

## (HMS) SUBCONTRACT CONDITIONS Revised August 2021

### 1. DEFINITIONS

- 1.1. "Acceptance" is defined in clause 2.2, and "Accepted" shall be construed accordingly.
- 1.2. "Agreement" means the agreement pursuant to which these Conditions are annexed, including its Recitals, Articles and Contract Data.
- 1.3. "Application Date" means each date as specified in the Contract Data.
- 1.4. "Contract" has the meaning given in Article 1.
- 1.5. "Conditions" means the clauses set out in sections 1 to 28 of these Conditions, which govern this Contract.
- 1.6. "Confidential Information" means any information in whatever form (including, without limitation, in written, oral, visual or electronic form or on any magnetic or optical disk or memory and wherever located) relating to the business, clients, customers, products, affairs and finances of the Contractor or any group company of the Contractor or LMH Group, or trade secrets (including, without limitation, technical data and know-how relating to the business of the Contractor or any of its or its suppliers, clients, customers, agents, distributors, shareholders or management) which is not in the public domain at the time this Contract is made.
- 1.7. "Contract Area" means the area set out in the first Recital.
- 1.8. "Contract Data" means the specific particulars of contract, appended hereto.
- 1.9. "Contractor" means Housing Maintenance Solutions Ltd (HMS.)
- 1.10. "Contractor's Representative" means the person nominated from time to time by the Contractor to be the Contractor's representative for the purposes of this Contract.
- 1.11. "Data Controller" has the meaning set out in the Data Protection Laws;
- 1.12. "Data Processor" has the meaning set out in the Data Protection Laws
- 1.13. Data Protection Laws "means the Data Protection Act 1998, the General Data Protection Regulation (Regulation (EU) 2016/679) (**GDPR**) and any other data protection legislation applicable in the UK from time to time, and the terms **appropriate safeguards, appropriate technical and organisational measures, controller, data portability, processor, data subject, personal data breach, restriction of processing and supervisory authority** shall, unless the context otherwise requires, each have the respective meanings given to them in the Data Protection Legislation
- 1.14. "Defect Period" means the period of 12 months from completion of the Services under the This Contract, or such other period as specified in the Contract Data.
- 1.15. "Delay Damages" means the sum stated in the Contract Data.
- 1.16. "Due Date" means the 1st day of the month following the month in which the relevant and valid Payment Application is received, or such other date as may be provided for by these Conditions.

- 1.17. "Ethics, Anti-bribery and Anti-corruption Policies" means the Contractor's policies relating to ethics, anti-bribery and anti-corruption, copies of which are available on request.
- 1.18. "Final Date for Payment" is the last Friday of the month in which the Due Date arises, or such other date as may be provided for by these Conditions.
- 1.19. "Intellectual Property Rights" means all patents, rights to inventions, utility models, copyright and related rights, trademarks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.
- 1.20. "Inventions" means any invention, idea, discovery, development, improvement or innovation made by the Subcontractor in the provision of the Services, whether or not patentable or capable of registration and whether or not recorded in any medium.
- 1.21. "Main Contract" means the terms and conditions of any main contract between the Contractor and its employer for a Project, as specified in the Contract Data, a copy of which shall be available on request.
- 1.22. "Material" means all designs, drawings, models, plans, specifications, design details, photographs, brochures, reports, notes of meetings, CAD materials, calculations, data, databases, schedules, programmes, bills of quantities, budgets and any other materials provided by or on behalf of the Subcontractor relating to the Services (including but not limited to any Inventions) in connection with the Project and all updates, amendments, additions and revisions to them and any works, designs, or inventions incorporated or referred to in them for any purpose relating to the Project.
- 1.23. "Order" means the Contractor's confirmation of the Price for the Services, including any amendments thereto issued pursuant to this Contract.
- 1.24. "Order Number" means the specific order number set out in the Contract Data.
- 1.25. "Originator" means the employee or representative from the Contractor that issues the Order to the Subcontractor (ie/ name@hmsworks.co.uk) and whose email address and details are set out in the Contract Data.
- 1.26. "Pay Less Notice" means a notice issued by the Contractor (or the Subcontractor as the case may be) when the Contractor (or the Subcontractor as the case may be) intends to pay less than the sum stated as due in the Payment Notice.
- 1.27. "Payment Application" means the detailed request for payment by the Subcontractor raised in accordance with the instalments/intervals/stages more particularly set out in the Contract Data, and in accordance with clause 11. For the avoidance of doubt, to be a valid application it must state the relevant Order Number(s), Project Reference and be Cumulative.
- 1.28. "Payment Notice" means a notice issued by the Contractor to the Subcontractor in accordance with these Conditions which shall specify the sum that it considers to be or to have been due at the date of the Payment Application and the basis on which that sum is calculated.
- 1.29. "Permitted Uses" means design, construction, completion, reconstruction, modification, refurbishment, development, maintenance, facilities management, funding, disposal, letting, fitting-out, advertisement, decommissioning, demolition, reinstatement, extension, building information modelling and repair of the Project and/or the Premises.

- 1.30. "Personal Data" shall have the meaning set out in the Data Protection Laws.
- 1.31. "Personnel" means all persons employed by the Subcontractor to perform its obligations under this Contract together with the Subcontractor's servants, agents, suppliers and approved Sub-subcontractors used in the performance of its obligations under this Contract.
- 1.32. "Premises" means premises in the Contract Area owned, controlled or occupied by the Contractor, its group companies or its affiliates (or the employer under the Main Contract as the case may be), which are made available for use by the Subcontractor or its Sub-subcontractors for the provision of the Services (or any part of them) on the terms set out in this Contract or any separate agreement or licence.
- 1.33. "Process(ing)" shall have the meaning set out in the Data Protection Act 1998.
- 1.34. "Project" means the wider programme of works and services required by the Contractor in respect of all or any of the Premises in the Contract Area or by the employer under the Main Contract as the case may be, and of which the Services form part.
- 1.35. "Project Reference" means the reference given to a Project specified in the Contract Data.
- 1.36. "Specification" means any document supplied by the Contractor setting out details of the Contractor's requirements in relation to this Contract.
- 1.37. "Services" means any works or services to be provided by the Subcontractor for a Project, more specifically set out in the Contract Documents. Within the contract area? Article one?
- 1.38. "Subcontract Order Suite of Documents" means the numbered Contract Documents specified in the Contract Data.
- 1.39. "Subcontractor" means the person, firm or company named in the Agreement.
- 1.40. "Sub-subcontract" means any contract or agreement or proposed contract or agreement between the Subcontractor and any third party whereby that third party agrees to provide to the Subcontractor the Services or any part thereof or facilities or services necessary for the provision of the Services or any part thereof or necessary for the management, direction or control of the Services or any part thereof. The Subcontractor shall ensure that any Sub-subcontract is made upon similar terms and conditions as this Contract.
- 1.41. "Sub-subcontractor" means any third party with whom the Subcontractor enters into a Sub-subcontract agreement or its servants or agents.
- 1.42. "Valid Invoice" means an invoice addressed, and emailed to the Originator, and emailed to payables@hmsworks.co.uk and addressed as follows:

HMS Payables  
The Observatory  
Old Haymarket  
Liverpool L1 6RA

And which quotes the correct Order Number and the Project Reference. The Contractor will not be responsible for any delays in receipt of payment by the Subcontractor due to the Subcontractor failing to raise a Valid Invoice. With respect to any sums due from the Subcontractor to the Contractor, a valid invoice will be an invoice for the sums due addressed to the Subcontractor.

## 2. THE CONTRACT AND MAIN CONTRACT

- 2.1 These Conditions considered as a whole govern this Contract between the Contractor and the Subcontractor. No other terms and conditions, whether introduced prior to or subsequent to the date of this Contract shall have any relevance to this Contract, unless expressly agreed in writing by the originator.
- 2.2 For the avoidance of doubt, the Subcontractor shall be deemed to have read and understood the terms and conditions of any Main Contract applicable to this Contract and warrants and undertakes that in carrying out the Services, the Subcontractor will comply with all duties and obligations contained therein and shall not cause or contribute to any breach by the Contractor of the terms of the Main Contract.

## 3. INSTRUCTIONS AND VARIATIONS

- 3.1 The Contractor/Contractor's representative may at any time during the currency of this Contract issue instructions to the Subcontractor to clarify, further particularise or direct the Subcontractor in respect of any matter concerned with or arising out of the carrying out of the Services.
- 3.2 Where it is agreed that a Contractor's Representative's instruction affects the Price, any change will be calculated by the Originator using where relevant, rates and prices in the Contract Data or rates and prices deduced from the same. If such rates and prices are deemed by the Originator to be inapplicable then any changes will be made using fair and reasonable rates and prices and the Services shall be valued accordingly.
- 3.3 The Contractor shall have the right at any time during this Contract to issue the Subcontractor with a written notification of variation of the Services. Any such variation shall take precedence and commencement of the provision of the Services (as varied) by the Subcontractor shall be taken to imply acceptance of the variation.
- 3.4 If the Subcontractor is unable to accept a variation to the Services, the Subcontractor shall immediately notify the Contractor in writing and the Contractor shall have the right to either cancel this Contract, confirm this Contract as originally agreed or further vary the Services.
- 3.5 Upon agreement of the variation to the Services, the adjustment to the Price shall be calculated by the Originator using where relevant rates and prices in the Contract Data or rates and prices deduced from the same. If such rates and prices are deemed by the Originator to be inapplicable then any adjustment will be made using fair and reasonable rates and prices and the Services shall be valued accordingly.
- 3.6 The Contractor, its employees, agents or associated companies shall in no circumstances whatsoever be liable for any loss of profits or indirect or consequential loss howsoever arising from this Contract issued pursuant to the same.
- 3.6 If the Contractor elects to cancel this Contract the provisions of Clause 14 shall apply.

## 4. THE PRICE

- 4.1 The price of the Services (the "Price") shall be as set out in the Order together with any value added tax (which the Subcontractor shall add to its invoices at the appropriate rate), subject to this Clause 4 and to any variations to the Services pursuant to Clause 3.

- 4.2 Subject to Clause 4.3, and unless the Contract Data (or Order as the case may be) states that the Services are to be calculated on a time spent basis in accordance with an agreed schedule of rates (or an equivalent measurement basis), the Price shall be fixed and firm for the duration of this Contract.
- 4.3 Without prejudice to Clause 4.4 below, no variation in the Price shall apply unless agreed in writing by the Originator prior to completion of Services.
- 4.4 For the avoidance of doubt, when it becomes apparent or ought reasonably have become apparent to the Subcontractor that the total Price may be or will be exceeded for any reason, the written permission of Contractor must be obtained by the Subcontractor prior to it providing any Services of a value in excess of the Price. Compliance with this Clause 4.4 is a condition precedent to the Subcontractor being able to claim any additional time or additional payment in respect of this Contract, with any failure to comply with this Clause 4.4 resulting in the Subcontractor forfeiting and not being entitled to any such payment in addition to the Price set out in the Order.

## 5. PLACE AND TIME

- 5.1 The Services should be performed at the contract area set out in the Contract Data, not later than the completion date specified in the Contract Data (unless otherwise agreed in writing by the Contractor) during the Contractor's normal business hours, or as otherwise instructed by the Contractor.
- 5.2 The Subcontractor shall commence and complete the Services on the dates stated in the Contract Data. In the event that the Subcontractor is unable to complete the Services by the completion date so stated due to a default, negligent act or omission, or act of prevention by the Contractor—then the time for completion shall be extended by such period of time as the Contractor's Representative determines to be fair and reasonable in the circumstances, taking account of the cause of the delay.
- 5.3 In the event that the Subcontractor fails to complete the Services by the completion date or dates stated in the Contract Data, or any revised date or dates established in accordance with clause 5.2, for any reason other than that specified in clause 5.2 then the Subcontractor may, at the Contractor's sole discretion, be required to pay to the Contractor Delay Damages at the rate or rates stated in the Contract Data, until such time as the Subcontractor completes the required Services.

## 6. QUALITY OF SERVICES

- 6.1 The Subcontractor warrants to the Contractor that:
- 6.1.1 the Subcontractor will at all times perform the Services using all the reasonable skill, care and diligence to be expected of a qualified and experienced member of the Subcontractor's profession undertaking the Services on works similar in scope and character to the Project including, but not limited to, industry best practice and in accordance with the Subcontractor's own established internal procedures;
- 6.1.2 the Subcontractor will at all times make available sufficient personnel (who shall be competent and suitable in every respect, whether as to qualifications, experience or otherwise) and all other resources (including materials, goods, plant and equipment unless otherwise stated in the Contract Documents) as are required for the successful and timely completion of the Services;
- 6.1.3 the Services shall at all times be carried out by appropriately supervised, experienced, qualified, trained and competent personnel; and

6.1.4 the Subcontractor shall at all times perform the Services in a manner which conforms to all relevant and appropriate British, European and/or International standards and legislation from time to time in force in the United Kingdom.

6.2 The Subcontractor further warrants to the Contractor that:

6.2.1 the Services will be to the reasonable satisfaction of the Contractor's Representative and will conform in all respects with all relevant laws, enactments and regulations, the Contract Documents and the policies of the Contractor as notified to the Subcontractor from time to time (including but not limited to any environmental, staff vetting, data handling, security and business continuity policies). Notwithstanding the foregoing, the Subcontractor shall comply with the Ethics, Anti-bribery, modern slavery and Anti-corruption Policies. Failure to adhere strictly to these policies shall be grounds for immediate termination (in accordance with clause 14) by the Contractor of this Contract, without compensation to the Subcontractor.

6.2.2 all materials and goods used in the provision of the Services will:

6.2.2.1 conform to all relevant British/European/International standards and/or statutory and regulatory requirements in force at the date of the Contract;

6.2.2.2 correspond with their description on any samples, patterns, drawings, plans and specifications provided to the Subcontractor;

6.2.2.3 unless otherwise specified in the Contract Documents be new, of satisfactory quality and fit for any purpose held out by the Subcontractor and/or made known to the Subcontractor expressly or by implication by the Contractor and in this respect the Contractor shall be entitled to rely on the Subcontractor's skill, judgement, expertise and experience;

6.2.2.4 will be entirely safe when in use and properly operated.

6.3 Any defects, shrinkages or other faults which appear within Defect Period and which are due to the Services not being in accordance with this Contract, shall be made good by the Subcontractor as soon as reasonably practicable, at no cost to the Contractor.

6.4 The Contractor's rights under these terms and conditions are in addition to the statutory terms implied in favour of the Contractor by the Supply of Goods and Services Act 1982 and any subsequent revision or re-enactment and any other statute.

6.5 The decision of the Contractor as to whether any person is to be admitted to or is to be removed from the Premises or is not to become involved in or is to be removed from involvement in the performance of this Contract shall be final, conclusive and without liability to the Subcontractor. Drugs and Alcohol

6.6 The Subcontractor shall ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under this Contract.

6.7 Where it is stated in the Contract Data that the Subcontractor is responsible for design, the Subcontractor warrants that it has examined the Contract Documents and confirms that the Contractor's requirements in respect of the Services are satisfied in all respects by the Subcontractor's proposals and the Subcontractor agrees to accept full responsibility for the design of the Services, including any design relating to the Services contained in the Contractor's requirements and the Contract Documents.

## 7. ACCEPTANCE, INSPECTION AND REJECTION

- 7.1 The Subcontractor shall not unreasonably refuse any request by the Contractor's Representative to inspect and test the provisions of any of the Services and shall provide the Contractor's Representative with all facilities reasonably necessary for such inspection and testing to take place. At no cost to the contractor
- 7.2 The Contractor's Representative shall inspect the Services and may issue a written notice on behalf of the Contractor to the Subcontractor either accepting or rejecting all or any part of any Services which fail to meet the requirements of this Contract as the case may be.
- 7.3 Following any rejection in accordance with clause 7.2, the Contractor shall not be deemed to have accepted any Services until the Contractor's Representative has had a reasonable time to re- inspect them.
- 7.4 If the Services or any part thereof are rejected, without limiting any other right or remedy available to the Contractor, the Subcontractor shall remove the affected Services at the Subcontractor's own expense within five days of notification and shall, at the Contractor's Representative's sole discretion within seven days, replace or rectify the relevant Services. Should the Subcontractor fail to replace or rectify the relevant Services to the Contractor's Representative's reasonable satisfaction and whether or not the Contractor's Representative has previously required the Subcontractor to rectify or replace such Services, the Contractor may at its sole discretion, but not unreasonably or vexatiously, treat this Contract as terminated (in accordance with clause 14) by reason of the Subcontractor's breach and may require the repayment of the whole or any part of the Price which has already been paid. Or any longer date agreed by both parties
- 7.5 Any approval required by the Subcontractor in relation to the Services must be provided in writing by the Contractor's Representative or as otherwise stipulated by the Contractor in writing from time to time.
- 7.6 For the avoidance of doubt, no inspection, testing, approval, acceptance or review nor any omission to inspect, test, approve, accept or review on the part of the Contractor or the Contractor's Representative shall diminish any duty or liability hereunder of the Subcontractor.

## 8. PROPERTY AND RISK

- 8.1 Title in any goods required to be delivered and/or forming part of the Services purchased by the Subcontractor shall pass to the Contractor on delivery at the relevant Premises, unless payment for the goods is made by the Contractor to the Subcontractor prior to delivery in which case title shall pass to the Contractor as soon as the required payment has been made. For the avoidance of doubt the Subcontractor warrants that it has full clear and unencumbered title to any such goods provided as part of the Services and that at the date of provision of the Services it will have full and unrestricted rights to transfer such title to the Contractor.
- 8.2 Risk in any such goods required to be delivered and/or forming part of the Services lies with the Subcontractor until the Services have been completed.

## 9. INTELLECTUAL PROPERTY RIGHTS

- 9.1 The Subcontractor owns all intellectual property rights (including copyright) relating to the Material it produces.
- 9.2 The Subcontractor grants to the Contractor, with immediate effect, an irrevocable, non-exclusive, non-terminable, royalty-free licence to copy and make full use of any Material prepared by, or on behalf of, the Subcontractor for any purpose relating to the Project and the Premises including the Permitted Uses.
- 9.3 The licence in clause 9.2 carries the right to grant sub-licences and is transferable to third parties without the consent of the Subcontractor.
- 9.4 The Subcontractor shall not be liable for use of the Material for any purpose other than that for which it was prepared and/or provided.
- 9.5 The Contractor may, at any time (whether before or after completion of the Services, or after termination of the Subcontractor's engagement under this Contract), request a copy or copies of (some or all of) the Material from the Subcontractor. On the Contractor's payment of the Subcontractor's reasonable charges for providing the copy (or copies), the Subcontractor shall provide the copy (or copies) to the Contractor
- 9.6 Notwithstanding clause 9.5, the Subcontractor undertakes whenever requested to do so by the Contractor's Representative, in the event of termination of this Contract, promptly to deliver to the Contractor copies of all of the Material relating to any element of the Services and the process of their creation which are in its possession, custody or power.
- 9.7 The Subcontractor shall, promptly at the Contractor's request, do (or procure to be done) all such further acts and things and the execution of all such other documents as the Contractor may from time to time require for the purpose of securing for the Contractor the full benefit of this Contract, including all rights, title and interest in and to the Intellectual Property Rights and all other rights licensed to the Contractor in accordance with this Clause 9.

## 10. INDEMNITY AND INSURANCE

- 10.1 The Subcontractor shall indemnify the Contractor against all losses, damage, injury or expense, and injury to or death of any person, howsoever caused by or arising from, either directly or indirectly;
- 10.1.1 the Services not being fully in accordance with this Contract ;
- 10.1.2 any act or omission by the Subcontractor, the Subcontractors employees, agents or Sub-subcontractors including but not limited to a breach of the provisions of this Contract ; or
- 10.1.4 any liability pursuant to the Transfer of Undertakings (Protection of Employment) Regulations 2006 and related legislation.
- 10.2 The Subcontractor shall fully indemnify the Contractor against any expenses arising from any alleged or actual infringement of any proprietary right including but not limited to any Intellectual Property Rights howsoever arising from this Contract.
- 10.3 For the term of this Contract and a period of 12 years thereafter (or such longer period of time as may be specified in the Contract Data), the Subcontractor shall maintain satisfactory insurance cover as stipulated by the Contractor from time to time including but not limited to professional indemnity in relation to the Services, public liability and employers liability with a reputable insurer in respect of all liabilities, both statutory and contractual, arising from this Contract, to a minimum of £5 million or such higher figure as the Contractor may specify in the Contract Data. The Subcontractor shall produce



statutory evidence that such insurance is in place and evidence that it has made payment of the current premium, on the Contractor's request.

10.4 The Contractor, its employees, agents or associated companies shall in no circumstances whatsoever be liable for any loss of profits or indirect or consequential loss howsoever arising from this Contract issued pursuant to the same.

## **11. VALUATION AND PAYMENT**

### **11.1 Measurement and Valuation**

11.1.1 The Services provided pursuant to this Contract shall be valued in accordance with options set out below. The Services shall be valued in accordance with whichever of the options below is designated in the Contract Data.

11.1.2. Options:

(A) Instalments: the value of the Services properly executed up to the date of the Payment Application, shall be ascertained by measurement and valuation in accordance with the principles of measurement and the rates or prices specified in the Contract Documents.

(B) Stages: when the progress of the Services properly executed for this Contract has reached the stage stipulated in the Contract Data for a stage payment to become due.

11.1.3 The cumulative sums included in a Payment Application or the Payment Notice will comprise the value of the Services properly executed and the total value of unfixed materials and goods delivered to or adjacent to the Premises for incorporation. Any materials and goods must be stored and protected by the Subcontractor and must not have been delivered prematurely.

11.1.4 Unless the Originator otherwise directs in writing, measurement and valuation of the Services will be undertaken by the Subcontractor and presented to the Contractor for approval. The Subcontractor shall maintain complete and accurate records of the work completed, time spent and materials used in providing the Services in such form as the Contractor shall approve. The Subcontractor shall provide copies of such supporting material as the Contractor shall from time to time require, or as set out in the Contract Data, and shall allow the Contractor to inspect such other records as the Contractor may reasonably require at all reasonable times on request. If the Subcontractor is directed not to carry out the measurement and valuation the task will be undertaken by the Originator. Where the Originator is to undertake measurement of the Services, he shall give the Subcontractor the opportunity to be present at the time of such measurement and to take such notes and measurements as the Subcontractor may require.

11.1.5 Where the rates or prices in the Contract Data do not apply then the Services shall be valued on a fair and reasonable basis by the originator after consultation with the Subcontractor.

### **11.2 Payment**

11.2.1 The Subcontractor may make a Payment Application to the Contractor strictly in accordance with the terms of this Clause 11 in respect of the Services at the times and in the manner specified in the Contract Data.

11.2.2 In respect of any Services for a Project for which the Subcontractor is entitled to make a Payment Application, the Subcontractor shall submit on or before the Application Date a Payment Application,

addressed to the Originator. The Payment Application shall set out the sum that the Subcontractor considers will become due, or to have been due to him on the Application Date and the basis on which that sum is calculated, it shall be itemised and cumulative (if appropriate). Should the Subcontractor submit a Payment Application for payment after the Application Date then the Due Date for payment of that Payment Application shall be 7 days following receipt by the Contractor of the Payment Application, if the Subcontractor fails to provide an application, it will be deemed as invalid application and valued as nil.

- 11.2.3 Not later than 5 days after the Due Date in each case the Contractor shall give a Payment Notice to the Subcontractor.
- 11.2.4 If a Payment Application is not in accordance with this Clause 11.2, it will be deemed to be invalid and the Payment Application may be rejected in writing by the Contractor, in its sole discretion. The Contractor shall not be responsible for any delays in payment arising from the Subcontractor's failure to comply with this Clause 11.2.
- 11.2.5 Where the Contractor intends to pay less than the sum stated as due from him in the Payment Notice or, if a Payment Notice shows a balance due from the Subcontractor to the Contractor and the Subcontractor intends to pay less than the sum stated as due, then the party by whom the payment is stated to be payable shall not later than 7 days before its Final Date for Payment give the other party a Pay Less Notice stating the amount that it considers to be due at the date of the notice and the basis on which it is calculated.
- 11.2.6 Not less than 7 days after the Payment Notice (or if a Pay Less Notice has been served, not later than 5 days before the Final Date for Payment), the Subcontractor (or if sums are due from the Subcontractor to the Contractor, then the Contractor as the case may be) shall raise a Valid Invoice for the sums set out in the Payment Notice, subject to any Pay less Notice. If the Valid Invoice is received by the Contractor (or the Subcontractor as the case may be) less than 5 days before the Final Date for Payment, then the Final Date for Payment shall be 7 days from the date of receipt by the Contractor (or the Subcontractor as the case may be) of the Valid Invoice.
- 11.2.7 Any payment made by the Contractor despite the absence of a signed Contract, a valid Payment Application or Valid Invoice shall not constitute a waiver by the Contractor of its rights under this Clause 11, which shall remain in full force and effect.
- 11.2.8 Payment by the Contractor shall be without prejudice to any rights or remedies available to it under this Contract, or otherwise, and shall not constitute any binding admission by the Contractor as to the suitability, quality or satisfactory performance and completion of the Services by the Subcontractor.
- 11.2.9 The Subcontractor shall maintain complete and accurate records of the work completed, time spent and materials used by the Subcontractor in providing the Services in such form as the Contractor shall approve. The Subcontractor shall allow the Contractor to inspect such records at all reasonable times on request.

### **11.3 Retention**

- 11.3.1 If applicable, the Retention Percentage will be 5% unless otherwise stated in the Contract Data.
- 11.3.2 Amounts due for payment prior to the date of acceptance (in writing) of the Services under this Contract by the Contractor's Representative or any section thereof will be subject to deduction of the Retention Percentage.

- 11.3.3 Amounts due for payment on or after the date of acceptance (in writing) of the Services by the Contractor's Representative up to the date of issue of final acceptance (in writing) of the Services following correction of any identified defects will be subject to retention at the rate of 50% of the Retention Percentage.
- 11.3.4 Any Payment Notices issued after the date of final acceptance (in writing) of the Services will be in full. Practical Completion of works/project or making good defects certificate issued.
- 11.3.5 If the Contract Data states that retention shall not apply then any payment due will be made in full.
- 11.3.6 For the avoidance of doubt, the Contractor shall owe no fiduciary duty to the Subcontractor with respect to the retained sum.

#### **11.4 Failure to Pay and Suspension**

- 11.4.1 If the Contractor fails to make payment in full of an amount stated as due in a Payment Notice or a subsequent Pay Less Notice and/or any VAT chargeable on that amount by the Final Date for Payment the Subcontractor may serve notice in writing on the Contractor of an intention to suspend the Services. If the failure to make payment by the Contractor continues for 7 days after receipt of the written notice then the Subcontractor may suspend any or all of his Services under this Contract until the outstanding payment is received by the Subcontractor.
- 11.4.2 If the Contractor fails to make payment in full in accordance with this Contract the Subcontractor will be entitled to interest on the sums paid late at a rate of 5% above the Bank of England Base Rate for the period of late payment.

#### **11.5 Value Added Tax**

- 11.5.1 Any sums due under this Contract will be subject to the addition of Value Added Tax at the applicable rate.

#### **11.6 Final Documentation**

- 11.6.1 Within 3 months from the date of final acceptance (in writing) of the Services under this Contract by the Contractor's Representative the Subcontractor will supply to the Contractor all supporting measurements, documentation and details of costs reasonably required to enable the Contractor to calculate the final sum due to the Subcontractor.
- 11.6.2 Within 3 months of receipt of the final documentation for this Contract the Contractor will issue a statement of the final account. This document will show the total Price and all adjustments required by this Contract ("the Final Account").

#### **11.7 Final Certificate Definitions**

- 11.7.1 A final certificate will be issued by the Contractor within one month of the date of final acceptance (in writing) of the Services under this Contract following correction of any identified defects ("the Final Certificate").
- 11.7.2 The Final Certificate will include all monies due in accordance with the Final Account adjusted, if appropriate, by the Contractor for any defects which are not required to be made good by the Subcontractor and less any payments already made.

- 11.7.3 The Due Date will be the first business day of the calendar month following the date of the Final Certificate and the Final Date for Payment will be 30 days thereafter, when payment of any balance will be made from the Contractor to the Subcontractor or from the Subcontractor to the Contractor, as the case may be.
- 11.7.4 If the Contractor (or the Subcontractor as the case may be) intends to pay less than the sum stated as due in the Final Certificate, the Contractor (or the Subcontractor as the case may be) shall give a Pay Less Notice to the Subcontractor of that intention not later than 7 days before the Final Date for Payment of the Final Account. The Pay Less Notice shall specify the sum due to the Subcontractor (or the Contractor as the case may be) on the date of the Pay Less Notice and the basis on which the sum has been calculated.
- 11.7.5 Not less than 7 days after the Final Certificate (or if a Pay Less Notice has been served, not later than 5 days before the Final Date for Payment), the Subcontractor (or if sums are due from the Subcontractor to the Contractor, then the Contractor as the case may be) shall raise a Valid Invoice for the sums set out in the Final Certificate, subject to any Pay less Notice. If the Valid Invoice is received by the Contractor (or the Subcontractor as the case may be) less than 5 days before the Final Date for Payment, then the Final Date for Payment shall be 7 days from the date of receipt by the Contractor (or the Subcontractor as the case may be) of the Valid Invoice.

## 11.8 Recovery of sums due

Any sum due from the Subcontractor to the Contractor may be deducted from any sum then due, or which may, at a later time, become due to the Subcontractor under this Contract.

## 12. PUBLICITY

The Subcontractor shall not publish or reproduce or arrange press releases or make public statements in connection with this Contract or make use of the name of the Contractor in any publicity without the Contractor's prior written approval.

## 13. CONFIDENTIALITY

13.1 The Subcontractor shall keep in strict confidence all Confidential Information and (except with the prior written consent of the Contractor) shall, and shall procure that its Personnel shall:

- 13.1.1 not use or exploit the Confidential Information in any way except for the purpose of this Contract;
- 13.1.2 not disclose or make available the Confidential Information in whole or in part to any third party, except as permitted by this Contract;
- 13.1.3 not copy, reduce to writing or otherwise record the Confidential Information in whole or in part except as strictly necessary for the purpose of this Contract (and any such copies, reductions to writing and records shall be the property of the Contractor);
- 13.1.4 unless otherwise agreed between the parties to this Contract, not use, reproduce, transform, or store the Confidential Information in an externally accessible computer or electronic information retrieval system or transmit it in any form or by any means whatsoever outside of its usual place of business;
- 13.1.5 keep separate the Confidential Information from all documents and other records of the Subcontractor;

- 13.1.6 apply the same security measures and degree of care to the Confidential Information as the Subcontractor applies to its own Confidential Information, which the Subcontractor warrants as providing adequate protection from unauthorised disclosure, copying or use;
  - 13.1.7 keep a written record of any document or other Confidential Information received from The Contractor in tangible form; any copy made of the Confidential Information; and
  - 13.1.8 ensure that any document or other records containing Confidential Information shall be kept at its premises and shall not remove or allow to be removed such document or record from its premises.
- 13.2 The Subcontractor shall restrict disclosure of such Confidential Information to such of its Personnel as need to know it for the purpose of discharging its obligations under this Contract, and shall ensure that such Personnel are subject to obligations of confidentiality corresponding to those which bind it. The Subcontractor shall be liable to the Contractor for the actions or omissions of its Personnel as if they were actions or omissions of the Subcontractor.
- 13.3 The Subcontractor may disclose Confidential Information to the extent that such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority, or by a court or other authority of competent jurisdiction provided that, to the extent it is legally permitted to do so, it gives the Contractor as much notice of this disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this clause 13.3, it takes into account the reasonable requests of the Contractor in relation to the content of the disclosure.
- 13.4 The Subcontractor shall establish and maintain adequate security measures (including but not limited to reasonable security measures proposed by the Contractor from time to time) to safeguard the Confidential Information from unauthorised access or use.
- 13.5 At the request of the Contractor the Subcontractor shall:
- 13.5.1 destroy or return to the Contractor all documents and materials (and any copies) containing, reflecting, incorporating or based on the Confidential Information;
  - 13.5.2 erase all the Confidential Information from its computer systems or which is stored in electronic form (to the extent possible); and
  - 13.5.3 certify in writing to the Contractor that it has complied with the requirements of this clause 13, provided that the Subcontractor may retain documents and materials containing reflecting, incorporating, or based on the Confidential Information to the extent required by law or any applicable governmental or regulatory authority and to the extent reasonable to permit the Subcontractor to keep evidence that it has performed its obligations under this Contract. The provisions of this clause 13 shall continue to apply to any such documents and materials retained by the Subcontractor.
- 13.6 Except as expressly stated in this Contract, the Contractor does not make any express or implied warranty or representation concerning its Confidential Information, or the accuracy or completeness of the Confidential Information.
- 13.7 The Subcontractor acknowledges that damages alone would not be an adequate remedy for the breach of any of the provisions of this Contract. Accordingly, without prejudice to any other rights and remedies it may have, the Contractor shall be entitled to the granting of equitable relief (including without limitation injunctive relief) concerning any threatened or actual breach of any provisions of this Contract.

13.8 The Subcontractor shall indemnify and keep fully indemnified the Contractor and its associated companies at all times against all liabilities, costs (including legal costs on an indemnity basis), expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interests, penalties and other costs and expenses suffered or incurred by the Contractor and or its associated companies arising from any breach of this Contract, by the Subcontractor and from the actions or omissions of any of its Personnel.

13.9 The provisions of Clause 13 shall survive the termination or expiry of this Contract.

#### 14. TERMINATION

14.1 The Contractor may immediately terminate this Contract (in whole or part) by written notice to the Subcontractor if:

14.1.1 the Subcontractor is in substantial breach of any of the provisions of this Contract ; or

14.1.2 the Subcontractor commits any gross misconduct affecting the business of the Contractor or any of its group companies; or

14.1.3 the Subcontractor is convicted to any criminal offence (other than an offence under any road traffic legislation in the United Kingdom or elsewhere for which a fine or non-custodial penalty is imposed; or

14.1.4 if an individual, the Subcontractor is incapacitated (including by reason of illness or accident) from providing the Services for an aggregate period of 30 days in any 52 week consecutive period; or

14.1.5 the Subcontractor becomes, or appears to become, insolvent or bankrupt or in any other way unable to meet its commitments under this Contract or any other contract; or

14.1.6 an encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Subcontractor; or

14.1.7 the Subcontractor ceases, or threatens to cease, to carry on business; or

14.1.8 for whatever reason, the Subcontractor is bringing, or may bring, bad publicity or disrepute upon the Contractor or any of its group companies.

14.2 The Contractor may terminate this Contract at any time for any reason by giving the Subcontractor not less than [1] months prior written notice of termination, or with immediate affect with both parties agreement.

14.3 Upon termination or expiry of this Contract, the Subcontractor shall at the Contractor's request, return, destroy and or erase all materials and Confidential Information supplied to it by the Contractor and provide a certificate confirming that it has complied with such request and not retained a copy of any such material and or Confidential Information.

14.4 On termination in accordance with this Clause 14:

14.4.1 No further sums shall become due to the Subcontractor otherwise than in accordance with this Clause 14.5;

- 14.4.2 The Subcontractor shall with all reasonable speed remove, or procure the removal from the contract area and Premises any materials, equipment tools and such belonging to the Subcontractor;
- 14.4.3 If required by the Contractor, within 14 days of the date of termination, assign (so far as assignable) or novate to the Contractor the benefit of any agreement ~~for~~ related to the provision of the Services.
- 14.5 On termination in accordance with this Clause 14, the Subcontractor shall be entitled to be paid:
- 14.5.1 for the Services provided up to the date of termination, subject to any Pay Less Notice;
- 14.5.2 less any amount of expenses properly incurred by and any direct loss and/or damage caused to the Contractor arising out of or in connection with the termination, including but not limited to the cost to the Contractor of employing others to carry out and complete any uncompleted Services.
- 14.6 If the calculation in accordance with Clause 14.5 results in a balance due to the Contractor, then this shall be a debt payable by the Subcontractor to the Contractor.
- 14.7 Clauses which expressly or by implication survive termination of this Contract, shall continue in full force and effect.
- 14.8 The Contractor, its employees, agents or associated companies shall in no circumstances whatsoever be liable for any loss of profits or indirect or consequential loss howsoever arising from this Contract issued pursuant to the same.

## 15. WAIVER

Failure on the part of the Contractor at any time to enforce any provision of this Contract, shall in no way affect the Contractor's rights at a later date to require performance of this Contract, nor shall a waiver of any breach be taken or held to be a waiver of any subsequent breach of any provision.

## 16. ANTI-BRIBERY

- 16.1 The Subcontractor shall ensure that it and persons associated with it or other persons who are performing any Services in connection with this Contract, shall:
- 16.1.1 comply with all applicable laws, statutes, regulations relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 ("Relevant Requirements");
- 16.1.2 not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;
- 16.1.3 comply with the Ethics, Anti-bribery and Anti-corruption Policies, updated from time to time ("Relevant Policies");
- 16.1.4 not do, or omit to do, any act that will cause or lead the Contractor to be in breach of any of the Relevant Requirements or Relevant Policies.
- 16.1.5 immediately report to the Contractor any request or demand for any undue financial or other advantage of any kind received by the Subcontractor in connection with the performance of this Contract;

- 16.1.6 have and shall maintain in place throughout the term of this Contract, , its own policies and procedures, including but not limited to adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements, the Relevant Policies and clause 16.1.2, and will enforce them where appropriate;
- 16.1.7 if requested, provide the Contractor with any reasonable assistance, at the Subcontractor's reasonable cost, to enable the Contractor to perform any activity required by any relevant government or agency in any jurisdiction for the purpose of compliance with any of the Relevant Requirements or Relevant Policies;
- 16.1.8 within 1 calendar months of the date of this Contract, and annually thereafter, certify to the Contractor in writing signed by an officer of the Subcontractor, compliance with this clause 16 by the Subcontractor and all persons associated with it or other persons who are performing services in connection with this Contract. The Subcontractor shall provide such supporting evidence of compliance as the Contractor may reasonably request.
- 16.2 The Subcontractor shall indemnify the Contractor against any losses, liabilities, damages, costs (including but not limited to legal fees) and expenses incurred by, or awarded against, the Contractor as a result of any breach of clause 16.1 by the Subcontractor, or any breach of provisions equivalent to clause 16.1 in any subcontract by any Sub-subcontractor.
- 16.3 The Subcontractor warrants and represents that:
- 16.3.1 neither the Subcontractor nor any of its personnel or persons associated with it or any other person who is performing services in connection with this Contract:
- 16.3.1.1 has been connected to any offence involving bribery or corruption, fraud or dishonesty;
- 16.3.1.2 having made reasonable enquiries, so far as it is aware or to the best of its knowledge, has been or is the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence under the Relevant Requirements; or
- 16.3.1.3 has been or is listed by any government agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or other government contracts;
- 16.3.2 none of the personnel of the Subcontractor or any person associated with it or any other person who is performing services in connection with this Contract, is a foreign public official; and
- 16.3.3 no foreign public official owns a direct or indirect interest in the Contractor or any person associated with it or any person for whom the Contractor is responsible and no public official has any legal or beneficial interest in any payments made by the Contractor under this Contract.
- 16.4 The Subcontractor shall immediately notify the Contractor if, at any time during the term of this Contract, its circumstances, knowledge or awareness changes such that it would not be able to repeat the warranties set out in clause 16.3 at the relevant time.
- 16.5 The Subcontractor shall ensure that, by introducing adequate procedures, any person associated with the Subcontractor who is performing services or providing goods in connection with this Contract, does so only on the basis of a written contract which imposes on and secures from such person terms equivalent



to those imposed on the Subcontractor in this clause 18 ("Relevant Terms"). The Subcontractor shall be responsible for the observance and performance by such persons of the Relevant Terms, and shall be directly liable to the Contractor for any breach by such persons of any of the Relevant Terms.

- 16.6 Without prejudice to clause 14, if the Contractor terminates this Contract, for breaching this clause 16, the Subcontractor shall not be entitled to claim compensation or any further remuneration, regardless of any activities or agreements with additional third party policies.
- 16.7 Regardless of any other provision in this Contract, the Contractor shall not be obliged to, or omit to do any act which would, in its reasonable opinion put it in breach of any of the Relevant Requirements.
- 16.8 For the purpose of clause 16, the meaning of adequate procedures and foreign public official and whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act), sections 6(5) and 6(6) of that Act and section 8 of that Act respectively
- 16.9 The Subcontractor shall not, prior to, during or after the date of this Contract:
- 16.9.1 communicate to any third party the amount of the proposed tender price in relation to the Services, unless such disclosure is made in confidence to an insurer in the event that such disclosure is necessary to obtain insurance premium quotations required for the preparation of such tender;
  - 16.9.2 enter into any agreement or arrangement with any third party that it shall refrain from tendering or as to the amount of any tender to be submitted.

## **17. HEALTH AND SAFETY**

- 17.1 The Subcontractor shall promptly notify the Contractor of any health and safety hazards, which may arise in connection with the performance of this Contract.
- 17.2 Where, in the performance of this Contract, the Subcontractor and or its Personnel is required to be on the Premises, the Subcontractor and it shall comply with any health and safety measures implemented by the Contractor in respect of Personnel and other persons working on those premises.
- 17.3 The Subcontractor shall notify the Contractor immediately in the event of any incident occurring in the performance of this Contract on the Premises where that incident causes any personal injury or damage to property that could give rise to personal injury.
- 17.4 The Subcontractor shall comply at all times for the requirements of the Health and Safety at Work etc. Act 1974, Control of Substances Hazardous to Health Regulations 2002 and all subsequent amendments thereto, the Contractor's Health and Safety Guidance Notes and any health and safety or related instructions which may be issued to the Subcontractor by the Contractor at any time.
- 17.5 The Subcontractor shall ensure that its health and safety policy statement (as required by the Health and Safety at Work etc. Act 1974) is made available to the Contractor on request.

## **18. ASSIGNMENT AND SUB-CONTRACTING**

The Subcontractor is prohibited from transferring or assigning directly or indirectly to any person or persons whatsoever any portion of this Contract, or entering into such a Sub-subcontract without prior written permission from the Contractor. The Subcontractor shall be responsible for any acts and omissions of any Sub-subcontractors as if they were the acts and omissions of the Subcontractor.

## 19. NOTICES

All notices and communications required to be sent from the Subcontractor to the Contractor or from the Contractor to the Subcontractor under this Contract, shall be made in writing electronically or sent by first class mail. They will be deemed to have reached the party to whom it is addressed on the second business day following date of posting.

## 20. RIGHTS OF THIRD PARTIES

The parties hereby declare that no term of this Contract, is intended by the parties to confer a benefit on any third party (as defined by the Contracts (Rights of Third Parties) Act 1999) nor is intended to be enforceable by any third party. The provisions of the said Act are hereby excluded.

## 21. DATA PROTECTION

- 21.1 For the purposes of the Data Protection Laws, the parties agree that in relation to this agreement the Contractor is the Data Controller and the Subcontractor is the Data Processor.
- 21.2 Both parties will (and will procure that any of their respective directors, officers, employees, permitted agents, licensees and contractors will) comply with all applicable requirements of the Data Protection Laws. This Contract does not relieve, remove or replace, a party's obligations under the Data Protection Laws.
- 21.3 The parties acknowledge that, in respect of Personal Data, the Data Controller is the controller and the Data Processor is a processor acting on behalf of the Data Controller.
- 21.4 The Data Processor will only process Personal Data in accordance with the written instructions of the Data Controller unless required to do so by law. Where the Data Processor intends to rely on a requirement of law as the basis for processing the Personal Data, the Data Processor will promptly notify the Data Controller of this before performing the processing required unless the requirement of law relied upon prohibits the Data Processor from so notifying the Data Controller.
- 21.5 Without prejudice to the generality of clause 21.20, the Data Controller will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of Personal Data to the Data Processor for the duration and purposes of this agreement.
- 21.6 The Data Processor will not transfer Personal Data to any third party, or engage any third party to process Personal Data on its behalf (a "**Sub-Processor**"), without prior specific or general written authorisation from the Data Controller.
- 21.7 If the Data Controller gives prior specific or general written authorisation for the Data Processor to use a Sub-Processor, the following will apply:
  - 21.7.1 the Data Processor must notify the Data Controller of any changes to Sub-Processors made under prior general written authorisation and must allow the Data Controller a reasonable time to object to those changes;
  - 21.7.2 the Data Processor must ensure that the processing of Personal Data by any Sub-Processor is subject to terms substantially similar to, and no less restrictive than, the terms of this agreement; and
  - 21.7.3 the Data Processor will remain fully liable to the Data Controller for any acts or omissions of the Sub-Processor.

- 21.8 The Data Processor will not transfer Personal Data outside of the European Economic Area.
- 21.9 The Data Processor will put in place appropriate technical and organisational measures (having regard to the state of the art and technological development, the costs of implementation (where applicable) and the nature, scope, context and purposes of processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons) to:
- 21.9.1 ensure compliance with the requirements of the Data Protection Laws, in particular the security of Personal Data, and to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, the Personal Data; and
  - 21.9.2 allow the Data Controller to meet its obligations to data subjects, including but not limited to rectification or erasure of Personal Data, restriction of processing of Personal Data, data portability and promptly responding to subject access requests.
- 21.10 The Data Processor will obtain a commitment of confidentiality from anyone it allows to process the Personal Data.
- 21.11 The Data Processor must assist the Data Controller, so far as possible and taking into account the nature of the processing under this Agreement and the information available to the Data Processor, in meeting the Data Controller's obligations under the Data Protection Laws.
- 21.12 The Data Processor will:
- 21.12.1 maintain a record of its processing activities in accordance with the requirements of the Data Protection Laws and retain all other information required to demonstrate that the Data Processor and the Data Controller have met their obligations under the Data Protection Laws and under this Agreement;
  - 21.12.2 submit and contribute to audits and inspections carried out by the Data Controller or a third-party appointed by the Data Controller to carry out such audits or inspections. The Data Controller will endeavour to provide reasonable written notice of the date of inspections or audits;
  - 21.12.3 inform the Data Controller immediately if the Data Processor believes or suspects that it has been given an instruction that does not comply with the Data Protection Laws;
  - 21.12.4 notify the Data Controller immediately if the Data Processor becomes aware of or reasonably suspects a personal data breach;
  - 21.12.5 not knowingly or negligently do or omit to do anything which places the Data Controller in breach of its obligations under the Data Protection Laws; and
  - 21.12.6 indemnify the Data Controller against any loss arising under the Data Protection Laws caused by any action or omission (unless such action or omission is specifically requested by the Data Controller) taken by the Data Processor or its directors, officers, employees, permitted agents, licensees and contractors.
- 21.13 On termination or expiry of this agreement, the Data Processor shall, at the choice of the Data Controller, delete or return to the Data Controller all Personal Data and copies thereof that it has within its power, ownership or control, and ensure that any such return or deletion is carried out securely and in accordance with current best practice.

## **22. FREEDOM OF INFORMATION**

The Contractor is under certain statutory duties which may require the release of information under the Freedom of Information Act 2000 and or the Environmental Regulations 2004. Such information may include matters relating to or arising out of or under this Contract. The Contractor shall be entitled to disclose such information in the event that it receives a request to do so. In this event, provided that it is legally permitted to do so, the Contractor shall inform the Contractor of the request and give the Subcontractor's details of the information that the Contractor intends to disclose. The Contractor will not usually disclose information which is subject to an exemption under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004 save where such disclosure is agreed by the Subcontractor and or required by the Information Commissioner.

## **23. DISCRIMINATION**

The Subcontractor, its agents, employees or Sub-subcontractors shall not unlawfully discriminate either directly or indirectly on such grounds as race, colour, ethnic or national origin, disability, sex or sexual orientation, religion or religious belief or age or any other basis as notified to the Subcontractor by the Contractor from time to time and shall comply with the Equability Act 2010 and any associated legislation.

## **24. DISPUTE RESOLUTION**

If any dispute arises in connection with this Contract, the parties will attempt to settle it with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator will be nominated by CEDR.

## **25. SEVERABILITY**

If any provision of these terms and conditions is held by any court or other competent authority to be invalid or unenforceable in whole or in part the validity of the other provision of these terms and conditions and the remainder of the provision in question shall not be affected.

## **26. NO PARTNERSHIP OR AGENCY**

Nothing in this Contract is intended to, or shall be deemed to constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind the other party in any way.

## **27. HEADINGS AND INTERPRETATION**

27.1 In this Contract, unless the context otherwise requires:

27.1.1 the headings to these terms and conditions shall not affect their interpretation;

27.1.2 the singular includes the plural and vice versa;

27.1.3 a gender includes any other gender;

27.1.4 a reference to a 'person' includes any individual, firm, partnership, company and any other body corporate;

27.1.5 a reference to a statute, statutory instrument or other subordinate legislation ('legislation') is to such legislation as amended and in force from time to time, including any legislation which re-enacts or consolidates it, with or without modification, and including corresponding legislation in any other relevant part of the United Kingdom;

27.1.6 where in this Contract an act is required to be done within a specified period of days after or from a specified date, the period shall begin immediately after that date. Where that period would include a day which is a Public Holiday that day shall be excluded. For the avoidance of doubt a Public Holiday means Christmas Day, Good Friday or a day which under the Banking and Financial Dealings Act 1971 is a bank holiday.

## **28. GOVERNING LAW**

This Contract shall be governed by and construed in accordance with English Law and the parties hereby irrevocably submit to the jurisdiction of the English Courts.