's engagement under the Order in accordance with **Condition 11.4** or **Condition 18** the Client will pay to the Provider:
- any amount properly due for payment under the Order at the date of termination; and
 - a fair and reasonable proportion of the next instalment of the Price commensurate with that part of the Commission properly performed at the date of termination.

18A.3 If the Provider's engagement under the Order is terminated:

- by the Provider in accordance with **Condition 18.1**;
- by the Client in accordance with **Condition 18.3**; or
- by the Provider in accordance with **Condition 18.5**, as a result of instructions issued by the Supervising Officer under **Condition 2.4** or **Condition 30.10**,

the Client will also pay any expenses and disbursements necessarily incurred by the Provider as a direct result of the termination.

18A.4 If the Provider's engagement under the Order is terminated by the Client in accordance with:

- **Condition 18.1**; or
- **Condition 18.4**, as a result of the Provider failing to comply with the Client's Policies, or any provisions of such policies, or committing any breach of any obligation imposed upon the Provider by the Client's Policies, or not complying within a reasonable time with any lawful instructions given to the Provider by the Supervising Officer regarding such policies,

the Provider will also pay the Client the reasonable cost of procuring a replacement contractor to carry out any unperformed portion of the Commission, to the extent that such cost exceeds the Price (or, where the Price is yet to be determined, the Client's reasonable estimate of the Price). Any such cost will be deducted from the amount payable to the Provider under **Condition 18A.2** and if any shortfall remains following such deduction the Client may claim it as a debt due from the Provider.

18A.5 Payment under **Conditions 18A.2** and **18A.3** (if any) will be:

- the Provider's sole entitlement to compensation for termination of its engagement under the Order; and
- claimed by the Provider as if it were a payment under **Condition 3** and (where applicable) **Conditions 26** and **34A.1**.

18A.6 Except as set out in **Condition 18A.2** and **Condition 18A.3**, the Client will not be liable to the Provider for:

- any costs, expenses, disbursements, or losses;
- any loss of profits, loss of fees, loss of chance or other similar losses; or
- any indirect losses or consequential losses

arising out of termination of the Provider's engagement under the Order.

19. Disputes & Governing Law

19.1. Where Module D (*Conditions applicable to Construction Operations*) applies to the Order, the following provisions of **Condition 19** are without prejudice the parties' rights to seek adjudication at any time in accordance with **Condition 27**.

- 19.2.** If any dispute arises out of the Order which cannot be amicably settled between the parties, then the parties will attempt to settle such dispute by mediation in accordance with the Model Mediation Procedure published by the Centre for Effective Dispute Resolution from time to time.
- 19.3.** It is agreed that if the dispute remains unresolved 20 Working Days after it has arisen either party may refer the dispute to the English Courts, which will have exclusive jurisdiction to hear the matter.
- 19.4.** The Order will be governed by and construed in accordance with the Laws of England and the parties submit to the exclusive jurisdiction of the English Courts.

MODULE B: CONDITIONS APPLICABLE TO A SERVICE

20. The Service

- 20.1. The Commission is to be provided for the duration set out in the Order unless terminated in accordance with these Conditions or extended by agreement of the parties. In the event of an extension, the parties will in good faith negotiate and agree any price increase with reference to the retail prices index.
- 20.2. The Provider will ensure that the Commission is performed in a good and workmanlike manner and conform to the standards set out or referred to in the Order to the reasonable satisfaction of the Supervising Officer.
- 20.3. The Provider will provide all supervision, labour, materials, transport, plant, tools, equipment, storage, and other facilities necessary to perform the Commission unless otherwise stated on the Order.
- 20.4. As far as practicable the Provider will use biodegradable or other environmentally friendly products in conducting the Commission.
- 20.5. The Provider will be deemed to have inspected the Site(s) where it is to perform the Commission and to have satisfied itself as to the conditions and circumstances affecting the Site(s).
- 20.6. The Supervising Officer may inspect and test (if appropriate) the Provider's performance of the Commission at any time. Where the Supervising Officer rejects any work, which forms part of the Commission, the Provider will re-execute that work at no additional cost to the Client.

21. Security

- 21.1. If required by the Order, personnel to be employed by the Provider in relation to the Commission will be subject to character, employment and all appropriate police and other security checks to ensure they are competent, reliable, discreet and honest. Full details of all persons to be employed must be provided to the Client for approval.
- 21.2. Where access to the Client's premises is necessary relating to the Commission, the Provider will ensure that its employees, agents, and sub-contractors are made aware of and comply with the Client's security procedures.
- 21.3. The Provider must take all steps required by the Client to prevent unauthorised persons (including its employees, agents, and sub-contractors) being admitted to the Client's premises. If the Client gives the Provider notice that any employees, agents, or sub-contractors is not to be admitted to or is to be removed from its premises, the Provider must take reasonable steps to comply with such notice. The decision of the Client as to whether any person is to be admitted to or removed from its premises will be final and conclusive.

22. Health & Safety

- 22.1. Before starting the Commission, the Provider must produce a risk assessment and submit it to the Supervising Officer for approval. The Provider will comply with all oral and written requests of the Supervising Officer, immediately.

- 22.2.** The Provider undertakes with the Client (without limiting its duties to its employees) to:
- safeguard their health, safety, and welfare at work under the Order;
 - bring to their notice the health and safety policies of the Provider and the Client;
 - provide all necessary information, training and supervision in safe working practices and the need to work safely; and
 - have regard for the health and safety of those not employed by the Provider but who may be affected by the Provider's performance of the Commission.
- 22.3.** The Provider will be responsible for the suitability and safety of any equipment or tools used by it. The Provider will not use any equipment or tools which may be unsuitable, unsafe, or likely to cause damage or injury.
- 22.4.** The Client reserves the right to inspect any equipment or tools used by the Provider and to ask the Provider to remove from the Site(s) and/or the Client's premises, any equipment or tools that may in his opinion be unsuitable, unsafe or likely to cause injury or damage to the same, without incurring any responsibility to the Provider for additional costs or time.

22B Staff Transfers

- 22B.1** Unless otherwise stated in the Order, the parties agree that the provisions of Module I (*Staff Transfers*) will apply as follows:
- **Condition 49** (*Interpretation*) will apply whenever any of **Conditions 50 to 53** (inclusive apply the Order);
 - **Condition 50** will apply whenever there is a Relevant Transfer in relation to Transferring Former Contractor Employees from a Former Contractor to the Provider;
 - **Condition 51** (*Redundancy Surcharge*) will apply where the employment of any Affected Employee is terminated as a direct result of a Client instigated Variation of the Commission;
 - **Condition 52** (*Employment Exit Provisions*) will apply to the Order; and
 - **Condition 53** (*Local Government Pension Scheme*) will apply to a transfer of employment of an Eligible Employee to or from either the Provider or a sub-contractor.
- 22B.1** Any proposed transfer of employment of an employee of the Client to the Provider is to be identified in the Order or a Variation and will be subject to such additional conditions as are set out in the Order or Variation relating to such transfer.

MODULE C: CONDITIONS APPLICABLE TO SUPPLY OF GOODS

23. Quality & Marking

- 23.1.** The Goods must conform as to quantity, quality, and description. The Goods must be of sound material and workmanship. If samples or patterns are or have been provided, the Goods must be equal in all respects to the samples or patterns. If a standard of performance is specified, the Goods must be capable of the required performance.
- 23.2.** The Provider will comply with such provisions relating to or affecting the health and/or safety of anyone despatching, receiving, handling, using, or processing the Goods, particularly with reference to Section 6 of the Health and Safety at Work Etc. Act 1974 obliging suppliers to provide adequate information and operating instructions for such articles so supplied and the Control of Substances Harmful to Health Regulations for the time being in force.
- 23.3.** All Goods supplied must be suitably and sufficiently marked endorsed and labelled with information and advice necessary to instruct and warn any person into whose hands the Goods come about any hazards to health and/or safety reasonably foreseeable as arising from despatching, receiving, handling, using or processing the Goods and also about the necessary precautions to be taken in respect thereof provided however that if it is not reasonably practicable to mark, endorse or label the Goods accordingly, the Provider must instruct and advise such persons by an accompanying notice at the time of despatch.
- 23.4.** The Provider must clearly mark the outside of each consignment or package with:
- the Provider's name;
 - the Provider's address;
 - the Client's Purchase Order number;
 - the number of packages and their contents (and in the case of part delivery, the outstanding balance remaining to be delivered); and
 - the full details of the destination as stated in the Order.
- 23.5.** The Provider must include a packing note stating the contents of each consignment or package.
- 23.6.** On despatch of each consignment the Provider must send to the Client at the delivery address an advice note specifying the:
- means of transport;
 - weight, number, or volume of each consignment; and
 - the point and date of despatch.
- 23.7.** The Provider must send the Client a detailed invoice as soon as is reasonably practicable after the delivery of each consignment.

24. Inspection, Testing & Warranty

- 24.1.** Before despatching the Goods, the Provider must inspect and test them for compliance with the Specification. If requested by the Client, the Provider will give the Client reasonable

notice of such tests and the Client will be entitled to be represented at the tests. The Provider must also supply to the Client with certificates of the results of inspection and test in such form as the Client may require.

- 24.2.** if so specified in the Order, the Client will be entitled to inspect and test the Goods during manufacture, processing or storage, and the Provider must provide or procure the provision of all such facilities as may reasonably be required by the Client in that respect.
- 24.3.** If, as a result of any inspection or test under **Conditions 24.1** and **24.2**, the Client considers that the Goods do not comply or are unlikely on completion of manufacture or processing to comply with the requirements of the Order, the Client will inform the Provider in writing and the Provider must then take such steps as may be necessary to ensure such compliance. The Client may require and witness further testing and inspection.
- 24.4.** Notwithstanding any inspection or testing by the Client, the Provider remains responsible for the Goods and any such inspection or testing will not diminish or otherwise affect the Provider's obligations under the Order.
- 24.5.** The Provider must, at its own expense, make good, repair, or replace with reasonable speed any defect or malfunction in the Goods which develop within the warranty period stated in the Order.
- 24.6.** The Client's rights under the Order are in addition to the statutory conditions implied in favour of the Client under the Sales Goods Act 1979 and the Supply of Goods and Services Act 1982.
- 24.7.** If any of the Goods fail to comply with the provisions set out in **Conditions 23** and **24**, the Client is entitled to avail itself of any one or more of the following remedies at its discretion, whether or not any part of the Goods have been accepted by the Client:
- to rescind the Order;
 - to reject the Goods (in whole or in part) and return them to the Provider at the risk and cost of the Provider on the basis that a full refund for the Goods so returned are to be paid by the Provider immediately;
 - at the Client's option, to give the Provider the opportunity (at the Provider's expense) either to remedy any defect in the Goods or to supply replacement Goods and carry out any other necessary work to ensure that the terms of the Order are fulfilled;
 - to refuse to accept any further deliveries of the Goods but without any liability to the Provider;
 - to carry out (at the Provider's expense) any work necessary to make the Goods comply with the Order; and
 - to all direct, reasonably foreseeable and properly mitigated loss, debt, damage, interest, cost and expense (including legal fees and expenses of litigation on a full indemnity basis) incurred by the Client by reason of the Provider's breach or breaches of the Order.

25. Delivery

- 25.1.** The Goods remain at the risk of the Provider until delivery of the Goods to the Client is completed (including off-loading and stacking) at which point ownership of the Goods passes to the Client. The Provider must repair or replace free of charge to the reasonable satisfaction of the Client, Goods damaged in transit and in the event of such damage, delivery of the Goods will not be deemed to have taken place until repaired or replacement Goods have been delivered.
- 25.2.** The Goods are to be delivered carriage paid by the Provider at the place or places and in the manner specified in the Order or as subsequently specified in writing prior to delivery of the Goods. The Provider will off-load the Goods at its own risk as directed by the Client.
- 25.3.** Where the Order provides for delivery of the Goods within a specified time, such time runs from the date of receipt by the Provider of the Order, or of the necessary information and drawings, whichever may be the later.
- 25.4.** Time for delivery of the Goods is of the essence. Where no date or time is specified in the Order, then delivery of the Goods is to be within a reasonable time, but no later than 20 Working Days from the date of the Order. Unless otherwise stipulated by the Client in the Order, deliveries will only be accepted by the Client during normal business hours.
- 25.5.** Where the Client agrees in writing to accept delivery of the Goods by instalments, the Order is to be construed as a single contract in respect of each instalment. Nevertheless, failure by the Provider to deliver any one instalment will entitle the Client at its option to treat the whole of the Order as repudiated.
- 25.6.** If the Goods are delivered to the Client more than the quantities ordered, the Client will not be bound to pay for the excess and any excess remains at the Provider's risk and will be returnable at the Provider's expense.
- 25.7.** If the Provider requires the Client to return any packaging material to the Provider that fact must be clearly stated on any delivery note delivered to the Client and any such packaging material will only be returned to the Provider at the cost of the Provider.
- 25.8.** If the Provider purchases the Goods from a third-party, The Provider will pay for those Goods within the time allowed by that third-party and will not in its dealings with that third-party put at risk the Client's possession and ownership of the Goods after delivery and payment.

MODULE D: CONDITIONS APPLICABLE TO CONSTRUCTION OPERATIONS

26. Interim Payment

26.1. On first Working Day falling one calendar month after the Commencement Date and thereafter on the same day in each month or the nearest Working Day in that month, the Provider will give to the Client an written application for payment (accompanied by supporting documentation), setting out the whole amount the Provider claims is due to it calculated in accordance with **Condition 26.2** for services performed, work executed and goods and materials supplied (as the case may be) in respect of the Commission up to and including the date of the application for payment.

26.2. Within 5 Working Days of receiving an application for payment from the Provider, the Client will issue to the Provider a Payment Notice, setting out the whole amount (if any) the Client considers due to the Provider and the basis on which it is calculated being:

- the total of the prices for the elements of the Commission which have been properly executed and completed in accordance with the Order;
- any Variation instructed pursuant to **Condition 4**;
- any other amounts which may become due to the Provider from the Client under the Order; and
- where applicable, the total value of any Offsite Goods subject to **Condition 26.3**;

less any:

- amounts previously paid;
- amounts which may become due to the Client from the Provider;

and, if Module E (*Conditions Applicable to Works*) applies to the Order, less any:

- Retention relating to the Commission or any Section thereof; and
- amounts in relation to which the Provider has failed to provide adequate or any supporting documentation in accordance with **Condition 26.3**.

26.3. If Module E (*Conditions Applicable to Works*) applies to the Order, the Client will only pay the Provider the total value of any Offsite Goods if the Provider can show to the Supervising Officer's satisfaction:

- that the Offsite Goods are clearly marked and identified for delivery to the Site;
- documentary evidence of ownership;
- that the Offsite Goods are stored in secure and locked accommodation appropriate to their value; and
- documentary evidence that the Offsite Goods are covered by insurance for their full reinstatement value against the Insured Risks.

26.4. If a Payment Notice is not issued pursuant to **Condition 26.2** the Provider may issue a notice, at any time after the date on which the Payment Notice was required to be given,

specifying the sum that the Provider considers is due on the date the notice is served and the basis on which that sum is calculated.

26.5. Not later than 10 Working Days from receipt of a Payment Notice, or (where applicable) from issue of the Provider's notice pursuant to **Condition 26.4**, the Provider will give to the Client:

- a tax invoice, quoting the Client's Purchase Order number, in the amount so notified by or to the Client, which complies with Regulation 14 of the Value Added Tax Regulations 1995 as amended by Regulation 7 of the Value Added Tax (Amendment) (No. 5) Regulations 2007; and
- the information prescribed by **Condition 34.1**.

and the amount stated in the tax invoice will then be due to the Provider. If the Provider's invoice complies with **Condition 26.4** then the Provider need not give another notice pursuant to **Condition 26.4** in respect of that payment.

26.6. The final date for payment will be the last day of the Payment Period. Invoices submitted by the Provider will be considered and verified by the Client in a timely fashion and undue delay in doing so will be insufficient justification for failing to regard an invoice as valid and undisputed.

26.7. Subject to **Condition 26.8**, nothing contained in the Order will in any way limit or exclude any of the Client's rights to withhold, deduct or set-off in accordance with **Condition 3.6**.

26.8. To the extent not already paid, the Client must pay the sum notified in the Payment Notice, or (where applicable) the Provider's notice pursuant to **Condition 26.4** on or before the expiry of the Payment Period unless either:

- it gives to the Provider a notice of the Client's intention to pay less than the notified sum, specifying the sum that the Client considers to be due on the date the notice is served and the basis on which that sum is calculated. Such notice must be given not later than 5 Working Days before the expiry of Payment Period and it is immaterial for the purposes of this Condition that the sum referred to in such notice may be zero; or
- the Provider becomes insolvent not earlier than 5 Working Days before the expiry of the Payment Period, in which event the Client need not pay any sum due in respect of the payment.

26.9. Where any amount due to the Provider under the Order is not paid in full before the expiry of the Payment Period, no effective notice is given under **Condition 26.8** and the Provider is not insolvent, the Provider will be entitled to:

- suspend performance of its obligations under the Order by giving not less than 5 Working Days' notice to the Client stating the ground or grounds on which it is intended to suspend performance. The right to suspend performance will cease when the Client makes payment in full of the amount due. The Provider will be entitled to a fair and reasonable payment in respect of the reasonable costs necessarily incurred by the Provider, because of a valid suspension to be ascertained by the Client after consultation with the Provider; and

- be paid interest at the statutory rate provided for in the Late Payment of Commercial Debts (Interest) Act 1998. The Provider will be entitled to claim such interest from the day after the expiry of the Payment Period on any unpaid amount up to the date that the Client pays the Provider such amount.

27. Adjudication

- 27.1.** Any disputes arising from the Order may be referred to adjudication in accordance with Part 1 of the Schedule to the Scheme for Construction Contracts (England and Wales) Regulations 1998 as amended by the Scheme for Construction Contracts (England and Wales) Regulations 1998 (Amendment) (England) Regulations 2011, and the nominating body will be the Technology and Construction Solicitors Association

28. Collateral Warranties

- 28.1.** Where so specified in the Order or the Specification the Provider must, within 10 Working Days of receipt of engrossments from the Client, execute and deliver to the Client a deed or deeds of collateral warranty in the relevant form (referred to or set out in the Order or the Specification) in favour of each or any recipient identified in the Order or the Specification.
- 28.2.** Where so specified in the Order or the Specification, upon the appointment of each sub-contractor (and in any event within 10 Working Days of a notice by the Client), the Provider must procure that the sub-contractor executes and delivers to the Client a deed or deeds of collateral warranty in the relevant form (referred to or set out in the Order or the Specification) in favour of the Client and each or any recipient identified in the Order or the Specification. If, during the sub-contract tender and selection process, the Provider becomes aware of any objections from any proposed sub-contractor to the required form of collateral warranty, the Provider must bring to the attention of the Client any such objections that remain unresolved after negotiation with the proposed sub-contractor concerned. The Client will engage in discussion with the Provider with a view to resolving any such objections.
- 28.3.** If the Provider fails to deliver to the Client any deed of collateral warranty validly requested by the Client under **Condition 28.1** or **Condition 28.2** within the respective timescale specified in those Conditions, the Client will be entitled to withhold any payment or further payment which would otherwise be due to the Provider under the Order until such deed of warranty has been so delivered to the Client.
- 28.4.** Upon the appointment of each sub-contractor in respect of which a deed of collateral warranty validly requested by the Client under **Condition 28.2**, the Provider must deliver to the Client a certified copy of the appointment or sub-contract entered into with the sub-contractor.

MODULE E: CONDITIONS APPLICABLE TO WORKS

29. Provider's Obligations

- 29.1.** The Provider will commence on the Commencement Date, execute, and complete the Commission (or, if applicable, each Section) in compliance with:
- the Specification;
 - the Construction Phase Plan;
 - the Contract Drawings; and
 - the instructions of the Supervising Officer;
- on or before the relevant Completion Date.
- 29.2.** To the extent that the quality of workmanship, materials and goods employed in the execution of the Commission is not indicated in the Specification, or the Contract Drawings, the Provider will execute such Commission in a good and workmanlike manner using goods and materials of satisfactory quality to the reasonable satisfaction of the Supervising Officer.
- 29.3.** The property in any goods and materials intended for the Commission will vest in the Client upon delivery to the Site by the Provider.
- 29.4.** The Provider will give written notice to the Supervising Officer of any discrepancy in or divergence between the Specification, the Contract Drawings and statutory requirements and will take and follow the Supervising Officers instructions in this respect.
- 29.5.** To the extent the Provider is responsible for the design of the Commission, the Provider has the like liability to the Client, whether under statute or otherwise, as would an architect or, as the case may be, other appropriate professional designer holding itself out as competent to undertake such design, who acting independently under a separate contract with the Client, has supplied such design for or in connection with works to be carried out and completed by a building contractor who is not the supplier of the design.
- 29.6.** No provision of the Order will operate to exclude or restrict the Provider's liability under statute or common law for any goods and materials that the Provider supplies, or has supplied, for use on, or incorporation into the Commission.
- 29.7.** The Provider will provide all supervision, labour, materials, transport, plant, tools, equipment, and facilities necessary to perform the Commission in accordance with the Order except where the Order expressly provides otherwise.
- 29.8.** The Provider will set out the whole of the Commission (including establishing all levels) and will be liable for any loss, or expense, occasioned through mistakes in setting out the Commission.
- 29.9.** Prior to the Date of Possession (or, if applicable, the Date of Possession for the first Section to be commenced) the Provider will confirm to the Client the identity of the Provider's Representative. The Provider will during the progress of the Commission keep and employ the Provider's Representative at the Site. The Provider is to give 10 Working Days prior

notice to the Supervising Officer of any change in the identity of the Provider's Representative.

29.10. Unless stated otherwise in the Order, the Provider:

- will act as “principal contractor” for the purposes of both the CDM Regulations and the Building Regulations; and
- will not act as the Principal Designer.

29.11. If the Provider is the “principal contractor” for the purposes of the CDM Regulations, it will:

- produce the Construction Phase Plan and make sure that it has all the features required by regulation 12 of the CDM Regulations. If the Provider refines, revises, or otherwise amends the Construction Phase Plan it must let the Client know immediately and provide the Client with a copy of any such changes; and
- assist the Principal Designer with its task of compiling the health and safety file by responding promptly to any requests the Principal Designer may make for information in relation to the Commission. Any breach of **Condition 29.11** will entitle the Supervising Officer to postpone or withhold the issue of a Practical Completion Certificate, or (where applicable) Section Completion Certificate, under **Condition 33.1** until such time as the Provider has remedied the breach.

29.12. Where the Provider is and while it remains the Principal Designer for the purposes of regulation 5 of the CDM Regulations, the Provider will comply with the duties of the Principal Designer for the purposes of the Building Regulations.

29.13. Each party undertakes to the other that in relation to the Commission it will duly comply with applicable duties under the Building Regulations. In particular:

- the Provider will comply with regulations 11J and 11L of the Building Regulations;
- where the Provider is the “principal contractor” for the purposes of the Building Regulations, it will comply with regulation 11N of the Building Regulations and will complete the declarations when required pursuant to regulations 16(4A)(e) and 16(5A)(e) of the Building Regulations;
- where the Provider is responsible for the design of any part of the Commission it will comply with regulation 11K of the Building Regulations; and
- where the Provider is and while it remains the Principal Designer for the purposes of regulation 11D(1)(a) of the Building Regulations, the Provider will comply with the duties of the Principal Designer for the purposes of the Building Regulations, including regulation 11M and will complete the declarations when required pursuant to regulations 16(4A)(e) and 16(5A)(e) of the Building Regulations.

29.14. Any ancient relics discovered on the Site are in all cases deemed to be the property of the Client. On discovery the Provider must suspend all work immediately and take all steps that may be necessary to preserve the object in the exact position and condition in which it was found, and immediately inform the Supervising Officer, in writing, of the discovery and the precise location of the object.

29.15. The Provider is to make all applications, give all notices and pay all fees required by, and comply with, the provisions of any Act of Parliament, any instrument, rule, or order made under any Act of Parliament, or any regulation, or bye-law of any local authority, or of any statutory undertaker; or any conditions attached to any notices served under any such Act, instrument, rule or order, regulation or bye-law; or any codes of practice, guidance notes and recommendations for the time being in force and approved by the Health and Safety Commission or published by the Health and Safety Executive.

30. Commencement & Delay

30.1. The Client will give to the Provider such access to such part or parts of the Site at such times and for such periods as may be reasonably necessary to enable the Provider to execute and complete the Commission in accordance with the Order. The Provider acknowledges that such access may (where indicated in the Order) be in common with other persons on the Site and may not be exclusive to the Provider.

30.2. Where the Order so provide, the Client may defer the giving of possession of the Site or relevant part of it for the period stated in the Order.

30.3. The Provider in executing and planning the Commission will consider the presence of other contractors employed by the Client, from time to time, on site or in the vicinity of the Commission. The Provider must liaise with such other contractors and the Client at the request of the Supervising Officer and programme and plan its work considering the activities of those other contractors and the reasonable requests of the Client. The Provider must comply with **Condition 30.3** at no additional cost to the Client.

30.4. The Provider will start the execution of the Commission on Site or a Section of the Commission on Site on the relevant Date of Possession stipulated in the Order and will thereafter proceed with the Commission or a Section of the Commission regularly and diligently and in accordance with the Programme so that the Commission or the relevant Section thereof are completed on the relevant Completion Date.

30.5. As soon as it becomes reasonably apparent to the Provider that it will be unable, for any reason, to complete the Commission or a Section of the Commission by the relevant Completion Date due to the occurrence of a Time Event or Time and Money Event the Provider will:

- take reasonable steps to prevent the occurrence arising from further affecting the progress of the Commission or the relevant Section thereof and mitigate the effects of such occurrence; and
- issue to the Client a Delay Application.

30.6. On receipt by the Supervising Officer of a Delay Application, the Supervising Officer will, within a reasonable period, decide whether it will:

- adjust the relevant Completion Date and by what length of time; or
- agree to an addition to the Price and the amount of such an addition; or
- both of the above.

Whether or not the Provider has complied with **Condition 30.5**, the Supervising Officer may only adjust the relevant Completion Date on the occurrence of a Time Event or Time and Money Events and may only adjust the Price on the occurrences of Time and Money Events.

- 30.7.** Any adjustment to the Price will be made applying the same principles of valuation as apply to a Variation under the Order.
- 30.8.** The Client reserves the right to:
- reject any Delay Application;
 - require the Provider to further substantiate a Delay Application that is not accompanied by documentary evidence supporting the reasons given for the delay, or reasonably substantiating the additional sums claimed as loss and expense; or
 - both of the above.
- 30.9.** If the Provider fails to complete the Commission or a Section of the Commission within the period for completion of the Commission or the relevant Section stated in the Order subject to any extension granted by the Supervising Officer under **Condition 30.6** and the Supervising Officer so certifies, the Provider will pay, or allow to the Client, as liquidated damages, a sum calculated at the rate specified in the Order for the period during which the Commission or the relevant Section thereof are incomplete. Where no rate for liquidated damages for delay is stated in the Order, time for completion of the Commission or the relevant Section will be of the essence and the Client may claim damages for delay by due process of law.
- 30.10.** The Supervising Officer may instruct the Provider to open up any part of the Commission for testing or inspection or both. If, as a result, such Commission is found not to be in accordance with the Order, the Supervising Officer may issue an instruction under **Condition 30.11**.
- 30.11.** If any part of the Commission, or any work, services or goods included in, or brought on to Site for inclusion in, the Commission is not in accordance with the Order, the Supervising Officer may instruct the Provider to undertake such remedial work or remove from the Site the relevant part of the Commission, work, service or materials, as the Supervising Officer specifies. The Provider will comply promptly with such instruction at its own expense.
- 30.12.** Instructions issued by the Supervising Officer pursuant to **Conditions 30.10** and **30.11** will not constitute a Variation except where, following the opening up of the Commission for inspection, the Commission is found to be in accordance with the Order, in which event opening up and reinstating the Commission will be considered a Variation.
- 31. Works Insurances**
- 31.1.** The Commission will be at the risk of the Provider until completion of the Commission and the Provider is to protect the Commission as may reasonably be necessary to prevent damage to the Commission until the date upon which the Supervising Officer issues the Practical Completion Certificate.

- 31.2.** Where the Commission is being carried out to an existing structure if, because of any of the Insured Risks, any loss or damage is occasioned to the existing structure (or, to any contents owned by the Client or for which the Client is responsible), the Supervising Officer may issue instructions for the reinstatement and making good of such loss or damage as a Variation.
- 31.3.** Where the Order so specifies, the Provider will maintain Contractor's All Risks insurance in the joint names of the Provider and the Client as composite insured (and under which the insurers have no right of recourse against any person named or recognised as an insured) to provide cover against (inter alia) the Insured Risks for the full value of all work executed and all unfixed goods and materials intended for, delivered to, placed on or adjacent to the Commission and intended for incorporation in the Commission. In the event of loss or damage occurring, which is covered by such insurance, the Provider will with due diligence restore or replace the work, materials or goods lost, or damaged, and dispose of debris and proceed with and complete the Commission. The Provider will not be entitled to payment for such work other than money received from the insurance and such money will be paid to the Provider upon the certificate of the Supervising Officer issued for the same period and at the same intervals as apply to Payment Notices.
- 31.4.** Where the Order so specifies, the Provider will maintain in the joint names of the Client and the Provider as composite insured (and under which the insurers have no right of recourse against any person named or recognised as an insured) insurances for such amounts of indemnity as may be required by the Client in respect of any loss, debt, damage, interest, cost and expense that the Client may incur or sustain by reason of damage to any property other than the Commission caused by the collapse, subsidence, vibration, weakening or removal of support or lowering of ground water arising in the course of or by reason of the conduct of the Commission except where:
- caused by the negligence, omission or default of the Provider, its servant, and agents;
 - attributable to error or omissions in the design of the Commission;
 - which can reasonably be foreseen as inevitable, having regard to the nature of the work and the manner of its execution; or
 - occasioned to the existing structure, or to any contents owned by the Client or for which the Client is responsible.

32. Partial Possession by the Client

- 32.1.** If at any time before the expiry of the period for the completion of the Commission, the Client agrees with the Provider to take possession of part or parts of the Commission that are complete to the satisfaction of the Supervising Officer:
- the Supervising Officer will issue a Section Completion Certificate for such part or parts and such certificate will state the value of the part, or parts, so completed;
 - the Supervising Officer will issue a Payment Notice for the value of the part, or parts, completed as stated in the Section Completion Certificate; and
 - from the date of the Section Completion Certificate the part, or parts of the Commission to which that certificate applies will be at the sole risk of the Client and the total value

insured in accordance with **Condition 31.4** will be reduced by the value stated in such certificate.

- 32.2.** Where liquidated damages for delay are required under **Condition 30.9**, the rate of such damages will be reduced by the proportion that the value of the part, or parts, stated in the Section Completion Certificate bears to the Price.

33. Completion & Defects Rectification

- 33.1.** Subject to the Provider having complied with **Condition 29.11**, when the whole of the Commission (or a relevant Section of the Commission) has been completed to the Supervising Officer's reasonable satisfaction, he will issue to the Provider a Practical Completion Certificate, or (where applicable) a Section Completion Certificate.
- 33.2.** Any Defects notified to the Provider by the Client before the issue of the Making Good Defects Certificate must be made good by the Provider (at its own expense) to the reasonable satisfaction of the Supervising Officer.
- 33.3.** The Supervising Officer may whenever he considers it necessary issue instructions pursuant to **Condition 30.11** requiring any such Defects to be rectified. No such instructions may be issued after the issue of the Making Good Defects Certificate.
- 33.4.** The Supervising Officer will issue a schedule of remaining Defects to the Provider no later than 10 Working Days after the expiry of the Defects Correction Period. When, in the opinion of the Supervising Officer, all Defects notified to the Provider have been made good to the Supervising Officer's reasonable satisfaction, the Supervising Officer will issue to the Provider a Making Good Defects Certificate.
- 33.5.** If the Provider fails to make good Defects to the reasonable satisfaction of the Supervising Officer by the date stipulated by the Supervising Officer in writing, or in the absence of such stipulation within a reasonable time of being notified of their existence, the Client may employ other persons to make good the Defects. The cost and expense incurred by the Client in doing so will be ascertained and certified by the Supervising Officer and the Client may deduct such sum from the monies payable to the Provider under the Order, or otherwise recover the same from the Provider by due process of law.

34. Taxation, Retention & Final Account

- 34.1.** For the purposes of the Construction Industry Scheme, the status of the Client is a 'contractor' pursuant to section 59(d) of the Finance Act 2004. The Provider will provide with each tax invoice all information required by section 63 of the Finance Act 2004 and as may be required by H M Revenue & Customs from time to time, and the Income Tax (Construction Industry Scheme) Regulations 2005 and the Income Tax (Construction Industry Scheme) (Amendment) Regulations 2007.
- 34.2.** Unless stated otherwise in the Order, the Client is an 'end-user' for the purposes of the Value Added Tax (Section 55A) (Specified Services and Excepted Supplies) Order 2019 (SI 2019/892) and the Provider will be responsible for payment to HMRC of any VAT properly due for the supply of goods and services pursuant to this contract in accordance the section 55A of the Value Added Tax Act 1994. Where the Client is not an 'end-user' for the purposes of SI 2019/892:

- section 55A of the Value Added Tax Act 1994 will apply to payments by the Client for the supply of goods and services pursuant to the Order; and
 - the Client is only required to pay an amount net of VAT to the Provider.
- 34.3.** Each payment to be made it in accordance with **Condition 3** and (where applicable) **Condition 26** is subject to compliance with the requirements of **Condition 34.1** and conditional upon the Provider having previously advised the Client of the Provider's Unique Taxpayer Reference Number as allocated to it by H M Revenue & Customs. The Provider acknowledges that its failure to provide its Unique Taxpayer Reference Number will mean that no proper application for payment has been made by it in accordance with **Condition 3** and (where applicable) **Condition 26**.
- 34.4.** Where the Order specifies that Retention is to be deducted from interim payments, unless specified otherwise in the Order, it will be due for payment to the Provider as follows:
- 50% upon the issue of the Practical Completion Certificate for the whole of the Commission;
 - 25% upon the issue of the Making Good Defects Certificate; and
 - the remainder in accordance with **Condition 34.7**, subject always to the Provider having provided sufficient supporting information as required by **Condition 34.5**.
- 34.5.** Within 10 Working Days of the issue of the issue of the Practical Completion Certificate for the whole of the Commission, the Provider will deliver to the Client a draft final account indicating the total Price adjusted in accordance with the terms of the Order and the basis on which that sum is calculated in the format stipulated in the preliminaries, together with all supporting documentation used in its preparation. The Provider and the Supervising Officer will use reasonable endeavours to agree the content of the final account within six months of the delivery of the draft final account and supporting documentation, subject in the event of the Provider or Supervising Officer being unable within that time to reach agreement, to either party's right to refer the matter to be finally determined in accordance with the provisions of with **Condition 19**.
- 34.6.** The agreed final account will only be formalised for payment on the happening of all the following events:
- the issuing of the issue of the Practical Completion Certificate for the whole of the Commission;
 - the issuing of the Making Good Defects Certificate; and
 - no dispute having been lodged in accordance with **Condition 19**.
- 34.7.** Within 10 Working Days of the final account being agreed between the parties or resolved in accordance with **Condition 19** and the conditions listed in **Condition 34.6** having been satisfied, the Supervising Officer will issue the Final Certificate to the Provider. The difference between:
- the total sum paid under all Payment Notices and any valid notice issued pursuant to **Condition 26.4**; and
 - the full value of the final account (as agreed or finally determined),

will be indicated in the Final Certificate as the sum which the Supervising Officer believes to be due to or from the Provider. Final payment of any sum due to or from the Provider (as the case may be) will then fall due 10 Working Days after the date of issue of the Final Certificate.

- 34.8.** The Provider undertakes to the Client that all financial statements and invoices given to the Client under the Order will properly reflect the fact of all activities and transactions made, or undertaken by the Provider in executing the Commission, and that such financial statements and invoices may be relied upon as being accurate and complete, in any further recording or reporting made by the Client. The Provider will notify the Client of any error in any statement, application or invoice and correct the same in writing, promptly upon discovery of any such error.

34A Termination of works

- 34A.1** If the Provider's engagement under the Order is terminated, the Client will not be bound to make any further payment to the Provider until the full and final cost of completion of the Commission by others is ascertained. Upon such cost being ascertained the amount of any damage, loss and/or expense suffered or incurred by the Client because of termination of the Provider's engagement under the Order will be notified by the Client to the Provider and, if such amount when added to the monies paid to the Provider before the date of termination exceeds the total value of work properly executed up to the date of termination, the difference may be claimed as a debt due to the Client by the Provider.
- 34A.2** If the Provider's engagement under the Order is terminated (notwithstanding that the validity of such termination is disputed) the Provider is to protect and secure the Commission immediately, leave the Site and deliver to the Client all Deliverables prepared by or, on behalf of, the Provider for the Commission. The Client will be entitled to employ others to complete the Commission and for that purpose such persons may use temporary buildings, scaffolding, ladders, machinery, plant, materials, and goods brought on to the Site by the Provider.

MODULE F: CONDITIONS APPLICABLE TO PROFESSIONAL SERVICES

35. Duty of Care

- 35.1.** The Client engages the Provider to undertake, and the Provider agrees to carry out, the Commission and all its duties and obligations under the Order exercising the standard of reasonable skill, care and diligence to be expected of a properly qualified member of the Provider's professional discipline experienced in undertaking commissions comparable in size, scope, complexity and purpose to the Commission.
- 35.2.** The Provider will exercise the level of skill, care and diligence referred to under **Condition 35.1** in connection with all statements made and advice given by the Provider relating to the Commission and the preparation of any documents, reports or other materials drawn up or created by the Provider in relation to the same.

36. Time for Performance

- 36.1.** The Commission will be performed by the Provider exercising the level of skill, care and diligence referred to under **Condition 35.1** having due regard to the time limits stated in the Order or (if none are stated) within a reasonable time, subject to any Variation reflecting the prolongation and/or increase in the scope of the Commission as a result of the Supervising Officer's instructions and/or other circumstances beyond the Provider's reasonable control.
- 36.2.** If the Order indicates the Commission is to be carried out in stages, the Provider will not proceed with any stage without the prior written authority of the Supervising Officer.

37. Personnel

- 37.1.** The Provider will provide suitably qualified personnel to carry out the Commission exercising the standard of reasonable skill, care and diligence required pursuant to **Condition 35.1**, having regard to current knowledge, information and good practice.
- 37.2.** Where the Order identifies any of the Provider's personnel as "Key Personnel", the Provider will procure that such personnel will:
- devote sufficient time and attention fulfilling their respective roles in connection with the Commission;
 - are not removed without the Client's prior written consent (such consent not to be unreasonably withheld or delayed), except in the event of:
 - death;
 - permanent incapacity;
 - an illness making the relevant individual unavailable for work; or
 - the relevant individual leaving the Provider's employment.
- 37.3.** The Client may at any time instruct the Provider to remove any person engaged in performing the Provider's obligations pursuant to the Order if, in the Client's reasonable opinion, that person's performance or conduct is unsatisfactory. The Provider will remove any such person promptly.

37.4. Any personnel appointed by the Provider to replace persons removed under **Condition 37.2** or **Condition 37.3** will be subject to the Client's prior written consent (such consent not to be unreasonably withheld or delayed).

38. Collaboration & attendance

38.1. The Provider will collaborate and work in consultation with any other consultants or contractors appointed now, or at any time by the Client, during the execution of the Commission.

38.2. The Provider will, if so required, attend upon a Committee of the Client, or any statutory or public body, on any matter concerning the Commission and will attend any meetings called by the Supervising Officer, make such reports concerning the Commission as the Supervising Officer may reasonably require.

38A. Limitation of Liability

38A.1 Where this Condition is stated to apply in the Order, subject to **Conditions 38A.2, 38A.3** and **38A.4** the Provider's liability to the Client:

- for physical loss or damage to property is limited to a sum equivalent to the level of public liability insurance cover to be maintained by the Provider in accordance with **Condition 5.2**; and
- for any other matter arising under or in connection with the Order, other than pursuant to **Conditions 6.3, 6.6, 40.7** and **41.15**, is limited to a sum equivalent to the level of professional indemnity insurance cover to be maintained by the Provider in accordance with **Condition 5.2** either:
 - for each and every claim, or series of claims arising out of any one event, or
 - where so specified in the Order, in aggregate,

and applies in contract, tort and otherwise to the extent allowed under the governing law,

38A.2 The limitations that apply under **Condition 38A.1** will be subject to any sub-limits or further limitations specified in the Order.

38A.3 Subject to **Condition 38A.4** neither party is liable to the other for any indirect, special, or consequential loss or damage.

38A.4 Neither party excludes nor limits its liability for:

- death or personal injury caused by its negligence, or that of its employees, agents, or sub-contractors;
- bribery, fraud or fraudulent misrepresentation by it or its employees, agents, or sub-contractors; or
- a wilful default of its obligations pursuant to the Order.

MODULE G: CONDITIONS RELATING TO DATA PROTECTION

39. Introduction

39.1. In this Module G (*Conditions relating to Data Protection*), unless the context in which the words appear requires otherwise, the following words and expressions will have the following meanings:

- **Consent** means a freely given, specific, informed and unambiguous indication (by a statement or by a clear affirmative action) by which the relevant Data Subject has agreed to the relevant transfer(s) and/or processing of the Shared Personal Data relating to him, her or they, that has not been withdrawn;
- **Data Loss Event** means any event that results, or may result, in unauthorised access to Personal Data held by the Provider under the Order, and/or actual or potential loss and/or destruction of Personal Data in breach of the Order, including any Personal Data Breach;
- **Data Processing Authorisation** means a written authorisation to process the Client's Personal Data issued by the Controller;
- **Data Protection Law** means the GDPR; the Data Protection Act 2018 to the extent that it relates to processing of personal data and privacy; and all applicable law relating to the processing of Personal Data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner;
- **Data Subject Access Request** means a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Law to access their Personal Data;
- **DP complaint** means a complaint or request relating to either party's obligations under Data Protection Law relevant to the Order and/or the processing of any of the Shared Personal Data, including any compensation claim from a Data Subject or any notice, investigation or other action from the Information Commissioner's Office (**ICO**) relating to the foregoing (and **Complainant** means the ICO, Data Subject or other person initiating or conducting a DP complaint);
- **GDPR** means the retained European Union law version of the General Data Protection Regulation ((EU) 2016/679) as it forms part of the law of England and Wales, Scotland, and Northern Ireland by virtue of section 3 of the European Union (Withdrawal) Act 2018 and as amended by Schedule 1 to the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019 (SI 2019/419);
- **Permitted Purpose** means the performance of the Commission under or pursuant to the Order and any other lawful purpose agreed on writing by the parties;
- **Protective Measures** means appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of such measures adopted by it;

- **Shared Personal Data** means Personal Data disclosed by one party to the other for the Permitted Purpose;
- **Sub-processor** means any third-party appointed to process Personal Data on behalf of the Provider related to the Order;

and references to **Controller, Processor, Data Subject, Personal Data, Personal Data Breach, and Data Protection Officer** are to be interpreted by reference to the meaning given to those terms in the prevailing Data Protection Law.

39.2. Where so stated in the Order, one or more of the following Conditions will apply to the Order.

40. Controller to Controller transfers within the EEA

40.1. The Provider does not act as the Processor for the Client pursuant to the Order. It is acknowledged by each party that they act as a Data Controller when processing the Shared Personal Data and no party is processing personal data on behalf of another party pursuant to the Order.

40.2. Each party will be a Controller of the Shared Personal Data. If a party shares the Shared Personal Data with another party, it will be shared and managed in accordance with the terms of **Condition 40**.

40.3. Each party will comply with all Data Protection Law in connection with the Order and with the exercise and performance of its rights and obligations under **Condition 40**.

40.4. Each party will ensure that:

- all Shared Personal Data transferred is accurate and up-to-date and is collected, processed, and transferred in accordance with Data Protection Law;
- each relevant Data Subject has been provided with sufficient information (in an appropriate form) to enable fair, transparent and lawful processing (including sharing) of the Shared Personal Data for the Permitted Purpose in accordance with the obligations of each party under the Data Protection Law;
- the Shared Personal Data is transferred and received in a secure manner using appropriate technical and organisational security measures complying with the obligations of each party under Data Protection Law;
- to the extent permitted by law, it will immediately notify each other party if it becomes aware of any change or circumstance which will, may or is alleged to impact the lawfulness of any processing of the Shared Personal Data (including if a Data Subject withdraws any necessary Consent or requests their Shared Personal Data is no longer processed or is erased or if any of the Shared Personal Data is not accurate or up-to-date), together with full details of the circumstances and (immediately once available) revised and corrected data;
- it will not by any act or omission cause the other party (or any other person) to be in breach of any Data Protection Law; and
- it will keep copies of all notices, Consents or other records and information necessary to demonstrate its compliance with **Condition 40** and promptly (and in any event within

5 Working Days) on request from time to time from the other party provide it with copies of all such notices, Consents or other records and information.

- 40.5.** Responsibility for compliance with and responding to:
- any Data Subject Access Request, falls on the party which first received such Data Subject Access Request;
 - any DP complaint, falls on the party which receives the DP complaint from a Complainant;
 - the respective obligations of each party in respect of any Personal Data Breach (including notification of the ICO and/or Data Subject(s)) impacting or relating to any Shared Personal Data in its possession or control (or any third party with whom it has shared such data) falls on the party responsible for the breach; and
 - the respective obligations of each party under Data Protection Law (including any obligation to notify the ICO and/or Data Subject(s) of any other Personal Data Breach) falls on the party subject to such obligation(s) under Data Protection Law.
- 40.6.** Each party will promptly co-operate with and provide reasonable assistance, information, and records to the other to assist the other party with its compliance with Data Protection Law and in relation to all DP complaints, Data Subject Access Requests, and investigations by the ICO.
- 40.7.** Without prejudice to any other right or remedy a party may have against another, each party (the **Responsible Party**) will be liable to the other party for:
- all losses, claims, damages, liabilities, fines, sanctions, interest, penalties, costs, charges, expenses, compensation paid to Data Subjects (including compensation to protect goodwill and ex gratia payments), demands and legal and other professional costs (in each case whether or not arising from any investigation by, or imposed by the ICO) incurred by the other party and arising out of or in connection with any breach by the Responsible Party of its obligations under **Conditions 40.2 to 40.6** (inclusive); and
 - all amounts paid or payable by the other party to a third-party which would not have been paid or payable if the Responsible Party's breach of **Conditions 40.2 to 40.6** (inclusive) had not occurred.
- 40.8.** Except as provided in **Condition 40.7**, each party will pay its own costs and expenses incurred in connection with the performance of this **Condition 40**.
- 40.9.** The provisions of **Condition 40** are intended to survive by their nature will survive upon termination or expiry of the Order and will continue indefinitely.
- 41. Data Processing on behalf of the Client within the EEA**
- 41.1.** Except as otherwise indicated in **Condition 41.16** (where applicable) or in the Order, for the purposes of the Data Protection Law the Client is the Controller in respect of the Client's Personal Data and the Client's Data Protection Officer is its Comptroller and City Solicitor. The Provider is the Processor.
- 41.2.** The Provider may not process the Client's Personal Data unless expressly authorised in writing to do so by a Data Processing Authorisation issued by the Controller. The Provider

must notify the Controller immediately if it considers that any of the Controller's instructions infringe the Data Protection Law.

41.3. Where required by the Controller, prior to commencing any processing the Provider must provide reasonable assistance to the Controller in the preparation of an assessment of the impact of the envisaged processing on the protection of Personal Data. At the discretion of the Controller, such assistance may include:

- a systematic description of the envisaged processing operations and the purpose of the processing;
- an assessment of the necessity and proportionality of the processing operations in relation to the Order;
- an assessment of the risks to the rights and freedoms of Data Subjects; and
- the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

41.4. In relation to any Personal Data processed pursuant to the Order, the Provider must:

- process that Personal Data only in accordance with the Data Processing Authorisation, unless the Provider is required to do otherwise by the applicable law. If it is so required, the Provider must promptly notify the Controller before processing the Personal Data unless prohibited by the applicable law;
- ensure that it has in place Protective Measures, which have been reviewed and approved by the Controller as appropriate to protect against a Data Loss Event having taken account of the:
 - nature of the data to be protected,
 - harm that might result from a Data Loss Event,
 - state of technological development, and
 - cost of implementing any measures;
- ensure that:
 - the Provider's personnel do not process Personal Data except in accordance with the Order and the Data Processing Authorisation,
 - it takes reasonable steps to ensure the reliability and integrity of any Provider personnel who have access to the Personal Data and ensure that they:
 - are aware of and comply with the Provider's duties under **Condition 41**,
 - are subject to appropriate confidentiality undertakings with the Provider or any Sub-processor,
 - are informed of the confidential nature of the Personal Data and do not publish, disclose, or divulge any of the Personal Data to any third-party unless directed in writing to do so by the Controller or as otherwise permitted by the Order, and

- have undergone adequate training in the use, care, protection, and handling of Personal Data; and
- not transfer Personal Data outside of the United Kingdom (except to a country or territory within the European Economic Area) unless the prior written consent of the Controller has been obtained and the following conditions are fulfilled:
 - the Controller or the Provider has provided appropriate safeguards in relation to the transfer (in accordance with Article 46 of the GDPR) as determined by the Controller,
 - the Data Subject has enforceable rights and effective legal remedies,
 - the Provider complies with its obligations under the Data Protection Law by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Controller in meeting its obligations), and
 - the Provider complies with any reasonable instructions notified to it in advance by the Controller with respect to the processing of the Personal Data; and
- at the written direction of the Controller, delete or return Personal Data (and any copies of it) to the Controller on termination of the Order unless the Provider is required by the applicable law to retain the Personal Data.

41.5. Subject to **Condition 41.6**, the Provider must notify the Controller immediately if it:

- receives a Data Subject Access Request (or purported Data Subject Access Request);
- receives a request to rectify, block or erase any Personal Data;
- receives any other request, complaint or communication relating to either party's obligations under the Data Protection Law;
- receives any communication from the Information Commissioner or any other regulatory authority relating to Personal Data processed under the Order;
- 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 applicable law; or
- becomes aware of a Data Loss Event.

41.6. The Provider's obligation to notify under **Condition 41.5** include the provision of further information to the Controller in phases, as details become available.

41.7. Taking into account the nature of the processing, the Provider must provide the Controller with full assistance in relation to either party's obligations under Data Protection Law and any complaint, communication or request made under **Condition 41.5** (and insofar as possible within the timescales reasonably required by the Controller) including by promptly providing:

- the Controller with full details and copies of the complaint, communication, or request;

- such assistance as is reasonably requested by the Controller to enable the Controller to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Law;
 - the Controller, at its request, with any Personal Data it holds in relation to a Data Subject;
 - assistance as requested by the Controller following any Data Loss Event;
 - assistance as requested by the Controller with respect to any request from the Information Commissioner's Office, or any consultation by the Controller with the Information Commissioner's Office.
- 41.8.** Except as provide otherwise in **Condition 41.9**, the Provider is to maintain complete and accurate records and information to demonstrate its compliance with **Condition 41**.
- 41.9.** The requirements set out in **Condition 41.8** do not apply where the Provider employs fewer than 250 staff, unless:
- the Controller determines that the processing is not occasional;
 - the Controller determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and
 - the Controller determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.
- 41.10.** The Provider must designate a Data Protection Officer if required by the Data Protection Law.
- 41.11.** Before allowing any Sub-processor to process any Personal Data related to the Order, the Provider must:
- notify the Controller in writing of the intended Sub-processor and processing;
 - obtain the written consent of the Controller;
 - enter into a written agreement with the Sub-processor which give effect to the terms set out in **Condition 41** such that they apply to the Sub-processor; and
 - provide the Controller with such information regarding the Sub-processor as the Controller may reasonably require.
- 41.12.** The Provider will remain liable for all acts or omissions of any Sub-processor.
- 41.13.** The Provider may, at any time on not less than 25 Working Days' notice, request that the terms of **Condition 41** as they apply to the Order be revised or replaced with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme which subject to the written agreement of the Controller will apply when incorporated by attachment to the Order.
- 41.14.** The Parties agree to take account of any guidance issued by the Information Commissioner's Office. The Controller may on not less than 25 Working Days' notice to the

Provider amend the Order to ensure that it complies with any guidance issued by the Information Commissioner's Office.

41.15. Notwithstanding any other provision of the Order, the Provider will be liable to the Controller for all direct, reasonably foreseeable and properly mitigated loss, debt, damage, interest, cost and expense (including legal fees and expenses of litigation) incurred by the Controller because of any breach by the Provider of the terms of **Condition 41**.

41.16. If the Client enters into the Order in its capacity as Police Authority, or the Order involves the processing of City of London Police Personal Data:

- the definition of **Data Protection Law** also includes EU Regulation 2016/680 (The Law Enforcement Directive);
- the Commissioner of Police for the City of London is the Controller for City of London Police Personal Data, and his Data Protection Officer is his Director of Information; and
- the Commissioner of Police for the City of London has the right pursuant to the Contracts (Rights of Third Parties) Act 1999, to enforce a term of the Order in respect of any confidentiality or data protection issues as if he were a party to the Order.

42. Data Transfers under separate agreement

42.1. Where so stated in the Order the parties will enter into either:

- Option A: an International Data Transfer Agreement;
- Option B: an International Data Transfer Addendum; or
- Option C: a bespoke data transfer or data sharing agreement on terms agreed between the parties,

(each being a **Data Transfer Agreement**).

42.2. The Provider must, within 10 Working Days of receipt of engrossments from the Client, execute and deliver to the Client the Data Transfer Agreement in the relevant form.

42.3. If the Provider fails to deliver to the Client the Data Transfer Agreement requested by the Client under **Condition 42.2** within the timescale specified in that Condition, the Client will be entitled to withhold any payment or further payment which would otherwise be due to the Provider under the Order until such Data Transfer Agreement has been so delivered to the Client.

MODULE H: THIRD PARTY RIGHTS

43. Application under the Order

- 43.1.** The following provisions of this Module H (*Third Party Rights*) will only apply if stated in the Order.
- 43.2.** The Client grants the rights in favour of a Beneficiary set out in Module H (*Third Party Rights*) to any person named as a Beneficiary in the Order.
- 43.3.** By written notice from time to time to the Provider the Client may grant the rights in favour of a Beneficiary set out in Module H (*Third Party Rights*) to any Funder, any Purchaser, or any Tenant. Such a notice will take effect on the date of the notice. The Client's notice will state the name of the person to whom the rights are granted and whether they are granted rights as a Funder, a Purchaser or a Tenant.
- 43.4.** The Client and the Provider cannot amend or vary the terms of Module H (*Third Party Rights*) applying to the Order without the consent of each person named as a Beneficiary:
- in the Order; and
 - in a notice issued by the Client under **Condition 43.3**.
- 43.5.** The benefit of the rights granted in favour of a Beneficiary under Module H (*Third Party Rights*) will in any event be subject to the limitations set out in **Condition 48**.

44. Duty of Care

- 44.1.** The Provider warrants to the Beneficiary that:
- where Module E (*Conditions Applicable to Works*) applies, it has complied, and will continue to comply, with its obligations under the Order; and
 - where Module F (*Conditions Applicable to Professional Services*) applies, it has carried out and will continue to carry out the Commission and all its duties and obligations under the Order exercising the standard of reasonable skill, care and diligence to be expected of a properly qualified member of the Provider's professional discipline experienced in undertaking commissions comparable in size, scope, complexity and purpose to the Commission.
- 44.2.** The Provider's duties and liabilities under the Order will not be negated or diminished by:
- any approval or inspection of the Commission or any designs or specifications for the Commission;
 - any testing of any work, goods, materials, plant, or equipment; or
 - any omission to approve, inspect or test,
- by or on behalf of the Beneficiary or the Client.

45. Copyright

- 45.1.** Where the Order states that **Condition 6.2** applies, the Provider grants to the Beneficiary an irrevocable, non-exclusive, non-terminable, royalty-free licence to copy and make full use of the Deliverables prepared by, or on behalf of, the Provider for any purpose relating

to the Commission or the property to which they relate, including the design, construction, completion, reconstruction, modification, refurbishment, development, maintenance, funding, disposal, letting, fitting-out, advertisement, demolition, reinstatement, extension, building information modelling and repair of such property.

45.2. The licence granted pursuant to **Condition 45.1**:

- allows the Beneficiary to use the Deliverables relating to any extension of the property, but not to reproduce the designs contained in the Deliverables in any such extension; and
- carries the right to grant sub-licences and is transferable to third parties without the consent of the Provider,

provided always that the Provider will not be liable for use of the Deliverables for any purpose other than that for which it was prepared and/or provided. Insofar as the Provider is the author (as referred to in the Copyright, Designs and Patents Act, 1988) of the Deliverables, the Provider waives any moral rights which it might otherwise be deemed to possess under Chapter IV of such Act in respect of the same. The Provider must procure for the Beneficiary a corresponding waiver from the author (as referred to in such Act) of the remainder of the Deliverables in respect of the same.

45.3. The Beneficiary may request a copy (or copies) of some or all the Deliverables from the Provider. On the Beneficiary's payment of the Provider's reasonable charges for providing the copy (or copies), the Provider will provide the copy (or copies) to the Beneficiary.

46. Insurances

46.1. The Provider grants the Beneficiary the right to enforce the Client's right to require the Provider to maintain insurances under **Condition 5.2**, as if the Beneficiary had been named, with the Client, in that Condition.

46.2. Whenever the Beneficiary reasonably requests, the Provider will send the Beneficiary evidence confirming that the Provider's insurances required under the Order are in force.

46.3. If required by the Beneficiary, the evidence required under **Condition 46.1** will be in the form of an original letter or certificate from the Provider's insurers or brokers.

47. Assignment

47.1. Subject to **Condition 47.3**, the benefit of the Beneficiary's rights under Module H (*Third Party Rights*) may be assigned by the Beneficiary by way of absolute legal assignment only without the consent of the Client and the Provider.

47.2. Subject to **Condition 47.3**, the Provider will not contend that any person to whom the benefit of the Beneficiary's rights under Module H (*Third Party Rights*) is assigned under **Condition 47.1** may not recover any sum under Module H because that person is an assignee and not the person originally named as a Beneficiary pursuant to **Condition 43.2** or **Condition 43.3**.

47.3. The benefit of the Beneficiary's rights under Module H (*Third Party Rights*) cannot be assigned under **Condition 47.1** on more than two occasions without the prior written

consent of the Provider and will in any event continue to be subject to the limitations set out in **Condition 48**.

48. Limitations

- 48.1.** The Beneficiary may not give instructions to the Provider under Module H (*Third Party Rights*).
- 48.2.** The Provider owes no greater obligations to the Beneficiary under Module H (*Third Party Rights*) than it owes to the Client under this Order. In proceedings for breach of the Provider's obligations under Module H (*Third Party Rights*) the Provider may:
- rely on any limit of liability or other term of the Order; and
 - raise equivalent rights of defence as it would have had if the Beneficiary had been named as a joint client, with the Client, under the Order (for this purpose not taking into account any set-off or counterclaim against the Client under the Order).
- 48.3.** The Beneficiary may not commence any legal action against the Provider under Module H (*Third Party Rights*) after the expiry of the Limitation Period.

MODULE I: EMPLOYEE TRANSFERS

49. Interpretation

Where a provision in this Module imposes an obligation on the Provider to provide an indemnity, undertaking or warranty, the Provider will procure that each of its sub-contractors complies with such obligation and provide such indemnity, undertaking or warranty to the Client, Former Contractor or Replacement Contractor, as the case may be and where the sub-contractor fails to satisfy any claims under such indemnity, undertaking or warranty, the Provider will be liable for satisfying any such claim as if it had provided the indemnity, undertaking or warranty itself.

50. Transfers to the Provider

50.1 Relevant Transfers

50.1.1 The parties agree that the commencement of the Commission or of any relevant part of the Commission will be a Relevant Transfer in relation to the Transferring Former Contractor Employees; and

50.1.2 The Client will procure that each Former Contractor complies with all its obligations under the Employment Regulations and performs and discharges all its obligations in respect of all the Transferring Former Contractor Employees in respect of the period up to (but not including) the date of the Relevant Transfer (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part in respect of the period up to (but not including) the date of the Relevant Transfer) and the Provider will make (and the Client will procure that each Former Contractor makes), any necessary apportionments in respect of any periodic payments.

50.2 Former Contractor Indemnities

50.2.1 Subject to **Condition 50.2.2**, the Client will procure that each Former Contractor indemnifies the Provider and any Notified Sub-Contractor against any Employee Liabilities in respect of any Transferring Former Contractor Employee (or, where applicable any employee representative as defined in the Employment Regulations) arising from or because of:

50.2.1.1 any act or omission by the Former Contractor arising before the date of the Relevant Transfer;

50.2.1.2 the breach or non-observance by the Former Contractor arising before the date of the Relevant Transfer of:

(a) any collective agreement applicable to the Transferring Former Contractor Employees; and/or

(b) any custom or practice in respect of any Transferring Former Contractor Employees which the Former Contractor is contractually bound to honour.

- 50.2.1.3 any proceeding, claim or demand by HMRC or other statutory provider in respect of any financial obligation including PAYE and primary and secondary national insurance contributions:
- (a) in relation to any Transferring Former Contractor Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authorities relates to financial obligations arising before the date of the Relevant Transfer; and
 - (b) in relation to any employee who is not a Transferring Former Contractor Employee and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer their employment from the Former Contractor to the Provider and/or any Notified Sub-Contractor as appropriate, to the extent that the proceeding, claim or demand by HMRC or other statutory authorities relates to financial obligations in respect of the period to (but excluding) the date of the Relevant Transfer;
- 50.2.1.4 a failure of the Former Contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Former Contractor Employees in respect of the period to (but excluding) the date of the Relevant Transfer; and
- 50.2.1.5 any claim made by or in respect of a Transferring Former Contractor Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Contractor Employee relating to any act or omission of the Former Contractor in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the Provider or any sub-contractor to comply with regulation 13(4) of the Employment Regulations.
- 50.2.2 The indemnities in **Condition 50.2.1** will not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Provider or any sub-contractor whether occurring or having its origin before, on or after the date of the Relevant Transfer, including any Employee Liabilities:
- 50.2.2.1 arising out of the resignation of any Transferring Former Contractor Employee before the date of the Relevant Transfer on account of substantial detrimental changes to their working conditions proposed by the Provider or any sub-contractor to occur in the period from (and including) the date of the Relevant Transfer); or
 - 50.2.2.2 arising from the failure by the Provider and/or any sub-contractor to comply with its obligations under the Employment Regulations).

50.3 Provider Indemnities and Obligations

- 50.3.1 Subject to **Condition 50.3.2**, the Provider will indemnify the Client and/or the Former Contractor against any Employee Liabilities in respect of any Transferring Former Contractor Employee (or, where applicable any employee representative as defined in the Employment Regulations) arising from or as a result of:
- 50.3.1.1 any act or omission by the Provider or any sub-contractor whether occurring before, on or after the date of the Relevant Transfer;
 - 50.3.1.2 the breach or non-observance by the Provider or any sub-contractor on or after the date of the Relevant Transfer of:
 - (a) any collective agreement applicable to the Transferring Former Contractor Employee; and/or
 - (b) any custom or practice in respect of any Transferring Former Contractor Employees which the Provider or any sub-contractor is contractually bound to honour;
 - 50.3.1.3 any claim by any trade union or other body or person representing any Transferring Former Contractor Employees arising from or connected with any failure by the Provider or a sub-contractor to comply with any legal obligation to such trade union, body or person arising on or after the date of the Relevant Transfer;
 - 50.3.1.4 any proposal by the Provider or a sub-contractor prior to the date of the Relevant Transfer to change the terms and conditions of employment or working conditions of any Transferring Former Contractor Employees on or after their transfer to the Provider or a sub-contractor (as the case may be) on the date of the Relevant Transfer, or to change the terms and conditions of employment or working conditions of any person who would have been a Transferring Former Contractor Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the date of the Relevant Transfer as a result of or for a reason connected to such proposed changes;
 - 50.3.1.5 any statement communicated to, or action undertaken by the Provider or a sub-contractor to, or in respect of, any Transferring Former Contractor Employee before the date of the Relevant Transfer regarding the Relevant Transfer which has not been agreed in advance with the Client and/or the Former Contractor in writing;

- 50.3.1.6 any proceeding, claim or demand by HMRC or other statutory authorities in respect of any financial obligation, including PAYE and primary and secondary national insurance contributions:
- (a) in relation to any Transferring Former Contractor Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authorities relates to financial obligations arising on or after the date of the Relevant Transfer; and
 - (b) in relation to any employee who is not a Transferring Former Contractor Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied so as to transfer their employment from the Former Contractor to the Provider or a sub-contractor, to the extent that the proceeding, claim or demand by the HMRC or other statutory authorities relates to financial obligations arising on or after the date of the Relevant Transfer;
- 50.3.1.7 a failure of the Provider or any sub-contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Former Contractor Employees in respect of the period from (and including) the date of the Relevant Transfer; and
- 50.3.1.8 any claim made by or in respect of a Transferring Former Contractor Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Former Contractor Employee relating to any act or omission of the Provider or any sub-contractor in relation to obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the Former Contractor's failure to comply with its obligations under regulation 13 of the Employment Regulations.
- 50.3.2 The indemnities in **Condition 50.3.1** will not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Former Contractor whether occurring or having its origin before, on or after the date of the Relevant Transfer, including any Employee Liabilities arising from the Former Contractor's failure to comply with its obligations under the Employment Regulations.
- 50.3.3 The Provider will comply, and procure that each sub-contractor complies, with all its obligations under the Employment Regulations (including its obligation to inform and consult in accordance with regulation 13 of the Employment Regulations) and perform and discharge, and procure that each sub-contractor performs and discharges, all its obligations in respect of all the Transferring Former Contractor Employees, on and from the date of the Relevant Transfer (including the payment of all remuneration, benefits, entitlements and outgoings, all wages,

accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part to the period from (and including) the date of the Relevant Transfer) and any necessary apportionments in respect of any periodic payments will be made between the Provider and the Former Contractor.

50.4 Information

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

50.5 Procurement Obligations

Notwithstanding any other provision in **Condition 50**, where in this **Condition 50** the Client accepts an obligation to procure that a Former Contractor does or does not do something, such obligation is limited so that it requires only that the Client must use reasonable endeavours to procure that the Former Contractor does or does not act accordingly.

50.6 Pensions

The Provider will, and procures that each sub-contractor will, comply with the pension provisions in **Condition 53** where any Transferring Former Contractor Employees transfer from the Former Contractor to the Provider or such sub-contractor is an Eligible Employee.

51. Redundancy Surcharge

51.1 Subject to **Conditions 51.2, 51.3** and **51.4**, where the Provider or any Notified Sub-Contractor makes or intends to make a Redundancy Payment in relation to the termination of employment of any Affected Employee as a direct result of the Client instigated variation of the Commission, the Provider may be entitled to a Redundancy Surcharge.

51.2 The Provider will not be entitled to a Redundancy Surcharge unless, before any relevant termination for redundancy is made, it has:

51.2.1 consulted the Client about the proposal to make any such termination for redundancy;

51.2.2 provided the Client with written estimates of any relevant Redundancy Payment together with a breakdown of such estimates and such supporting evidence as the Client may reasonably request to corroborate and assess the calculations; and

- 51.2.3 provided the Client with details of the steps the Provider, or the Notified Sub-Contractor (as applicable), has taken (or proposes to take) to mitigate such costs in accordance with **Condition 51.4**.
- 51.3 The Provider will not be entitled to a Redundancy Surcharge unless it, or the Notified Sub-Contractor (as applicable), has followed a fair dismissal procedure and complied with all contractual and legislative requirements (save for a breach of notice entitlement where payment is made on termination in satisfaction of the Affected Employee's claim for damages) in respect of each termination for redundancy to which the Redundancy Surcharge relates.
- 51.4 The Provider will (or, where relevant, procures that the Notified Sub-Contractor will) avoid having to make, or mitigate the extent of, any Redundancy Payment by:
- 51.4.1 redeploying any relevant person where it is practicable to do so;
- 51.4.2 where redeployment is not practicable, taking reasonable steps to minimise the amount of Redundancy Payment, including requiring employees to work their notice where this is practicable;
- 51.4.3 complying with the law and any reasonable instructions.
- 51.5 The Provider will not be entitled to a Redundancy Surcharge unless:
- 51.5.1 the Provider (or, where relevant, Notified Sub-Contractor) has consulted with the Client, under **Condition 51.2.1**, within one month of receiving notice from the Client of the building closure or removal of service(s); and
- 51.5.2 the employment of any employee to whom the Redundancy Payment relates is terminated for redundancy no later than one month after the relevant building closure or removal of service(s).
- 51.6 On receipt of the Provider's calculation of the Redundancy Payments, the Client will either:
- 51.6.1 notify the Provider in writing of acceptance of the Redundancy Surcharge relating to the relevant building closure or removal of service(s); and/or
- 51.6.2 request further information/evidence; and/ or
- 51.6.3 request a meeting to discuss/clarify the evidence provided.
- 51.7 Where the Redundancy Surcharge is agreed following the receipt of further information/evidence or following a meeting, the Client will notify the Provider in writing.
- 51.8 If the Provider and the Client are unable to agree the Redundancy Surcharge, they will follow the procedures for dispute resolution prescribed by **Condition 19**.

52. Employment Exit Provisions

52.1 Pre-Transfer Obligations

- 52.1.1 The Provider agrees that within 20 Working Days of the earliest of:
- 52.1.1.1 receipt of a notification from the Client of a Transfer or intended Transfer;

52.1.1.2 receipt of the giving of notice of early termination or any partial termination of the engagement of the Provider under the Order; and

52.1.1.3 receipt of a written request of the Client at any time (provided that the Client will only be entitled to make one such request in any six-month period),

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

52.1.2 At least 20 Working Days prior to the Transfer, the Provider will provide to the Client or at the direction of the Client to any Replacement Contractor:

52.1.2.1 the Provider's Final Personnel List, which identifies which of the Staff are Transferring Provider Employees; and

52.1.2.2 the Staffing Information in relation to the Provider's Final Personnel List (insofar as such information has not previously been provided).

52.1.3 The Client will be permitted to use and disclose information provided by the Provider under **Condition 52.1.1** and **Condition 52.1.2** for the purpose of informing any prospective Replacement Contractor.

52.1.4 The Provider warrants, for the benefit of the Client and any Replacement Contractor that all information provided under **Condition 52.1.1** and **Condition 52.1.2** will be true and accurate in all material respects.

52.1.5 From the date of the earliest event referred to in **Condition 52.1.1**, the Provider agrees, that it will not, and agrees to procure that each sub-contractor will not, assign any person to the provision of the Commission who is not listed on the Provider's Provisional Personnel List and will not without the Approval of the Client (not to be unreasonably withheld or delayed):

52.1.5.1 replace or re-deploy any personnel listed on the Provider's Provisional Personnel List other than where any replacement is of equivalent grade, skills, experience and expertise and is employed on the same terms and conditions of employment as the person he/she replaces;

52.1.5.2 make, promise, propose or permit any material changes to the terms and conditions of employment of the Provider's personnel who assigned to the Commission, including any payments connected with the termination of employment;

52.1.5.3 increase the proportion of working time spent on the Commission (or the relevant part of the Commission) by any of the Provider's personnel save for fulfilling assignments and projects previously scheduled and agreed;

- 52.1.5.4 introduce any new contractual or customary practice concerning the making of any lump sum payment on the termination of employment of any employees listed on the Provider's Provisional Personnel List;
- 52.1.5.5 increase or reduce the total number of employees so engaged, or deploy any other person to perform the Commission (or the relevant part of the Commission); or
- 52.1.5.6 terminate or give notice to terminate the employment or contracts of any persons on the Provider's Provisional Personnel List save by due disciplinary process,

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

- 52.1.6 The Provider will provide to the Client any information the Client may reasonably require relating to any individual employed, assigned or engaged in providing the Commission (subject to any limitations imposed by the Data Protection Law), including the Staffing Information and, upon reasonable request by the Client and subject only to any limitation imposed by the Data Protection Law, the Provider will provide, and will procure that each sub-contractor provides, the Client or, at the direction of the Client to a Replacement Contractor with access (on reasonable notice and during normal working hours) to such employment records as the Client reasonably requests and will allow the Client or at the Client's direction, the Replacement Contractor to have copies of any such documents.
- 52.1.7 The Provider will provide, and procures that each sub-contractor will provide, all reasonable cooperation and assistance to the Client, any Replacement Contractor to ensure the smooth transfer of the Transferring Provider Employees on the Transfer including providing sufficient information in advance of the Transfer to ensure that all necessary payroll arrangements can be made to enable the Transferring Provider Employees to be paid as appropriate. Without prejudice to the generality of the foregoing, within 5 Working Days following the Transfer, the Provider will provide, and procures that each sub-contractor will provide, the Client or, at the direction of the Client, to any Replacement Contractor, in respect of each person on the Provider's Final Personnel List who is a Transferring Provider Employee:
 - 52.1.7.1 the most recent month's copy pay slip data;
 - 52.1.7.2 details of cumulative pay for tax and pension purposes;
 - 52.1.7.3 details of cumulative tax paid;
 - 52.1.7.4 tax code;

- 52.1.7.5 details of any voluntary deductions from pay; and
- 52.1.7.6 bank/building society account details for payroll purposes.

52.2 Employment Regulations Exit Provisions

- 52.2.1 The Client and the Provider acknowledge that after the starting date, the identity of the person performing the Commission (or any part of the Commission) may change (whether because of termination or partial termination of the engagement of the Provider under the Order or otherwise) resulting in the Commission (or relevant part of the Commission) being undertaken by a Replacement Contractor. Such change in the identity the person performing the Commission (or any part of the Commission) may constitute a Relevant Transfer to which the Employment Regulations and/or the Acquired Rights Directive will apply.
- 52.2.2 The Provider will, and procures that each sub-contractor will, comply with all its obligations in respect of the Transferring Provider Employees arising under the Employment Regulations in respect of the period up to the Transfer (including the payment of all remuneration, benefits, entitlements and outgoings, all wages, accrued but untaken holiday pay, bonuses, commissions, payments of PAYE, national insurance contributions and pension contributions which in any case are attributable in whole or in part to the period ending on the date of the Transfer) and any necessary apportionments in respect of any periodic payments will be made between: (i) the Provider and/or the sub-contractor (as appropriate); and (ii) the Replacement Contractor.
- 52.2.3 Subject to **Condition 52.2.4**, the Provider will indemnify the Client and/or the Replacement Contractor against any Employee Liabilities in respect of any Transferring Provider Employee (or, where applicable any employee representative as defined in the Employment Regulations) arising from or as a result of:
 - 52.2.3.1 any act or omission of the Provider or any sub-contractor whether occurring before, on or after the Transfer;
 - 52.2.3.2 the breach or non-observance by the Provider or any sub-contractor occurring on or before the Transfer of:
 - (a) any collective agreement applicable to the Transferring Provider Employees; and/or
 - (b) any other custom or practice with a trade union or staff association in respect of any Transferring Provider Employees which the Provider or any sub-contractor is contractually bound to honour;
 - 52.2.3.3 any claim by any trade union or other body or person representing any Transferring Provider Employees arising from or connected with any failure by the Provider or a sub-contractor to comply with any

- legal obligation to such trade union, body or person arising on or before the Transfer;
- 52.2.3.4 any proceeding, claim or demand by HMRC or other statutory authorities in respect of any financial obligation, including PAYE and primary and secondary national insurance contributions:
- (a) in relation to any Transferring Provider Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authorities relates to financial obligations arising on and before the Transfer; and
 - (b) in relation to any employee who is not a Transferring Provider Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied to transfer their employment from the Provider to the Client and/or Replacement Contractor, to the extent that the proceeding, claim or demand by HMRC or other statutory authorities relates to financial obligations arising on or before the Transfer;
- 52.2.3.5 a failure of the Provider or any sub-contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Provider Employees in respect of the period up to the Transfer);
- 52.2.3.6 any claim made by or in respect of any person employed or formerly employed by the Provider or any sub-contractor other than a Transferring Provider Employee for whom it is alleged the Client and/or the Replacement Contractor may be liable by virtue of the Order and/or the Employment Regulations and/or the Acquired Rights Directive; and
- 52.2.3.7 any claim made by or in respect of a Transferring Provider Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Provider Employee relating to any act or omission of the Provider or any sub-contractor in relation to its obligations under regulation 13 of the Employment Regulations, except to the extent that the liability arises from the failure by the Client and/or Replacement Contractor to comply with regulation 13(4) of the Employment Regulations.
- 52.2.4 The indemnities in **Condition 52.2.3** will not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Replacement Contractor whether occurring or having its origin before or after the Transfer, including any Employee Liabilities:
- 52.2.4.1 arising out of the resignation of any Transferring Provider Employee before the Transfer on account of substantial detrimental changes

- to their working conditions proposed by the Replacement Contractor to occur after the Transfer); or
- 52.2.4.2 arising from the Replacement Contractor's failure to comply with its obligations under the Employment Regulations.
- 52.2.5 The Provider will, and procures that each sub-contractor will, promptly provide to the Client and any Replacement Contractor in writing such information as is necessary to enable the Client and/or the Replacement Contractor to carry out their respective duties under regulation 13 of the Employment Regulations. The Client will procure that the Replacement Contractor promptly provides to the Provider and each sub-contractor in writing such information as is necessary to enable the Provider and each sub-contractor to carry out their respective duties under regulation 13 of the Employment Regulations.
- 52.2.6 Subject to **Condition 52.2.7**, the Client will procure that the Replacement Contractor indemnifies the Provider against any Employee Liabilities in respect of each Transferring Provider Employee (or, where applicable any employee representative (as defined in the Employment Regulations) of any Transferring Provider Employee) arising from or as a result of:
- 52.2.6.1 any act or omission of the Replacement Contractor;
- 52.2.6.2 the breach or non-observance by the Replacement Contractor the Transfer of:
- (a) any collective agreement applicable to the Transferring Provider Employees; and/or
- (b) any custom or practice in respect of any Transferring Provider Employees which the Replacement Contractor is contractually bound to honour;
- 52.2.6.3 any claim by any trade union or other body or person representing any Transferring Provider Employees arising from or connected with any failure by the Replacement Contractor to comply with any legal obligation to such trade union, body or person arising on or after the date of the Relevant Transfer;
- 52.2.6.4 any proposal by the Replacement Contractor to change the terms and conditions of employment or working conditions of any Transferring Provider Employees on or after their transfer to the Replacement Contractor on the date of the Relevant Transfer, or to change the terms and conditions of employment or working conditions of any person who would have been a Transferring Provider Employee but for their resignation (or decision to treat their employment as terminated under regulation 4(9) of the Employment Regulations) before the date of the Relevant Transfer as a result of or for a reason connected to such proposed changes;

- 52.2.6.5 any statement communicated to, or action undertaken by the Replacement Contractor to, or in respect of, any Transferring Provider Employee on or before the date of the Relevant Transfer regarding the Relevant Transfer which has not been agreed in advance with the Provider in writing;
- 52.2.6.6 any proceeding, claim or demand by HMRC or other statutory authorities in respect of any financial obligation, including PAYE and primary and secondary national insurance contributions:
- (a) in relation to any Transferring Provider Employee, to the extent that the proceeding, claim or demand by HMRC or other statutory authorities relates to financial obligations arising after the Transfer; and
 - (b) in relation to any employee who is not a Transferring Provider Employee, and in respect of whom it is later alleged or determined that the Employment Regulations applied to transfer their employment from the Provider or sub-contractor to the Replacement Contractor to the extent that the proceeding, claim or demand by HMRC or other statutory authorities relates to financial obligations arising after the Transfer;
- 52.2.6.7 a failure of the Replacement Contractor to discharge or procure the discharge of all wages, salaries and all other benefits and all PAYE tax deductions and national insurance contributions relating to the Transferring Provider Employees in respect of the period from the Transfer; and
- 52.2.6.8 any claim made by or in respect of a Transferring Provider Employee or any appropriate employee representative (as defined in the Employment Regulations) of any Transferring Provider Employee relating to any act or omission of the Replacement Contractor in relation to obligations under regulation 13 of the Employment Regulations.
- 52.2.7 The indemnities in **Condition 52.2.6** will not apply to the extent that the Employee Liabilities arise or are attributable to an act or omission of the Provider and/or any sub-contractor (as applicable) whether occurring or having its origin before, on or after the date of the Relevant Transfer, including any Employee Liabilities arising from the failure by the Provider and/or any sub-contractor (as applicable) to comply with its obligations under the Employment Regulations.
- 52.2.8 Where in **Condition 51** the Client accepts an obligation to procure that a Replacement Contractor does or does not do something, such obligation will be limited so that it requires only that the Client must use reasonable endeavours to procure that the Replacement Contractor does or does not act accordingly.

53. Local Government Pension Scheme

53.1 Becoming an Admission Body

The Provider or a sub-contractor after the Transfer will offer each Eligible Employee membership of the LGPS, and the Provider procures that it and/or each relevant sub-contractor will become an Admission Body. The Provider will before the Transfer execute and procure that each relevant sub-contractor executes an Admission Agreement which will have effect from date of the Transfer.

53.2 Funding

The Client will procure that the Fund will be notionally fully funded on the basis used for the purposes of the triennial valuation of the Fund immediately prior to the Transfer in respect of each Eligible Employee's benefits accrued prior to the Transfer. This **Condition 53.2** does not apply to any funding in respect of each Eligible Employee's benefits accruing after the Transfer which will be the responsibility of the Provider and/or any relevant sub-contractor pursuant to **Condition 53.6** and **Condition 53.7**.

53.3 Breach of Admission Agreement

Without prejudice to the generality of Module I, the Provider hereby indemnifies the Client and/or any Replacement Contractor and, in each case, their sub-contractors on demand from and against all damage, losses, liabilities, claims, actions, costs, expenses (including the cost of legal or professional services, legal costs being on an agent/client, client paying basis), proceedings, demands and charges whether arising under statute, contract or at common law suffered or incurred by it or them which arise from any breach by the Provider or any of its sub-contractor of the terms of the Admission Agreement to the extent that such liability arises before or as a result of the termination or expiry of the engagement of the Provider under the Order (howsoever caused).

53.4 Indemnity or Bond

The Provider will procure that it and each relevant sub-contractor will as soon as reasonably practicable obtain any guarantee, indemnity or bond required in accordance with the Admission Agreements, such guarantee, indemnity or bond to be put in place no later than 4 weeks prior to the Transfer in a form prescribed by the Administering Authority (Pension Bond).

53.5 Set Off

The Client will have a right to set off against any payments due to the Provider under the Order an amount equal to any overdue employer and employee contributions and other payments (and interest payable under the LGPS Regulations) due from the Provider or from any relevant sub-contractor (as applicable) under the Admission Agreement.

53.6 Employer Contribution

53.6.1 The Provider and each relevant sub-contractor will pay to the Administering Authority, for the credit of the Provider, such employer contributions as are due under the LGPS Regulations and the Admission Agreement in respect of each Eligible Employee.

- 53.6.2 The employer contributions payable in accordance with a rates and adjustments certificate as set out in regulation 62 of the LGPS Regulations (the “**ordinary employer contributions**”) by the Provider and each relevant sub-contractor will be calculated exclusive of any additional contributions which may be required to be paid by the Provider and/or each relevant sub-contractor to the LGPS by reason of:
- 53.6.2.1 any retirement on redundancy under Regulation 19 of the Local Government Pension Scheme (Benefits, Membership and Contributions) Regulations 2007 as amended, re-enacted, superseded or modified from time to time (“**Benefits Regulations**”);
 - 53.6.2.2 an award of added years under Regulation 12 of the Benefits Regulations or an award of an additional pension under Regulation 13 of the Benefits Regulations;
 - 53.6.2.3 any early retirement pension payable under Regulation 30 of the Benefits Regulations to any active or deferred member of the LGPS or the waiver of any actuarial reduction under Regulation 30(4) of the Benefits Regulations;
 - 53.6.2.4 the payment of any pensions early under Regulation 18 of the Benefits Regulations (flexible retirement) and any waiver of the actuarial reduction under Regulation 18(3);
 - 53.6.2.5 the exercise by the Provider and/or any relevant sub-contractor of any of its discretions under the Benefits Regulations;
 - 53.6.2.6 any waiver of employee contributions.
- 53.6.3 Any contributions or payments payable by the Provider or any sub-contractor by reason of any event specified in **Condition 53.6.2** or for any other reason specified in the LGPS Regulations or the Admission Agreement will be payable by the Provider or relevant sub-contractor in addition to any ordinary employer contributions payable pursuant to **Condition 53.6.2**.
- 53.7 **Provider’s Undertakings**
- 53.7.1 The Provider undertakes to the Client (for the benefit of the Client itself and for the Client as agent and trustee for the benefit of each Eligible Employee) that:
- 53.7.1.1 all information which the Client or their respective professional advisers may reasonably request from the Provider or any relevant sub-contractor for the administration of the LGPS or concerning any other matters raised in this **Condition 53.7** will be supplied to them as expeditiously as possible;
 - 53.7.1.2 it will not and procures that any relevant sub-contractor will not, without the consent in writing of the Client (which will only be given subject to the payment by the Provider or the relevant sub-contractor of such reasonable costs as the Client may require) consent to instigate, encourage or assist any event which could

impose on the LGPS or on the Client a cost in respect of any Eligible Employee greater than the cost which would have been payable in respect of that Eligible Employee had that consent, instigation, encouragement or assistance not been given;

- 53.7.1.3 until the Transfer, it will not and procures that any relevant sub-contractor will not issue any announcements (whether in writing or not) to any Eligible Employee concerning the matters stated in **Condition 53** without the consent in writing of the Client (not to be unreasonably withheld or delayed);
- 53.7.1.4 it will not and procures that any relevant sub-contractor will not take or omit to take any action which would materially affect the benefits under the LGPS of any Eligible Employee who is or will be employed wholly or partially in connection with the Commission without the prior written agreement of the Client (not to be unreasonably withheld or delayed) provided that the Provider and/or such sub-contractor will be so entitled without the requirement of consent to give effect to any pre-existing contractual obligations to any Eligible Employee; and
- 53.7.1.5 it will and procures that any relevant sub-contractor will offer any of its Eligible Employees who cease to be engaged in the provision of the Commission and thereby cease to be eligible for membership of the LGPS membership of a pension scheme which complies with the requirements of sections 257 and 258 of the Pensions Act 2004 and the Transfer of Employment (Pension Protection) Regulations 2005 as soon as reasonably practicable after ceasing to be so engaged.

53.8 Eligible Employee Claims

- 53.8.1 The Provider hereby indemnifies the Client and/or any Replacement Contractor and, in each case, their sub-contractors from and against all damage, losses, liabilities, claims, actions, costs, expenses (including the cost of legal or professional services, legal costs being on an agent/client, client paying basis), proceedings, demands and charges whether arising under statute, contract or at common law suffered or incurred by it or them which arise from claims by any Eligible Employee of the Provider and/or of any sub-contractor or by any trade unions, elected employee representatives or staff associations in respect of any such Eligible Employee which losses:
 - 53.8.1.1 relate to pension rights in respect of periods of employment after the Transfer until the date of termination or expiry of the engagement of the Provider under the Order; or
 - 53.8.1.2 arise out of the failure of the Provider and/or any relevant sub-contractor to comply with the provisions of this Module I before the date of termination or expiry of the engagement of the Provider under the Order,

unless such losses are the direct result of an act or omission of the Client.

53.9 **Costs**

53.9.1 The costs of the Client necessarily and reasonably incurred in connection with the Admission Agreement will be borne by the Client; and

53.9.2 The administration or actuarial costs of the Provider necessarily and reasonably incurred in relation the Admission Agreement will be borne by the Provider.

53.10 **Transfers to another Employer**

53.10.1 Except on expiry or termination of the engagement of the Provider under the Order, if the employment of any Eligible Employee transfers to another employer (by way of a transfer under TUPE) the Provider will and procures that any relevant sub-contractor will:

53.10.1.1 consult with and inform such Eligible Employee of the pension provisions relating to that transfer; and

53.10.1.2 procure that the employer to which the Eligible Employee is transferred (the “**New Employer**”) complies with **Condition 53** provided that references to the “**sub-contractor**” will become references to the New Employer, references to “**date of the Relevant Transfer**” will become references to the date of the transfer to the New Employer and references to an “**Eligible Employee**” will become references to the Eligible Employee so transferred to the New Employer.

53.11 **Pension Issues on Expiry or Termination**

53.11.1 The Provider will and procures that any relevant sub-contractor will:

53.11.1.1 maintain such documents and information as will be reasonably required to manage the pension aspects of any onward transfer of any person engaged or employed by the Provider or any sub-contractor in the provision of the Commission on the expiry or termination of the engagement of the Provider under the Order, including identification of any Eligible Employee;

53.11.1.2 promptly provide to the Client such documents and information mentioned in **Condition 53.11.1.1** which the Client may reasonably request in advance of the expiry or termination of the engagement of the Provider under the Order; and

53.11.1.3 fully co-operate (and procure that the trustees of the Provider's Scheme will fully co-operate) with the reasonable requests of the Client relating to any administrative tasks necessary to deal with the pension aspects of any onward transfer of any person engaged or employed by the Provider or any sub-contractor in the provision of the Commission on the expiry or termination of the engagement of the Provider under the Order.

53.12 Discretionary Benefits

- 53.12.1 Where the Provider or a sub-contractor is an Admission Body, the Provider will and procures that the sub-contractor will award benefits to any Eligible Employee under the Compensation Regulations and/or the LGPS Regulations in circumstances where such Eligible Employee would have received or have been entitled to receive such benefits had they still been employed by the Client; or
- 53.12.2 Where benefits described in **Condition 53.12.1** are of a discretionary nature, those benefits will be awarded to any Eligible Employee on the basis of the Client's written policy in relation to such benefits in force at the time of the Transfer. Where the payment of such benefits to or in respect of any Eligible Employee is not, for any reason, possible, the Provider will and procures that any sub-contractor will compensate such Eligible Employee in a manner which is broadly comparable or equivalent to such benefits in cash terms.