



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. Refer to the specific terms of your Order to identify which of the Conditions apply.

CONTENTS

MODULE A: GENERAL CONDITIONS	4
1. Definitions & Interpretation	4
2. Supervising Officer	9
3. Payment	10
4. Variations	10
5. Insurance	11
6. Intellectual Property Rights	11
7. Confidentiality & Publicity	13
8. Electronic Communications	14
9. Delegation & Third-Party Rights	14
10. Status of the Provider	15
11. Force Majeure	15
12. Notices	15
13. Waiver & Severance	16
14. Compliance	16
15. Freedom of Information	16
16. Key Performance Indicators	17
17. Audit	17
18. Termination	18
19. Consequences of Termination	19
20. Disputes & Governing Law	20
 MODULE B: CONDITIONS APPLICABLE TO A SERVICE	 22
21. The Service	22
22. Security	22
23. Health & Safety	22
 MODULE C: CONDITIONS APPLICABLE TO SUPPLY OF GOODS	 24
24. Quality & Marking	24
25. Inspection, Testing & Warranty	25
26. Delivery	26
 MODULE D: CONDITIONS APPLICABLE TO CONSTRUCTION OPERATIONS	 27
27. Interim Payment	27
28. Adjudication	29
29. Collateral Warranties	29

MODULE E: CONDITIONS APPLICABLE TO WORKS	30
30. Provider's Obligations	30
31. Commencement & Delay	32
32. Works Insurances	33
33. Partial Possession by the Client	34
34. Completion & Defects Rectification	35
35. Taxation, Retention & Final Account	35
36. Termination of works	37
MODULE F: CONDITIONS APPLICABLE TO PROFESSIONAL SERVICES	37
37. Duty of Care	38
38. Time for Performance	38
39. Personnel	38
40. Collaboration & attendance	39
41. Limitation of Liability	39
MODULE G: CONDITIONS RELATING TO DATA PROTECTION	40
42. Introduction	40
43. Controller to Controller transfers within the EEA.....	41
44. Data Processing on behalf of the Client within the EEA.....	42
45. Data transfers under separate agreement.....	46
MODULE H: THIRD PARTY RIGHTS	47
46. Application under the Order.....	47
47. Duty of Care.....	47
48. Copyright.....	47
49. Insurances.....	48
50. Assignment.....	48
51. Limitations.....	49

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;
- **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 46.3**, and/or (c) who is a permitted assignee under **Condition 50**;
- **Client** means the Exan Property Group entity stated in the Order and its permitted assignees pursuant to **Condition 9.3**;
- **Client's Policies** means any 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;
- **Contract Drawings** means any drawings, plans or diagrams referred to in the Order illustrating the Commission;
- **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;
- **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 the relevant provisions of the Building Safety Act 2022 and/or any of its amendments or Regulations, 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;
 - **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 27.2**;
- **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 27.5**;
- **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;
- **Provider** means the firm, company, or individual being the counterparty to the Client named in the Order;
- **Provider's Representative** means a nominated representative, if any, 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 27.2**;
- **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 31.6**;
- **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 31.2** 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 31.5** 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 35.7** stating the total sum paid under all Payment Notices and any valid notice issued pursuant to **Condition 27.4** 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 34.4**;
- **Practical Completion Certificate** means a certificate issued by the Supervising Officer pursuant to **Condition 34.1** 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 33.1** or **Condition 34.1** 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 31.2** 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 31.2** 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 27.9**, 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. Headings are for information only and do not form part of the Order.

1.4. 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.

1.5. 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.

1.6. 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.

1.7. 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 proceedings under **Condition 20** and (where applicable) **Condition 28**; or
- any other exception notified in 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 34.1**) 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.** This **Condition 3.2** 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.
- 3.3.** 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.
- 3.4.** 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 setoff, 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 subcontractors 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. The Client requires all its Providers 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**).

8.2. Each party shall:

- 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; and
- the proposed terms and conditions of the sub-contract are approved by the Supervising Officer, which approval will not be unreasonably withheld or delayed.

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

9.3. 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.

9.4. Except as provided in **Condition 46** (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; and

14.3. The Provider shall 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 subcontractors, 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 42.1**) 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; or
- to verify the accuracy and completeness of any reports delivered or required by 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 May, 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, 45.2** 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; or
- 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.

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 31.10**, unless caused by the negligence of the Provider or anyone for whom the Provider is responsible.

19. Consequences of Termination

19.1 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.

19.2 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.

19.3 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 31.10**,

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

19.4 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 shall be deducted from the amount payable to the Provider under **Condition 19.2** and if any shortfall remains following such deduction the Client may claim it as a debt due from the Provider.

19.5 Payment under **Conditions 19.2** and **19.3** (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 27** and **36.1**.

19.6 Except as set out in **Condition 19.2** and **Condition 19.3**, 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.

20. Disputes & Governing Law

20.1. Where Module D (*Conditions applicable to Construction Operations*) applies to the Order, the following provisions of **Condition 20** are without prejudice the parties' rights to seek adjudication at any time in accordance with **Condition 28**.

- 20.2.** 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.
- 20.3.** 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.
- 20.4.** 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

21. The Service

- 21.1.** 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.
- 21.2.** 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.
- 21.3.** 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.
- 21.4.** As far as practicable the Provider will use biodegradable or other environmentally friendly products in conducting the Commission.
- 21.5.** 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).
- 21.6.** 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.

22. Security

- 22.1.** 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 on request.
- 22.2.** 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.
- 22.3.** 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 subcontractors are not to be admitted to or are 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.

23. Health & Safety

- 23.1.** Before starting the Commission, the Provider must produce a method statement and 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.

- 23.2.** 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.
- 23.3.** The Provider will be responsible for the sustainability 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.
- 23.4.** 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.

MODULE C: CONDITIONS APPLICABLE TO SUPPLY OF GOODS

24. Quality & Marking

- 24.1.** 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.
- 24.2.** 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.
- 24.3.** 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.
- 24.4.** 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.
- 24.5.** The Provider must include a packing note stating the contents of each consignment or package.
- 24.6.** 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.
- 24.7.** The Provider must send the Client a detailed invoice as soon as is reasonably practicable after the delivery of each consignment.

25. Inspection, Testing & Warranty

- 25.1.** 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.
- 25.2.** 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.
- 25.3.** If, as a result of any inspection or test under **Conditions 25.1** and **25.2**, 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.
- 25.4.** 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.
- 25.5.** 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.
- 25.6.** 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.
- 25.7.** If any of the Goods fail to comply with the provisions set out in **Conditions 24** and **25**, 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.

26. Delivery

- 26.1.** 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.
- 26.2.** 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.
- 26.3.** 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.
- 26.4.** 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.
- 26.5.** 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.
- 26.6.** If the Goods delivered to the Client are 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.
- 26.7.** 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.
- 26.8.** 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

27. Interim Payment

27.1. 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 a 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 27.2** 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.

27.2. 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 27.3**;

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 27.3**.

27.3. 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.

27.4. If a Payment Notice is not issued pursuant to **Condition 27.2** 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.

27.5. 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 27.4**, the Provider will give to the Client:

- a tax invoice, correctly addressed and 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 35.1**.

and the amount stated in the tax invoice will then be due to the Provider. If the Provider's invoice complies with **Condition 27.4** then the Provider need not give another notice pursuant to **Condition 27.4** in respect of that payment.

27.6. 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.

27.7. Subject to **Condition 27.8**, 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 3.4**.

27.8. 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 27.4** 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.

27.9. 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 27.8** 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.

28. Adjudication

- 28.1.** 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.

29. Collateral Warranties

- 29.1.** 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.
- 29.2.** Where so specified in the Order or the Specification, upon the appointment of each subcontractor (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.
- 29.3.** If the Provider fails to deliver to the Client any deed of collateral warranty validly requested by the Client under **Condition 29.1** or **Condition 29.2** 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.
- 29.4.** Upon the appointment of each sub-contractor in respect of which a deed of collateral warranty is validly requested by the Client under **Condition 29.2**, the Provider must deliver to the Client a certified copy of the appointment or sub-contract entered into with the subcontractor.

MODULE E: CONDITIONS APPLICABLE TO WORKS

30. Provider's Obligations

- 30.1.** 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.
- 30.2.** 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.
- 30.3.** The property in any goods and materials intended for the Commission will vest in the Client upon delivery to the Site by the Provider.
- 30.4.** 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.
- 30.5.** 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.
- 30.6.** 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.
- 30.7.** 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.
- 30.8.** 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.
- 30.9.** 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.

30.10. 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.

30.11. 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 30.11** will entitle the Supervising Officer to postpone or withhold the issue of a Practical Completion Certificate, or (where applicable) Section Completion Certificate, under **Condition 34.1** until such time as the Provider has remedied the breach.

30.12. 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.

30.13. 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.

30.14. 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.

30.15. 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.

31. Commencement & Delay

- 31.1.** 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.
- 31.2.** Where the Order so provides, the Client may defer the giving of possession of the Site or relevant part of it for the period stated in the Order.
- 31.3.** 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 31.3** at no additional cost to the Client.
- 31.4.** 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 is completed on the relevant Completion Date.
- 31.5.** 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 Events 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.
- 31.6.** 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 31.5**, 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.

31.7. Any adjustment to the Price will be made applying the same principles of valuation as apply to a Variation under the Order.

31.8. 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.

31.9. 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 31.6** 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.

31.10. 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 31.11**.

31.11. 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.

31.12. Instructions issued by the Supervising Officer pursuant to **Conditions 31.10** and **31.11** 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.

32. Works Insurances

32.1. 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.

32.2. 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.

32.3. 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.

32.4. 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.

33. Partial Possession by the Client

33.1. 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 32.4** will be reduced by the value stated in such certificate.

33.2. Where liquidated damages for delay are required under **Condition 31.9**, 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.

34. Completion & Defects Rectification

- 34.1.** Subject to the Provider having complied with **Condition 30.11**, 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.
- 34.2.** 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.
- 34.3.** The Supervising Officer may whenever he considers it necessary issue instructions pursuant to **Condition 31.11** requiring any such Defects to be rectified. No such instructions may be issued after the issue of the Making Good Defects Certificate.
- 34.4.** 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.
- 34.5.** 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.

35. Taxation, Retention & Final Account

- 35.1.** 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.
- 35.2.** 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.
- 35.3.** Each payment to be made in accordance with **Condition 3** and (where applicable) **Condition 27** is subject to compliance with the requirements of **Condition 35.1** 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 27**.

35.4. 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 35.7**, subject always to the Provider having provided sufficient supporting information as required by **Condition 35.5**.

35.5. Within 10 Working Days 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 20**.

35.6. 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 20**.

35.7. Within 10 Working Days of the final account being agreed between the parties or resolved in accordance with **Condition 20** and the conditions listed in **Condition 35.6** 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 27.4**; 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.

35.8. 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.

36. Termination of works

36.1 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.

36.2 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

37. Duty of Care

- 37.1.** 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 and competent member of the Provider's professional discipline experienced in undertaking commissions comparable in size, scope, complexity and purpose to the Commission.
- 37.2.** The Provider will exercise the level of skill, care and diligence referred to under **Condition 37.1** 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.

38. Time for Performance

- 38.1.** The Commission will be performed by the Provider exercising the level of skill, care and diligence referred to under **Condition 37.1** 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.
- 38.2.** 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.

39. Personnel

- 39.1.** 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 37.1**, having regard to current knowledge, information and good practice.
- 39.2.** 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.
- 39.3.** 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.

39.4. Any personnel appointed by the Provider to replace persons removed under **Condition 39.2** or **Condition 39.3** will be subject to the Client's prior written consent (such consent not to be unreasonably withheld or delayed).

40. Collaboration & attendance

40.1. 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.

40.2. The Provider will, if so required, attend upon the Client on any matter concerning the Commission and will attend any meetings called by the Supervising Officer, and make such reports concerning the Commission as the Supervising Officer may reasonably require.

41. Limitation of Liability

41.1. Where this Condition is stated to apply in the Order, subject to **Conditions 41.2, 41.3** and **41.4** 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, 43.7** and **44.15**, 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 the aggregate,

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

41.2. The limitations that apply under **Condition 41.1** will be subject to any sub-limits or further limitations specified in the Order.

41.3. Subject to **Condition 41.4** neither party is liable to the other for any indirect, special, or consequential loss or damage.

41.4. 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 subcontractors; or
- a wilful default of its obligations pursuant to the Order.

MODULE G: CONDITIONS RELATING TO DATA PROTECTION

42. Introduction

42.1. 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.

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

43. Controller to Controller transfers within the EEA

43.1. 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.

43.2. 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 43**.

43.3. 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 43**.

43.4. 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 43 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.

43.5. 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.

43.6. 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.

43.7. 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 43.2 to 43.6** (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 43.2 to 43.6** (inclusive) had not occurred.

43.8. Except as provided in **Condition 43.7**, each party will pay its own costs and expenses incurred in connection with the performance of this **Condition 43**.

43.9. The provisions of **Condition 43** are intended to survive by their nature shall survive upon termination or expiry of the Order and will continue indefinitely.

44. Data Processing on behalf of the Client within the EEA

44.1. Except as otherwise indicated in **Condition 44.16** (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 Director. The Provider is the Processor.

- 44.2.** 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.
- 44.3.** 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.
- 44.4.** 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.

44.5. Subject to **Condition 44.6**, 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.

44.6. The Provider's obligation to notify under **Condition 44.5** include the provision of further information to the Controller in phases, as details become available.

44.7. 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 44.5** (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.
- 44.8.** Except as provided otherwise in **Condition 44.9**, the Provider is to maintain complete and accurate records and information to demonstrate its compliance with **Condition 44**.
- 44.9.** The requirements set out in **Condition 44.8** 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.
- 44.10.** The Provider must designate a Data Protection Officer if required by the Data Protection Law.
- 44.11.** 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 44** 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.
- 44.12.** The Provider will remain liable for all acts or omissions of any Sub-processor.
- 44.13.** The Provider may, at any time on not less than 25 Working Days' notice, request that the terms of **Condition 44** 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.
- 44.14.** 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.

44.15. 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 44.**

45. Data Transfers under separate agreement

45.1. Where so stated in the Order the parties will enter into a bespoke data transfer or data sharing agreement on terms agreed between the parties, this being a **Data Transfer Agreement.**

45.2. 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.

45.3. If the Provider fails to deliver to the Client the Data Transfer Agreement requested by the Client under **Condition 45.2** 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

46. Application under the Order

- 46.1.** The following provisions of this Module H (*Third Party Rights*) will only apply if stated in the Order.
- 46.2.** 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.
- 46.3.** 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.
- 46.4.** 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 46.3**.
- 46.5.** 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 51**.

47. Duty of Care

- 47.1.** 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 and competent member of the Provider's professional discipline experienced in undertaking commissions comparable in size, scope, complexity and purpose to the Commission.
- 47.2.** 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.

48. Copyright

- 48.1.** 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.

48.2. The licence granted pursuant to **Condition 48.1**:

- 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.

48.3. 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.

49. Insurances

49.1. 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.

49.2. 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.

49.3. If required by the Beneficiary, the evidence required under **Condition 49.1** will be in the form of an original letter or certificate from the Provider's insurers or brokers.

50. Assignment

50.1. Subject to **Condition 50.3**, 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.

50.2. Subject to **Condition 50.3**, 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 50.1** may not recover any sum under this schedule because that person is an assignee and not the person originally named as a Beneficiary pursuant to **Condition 46.2** or **Condition 46.3**.

50.3. The benefit of the Beneficiary's rights under Module H (*Third Party Rights*) cannot be assigned under **Condition 50.1** 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 51**.

51. Limitations

- 51.1.** The Beneficiary may not give instructions to the Provider under Module H (*Third Party Rights*).
- 51.2.** The Provider shall owe 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).
- 51.3.** The Beneficiary may not commence any legal action against the Provider under Module H (*Third Party Rights*) after the expiry of the Limitation Period.



**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. Refer to the specific terms of your Order to identify which of the Conditions apply.

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