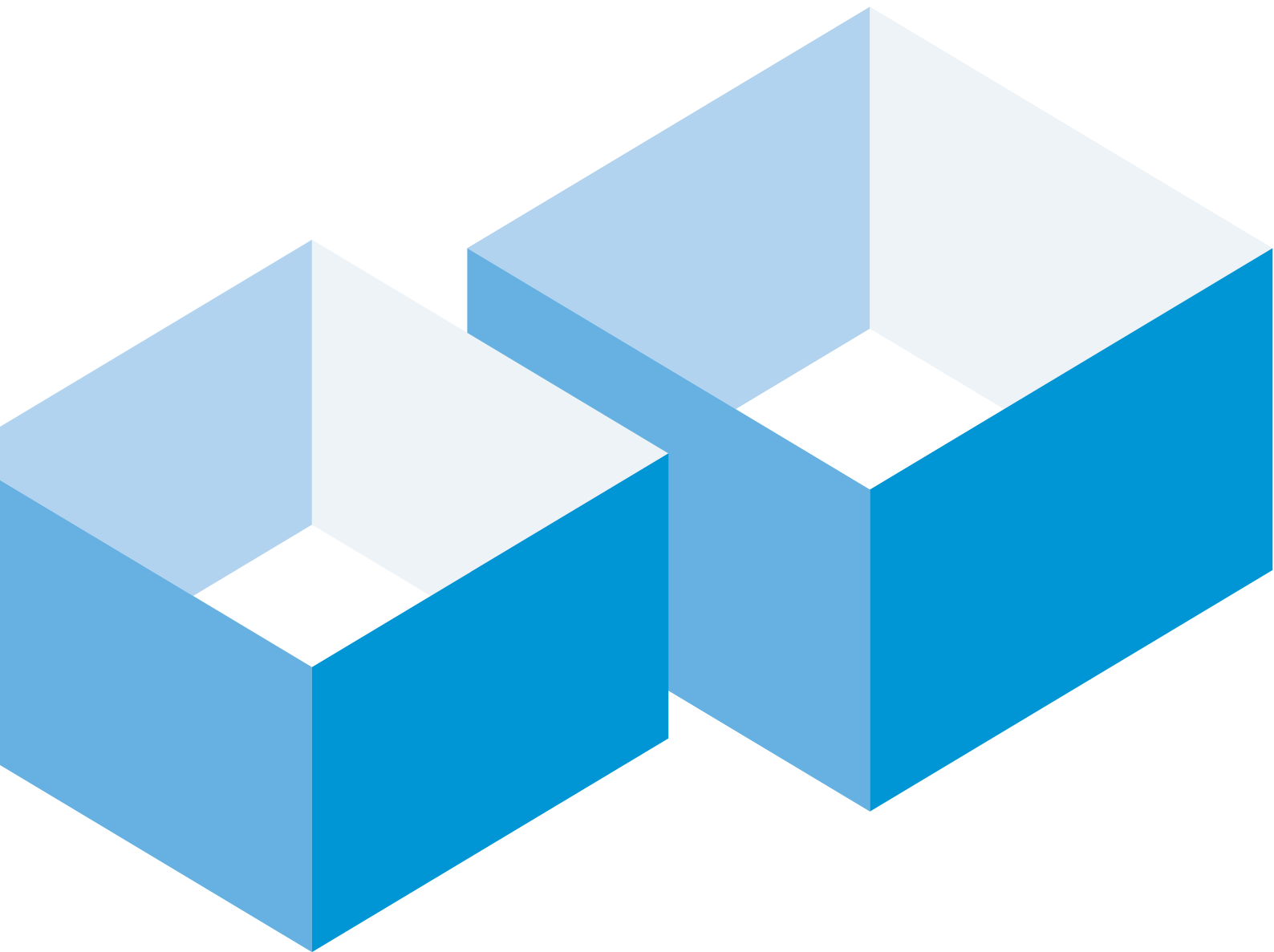




NHF Form of Contract 2023

Contract Conditions



**Your challenges
expertly solved
in partnership**

Published by M3 Housing Ltd, Three Kings, 23 Commonside East,
Mitcham, Surrey, CR4 2QA
www.m3h.co.uk

ISBN: 978-1-908409-49-2 | NHF Form of Contract 2023 – Contract Conditions

Revised and updated in 2023 by Rand Associates Consultancy Services Ltd. and Anthony Collins Solicitors LLP.

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted, in any form or by any means, electronic, mechanical, photocopying, recording or otherwise, without the prior permission of M3 Housing Ltd.

© Rand Associates Consultancy Services Ltd



CONTRACT CONDITIONS

**[Responsive Maintenance (including Emergency Works
ordered during Normal Working Hours and including
Mutual Exchange Gas and Electric Tests),
Call Handling,
Out of Hours Call Handling,
Out of Hours Emergency Works,
Disrepair Works,
Void Property Inspections,
Void Property Works,
Major Works,
Planned Works,
Disability Adaptation Works,
Servicing (including Safety Checks) and
Routine Maintenance of Installations,
Technical Inspections,
Property Health Checks/MOTs,
Handyperson Services, and
Estate Services]**

NHF FORM OF CONTRACT 2023 – CONTRACT CONDITIONS

CONTENTS

1.	INTERPRETATION	1
1.1	Definitions	1
1.2	Interpretation	37
1.3	Errors and inconsistencies in the Contract Documents	37
1.4	Joint Parties.....	37
1.5	Time	38
1.6	Provider’s obligations	38
2.	CONTRACT FORMATION AND DURATION	38
2.1	Contract formation	38
2.2	Commencement and Duration	38
3.	CONTRACT MANAGEMENT	39
3.1	Appointment of the Client’s Representative.....	39
3.2	Delegation by the Client’s Representative	39
3.3	Role and Instructions of the Client’s Representative	39
3.4	Duties of the Client in relation to the Client’s Representative	40
3.5	Provider’s Contract Manager	40
3.6	Core Group.....	41
3.7	Collaborative Working	41
4.	WORK ORDERING AND COMPLETION PROCEDURES	41
4.1	Order procedures.....	41
4.2	Order Variations and Customer Damage	42
4.3	Appointments, Response Periods, Target Completion Dates and Programmes.....	42
4.4	Volumes and other contractors	44
4.5	Variations to Property numbers.....	44
5.	PROVIDER’S OBLIGATIONS	44
5.1	General obligations relating to the Works	44
5.2	CDM and Regulatory Requirements	45
5.3	Specialist Works and associated requirements	47
5.4	Defects	49
5.5	Best Value	49
5.6	Assistance with Leaseholder consultation.....	49
5.7	Right to repair	49
5.8	Business continuity	50
5.9	Disasters, civil emergencies, and terrorism prevention.....	51
5.10	Social Value.....	51
5.11	Complaints handling.....	52
5.12	Co-operation with audit, ombudsman, etc.	52

NHF FORM OF CONTRACT 2023 – CONTRACT CONDITIONS

5.13	Documents and Data	52
5.14	Publicity	53
5.15	Safeguarding	53
5.16	Parent Company Guarantee and Performance Bond	53
6.	STAFF AND TUPE	54
6.1	Staff.....	54
6.2	Licence to enter Properties	55
6.3	Equality and diversity	56
6.4	TUPE – in	57
6.5	TUPE Retendering Information	57
6.6	TUPE transfer to a Successor Contractor	58
6.7	TUPE and Subcontractors	59
7.	INFORMATION HANDLING	59
7.1	Intellectual Property Rights and Client Data	59
7.2	Confidentiality.....	60
7.3	Security of Confidential Information	61
7.4	Data Protection.....	62
7.5	Freedom of Information	66
7.6	Client Data held on the Provider’s IT Systems	67
8.	CHANGES TO ORDER PRICE, RESPONSE PERIOD AND/OR TARGET COMPLETION DATE	68
8.1	Early warning	68
8.2	Paid extensions of time	69
8.3	Unpaid extensions of time	69
8.4	Condition precedent to paid or unpaid extensions of time.....	70
8.5	Quotation for a proposed Instruction.....	70
8.6	Change in Law risk.....	71
8.7	Force Majeure.....	72
9.	PAYMENT	72
9.1	Price	72
9.2	Valuations	73
9.3	Valuations for Central Overheads and Profits	74
9.4	Inflation	74
9.5	Liquidated damages	75
9.6	Deduction of Retention.....	75
9.7	Set off.....	75
9.8	Notified Sum where a Valuation is an application for payment	76
9.9	Invoice procedure where a Valuation is an application for payment.....	77
9.10	Notified Sum and invoice procedure where a Valuation is an invoice	78
9.11	Interim Final Account.....	78
9.12	Final Account.....	78

NHF FORM OF CONTRACT 2023 – CONTRACT CONDITIONS

9.13	Pay Less Notices	81
9.14	Release of Retention	82
9.15	Construction Industry Scheme ("CIS")	83
9.16	Interest	83
9.17	VAT	83
10.	ASSIGNMENT AND SUBCONTRACTING	84
10.1	Assignment and Novation by the Client	84
10.2	Assignment by the Provider	84
10.3	Subcontracts	84
10.4	Subcontractors for Excepted Works	86
10.5	Payment of Subcontractors	86
10.6	Collateral warranties	86
10.7	Anti-slavery and human trafficking due diligence	87
11.	INDEMNITY AND INSURANCE	87
11.1	Provider Indemnities	87
11.2	Provider Insurances	88
11.3	Property damage caused by other events	88
11.4	Equipment	88
11.5	Evidence and approval of Insurances	89
11.6	Failure to insure	89
12.	MONITORING, KPIs, BREACHES AND REMEDIES	89
12.1	Monitoring and KPIs	89
12.2	Instruction to complete Orders or rectify Defects	91
12.3	Diversion or suspension of Orders	91
12.4	Default Notice	93
12.5	Client step-in	93
12.6	Remedial Plan	94
12.7	Provider's statutory right of suspension	95
12.8	Remedies cumulative	95
13.	TERMINATION AND EXPIRY	96
13.1	Termination for Provider Default	96
13.2	Bribery and corruption	98
13.3	Termination for Client Default	99
13.4	Termination for Force Majeure	101
13.5	Break clause	102
13.6	Expiry	102
13.7	Removal of Workstreams	103
13.8	Completion certificate	104
13.9	Obligations to co-operate on handover	104
13.10	Post Termination	105

NHF FORM OF CONTRACT 2023 – CONTRACT CONDITIONS

14.	GENERAL PROVISIONS	105
14.1	Third party rights, groups and ALMOs	105
14.2	Waiver and severability	106
14.3	Entire agreement	106
14.4	Extent of obligations and further assurance	106
14.5	No partnership or agency	107
14.6	Variations of this Contract	107
14.7	Notices.....	107
14.8	Governing Law and enforcement	108
14.9	Counterparts	108
14.10	Legal costs	108
15.	DISPUTE RESOLUTION	108
15.1	Dispute escalation procedure.....	108
15.2	Adjudication	109
15.3	Mediation	109
15.4	Expert decision	109
15.5	Arbitration	110
15.6	Settlement of Disputes	110

NHF FORM OF CONTRACT 2023 – CONTRACT CONDITIONS

1. INTERPRETATION

1.1 Definitions

In the Contract Documents the following terms have the following meanings:

"Adjudicator"	the person appointed as adjudicator under Clause 0 [<i>Adjudication</i>];
"Adviser"	a professional adviser or consultant to either Party;
"ALMO"	an arm's length management organisation that is managing local authority-owned housing;
"Anniversary Date"	each anniversary of the Commencement Date;
"Annual Price"	<p>an annual Price, as set out in the Price Framework, for:</p> <ul style="list-style-type: none">• Servicing Visits (including Safety Checks);• Responsive Maintenance; or• Estate Services including window cleaning, building cleaning, grounds maintenance, maintaining, cleaning and litter picking of Areas;
"Annual Programme"	an annual programme for Planned Works that has been accepted by the Client's Representative under Paragraph 6.2 [<i>Annual Programme for Planned Works</i>] of the Preliminaries;
"Appliance"	any appliance installed in a Property including any gas, heating, safety, lifting, electrical or other appliance which the Client is under an obligation to inspect, test, certify, service and/or maintain;
"Apprentice"	a person registered as an apprentice with an industry recognised body;
"Apprenticeship"	an apprenticeship approved under the Law governing apprenticeships;
"Arbitrator"	a person appointed as arbitrator under Clause 0 [<i>Arbitration</i>];
"Area"	a scheme, area or estate to which Estate Services are to be provided under this Contract which may include any internal Common Parts, roads, paths, paving, hardstanding, parking areas, play areas, garages, bin and refuse stores, outbuildings, play equipment, fences, railings, and walls as set out on the Area Map or schedule appended to the Contract Details owned, managed, or maintained by the Client;
"Area Map"	the map or schedule appended to the Contract Details owned, managed, or maintained by the Client;

NHF FORM OF CONTRACT 2023 – CONTRACT CONDITIONS

"Articles of Agreement"	the Articles of Agreement for this Contract executed by the Client and Provider;
"Asbestos Licensed Contractor"	a contractor licensed under the Control of Asbestos Regulations 2012 to undertake "work with asbestos";
"Asbestos Licensed Works"	any Works with asbestos that are regulated under the Control of Asbestos Regulations 2012 and must be undertaken by an Asbestos Licensed Contractor;
"Asbestos Works"	any Works with asbestos that either: <ul style="list-style-type: none">• are Asbestos Licensed Works; or• involve asbestos but need not be undertaken by an Asbestos Licensed Contractor;
"Assigned Employee"	any person engaged or employed by the Provider or a Subcontractor in providing the Works who it is expected will be a Returning Employee if they remain engaged or employed by the Provider or that Subcontractor until the Termination Date;
"Audit Check"	an independent check on behalf of the Client of Servicing, Routine Maintenance, Responsive Maintenance, Planned Works, and/or Major Works to Installations;
"Auditor"	an auditor or independent consultant appointed to carry out Audit Checks including a Gas Auditor and an Electrical Auditor;
"Biomass"	the use of plant matter (wood chippings and other waste products etc) to produce heat by direct combustion boilers or other heat producing appliances, and electricity by steam turbines and gasifiers;
"Block"	a block containing 2 (two) or more separate dwellings;
"Budget"	the Provider's anticipated Order Price for an Order for Planned Works or Major Works calculated in accordance with the Price Framework;
"Building Safety Law"	all Law relating building safety, including all applicable guidance, Standards, and Codes of Practice issued by the Building Safety Regulator;
"Building Safety Regulator"	the regulator created by the Building Safety Act 2022 including any Organisation authorised under Building Safety Law to exercise its functions;
"Building Regulations"	Laws made under the Building Act 1984 as amended by Building Safety Law;

NHF FORM OF CONTRACT 2023 – CONTRACT CONDITIONS

"Business Continuity Plan"	a plan showing how the Provider can continue to deliver the Works throughout the first week after any incident that disrupts the Provider's normal operations including a fire or loss of power at the Provider's or a Subcontractor's premises;
"Business Day"	any day other than a Saturday, Sunday, or public holiday (as defined in the Banking and Financial Dealings Act 1971);
"Call Handling"	receiving and dealing with Responsive Maintenance requests from Customers during the hours specified in the Contract Details for Paragraph 2.3 [<i>Provider's call centre or Call Handling Software</i>] of the Preliminaries;
"CCTV Installations"	closed circuit television installations;
"CDM Regulations"	the Construction (Design and Management) Regulations 2015;
"CEDR"	the Centre for Effective Dispute Resolution;
"Central Overheads"	<p>the Provider's fixed costs in respect of (and limited to):</p> <ul style="list-style-type: none">• directors' and head office staff:<ul style="list-style-type: none">◦ salaries and pension contributions;◦ transport and travel costs including associated leasing and vehicle maintenance, running costs (including fuel) and other related ancillary costs; and◦ health care and life Insurance costs;• employer's liability, contractor's all-risk and public liability Insurances;• all other corporate expenses and disbursements (including corporate administration and tendering costs) that are not job specific or site specific;• head and regional office expenditure including:<ul style="list-style-type: none">◦ rent or purchase and mortgage costs;◦ electricity, gas and water charges;◦ business rates, water and sewage rates;◦ all telephone, cable, ISDN and/or other communication charges;◦ building maintenance, upkeep and service charges;◦ the purchase, maintenance, upkeep and replacement of:<ul style="list-style-type: none">– fixtures and fittings;

NHF FORM OF CONTRACT 2023 – CONTRACT CONDITIONS

	<ul style="list-style-type: none">– all IT systems; hardware and software (including fittings and consumables);– office equipment; and– stationery, postage and facsimile costs; <ul style="list-style-type: none">• all company financing charges, interest and other costs, including depreciation and amortisation charges;• professional fees incurred in carrying out the Provider's business, including accountants, lawyers and auditors fees; and• any other items specified in the Contract Details for Clauses 1.1 [<i>Definitions</i>] and 9.3 [<i>Valuations for Central Overheads and Profit</i>];
"Certificate of Making Good Defects"	a certificate issued by the Client's Representative confirming that all Defects Liability Periods under this Contract have ended and that all Defects arising during them have been rectified to the satisfaction of the Client's Representative;
"Civil Emergencies Plan"	the Client's co-ordination plan for major civil emergencies;
"Client"	the organisation named as Client in the Contract Details or any successor in title of the Client;
"Client Data"	all data, information, records, and documentation in any electronic or tangible form relating to the Properties, the Customers or the Works (including the identity of the Staff carrying out each Order) that is held on the Client's IT System, the Provider's IT System or in paper form;
"Client Default"	any of the circumstances set out in Clause 13.3 [<i>Termination for Client Default</i>];
"Client's IT Appendix"	the Contract Document giving details of the Client's IT System that is appended to the Contract Details;
"Client's IT System"	the Client's information technology system (including both software and hardware) as specified in the Contract Details for Clause 1.1 [<i>Definitions</i>] and Paragraph 2.2.1 [<i>Linking the Client's IT System and Provider's IT System</i>] of the Preliminaries which is to be used and/or connected to by the Provider in connection with the Works; further details of which are set out in the Client's IT Appendix;
"Client Party"	the Client, any board member or councillor (as applicable) of the Client, any employee of the Client and any Advisor or contractor to the Client other than the Provider or any Subcontractor or Supplier;

NHF FORM OF CONTRACT 2023 – CONTRACT CONDITIONS

"Client's Policies"	the policies and procedures of the Client that the Provider must follow when carrying out the Works as specified in the Contract Details for Clauses 1.1 [<i>Definitions</i>] and 5.1.1 [<i>General obligations relating to the Works</i>] or as varied from time to time under Clause 8.5 [<i>Quotation for a proposed Instruction</i>];
"Client's Representative"	the person stated in the Contract Details for Clause 3.1 [<i>Appointment of the Client's Representative</i>] to be the Client's Representative under this Contract;
"Client's Standard Details"	the Client's specific design and/or installation requirements, performance or technical specifications, schedules or drawings for this Contract as appended to the Contract Details;
"Code of Practice"	any code of recommended practice produced by a Statutory Authority or an industry recognised body (including the Construction Leadership Council);
"Commencement Date"	the date stated in the Contract Details for Clause 2.2 [<i>Commencement and Duration</i>] as the commencement date of this Contract;
"Common Parts"	the Communal areas of a Block including Communal entrances, lifts, staircases, landings, corridors, access decks, front and rear doors to individual Properties within a Block, the external structure, windows and roofs, external Areas, fencing, below ground services and water mains;
"Communal"	relating to the Common Parts, a Block or more than one Property;
"Completion Certificate"	a certificate issued by the Client's Representative stating that all Orders have been completed and that all Defects occurring up to the date of issue of the Completion Certificate have been made good;
"Confidential Information"	any information communicated by either Party to the other on the basis that it is confidential and any information that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including all Personal Data;
"Conflicts of Interest Policy"	in the case of a Client that is a Registered Provider the Client's policy for ensuring that it complies with all the Regulatory Requirements and good practice in relation to avoiding conflicts of interest between its board members and employees and its contractors and suppliers;
"Construction Act"	the Housing Grants, Construction and Regeneration Act 1996 as amended by the Local Democracy, Economic Development and Construction Act 2009;

NHF FORM OF CONTRACT 2023 – CONTRACT CONDITIONS

"Construction Phase Plan"	the plan developed by the Provider in its capacity as Principal Contractor to comply with the CDM Regulations;
"Consultant"	a Consultant employed to advise the Client on any aspect of the Works including asbestos, gas and/or quality or to audit the Provider's performance of the Works;
"Contract"	this contract set out and described in the Contract Documents;
"Contract Details"	the details of this Contract as set out in the Contract Details document;
"Contract Documents"	the documents listed as Contract Documents in the Articles of Agreement;
"Contract Manager"	the Provider's contract manager appointed under Clause 3.5 [<i>Provider's Contract Manager</i>];
"Contract Period"	the period from the Commencement Date to the Termination Date;
"Contract Year"	the period from the Commencement Date to the date 12 (twelve) months from the Commencement Date plus each successive period of 12 (twelve) months other than the final Contract Year which shall be the period from the anniversary of the Commencement Date immediately preceding the Termination Date to the Termination Date;
"Controlled Entry Installations"	controlled door entry, barrier and automatic door opening systems, automatic gates, car park barriers rising bollards and entry control systems;
"Council"	the local authority named in the Contract Details for Clauses 1.1 [<i>Definitions</i>] and 14.1 [<i>Third party rights, groups and ALMOs</i>] (if any) whose housing stock is managed by the Client;
"Customer"	a tenant, Leaseholder, or licensee of the Client or of another landlord for whom the Client undertakes housing management and in relation to a Customer that is vulnerable, " Customer " includes any carer or person who undertakes a similar role in relation to them;
"Customer Damage"	vandalism or other damage to a Property caused or suspected to be caused by a Customer or member of a Customer's household or visitor to the Customer (excluding fair wear and tear);
"Daily Report"	the daily report from the Provider to the Client as set out in the Preliminaries;

NHF FORM OF CONTRACT 2023 – CONTRACT CONDITIONS

"Data Controller"	has the meaning given under Data Protection Law;
"Data Loss Event"	any event that results or may result in any unauthorised or unlawful access to Personal Data held by the Provider under this Contract, actual potential loss and/or destruction of Personal Data in breach of this Contract including any personal data breach (as defined under Data Protection Law);
"Data Processing Table"	the Appendix to the Contract Details headed "Data Processing Table";
"Data Processor"	has the meaning given under Data Protection Law;
"Data Protection Impact Assessment"	has the meaning given under Data Protection Law;
"Data Protection Law"	all Law relating to the processing of Personal Data, including all applicable guidance and codes of practice issued by the Information Commissioner's Office or any replacement data protection or related privacy Law in force in England and Wales;
"Data Protection Officer"	has the meaning given under Data Protection Law;
"Data Protection Principles"	the principles applicable to the protection of Personal Data under Data Protection Law;
"Data Subject"	has the meaning given under Data Protection Law;
"Data Subject Access Request"	a request by a Data Subject under Data Protection Law to access their Personal Data;
"Daywork"	Works not covered by the Schedule of Rates that are to be paid for at the Rate for dayworks set out in the Price Framework;
"DBS Check"	<p>a check with the Disclosure and Barring Service (or any successor agency) of the most extensive type available in relation to a person (having regard to the Works they are to undertake under this Contract) whether:</p> <ul style="list-style-type: none">• the person about whom the check is made has any criminal convictions including, where the nature of the Works means that any such person is exempt from the restriction on disclosing spent convictions under Regulation 4(2) of the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975, a check for convictions that would otherwise be deemed to be spent; and/or• there are other circumstances that may affect their eligibility to work alongside children or vulnerable adults;

NHF FORM OF CONTRACT 2023 – CONTRACT CONDITIONS

"Default Notice"	a notice issued by the Client under Clause 0 [<i>Default Notice</i>] registering formally a breach of this Contract;
"Defect"	any Works not complying with the requirements for those Works as set out in this Contract;
"Defect Rectification Period"	<p>the shorter of:</p> <ul style="list-style-type: none">• 5 (five) Working Days of the notification of the Defect to the Provider; and• the Response Period for a Responsive Maintenance repair of the same nature as the Defect;
"Defects Liability Period"	the period stated in the Contract Details for Clauses 1.1 [<i>Definitions</i>] and 5.4 [<i>Defects</i>] as being the Defects Liability Period which will begin on the Order Completion Date;
"Deputy Client's Representative" or "Deputy CR"	a person appointed by the Client's Representative under Clause 3.2 [<i>Delegation by the Client's Representative</i>] to act as his/her deputy;
"Design"	any design produced by or on behalf of the Provider in connection with the Works including any design produced by or on behalf of the Client and which is incorporated in or used for producing the Provider's design for Planned Works or Major Works under Paragraph 6.5 [<i>Preparation and approval of Designs, schedule Budget and Order Programme</i>] of the Preliminaries;
"Disability Adaptation Works"	Works specified by an Occupational Therapist to provide facilities for a person with a disability;
"Disaster"	a disaster or civil emergency that in the opinion of the Client requires the Provider's Staff and/or Equipment to be diverted to activities other than the Works;
"Dispute"	a dispute that one Party has with the other Party (or, in the case of the Provider, with the Client's Representative), concerning this Contract or an allegation by a Party that the other has committed a breach of this Contract;
"Dispute Escalation Table"	the table set out in the Contract Details for Clause 15.1 [<i>Dispute escalation procedure</i>] setting out the escalation procedure for resolving a Dispute;
"Dispute Resolution Procedure"	the procedure set out in Clause 15 [<i>Dispute Resolution</i>];
"Disrepair Claim"	any actual or threatened legal proceedings (including any actions taken under the pre-action protocol) by a

NHF FORM OF CONTRACT 2023 – CONTRACT CONDITIONS

	Customer against the Client in relation to the disrepair of any Property;
"Disrepair Works"	any Work instructed by the Client that relate to a Disrepair Claim
"Documents and Data"	all documents, data, information, text, drawings, diagrams, images, records, or sound embodied in any electronic or tangible medium used or created in connection with this Contract or the Works;
"Domestic"	relating to a single Property;
"Early Void Completion Payment"	an additional payment to be made to the Provider (where the Price Framework Details so provide) for completing Void Property Works at least 5 (five) Working Days before the end of their Response Period;
"ECA"	the Electrical Contractors' Association;
"EICR"	Electrical Installation Condition Report;
"Electrical Auditor"	a consultant or independent body appointed by the Client to undertake desktop and/or on-site BS 7671 validation of EICRs and other electrical test certificates issued by Provider;
"Electrical Testing"	the inspection and testing of Domestic and Communal Electrical Installations in Properties and the production of EICRs and electrical test certifications;
"Electrical Installations"	Domestic and Communal electrical circuits, supply, and installations;
"Emergency Works"	Works: <ul style="list-style-type: none">• that have an emergency priority Response Period; or• that must be undertaken immediately to safeguard the wellbeing of Customers or other occupiers, the structural stability and integrity of the Properties or the health and safety of the general public;
"Energy Efficiency Works"	retrofitting Works to improve the energy efficiency of Properties and reduce energy consumption;
"EPC"	an Energy Performance Certificate;
"Equality and Diversity Law"	all Law preventing unlawful discrimination, including unlawful discrimination on the basis of colour, race, nationality, ethnic group, regional or national origin,

NHF FORM OF CONTRACT 2023 – CONTRACT CONDITIONS

	gender, marital status, civil partnership status, pregnancy, maternity, sexual orientation, gender reassignment, religious or similar belief, age, disability or part time or fixed term status;
"Equal Pay Legislation"	all Law preventing pay differentials directly or indirectly on the grounds of sex, gender, maternity, or pregnancy except to the extent that such differentials are justified;
"Equipment"	the Provider's or a Subcontractor's owned or hired equipment, plant and machinery, vehicles, temporary buildings, scaffolding, tools, clothing and personal protective equipment and other items supplied and used by the Provider to undertake the Works;
"Estate"	a group of Properties or Blocks with hard and soft landscaped Areas, access roads, parking areas, garage blocks and other similar ancillary buildings forming an integrated asset;
"Estate Services"	<p>such of the following Works (as specified in the Contract Details for Clause 1 [<i>Definitions</i>]) as are included in this Contract:</p> <ul style="list-style-type: none">• building cleaning;• window cleaning;• grounds maintenance; and• hard landscaping;
"Estate Services Programme"	a programme for Periodic Tasks produced by the Provider in accordance with Paragraph 6.8 [<i>Servicing Programmes and Estate Services Programmes</i>] of the Preliminaries;
"Excepted Works"	Works for which the Provider is to be paid under this Contract but for which there is no Price or Rate in the Schedule of Rates;
"Excepted Works Subcontractor"	a Subcontractor for Excepted Works appointed in accordance with Clause 10.4 [<i>Subcontractors for Excepted Works</i>];
"Expert"	a person appointed to decide a Dispute under Clause 15.4 [<i>Expert Decision</i>];
"Expert Decision"	decision by an Expert under Clause 15.4 [<i>Expert Decision</i>];
"Expiry Date"	the last day of the Contract Period, as stated in the Contract Details for Clause 2.2 [<i>Commencement and Duration</i>] as extended, where applicable, under Clause 2.2 [<i>Commencement and Duration</i>];

NHF FORM OF CONTRACT 2023 – CONTRACT CONDITIONS

"Extremist"	a person who is vocally or actively opposed to fundamental British values, including democracy, the rule of law, individual liberty and mutual respect and tolerance of different faiths and beliefs and including a person who calls for the death of members of the British armed forces whether in this country or overseas;
"Final Account"	the account issued by the Client's Representative under Clause 9.12 [<i>Final Account</i>] indicating any amount remaining due to the Provider or the Client;
"Fire Safety Installations"	all circuits, supply and installations relating to fire alarms, fire detection systems, emergency lighting and firefighting equipment;
"FOIA"	the Freedom of Information Act 2000;
"Force Majeure"	<p>either:</p> <ul style="list-style-type: none">• any event beyond the reasonable control of the affected Party which does not relate to its fault or negligence including Act of God, expropriation or confiscation of property or other Government intervention, war, hostilities, rebellion, terrorist activity, local or national emergency, sabotage or riots, and floods, fires, explosions or other catastrophes, any Pandemic, power shortages and computer viruses but Force Majeure does not include:<ul style="list-style-type: none">◦ any failure by the Provider adequately to test any Equipment or any Materials before their use;◦ strikes or other industrial action by employees of the affected Party or any Subcontractors or Suppliers;◦ any inability of the Provider or its Subcontractors to obtain labour or Materials or any delays in being able to do so;◦ anything caused by a breach of this Contract by the affected Party; or• this Contract being set aside under Regulation 73 PCR 2015 by a court in relation to which there is no further appeal (either due to the passage of time or otherwise) on the basis that this Contract has been subject to a substantial modification to which to Regulation 73(1)(a) PCR 2015 applies;
"Freedom of Information Law"	FOIA, the Environmental Information Regulations 2004 and any equivalent freedom of information Law (including where limited to Customers) to the extent that the Client becomes a designated body under that

NHF FORM OF CONTRACT 2023 – CONTRACT CONDITIONS

	Law or subject to such freedom of information Law during the Contract Period;
"Gas Auditor"	a consultant or independent body appointed by the Client to undertake desktop and/or on-site validation of LGSRs issued by the Provider;
"Gas Safe Register"	the official gas register of gas businesses and engineers for the United Kingdom, Isle of Man and Guernsey operated on behalf of the Health and Safety Executive;
"Gas Safety Regulations"	the Gas Safety (Installation and Use) Regulations 1998;
"Gas Installations"	Heating Appliances and Heating Installations including boilers, appliances, gas fittings or service pipework (as defined in the Gas Safety Regulations) that are connected to a live gas supply;
"General Principles of Risk Prevention"	the general principles of risk prevention referred to in the CDM Regulations 2015 as set out in Schedule 1 to the Management of Health and Safety at Work Regulations 1999;
"Good Industry Practice"	that degree of skill, care, prudence, and workmanship which would reasonably and ordinarily be expected from a skilled and experienced maintenance contractor or subcontractor carrying out the Works;
"Group"	<p>in relation to the Client is:</p> <ul style="list-style-type: none">• that Client;• all of its subsidiaries, holding companies or companies or community benefit societies of which it is a subsidiary; and• all subsidiaries of its holding company and of companies or community benefit societies of which it is a subsidiary; <p>(in each case as defined in Section 1159 of the Companies Act 2006 or Sections 100 and 101 of the Co-operatives and Community Benefit Societies Act 2014);</p>
"Handyperson Service"	the provision by the Provider of a multi-skilled Tradesperson or Tradespersons and a van(s) to undertake both programmed and ad-hoc minor tasks or preventative maintenance on Properties designated by the Client;
"Health and Safety File"	the file prepared, maintained, and updated by the Principal Designer to comply with the CDM Regulations;
"Health and Safety Law"	all Law (including the Building Regulations) related to the protection of health and safety, the protection of

NHF FORM OF CONTRACT 2023 – CONTRACT CONDITIONS

	the environment, the prevention of disease and the avoidance of industrial accidents;
"Heating Appliance"	a solid fuel (including Biomass), oil, LPG or gas fired point, space, micro-generation and/or hot water generating appliance (including integral circulators and fans) together with all pumps, timer controls, and temperature controls (wherever sited);
"Heating Installation"	an entire heating, space heating and/or hot water generating system from the Property isolating stop cock, including Heating Appliances, fuel supply pipework, heat exchangers, circulators, fans, flues, terminals, vents, insulation, equipment, controls, valves, filters, appliances, tanks, cylinders, vessels, pumps; radiators, heat emitting devices, associated electrics and all associated pipework and ductwork systems other than pipework cylinders, vessels and circulatory pipe work solely for drawing off Domestic hot water from hot water storage tanks;
"Heating 1 (one) Star Servicing"	Servicing to Heating Appliances as described under the heading "Heating 1 (one) Star Servicing" in Appendix 1 [<i>Scope of Works</i>] to the Contract Details;
"Heating 3 (three) Star Servicing"	Servicing, and Responsive Maintenance to Heating Installations as described under the heading "Heating 3 (three) Star Servicing" in Appendix 1 [<i>Scope of Works</i>] to the Contract Details;
"HETAS"	the Organisation recognised by the Government to approve Biomass and solid fuel Domestic Heating Appliances, fuels and services including registration of competent installers and servicing Organisations;
"Higher-Risk Building"	has the meaning given in Part 3 of the Building Safety Act 2022 other than in relation to Paragraph 13.3 [<i>Higher Risk Buildings prescribed information</i>] of the Preliminaries where it has the meaning given in Part 4 of the Building Safety Act 2022;
"Higher-Risk Building Work"	Works defined as "higher risk building works" under the Building Safety Act 2022;
"HRB Completion Certificate"	the completion certificate issued under Building Safety Law on the completion of Works to a Higher-Risk Building;
"IET Wiring Regulations"	the edition of BS 7671: Requirements for Electrical Installations IET Wiring Regulations, co-published by The Institution of Engineering and Technology and the British Standards Institution or equivalent current at the time of the Works or any equivalent wiring regulations approved by Law;

NHF FORM OF CONTRACT 2023 – CONTRACT CONDITIONS

"Incentivised Amount"	the amount calculated by applying the Incentivisation Percentage to each Valuation;
"Incentivised Payment"	the part of the Incentivised Amount payable to the Provider as set out in the KPI Framework;
"Incentivisation Percentage"	the percentage (as stated in the Price Framework) that is to be deducted from each Valuation and which is to be payable (or not) depending on the Provider's performance as measured by the KPIs for which incentivisation is applied (as stated in the KPI Framework);
"Indemnify"	indemnify on a full indemnity basis;
"Inflation"	the percentage change in the Inflation Index from the Month or Quarter in which the Inflation Period starts to that in which the Inflation Period ends;
"Inflation Adjustment Date"	the first date on which Inflation is applied to the Rates (as set out in the Price Framework Details and Paragraph 6 [<i>Inflation</i>] of the Price Framework Rules) and each anniversary of that date during the Contract Period;
"Inflation Base Date"	the date stated in the Price Framework Details as the date from which Inflation is calculated;
"Inflation Index"	the index stated in the Price Framework Details as the inflation index or, if such index is replaced, the inflation index the Client's Representative nominates under Clause 9.4 [<i>Inflation</i>];
"Inflation Period"	the period starting on the Inflation Base Date and ending on each Inflation Period End;
"Inflation Period End"	the date stated in the Price Framework Details as the date on which the first Inflation Period ends and each anniversary of that date;
"Information"	has the meaning given under section 84 of the FOIA;
"Insolvency Event"	<p>a Party:</p> <ul style="list-style-type: none">• suspending or threatening to suspend, payment of its debts or being unable or deemed unable to pay its debts within section 123 of the Insolvency Act 1986;• commencing negotiations with any of its creditors with a view to rescheduling any of its debts, or making a proposal for or entering into any compromise or arrangement with any or all of its creditors;• having a petition filed, passing a resolution, or having an order made for its winding up (except

NHF FORM OF CONTRACT 2023 – CONTRACT CONDITIONS

for the purposes of an amalgamation or reconstruction of a solvent company);

- giving or receiving notice of any intention to appoint or appointing or having appointed an administrator, receiver, receiver and manager or administrative receiver or applying for or being the subject of an administration order;
- having a creditor take possession of, or distress, execution, sequestration, or other such process levied or enforced on or sued against, the whole or any part of its assets and such attachment or process not being discharged within 10 (ten) Business Days;
- ceasing to trade or threatening to cease to trade;
- failing within the time provided for payment to honour any guarantee or indemnity it has given which has fallen due and been called upon;
- being an individual that:
 - is the subject of a bankruptcy petition or order;
 - has a receiver appointed over his/her assets;
 - makes an arrangement with creditors; or
 - is deemed unable to pay his/her debts within section 268 of the Insolvency Act 1986;
- being a partnership (other than a limited liability partnership) that has one of its partners that is subject to any of the above insolvency events applying to individuals; or
- being the subject of any equivalent or similar event in England & Wales or in any other legal jurisdiction;

“Installations”

any items installed in any of the Properties or Blocks for which Servicing may be required including:

- Electrical Installations;
- Fire Safety Installations;
- Heating Installations (including Gas Installations);
- Lifting Installations;
- Mechanical Installations;
- Microgeneration Installations;
- Security, Access, and Life Support Installations; and
- Water Installations;

NHF FORM OF CONTRACT 2023 – CONTRACT CONDITIONS

"Instruction"	a written or oral instruction from the Client's Representative or Deputy Client's Representative issued under this Contract and "Instruct" means to "issue an Instruction";
"Insurances"	the Insurances the Provider is required to maintain under Clause 11 [<i>Indemnity and Insurance</i>] at the minimum levels set out in the Contract Details;
"Intellectual Property Rights"	all intellectual property rights including patents, inventions, trademarks, service marks, logos, designs, design rights (whether registered or not) and all applications for any of them, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registrable or not in any country (including the United Kingdom) and the right to sue for passing off and all renewals and extensions of such rights;
"Interest Rate"	the interest rate specified in the Contract Details for Clauses 1.1 [<i>Definitions</i>] and 9.16 [<i>Interest</i>];
"Interim Completion Certificate"	<p>a certificate issued by the Client's Representative stating that:</p> <ul style="list-style-type: none">• all Orders issued up to the Interim Final Account Date have been completed; and• all Defects notified to the Provider before the Interim Final Account Date have been rectified;
"Interim Final Account"	the account issued by the Client's Representative under Clause 9.11 [<i>Interim Final Account</i>] stating the amount due in respect of all Orders issued up to the Interim Final Account Date;
"Interim Final Account Date"	the date or stage of the Works to which an Interim Final Account is to be made up as set out in the Contract Details for Clauses 1.1 [<i>Definitions</i>] and 9.11 [<i>Interim Final Account</i>];
"Invasive Alien Species"	any invasive plants designated as such by Law;
"Invitation to Tender"	the invitation to tender for this Contract issued by the Client including any supplements to it;
"IT System"	the Client's IT System or the Provider's IT System (as applicable);
"Key Performance Indicator" or "KPI"	a Key Performance Indicator by which the Provider's performance of the Works is measured as set out in the KPI Framework;
"KPI Framework"	the Contract Document setting out how KPIs are to be measured;
"KPI MAP Level"	the minimum acceptable performance level as measured by a KPI (as set out in the KPI Framework)

NHF FORM OF CONTRACT 2023 – CONTRACT CONDITIONS

	that the Client is prepared to tolerate such that if performance is worse than that level for that KPI the Client can serve a notice under Clause 12.1.9 [<i>Monitoring and KPIs</i>];
"KPI Measurement Period"	the period over which the Provider's performance in relation to a KPI is assessed as set out in the KPI Framework;
"KPI Performance Target"	the performance target for a KPI as set out in the KPI Framework;
"Law"	<p>any:</p> <ul style="list-style-type: none">• Act of Parliament or other legislation;• subordinate legislation (as defined in section 21(1) of the Interpretation Act 1978);• exercise of the Royal prerogative;• retained European Union law in force in England and Wales under the European Union (Withdrawal) Act 2018 (whilst in force);• provisions of the EU/UK Trade and Co-operation Agreement (so far as directly applicable under the European Union (Future Relationship) Act 2020);• applicable judgement of a relevant court of law which is a binding precedent in England and Wales; and• determination, direction, statutory guidance, or Code of Practice having the force of law or with which a Party must comply in order to comply with the law;
"Leaseholder"	a leaseholder or tenant from whom the Client seeks to recover any of the cost of any Works through variable service charges;
"Lettable Standard"	the Client's standards of repair and cleanliness required for a Property (including a Void Property) (which may vary dependent on Tenure) before it is let as appended to the Contract Details or as varied from time to time under Clause 8.5 [<i>Quotation for a proposed Instruction</i>];
"Letter of Acceptance"	the Client's letter accepting the Provider's tender to carry out the Works in accordance with this Contract;
"LGSR"	the Landlords Gas Safety Record;
"LGSR Validity Period"	12 (twelve) months following the issue of a LGSR or, if longer, and provided the LGSR is issued within the 2 (two) months immediately preceding the date of expiry of the previous LGSR, the period from the date

NHF FORM OF CONTRACT 2023 – CONTRACT CONDITIONS

	of issue of that LGSR to the date 12 (twelve) months following the expiry of the previous LGSR;
"Liability"	all demands, actions, claims, proceedings, judgements, damages, settlements indebtedness, losses, liability, costs (including internal and administrative costs and professional fees on a "professional and own client" basis) charges, taxes, interest, duties, payments, and expenses;
"Lifting Installations"	passenger and goods lifts, stairlifts, hoists, minivators, and other lifting equipment for people with a disability;
"LPG"	liquified petroleum gas;
"Major Component Renewal Prices"	the Prices payable for Planned Works and Major Works involving kitchen and bathroom renewals, Heating Installation and Heating Appliance renewals, Electrical Installation renewals and such other Works as are specified in the Pricing Schedule;
"Major Works"	either defined capital repair or improvement Works or other Works which have been packaged by either location or trade;
"Material Breach"	<p>in relation to:</p> <ul style="list-style-type: none">• the Provider means a breach of this Contract within Clause 13.1 [<i>Termination for Provider Default</i>];• the Client means a breach of this Contract within Clause 13.3 [<i>Termination for Client Default</i>];
"Materials"	all materials, goods, and components to be used in the Works;
"Mechanical Installations"	automatic doors, gates and carriers, Communal catering and laundry equipment, roller shutters, ventilation installations Water Installations and pipework and associated valves and installations for water (liquid and gas), gas, and oil;
"Mediator"	a person appointed as Mediator under Clause 15.3 [<i>Mediation</i>];
"Method Statement"	the method statement(s) prepared by the Provider forming part of this Contract as amended from time to time with the approval of the Client's Representative;
"Microgeneration Installations"	<p>installations for the production of heat and/or electricity on a small scale from a low carbon source including:</p> <ul style="list-style-type: none">• solar photovoltaic (PV) systems;• micro wind or hydroelectricity turbines;

NHF FORM OF CONTRACT 2023 – CONTRACT CONDITIONS

	<ul style="list-style-type: none">• solar thermal hot water;• ground source heat pumps;• air source heat pumps;• bioenergy;• hydrogen energy and fuel cells; and• combined heat and power (CHP);
"Minimum Order Value"	any minimum amount stated in the Contract Details (where applicable) that is to be payable in respect of every Order for Responsive Maintenance;
"Mobilisation Costs"	the Provider's one-off costs for mobilisation as set out in the Price Framework which are to be paid for separately from the Order Prices where the Contract Details for Clause 9.2.5 [<i>Valuations</i>] so provide;
"Modern Slavery Assessment Tool"	the modern slavery risk identification and management tool at https://supplierregistration.cabinetoffice.gov.uk/msat as referred to in Procurement Policy Note 02/23;
"Modern Slavery Helpline"	the modern slavery helpline phone number on 08000 121 700 or the online reporting tool at https://www.modernslaveryhelpline.org/ each as referred to in Procurement Policy Note 02/23;
"Month"	a calendar month running from any day in a month to the day preceding the corresponding day in the next month and beginning on the first day of a month unless the context means that it is to start on a day of the month other than the first;
"Mutual Exchange"	an exchange of Properties between two Customers in accordance with a right to do so given by them under housing Laws;
"Mutual Exchange Electric and Gas Tests"	gas and/or electrical tests on a Property that may be subject to a mutual exchange of Customers and the production of a "Landlords Gas Safety Record" and/or an "Electrical Inspection Certificate to BS 7671 or equivalent" and "Mutual Exchange Electric Test" and "Mutual Exchange Gas Test" shall be construed accordingly;
"Net Zero Carbon Works"	Works to reduce the carbon footprint of a Property including to improve its energy efficiency and thermodynamic performance and to install Microgeneration Installations and "Retrofit Works" has the same meaning;
"NICEIC"	the National Inspection Council for Electrical Installation Contracting;
"Normal Working Hours"	the hours outside of which an Order issued for Emergency Works is to be an Order for Out of Hours

NHF FORM OF CONTRACT 2023 – CONTRACT CONDITIONS

Emergency Works as set out in the Contract Details for Paragraph 7.2.2 [*Out of Hours Emergency Works*] of the Preliminaries;

“Notified Sum”

the amount:

- notified by the Client’s Representative as the amount due to the Provider under:
 - Clause 9.8.1 [*Notified Sum where a Valuation is an application for payment*];
 - Clause 9.12.3 [*Final Account*], in relation to the Final Account; or
 - under Clause 9.14.1 [*Release of Retention*], in relation to the release of the Retention;
- notified by the Provider:
 - in accordance with Clause 9.8.3 [*Notified Sum where a Valuation is an application for payment*] where the Client’s Representative has failed to notify the Provider of the amount due in respect of that Valuation within the period set out in the Contract Details for Clause 9.8.1 [*Notified Sum where a Valuation is an application for payment*];
 - in accordance with Clause 9.12.6 [*Final Account*] where the Client’s Representative has not notified the Client and Provider of the Notified Sum in relation to the Final Account within the 40 (forty) Business Day period under Clause 9.12.3 [*Final Account*], or
 - in accordance with Clause 9.14.3 [*Release of Retention*] where the Client’s Representative has not both issued the Certificate of Making Good Defects under Clause 5.4.5 [*Defects*] and notified the Provider of the amount of the Retention that is to be released to the Provider within 40 (forty) Business Days of the date on which the preconditions to the issue of the Certificate of Making Good

NHF FORM OF CONTRACT 2023 – CONTRACT CONDITIONS

	Defects were first satisfied under Clause 5.4.5 [<i>Defects</i>]; or
	<ul style="list-style-type: none">included in the invoice, where a Valuation is an invoice;
"NVQ"	a national vocational qualification;
"Occupational Therapist"	a person appointed by the Client, Provider, or the local authority responsible for a Customer to undertake Occupational Therapist Inspections;
"Occupational Therapist Inspection"	the inspection of a Property by an Occupational Therapist to advise on and schedule Disability Adaptation Works to make that Property suitable for a Customer with a disability;
"Occupied Property"	a Property which, at the time of the Works, is occupied by a Customer;
"OFTEC"	the Oil Fired Technical Association;
"Ombudsman"	the Housing Ombudsman, Local Government Ombudsman, or other ombudsman to whom the Client is subject;
"Optional Tasks"	tasks relating to a Workstream for which there is an Annual Price that are not Servicing or Periodic Tasks, and which the Provider must undertake in response to an Order and for which the Provider will be paid at the applicable Rates;
"Order"	a written Instruction to carry out Works in accordance with this Contract and "Ordered" means being the subject of an Order;
"Order Cancellation Payment"	the amount payable under Clause 4.1 [<i>Order procedures</i>] or Clause 4.2 [<i>Order Variations and Customer Damage</i>] for an Order that is cancelled or not proceeded with;
"Order Completion Date"	the date on which the Provider completes an Order in accordance with this Contract;
"Order Price"	the amount payable for the Works in an Order;
"Order Programme"	a Programme for undertaking Planned Works or Major Works to a Scheme that has been accepted by the Client's Representative under Paragraph 6.5 [<i>Preparation and approval of Designs, schedule, Budget, and Order Programme</i>] of the Preliminaries;
"Order Variation"	a variation (including a Self-Authorised Variation) to the extent of Works undertaken under an Order from that originally included in the Order;

NHF FORM OF CONTRACT 2023 – CONTRACT CONDITIONS

"Organisation"	any firm, partnership, company, co-operative or community benefit society, corporation, association, government, state, agency, foundation, trust, unincorporated body and any organisation having legal capacity (in each case whether or not having separate legal personality) and their successors, permitted assignees and transferees;
"Out of Hours Call Handling"	receiving and dealing with emergency Responsive Maintenance calls from Customers (including arising from Defects in Planned Works or Major Works) between the times set out in the Contract Details for Paragraph 2.3 [<i>Provider's call centre or Call Handling Software</i>] of the Preliminaries including making follow-up appointments for Responsive Maintenance;
"Out of Hours Emergency Works"	Emergency Works that are Ordered outside Normal Working Hours;
"Pandemic"	any infectious disease declared to be a pandemic by the World Health Organisation including Covid-19, any mutation of it caused by severe acute respiratory syndrome or any other similar infectious disease, in each case declared to be a pandemic;
"Parties"	the Client and the Provider and their successors and permitted assignees and "Party" means either of them;
"Pay Less Notice"	a notice of intention to pay less than the full amount of any Valuation served in accordance with the Construction Act;
"PCR 2015"	The Public Contracts Regulations 2015;
"Periodic Tasks"	Works (other than Servicing) comprising regular periodic tasks as set out in the appropriate Specification of Workmanship and Materials covered by an Annual Price;
"Permitted Working Hours"	the hours during which the Provider may undertake the Works as set out in the Contract Details for Paragraph 7.1 [<i>Provider's Permitted Working Hours</i>] of the Preliminaries;
"Personal Alarm Installations"	warden and nurse call systems, personal alarms, fire safety refuge intercom systems and other alarm installations;
"Personal Data"	personal data, within the meaning given by Data Protection Law, which is obtained or Processed in connection with the Works or this Contract;
"Person-week"	the equivalent of 1 (one) person being employed for 1 (one) normal working week either on site or through a mix of work on site and elsewhere;

NHF FORM OF CONTRACT 2023 – CONTRACT CONDITIONS

"Planned Works"	<p>planned maintenance and property reinvestment Works forming part of a defined programme of such Works including:</p> <ul style="list-style-type: none">• kitchen and bathroom renewals;• upgrading and renewing Heating Installations and /or Heating Appliances;• electrical rewiring;• cyclical redecorations and pre-decoration repairs;• window and external door renewals associated works to achieve "Decent Homes Standard and Secure by Design"; and• any other planned maintenance works;
"Pre-Construction Information"	the health and safety information set out in the Appendix to the Contract Details headed "Health and Safety Pre-construction Information";
"Preliminaries"	the preliminaries to this Contract included in the Contract Documents;
"Previous Contractor"	the person or Organisation providing works equivalent to all or part of the Works before the Commencement Date;
"Price"	a price (including an Annual Price) included in the Pricing Schedule or the Price Framework (as applicable) which is not subject to adjustment by the Provider's tendered percentage adjustment;
"Price Framework"	the Contract Document comprising the Price Framework Details and Price Framework Rules setting out the basis of payment for the Works and including the Provider's tendered Rates;
"Price Framework Details"	Part 1 of the Price Framework;
"Price Framework Rules"	Part 2 of the Price Framework;
"Pricing Schedule"	the MS excel document appended to and forming part of the Price Framework (where included) setting out the Provider's Rates that are tendered as Prices rather than as adjustments to SoR pre-priced items;
"Prime Cost Sum" (or "PC Sum")	an amount included in specific Items within the Schedule of Rates that is to be payable to the Provider for particular Materials;
"Principal Contractor"	the Provider, who is to be the principal contractor under the CDM Regulations for all Works that are subject to the CDM Regulations;

NHF FORM OF CONTRACT 2023 – CONTRACT CONDITIONS

"Principal Designer"	the principal designer under the CDM Regulations as specified in the Contract Details for Clause 5.2.1 [<i>CDM and Regulatory Requirements</i>];
"Processing"	has the meaning given under Data Protection Law and "Process" and "Processed" shall be construed accordingly;
"Profit"	the percentage amount (if any) set out in the Price Framework as the percentage amount to be added to the Schedule of Rates Prices as pure profit for the Provider;
"Programme"	<p>a programme of any Works which has been accepted by the Client's Representative including:</p> <ul style="list-style-type: none">• an Annual Programme for Planned Works;• a Scheme Programme for Major Works or Planned Works;• a Servicing Programme; and• an Estate Services Programme;
"Prohibited Materials"	<p>goods, materials, substances, or products which are generally accepted or (having regard to Good Industry Practice) are reasonably suspected of:</p> <ul style="list-style-type: none">• being harmful in themselves;• being harmful when used in a particular situation or in combination with other materials;• becoming harmful with the passage of time; or• being damaged by or causing damage to the structure in which they are to be affixed. <p>Goods, materials, substances, or products are to be regarded as harmful if, in the context of their use in the Works (whether alone or in combination with other materials) they:</p> <ul style="list-style-type: none">• are prejudicial to health and safety;• pose a threat to the structural stability or the physical integrity of any Property; or• could materially reduce the normal life expectancy of any part of the Property;
"Properties"	the residential dwellings including sheltered schemes, and hostels within any area specified in the Contract Details for Clauses 1.1 [<i>Definitions</i>] and 4.1 [<i>Order Procedures</i>] or such other area as the Client specifies by written notice to the Provider that are included in the property portfolio owned or managed by the Client and in relation to which the Client is responsible for maintenance and "Property" means any of them that comprises either a single dwelling or a single sheltered scheme or hostel;

NHF FORM OF CONTRACT 2023 – CONTRACT CONDITIONS

"Property Health Checks/MOTs"	a schedule of testing, inspections and/or works to each Property designated by the Client incorporating the completion of a schedule of the condition of specific components as appended to the Contract Details;
"Protective Measures"	<p>appropriate technical and organisational measures designed to ensure compliance with the obligations of the Parties under Data Protection Law and this Contract and which may include:</p> <ul style="list-style-type: none">• pseudonymising and encrypting Personal Data;• ensuring confidentiality, integrity, availability, and resilience of the Provider's IT System,• ensuring that the availability of and access to Personal Data can be restored in promptly following a physical or technical incident; and• regularly testing, assessing, and evaluating the effectiveness of such measures adopted by the Provider including any outlined in the Data Processing Table;
"Provider"	the person or Organisation stated in the Articles of Agreement as the Provider;
"Provider Default"	any of the circumstances set out in Clause 13.1 [<i>Termination for Provider Default</i>];
"Provider's IT System"	the information technology system (being software, hardware, any interfaces, and any combination of them) used by the Provider in connection with the Works;
"Provisional Amount"	<p>a provisional amount set out in the Price Framework that is to be used (or not, as the case may be) at the Instruction of the Client's Representative for:</p> <ul style="list-style-type: none">• specific Works that may or may not be required from the Provider;• Works to be undertaken by an Excepted Works Subcontractor; or• particular Materials;
"Qualifying Repair"	a repair which is the subject of an Order issued by the Client to comply with the Right to Repair Regulations following the notification of a repair by a Customer under the Right to Repair Regulations;
"Quarter"	a period of 3 (three) Months comprising January to March, April to June, July to September or October to December;
"Radicalisation"	the process by which a person comes to support terrorism and Extremist ideologies associated with terrorist groups;

NHF FORM OF CONTRACT 2023 – CONTRACT CONDITIONS

“Rates”

the rates and Prices as set out in the Price Framework being the rates and Prices for such of the following that apply:

- the Client’s predefined rates in the Price Framework for:
 - Daywork (where pre-defined);
 - Out of Hours Emergency Work (where pre-defined, either as predefined hourly rates or as a predefined lump sum per call out);
 - percentage additions for Materials, Equipment and Excepted Works Subcontractors (where applicable); and
 - Incentivisation;
- the rates in the pre-priced Schedule of Rates, as amended by the Provider’s tendered percentage adjustments, for such of the following Workstreams as are priced by an adjustment to pre-defined rates in the Schedule of Rates:
 - Responsive Maintenance;
 - Routine Maintenance;
 - Void Property Works;
 - Major Works;
 - Planned Works;
 - Servicing;
 - Estate Services;
 - Central Overheads (where the Contract Details for Clause 9.3.1 [*Valuations for Central Overheads and Profits*] provide for these to be paid separately); and
 - Profit (where the Contract Details for Clause 9.3.1 [*Valuations for Central Overheads and Profits*] provide for this to be paid separately); and
- the Provider’s tendered Prices (including Annual Prices) for such of the for such of the following Workstreams as are Priced by the Provider in the Pricing Schedule or Price Framework:
 - Daywork labour;
 - Out of Hours Emergency Work (either as tendered Daywork rates or as a tendered lump sum per callout);
 - Void Property Inspections;
 - Technical Inspections;
 - Occupational Therapist Inspections;

NHF FORM OF CONTRACT 2023 – CONTRACT CONDITIONS

- o Out of Hours Call Handling;
- o Call Handling;
- o Property Health Checks/MOTs;
- o Handyperson Services;
- o Major Works;
- o Planned Works;
- o Servicing;
- o Responsive Maintenance (where tendered as an Annual Price);
- o Estate Services (where tendered as an Annual Price);
- o Optional Tasks;
- o Major Component Renewal Prices;
- o Scaffolding;
- o Mobilisation Costs (where the Contract Details for Clause 9.2.5 [*Valuations*] provide for them to be paid separately); and
- o TUPE Costs (where the Contract Details for Clause 9.2.5 [*Valuations*] provide for them to be paid separately);

“Rebates”

all rebates and discounts received by the Provider or a Subcontractor from a Supplier in relation to Prime Cost Sums, Provisional Amounts and materials, plant and/or equipment valued as Daywork;

“Registered Provider”

a non-profit organisation registered as a provider of social housing registered or deemed to be registered under the Housing and Regeneration Act 2008 or, in Wales, registered as a registered social landlord under the Housing Act 1996 (as amended);

“Regulatory Requirements”

the requirements of the Law and of all Statutory Authorities in relation to the Works including the requirements of any regulatory body to which the Client is subject;

“Remedial Plan”

a plan prepared by the Provider under Clause 12.6 [*Remedial Plan*] following a breach of this Contract setting out how the Provider will prevent a further breach;

“Request for Information”

a request for information made under Freedom of Information Law;

“Required Competencies Table”

the table appended to the Contract Details setting out the specific competencies, qualifications, training

NHF FORM OF CONTRACT 2023 – CONTRACT CONDITIONS

	requirements and accreditations required to undertake particular types of Works under this Contract;
"Requirements"	the Client's requirements for the Works as set out in the Contract Documents;
"Resident Inspector"	a Customer trained by the Provider to carry out inspections of completed Works;
"Response Period"	the time for completion of each Order for Responsive Maintenance, Routine Maintenance, Disrepair Works, Void Property Works, Disability Adaptation Works, Technical Inspections, Occupational Therapist Inspections, Void Property Inspections and Optional Tasks as specified in the Order or (if no period is specified in the Order) in the Contract Details for Paragraph 6.9 [<i>Response Periods and Target Completion Dates</i>] of the Preliminaries or (if not specified in the Contract Details) in the Schedule of Rates as extended under Clause 4.3 [<i>Appointments, Response Periods, Target Completion Dates and Programmes</i>] (where applicable);
"Responsive Maintenance"	responsive day-to-day repairs and maintenance work (including Emergency Work Ordered during Normal Working Hours);
"Retendering Information"	<p>in relation to any Assigned Employee, full details of that person's:</p> <ul style="list-style-type: none">• identity (or reference number);• date of birth;• age;• sex;• date of commencement of employment;• length of service;• job title; and <p>• grade and terms and conditions of employment, together with such other matters as are reasonably requested by the Client;</p>
"Retention"	a retention of the percentage stated in the Contract Details for Clauses 1.1 [<i>Definitions</i>] and 9.6 [<i>Deduction of Retention</i>] to be deducted from all sums due to the Provider during the Retention Period;
"Retention Period"	the period stated in the Contract Details for Clauses 1.1 [<i>Definitions</i>] and 9.6 [<i>Deduction of Retention</i>] during which the Retention is to be deducted from payments due to the Provider;

NHF FORM OF CONTRACT 2023 – CONTRACT CONDITIONS

"Retrofit Works"	Works to reduce the carbon footprint of a Property including to improve its energy efficiency and thermodynamic performance and to install Microgeneration Installations and "Net Zero Carbon Works" has the same meaning;
"Returning Employee"	an employee or worker wholly or mainly engaged in providing the Works immediately before the Termination Date whose employment transfers to a Successor Contractor under TUPE;
"RIDDOR"	Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995;
"Right to Repair Regulations"	the Secure Tenants of Local Housing Authorities (Right to Repair) Regulations 1994;
"Routine Maintenance"	repairs, renewals, and maintenance Works undertaken during or immediately following a Servicing Visit or Periodic Task;
"Safety Case"	has the meaning given in Part 4 of the Building Safety Act 2022;
"Safety Check"	a routine or specifically Ordered safety check, inspection, testing and certification;
"Schedule of Rates" or "SoR"	the version(s) of the NHF pre-priced Schedule of Rates contract specified in the Price Framework against which the Provider has tendered percentage adjustment(s);
"Scheme"	(when such word is not referring to the Construction Act or to a construction industry initiative) is the geographic grouping of a number of Properties for the purposes of a Programme of Planned Works or Major Works;
"Scheme Budget"	the anticipated Order Price for Planned Works calculated by applying the Rates to the Scope of Works for a Scheme;
"Scheme Programme"	a Programme for Planned Works or Major Works to a Scheme that has been accepted by the Client's Representative under Paragraph 6.3 [<i>Scheme Programmes for Planned Works and Major Works</i>] of the Preliminaries;
"Scope of Works"	a document prepared by the Client or the Provider before any Properties are surveyed setting out the details and extent of Planned Works or Major Works to a Property or a number of Properties comprised in a Scheme;

NHF FORM OF CONTRACT 2023 – CONTRACT CONDITIONS

"Security, Access, and Life Support Installations"	Controlled Entry Installations, CCTV Installations, TV Reception Installations and Personal Alarm Installations;
"Self-Authorised Variation"	extra/varied work carried out in connection with an Order and which increases the Order Price by no more than the Self-Authorised Variations Limit;
"Self-Authorised Variations Limit"	the amount indicated in the Contact Details for Works within the Workstream to which the Order relates by which the Order Price may be increased for a Variation to be a Self-Authorised Variation;
"Services"	all Installations for the supply of gas, electricity, water; telephones, television, telecommunications, and security;
"Servicing"	undertaking routine visits to a Property or Block to carry out Safety Checks, periodic servicing, inspection, testing, recalibration, and certification of Domestic and/or Communal Heating Appliances, Heating Installations, Electrical Installations, Fire Safety Installations and/or Communal Mechanical Installations including Routine Maintenance and renewing defective parts and parts that the manufacturer recommends are renewed during the particular service being undertaken;
"Servicing Certificate"	a certificate or other document issued by the Provider following a Servicing Visit indicating that the Servicing has been completed, including a LGSR and EICR;
"Servicing Visit"	a visit to a Property or Block during which Servicing is undertaken;
"Servicing Period"	the period each Contract Year between the dates specified in the Contract Details for Paragraph 6.8 [<i>Servicing Programmes and Estate Services Programmes</i>] of the Preliminaries within which the Provider is required to complete all Safety Checks and/or Servicing;
"Servicing Programme"	the annual Programme for Servicing for a Contract Year approved by the Client's Representative under Paragraph 6.8 [<i>Servicing Programmes and Estate Services Programmes</i>] of the Preliminaries;
"Servicing Validity Period"	the period after a Servicing Visit within which a Servicing Certificate is valid and the Property or Installation does not need a further Servicing Visit in order to be compliant with the aspect of the Law for which the Servicing Visit was required, including a LGSR Validity Period;

NHF FORM OF CONTRACT 2023 – CONTRACT CONDITIONS

"Site Waste Management Plan"	a plan dealing with site waste prepared (where the Contract Details so require) by the Provider under Paragraphs 8.12.4 to 8.12.7 [<i>Site Waste</i>] of the Preliminaries;
"Social Value Activities"	the "social value" activities the Provider is to deliver under this Contract as set out in the Social Value Matrix;
"Social Value Appendix"	the Appendix to the Contract Details incorporating the Social Value Matrix setting out the Social Value Activities the Provider is required to deliver in each Contract Year under this Contract;
"Social Value Matrix"	the document included in the Social Value Appendix setting out the Social Value Activities the Provider's must deliver in each Contract Year including the Provider's social value "offer" and the liquidated and ascertained damages payable by the Provider if the Provider fails to deliver all those Social Value Activities in any Contract Year;
"Special Category Data"	special category data, within the meaning given by Data Protection Law, obtained or Processed in connection with the Works or this Contract;
"Special Rate"	a special rate tendered for particular Works as set out in the Price Framework;
"Specialist Works"	any Works designated as such, either in the Contract Details for Clause 1.1 [<i>Definitions</i>] or in Clause 0 [<i>Specialist Works and associated requirements</i>] or by the Client's Representative;
"Specification"	the Specification of Workmanship and Materials forming part of the Contract Documents;
"Staff"	<p>all persons (including tradespersons, site supervisors and office and supervisory staff) employed or engaged by the Provider or a Subcontractor (where applicable) to perform the Provider's obligations under this Contract including:</p> <ul style="list-style-type: none">• the Provider's directors, officers, supervisors, tradespersons, and other employees; and• Subcontractors and Suppliers and their respective directors, officers, and employees;
"Standards"	<p>the following:</p> <ul style="list-style-type: none">• technical specifications (as referred to in Regulation 42(11)(b) PCR 2015) published by the International Organisation for Standardisation, the British Standard Institute, or any other equivalent body; and

NHF FORM OF CONTRACT 2023 – CONTRACT CONDITIONS

- the standards set out in any applicable Code of Practice;

"Statutory Authority"

any local, national or supra-national agency, inspectorate, minister, ministry, official or public or statutory authority or governmental or regulatory body having jurisdiction over the Works, the Client, the Provider or any activities undertaken by the Provider in connection with the Works or whose permission is required in connection with the Works including the Building Safety Regulator, the Equality and Human Rights Commission, the Health and Safety Executive and the Information Commissioner;

"Statutory Permissions"

those permissions, consents, approvals, licences, certificates, and permits in legally effective form that are necessary from any Statutory Authority lawfully to commence, carry out and complete the Works in accordance with this Contract including:

- any planning permission and/or reserved matters approval;
- building regulations consents and/or bye-laws approvals (including for any Works to a Higher Risk Building); and
- the requirements of any Statutory Authority regulating the Works and/or the way in which they are carried out;

"Subcontract"

a contract between the Provider and a Subcontractor or between two or more Subcontractors, at any stage of remoteness from the Client in the Provider's supply chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the Works;

"Subcontractor"

any subcontractor of or Supplier to the Provider of any tier;

"Successor Contractor"

a contractor (or the Client) that undertakes works equivalent to the Works after the Termination Date;

"Supplier"

a person or Organisation that supplies Materials to the Provider for the Works or Equipment to undertake them;

"Supply Contract"

a contract between the Provider and a Supplier;

"Supply Chain Map"

a document setting out the following details of each Subcontractor (of any tier) in the Provider's supply chain:

- its name, registered office, and company registration number;
- its function in the Provider's supply chain; and

NHF FORM OF CONTRACT 2023 – CONTRACT CONDITIONS

	<ul style="list-style-type: none">the location of any premises at which it carries out its function in the Provider's supply chain;
"Target Completion Date"	for Planned Works, Major Works, Disrepair Works, Disability Adaptation Works, or Servicing is the date the number of Working Days stated in the Order or the Contract Details for Paragraph 6.9 [<i>Response Periods and Target Completion Dates</i>] of the Preliminaries (for that type of Works) after commencing those Works in a Property by which the Order Completion Date needs to have occurred;
"Technical Inspection"	<p>an inspection Instructed to be carried out on behalf of the Client including:</p> <ul style="list-style-type: none">inspecting the prospective Works;scheduling the work content;establishing the timescales required to undertake the Works identified;taking digital photographs at the time of inspection;providing a written report (if required); andforwarding the Works Schedule, report, and digital photographs to the Client for approval;
"Tenancy"	any tenancy, long lease, or licence under which a Customer occupies a Property;
"Tenancy Agreement"	the tenancy agreement(s) setting out the terms under which Customers hold their Tenancies (as applicable to each type of Tenure, where the Contract Details for Clauses 1.1 [<i>Definitions</i>] and 8.5 [<i>Quotation for a proposed Instruction</i>] so state) as appended to the Contract Details or as varied from time to time under Clause 8.5 [<i>Quotation for a proposed Instruction</i>];
"Tender"	<p>the Provider's tender comprising:</p> <ul style="list-style-type: none">the Method Statement; andthe completed Price Framework;
"Tender Certificate"	the certificate provided with the Provider's Tender;
"Tenure"	the type of tenancy or tenure under which a Property is held, being social rented, affordable rented, market rent, leasehold or any other tenure type specified in the Contract Details for Clause 1.1 [<i>Definitions</i>];
"Termination Date"	the date of termination of this Contract on either the Expiry Date or earlier termination under Clause 0 [<i>Termination and Expiry</i>];

NHF FORM OF CONTRACT 2023 – CONTRACT CONDITIONS

"Terrorism Prevention Duty"	the duty to have due regard to the need to prevent people from being drawn into terrorism under section 26 of the Counter Terrorism and Security Act 2015;
"Terrorism Prevent Programme"	the Prevent Programme as set out in the Prevent Strategy that was presented to Parliament by the Secretary of State for the Home Department in June 2011, being part of the UK Government's wider counter-terrorism strategy;
"Trainee"	<p>a person who is not an Apprentice but who:</p> <ul style="list-style-type: none">• is leaving an educational establishment or a training provider;• is not employed but who is seeking employment that includes training towards a qualification recognised in the construction industry; or• otherwise has a contract of employment or is self-employed and who is undergoing work-related training as a result;
"Training Programme"	an accredited or non-accredited training event providing opportunities for Customers and members of the community to gain skills in for example CSCS, health and safety, skills, and careers workshops;
"Transferring Employee"	an employee or worker who is the subject of a TUPE Transfer;
"TUPE"	the Transfer of Undertakings (Protection of Employment) Regulations 2006;
"TUPE Costs"	the Provider's proper and reasonable additional costs (above those allowed for or included in the Rates) incurred by the Provider as a result of the TUPE transfer of the Transferring Employees on the Commencement Date and which are to be paid for separately from the Order Prices where the Contract Details for Clause 9.2.5 [<i>Valuations</i>] so provide;
"TUPE Transfer"	a "relevant transfer" under TUPE;
"TV Reception Installations"	communal and domestic television reception equipment systems including aerials, distribution systems and satellite installations;
"Utility Provider"	the provider of water, electricity, gas, or telecommunications to or sewerage removal from the Property at which Works are being undertaken;
"Valuation"	either an "application for payment" or an invoice, as set out in the Contract Details for Clause 0 [<i>Valuations</i>] other than in relation to the final Valuation which is to be an application for payment;

NHF FORM OF CONTRACT 2023 – CONTRACT CONDITIONS

"Version"	a version of the Schedule of Rates as set out in Paragraph 1.1 [<i>Percentage adjustments to Schedule(s) of Rates</i>] of the Price Framework Details;
"Void Property"	a Property not subject to a Tenancy;
"Void Property Inspection"	<p>an inspection of a Void Property the Client's Representative instructs the Provider to carry out to determine the extent of any Void Property Works including:</p> <ul style="list-style-type: none">• inspecting the Property to determine the extent of the Works required;• scheduling the Works required (in a format acceptable to the Client) in a Works Schedule;• establishing the time required to undertake the Works identified;• taking digital photographs at the time of inspection;• reading meters; and• forwarding a Works Schedule of prospective Works and digital photographs to the Client's Representative for approval;
"Void Property Works"	<p>any Works (including internal redecoration, cleaning, and clearing out) including Works which may be undertaken whilst a Property is occupied arising from:</p> <ul style="list-style-type: none">• a change of Tenancy (other than on a Mutual Exchange);• the decanting, long term hospitalisation or imprisonment of a Customer; or• such other circumstances as the Client's Representative designates from time to time;
"Water Installations"	water storage and distribution Installations including sewage and water booster pumps but excluding pipes and valves for the transmission of water and steam;
"Weekly Report"	a weekly report from the Provider to the Client's Representative as set out in the Preliminaries;
"Working Days"	days and part days as set out in the Contract Details for Clause 1.1 [<i>Definitions</i>] on which the Provider is required to undertake Works within the Provider's Permitted Working Hours specified in the Contract Details for Paragraph 7.1 [<i>Provider's Permitted Working Hours</i>] of the Preliminaries, and any part day shall be classified as 1 (one) Working Day for the purpose of all time periods calculated in Working Days;

NHF FORM OF CONTRACT 2023 – CONTRACT CONDITIONS

“Work Placement”	a period of unpaid work experience as set out in the Social Value Appendix;
“Works”	works to be undertaken under this Contract within any of the Workstreams and which are the subject of an Order;
“Works Schedule”	a schedule prepared by the Provider setting out the Works required to a Property which is the subject of an Order for Planned Works or Major Works; and
“Workstream”	<p>whichever of the following workstreams that are the subject of this Contract as set out in the Contract Details for Clause 1.1 [<i>Definitions</i>]:</p> <ul style="list-style-type: none">• Responsive Maintenance;• Call Handling;• Out of Hours Call Handling;• Out of Hours Emergency Works;• Disrepair Works;• Void Property Inspections;• Void Property Works;• Major Works;• Planned Works;• Occupational Therapist Inspections;• Disability Adaptation Works;• Servicing (including (Safety Checks) and Routine Maintenance of Installations);• Technical Inspections;• Property Health Checks/MOTs;• Handyperson Services;• Estate Services; and/or• any other Workstreams set out in the Contract Details for Clause 1.1 [<i>Definitions</i>].

NHF FORM OF CONTRACT 2023 – CONTRACT CONDITIONS

1.2 Interpretation

In the Contract Documents:

- 1.2.1 a reference to a Clause or Schedule is (unless stated otherwise) a reference to the clause or schedule of the Contract Document in which the reference appears;
- 1.2.2 a reference to a Sub-clause or Paragraph is (unless stated otherwise) a reference to the relevant sub-clause or paragraph of the Clause or Schedule in which it appears;
- 1.2.3 the contents section, headings, and references to them are not to affect the interpretation of the Contract Document in which they appear;
- 1.2.4 references to the masculine include the feminine and neuter and to the singular include the plural and vice versa;
- 1.2.5 a reference to any Law, is to be construed as a reference to that Law as amended, replaced, consolidated, or re-enacted and in relation to any Act of Parliament includes all regulations, determinations, directions and statutory guidance having the force of Law made or given under that Act;
- 1.2.6 a reference to "consent" or "approval" is to the prior written consent of the consenting or approving Party and any breach of the terms of any consent given is to be a breach of the Contract Document under which consent was required;
- 1.2.7 the terms "including" and "in particular" are not intended to limit the meaning of the words which precede them and neither the ejusdem generis rule nor any similar rule is to apply to the construction of the Contract Documents;
- 1.2.8 a reference to any document is (unless specified) a reference to such document as amended or supplemented from time to time.

1.3 Errors and inconsistencies in the Contract Documents

- 1.3.1 The Contract Documents are to be mutually explanatory of each other.
- 1.3.2 The Provider must notify the Client's Representative in writing of any ambiguity or inconsistency in the Contract Documents.
- 1.3.3 The Client's Representative must issue an Instruction to clarify any ambiguity or Instruct the Provider how to deal with any inconsistency in the Contract Documents:
 - within 2 (two) Business Days of being notified of the ambiguity or inconsistency in the Contract Documents under Clause 1.3.2; and
 - at any time, if the Client's Representative becomes aware of any ambiguity or inconsistency in any other way.

1.4 Joint Parties

- 1.4.1 Where a Party consists of more than 1 (one) Organisation or person, the obligations of each of them are joint and several.
- 1.4.2 The other Party may release or compromise the liability of any of the joint persons or Organisations comprising a Party without affecting that of the other persons or Organisations comprising that same Party.

NHF FORM OF CONTRACT 2023 – CONTRACT CONDITIONS

1.5 Time

- 1.5.1 Where any of the Contract Documents requires something to be done:
- it must be done in accordance with the Contract Documents;
 - if it is to be done within a period after an action is taken, the day on which that action is taken does not count in the calculation of that period; and
 - except in the case of Response Periods and Target Completion Dates (which may end at any time) if the last day of the period within which it is to be done is not a Business Day, the period is to be extended to include the following Business Day.

1.6 Provider's obligations

- 1.6.1 All of the Provider's obligations, duties and responsibilities under the Contract Documents are separate obligations, duties and responsibilities owed to the Client and are to be performed at the Provider's own cost and expense except to the extent that the Contract Documents expressly provide for payment for them.

2. CONTRACT FORMATION AND DURATION

2.1 Contract formation

- 2.1.1 Where the Contract Details so provide, this Contract may be formed by a Letter of Acceptance. Such Contract is to comprise:
- the Contract Details, in the form enclosed with the Invitation to Tender;
 - the Contract Conditions, Preliminaries, Specification and Schedule of Rates;
 - the KPI Framework in the form enclosed with the Invitation to Tender and as completed in the Provider's Tender;
 - the Provider's Method Statements and completed Price Framework; and
 - the Letter of Acceptance.
- 2.1.2 Where Clause 2.1.1 applies the Client and Provider must execute the Articles of Agreement (incorporating the Contract Documents) as a deed within 20 (twenty) Business Days of the date of the Letter of Acceptance.
- 2.1.3 Where this Contract may be formed by a Letter of Acceptance under Clause 2.1.1, the execution and delivery of the Contract Documents by the Provider is a condition precedent to any payment becoming due to the Provider under this Contract.

2.2 Commencement and Duration

- 2.2.1 This Contract will commence on the Commencement Date (or will be deemed to have done so) and continue until midnight on the Termination Date (each as set out in the Contract Details).
- 2.2.2 Where the Contract Details so provide (and subject to the extension having been advertised in accordance with PCR 2015, where applicable), the Client may extend the Contract Period as set out in the Contract Details by serving a written notice to that effect on the Provider at any time in the 6 (six) months immediately preceding the Expiry Date.
- 2.2.3 Following the service of a notice under Clause 2.2.2, the Expiry Date is to be the last date of the period of the extension specified in the notice.

NHF FORM OF CONTRACT 2023 – CONTRACT CONDITIONS

3. CONTRACT MANAGEMENT

3.1 Appointment of the Client's Representative

- 3.1.1 The Client will appoint a Client's Representative with the powers and duties set out in this Contract. The first Client's Representative is set out in the Contract Details.
- 3.1.2 The Client's Representative may be an employee of the Client but may not be the Client itself.
- 3.1.3 The Client may replace the Client's Representative at any time. The Client will appoint a new Client's Representative either before or as soon as practicable after and in any event within 10 (ten) Business Days after the date of any person ceasing to be the Client's Representative.
- 3.1.4 The Client must notify the Provider in writing within 2 (two) Business Days of the appointment of a new Client's Representative. This notification must include:
- the identity of the Client's Representative;
 - the post held by the Client's Representative (or, if not an employee of the Client, the Organisation that employs the Client's Representative); and
 - contact details for the Client's Representative.
- 3.1.5 A person appointed as the Client's Representative may not disregard or overrule any Instruction or approval given by a previous Client's Representative unless the previous Client's Representative would have been entitled to do so.

3.2 Delegation by the Client's Representative

- 3.2.1 The Client's Representative may delegate some or all of the Client's Representative's duties to one or more Deputy Client's Representatives.
- 3.2.2 The Client's Representative must give notice of any delegation under Clause 3.2.1 to the Provider. The notification must state:
- the identity of the Deputy Client's Representative;
 - contact details for the Deputy Client's Representative; and
 - the duties delegated.
- 3.2.3 The Provider need not recognise any Deputy Client's Representative until notified in writing of a delegation to that Deputy Client's Representative under Clause 3.2.2.

3.3 Role and Instructions of the Client's Representative

- 3.3.1 Subject to Clause 3.3.2, the Provider must comply with all oral and written Instructions given by the Client's Representative:
- within any period specified in the Contract Documents;
 - if no period is specified in the Contract Documents, within any period specified by the Client's Representative; and
 - if no period is specified either in the Contract Documents or by the Client's Representative, within 5 (five) Business Days of the date of the Instruction.
- 3.3.2 If the Provider does not receive confirmation of an oral Instruction within 5 (five) Business Days the Provider may confirm that Instruction back to the Client's Representative within 10 (ten) Business Days of the date of the oral Instruction. If the Provider does not confirm the oral Instruction within this period, it will be deemed not to have been given.

NHF FORM OF CONTRACT 2023 – CONTRACT CONDITIONS

- 3.3.3 The Client's Representative may exercise all functions and rights of the Client under this Contract except to the extent that either:
- the Contract Details state otherwise; or
 - the Client notifies the Provider in writing of any restrictions.
- 3.3.4 The Client appoints the Client's Representative as:
- the specified person under the Construction Act 2009 in relation to the issue of Pay Less Notices under this Contract; and
 - its agent for the purposes of:
 - calculating and levying any liquidated and ascertained damages or other payments due from the Provider under this Contract; and
 - applying any set off or other deductions that may be made by the Client from payments due to the Provider under it.
- 3.3.5 The Client's Representative must act honestly, fairly, justly and in good faith in relation to any functions where the Client's Representative is under a duty to do so including:
- Approving or rejecting Valuations;
 - granting extensions of time; and
 - valuing any increases to Order Prices or additional payments due to the Provider under Clause 8 [*Changes to Order Price, Response Period and/or Target Completion Date*].
- 3.3.6 The signing by the Client's Representative of time sheets or similar documents are not to imply the Provider's compliance with this Contract.

3.4 Duties of the Client in relation to the Client's Representative

- 3.4.1 Since the Client's Representative is not a party to this Contract, wherever this Contract places an obligation on the Client's Representative, the Client must ensure the Client's Representative discharges that obligation.
- 3.4.2 Any failure of the Client's Representative to discharge an obligation placed on the Client's Representative under this Contract will be a breach of this Contract by the Client.

3.5 Provider's Contract Manager

- 3.5.1 The Provider must appoint an employee as Contract Manager who is empowered to act on behalf of the Provider. The first Contract Manager is set out in the Contract Details.
- 3.5.2 The Provider must ensure that the Contract Manager or a nominated deputy is contactable by the Client at any time inside or outside Normal Working Hours during the Contract Period.
- 3.5.3 The Provider may replace the Contract Manager at any time with a replacement who is suitably qualified and experienced in the Works to be undertaken under this Contract. Wherever possible the Provider must notify the Client in writing of the details of any new Contract Manager that are set out in Clause 0 before removing any person as Contract Manager.
- 3.5.4 The Provider must appoint a replacement Contract Manager either before or as soon as practicable after and in any event within 10 (ten) Business Days after the date of any person ceasing to be its Contract Manager.

NHF FORM OF CONTRACT 2023 – CONTRACT CONDITIONS

- 3.5.5 Before or within 2 (two) Business Days of appointing any person as Contract Manager the Provider must notify the Client in writing of:
- the name of the Contract Manager;
 - the post held by the Contract Manager; and
 - contact details for the Contract Manager.
- 3.5.6 The Provider must also inform the Client in writing of any person(s) authorised to act as deputy for the Contract Manager.
- 3.5.7 The Provider must ensure that the Contract Manager informs the Client's Representative promptly in writing of any act or omission by the Client or any Client Party that stops the Provider from complying with this Contract.
- 3.5.8 Any communication given by the Client or Client's Representative to the Provider's Contract Manager will be deemed to have been given to the Provider.

3.6 Core Group

- 3.6.1 Where the Contract Details provide for a Core Group to manage this Contract and the delivery of the Works:
- the Core Group will consist of those persons or postholders listed in the Contract Details;
 - Core Group meetings are to be called by the Client's Representative;
 - the Client's Representative must give 5 (five) Business Days' written notice of each Core Group meeting with a full copy of the proposed agenda unless agreed otherwise by one Core Group representative from the Client and one Core Group representative from the Provider; and
 - decisions of the Core Group are to be by consensus and unanimity is required for any decision.
- 3.6.2 Subject to Clause 3.6.1 the Core Group may regulate its own procedure as it chooses.

3.7 Collaborative Working

- 3.7.1 The Parties agree to work with each other in a collaborative manner, in good faith and in a spirit of mutual trust and co-operation. Each Party agrees to support collaborative behaviour and address behaviour which is not collaborative.

4. WORK ORDERING AND COMPLETION PROCEDURES

4.1 Order procedures

- 4.1.1 The Client's Representative may issue Orders for Works to any of the Properties through following the procedure set out in the Preliminaries. Orders may be issued in relation to any of the Workstreams set out in the Contract Details or for any Works that are ancillary to those Workstreams.
- 4.1.2 The Client's Representative may Order any extra Works, vary the Works or omit any part of the Works (with any such extras, variations or omissions being paid for or allowed for at the Rates).
- 4.1.3 The Client's Representative must issue any further information necessary for the proper carrying out of each Order or the Works generally.
- 4.1.4 The Client's Representative may (through the issue of Orders to that effect) require the Provider to undertake Works for any Organisation within the Client's Group in which case Clause 14.1 [*Third party rights, groups and ALMOs*] will apply.

NHF FORM OF CONTRACT 2023 – CONTRACT CONDITIONS

- 4.1.5 The Client's Representative may cancel any Order at any time. The Price Framework sets out whether any payment is to be made to the Provider if this is done.
- 4.1.6 The Client's Representative may require the Provider to undertake Works in locations and Areas other than those covered by this Contract. The Provider must undertake all such Works in accordance with this Contract and at the Provider's tendered Rates.

4.2 Order Variations and Customer Damage

- 4.2.1 If whilst undertaking the Works, the Provider considers extra or varied Works are necessary, the Provider may carry out such Works as a Self-Authorised Variation as long as:
- the extra/varied Works are directly related to the Works Ordered;
 - the Provider takes photographic evidence showing the additional Works required and the reason for them; and
 - the extra/varied work will not result in the original Order Price being increased by more than the amount indicated in the Contract Details as the Self-Authorised Variations Limit as applicable to the Workstream within which the Works.
- 4.2.2 The Provider must immediately seek the Client's Representative's instructions whilst its Staff (or its Subcontractor's Staff) are still at the Property where extra or varied Works will or may result in an increase in the Order Price of any Order by more than the Self-Authorised Variations Limit (indicated in the Contract Details) as applicable to the relevant Workstream. The Provider must provide photographic evidence showing the additional Works required and the reason for them to the Client's Representative.
- 4.2.3 Despite the issue of an Order the Provider must also obtain further prior permission from the Client's Representative to carry out any Work in excess of the amount indicated in the Contract Details where the Order for that Work (in the Provider's opinion) arises because of Customer Damage. When seeking permission the Provider must provide photographic evidence showing evidence of the Customer Damage to the Client's Representative.
- 4.2.4 If the Client's Representative does not confirm that any Works may go ahead within the period stated in the Contract Details for Clause 4.2.3 (or such longer period as the Client and Provider agree) the Order for that Work will lapse. In such circumstances the Price Framework states whether or not the Provider will be paid an Order Cancellation Payment for that Order.
- 4.2.5 Where the Contract Details for Clause 0 [*Valuations*] require full details of an Order Variation to be included in the Valuation for that Order, it is a condition precedent to payment for that Order Variation that the Provider provides those details (including photographic evidence showing the additional Works required and the reason for them).

4.3 Appointments, Response Periods, Target Completion Dates and Programmes

- 4.3.1 The Provider must complete all Orders for Responsive Maintenance, Routine Maintenance, Void Property Works, Disrepair Works, Disability Adaptation Works, Technical Inspections, Occupational Therapist Inspections, Void Property Inspections, and Optional Tasks within their applicable Response Periods as set out in the Contract Details for Paragraph 6.9 [*Response Periods and Target Completion Dates*] of the Preliminaries (as extended under this Contract, where applicable).

NHF FORM OF CONTRACT 2023 – CONTRACT CONDITIONS

- 4.3.2 The Provider must complete all Orders for Planned Works, Major Works, Disrepair Works, Disability Adaptation Works, and Servicing within their applicable Target Completion Dates as set out in the Contract Details for Paragraph 6.9 [*Response Periods and Target Completion Dates*] of the Preliminaries (as extended under this Contract, where applicable).
- 4.3.3 Where the Contract Details for the Paragraph 7.3 [*Appointments*] of the Preliminaries provide for appointments, the Provider must operate an appointments system for Orders in accordance with the Preliminaries.
- 4.3.4 The Provider must provide Programmes for Servicing, Planned Works, Estate Services, and, where the Client's Representative so requires, Major Works, in each case in accordance with the Preliminaries. The Provider must commence Planned Works and Major Works to each Property and Block within the periods set out in any Programme for them and complete the Works to each Property by the Target Completion Date for those Works.
- 4.3.5 The Provider must notify the Client's Representative immediately, giving reasons, if it becomes apparent that:
- any Order for any Responsive Maintenance, Routine Maintenance, Void Property Works, Disrepair Works, Disability Adaptation Works, Technical Inspection, Occupational Therapist Inspection, Void Property Inspection, or Optional Task will not be completed within its Response Period;
 - any Planned Works or Major Works to any Property will not be started in accordance with the Programme;
 - any Planned Works, Major Works, Disrepair Works, Disability Adaptation Works, or Servicing will not be completed by their Target Completion Date.
- 4.3.6 The Provider's reasons under Clause 4.3.5 must include any notification under Clause 8.4 [*Condition precedent to paid or unpaid extensions of time*] of any extension of time or increase in the Order Price that the Provider wishes to claim.
- 4.3.7 Following a notification under Clause 4.3.5 the Client's Representative will either:
- award an extension of time under Clause 0 [*Paid extensions of time*] or 8.3 [*Unpaid extensions of time*] in which case the Response Period, date for commencing the Works or Target Completion Date (as applicable) will be adjusted accordingly;
 - notify the Provider that the Client's Representative accepts that the Provider is entitled to an extension of time but that the detailed assessment will follow the Provider's detailed claim under Clause 8.4.2 [*Condition precedent to paid or unpaid extensions of time*], in which case the Response Period, date for commencing the Works or Target Completion Date (as applicable) will be adjusted or deemed to have been adjusted once the claim has been determined; or
 - notify the Provider that it is not entitled to any extension of time.
- 4.3.8 If the Client has to relocate any Customer(s) to temporary accommodation in bed and breakfast or a residential care home because of the Provider's failure to complete any Works within their Response Period and/or Target Completion Date (each as revised where applicable), the Client may recover all of its costs of doing so from the Provider plus the percentage stated in the Contract Details of these costs for its administrative costs.
- 4.3.9 Immediately upon their completion, the Provider must notify the Client's Representative of the Order Completion Dates of all Orders for which a notification has been given under Clause 4.3.5.

NHF FORM OF CONTRACT 2023 – CONTRACT CONDITIONS

4.4 Volumes and other contractors

- 4.4.1 The Client may carry out work similar to the Works through using either its own employees or by engaging other contractors.
- The Client may not use this Clause as an alternative to termination. Subject to Clauses 4.4.3 and 4.4.4 and Clause 12.3 [*Diversion or Suspension of Orders*] the Client's Representative will continue to issue Orders to the Provider throughout the Contract Period.
- 4.4.2 The Client gives no representations or warranties to the Provider about the amount or value of Orders the Client's Representative will instruct the Provider to do under this Contract. Any indications of these amounts or values in the Invitation to Tender, the Preliminaries, the Contract Documents or Works Documents are estimates only.
- 4.4.3 The Provider is not entitled to claim for any loss of profit, loss of business or otherwise if the volume or timing of Orders is different in amount, value or scope than anticipated.
- 4.4.4 The Client may engage other contractors to carry out other works to the Properties at the same time as the Provider undertakes the Works. The Provider must facilitate such works and must not obstruct the contractor that is undertaking them.
- 4.4.5 Where this Contract includes Estate Services the Provider shall, at no additional cost, work with the Client in validating the Client's existing database of information relating to each Area including quantities, areas, site plans, drawings, floor layouts and coverage including the extent of grassed areas, hard landscaping, planted areas, floors and hard surface finishes. Where so requested by the Client's Representative the Provider shall, at no additional cost, measure prospective Areas that the Client may wish to add into this Contract.

4.5 Variations to Property numbers

- 4.5.1 The Client may add or omit Properties at any time from this Contract by notifying the Provider in writing of the Properties added or omitted.

5. PROVIDER'S OBLIGATIONS

5.1 General obligations relating to the Works

- 5.1.1 The Provider must carry out and complete the Works under each Order:
- in accordance with Law;
 - in accordance with Good Industry Practice;
 - in accordance with all applicable Standards;
 - in accordance with the Client's Policies as set out in the Contract Details for Clause 1.1 [*Definitions - definition of "Client's Policies"*], copies of which are appended to the Contract Details;
 - to the standards of workmanship and using Materials as set out in the Specification;
 - in accordance with the procedures set out in the Preliminaries;
 - in accordance with any other specific requirements for Works carried out under this Contract; and
 - to the reasonable satisfaction of the Client's Representative.

To the extent the standard of any Works has not been specified in this Contract, the Provider must agree the relevant standard for the Works with the Client's Representative prior to their execution.

NHF FORM OF CONTRACT 2023 – CONTRACT CONDITIONS

- 5.1.2 To the extent that it is necessary to design any aspect of the Works, in preparing those Designs the Provider must use the reasonable skill, care, diligence and expedition as would be reasonably expected of a prudent experienced contractor with Design obligations having experience in carrying out projects similar in size, scope, nature, complexity and value to the Works.
- 5.1.3 All Materials used in the Works must:
- comply with all applicable Standards;
 - be to the standards specified in the Specification; and
 - be to the reasonable satisfaction of the Client's Representative.
- 5.1.4 The Provider must not use any Prohibited Materials in carrying out the Works.
- 5.1.5 Where the Client's Representative so directs, the Provider may be required to undertake the Works using "free issue" Materials. In these circumstances the Provider must allow a credit against the amount payable for the Order to reflect the saving on the cost of the Materials.

5.2 CDM and Regulatory Requirements

- 5.2.1 In relation to any Works subject to the CDM Regulations, the Principal Designer will be the person or Organisation set out in the Contract Details.
- 5.2.2 The Client may replace the Principal Designer at any time. Where any Works are subject to the CDM Regulations the Client must appoint a new Principal Designer, either before or as soon as practicable after and in any event within 10 (ten) Business Days after the date of any person ceasing to be the Principal Designer. The Client must notify the Provider in writing within 2 (two) Business Days of the appointment of a new Principal Designer. This notification must include:
- the identity of the Principal Designer;
 - the organisation for whom the Principal Designer works or (if an employee of the Client) the post held by the Principal Designer;
 - contact details for the Principal Designer.
- 5.2.3 Where the Principal Designer is the Provider, the Provider must appoint an appropriately qualified and experienced "competent person" to assist the Provider in fulfilling its duties as Principal Designer. The first such "competent person" will be the person set out in the Contract Details. The Provider may with the approval of the Client's Representative (who shall have absolute discretion whether or not to approve the replacement "competent person") replace the "competent person" at any time. The "competent person" may not be the same as the person the Provider appoints as the principal point of contact for health and safety matters concerning the Works under Paragraph 5.3.1 [*Health and safety and Staff*] of the Preliminaries.
- 5.2.4 The Client appoints the Provider as the Principal Contractor for any Works that are subject to the CDM Regulations.
- 5.2.5 In relation to any Works subject to the CDM Regulations, the Provider warrants that:
- the Provider has the skills, knowledge, experience, and organisational capability to act as Principal Contractor, and (where as appointed as such) as Principal Designer under the CDM Regulations in a manner that secures the health and safety of any person affected by those Works;
 - it is and will at all times be competent to perform the duties imposed on a principal contractor and, where appointed as Principal Designer, as a principal designer by the CDM Regulations;

NHF FORM OF CONTRACT 2023 – CONTRACT CONDITIONS

- it will allocate adequate resources to enable it to comply with its obligations under the CDM Regulations; and
 - it has the competence, resources, and capacity to comply with, and will comply with any Code of Practice approved by the Health and Safety Executive under the Health and Safety at Work etc Act 1974 in connection with the CDM Regulations.
- 5.2.6 In relation to any Higher Risk Building Work or other Works to a Higher Risk Building the Provider warrants that it is a competent person in relation to those Works.
- 5.2.7 The Provider must secure all Statutory Permissions necessary to carry out the Works, including for any Higher Risk Building Works. The Provider must pay all fees and charges in connection with this. The Provider must not commence any Works for which a Statutory Permission is required until that Statutory Permission has been obtained.
- 5.2.8 The Provider must co-operate with the Client, the Building Safety Regulator and all dutyholders under Building Safety Law in relation to the Works and the performance of the Provider's obligations under this Contract.
- 5.2.9 Both Parties will seek to maintain a culture and working environment in which health and safety is paramount to everybody involved with the Works.
- 5.2.10 The Provider must immediately give to the Client's Representative a written notice specifying any divergence the Provider discovers between the Regulatory Requirements and either the Contract Documents and/or an Instruction.
- 5.2.11 Following receipt of a written notice under Clause 5.2.10 the Client's Representative will Instruct the Provider whether to comply with the Regulatory Requirements or with the Contract Documents or Instruction.
- 5.2.12 The Provider is not to be liable to the Client under this Contract where the Works do not comply with the Regulatory Requirements to the extent that such non-compliance results from the Provider having complied with a specific Instruction given under Clause 5.2.10.
- 5.2.13 The Provider must notify the Client's Representative promptly and in any event within 1 (one) Working Day of:
- the Provider or any Staff first becoming aware that a Property or Area to which any Works are being undertaken is or is likely in the near future to become a hazard;
 - any circumstances that the Client or the Provider is required to report to a Statutory Authority (including any circumstances which are required to be the subject of a report under Building Safety Law or Health and Safety Law) and any concerns that the Provider has over the safety of the Property or Block to which the Works are undertaken;
 - any injury or illness of any Staff or any "near miss" that occurs whilst they are engaged on the Works;
 - any breach of Law, Regulatory Requirements, or this Contract by the Provider (including where due to the actions or omissions of a Subcontractor);
 - any notice the Provider receives from any Statutory Authority in relation to the Works or any of the Properties; or
 - any investigation by a Statutory Authority in connection with the Works or the Provider.

NHF FORM OF CONTRACT 2023 – CONTRACT CONDITIONS

5.3 Specialist Works and associated requirements

5.3.1 The Provider must ensure that:

- all Asbestos Licensed Works are undertaken by an Asbestos Licensed Contractor;
- all Works to Electrical Installations are undertaken by an Organisation that is a member of the NICEIC or ECA or other equivalent body approved by the Client's Representative;
- all Works to Gas Installations are undertaken by an Organisation that is on the Gas Safe Register;
- all Works to oil fired Heating Appliances or Heating Installations are carried out by an Organisation that is registered with OFTEC or other equivalent body approved by the Client's Representative;
- all Works involving Biomass or solid fuel Heating Appliances or Heating Installations are carried out by an Organisation that is registered with HETAS or other equivalent body approved by the Client's Representative;
- all Works to Fire Safety Installations are carried out by an Organisation that is that is registered with BAFE or other equivalent body approved by the Client's Representative;
- all retrofitting Works to improve energy efficiency are undertaken by an Organisation that is certified under PAS 2030 or equivalent;
- all Works to fire doors are carried out by an Organisation that is independently certified by BM TRADA or equivalent;
- all chemical injection damp proof course Works are undertaken by an Organisation that is a member of the Property Care Association or other equivalent body approved by the Client's Representative;
- all fungus/beetle eradication Works are undertaken by an Organisation that is a member of the Property Care Association or other equivalent body approved by the Client's Representative;
- all Works to a Higher Risk Building are carried out by an Organisation that is a competent person in relation to those Works;
- all Works to remove Invasive Alien Species are carried out by an Organisation that is a member of the Property Care Association; and
- the Provider is competent to undertake all Works that the Provider undertakes and if the Provider does not have the competency that is required for any Works the Provider:
 - o notifies the Client's Representative of this; and
 - o subcontracts those Works to an appropriately qualified and competent Subcontractor.

5.3.2 The Provider must provide such documentary evidence as the Client may request to prove that:

- any person or Organisation undertaking Asbestos Licensed Works is an Asbestos Licensed Contractor;
- any person or Organisation undertaking Works to Electrical Installations is a member of NICEIC, the ECA or other equivalent approved under Clause 5.3.1;

NHF FORM OF CONTRACT 2023 – CONTRACT CONDITIONS

- any Organisation undertaking Works to Gas Installations is and the individual Staff doing so are properly registered and qualified under the Gas Safety Regulations;
 - any person or Organisation undertaking Works to oil fired Heating Appliances or Heating Installations is properly registered and qualified with OFTEC or other equivalent approved under Clause 5.3.1;
 - any person or Organisation undertaking Works involving Biomass or solid fuel Heating Appliances or Heating Installations is properly registered and qualified with HETAS or other equivalent approved under Clause 5.3.1;
 - any person or Organization undertaking retrofitting Works to improve energy efficiency is certified under PAS 2030 or other equivalent approved under Clause 5.3.1;
 - any person or Organisation undertaking Works to Lifting Installations is a member of LEIA or other equivalent approved under Clause 5.3.1;
 - any person or Organisation undertaking Works to Fire Safety Installations is a member of LPS and/or BAFE or other equivalent approved under Clause 5.3.1;
 - any person or Organisation undertaking chemical injection damp proof course Works is a member of the Property Care Association or other equivalent approved under Clause 5.3.1;
 - any person or Organisation undertaking fungus/beetle eradication Works is a member of the Property Care Association or other equivalent approved under Clause 5.3.1; and
 - any Subcontractor is appropriately qualified for the Specialist Works they undertake.
- 5.3.3 The Provider must notify the Client in writing promptly and in any event within 24 (twenty-four) hours if the Provider or a Subcontractor appointed to undertake any of the types of Works specified in Clause 5.3.2 has its authorisation or registration to do so suspended or withdrawn or if conditions are attached to it which involve the suspension of certain categories of Works or persons. The notification must include for details of:
- the reasons the Provider has been given for the suspension, withdrawal or conditions; and
 - the Provider's proposed actions (with timescales) for gaining reinstatement of its full unconditional authorisation or registration.
- 5.3.4 Following any suspension referred to in Clause 5.3.3 the Provider shall immediately arrange for an appropriately qualified Subcontractor to undertake any Works for which the Provider or their usual Subcontractor is suspended, but the appointment of such Subcontractor shall be subject to the usual requirements for appointing Subcontractors under this Contract.
- 5.3.5 Where the Client directly employs a contractor to undertake any of the types of work listed in Clause 5.3.1, the Provider must facilitate and co-ordinate the work of that contractor, including programming and arranging access so as not to impede that contractor carrying out that work.
- 5.3.6 Where the Client directly employs a Consultant to undertake asbestos surveys, audits and/or quality inspections, the Provider must facilitate and co-ordinate the work of that Consultant including programming and arranging access so as not to impede them in carrying out their work.

NHF FORM OF CONTRACT 2023 – CONTRACT CONDITIONS

- 5.3.7 The Provider must notify the Client in writing promptly and in any event within 24 (twenty-four) hours of any Invasive Alien Species on any Areas covered by this Contract, or on adjoining land where there is a risk of encroachment onto any Area which was not included in the Client's schedule of Areas affected by Invasive Alien Species as shown on the Area Map appended to the Contract Details.

5.4 Defects

- 5.4.1 The Client's Representative may direct the Provider to rectify all Defects that are discovered or become apparent in the Works during the Defects Liability Period. Any such direction must be given in writing and may be given in the form of an Order.
- 5.4.2 The Provider must rectify all Defects within their Defect Rectification Periods.
- 5.4.3 If the Building Safety Regulator requires any additional or replacement Works to be undertaken as a result of any Works the Provider has undertaken, the Provider must undertake those Works at no cost to the Client.
- 5.4.4 The rectification of Defects must be to the reasonable satisfaction of the Client's Representative, in relation to which the decision of the Client's Representative is final.
- 5.4.5 The Client's Representative will issue the Certificate of Making Good Defects within 20 (twenty) Business Days of the later of:
- the expiry of the Defects Liability Period of the last Order for Works (other than for Periodic Tasks) to be completed before the Termination Date; and
 - the date on which all Defects arising during any Defects Liability Period under this Contract are fully rectified.

5.5 Best Value

- 5.5.1 Where the Contract Details provide that the Provider is subject to duties under best value Law then throughout the Contract Period the Provider must (but only to the extent of the Provider's obligations under this Contract) make arrangements to secure a continuous improvement in the way the Provider and its Subcontractors undertake the Works, having regard to a combination of economy, efficiency and effectiveness.
- 5.5.2 Where Clause 5.5.1 applies the Provider must undertake or refrain from undertaking such actions as the Client reasonably requests to enable the Client to achieve the best value in relation to the Works including:
- supporting and assisting the Client to meet this objective through the way the Provider undertakes the Works; and
 - complying with requests from the Client for information, data, or other assistance about the Works in relation to this objective.

5.6 Assistance with Leaseholder consultation

- 5.6.1 The Provider must provide such information, co-operation, and assistance as the Client requests to comply with its obligations to consult tenant associations and Leaseholders who pay variable service charges.
- 5.6.2 The assistance under Clause 5.6.1 is to be provided as the Client requires and in sufficient time to enable the Client to comply with those obligations.

5.7 Right to repair

- 5.7.1 At the same time as the Client's Representative issues an Order for a Qualifying Repair the Client will also serve a repair notice on the Provider (as well as on the Customer) under Regulation 5 of the Right to Repair Regulations.

NHF FORM OF CONTRACT 2023 – CONTRACT CONDITIONS

- 5.7.2 The Response Period for any Order for a Qualifying Repair will be the shorter of:
- the first prescribed period (as defined in the Right to Repair Regulations); and
 - the Response Period set out in the Order or the Contract Details for Paragraph 6.9 [*Response Periods and Target Completion Dates*] of the Preliminaries.
- 5.7.3 Subject to the prompt issue of both an Order and a repair notice for a Qualifying Repair, the Provider must ensure the Client complies with its obligations under the Right to Repair Regulations.
- 5.7.4 If the Provider fails to complete an Order issued for a Qualifying Repair within its Response Period:
- the Client may arrange for another contractor to undertake that Qualifying Repair;
 - the Provider must reimburse to the Client:
 - any extra costs incurred by the Client in undertaking the Qualifying Repair (over and above what the Client would have paid the Provider). These costs include any premium the Client has to pay to ensure that the Qualifying Repair is completed within the second prescribed period (as defined in the Right to Repair Regulations); and
 - a fixed payment of the amount specified in the Price Framework towards the Client's administration costs.

5.8 Business continuity

- 5.8.1 The Provider must maintain a Business Continuity Plan which includes:
- details of the activities the Provider undertakes in connection with the Works that must continue during the first week following an incident that disrupts the Provider's normal operations;
 - details of the minimum number of Staff, Equipment and Materials needed to continue to undertake the Works;
 - details of key personnel and their role in an emergency;
 - a register of all employees used in providing the Works under the Business Continuity Plan with contact details (to be kept by the Provider for emergency purposes); and
 - any other information the Contract Details require.
- 5.8.2 The Provider must ensure that at all times the Client has a copy of the Provider's current Business Continuity Plan.
- 5.8.3 The Provider must always be familiar with the requirements of the Client's business continuity plan (which is available on application to the Client's Representative).
- 5.8.4 The Provider must have proper regard to and reflect any comments from the Client in its Business Continuity Plan. The Provider must give written reasons to the Client if it decides not to reflect any Client comments in its Business Continuity Plan.
- 5.8.5 The Provider must immediately notify the Client if any incident occurs which activates its Business Continuity Plan. This notification must be given before any notification is given to the media.
- 5.8.6 Once any activation of its Business Continuity Plan has been completed, the Provider must provide the Client with details of how it managed the incident which resulted in such activation and any amendments made to its processes and/or procedures as a result.

NHF FORM OF CONTRACT 2023 – CONTRACT CONDITIONS

- 5.8.7 The Provider must ensure all Staff are trained in the operation of its Business Continuity Plan.

5.9 Disasters, civil emergencies, and terrorism prevention

- 5.9.1 In any situation which the Client's Representative considers to be a potential, or actual Disaster, the Provider must undertake such Disaster related activities as the Client's Representative requires.
- 5.9.2 The Client's Representative may suspend all or any of the Works and/or prioritise the Works if the Client's Representative deems that any Staff and/or Equipment are required for any Disaster.
- 5.9.3 The Provider must ensure the Provider's Contract Manager has the authority to call upon the Provider's Staff and Equipment as required during any Disaster.
- 5.9.4 Where the Contract Details state that the Client is subject to duties in relation to civil emergencies:
- the Provider must participate in training programmes and exercises relating to the Client's Civil Emergencies Plan as required by the Client's Representative; and
 - the Provider will be paid for its participation in activities relating to Civil Emergencies (including training) at the Daywork Rates set out in the Price Framework.
- 5.9.5 Where the Contract Details state that the Client is a local authority or an ALMO, the Provider:
- must not engage in any Extremist activities or espouse Extremist views;
 - must ensure that Staff;
 - are trained to recognise a person's vulnerability to being drawn into terrorism;
 - are aware of available programmes to deal with Extremist activity and Radicalisation; and
 - have a good understanding of the Terrorism Prevent Programme; and
 - must not do or omit to do anything or cause anything to be done that would cause the Client or any Client Party to contravene the Terrorism Prevention Duty or incur any liability in relation to the Terrorism Prevention Duty.

5.10 Social Value

- 5.10.1 The Provider must participate actively in economic and social regeneration in connection with this Contract including promoting the use of small and medium enterprises and social enterprises in its supply chain.
- 5.10.2 The Provider will, together with the Client, seek to develop links and improve communications with the communities served by the Works.
- 5.10.3 In each Contract Year, the Provider must deliver the Social Value Activities set out in the Social Value Matrix and in accordance with the Social Value Appendix. If the Provider fails to do deliver any of those "Social Value Activities" in any Contract Year, the Provider shall pay the amount of liquidated and ascertained damages set out in the Social Value Matrix for the Social Value Activities the Provider has failed to deliver in that Contract Year.

NHF FORM OF CONTRACT 2023 – CONTRACT CONDITIONS

- 5.10.4 The Provider must report to the Client in relation to Social Value Activities undertaken in connection with this Contract as set out in the Social Value Appendix (including the Social Value Matrix).
- 5.10.5 By supplying details of employment agencies, further education colleges, schools, or other agencies, neither the Client nor any such agencies give any representation that:
- the individuals referred to the Provider as potential Apprentices, Trainees, Work Placement persons or candidates for Training Programmes are suitable for that role; or
 - they have promised to supply details of any such individuals to the Provider.

5.11 Complaints handling

- 5.11.1 The Provider must deal with any complaints received in a prompt, courteous and efficient manner.
- 5.11.2 The Provider must keep written records of all complaints received and of the action taken in relation to each of them. Such records must be kept available for inspection by the Client's Representative at any reasonable time.
- 5.11.3 The Provider must notify the Client's Representative immediately in writing of all complaints received and of all steps taken to deal with them.
- 5.11.4 The Provider must promptly provide all information the Client requires in order to deal with any complaints the Client receives in connection with the Works or the Provider.
- 5.11.5 At the request of the Client's Representative the Provider must arrange for notice(s) to be permanently displayed giving information on how to complain about the Works. The notice(s) must be in a form and displayed in places approved by the Client's Representative.

5.12 Co-operation with audit, ombudsman, etc.

- 5.12.1 The Provider must co-operate with the Client in responding to Ombudsman enquiries or investigations and/or complaints under the Client's own complaints procedure in relation to the Works.
- 5.12.2 Within 10 (ten) Business Days of request from the Client, the Provider must reimburse the Client the whole or an appropriate part (as specified in the request) of any payment made by the Client to a complainant and/or any other costs incurred by the Client in responding to the complaint following either:
- a breach of this Contract by the Provider; or
 - a report or investigation by the Ombudsman that:
 - o identifies the Provider or a Subcontractor as being wholly or partly responsible for any maladministration or other failure; and
 - o recommends compensation to be paid.

5.13 Documents and Data

- 5.13.1 Whenever requested by the Client's Representative or the Client the Provider must:
- make any records it maintains under Clause 7.1 [*Intellectual Property Rights and Client Data*] available for inspection and analysis by the Client and the Client's internal or external auditors or representatives of any Statutory Authority to which the Client is subject; and

NHF FORM OF CONTRACT 2023 – CONTRACT CONDITIONS

- provide such assistance as the Client, its auditors or the Statutory Authority require including:
 - granting immediate access to the Provider's premises;
 - making the Provider's and any Subcontractor's Staff available; and/or
 - giving access to and permission to copy and remove copies of any books, records and information relating to this Contract.
- 5.13.2 The Provider must not and must procure that Subcontractors do not destroy any books, records or information concerning this Contract without the prior approval of the Client.

5.14 Publicity

- 5.14.1 The Provider must not and must ensure that Subcontractors do not give any information about the Works for publication in the press or on radio, television, via the internet, or for any other medium without the consent of the Client.
- 5.14.2 The Provider must not, and must ensure that Subcontractors do not, without the prior consent of the Client take photographs of any Properties or any Works for any purposes other than providing a record that the Works have been undertaken.
- 5.14.3 The Provider must take all measures needed to prevent Staff publishing or otherwise circulating such photographs.
- 5.14.4 The Provider must not advertise on any of the Properties or in connection with this Contract unless the Client's Representative has approved the content, duration, and location of the advertisement.

5.15 Safeguarding

- 5.15.1 The Provider must maintain appropriate arrangements for any member of Staff to raise concerns over safeguarding issues with the Provider on a confidential basis.
- 5.15.2 The Provider must train Staff in relation to safeguarding from time to time.
- 5.15.3 The Provider must deal with any safeguarding concerns raised with them in accordance with Good Industry Practice and (where the Client has one) the Client's safeguarding Policy.

5.16 Parent Company Guarantee and Performance Bond

- 5.16.1 Where the Contract Details so provide, the Provider must provide a parent company guarantee from its ultimate holding company or such other holding company as the Client approves within 20 (twenty) Business Days of the date of this Contract. The form of the parent company guarantee is to be as set out in the Contract Details.
- 5.16.2 Where the Contract Details so provide, the Provider must provide a performance bond from a substantial and reputable bond provider approved by the Client within 20 (twenty) Business Days of the date of this Contract. The amount and form of the performance bond is to be as set out in the Contract Details.
- 5.16.3 Where a parent company guarantee or a performance bond is required to be provided under Clause 5.16.1 or 5.16.2, its provision is a condition precedent to any payment becoming due to the Provider under this Contract.
- 5.16.4 Where the Contract Details state that the cost of the performance bond is to be borne by the Client the Client will pay the cost of the bond, up to the amount set out in the Tender Certificate, to the Provider within 15 (fifteen) Business Days of the date on which the Client receives the executed and completed bond.

NHF FORM OF CONTRACT 2023 – CONTRACT CONDITIONS

6. STAFF AND TUPE

6.1 Staff

- 6.1.1 The Provider must employ sufficient competent Staff to undertake the Works.
- 6.1.2 The Provider must obtain the consent of the Client's Representative before employing as a member of Staff any person who is:
- a board member or councillor of the Client (as applicable);
 - an employee of the Client;
 - a close relative (spouse, civil partner, parent, grandparent, child, grandchild (including an illegitimate child or grandchild), brother or sister) of any such board member, councillor (as applicable) or employee of the Client; or
 - a person with whom such board member, councillor (as applicable) or employee of the Client has a close personal relationship that is equivalent to their being a close relative.
- 6.1.3 The Provider must ensure when undertaking the Works all Staff:
- act in the best interests of the Client;
 - comply with all applicable Law including Building Safety Law, Health and Safety Law, Equality and Diversity Law, the Human Rights Act 1998, and Data Protection Law; and
 - comply with any direction given by the Client's Representative under this Contract.
- 6.1.4 The Provider shall ensure that at least 25% (one quarter) of the total number of Staff providing Estate Services hold a Basic First Aid (or higher) first aid qualification.
- 6.1.5 The Provider warrants that neither the Provider nor any of its Staff:
- have been convicted of any offence involving slavery or human trafficking anywhere around the world; and
 - have, to the best of the Provider's knowledge, been the subject of any investigation, inquiry, or enforcement proceedings by any governmental, administrative or regulatory body regarding any allegation of slavery or human trafficking offences anywhere around the world.
- 6.1.6 The Provider:
- shall not use, nor allow any Subcontractor to use, forced, bonded or involuntary prison labour;
 - shall not require any Staff to lodge deposits or identity papers with their employer;
 - shall ensure all Staff are free to leave their employment by their employer after reasonable notice;
 - throughout the Contract Period shall maintain policies and procedures to ensure compliance with the Modern Slavery Act 2015 and include anti-slavery and human trafficking provisions in all Subcontracts;
 - shall not use, or allow Staff or Subcontractors to use, physical abuse or discipline, the threat of physical abuse, sexual or other harassment and verbal abuse or other forms of intimidation of Staff or Subcontractors;
 - shall not use, or allow any Subcontractor to use, child or slave labour;

NHF FORM OF CONTRACT 2023 – CONTRACT CONDITIONS

- shall carry out due diligence to ensure Staff are not paying illegal or exploitative recruitment fees to secure employment, and where such fees are uncovered shall ensure that those Staff are reimbursed;
- within 20 (twenty) Business Days of a request from the Client's Representative prepare and make available to the Client, an annual slavery and human trafficking report (which may be in the form of the Provider's statement under Section 54 of the Modern Slavery Act 2015) setting out the steps it has taken to ensure that slavery and human trafficking is not taking place in any of its supply chains or in any part of its business;
- shall report the discovery or suspicion of any slavery, trafficking, forced labour, child labour, involuntary prison labour or labour rights abuses by it or any Subcontractor to the Client, the Modern Slavery Helpline and relevant national or local Law enforcement agencies;
- shall respond promptly and in any event within 24 (twenty-four) hours to any enquiry from the Client concerning any report of the discovery or suspicion of any slavery, trafficking, forced labour, child labour, involuntary prison labour or labour rights abuses by it or any Subcontractor;
- shall complete the Modern Slavery Assessment Tool and provide a copy to the Client within 40 (forty) Business Days of request from the Client's Representative;
- shall, if the Provider or the Client identifies any occurrence of modern slavery connected to this Contract, within 20 (twenty) Business Days of a request from the Client's Representative, take the actions that the "supplier" is required to take under Annex D to Procurement Policy Note 2/23.

6.2 Licence to enter Properties

- 6.2.1 The Client grants the Provider, Subcontractors, Suppliers, and their respective Staff a non-exclusive temporary licence during the Contract Period to go onto and occupy such parts of each Property as necessary in connection with the Works. Such license does not confer exclusive possession and does not grant any other legal right or interest in land.
- 6.2.2 The licence granted by Clause 6.2.1 is subject to:
- the permission of the Customer where that Property is subject to a Tenancy;
 - the Provider, Subcontractors, Suppliers, and their respective Staff complying with the Client's Policies including those relating to the security of Properties;
 - the Provider complying with the requirements of the Preliminaries (if any) in relation to carrying out DBS Checks on Staff who may require access to any of the Properties and (where applicable) disclosing to the Client any criminal convictions of those Staff or other circumstances revealed by those DBS Checks (or any update of them) that may affect their working with children or vulnerable adults;
 - no member of Staff who has a conviction or other relevant information revealed by a DBS Check attending at any Property unless the Client has approved their doing so in writing in full knowledge of the existence of the conviction or other information revealed by the DBS Check; and
 - Staff complying with the requirements of the Preliminaries as regards carrying and showing identification.

NHF FORM OF CONTRACT 2023 – CONTRACT CONDITIONS

- 6.2.3 The Provider must not:
- grant or purport to grant any interest in any Property to any person; or
 - part with possession of any part of the Property to any person, other than the Client or the Customer who is the tenant of that Property.
- 6.2.4 The Provider must comply immediately with any Instruction issued by the Client's Representative requiring the exclusion any member of Staff or any Subcontractor, Supplier or Adviser to the Provider from this Contract and/or any Property.

6.3 Equality and diversity

- 6.3.1 The Provider must comply with its obligations under Equality and Diversity Law.
- 6.3.2 The Provider must, as far as possible comply with all applicable guidance issued by the Equalities and Human Rights Commission and its predecessors.
- 6.3.3 The Provider must comply with the Equality Act 2010 on the basis that the Provider is providing services and exercising public functions under that Act. The Provider must use all reasonable endeavours to assist the Client to fulfil its duties under the Equality Act 2010 in relation to the delivery of the Works.
- 6.3.4 The Provider must take reasonable steps to ensure that all Staff, Subcontractors, Suppliers, and their Staff comply with the requirements placed on the Provider under Clauses 6.3.1 to 6.3.3 (inclusive) in connection with this Contract.
- 6.3.5 The Provider must notify the Client's Representative in writing as soon as possible and in any event within 2 (two) Business Days of first becoming aware of any investigation or proceedings brought against the Provider for unlawful discrimination or harassment.
- 6.3.6 Where there is a finding against the Provider in any investigation or proceedings for unlawful discrimination or harassment:
- the Provider must indemnify the Client against all costs, charges, and expenses (including legal and administrative expenses) arising out of or in connection with that investigation or those proceedings;
 - the Provider must take all appropriate steps to prevent any repetition of the unlawful discrimination or harassment; and
 - the Provider must provide the Client's Representative with such information as the Client's Representative requests about such steps.
- 6.3.7 The Provider must set out its policy on equality and diversity:
- in instructions to those concerned with recruitment, training, and promotion;
 - in documents available to employees, recognised trade unions or other representative groups of employees; and
 - in recruitment advertisements or other literature.
- 6.3.8 The Provider must, on request, provide the Client with examples of the instructions and other documents, recruitment advertisements or other literature.
- 6.3.9 Where the Provider's or any Subcontractor's Staff are required to carry out Works alongside the Client's employees, the Provider must use all reasonable endeavours to ensure those Staff comply with the Client's equality and diversity policy.
- 6.3.10 The Client's Representative may from time to time require the Provider to monitor its workforce according to such categories as the Client's Representative specifies by Instruction to the Provider.

NHF FORM OF CONTRACT 2023 – CONTRACT CONDITIONS

6.4 TUPE – in

- 6.4.1 Where TUPE applies on the commencement of this Contract or on the issue of any Order under it, the Commencement Date of those Works will be the date of the TUPE Transfer. On that date the contracts of employment of any Transferring Employees are to have effect (subject to Regulation 4(7) of TUPE) as if originally made between the Transferring Employees and the Provider, except in so far as those contracts relate to an occupational pension scheme relating to old age, invalidity, and survivors' benefits.
- 6.4.2 The Client assigns to the Provider the benefit of any indemnity in favour of the Provider (as the successor to the Previous Contractor) under the contracts listed in the Contract Details.
- 6.4.3 The Provider agrees to Indemnify the Client, and at the Client's request, each Previous Contractor against all Liability (arising before or after the Commencement Date):
- to any person who is or has been employed or engaged by the Provider or any Subcontractor as a result of any act, fault, or omission of the Provider and/or any Subcontractor after the Commencement Date or the date of the issue of the Order (as applicable);
 - to a Transferring Employee, trade union or staff association or employee representative arising from any failure by the Provider and/or any Subcontractor to comply with any legal obligation under any of Regulations 13, 14 or 15 of TUPE, or otherwise;
 - arising from any claim that the change of identity of employer occurring under TUPE to the Provider or the relevant Subcontractor is significant and detrimental to any Transferring Employee or to any person who would have been a Transferring Employee but for their resignation (or decision to treat their employment as terminated under Regulation 4(9) of TUPE) on or before the Commencement Date or the date of issue of the Order (as applicable) as a result of the change in employer;
 - arising from the Provider's or a Subcontractor's proposed or actual change to a Transferring Employee's working conditions, terms or conditions or any measures proposed by the Provider or the relevant Subcontractor which are to the material detriment of any Transferring Employee or any person who would have been a Transferring Employee but for their resignation (or decision to treat their employment as terminated under Regulation 4(9) of TUPE) on or before the Commencement Date or date of issue of the Order (as applicable) as a result of any such proposed changes or measures; or
 - arising out of any negligent or other misrepresentation or mis-statement, made by the Provider or any Subcontractor to the Transferring Employees or their representatives.

6.5 TUPE Retendering Information

- 6.5.1 Within the 12 (twelve) months immediately preceding the Expiry Date and following service of a notice of termination under Clause 0 [*Termination and Expiry*] the Provider must:
- provide Retendering Information at no cost to the Client within a maximum of 10 (ten) Business Days of a request;
 - notify the Client in writing of any material changes to the Retendering Information promptly as and when such changes arise;

NHF FORM OF CONTRACT 2023 – CONTRACT CONDITIONS

- ensure that neither the Provider nor any Subcontractors without the Client's prior written consent:
 - make any material increase or decrease in the numbers of Assigned Employees;
 - increase the remuneration or otherwise change the terms of employment or engagement of the Assigned Employees; or
 - transfer any of the Assigned Employees to another part of their business or move other employees from elsewhere in their business who have not previously been employed or engaged in providing the Works.
- 6.5.2 The Provider agrees to Indemnify the Client and at the Client's request any Successor Contractor, against all Liability from:
 - the Provider or a Subcontractor failing to provide the Client with any Retendering Information promptly; or
 - any material inaccuracy in or omission from the Retendering Information.

6.6 TUPE transfer to a Successor Contractor

- 6.6.1 The Client and Provider intend TUPE to apply to the provision of any works equivalent to the Works after the Termination Date but the position is to be determined in accordance with the Law on the Termination Date.
- 6.6.2 Following the Termination Date the Provider must:
 - ensure that all financial obligations including wages, salaries and other benefits and all related PAYE, tax, deductions, pension contributions and National Insurance contributions in respect of the employment of the Returning Employees are satisfied up to the Termination Date;
 - remain (or ensure that Subcontractors remain) responsible for all the Provider's or Subcontractor's employees or workers who are not Returning Employees;
 - Indemnify the Client and any Successor Contractor against all Liability incurred from any claim:
 - by or on behalf of any of the Provider's or any Subcontractor's employees or workers who are not Returning Employees;
 - by or on behalf of any of the Returning Employees in respect of the period on or before the Termination Date (whether any such claim arises before, on or after the Termination Date) except to the extent that any loss results from any failure by the Client or any Successor Contractor to comply with Regulation 13(4) of TUPE;
 - by or on behalf of any of the Returning Employees under Equal Pay Legislation relating to the period before the Termination Date (including a claim made after the Termination Date arising out of circumstances which arose before the Termination Date).
- 6.6.3 The Client may assign the benefit of any or all of the indemnities in Clause 6.4.2 [*TUPE - in*], Clause 6.5.2 [*TUPE Retendering Information*], Clause 6.6.2 and Clause 6.7.2 [*TUPE and Subcontractors*] to a Successor Contractor.

NHF FORM OF CONTRACT 2023 – CONTRACT CONDITIONS

6.7 TUPE and Subcontractors

6.7.1 The Provider must:

- obtain Indemnities from and impose obligations on its Subcontractors in the same terms as those applying to the Provider under Clause 6.4.3 [*TUPE - in*], Clause 6.5 [*TUPE Retendering Information*] and Clause 6.6 [*TUPE transfer to a Successor Contractor*]; and
- ensure that the Subcontractors comply with those obligations.

6.7.2 The Provider agrees to Indemnify the Client against all Liability incurred by the Client or any Successor Contractor resulting from the Provider's failure to comply with Clause 6.7.1.

7. INFORMATION HANDLING

7.1 Intellectual Property Rights and Client Data

7.1.1 All Intellectual Property Rights in the following will at all times belong to the Client:

- the Client Data and all updates of and changes to it (including any Client Data stored on the Provider's IT System); and
- all Documents and Data provided by the Client in connection with this Contract.

7.1.2 Subject to Clause 7.1.1, Intellectual Property Rights in all Documents and Data:

- provided, created, or acquired by the Provider in connection with its business generally and not specifically for the purposes of this Contract are to belong to the Provider;
- provided or created solely by the Provider for the purposes of this Contract, but which are of general application elsewhere, are to belong to the Provider except to the extent this Contract expressly states otherwise; and
- specifically created by the Provider and Client jointly for the purposes of this Contract, but which are of general application elsewhere, are to belong jointly to the Client and the Provider.

7.1.3 All Intellectual Property Rights in the NHF Schedule of Rates Contract Documents are vested jointly in NHF Hammer South-West and Rand Associates Consultancy Services Ltd. The Client warrants to the Provider that it has paid all copyright licence fees for the use of such documents by the Client and the Provider in relation to this Contract. The Client and the Provider may therefore each (at their own expense) obtain or make any further copies required subject to such copies being for the express purposes of this Contract.

7.1.4 As beneficial owner, each Party grants to the other Party an irrevocable, non-exclusive, royalty-free licence to copy and use all Documents and Data in which it has Intellectual Property Rights that the other Party may wish to use in connection with this Contract. Such licence includes the right to transfer and sub-license the use of such Documents and Data by a Subcontractor or Supplier for the same purposes. Each Party must ensure that such licence is supported by the grant of such Intellectual Property Rights from third parties as is necessary to allow the grant of this licence.

7.1.5 Each Party agrees to Indemnify the other in respect of any Liability arising in connection with any infringement of the Intellectual Property Rights of any third party in relation to any Documents and Data it uses or makes available to the other under this Contract.

NHF FORM OF CONTRACT 2023 – CONTRACT CONDITIONS

- 7.1.6 The licence in Clause 7.1.4 does not extend to:
- copying or using any such Documents and Data other than in connection with the Works or this Contract;
 - granting any other person (other than a Subcontractor or Supplier as set out in Clause 7.1.4) the right to copy or to use them; or
 - selling, transferring, or otherwise disposing of or granting rights in them.
- 7.1.7 Neither Party is to be liable to the other for the use of Documents and Data for any purpose other than that for which they are prepared, as stated in, or reasonably inferred from, the Contract Documents.
- 7.1.8 Each Party must promptly notify the other in writing of any infringement or potential infringement of that Party's Intellectual Property Rights of which it becomes aware.
- 7.1.9 Each Party agrees to co-operate with the other Party in the protection of that other Party's Intellectual Property Rights in all of its Documents and Data. Each Party must take such action as the other Party reasonably requires it to take to protect its Intellectual Property Rights in those Documents and Data (subject to being reimbursed for all costs reasonably incurred in doing so).

7.2 Confidentiality

- 7.2.1 Subject to Clauses 7.2.2 and 7.2.3 each Party must keep confidential any Confidential Information communicated to it by the other on the basis that it is confidential.
- 7.2.2 Clause 7.2.1 does not prevent the disclosure of any Confidential Information which:
- is public knowledge or becomes public knowledge (otherwise than by breach of this Clause);
 - was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;
 - is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;
 - is independently developed without access to the Confidential Information; or
 - must be disclosed pursuant to any court order or statutory, legal or parliamentary obligation placed upon the Party making the disclosure, including any requirements for disclosure under the Freedom of Information Law or (where the Client is a local authority) Part 12A of the Local Government Act 1972 provided (where applicable) that such disclosure of any Personal Data is made in accordance with Clause 7.4 [*Data Protection*] and any disclosure under Freedom of Information Law is made in accordance with Clause 0 [*Freedom of Information*].
- 7.2.3 Clause 7.2.1 does not prevent any disclosure of Confidential Information where a duty of confidentiality is placed on the recipient of that Confidential information and the disclosure is:
- to Staff, Subcontractors, Suppliers, or a Client Party where the disclosure is reasonably required by the disclosing Party in order to perform its obligations under this Contract;
 - by the Client to any department, office or agency of the Government or their respective advisers;
 - for the purpose of the examination, certification and/or audit of either Party's accounts;

NHF FORM OF CONTRACT 2023 – CONTRACT CONDITIONS

- by the Client or its auditors in connection with any examination of the economy, efficiency, and effectiveness with which the Client has performed, or is performing its functions;
 - if the disclosure is to a public authority under the FOIA, and the Party making the disclosure notifies that authority that the Parties to this Contract consider that the information may be exempt from disclosure under the FOIA and specifies the reasons why; or
 - under the Dispute Resolution Procedure.
- 7.2.4 Each Party must take all reasonable precautions to ensure that all Confidential Information obtained from the other Party under or in connection with this Contract is:
- securely stored and safeguarded from misuse;
 - provided or returned to that Party on request and that that Party is given immediate access to it;
 - not used or disclosed other than in connection with this Contract;
 - given only to such Client Parties, or such Staff, Subcontractors, Suppliers and Advisors in connection with this Contract as necessary for the performance of this Contract; and
 - treated as confidential and not disclosed or used by any Client Parties or Staff, Subcontractors, Suppliers or Advisors (as applicable) other than for the purposes of and as permitted under this Contract.
- 7.2.5 The Client must ensure that all Client Parties are made aware of the Client's confidentiality obligations under this Contract.
- 7.2.6 The Provider must ensure that all Staff, Subcontractors, Suppliers and Advisors are aware of the Provider's confidentiality obligations under this Contract.
- 7.2.7 Nothing in this Clause 7.2 prevents either Party from using any techniques, ideas or know-how gained during the performance of this Contract in the course of its normal business, to the extent that this does not result in a disclosure of Confidential Information or an infringement of Intellectual Property Rights.
- 7.2.8 The Provider must not discuss any aspect of the Works or this Contract with the press or on radio, television, internet or any other medium without the consent of the Client. The Provider must include and enforce a provision in all Subcontracts and Supply Contracts requiring that Subcontractors and Suppliers do not do so either.

7.3 Security of Confidential Information

- 7.3.1 In order to ensure that no unauthorised person gains access to any Confidential Information or any Personal Data obtained in the performance of this Contract, the Provider must maintain such information security systems as are approved by the Client.
- 7.3.2 Where necessary to prevent such access, the Client may require the Provider to alter any security systems at any time during the Contract Period at the Provider's expense.
- 7.3.3 The Provider must immediately notify the Client of any breach of security in relation to Confidential Information or Personal Data obtained in connection with this Contract and must keep a record of such breaches. The Provider must use its best endeavours to recover such Confidential Information or Personal Data (however it was recorded). This obligation is in addition to the Provider's obligations under Clause 7.2 [*Confidentiality*].

NHF FORM OF CONTRACT 2023 – CONTRACT CONDITIONS

- 7.3.4 The Provider must co-operate with the Client in any investigation that the Client considers necessary to undertake as a result of any breach of security in relation to Confidential Information or Personal Data.
- 7.3.5 This Clause 7.3 is to apply during the Contract Period and for 6 (six) years after the Termination Date.

7.4 Data Protection

- 7.4.1 Each Party shall comply with Data Protection Law when Processing Personal Data under this Contract. This includes complying with the Data Protection Principles and upholding the rights of Data Subjects under Data Protection Law.
- 7.4.2 Each Party shall ensure they have all necessary and appropriate legal bases required for the lawful Processing of Personal Data under this Contract (including any transfer of Personal Data to the other Party).
- 7.4.3 Each Party shall designate its own Data Protection Officer if Data Protection Law so requires.
- 7.4.4 The subject-matter, nature and purpose and the duration of Processing and the types of Personal Data and categories of Data Subject in relation to which Personal Data may be Processed under this Contract are set out in the Data Processing Table appended to the Contract Details.
- 7.4.5 Where the Provider Processes Personal Data of which the Client is the Data Controller the Provider shall:
- do so only on written instructions from the Client (the first such instructions being those set out in this Contract) as revised by the Client from time to time (where applicable) in accordance with Clause 7.4.13;
 - do so only as authorised by this Contract (and not as determined by the Provider);
 - promptly comply with the Client's written instructions and requirements from time to time, including any requests to amend, delete or transfer Personal Data;
 - immediately inform the Client if the Provider thinks that it has been given an instruction which does not comply with Data Protection Law;
 - take all reasonable steps to ensure the reliability and integrity of all persons (including Staff) whom the Provider authorises to Process the Personal Data and ensure that those persons:
 - o are aware of and comply with the Provider's obligations under this Clause 7.4;
 - o have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality;
 - o are informed of the confidential nature of the Personal Data and do not Process, publish, disclose, or divulge any of the Personal Data other than in accordance with this Contract or the written instructions of the Client; and
 - o have undergone adequate training in Data Protection Law, the confidentiality, security, use, care, protection and handling of Personal Data and the Provider's obligations as Data Processor under this Contract;

NHF FORM OF CONTRACT 2023 – CONTRACT CONDITIONS

- fully cooperate with and assist the Client, by having appropriate technical and organisational measures in place, to give effect to the rights of Data Subjects and respond to requests for exercising the Data Subject's rights including Data Subject Access Requests;
- Process the Personal Data in such a manner that ensures that at all times the Client complies with Data Protection Law;
- promptly forward any complaint, request (including a Data Subject Access Request), notice or other communication which relates directly or indirectly to the Personal Data or to either Party's compliance with Data Protection Law (including any request from the Information Commissioner) to the Client and not respond to or otherwise deal with such communication except as instructed by the Client or as required by Data Protection Law;
- maintain complete and accurate records of any Processing of Personal Data it carries out on behalf of the Client which are sufficient to demonstrate compliance by the Client and the Provider with Data Protection Law and this Clause 7.4;
- on request, provide the Client promptly with all information that the Client needs to show that both the Client and Provider have complied with their data protection obligations under this Contract; and
- at the option of the Client, either irretrievably delete or return all Personal Data to the Client by the date set out in the Data Processing Table (unless the Provider is required by Law to retain that Personal Data).

7.4.6 The Provider shall maintain appropriate Protective Measures (which the Client may reasonably reject) which are appropriate to protect against a Data Loss Event. If the Client reasonably rejects Protective Measures put in place by the Provider, the Provider must propose alternative Protective Measures to the satisfaction of the Client. Failure to reject shall not amount to approval by the Client of the adequacy of the Protective Measures. Protective Measures must take account of:

- the nature of the Personal Data to be protected;
- the harm that might result from any Data Loss Event including the risk (which may be of varying likelihood and severity) for the rights and freedoms of natural persons;
- the scope, context and purpose of the Processing of the Personal Data concerned;
- the state of technological development; and
- the cost of implementing any measures;

7.4.7 The Provider shall not transfer any Personal Data outside of the United Kingdom unless the prior written consent of the Client has been obtained and the following conditions are fulfilled:

- the destination country has been recognised as adequate by the UK government in accordance with Data Protection Law;
- the Provider has provided appropriate safeguards in relation to the transfer (in accordance with Data Protection Law) as determined by the Client;
- Data Subjects have enforceable rights and effective legal remedies;
- the Provider complies with the Provider's obligations under Data Protection Law by providing an appropriate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Client in the meeting its obligations); and

NHF FORM OF CONTRACT 2023 – CONTRACT CONDITIONS

- the Provider complies with any instructions notified to the Provider by the Client with respect to the Processing of that Personal Data.
- 7.4.8 The Provider shall notify the Client immediately (and provide further information as details become available) if the Provider:
- receives a Data Subject Request (or purported Data Subject Request);
 - receives a request to rectify, block or erase any Personal Data;
 - receives any other request, complaint or communication relating to either Party's obligations under Data Protection Law;
 - receives any communication from the Information Commissioner or any other Regulatory Body in connection with Personal Data processed under this Contract;
 - receives a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
 - becomes aware of a Data Loss Event, in which case the notification shall:
 - describe the nature of the breach including the categories and number of Data Subjects and records concerned;
 - communicate the name and contact details of all persons from whom more information can be obtained about the Data Loss Event;
 - describe the likely consequences of the Data Loss Event; and
 - describe the measures taken by the Provider and the measures which the Provider wishes the Client (at the expense of the Provider) to take to address the Data Loss Event and mitigate its possible adverse effects.
- 7.4.9 The Provider shall give the Client immediate and full co-operation and assistance in relation to any Data Loss Event including:
- taking all reasonable steps the Client requires to assist in the containment, mitigation, remediation, and investigation of such Data Loss Event;
 - providing assistance with notifying the Information Commissioner's Office or affected Data Subjects of any breach of Data Protection Law;
 - providing the Client promptly with all relevant information in the Provider's possession; and
 - where the Data Loss Event involves Personal Data being lost, damaged, corrupted, or unusable, promptly restoring that Personal Data at the Provider's expense.
- 7.4.10 Taking into account the nature of the Processing, the Provider shall provide the Client with full assistance in relation to either Party's obligations under Data Protection Law and any complaint, communication or request made under Clause 7.4.9 (and insofar as possible within the timescales reasonably required by the Client), promptly providing the Client with:
- full details and copies of the complaint, communication, or request;
 - such assistance as the Client reasonably requests to enable the Client to comply with a Data Subject Access Request within the relevant timescales set out in Data Protection Law;
 - at the Client's request, any Personal Data it holds in relation to a Data Subject Access Request; and

NHF FORM OF CONTRACT 2023 – CONTRACT CONDITIONS

- such assistance as the Client requests with respect to any request from the Information Commissioner's Office, or any consultation by the Client with the Information Commissioner's Office.
- 7.4.11 The Provider shall provide reasonable assistance to the Client in the preparation of any Data Protection Impact Assessment before commencing any Processing and whenever reasonably required by the Client. Such assistance may include (at the discretion of the Client):
- 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 Works;
 - an assessment of the risks to the rights and freedoms of Data Subjects; and / or
 - the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 7.4.12 The Client or an auditor designated by the Client may inspect and audit the Provider's facilities for Processing the Personal Data of which the Client is Data Controller to ensure they comply with this Contract and Data Protection Law.
- 7.4.13 The Client may revise their instructions to the Provider on the Processing of Personal Data at any time if this is necessary or desirable to comply with Data Protection Law. Such revision shall not entitle the Provider to any additional payment, be a compensation event, lead to any paid or unpaid extension of time or be treated as a variation to this Contract. The Client shall use reasonable endeavours to give the Provider as much notice of the revision as possible, consistent with their obligation to comply with Data Protection Law and protect against any Data Loss Event.
- 7.4.14 Nothing in this Contract requires either Party to disclose any information to the other Party or any third party if to do so would breach Data Protection Law. If any part of this Clause 7.4 does not comply with Data Protection Law, the Client may amend that part (to the minimum necessary to ensure such compliance) by giving the Provider at least 30 (thirty) Working Days' notice. The Parties agree that such amendment shall not entitle the Provider to any additional payment, be a compensation event, lead to any paid or unpaid extension of time or be treated as a variation to this Contract.
- 7.4.15 The Client may replace this clause with any applicable Data Controller to Data Processor standard clauses forming part of an applicable certification scheme (as defined under Data Protection Law) at any time by giving the Provider at least 30 (thirty) Working Days' notice. The Parties agree that such amendment shall not entitle the Provider to any additional payment, be a compensation event, lead to any paid or unpaid extension of time or be treated as a variation to this Contract.
- 7.4.16 The Parties shall take account of any guidance issued by the Information Commissioner's Office. The Client may amend this Contract to ensure that it complies with any guidance issued by the Information Commissioner's Office by giving the Provider at least 30 (thirty) Working Days' notice. The Parties agree that such amendment shall not entitle the Provider to any additional payment, be a compensation event, lead to any paid or unpaid extension of time or be treated as a variation to this Contract.

NHF FORM OF CONTRACT 2023 – CONTRACT CONDITIONS

7.5 Freedom of Information

- 7.5.1 Where the Client is a body subject to the FOIA or the Environmental Information Regulations, the Provider must assist and cooperate with the Client so as to enable the Client to comply with the FOIA and the Environmental Information Regulations.
- 7.5.2 The Provider must and must procure that its Subcontractors and Suppliers:
- transfer any Request for Information it receives to the Client as soon as practicable and in any event within 2 (two) Business Days of receiving it;
 - provide the Client with a copy of all such Information in its possession or power in the form that the Client requires within 5 (five) Business Days (or such other period as the Client may specify) of the Client requesting that information; and
 - provide all assistance as reasonably requested by the Client to enable the Client to respond to a Request for Information within the time for compliance set out in section 10 of the FOIA (or regulation 5 of the Environmental Information Regulations).
- 7.5.3 The Provider must not respond directly to a Request for Information unless expressly authorised to do so by the Client.
- 7.5.4 The Provider acknowledges that the Client is responsible for determining at its absolute discretion (but having regard to any guidance or Codes of Practice issued by the Information Commissioner or the Ministry of Justice or its predecessors):
- whether any information is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations;
 - in the case of a qualified exemption, whether the public interest in disclosing the information is greater than the public interest in maintaining the exemption; and
 - whether any information is to be disclosed in response to a Request for Information.
- 7.5.5 The Provider acknowledges that the Client may, acting in accordance with the applicable Code of Practice on the discharge of public authorities' functions under Part 1 of the FOIA (issued under section 45 of the FOIA), be obliged under Freedom of Information Law to disclose Information:
- without consulting with the Provider; or
 - following consultation with the Provider and having taken the Provider's views into account.
- 7.5.6 Where it receives a Request for Information relating to any Confidential Information, the Client must (unless it has decided not to disclose that information either because Freedom of Information Law does not apply or because it is exempt from disclosure under Freedom of Information Law) use reasonable endeavours to:
- notify the Provider of the Request for Information in accordance with Part VII of the Code of Practice issued by the Secretary of State under section 45 of the FOIA; and
 - consider any representations made by the Provider before disclosing that Confidential Information under the FOIA.
- 7.5.7 The Provider acknowledges that any lists or schedules provided by it outlining Confidential Information are of indicative value only and that the Client may nevertheless be obliged to disclose Confidential Information.

NHF FORM OF CONTRACT 2023 – CONTRACT CONDITIONS

7.5.8 If the Client decides to disclose any Confidential Information under Freedom of Information Law, it must use reasonable endeavours to notify the Provider of this decision before making the disclosure.

7.5.9 Where the Provider holds information on behalf of the Client, the Provider must:

- have regard to any Code of Practice issued under section 46 of the FOIA;
- comply with any practice recommendation issued to it under section 48 of the FOIA; and
- comply with any retention and destruction of information policy which the Client notifies to it.

7.6 Client Data held on the Provider's IT Systems

7.6.1 The Provider must:

- store all Client Data safely and separately from any data not relating to the Client or the Works;
- provide, maintain and update (where necessary) the Provider's IT System so that, at all times during the Contract Period, it is suitable for the delivery of the Works and for keeping the Client Data up to date in connection with this;
- make all Client Data maintained on the Provider's IT System readily available to the Client at all times during the Contract Period; and
- return that Client Data to the Client following the Termination Date.

7.6.2 Each Party warrants to the other that:

- it will not introduce any virus, Trojan horse, malware, keylogger or other harmful software into the other's IT System;
- it will regularly check all software and transfer media used in connection with this Contract (including any software and transfer media used on or connected to the other Party's IT System) with an up-to-date virus checker throughout the Contract Period;
- it will grant access to its IT System to the other Party during Normal Working Hours (other than when it is necessary to close down its IT System to rectify faults or undergo maintenance of which the other Party has been given reasonable notice); and
- granting the other Party access to its IT System does not breach any Intellectual Property Rights of any third party.

7.6.3 The Provider:

- acknowledges that the Client Data belongs solely to the Client;
- must not remove any copyright notices contained in or relating to the Client Data;
- must not modify, alter, or reconfigure the Provider's IT System other than as required by the Preliminaries in order to provide the required functionality;
- must not modify, alter, delete, or overwrite any Client Data stored on the Provider's IT System without the prior written consent of the Client;
- must always maintain a back-up and records of any Client Data it has so modified or deleted for a minimum of 3 (three) months after the modification or deletion;

NHF FORM OF CONTRACT 2023 – CONTRACT CONDITIONS

- must, if any Client Data is lost or corrupted, restore or procure the restoration of the Client Data to its state immediately before the corruption or loss;
- must access and use the Client's IT System only for the purpose of and to the extent required for the Works and when doing so must comply with any reasonable rules on its use that are issued by the Client from time to time; and
- must ensure that the Client is able to use any software necessary to access and use the Client Data both during the Contract Period and after the Termination Date. Where the Client so requires, this includes entering into an escrow agreement in the standard form of National Computer Centre Limited (or such other industry standard body the Client approves) to protect the Client's access to any software:
 - o that is necessary to access and use the Client Data;
 - o in which the Provider has the Intellectual Property Rights; and
 - o which is not widely available for commercial purchase.

7.6.4 The Provider:

- warrants that the Provider's IT System will operate and interface seamlessly with the Client's IT System to the extent required by the Preliminaries; and
- must enhance the interfaces between the Client's IT System and the Provider's IT System from time to time to the extent Instructed to do so by the Client's Representative to develop the Client's service to Customers.

7.6.5 The Provider must notify the Client promptly and, in any event, within 2 (two) Business Days if it becomes aware of any actual, potential or threatened breach of Clause 7.6.3 or of any of the warranties in Clause 7.6.2 or Clause 7.6.4.

7.6.6 Each Party agrees to Indemnify the other in respect of all Liability incurred as a result of a breach of any of Clauses 7.6.2 to 7.6.5 (inclusive).

8. CHANGES TO ORDER PRICE, RESPONSE PERIOD AND/OR TARGET COMPLETION DATE

8.1 Early warning

8.1.1 Each Party must notify the other in writing (copied to the Client's Representative) of any matter they become aware of which could lead to:

- either Party being unable to comply with its obligations under this Contract to any extent that is material; or
- any increase to the Order Prices for a substantial number of Orders.

8.1.2 Following a notification under Clause 8.1.1 the Client's Representative may require the Provider to attend a risk reduction meeting to consider:

- the likely impact of the matter that has been notified;
- the steps that should be taken (in accordance with this Contract) for managing avoiding or reducing the effect of it; and
- the likely cost of those steps and who (in accordance with this Contract) should bear that cost.

NHF FORM OF CONTRACT 2023 – CONTRACT CONDITIONS

8.2 Paid extensions of time

8.2.1 Subject to the Provider complying with Clause 8.4 [*Condition precedent to paid or unpaid extensions of time*], in the circumstances set out in Clause 8.2.2 the Client's Representative will:

- extend the Response Periods and/or Target Completion Dates (as applicable) for any Orders affected and/or the Defect Rectification Periods for the rectification of any Defects affected by those circumstances, in each case by such period as represents a fair and proper reflection of the period of delay caused by those circumstances;
- increase the Order Prices for those Orders by such amount as the Client's Representative determines under Clause 8.2.3 (if any); and/or
- assess the amount due to the Provider as an additional payment outside of the Order Prices in relation to any such circumstances for which the Provider cannot be recompensed through an increase to the Order Prices.

8.2.2 The circumstances in which Clause 8.2.1 applies are where:

- the Client's Representative gives the Provider an Instruction (unless the Instruction is to do something that it is already an obligation of the Provider to do under this Contract);
- there is a delay in receiving an Instruction, decision, information or consent from the Client or the Client's Representative beyond the period within which it is to be provided under this Contract except to the extent that the delay is attributable to the Provider or any Subcontractor or Supplier;
- the Client's Representative redirects the Staff or Equipment of the Provider from the Works to deal with any Disaster;
- the Client fails to supply or delays in supplying Materials the Client has agreed to provide, except to the extent that the delay is attributable to the Provider or any Subcontractor or Supplier;
- the Provider validly suspends work under the Construction Act; or
- the Client, the Client's Representative or any Client Party commits any other "act of prevention".

8.2.3 Where Clause 8.2.1 applies, the Order Prices for the Orders affected by the circumstances referred to in that Clause will be varied by and/or any additional payment is to be assessed as:

- such amount as is provided for in this Contract; or
- where no amount is provided in this Contract, such amount as the Client's Representative considers is a fair and proper reflection of the additional cost to the Provider caused by those circumstances.

8.3 Unpaid extensions of time

8.3.1 Subject to the Provider complying with Clause 8.4 [*Condition precedent to paid or unpaid extensions of time*], in the circumstances set out in Clause 0 the Client's Representative will extend the Response Periods and/or Target Completion Dates (as applicable) for any Orders affected and/or the Defect Rectification Periods for the rectification of any Defects affected by those circumstances, in each case by such period as represents a fair and proper reflection of the period of delay caused by those circumstances (but there is to be no increase to the Order Prices for those Orders and no additional payment is to be made to the Provider for them).

NHF FORM OF CONTRACT 2023 – CONTRACT CONDITIONS

8.3.2 The circumstances in which Clause 8.3.1 applies are:

- Force Majeure prevents the Order from being undertaken (subject to the Provider complying with Clause 0 [*Force Majeure*]);
- a delay in receiving a Statutory Permission required for the Works comprised in an Order where the Provider has applied for such permission promptly and pursued the application diligently;
- any delay in obtaining a quotation under Clause 10.4 [*Subcontractors for Excepted Works*] from a prospective Subcontractor for Excepted Works where the Provider has used all reasonable endeavours to obtain such quotation quickly; or
- a delay in obtaining access to a Property to carry out the Works, where the Provider has complied with its obligations under this Contract in relation to securing such access (including where the Customer requires the Works to be carried out after the end of their Response Period).

8.4 Condition precedent to paid or unpaid extensions of time

8.4.1 The Provider must take all reasonable steps to mitigate the effect of any circumstances listed in Clause 0 [*Paid extensions of time*] or Clause 8.3 [*Unpaid extensions of time*]. Any extension to the Response Periods or Target Completion Dates (as applicable), extension to the Defect Rectification Periods, increase to the Order Prices for the Orders affected and/or additional payment is to be calculated on the basis that the Provider has done so.

8.4.2 Clauses 0 [*Paid extensions of time*], and 8.3 [*Unpaid extensions of time*], are subject to the following conditions precedent to the Provider's entitlement to any extensions to the Response Periods, Target Completion Dates or Defect Rectification Periods or, where applicable, to any increase to the Order Prices and/or any additional payment under those Clauses:

- the Provider notifying the Client's Representative in writing within 2 (two) Business Days the occurrence of any circumstances listed in Clause 0 [*Paid extensions of time*] or Clause 8.3 [*Unpaid extensions of time*] of:
 - the claim for the extension to the Response Periods, Target Completion Dates and/or Defect Rectification Periods, increase in the Order Prices and/or additional payment;
 - the Orders and/or Defects that are or may be affected; and
 - the circumstances which justify the extension to the Response Periods, Target Completion Dates and/or Defect Rectification Periods, increase in the Order Prices and/or additional payment; and
- the Provider justifying its detailed claim for an extension to the Response Periods, Target Completion Dates and/or Defect Rectification Periods, increase in the Order Prices and/or additional payment to the Client's Representative within 40 (forty) Business Days of such circumstances arising.

8.5 Quotation for a proposed Instruction

8.5.1 Before giving any Instruction to do anything that is not already an obligation of the Provider under this Contract, the Client's Representative may require the Provider to provide a quotation setting out the consequences (in terms of both time and cost) of that Instruction being given. This procedure shall also apply to any proposed change to:

- any of the Client's Policies;

NHF FORM OF CONTRACT 2023 – CONTRACT CONDITIONS

- the Tenancy Agreement(s); and/or
 - the Lettable Standard.
- 8.5.2 The Provider must provide the quotation to the Client's Representative:
- within any period specified by the Client's Representative; or
 - if the Client's Representative does not specify any period, within 5 (five) Business Days of the request.
- 8.5.3 Each quotation must set out the consequences of the Instruction being given in terms of both time and cost, with cost being split between any increases to the Order Prices for the Orders affected and any additional payment.
- 8.5.4 On receipt of a quotation under Clause 8.5.2 the Client's Representative may:
- issue the Instruction;
 - ask for a revised quotation (giving reasons), in which case Clauses 8.5.1 to 8.5.3 are to apply to that request; or
 - inform the Provider that the Instruction is not being proceeded with.
- 8.5.5 Where the Client's Representative and the Provider cannot agree on a quotation within 20 (twenty) Business Days of quotation or a revised quotation being provided (or such longer period as the Client's Representative and Provider agree) either Party may refer the Dispute to decision by an Expert under Clause 15.4 [*Expert Decision*].
- 8.5.6 An Instruction is not to be proceeded with if the Client's Representative does not issue an Instruction to implement it within 20 (twenty) Business Days of:
- the date the quotation (or revised quotation) is provided under Clause 8.5.4 (or such longer period as the Client's Representative and Provider agree); or
 - the date on which it is determined by the Expert.
- 8.5.7 Where an Instruction is issued under Clause 8.5.4 within the period specified in Clause 8.5.5 the resulting extensions to the Response Periods and/or Target Completion Dates (as applicable), increases to any Order Prices and/or additional payment claimed under Clause 0 [*Paid extensions of time*] may not exceed the times or amounts specified in the quotation.

8.6 Change in Law risk

- 8.6.1 Changes in the Law are to be at the Provider's risk. The Provider will not be entitled to claim for any increase to the Order Prices, extension to the Response Periods, Target Completion Dates or Defect Rectification Periods or additional payment under this Contract that results from a change in Law.
- 8.6.2 Where a change in Law was not foreseeable on the date of this Contract and has a significant impact on the Rates, the Client and the Provider may (but are not required to) agree a change to the Rates or an additional payment due to the Provider to reflect the Provider's additional costs due to that change in Law.
- 8.6.3 A failure to agree revised Order Prices under this Clause may not be referred to the Dispute Resolution Procedure.

NHF FORM OF CONTRACT 2023 – CONTRACT CONDITIONS

8.7 Force Majeure

- 8.7.1 Neither Party is to be responsible for a failure to comply with this Contract to the extent that that Party is prevented from doing so by Force Majeure provided the affected Party:
- takes all reasonable steps to prevent, avoid and minimise the effect of the Force Majeure;
 - carries out its duties under this Contract to the best level reasonably achievable in the circumstances of the Force Majeure;
 - takes all reasonable steps to overcome and mitigate the effects of the Force Majeure as soon as reasonably practicable, including actively managing any problems caused or contributed to by third parties and liaising with them;
 - on becoming aware of the Force Majeure immediately informs the other Party in writing that something has happened which is Force Majeure;
 - within 5 (five) Business Days of becoming aware of the Force Majeure provides:
 - o written confirmation and reasonable evidence of the Force Majeure;
 - o details of the obligations affected by the Force Majeure; and
 - o a reasonable estimate of the period during which the Force Majeure will continue; and
 - tells the other Party when the Force Majeure has stopped.
- 8.7.2 The Order Prices for Works affected by Force Majeure are to be reduced by such fair and reasonable amount as the Client's Representative determines to reflect the extent and standard to which the affected Works are provided.

9. PAYMENT

9.1 Price

- 9.1.1 All Valuations are to be calculated on the basis of:
- the Rates set out in the Schedule of Rates as adjusted in accordance with the Provider's tendered Rates set out in the Price Framework;
 - the Prices in the Pricing Schedule; and
 - any specific amounts and Rates set out in the Price Framework.
- 9.1.2 The Provider has examined the Contract Documents and confirms that the tendered Rates include for all items and contingencies except where this Contract expressly provides for additional payment.
- 9.1.3 The Provider is deemed to have:
- inspected the Properties (or a representative sample of them);
 - satisfied itself regarding the conditions under which the Works are to be carried out;
 - satisfied itself to the extent and accuracy of any information provided by the Client; and
 - made all necessary allowances to execute the Works within the tendered Rates.

NHF FORM OF CONTRACT 2023 – CONTRACT CONDITIONS

9.2 Valuations

- 9.2.1 A Valuation is either an application for payment or an invoice, as set out in the Contract Details. It is a condition precedent to payment becoming due for any Works that the Provider has provided all of the documentation referred to in the Paragraph 12.2.5 [*Notification of Order Completions – Responsive Maintenance, Disrepair Works, Void Property Works, Planned Works, Major Works, and Disability Adaptation Works*] of the Preliminaries for those Works. The Provider must not include any Works within a Valuation unless the Provider has provided the Client with all such documentation in relation to those Works.
- 9.2.2 Within the period stated in the Contract Details and subject to Clause 9.2.5, the Provider must submit to the Client's Representative detailed Valuations for the following Works:
- either completed single Orders or for batches of completed Orders as stated in the Contract Details over the period stated in the Contract Details; and
 - other amounts due to the Provider for that period.
- 9.2.3 With each Valuation the Provider must provide such information and documents as the Contract Details require for all Works included in the Valuation. For Planned Works and Major Works this includes details of the Properties to which those Works have been undertaken so that (where applicable) the Client can evidence the amount to be recovered from Leaseholders for those Works.
- 9.2.4 An application for payment or invoice will not be a valid Valuation under Clause 9.2.2, or a notification under section 110B(4) of the Construction Act (and no sums will become due under this Contract in respect of such application for payment or invoice) unless:
- all conditions precedent to payment becoming due under Clause 2.1.3 [*Contract Formation*], Clause 4.2.5 [*Order Variations and Customer Damage*] and Clause 5.16 [*Parent Company Guarantee and Performance Bond*] in relation to that Valuation have been satisfied;
 - all the certifications and documents required by Paragraph 12.2.5 [*Notification of Order Completions – Responsive Maintenance, Disrepair Works, Void Property Works, Planned Works, Major Works, and Disability Adaptation Works*] of the Preliminaries have been provided to the Client's Representative before the application or invoice is issued; and
 - where the Valuation is an invoice and the Contract Details state that a VAT invoice is required, it is a VAT invoice and includes all VAT properly chargeable on the invoice.
- 9.2.5 Where the Contract Details provide for the separate payment of Mobilisation Costs and/or TUPE Costs the Provider must submit separate Valuations for those Mobilisation Costs and/or TUPE Costs in accordance with the Contract Details.
- 9.2.6 Each Valuation for Mobilisation Costs and/or TUPE Costs is to be for the actual costs properly incurred. The amount payable will be capped at the maximum amount for Mobilisation Costs or TUPE Costs (as applicable) set out in the Price Framework.
- 9.2.7 The Client's Representative may by written Instruction to the Provider amend the procedure for the submission of Valuations at any time during the Contract Period. This may involve varying the batching, frequency/timescale, documentation requirements for Valuations or computerised invoicing. The Provider must adopt the new procedure within 10 (ten) Business Days of the Instruction or such longer period as the Client's Representative provides in the Instruction.

NHF FORM OF CONTRACT 2023 – CONTRACT CONDITIONS

- 9.2.8 If the Provider does not submit a Valuation as required by this Contract within the period indicated in the Contract Details for Clause 9.2.2, the Client's Representative may (but is not required to) assess the amount the Client's Representative considers to be due to the Provider in accordance with Clause 9.1.1 [*Price*] in respect of the Works for the period that the Valuation should have covered.
- 9.2.9 Where part of the payment to the Provider for the Works is incentivised, the amount of the Incentive Payment shall be determined in accordance with the KPI Framework.

9.3 Valuations for Central Overheads and Profits

- 9.3.1 Where the Contract Details provide for the separate payment of Central Overheads and Profit, the Provider must submit separate Valuations for those Central Overheads and Profit. Such Valuations must be submitted in accordance with the Contract Details for Clause 9.2.2 [*Valuations*] and for the periods set out in the Contract Details for Clause 9.2.2 [*Valuations*]. Each Valuation for Central Overheads and Profit must be numbered consecutively from the previous one and must state the period to which it applies.
- 9.3.2 Where the Price Framework so provides, a proportion of the Provider's Central Overheads and Profit or Profit only (as applicable) payments are a fixed percentage and the remaining percentage is variable.
- 9.3.3 Where part of the Provider's payment for Central Overheads and Profit or Profit only is variable, payment of the variable element will depend on the Provider's achieving the KPI Targets set out in the KPI Framework. The KPI Framework sets out how the amount payable for the variable element is determined.

9.4 Inflation

- 9.4.1 Where the Price Framework Details so provide, on each Inflation Adjustment Date during the Contract Period, the amounts in the Schedule of Rates and the Price Framework to which an Inflation adjustment is to be applied (as set out in the Price Framework) are to be adjusted by the Inflation for the relevant Inflation Period. The adjustment for Inflation is applied to items within the Schedule of Rates before the application of the Provider's tendered Rates.
- 9.4.2 The revised Schedule of Rates amounts under Clause 9.4.1 (to which the Provider's tendered Rates are applied) are to be used to calculate the value of all Orders issued after the relevant Inflation Adjustment Date.
- 9.4.3 If the Inflation Index is no longer published or the basis of calculating it is changed the Client's Representative may:
- specify such other index as the Inflation Index being the index that the Client's Representative considers is closest to the way in which Inflation was measured by the original Inflation Index; or
 - apply such adjustment to Inflation as measured by the revised Inflation Index as is appropriate so that Inflation is applied as closely as possible to the way in which it was applied by the original Inflation Index; or
 - do a combination of these.
- 9.4.4 Except as provided in Clause 9.4.2 the Rates are not subject to fluctuations for any changes in Staff, Materials, Equipment, Subcontractors', or Suppliers' costs.

NHF FORM OF CONTRACT 2023 – CONTRACT CONDITIONS

9.5 Liquidated damages

9.5.1 The Client may recover liquidated and ascertained damages from the Provider of the amount set out in the applicable Appendix to the Contract Details if the Provider:

- fails to attend a prearranged appointment, such damages including any amount the Client has to pay to the Customer under the Customer's Tenancy Agreement, or the Client's Tenant's Charter or similar agreement and the Client's administrative costs;
- fails to deliver all of the Social Value Activities set out in the Social Value Matrix in any Contract Year;
- does not complete any Void Property Works within their Response Period or any Planned Works or Major Works to a Void Property by their Target Completion Date (each as extended under this Contract, where applicable), such damages including the Client's weekly or part-weekly rent loss and (where applicable) service charge loss from the Property plus additional council tax payable on it and the Client's administrative costs;
- does not complete any Disrepair Works within their Response Period or Target Completion Date (each as extended under this Contract, where applicable), such damages including any amount the Client has to pay to the Customer and the Client's administrative costs;
- does not complete any Planned Works, Major Works, Disrepair Works, or Disability Adaptation Works by their Target Completion Date (as extended under this Contract, where applicable), such damages including any amount the Client has to pay to the Customer(s) under the Customer's Tenancy Agreement, or the Client's Tenant's Charter or similar agreement for the disruption caused by the overrunning Works and the Client's administrative costs;
- does not complete any Servicing by the date set out in the Servicing Programme, within the Servicing Validity Period or at the time of a scheduled Servicing Visit, such damages including any compensation payable to a Leaseholder as a result of failing to complete such Servicing within the Servicing Validity Period or at the time of the scheduled Servicing Visit; or
- breaches this Contract in any other circumstances in which the Contract Details provide that an amount is payable as liquidated and ascertained damages.

9.6 Deduction of Retention

9.6.1 Where the Contract Details so state, the Client may deduct the Retention from any payments due to the Provider for any periods falling within the Retention Period under this Contract.

9.6.2 The Client shall have the full and unencumbered beneficial interest in the Retention. The Provider shall have no proprietary right or other interest (whether at Law or in equity) in or over the Retention except as an unsecured creditor, and the Client shall owe no fiduciary obligation to the Provider in relation to the Retention.

9.7 Set off

9.7.1 Without prejudice to Clause 9.13 [*Pay Less Notices*], the Client may set-off any amount recoverable from or payable by the Provider against any sum due to the Provider under this Contract or any other contract between the Client and the Provider. This right of set-off applies to any undercharge or overcharge on previous Valuations.

NHF FORM OF CONTRACT 2023 – CONTRACT CONDITIONS

- 9.7.2 The Provider may set off any amount due from the Client against any sums due to the Client where:
- either the Client has agreed or it has been determined under the Dispute Resolution Procedure that such amount is due from the Client to the Provider; and
 - the Provider has given the Client a written notice at least 10 (ten) Business Days before the date payment was due setting out:
 - each item set-off;
 - the reason for the set-off; and
 - the date of the agreement or decision authorising the set-off.

9.8 Notified Sum where a Valuation is an application for payment

- 9.8.1 Within 15 (fifteen) Business Days from receipt of the Valuation or from the last day of the period within which the Valuation should have been submitted by the Provider, the Client's Representative must notify the Client and Provider in writing of:
- the Notified Sum (which may be zero or negative) that the Client's Representative considers to be payable either in respect of a Valuation or following the Client's Representative's assessment under Clause 0 [*Valuations*]; and
 - the basis on which that amount is calculated.
- 9.8.2 The grounds on which the Client's Representative may notify the Client and Provider of a Notified Sum that is less than the amount set out in the Valuation include:
- that the Works have not been properly completed to the Client's Representative's satisfaction;
 - that any Order Variation included in that Valuation is not in accordance with this Contract;
 - that the Provider has not provided the documentation required by Paragraph 12.2.5 [*Notification of Order Completions – Responsive Maintenance, Disrepair Works, Void Property Works, Planned Works, Major Works, and Disability Adaptation Works*] of the Preliminaries or the Contract Details for Clause 9.2.3 [*Valuations*];
 - that the Valuation is based on incorrect Rates;
 - that any amount claimed in the Valuation is not due under this Contract;
 - that a condition precedent to payment under this Contract has not been satisfied (including in particular under Clause 2.1.3 [*Contract Formation*], Clause 4.2.5 [*Order Variations and Customer Damage*] or Clause 5.16 [*Parent Company Guarantee and Performance Bond*]); or
 - that there are other grounds under this Contract for payment not being due in relation to such a Valuation.
- 9.8.3 If the Client's Representative has not notified the Client and Provider of the Notified Sum under Clause 9.8.1 within the period stated in Clause 9.8.1 in relation to a valid Valuation, then, in accordance with section 110B(4) of the Construction Act, the Notified Sum will be the amount set out in that Valuation. Such Notified Sum shall be deemed to have been notified by the Provider under section 110A(3) of the Construction Act on the last day of that period. This is without prejudice to the right of the Client or Client's Representative to issue one or more Pay Less Notices in relation to that Valuation under Clause 9.13 [*Pay Less Notices*].

NHF FORM OF CONTRACT 2023 – CONTRACT CONDITIONS

- 9.8.4 Where the Provider disputes the Client's Representative's notification of a Notified Sum that is less than the full amount of the Valuation, the Provider must discuss this with the Client's Representative within 5 (five) Business Days (or such longer period as the Client's Representative agrees) of being notified of that Notified Sum. Following such discussion or the expiry of such period, either Party may initiate the Dispute Resolution Procedure.

9.9 Invoice procedure where a Valuation is an application for payment

- 9.9.1 Following receipt of the Client's Representative's notification of a Notified Sum under Clause 9.8.1 [*Notified Sum where a Valuation is an application for payment*] in relation to a Valuation that is an application for payment or following the expiry of the period stated in Clause 9.8.1 [*Notified Sum where a Valuation is an application for payment*], where the Client's Representative has failed to notify the Notified Sum within that period, the Provider must issue an invoice for the Notified Sum. The invoice must be issued within 5 (five) Business Days of notification of the Notified Sum or by such later date as the Client's Representative agrees.
- 9.9.2 An invoice will not be a valid invoice under Clause 9.9.1 unless:
- it is clearly cross referenced to the application for payment (Valuation) to which it relates;
 - it is for the Notified Sum under that Valuation, being:
 - the sum notified by the Client's Representative under Clause 9.8.1 [*Notified Sum where a Valuation is an application for payment*];
 - where no notification is given by the Client's Representative within the period set out in Clause 9.8.1 [*Notified Sum where a Valuation is an application for payment*], the amount(s) set out in the Valuation; or
 - where a Pay Less Notice has been served under Clause 9.13 [*Pay Less Notices*], the amount set out in the Pay Less Notice (or the last of them if more than one Pay Less Notice is served before the invoice is issued); and
 - where the Contract Details state that a VAT invoice is required, it is a VAT invoice and includes all VAT properly chargeable on the invoice.
- 9.9.3 The due date for payment of any Valuation that is an application for payment is 20 (twenty) Business Days after:
- the submission of that Valuation; or
 - where no Valuation has been submitted and the Client's Representative has assessed the amount due under Clause 0 [*Valuations*], the last day of the period within which the Valuation should have been submitted.
- 9.9.4 The final date for payment in relation to a Valuation that is an application for payment is the date 10 (ten) Business Days after the due date but where the Provider has not issued an invoice in accordance with Clause 9.9.1 or any revised invoice in accordance with Clause 0 (and to the extent that such delay is permitted under the Construction Act) the final date for payment shall be delayed by the number of days that the Provider is late in issuing the invoice or revised invoice under that Clause 9.9.1 or under Clause 0 (as applicable).
- 9.9.5 At any time up to the date 5 (five) Business Days before the final date for payment of the Notified Sum under Clause 9.9.4 (ignoring any delay to the final date for payment under that Clause) either the Client or the Client's Representative may issue one or more Pay Less Notices in accordance with Clause 9.13 [*Pay Less Notices*].

NHF FORM OF CONTRACT 2023 – CONTRACT CONDITIONS

- 9.9.6 Where the Client or the Client's Representative issues a Pay Less Notice after the issue of the invoice under Clause 9.9.1, the Provider must issue a credit note for the whole amount of the original invoice and a revised invoice for the amount due as set out in the Pay Less Notice within 5 (five) Business Days after the date of issue of the Pay Less Notice.

9.10 Notified Sum and invoice procedure where a Valuation is an invoice

- 9.10.1 Where a Valuation is an invoice, the Notified Sum will be the amount set out in the invoice.
- 9.10.2 The due date for payment of any Valuation that is an invoice is 20 (twenty) Business Days after the submission of the Valuation.
- 9.10.3 The final date for payment in relation to a Valuation that is an invoice is the date 10 (ten) Business Days after the due date for payment in relation to that Valuation, but where the Provider has not issued any revised invoice in accordance with Clause 9.10.5 (and to the extent that such delay is permitted under the Construction Act) the final date for payment shall be delayed by the number of days that the Provider is late in issuing the revised invoice under that Clause.
- 9.10.4 At any time up to the date 5 (five) Business Days before the final date for payment of the amount included in the invoice under Clause 9.10.2 (ignoring any delay to the final date for payment under that Clause) the Client or the Client's Representative may issue one or more Pay Less Notices in relation to it in accordance with Clause 9.13 [*Pay Less Notices*].
- 9.10.5 Where a Valuation is an invoice and the Client or the Client's Representative issues a Pay Less Notice, the Provider must issue a credit note for the whole amount of the original invoice and a revised invoice for the amount due as set out in the Pay Less Notice within 5 (five) Business Days after the date of issue of the Pay Less Notice.

9.11 Interim Final Account

- 9.11.1 Where the Contract Details provide for Interim Final Accounts, Clause 9.12 [*Final Account*] is to apply in relation to those Interim Final Accounts as though references to:
- the Completion Certificate were to the Interim Completion Certificate;
 - the Termination Date were to the Interim Final Account Date; and
 - the Final Account were to the Interim Final Account.
- 9.11.2 Where the Contract Details for Clause 9.11.1 provide for Interim Final Accounts, in relation to the Final Account Clause 9.12 [*Final Account*] will apply (in its unamended form) just to Works that have not been:
- covered by any Interim Completion Certificate(s); and
 - paid for under an Interim Final Account(s).

9.12 Final Account

- 9.12.1 The Provider must submit a final Valuation (in the form of an application for payment) to the Client's Representative within 40 (forty) Business Days after:
- the Termination Date, where termination is for any reason other than Provider Default; or

NHF FORM OF CONTRACT 2023 – CONTRACT CONDITIONS

- the date that would have been the Expiry Date or, if earlier, the earliest date on which the Provider could have terminated this Contract by serving a notice under Clause 13.5.2 [*Break Clause*] on or after the Termination Date, where termination is for Provider Default.
- 9.12.2 With the final Valuation, the Provider must provide such documentation as the Contract Details require and, if such documents are not provided, the Valuation is not to be a valid final Valuation and no sums will be due in respect of it under this Contract.
- 9.12.3 The Client's Representative must issue the Final Account to the Client and the Provider indicating the Notified Sum due to the Provider or due to the Client (as the case may be) within 40 (forty) Business Days of the later of:
- receipt of the final Valuation and all documentation required by Clause 9.12.2 from the Provider;
 - the date on which the Client's Representative calculates the Notified Sum due to the Provider under Clause 9.12.5 (where applicable); and
 - whichever of the following applies:
 - o the issue of the Completion Certificate (in all cases other than Provider Default or Client Default);
 - o in the case of Provider Default, the date the Client has determined the cost of making alternative arrangements for the Works under Clause 13.1 [*Termination for Provider Default*]; or
 - o in the case of Client Default, the Termination Date.
- 9.12.4 In the Final Account, the Client's Representative must set out:
- all Notified Sums under previous Valuations;
 - all subsequent adjustments to those Notified Sums in accordance with this Contract;
 - all amounts that have been paid to the Provider in respect of those Notified Sums;
 - the Order Prices payable for all completed Orders that have not been included in previous Valuations that have been Approved;
 - any sums due for uncompleted Orders, where payable under Clause 13.3.3 [*Termination for Client Default*] or Clause 13.4.2 [*Termination for Force Majeure*];
 - any sums due to the Provider under Clause 0 [*Paid extensions of time*] insofar as they are not reflected in the Order Prices;
 - any liquidated damages payable under Clause 0 [*Liquidated damages*];
 - any sums the Client may recover from the Provider under Clause 12.3 [*Diversion or Suspension of Orders*] or Clause 12.5 [*Client step-in*];
 - the amount of any Retention the Client is to retain until the end of the last Defects Liability Period to expire for all Works undertaken under the Contract;
 - any amounts due from either Party to the other on termination under Clause 0 [*Termination and Expiry*];
 - any amount the Client may recover from the Provider for removing rubbish, debris, and site waste from the Properties under Clause 13.9.6 [*Obligations to co-operate on handover*];

NHF FORM OF CONTRACT 2023 – CONTRACT CONDITIONS

- any other amounts due from the Client to the Provider under this Contract;
 - any other sums due from the Provider to the Client under this Contract;
 - the Notified Sum (even if the amount is zero) due from the Client to the Provider or from the Provider to the Client in relation to the Final Valuation; and
 - the basis on which that amount is calculated.
- 9.12.5 If the Provider does not submit the final Valuation and other documentation required under Clause 9.12.2 within the 40 (forty) Business Day period required by Clause 9.12.1, the Client's Representative may calculate all amounts that are to be included in the Final Account and the resulting Notified Sum based on the information the Client's Representative has available at that time. The calculation is to be undertaken using the Rates and all calculated amounts are to be included in the Final Account as set out in Clause 9.12.4.
- 9.12.6 If the Client's Representative has not notified the Client and Provider of the Notified Sum in relation to the Final Account within the 40 (forty) Business Day period under Clause 9.12.3, then, in accordance with section 110B(4) of the Construction Act, the Notified Sum in relation to the Final Account will be the amount set out in the final Valuation. Such Notified Sum shall be deemed to have been notified by the Provider under section 110A(3) of the Construction Act on the last day of that period. This is without prejudice to the right of the Client or the Client's Representative to issue one or more Pay Less Notices in relation to that Notified Sum under Clause 9.13 [*Pay Less Notices*].
- 9.12.7 Within 20 (twenty) Business Days of receipt of the Final Account under Clause 9.12.3, the Provider must sign and return a copy of the Final Account to the Client. By doing so, the Provider accepts that the stated amount to be paid will be in full and final settlement of all amounts due to the Provider under this Contract and that no further payment will be due to the Provider.
- 9.12.8 The Provider must issue an invoice for the Notified Sum in relation to the Final Account within 10 (ten) Business Days:
- following signature of the Final Account; or
 - where Clause 9.12.6 applies, following the end of the 40 (forty) Business Day period under that clause.
- 9.12.9 An invoice will not be a valid invoice under Clause 9.12.8 unless:
- it is clearly cross referenced to the Final Account;
 - it is for the Notified Sum in relation to the Final Account, being:
 - the sum notified by the Client's Representative in the Final Account under Clause 9.12.3;
 - where no notification is given by the Client's Representative within the period set out in Clause 9.12.3, the amount(s) set out in the Valuation; or
 - where a Pay Less Notice is served under Clause 9.13 [*Pay Less Notices*] before the date of the invoice, the amount set out in the Pay Less Notice (or the last of them if more than one Pay Less Notice is served before the invoice is issued); and
 - where the Contract Details for Clause 9.9.2 [*Invoice procedure where a Valuation is an application for payment*] state that a VAT invoice is required, it is a VAT invoice and includes all VAT properly chargeable on the invoice.

NHF FORM OF CONTRACT 2023 – CONTRACT CONDITIONS

- 9.12.10 The due date for payment of the Notified Sum in relation to the Final Account will be the date of the Provider's invoice under Clause 9.12.8.
- 9.12.11 The final date for payment of the Notified Sum in relation to the Final Account is the date that 20 (twenty) Business after the due date, but where the Provider has not issued any revised invoice in accordance with Clause 9.12.13 (and to the extent that such delay is permitted under the Construction Act) the final date for payment shall be delayed by the number of days that the Provider is late in issuing the revised invoice under that Clause.
- 9.12.12 At any time up to the date 5 (five) Business Days before the final date for payment of the Notified Sum in relation to the Final Account under Clause 9.12.11 (ignoring any delay to the final date for payment under that Clause) the Client or the Client's Representative may issue one or more Pay Less Notices in relation to it in accordance with Clause 9.13 [*Pay Less Notices*].
- 9.12.13 Where the Client or the Client's Representative issues a Pay Less Notice after the issue of the invoice under Clause 9.12.8, the Provider must issue a credit note for the whole amount of the original invoice and a revised invoice for the amount due as set out in the Pay Less Notice within 5 (five) Business Days after the date of issue of the Pay Less Notice.

9.13 Pay Less Notices

- 9.13.1 A Pay Less Notice issued under Clause 9.9.5 [*Invoice procedure where a Valuation is an application for payment*], Clause 9.10.4 [*Notified Sum and invoice procedure where a Valuation is an invoice*], Clause 9.12.12 [*Final Account*] or Clause 9.14.8 [*Release of Retention*] indicating that the Client will pay less than the Notified Sum must:
- be in writing;
 - be given no later than 7 (seven) calendar days before the final date for payment in relation to the Notified Sum in respect of which it is issued;
 - specify the amount that is being paid (even if this is zero) and the basis on which that sum is calculated;
 - specify each amount included in the Notified Sum that is not being paid; and
 - specify the ground(s) for not paying each amount that is not being paid.
- 9.13.2 The grounds on which the Client or the Client's Representative may issue a Pay Less Notice include:
- that Works have not been properly completed to the Client's Representative's satisfaction;
 - that any Order Variation included in that Valuation is not in accordance with this Contract;
 - that the Provider has not provided the documentation required by the Contract Details;
 - that the Valuation is based on incorrect Rates;
 - that any amount claimed in the Valuation is not due under this Contract;
 - that a condition precedent to payment under this Contract has not been satisfied (including in particular under Clause 2.1.3 [*Contract Formation*], Clause 4.2.5 [*Order Variations and Customer Damage*] or Clause 5.16 [*Parent Company Guarantee and Performance Bond*]); or
 - that there are other grounds under this Contract for payment not being due in relation to such a Valuation.

NHF FORM OF CONTRACT 2023 – CONTRACT CONDITIONS

- 9.13.3 The Client must not withhold any payment of any Notified Sum (or part) after its final date for payment without an effective Pay Less Notice first having been given under the Construction Act as set out in this Clause 9.13.

9.14 Release of Retention

- 9.14.1 Where the Contract Details for Clause 1.1 [*Definitions – definition of Retention*] and 9.6 [*Deduction of Retention*] provide for a Retention within 20 (twenty) Business Days of the issue of the Certificate of Making Good Defects under Clause 5.4.5 [*Defects*] the Client's Representative shall calculate the amount of the Retention that is to be released to the Provider and notify the Provider of that amount *(which shall be the Notified Sum in relation to the release of the Retention).
- 9.14.2 The amount of the Retention to be released shall be calculated as the full amount of the Retention less all amounts incurred by the Client (if any) including any amounts paid to a Successor Contractor in rectifying any Defects that the Provider failed to rectify within their Defects Rectification Periods.
- 9.14.3 If the Client's Representative has not issued the Certificate of Making Good Defects under Clause 5.4.5 [*Defects*] and notified the Provider of the amount of the Retention that is to be released to the Provider within 40 (forty) Business Days of the date on which the preconditions to the issue of the Certificate of Making Good Defects were first satisfied under Clause 5.4.5 [*Defects*] the Provider may notify the Client's Representative of the amount the Provider considers is due to the Provider in relation to the release of the Retention, calculated in accordance with Clause 9.14.2. In accordance with section 110B(4) of the Construction Act, the amount notified by the Provider under this Clause shall be the Notified Sum in relation to release of the Retention. This is without prejudice to the right of the Client or the Client's Representative to issue one or more Pay Less Notices in relation to that Notified Sum under Clause 9.13 [*Pay Less Notices*].
- 9.14.4 The Provider must issue an invoice for the Notified Sum in relation to the release of the Retention within 10 (ten) Business Days:
- following the notification from the Client's Representative under Clause 9.14.1; or
 - where Clause 9.14.2 applies, following the notification of the Notified Sum in relation to the release of the Retention by the Provider to the Client's Representative.
- 9.14.5 An invoice will not be a valid invoice under Clause 9.14.4 unless:
- it is clearly cross referenced to the release of the Retention;
 - it is for the Notified Sum in relation to the release of the Retention, being:
 - the sum notified by the Client's Representative in relation to the release of the Retention under Clause 9.14.1;
 - where Clause 9.14.3 applies the Notified Sum notified by the Provider to the Client's Representative under that Clause; or
 - where a Pay Less Notice is served under Clause 9.13 [*Pay Less Notices*] before the date of the Provider's invoice under Clause 9.14.4, the amount set out in the Pay Less Notice (or the last of them if more than one Pay Less Notice is served before the invoice is issued); and
 - where the Contract Details for Clause 9.9.2 [*Invoice procedure where a Valuation is an application for payment*] state that a VAT invoice is required, it is a VAT invoice and includes all VAT properly chargeable on the invoice.

NHF FORM OF CONTRACT 2023 – CONTRACT CONDITIONS

- 9.14.6 The due date for payment of the Notified Sum in relation to the release of the Retention will be the date of the Provider's invoice under Clause 9.14.4 [*Release of Retention*].
- 9.14.7 The final date for payment of the Notified Sum in relation to the release of the Retention is the date 20 (twenty) Business Days after the due date, but where the Provider has not issued any revised invoice in accordance with Clause 9.14.9 [*Release of Retention*] (and to the extent that such delay is permitted under the Construction Act) the final date for payment shall be delayed by the number of days that the Provider is late in issuing the revised invoice under that Clause.
- 9.14.8 At any time up to the date 5 (five) Business Days before the final date for payment of the Notified Sum in relation to release of the Retention under Clause 9.14.7 (ignoring any delay to the final date for payment under that Clause) the Client or the Client's Representative may issue one or more Pay Less Notices in relation to it in accordance with Clause 9.13 [*Pay Less Notices*].
- 9.14.9 Where the Client or the Client's Representative issues a Pay Less Notice after the issue of the invoice under Clause 9.14.4, the Provider must issue a credit note for the whole amount of the original invoice and a revised invoice for the amount due as set out in the Pay Less Notice within 5 (five) Business Days after the date of issue of the Pay Less Notice.

9.15 Construction Industry Scheme ("CIS")

- 9.15.1 Where the Contract Details state that the Client is a 'contractor' under the CIS or if at any time up to the payment of any amount due under the Completion Certificate the Client becomes a 'contractor' under the CIS, any obligation of the Client to make any payment under this Contract is subject to the CIS.
- 9.15.2 The Provider must provide such information as the Client requires from time to time to verify the deduction status of the Provider.
- 9.15.3 The Provider must notify the Client in writing if at any time its CIS status changes.

9.16 Interest

- 9.16.1 The Client must pay interest at the Interest Rate set out in the Contract Details on all sums due to the Provider from the final date for payment of such sums to the date they are paid.
- 9.16.2 The Provider must pay interest at the Interest Rate on all sums due to the Client from the Provider from the date such sums become due until the date they are paid.
- 9.16.3 Each Party acknowledges that the payment of interest under Clause 9.16.1 or 9.16.2 (as applicable) is in lieu of any obligation to pay interest under the Late Payment of Commercial Debts (Interest) Act 1998 and the Late Payment of Commercial Debts Regulations 2002. Both Parties waive any entitlement to interest under that Act.

9.17 VAT

- 9.17.1 All Rates exclude VAT.
- 9.17.2 The Client must pay VAT at the applicable rate on all valid VAT invoices under this Contract.
- 9.17.3 The Client confirms that it is an "end user" for the purposes of VAT, such that the VAT reverse charge provisions do not apply to payments made under this Contract.

NHF FORM OF CONTRACT 2023 – CONTRACT CONDITIONS

10. ASSIGNMENT AND SUBCONTRACTING

10.1 Assignment and Novation by the Client

- 10.1.1 The Client may assign or transfer the benefit of any or all of its rights under this Contract, or any part, share or interest in this Contract to any successor in title of the Client with the prior written consent of the Provider (such consent not unreasonably to be withheld or delayed).
- 10.1.2 An assignment under Clause 10.1.1 will be effective when written notice of the assignment is served on the Provider.
- 10.1.3 The Client may require the Provider to enter into a deed of novation to transfer both the Client's rights and obligations under this Contract to any public or local authority or to any Registered Provider approved by the Provider (such approval not unreasonably to be withheld or delayed). The deed of novation is to be in such form as the Client reasonably requires.

10.2 Assignment by the Provider

- 10.2.1 The Provider may not assign or transfer the benefits of its rights under this Contract, or any part, share or interest in this Contract without the written consent of the Client.
- 10.2.2 The Client has an absolute discretion whether to grant or refuse consent to an assignment under Clause 10.2.1.

10.3 Subcontracts

- 10.3.1 The Provider must not subcontract any Works or their Design without the written consent of the Client to:
- the identity of the proposed Subcontractor;
 - the extent of the Works that are or to the extent of the Design of the Works that is to be subcontracted; and
 - the terms of the Subcontract.
- 10.3.2 Before the Provider Subcontracts any of the Works, the Provider must ensure that the proposed Subcontractor is competent to undertake those Works and satisfies any requirements on the Provider under this Contract in relation to those Works.
- 10.3.3 The Client consents to the Provider subcontracting any Works specified in the Contract Details to the Subcontractors listed in the Contract Details subject to the Client approving the terms of each Subcontract.
- 10.3.4 Where the Provider subcontracts any Works, the Provider will continue to be responsible to the Client for compliance with this Contract in relation to the subcontracted Works. The appointment of a Subcontractor shall not relieve the Provider from any of its obligations under this Contract including in relation to Personal Data.
- 10.3.5 Before any Subcontractor commences work under a Subcontract the Provider must in accordance with Regulation 71(3) and (4) PCR 2015 notify the Client of the correct name, contact details for and details of the legal representatives of the Subcontractor. The Provider must notify the Client of any changes to this information within 10 (ten) Business Days of such change occurring.

NHF FORM OF CONTRACT 2023 – CONTRACT CONDITIONS

- 10.3.6 The Provider must not allow a Subcontractor to Process any Personal Data of which the Client is Data Controller without the prior written consent of the Client to that Subcontractor doing so. Where the Provider wishes a Subcontractor to be able to do so the Provider must provide the Client with such evidence as the Client requires in order to be satisfied that the proposed Subcontractor is capable of complying with the Provider's obligations under this Contract and under Data Protection Law in relation to that Personal Data.
- 10.3.7 The Provider must include the following terms in all Subcontracts and Supply Contracts:
- that the Subcontractor will comply with any terms of this Contract that relate to how the Works are to be undertaken;
 - that the Subcontractor (in relation to a Subcontract) must provide to the Provider the information the Provider is required to provide to the Client under Clause 10.3.4 and must notify the Provider of any changes to this information within 5 (five) Business Days of such change occurring;
 - that the Subcontractor must notify the Provider promptly of anything that the Provider is required to notify to the Client or Client's Representative;
 - that the Subcontractor or Supplier may not further subcontract without the prior written consent of the Client;
 - that the Provider will pay all undisputed sums due from the Provider to the Subcontractor or Supplier within no more than 30 (thirty) days from the receipt of a valid invoice under the Subcontract or Supply Contract;
 - that the Subcontractor will provide a collateral warranty to the Client where required by Clause 10.6 [*Collateral warranties*];
 - that the Supplier will either provide product warranties to the Client or permit the Provider to assign to the Client any product warranties the Supplier has provided to the Provider;
 - terms in identical terms to the Provider's obligations in relation to Subcontractors under:
 - Clause 5.12 [*Co-operation with audit, ombudsman, etc*];
 - Clauses 6.2 [*Licence to enter Properties*];
 - Clause 6.3 [*Equality and diversity*];
 - Clause 6.4.3 [*TUPE-in*], Clause 6.5 [*TUPE Retendering Information*] and Clause 6.6 [*TUPE transfer to a Successor Contractor*] in accordance with the Provider's obligations under Clause 0 [*TUPE and Subcontractors*];
 - Clause 7 [*Information Handling*] together with, where the Subcontractor Processes Personal Data of which the Client is Data Controller, a provision entitling the Client to enforce such obligations directly against the Subcontractor under the Contracts (Rights of Third Parties) Act 1999;
 - Clauses 6.1.6 [*Staff*] and 10.7 [*Anti-slavery and anti-human trafficking due diligence*]; and
 - Clause 13.2.3 [*Bribery and corruption*];
 - that the Subcontract or Supply Contract will terminate automatically on the Termination Date unless the Client notifies the Provider that the Client wishes to take over that Subcontract and/or Supply Contract in accordance with Clause 13.1.3 [*Termination for Provider Default*], Clause 13.4.2 [*Termination for Force Majeure*], Clause 13.5.5 [*Break clause*] or Clause 13.6.3 [*Expiry*];

NHF FORM OF CONTRACT 2023 – CONTRACT CONDITIONS

- that, if the Client so requires by written notice served on the Subcontractor or Supplier, the Subcontractor or Supplier will novate the Subcontract or Supply Contract (as applicable) to the Client and will enter into a deed of novation to that effect; and
- that the Provider is entitled to terminate the Subcontract or Supply Contract for default by the Subcontractor if the Subcontractor breaches any of the provisions that the Provider is required to include in the Subcontract under this Clause.

10.4 Subcontractors for Excepted Works

- 10.4.1 Where an Order involves Excepted Works and there is no Subcontractor approved for those Works under Clause 10.3.2 [*Subcontracts*] the Provider must:
- notify the Client's Representative in writing of this on the same or next Business Day as that on which the Order is issued; and
 - at the same time propose such number as the Order provides (and if no number is provided in the Order at least 3 (three)) suitable, qualified specialist Organisations as prospective Excepted Works Subcontractors for those Works.
- 10.4.2 Works are not Excepted Works simply because they are Specialist Works.
- 10.4.3 The Client may suggest potential Subcontractors to the Provider for Excepted Works, but the Provider has a complete discretion whether or not to propose them under Clause 10.4.1.
- 10.4.4 On receipt of details of the Provider's proposed potential Excepted Works Subcontractors under Clause 10.4.1 the Client's Representative will:
- instruct the Provider to obtain competitive quotations from up to 3 (three) of them; and
 - as soon as practicable after receiving those quotations, instruct the Provider which of them (if any) should be engaged by the Provider as the Excepted Works Subcontractor for those Specialist Works.
- 10.4.5 The Provider is solely responsible for all matters of co-ordination, supervision, provision of facilities, testing, protection, attendances, and special attendances in connection with Excepted Works undertaken by Excepted Works Subcontractors.
- 10.4.6 The Provider must use all reasonable endeavours to expedite the above procedure in order to prevent any delay to completion of the Order.

10.5 Payment of Subcontractors

- 10.5.1 The Provider must pay all undisputed invoices from Subcontractors and Suppliers within 30 (thirty) calendar days of the date of their submission to the Provider.
- 10.5.2 If the Provider fails to comply with Clause 10.5.1 the Client, as agent for the Provider, may pay such Subcontractor or Supplier and deduct any sum so paid from any sum due to the Provider. The Provider appoints the Client as its agent for the purposes of this Clause 10.5 and such appointment is irrevocable during the Contract Period.

10.6 Collateral warranties

- 10.6.1 Where the Client so requires when approving a Subcontract under Clause 10.3.1 [*Subcontracts*] the Provider must procure that its Subcontractor provides a collateral warranty to the Client in the form specified in the Contract Details or such other form that is satisfactory to the Client (acting reasonably) within 10 (ten) Business Days of the date of the Subcontract.

NHF FORM OF CONTRACT 2023 – CONTRACT CONDITIONS

- 10.6.2 Where a collateral warranty is required by the Client from a Subcontractor under Clause 10.6.1, the provision of that collateral warranty is a condition precedent to any payment becoming due to the Provider in respect of any Works or the Design of any Works undertaken by that Subcontractor.
- 10.6.3 The Provider must assign to the Client the benefit of all product warranties given by Suppliers to the Provider in connection with the Works or any Materials provided in connection with them.

10.7 Anti-slavery and human trafficking due diligence

- 10.7.1 The Provider must take appropriate steps to ensure that there is no slavery or human trafficking in its supply chains.
- 10.7.2 In connection with this the Provider must:
- implement due diligence procedures for its Subcontractors;
 - require all Subcontractors to warrant that, neither the Subcontractor nor any of the Subcontractor's officers or employees:
 - have been convicted of any offence involving slavery or human trafficking; or
 - have, to the best of the Subcontractor's knowledge, been the subject of any investigation, inquiry, or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence of or in connection with slavery and human trafficking; and
 - require all Subcontractors to include provisions having the same effect as in this Clause 10.7.2 in all Subcontracts (at any stage of remoteness from the Client in the supply chain) relating to the Works;
 - provide a Supply Chain Map to the Client within 20 (twenty) Business Days of a request from the Client's Representative;
 - within 10 (ten) Business Days of a request from the Client's Representative provide to the Client a report on any Subcontractor setting out their workplace conditions, working or employment practices and/or their recruitment practices; and
 - terminate a Subcontract if the Client's Representative so instructs following that Subcontractor breaching any of the Provisions the Provider is required to include in Subcontracts under Clause 10.3.7 [*Subcontracts*] or putting the Provider in breach of Clause 6.1.6 [*Staff*].

11. INDEMNITY AND INSURANCE

11.1 Provider Indemnities

- 11.1.1 The Provider agrees to Indemnify the Client against Liability for the death of or personal injury to any person arising out of or in the course of the Works unless it was due to the negligence or default of the Client or a Client Party.
- 11.1.2 The Provider agrees to Indemnify the Client against loss or damage to property including any of the Properties and/or any adjoining property due to any negligence, default, or breach of Law in carrying out the Works or any breach of this Contract. Such loss or damage includes any contamination or pollution, damage caused to the Properties whilst carrying out the Works and Liability for trespass or nuisance caused by Staff.

NHF FORM OF CONTRACT 2023 – CONTRACT CONDITIONS

- 11.1.3 The Provider agrees to Indemnify the Client against loss or damage to the Works or Materials.
- 11.1.4 The Provider agrees to Indemnify the Client against the failure of the Provider to comply with its obligations in relation to the Design of the Works.
- 11.1.5 The Provider agrees to Indemnify the Client against loss or damage to property including any Customer's or former Customer's property and/or any of the Properties due to vandalism or theft and other loss or damage (other than that referred to in Clause 11.3.1 [*Property damage caused by other events*]) either:
- whilst the Provider is in possession of a key to any of the Properties; or
 - which is caused by Staff of the Provider or any Subcontractor or Supplier.

11.2 Provider Insurances

- 11.2.1 The Provider must take out and maintain and procure that each Subcontractor is covered by or takes out and maintains Insurances to cover such of the following areas as are specified in the Contract Details:
- employer's liability Insurance;
 - public liability Insurance covering Liability under Clause 11.1.1 and 11.1.2 [*Provider Indemnities*];
 - product liability Insurance covering Liability under Clause 11.1.2 [*Provider Indemnities*] arising from defects in the Materials used in the Works;
 - contractor's all risk Insurance covering Liability under Clause 0 [*Provider Indemnities*]; and
 - professional indemnity Insurance covering Liability under Clause 11.1.4 [*Provider Indemnities*].
- 11.2.2 The Insurances are to be:
- in the minimum amounts and for the durations specified in the Contract Details; and
 - taken out with substantial and reputable insurers trading in the United Kingdom or European Union.

11.3 Property damage caused by other events

- 11.3.1 Loss or damage to the Properties and their contents (except the Provider's or any Subcontractor's Equipment) is at the sole risk of the Client if caused by fire, lightning explosion, storm, tempest, flood, bursting or overflowing of water tanks, apparatus or pipes, earthquake, aircraft and other aerial devices or articles dropped, riot and civil commotion except to the extent that any such loss or damage may be suffered due to any negligence, omission, or default of the Provider.
- 11.3.2 The Provider must take all reasonable precautions to prevent and/or mitigate loss or damage by any of the Client's risks under Clause 11.3.1 and must minimise the extent of any such loss or damage.

11.4 Equipment

- 11.4.1 Loss of or damage to Equipment is at the Provider's or Subcontractor's risk.

NHF FORM OF CONTRACT 2023 – CONTRACT CONDITIONS

11.5 Evidence and approval of Insurances

- 11.5.1 The Provider must produce and must ensure any Subcontractor produces evidence of the required Insurance policies and premium receipts at the Commencement Date, on each renewal of any such Insurance policy and as and when required by the Client's Representative. Such evidence includes details of all excesses, exclusions, limits or conditions restricting cover.
- 11.5.2 The Client's Representative may object to any such excesses, exclusions, limits or conditions restricting cover for any of the Insurances that, in the Client's Representative's opinion, unreasonably reduce the benefit of any of the Insurances to the Provider or Client.
- 11.5.3 If the Client's Representative objects to any restrictions on any of the Insurances under Clause 11.5.2, the Provider must at its own cost reduce or eliminate such restrictions as directed by the Client's Representative.
- 11.5.4 If the Provider has not provided evidence that any restriction on the Insurances has been so reduced or eliminated within 20 (twenty) Business Days of the Client's Representative's objection under Clause 11.5.2, the Client may make other arrangements to protect its interests in accordance with Clause 11.6 [*Failure to insure*].

11.6 Failure to insure

- 11.6.1 If the Provider or any Subcontractor fails to take out and maintain any of the Insurances or fails to resolve an objection of the Client's Representative under Clause 11.5.2 [*Evidence and approval of Insurances*], the Client may make alternative arrangements to protect its interests and may recover the cost of doing so from the Provider.

12. MONITORING, KPIS, BREACHES AND REMEDIES

12.1 Monitoring and KPIS

- 12.1.1 The Client or Client's Representative may monitor the performance of the Works and any activities undertaken by the Provider in connection with this Contract.
- 12.1.2 The Provider shall:
- grant access to the Client and Client's Representative to any premises from which this Contract is undertaken or administered (subject to them complying with reasonable health and safety requirements associated with those premises);
 - allow the Client, the Client's Representative or any person authorised by them to speak to any member of Staff confidentially in their own language in respect of workforce conditions and working or employment practices;
 - allow the Client to inspect any books, records and/or any other relevant documentation of the Provider concerning the Provider's workforce conditions and working or employment practices; and
 - if so instructed by the Client's Representative, procure that an audit is carried out by either the Provider or an independent third party (as directed by the Client's Representative) of the workforce conditions and working or employment practices of any Subcontractor and deliver a written report to the Client on them within 60 (sixty) Business Days of the instruction.
- 12.1.3 The Client's Representative may "shadow" the Provider at any time and for any Works. This may entail a surprise visit by the Client's Representative to accompany the Provider's Staff to a Property, or meet them at a Property, to watch the Works being undertaken.

NHF FORM OF CONTRACT 2023 – CONTRACT CONDITIONS

- 12.1.4 The Client may audit the Provider's procedures, documentation, and Valuations (including those that have been paid) under this Contract at any time. This may include checking that all Works for which the Provider has been paid or has submitted a Valuation:
- were carried out and completed in conformity with this Contract; and
 - have been valued at the correct rate.
- 12.1.5 Where an audit by the Client identifies that any overcharge or overpayment has been made, the Client may recover from the Provider all reasonable costs and expenses the Client has incurred in connection with carrying out that audit.
- 12.1.6 The Provider's delivery of the Works under this Contract will also be monitored through KPIs as set out in the KPI Framework.
- 12.1.7 If the Client's Representative is concerned about the accuracy of any KPI monitoring data the Client's Representative may arrange for independent monitoring or verification of such data. If monitoring data obtained by the Provider is found to have been inaccurate the Client may recover from the Provider the costs of the independent monitoring.
- 12.1.8 The Client may at any time monitor or direct the Provider to monitor the Provider's performance in relation to any KPI over such period of no less than 1 (one) Month as the Client determines.
- 12.1.9 If there is any Dispute over the data collected to monitor the Provider's KPI performance or any discrepancy between the KPI data collected by the Client and that collected by the Provider the decision of the Client's Representative over which data is valid is to be final and binding. This applies unless the Provider formally disputes that data under the Dispute Resolution Procedure within 1 (one) Month of the Client's Representative confirming in writing to the Provider which data is to be used.
- 12.1.10 Where the Provider's performance of the Works is worse than the Minimum Acceptable Performance level for any one or more KPIs the Client may serve a written notice on the Provider to that effect. The notice will:
- give details of each KPI where performance is worse than the Minimum Acceptable Performance level, stating:
 - o the performance level achieved;
 - o the period over which that KPI performance was measured; and
 - o that performance in relation to that KPI is worse than the Minimum Acceptable Performance level;
 - tell the Provider by what date (no less than 1 (one) Month from the date of the notice), performance in relation to each of those KPIs must be improved so that it is better than Minimum Acceptable Performance for the Measurement Period next ending after that date and the next 2 (two) Measurement Periods after that; and
 - warn the Provider that if performance is not improved so that it is better than Minimum Acceptable Performance for all of those KPIs for all of those Measurement Periods, this Contract may be terminated for Provider Default.

NHF FORM OF CONTRACT 2023 – CONTRACT CONDITIONS

12.2 Instruction to complete Orders or rectify Defects

12.2.1 The Client's Representative may Instruct the Provider either:

- to complete any Order for Responsive Maintenance, Routine Maintenance, Disrepair Works, Void Property Works, Disability Adaptation Works, a Technical Inspection, an Occupational Therapist Inspection, a Void Property Inspection, or an Optional Task which has not been completed within its Response Period within such period of not less than 2 (two) Working Days as the Client's Representative specifies;
- to complete any Order for Planned Works, Major Works, Disrepair Works, Disability Adaptation Works, or Servicing which has not been completed by its Target Completion Date within such period of not less than 5 (five) Working Days as the Client's Representative specifies; or
- not to undertake that Order at all, on the basis that the Client will get an alternative contractor to do the Work in accordance with Clause 12.3 [*Diversion or suspension of Orders*].

12.2.2 The Client's Representative may Instruct the Provider in accordance with Clause 5.4 [*Defects*] either:

- to rectify any Defect that has not been rectified before the end of its Defect Rectification Period within such period of not less than 2 (two) Business Days as the Client's Representative specifies; or
- not to rectify that Default at all, on the basis that the Client will get another contractor to do the Work in accordance with Clause 12.3 [*Diversion or suspension of Orders*].

12.3 Diversion or suspension of Orders

12.3.1 Subject to Clause 8 [*Changes to Order Price, Response Period and/or Target Completion Date*], the Client may arrange for a contractor other than the Provider to undertake any Works if the Provider:

- refuses to accept an Order for those Works;
- cannot be contacted by the Client's Representative, despite the Client's Representative having used reasonable endeavours to do so;
- fails to complete an Order for Responsive Maintenance, Routine Maintenance, Disrepair Works, Void Property Works, Disability Adaptation Works, a Technical Inspection, Occupational Therapist Inspection, Void Property Inspection, or an Optional Task within its Response Period and the Client's Representative has given the Provider at least 2 (two) Working Days' notice of the proposal to divert those Works to another contractor;
- fails to commence any Order for Planned Works or Major Works within 5 (five) Working Days of their commencement date set out in the Programme;
- fails to complete any order for Planned Works, Major Works, Disrepair Works, Disability Adaptation Works, or Servicing by its Target Completion Date and the Client's Representative has given the Provider at least 5 (five) Working Days' notice of the proposal to divert those Planned Works, Major Works, Disrepair Works, Disability Adaptation Works, or Servicing to another contractor;
- fails to complete any Servicing within 5 (five) Working Days of the date on which the Servicing Programme states it is to be undertaken;

NHF FORM OF CONTRACT 2023 – CONTRACT CONDITIONS

- fails to complete any Periodic Task within 5 (five) Working Days of the date on which the Programme states it is to be undertaken; or
 - fails to rectify a Defect within its Defect Rectification Period.
- 12.3.2 Where the Client engages a contractor other than the Provider to undertake Works under Clause 12.3.1:
- the Client may recover from the Provider:
 - any additional costs of having those Works done by another contractor (either compared to the amount that would have been paid to the Provider for that Order or, where the Works are to rectify a Defect, in addition to the amount paid to the Provider);
 - any compensation payable to a Customer or third party under the Client's Policies as a result of the delay; and
 - an administrative fee per Order of the amount set out in the Contract Details; and
 - if no Order has been issued for those Works, the Client's Representative will provide the Provider with a copy of the Order that would have been given for those Works.
- 12.3.3 By written notice from the Client to the Provider the Client may temporarily suspend the issue of Orders for a period of no more than 3 (three) Months pending the outcome of the Client's investigation into a breach or suspected breach of this Contract by the Provider. Neither Party is to have any claim against the other because of a suspension of the issue of Orders under this Clause 12.3.3.
- 12.3.4 The Client's Representative will notify the Provider in writing when any suspension of the issue of Orders under Clause 12.3.3 ends.
- 12.3.5 Where the Client is entitled to terminate this Contract for Provider Default under Clause 13.1 [*Termination for Provider Default*] as an alternative to doing so the Client may by written notice to the Provider withdraw one or more Workstreams from the Provider under this Contract with immediate effect following service of the notice.
- 12.3.6 Following the service of a notice under Clause 12.3.5:
- the Client is not under any obligation to issue any further Orders to the Provider in relation to those Workstreams;
 - the Provider must complete all Orders in relation to those Workstreams that were issued before the date of the notice;
 - neither Party has any claim against the other as a result of the withdrawal of those Workstreams, but this is without prejudice to the Client's obligation to pay the amounts due under Clause 9 [*Payment*] for Orders that are completed by the Provider in respect of that Workstream before or after the date of the notice; and
 - Clause 6.6 [*TUPE transfer to a Successor Contractor*] and Clause 6.7.1 [*TUPE and Subcontractors*] will apply to any Staff who are the subject of a TUPE transfer as a result of the withdrawal of those Workstreams as though:
 - the date of the notice under Clause 12.3.5 were the Termination Date; and
 - those Staff were Returning Employees for the purposes of that Clause.

NHF FORM OF CONTRACT 2023 – CONTRACT CONDITIONS

12.4 Default Notice

12.4.1 The Client may serve a Default Notice on the Provider if the Provider:

- fails either to complete an Order or rectify a Defect in response to an Instruction given under Clause 0 [*Instruction to complete Orders or rectify Defects*] within the period specified in the Instruction;
- commits a breach of this Contract (other than failing to complete an Order for Responsive Maintenance, Routine Maintenance, Void Property Works, Disrepair Works, Disability Adaptation Works, Technical Inspections, Occupational Therapist Inspections, Void Property Inspections and Optional Tasks within its Response Period, failing to commence an Order for Planned Works or Major Works in accordance with the Programme, failing to complete a Periodic Task in accordance with the applicable Programme, failing to complete an Order for Planned Works, Major Works, Disrepair Works, Disability Adaptation Works, or Servicing by its Target Completion Date, failing to rectify a Defect within its Defect Rectification Period or failing either to complete an Order or rectify a Defect in response to an Instruction given under Clause 0 [*Instruction to complete Orders or rectify Defects*] within the period specified in the Instruction) which either cannot be put right or which is not put right within the period set out in a written notice from the Client:
 - o specifying the breach; and
 - o giving the Provider a period to put it right, which may not be less than 20 (twenty) Business Days unless the Client (acting reasonably) considers that the breach needs to be put right within a shorter period than this;
- commits a breach of this Contract and the Provider has committed the same or a similar breach two or more times in the 3 (three) months preceding the breach;
- fails to provide a Remedial Plan under Clause 12.6 [*Remedial Plan*] within the period the Provider is required to do so under that Clause; or
- fails to implement a Remedial Plan to the satisfaction of the Client within any deadline to do so set out in the Remedial Plan.

12.4.2 The service of a Default Notice has no immediate consequences for the Provider other than the risk that if the number of Default Notices is above the number specified as the Minimum Acceptable Performance level over a KPI measurement period this Contract may be terminated for Provider Default.

12.5 Client step-in

12.5.1 If the Client reasonably believes that it needs to act in connection with any Works to discharge a statutory duty, then the Client may take action in accordance with this Clause.

12.5.2 If the Client wishes to take such action, the Client must notify the Provider in writing of the following:

- the action it wishes to take;
- the reason for such action;
- the date it wishes to commence such action;
- the time period which it believes will be necessary for such action; and
- to the extent practicable, the effect on the Provider and the Works during the period such action is being taken.

NHF FORM OF CONTRACT 2023 – CONTRACT CONDITIONS

- 12.5.3 In a Disaster the Client will notify the Provider verbally of the matters referred to in Clause 12.5.2 and confirm such notification in writing as soon as reasonably possible.
- 12.5.4 Following the service of a notice under Clause 12.5.2 or the giving of a verbal notification under Clause 0, the Client may take such action as has been notified and any consequential additional action as the Client reasonably believes is necessary. The Provider must give all reasonable assistance to the Client while it is taking such action.
- 12.5.5 If the Provider is not in breach of its obligations under this Contract, then for so long as and to the extent that the Client takes action under Clause 12.5.4 and this prevents the Provider from undertaking any part of the Works the Provider:
- will not be required to undertake such Works during the period in which the Client is taking such action; and
 - must provide such assistance as the Client's Representative directs (such assistance to be paid for at the Daywork Rates under the Price Framework).
- 12.5.6 If action is taken by the Client under Clause 12.5.4 as a result of a breach of this Contract by the Provider then, for so long as and to the extent that the action is taken, and this prevents the Provider from providing any part of the Works:
- the Provider will not be required to undertake such Works during the period in which the Client is taking such action; and
 - the Provider must pay to the Client the costs of any such Works undertaken by the Client or by a Client Party less the amount the Client would have paid the Provider for those Works.

12.6 Remedial Plan

- 12.6.1 The Client may by written notice require the Provider to produce a Remedial Plan if the Provider:
- fails to achieve any KPI Performance Target for any KPI for 3 (three) monthly Measurement Periods or one quarterly Measurement Period
 - fails to achieve the Performance Targets for 3 (three) KPIs during any Measurement Period;
 - has not completed any Safety Check (including for a LGSR or an EICR) to any Property by the end of the KPI Measurement Period in which the previous Servicing Certificate for that Property expired other than where the Provider has notified the Client of the need to take legal action to secure access to that Property in accordance with Paragraph 7.8 [*Access for Servicing*] of the Preliminaries;
 - has not notified the Client of the need to take legal action to secure access to carry out a Safety Check to any Property before the end of a KPI Measurement Period where the date 42 (forty-two) calendar days before the expiry of the current Servicing Certificate occurred during that KPI Measurement Period; or
 - is in breach of this Contract.
- 12.6.2 A Remedial Plan must demonstrate to the satisfaction of the Client how (as applicable):
- the Provider will achieve performance above the KPI Performance Targets for the KPIs where performance was below the applicable KPI Performance Target; or
 - such a breach will be avoided in future.

NHF FORM OF CONTRACT 2023 – CONTRACT CONDITIONS

- 12.6.3 The Provider must provide a draft of the Remedial Plan within 20 (twenty) Business Days of the Client's written notice under Clause 12.6.1 unless the Client (acting reasonably) considers that the nature of the breach means that a draft Remedial Plan should be provided within a shorter period and states this period in the notice.
- 12.6.4 Within 10 (ten) Business Days of the receipt of the draft Remedial Plan under Clause 0 (or such longer period as the Client and Provider agree) the Client will by written notice to the Provider:
- approve the draft Remedial Plan;
 - approve the draft Remedial Plan subject to the Provider making specific changes to it that are set out in the notice;
 - reject the draft Remedial Plan and inform the Provider of the contents of it that need to be changed to secure the Client's approval; or
 - reject the draft Remedial Plan and inform the Provider of the Client's reasons for doing so.
- 12.6.5 Where the Client approves the draft Remedial Plan under Clause 12.6.4, the Provider must implement that Remedial Plan.
- 12.6.6 Where the Client approves a draft Remedial Plan under Clause 12.6.4 subject to amendments being made by the Provider, the Provider must indicate by written notice to the Client within 5 (five) Business Days whether those amendments are acceptable. Where the Provider's notice indicates that the amendments are:
- acceptable, the Provider must implement that Remedial Plan within the timescales set out in that Remedial Plan;
 - not acceptable, Clause 12.6.7 will apply.
- 12.6.7 Where the Client rejects the draft Remedial Plan:
- the Provider must provide the revised Remedial Plan within 10 (ten) Business Days of the date of rejection or such shorter period stated in the notice of rejection within which the Client (acting reasonably) considers that it should be provided having regard to the nature of the breach; and
 - Clauses 12.6.2 to this Clause 12.6.7 will apply to the revised Remedial Plan and any further revisions to it.

12.7 Provider's statutory right of suspension

- 12.7.1 Where any sum due from the Client to the Provider under this Contract remains unpaid after its final date for payment, the Provider may give the Client at least 7 (seven) calendar days' notice of the Provider's intention to suspend performance of this Contract.
- 12.7.2 A notice given under Clause 12.7.1 must state the grounds on which the Provider intends to suspend performance.
- 12.7.3 If the Client does not pay the sum due within the 7 (seven) calendar day period set out in Clause 12.7.1, the Provider may suspend performance of this Contract. Such suspension is without prejudice to any other right or remedy the Provider has under this Contract.

12.8 Remedies cumulative

- 12.8.1 The rights and remedies given by this Contract are cumulative and do not exclude any other rights or remedies given by Law or under this Contract.

13. TERMINATION AND EXPIRY

13.1 Termination for Provider Default

13.1.1 The Client may terminate this Contract for Provider Default by written notice to the Provider having immediate effect, if the Provider:

- is subject to an Insolvency Event;
- without reasonable cause fails to proceed diligently with all or a substantial part of the Works or wholly suspends the carrying out of the Works other than in accordance with the Construction Act;
- purports to assign, novate or appoint an agent to deliver this Contract without the consent of the Client in breach of Clause 0 [*Assignment and Subcontracting*];
- fails to improve performance of the Works following the service of a notice under Clause 12.1.10 [*Monitoring and KPIs*] so that performance as measured by the KPI(s) in respect of which the notice was served is maintained at or above Minimum Acceptable Performance level for each of those KPIs for each of the KPI Measurement Periods referred to in the notice;
- fraudulently or recklessly submits any Valuation for Work not carried out or not carried out in accordance with this Contract;
- except in relation to a Property which the Client is in the process of taking legal action in order to obtain access or where the Client considers there are valid reasons for the delay, fails to complete any Safety Check (including for a LGSR or an EICR) to any Property during the Servicing Validity Period of the previous Servicing Certificate and does not carry out such Safety Check within 5 (five) calendar days (or such longer period as the Client specifies in the notice) of a written notice from the Client warning the Provider that this Contract may be terminated for Provider Default if the Safety Check for that Property is not completed within the period set out in the notice;
- fails to notify the Client of the need to take legal action to secure access in order to carry out a Safety Check to any Property before the date 42 (forty-two) calendar days before the expiry of the current Servicing Validity Period;
- issues any Servicing Certificate (including a LGSR or an EICR) where the Servicing for which the Servicing Certificate was issued has not been completed or provides inaccurate information to the Client or the Client's Auditor about the existence of a valid Servicing Certificate or its expiry date;
- breaches any of Clauses 6.1.6 [*Staff*], 10.7 [*Anti-slavery and human trafficking due diligence*] or 13.2 [*Bribery and corruption*] or the warranty in Clause 6.1.5 [*Staff*] is or becomes untrue;
- is unable to comply with its obligations under this Contract for a period of more than 10 (ten) Business Days because of any action taken by any Statutory Authority in relation to the Provider due to any breach of Law or suspected breach of Law by the Provider;
- has its accreditation or registration to undertake a particular type of Works covered by this Contract withdrawn, suspended, or made subject to conditions by the Statutory Authority responsible for that accreditation or registration and fails to secure the restoration of its full and unconditional registration or accreditation within 10 (ten) Business Days of the date of the withdrawal, suspension or imposition of conditions;

NHF FORM OF CONTRACT 2023 – CONTRACT CONDITIONS

- is found to have been in one of the situations referred to in Regulation 57(1) to (3) [*Mandatory exclusions*] PCR 2015 at the time of the award of this Contract to the Provider; or
- commits a Material Breach of this Contract which either cannot be put right or which is not put right within the period set out in a written notice from the Client:
 - specifying the Material Breach;
 - giving the Provider a period to put it right (which may not be less than 20 (twenty) Business Days unless the Client (acting reasonably) considers that the Material Breach needs to be put right within a shorter period than this); and
 - warning the Provider that this Contract will be terminated if the Material Breach is not put right within that period.

13.1.2 A Material Breach by the Provider includes:

- the Provider failing to comply with an Instruction of the Client's Representative within the period for doing so as set out in Clause 3.3.1 [*Role and Instructions of the Client's Representative*] or Clause 0 [*Instruction to complete Orders or rectify Defects*] (as applicable);
- the Provider or a Subcontractor breaching any Law in connection with this Contract (other than a minor breach which does not give rise to any risk of prosecution and which is remedied immediately upon the Provider becoming aware of it);
- where this Contract is concluded by a Letter of Acceptance under Clause 2.1.2 [*Contract formation*] the Provider refusing or failing to execute and deliver the Contract Documents in accordance with Clause 2.1.2 [*Contract formation*];
- the Provider submitting any Valuation for Works that have not been done or for more Works than have been done (whether or not such Valuation is submitted fraudulently or recklessly);
- the Provider failing to provide a performance bond or parent company guarantee within the period specified in this Contract (where applicable);
- the Provider failing to provide a collateral warranty from a Subcontractor within the period specified in this Contract;
- the Provider having had 2 (two) draft Remedial Plans rejected by the Client under Clause 12.6 [*Remedial Plan*] provides a further draft Remedial Plan that is also rejected under that Clause; and
- any other breach of this Contract which, in the reasonable opinion of the Client, is sufficiently serious to entitle the Client to terminate this Contract if it is not remedied.

13.1.3 If this Contract is terminated for Provider Default:

- no further payments will become due following the Termination Date and any payments that are due will cease to be due until the Final Account has been prepared;
- no payment is to be made or due for uncompleted Orders except to the extent that the Client's Representative considers that part of an Order has been fully completed;

NHF FORM OF CONTRACT 2023 – CONTRACT CONDITIONS

- the Client may repossess any Materials or Equipment loaned or provided by the Client to the Provider (if any);
- the Client may exercise a lien over any of the Materials or Equipment, owned or used by the Provider for any sum due or expected to be due from the Provider to the Client;
- the Client may require the Provider to novate any Subcontracts and/or Supply Contracts to the Client by serving notice to that effect on the Provider at the same time as giving notice of termination;
- the Client may itself complete or employ other persons to complete any Orders that are outstanding or part-completed and recover any additional cost of doing so (compared to the amount the Client would have paid) from the Provider. Such persons may use any of the Provider's or a Subcontractor's Materials and Equipment for doing so; and
- the Client may deduct its costs relating to the termination from any sum due to the Provider.

13.1.4 The Client's costs relating to the termination include:

- any costs paid to Client Parties in connection with such termination and in making alternative arrangements for the Works;
- the cost to the Client of the time spent by its officers in connection with such termination and in making alternative arrangements for the Works; and
- the additional costs incurred by the Client in arranging for contractors other than the Provider to carry out the works that would have been the subject of Orders under this Contract up to the date which would have been the Expiry Date or, if earlier, the first date on which the Provider could have terminated this Contract under Clause 13.5.2 [*Break clause*] (through serving a break notice on the Client) had it not been terminated for Provider Default.

13.1.5 The Client's Representative must issue the Completion Certificate within 45 (forty-five) Business Days of the date referred to in Clause 13.1.4.

13.2 Bribery and corruption

13.2.1 The Client may terminate this Contract immediately by written notice for Provider Default and recover from the Provider the amount of any loss resulting from such termination if:

- the Provider has offered or given or agreed to give any person a bribe, gift, consideration or financial or other advantage as an inducement or reward for:
 - doing or not doing or having done or not having done any action in relation to the obtaining or execution of this Contract or any other contract with the Client; or
 - showing or not showing favour or disfavour to any person in relation to this Contract or any other contract with the Client;
- these acts have been done by any member of Staff of the Provider or of a Subcontractor or by anyone acting on the Provider's or Subcontractor's behalf (whether without or with the Provider's or Subcontractor's knowledge);
- in relation to this or any other contract with the Client, the Provider or any person employed by the Provider or acting on the Provider's behalf (including a Subcontractor or Supplier) has:
 - committed any offence under the Bribery Act 2010; or

NHF FORM OF CONTRACT 2023 – CONTRACT CONDITIONS

- o given any fee or reward the receipt of which is an offence under the Local Government Act 1972; or
 - the Provider or a Subcontractor or Supplier breaches Clause 13.2.3.
- 13.2.2 The Provider must incorporate obligations in every Subcontract and Supply Contract that enable the Provider to terminate the Subcontract or Supply Contract because of any corrupt gift consideration or financial or other advantage offered or paid by the Subcontractor or Supplier or on its behalf in connection with this Contract.
- 13.2.3 Where the Client is a Registered Provider, the Provider must not do and must procure that each Subcontractor and Supplier does not do anything which would place the Client in breach of any restriction in its Conflict of Interests Policy on making a payment or granting a benefit to certain businesses trading for profit.
- 13.2.4 Within 5 (five) Business Days of being so instructed by the Client, the Provider must repay to the Client any payments made by the Client as a result of a breach of Clause 13.2.3 by the Provider or a Subcontractor or Supplier.

13.3 Termination for Client Default

- 13.3.1 The Provider may terminate this Contract for Client Default by written notice to the Client having immediate effect if the Client:
- is subject to an Insolvency Event;
 - suspends the carrying out of the Works for a continuous period of at least 3 (three) Months, unless such suspension arises from a breach or suspected breach of this Contract by the Provider which is notified by the Client to the Provider under Clause 12.3.3 [*Diversion or suspension of Orders*];
 - has not before the Termination Date paid any amount properly due to the Provider under this Contract:
 - o which has been Approved by the Client's Representative in respect of any Valuation and in relation to which no subsequent Pay Less Notice has been served;
 - o in respect of which a VAT invoice has been issued by the Provider;
 - o which is outstanding after its final date for payment under this Contract; and
 - o in respect of which the Provider has given at least 10 (ten) Business Days' notice of its intention to terminate; or
 - commits a Material Breach of this Contract which either cannot be put right or which is not put right within the period set out in a written notice from the Provider:
 - o specifying the Material Breach;
 - o giving the Client a period to put it right (which may not be less than 20 (twenty) Business Days unless the Provider (acting reasonably) considers that the Material Breach needs to be put right within a shorter period than this); and
 - o warning the Client that this Contract will be terminated if the Material Breach is not put right within that period.

NHF FORM OF CONTRACT 2023 – CONTRACT CONDITIONS

13.3.2 A Material Breach by the Client includes:

- the Client breaching any Law (including the CDM Regulations) in connection with this Contract (other than a minor breach which does not give rise to any risk of prosecution and which is remedied as soon as the Client becomes aware of it);
- where this Contract is concluded by a Letter of Acceptance under Clause 2.1.2 [*Contract formation*] the Client refusing or failing to execute and deliver the Contract Documents in accordance with Clause 2.1.2 [*Contract formation*]; and
- any breach of this Contract that prevents the Provider from carrying out a substantial part of its obligations under this Contract.

13.3.3 If the Provider terminates this Contract for Client Default:

- the Provider need not complete any uncompleted Orders;
- the Client must pay the Provider for all Orders completed up to the Termination Date in accordance with Clause 9 [*Payment*];
- the Client must pay the Provider a fair and reasonable amount for all uncompleted Orders up to the Termination Date (such amount being determined by the Client's Representative in the Final Account under Clause 9.12 [*Final Account*] following the Provider's Valuation);
- the Client must pay the Provider the market value on the Termination Date of any Equipment or Materials owned by the Provider which are to be transferred to the Client on termination;
- the Provider may recover the following costs from the Client (subject to and on the assumption that the Provider has taken all reasonable steps to mitigate those costs):
 - the Provider's and/or Subcontractor's reasonable costs of removing its Materials or Equipment from any Properties (to the extent that they are not to be transferred to the Client on termination);
 - the Provider's reasonable costs of terminating any Equipment hire or leasing arrangements that are terminated as a direct result of the termination of this Contract;
 - the reasonable costs of any Materials ordered for the Works before the Termination Date (but all Materials paid for in full by the Client will belong to the Client and the Provider must deliver them to the Client in accordance with Clause 13.9.4 [*Obligations to co-operate on handover*]);
 - any redundancy costs for Staff made redundant as a direct result of the termination of this Contract;
 - reasonable breakage costs from all Subcontracts and Supply Contracts that are terminated as a direct result of the termination of this Contract; and
 - any other reasonable out-of-pocket costs incurred or committed to by the Provider in anticipation of this Contract continuing (including any Mobilisation Costs and TUPE Costs that have not been fully recovered from the Client).

13.3.4 The Client's Representative must issue the Completion Certificate within 5 (five) Business Days of the Termination Date even though certain Orders may not be complete and certain Defects may not have been rectified. In the Completion Certificate the Client's Representative must give details of all Orders that are not complete and all Orders where Defects are still to be rectified.

13.4 Termination for Force Majeure

- 13.4.1 If Force Majeure results in the suspension of all or a substantial majority of the Works or of the Works in a Workstream for more than 20 (twenty) Business Days, either Party may terminate this Contract or (where applicable) remove that Workstream from that Contract by giving 10 (ten) Business Days' written notice to the other.
- 13.4.2 If this Contract is terminated for Force Majeure:
- to the extent possible in the light of the Force Majeure the Provider must continue to carry out and complete all Orders that have been issued before termination;
 - the Provider must notify the Client's Representative of any Order that the Provider is not able to complete;
 - the Client must pay the Provider for all Orders completed up to the Termination Date in accordance with Clause 9 [*Payment*];
 - the Client must pay the Provider a fair and reasonable amount for all uncompleted Orders up to the Termination Date (such amount being determined by the Client's Representative in the Final Account under Clause 9.12 [*Final Account*] following the Provider's Valuation);
 - the Client must pay the Provider the market value on the Termination Date of any Equipment or Materials owned by the Provider which are to be transferred to the Client on termination;
 - the Client may require the Provider to novate any Subcontracts and/or Supply Contracts to the Client by serving notice to that effect on the Provider:
 - o at the same time as the notice of termination where the notice of termination is served by the Client; or
 - o within 5 (five) Business Days of the date of service of the notice of termination where the notice of termination is served by the Provider;
 - except as provided above neither Party is to have any claim against the other as a result of termination for Force Majeure, but this is without prejudice to:
 - o any amounts due under Clause 9 [*Payment*] for Orders completed before the Termination Date; and
 - o any other Liability or sums due under this Contract in respect of any period up to the Termination Date or resulting from events that happened before it.
- 13.4.3 Where a Workstream is removed from this Contract as a result of Force Majeure applying to that Workstream, Clause 13.4.2 shall apply to that Workstream as though references in it to the Termination Date were to the date of removal of that Workstream.
- 13.4.4 Where the Provider completes Orders under Clause 13.4.2 the Termination Date will be the date of completion of the last Order to the reasonable satisfaction of the Client's Representative.
- 13.4.5 The Client's Representative must issue the Completion Certificate following the completion of all Orders and the rectification of all Defects notified to the Provider up to the date of the final Valuation in each case to the satisfaction of the Client's Representative.

NHF FORM OF CONTRACT 2023 – CONTRACT CONDITIONS

13.5 Break clause

- 13.5.1 The Client may terminate this Contract by giving the Provider the period of written notice stated in the Contract Details. The Client's notice to terminate under this Clause may not expire earlier than any date stated in the Contract Details (if any).
- 13.5.2 The Provider may terminate this Contract by giving the Client the period of written notice as stated in the Contract Details. The Provider's notice to terminate under this Clause may not expire earlier than any date stated in the Contract Details (if any).
- 13.5.3 Following the service of a notice under Clause 13.5.1 or 13.5.2 the Provider:
- must continue to carry out and complete Orders except as set out below;
 - need not carry out any Order Instructed after receipt of the notice which cannot be reasonably completed before the Termination Date unless the Client's Representative and Provider agree otherwise and the Provider must notify the Client's Representative of the fact that the Order cannot be completed before the expected Termination Date set out in the notice to terminate immediately on receipt of the Order;
 - must complete all Orders Instructed before the receipt of the notice, even if such Works cannot be completed before the expected Termination Date set out in the notice to terminate.
- 13.5.4 Where the Provider completes Orders under Clause 13.5.3 the Termination Date will be the date of completion of the last Order to the reasonable satisfaction of the Client's Representative.
- 13.5.5 If this Contract is terminated by either Party exercising the break provision under Clause 13.5.1 or 13.5.2:
- the Client may require the Provider to novate any Subcontracts and/or Supply Contracts to the Client by serving notice to that effect on the Provider at least 25 (twenty-five) Business Days before the Termination Date; and
 - neither the Client nor the Provider will have any claims against the other for any resulting loss or damage but this is without prejudice to:
 - o any amounts due under Clause 9 [*Payment*] for Orders completed before the Termination Date; and
 - o any other Liability or sums due under this Contract in respect of any period up to the Termination Date or resulting from events which happened before it.

13.6 Expiry

- 13.6.1 During the 3 (three) Months preceding the Expiry Date the Provider:
- must continue to carry out and complete Orders except as set out below;
 - need not carry out any Order Instructed during those 3 (three) Months which cannot be reasonably completed before the Expiry Date unless the Client's Representative and Provider agree otherwise and the Provider must notify the Client's Representative of the fact that the Order cannot be completed before the Expiry Date immediately on receipt of the Order; and
 - must complete all Orders Instructed before the start of such 3 (three) Month period, even if such Works cannot be completed before the Expiry Date.

NHF FORM OF CONTRACT 2023 – CONTRACT CONDITIONS

- 13.6.2 Where the Provider completes Orders under Clause 13.6.1 the Expiry Date will be the date of completion of the last Order to the reasonable satisfaction of the Client's Representative.
- 13.6.3 Where this Contract is terminated under Clause 13.5.1 or 13.5.2 [*Break clause*]:
- the Client may require the Provider to novate any Subcontracts and/or Supply Contracts to the Client by serving notice to that effect on the Provider at least 25 (twenty-five) Business Days before the Expiry Date; and
 - neither Party is to have any claim against the other as a result of such termination but this is without prejudice to:
 - any amounts due under Clause 9 [*Payment*] for Orders completed before the Termination Date; and
 - any other Liability or sums due under this Contract in respect of any period up to the Termination Date or resulting from events that happened before it.

13.7 Removal of Workstreams

- 13.7.1 The Client may remove one or more Workstreams from this Contract:
- if Provider Default occurs (including a Material Breach that is not rectified within the period set out in a written notice from the Client:
 - specifying the Material Breach;
 - giving the Provider a period to put it right (which may not be less than 20 (twenty) Business Days unless the Client (acting reasonably) considers that the Material Breach needs to be put right within a shorter period than this); and
 - warning the Provider that that Workstream may be removed from this Contract if the Material Breach is not put right within that period); or
 - by giving the Provider the period of written notice stated in the Contract Details. The Client's notice to remove a Workstream under this Clause may not (other than in the case of Provider Default) expire earlier than any date stated in the Contract Details (if any).
- 13.7.2 Following the removal of a Workstream:
- where this is following Provider Default:
 - no payment is to be made or due for uncompleted Orders in relation to that Workstream except to the extent that the Client's Representative considers that part of an Order has been fully completed;
 - the Client may require the Provider to novate any Subcontracts and/or Supply Contracts to the Client relating to that Workstream by serving notice to that effect on the Provider at the same time as giving notice of termination;
 - the Client may itself complete or employ other persons to complete any Orders that are outstanding or part-completed and recover any additional cost of doing so (compared to the amount the Client would have paid) from the Provider. Such persons may use any of the Provider's or a Subcontractor's Materials and Equipment for doing so; and
 - the Client may deduct its costs relating to the termination from any sum due to the Provider.

NHF FORM OF CONTRACT 2023 – CONTRACT CONDITIONS

- In all circumstances:
 - the Provider shall not be entitled to any compensation for the removal of that Workstream; and
 - the Rates payable for other Workstreams shall not be changed.

13.8 Completion certificate

- 13.8.1 Following the termination of this Contract the Client's Representative must issue the Completion Certificate following the completion of all Orders and the rectification of all Defects notified to the Provider up to the date of the final Valuation in each case to the satisfaction of the Client's Representative.

13.9 Obligations to co-operate on handover

- 13.9.1 On termination of this Contract or the removal of a Workstream from it, the Provider must co-operate fully with the Client and/or any Successor Contractor in relation to the legal and operational handover of responsibilities between the Provider and the Client or the Successor Contractor.
- 13.9.2 The Provider must use all reasonable endeavours to procure that the benefit of any guarantees, warranties, documentation, and service agreements relating to the Works that are in force on the Termination Date are assigned to the Client or as the Client's Representative may Instruct.
- 13.9.3 Except where this Contract is terminated for Provider Default, and subject to the Provider obtaining permission to do so from any Customer occupying the affected Properties, the Provider may go onto any of the Properties in the 10 (ten) Business Days after the Termination Date to remove any Materials or Equipment which either it or a Subcontractor owns or has hired and which are not to be transferred to the Client on the Termination Date.
- 13.9.4 The Provider must deliver all Materials and Equipment paid for by the Client to the Client or as the Client's Representative directs within 10 (ten) Business Days of:
- the Termination Date, where the reason for termination is any reason other than Client Default; or
 - where the termination is for Client Default, the date on which the Provider receives payment for those plant and Materials under Clause 13.3.3 [*Termination for Client Default*].
- 13.9.5 The Provider must ensure that all rubbish, debris, and site waste has been removed from the Properties within 10 (ten) Business Days of the Termination Date but the Provider's attendance at any Properties for the purpose of such removal is subject to:
- any direction of the Client's Representative; and
 - the Provider obtaining permission to do so from any Customer occupying those Properties.
- 13.9.6 If the Provider fails to remove all rubbish, debris, and site waste from the Properties within 10 (ten) Business Days of the Termination Date the Client may do so and recover its reasonable costs of doing so from the Provider through the Final Account.
- 13.9.7 Within 5 (five) Business Days of the Termination Date, the Provider must:
- return to the Client the Client Data and all Documents and Data provided by the Client;
 - provide copies of all other Documents and Data used in connection with the Works to the Client; and

NHF FORM OF CONTRACT 2023 – CONTRACT CONDITIONS

- return to the Client all keys, passes, door entry codes and other information relating to the Properties.
- 13.9.8 All the Documents and Data (including Client Data) provided under Clause 13.9.7 must be supplied in the formats required by the Client and must be up-to-date to midnight on the Termination Date.
- 13.9.9 Following the later of the issue of the Certificate of Making Good Defects and payment of the Final Account the Provider must delete all copies of all Documents and Data relating to this Contract from the Provider's IT System except:
- those required to be kept under Clause 13.10.2 [*Post Termination*]; and
 - any in which the Provider has the Intellectual Property Rights under Clause 7.1.2 [*Intellectual Property Rights and Client Data*].

13.10 Post Termination

- 13.10.1 Termination of this Contract is without prejudice to the continuation of any provisions intended to survive termination including:
- Clause 6.5.2 [*TUPE Retendering Information*];
 - Clause 6.6 [*TUPE transfer to a Successor Contractor*];
 - Clause 6.7.2 [*TUPE and Subcontractors*];
 - Clause 7 [*Information Handling*];
 - Clause 9 [*Payment*];
 - Clause 10.1 [*Assignment and Novation by the Client*];
 - Clause 10.2 [*Assignment by the Provider*];
 - Clause 11 [*Indemnity and Insurance*] as regards the Indemnities included in that Clause and any express obligations to insure for any period after the Termination Date;
 - Clause 0 [*Termination and Expiry*];
 - Clause 14 [*General Provisions*]; and
 - Clause 15 [*Dispute Resolution*] (other than in relation to any Disputes over termination).
- 13.10.2 For a period of 7 (seven) years after the Termination Date the Provider must maintain full records of:
- this Contract;
 - the Works done under it;
 - all payments received from the Client; and
 - any expenditure of the Provider that the Client reimburses.

14. GENERAL PROVISIONS

14.1 Third party rights, groups and ALMOs

- 14.1.1 Where the Client requires the Provider to undertake Works for a Group Organisation that Group Organisation may rely on this Contract under the Contracts (Rights of Third Parties) Act 1999.

NHF FORM OF CONTRACT 2023 – CONTRACT CONDITIONS

- 14.1.2 Where the Client is an ALMO, the Council of which it is an ALMO (as set out in the Contract Details) may rely on this Contract under the Contracts (Rights of Third Parties) Act 1999.
- 14.1.3 Subject to Clauses 14.1.1 and 0, nothing in this Contract confers any benefit on any person or Organisation who is not a Party or gives any such person or Organisation any right to enforce it.

14.2 Waiver and severability

- 14.2.1 A failure by the Client in enforcing any rights, powers or privileges under this Contract is not to be construed as a waiver of that provision. Such failure does not affect the validity of this Contract or the Client's right to enforce it in accordance with its terms.
- 14.2.2 The single or partial exercise of any right, power or privilege under this Contract does not prevent any other exercise of that right, power or privilege or the exercise of any other right, power, or privilege (whether arising out of the same factual situation or otherwise).
- 14.2.3 Any waiver of a breach of this Contract is not to be effective unless given in writing signed by the Party waiving its entitlement.
- 14.2.4 No waiver is to be deemed a waiver of any subsequent breach or default nor is it to affect the other terms of this Contract.
- 14.2.5 The receipt of money does not prevent the Party receiving it questioning the correctness of the amount or of any statement concerning that or any other amount due.
- 14.2.6 If any term of this Contract is illegal, void, or unenforceable the remainder of this Contract will continue in force, modified to the minimum extent necessary to make it legal, valid and enforceable, as though that term had not been included in it.
- 14.2.7 All remedies available to either Party for breach of this Agreement are cumulative and may be exercised concurrently or separately. The exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

14.3 Entire agreement

- 14.3.1 Subject as provided in Clause 14.3.3, this Contract sets out the whole agreement between the Parties in relation to the Works. It supersedes and invalidates all other commitments, representations and warranties relating to its subject matter which either Party has made orally or in writing.
- 14.3.2 Each Party warrants that it has not entered into any this Contract in reliance on any representation made by the other except to the extent that such representation is expressly included in it.
- 14.3.3 Nothing in this Clause 14.3 excludes any liability for fraudulent misrepresentation.

14.4 Extent of obligations and further assurance

- 14.4.1 Where the Client is a charity and/or a Registered Provider (as set out in the Contract Details), nothing in this Contract requires the Client to act in any way which is inconsistent with its obligations as such.
- 14.4.2 Where the Client is a local authority (as set out in the Contract Details), nothing in this Contract requires the Client to act in any way which is inconsistent with its statutory duties or obligations as a local authority and nothing in this Contract is to act as a fetter on the Client in the exercise of those statutory duties and obligations.
- 14.4.3 Each Party undertakes (subject to Clauses 14.4.1 and 14.4.2) to do all things and execute all further documents that the other may reasonably require to give effect to this Contract.

NHF FORM OF CONTRACT 2023 – CONTRACT CONDITIONS

14.5 No partnership or agency

- 14.5.1 Nothing in this Contract is to constitute or be deemed to create a partnership within the meaning of the Partnership Act 1890, the Limited Partnerships Act 1907, the Limited Liability Partnerships Act 2000, or any other Law concerning partnerships or limited liability partnerships.
- 14.5.2 Neither Party may hold itself out as the agent of the other and neither Party has any authority to bind the other except to the extent that this Contract expressly provides otherwise.

14.6 Variations of this Contract

- 14.6.1 No variation of this Contract (other than one made in accordance with Clause 8 [*Changes to Order Prices, Response Periods and/or Target Completion Dates*]) is to bind either Party and no person has authority on behalf of either Party to agree to any variations to this Contract except where the amendment is agreed to in writing by both Parties.
- 14.6.2 No consents to any variation to this Contract are required from any person who is not a Party.

14.7 Notices

- 14.7.1 Notices or other communications under this Contract will be duly served if given by and sent to the Party to be served in accordance with the following table (and the date of service and method of proof of service will be as set out in the table):

Method of service	Date of service	Proof of service
Personal delivery of a letter addressed to the Party to be served to the address for service.	Day of delivery if before 16.00 on a Business Day otherwise 10.00 on the next Business Day after that.	Proof of delivery of the letter to an individual at the address for service.
Letter sent by first class post addressed to the Party to be served at its address for service.	48 (forty-eight) hours after posting if that is a Business Day otherwise 10.00 on the next Business Day after that.	Proof of posting to the address for service (unless the letter is returned undelivered within 10 (ten) Business Days, in which case service is not effective).
Where the Contract Details provide for service by email, and subject to Clause 0, by "read receipt" email to the email address specified in Contract Details.	Time of opening of the email.	Notification of the opening of the email by its recipient provided it is safely delivered to the correct email address.

NHF FORM OF CONTRACT 2023 – CONTRACT CONDITIONS

- 14.7.2 The following notices may not be served by email:
- a notice warning of impending termination under Clause 13.1.1 [*Termination for Provider Default*] or Clause 13.3.1 [*Termination for Client Default*];
 - a notice of termination or to remove a Workstream under Clause 0 [*Termination and Expiry*].
- 14.7.3 Each Party's address for service is the address set out at the start of the Contract Details or such other address as it notifies to the other(s) in writing.
- 14.7.4 Each Party's registered or principal office (where different from their address set out in the Contract Details) is also a permissible address for service and notices may be served there instead.

14.8 Governing Law and enforcement

- 14.8.1 The formation, construction, performance, validity, and all aspects of this Contract are to be governed by English Law.
- 14.8.2 Subject to Clause 0 [*Arbitration*] (where applicable) the Parties agree to submit to the exclusive jurisdiction of the courts of England and Wales.

14.9 Counterparts

- 14.9.1 This Contract may be executed in counterparts each of which is deemed to be an original and the counterparts together constitute the same agreement.

14.10 Legal costs

- 14.10.1 Each Party is to bear their own costs in relation to the negotiation and completion of this Contract.

15. DISPUTE RESOLUTION

15.1 Dispute escalation procedure

- 15.1.1 Each Party agrees to attempt to resolve any Disputes which it has with the other amicably but nothing in this Clause is to prevent the exercise by a Party of its other rights under this Contract.
- 15.1.2 If a Party considers that a Dispute has arisen under this Contract (including any allegation that the other has breached this Contract) it may write a letter to that Party specifying:
- what the Dispute is alleged to be;
 - what steps that Party should take to resolve the Dispute (or remedy the breach); and
 - within what reasonable period such steps should be taken.
- 15.1.3 If the Dispute is not resolved (or the breach is not remedied) within the period set out in the letter then the Parties will seek to resolve the Dispute in accordance with the Dispute Escalation Table.
- 15.1.4 Each of the individuals named in the Dispute Escalation Table are to have the period stated in the Contract Details to agree a solution with the individual stated alongside their respective names, failing which the Dispute is to be escalated to the next named individuals (if any).
- 15.1.5 Clauses 15.1.1 to 15.1.4 do not apply to any Disputes over a decision to terminate this Contract or over any Party's entitlement to do so.

NHF FORM OF CONTRACT 2023 – CONTRACT CONDITIONS

15.2 Adjudication

- 15.2.1 If a Dispute arises under this Contract which either Party wishes to refer to adjudication, the TeCSA (Technology and Construction Solicitors Association) Adjudication Rules current at the time of the Dispute shall apply and the Adjudicator shall be appointed in accordance with those rules.

15.3 Mediation

- 15.3.1 Either Party may, at any time after the procedure under Clause 15.1 [*Dispute escalation procedure*] has been followed, invite the other Party to attempt to settle a Dispute by mediation in accordance with the CEDR Model Mediation Procedure in force at the time of referral of the Dispute to mediation or by such other mediation or conciliation procedure as the Parties agree.
- 15.3.2 If the Parties cannot agree the identity of the Mediator within 10 (ten) Business Days after either Party has given to the other a written request to concur to the appointment of a Mediator, the Mediator is to be nominated by CEDR at the request of either Party.
- 15.3.3 Any mediation must be completed within 25 (twenty-five) Business Days of the referral of the Dispute to mediation or such longer period as the Parties may agree.
- 15.3.4 The Parties are not bound to participate in a mediation, and a refusal by either Party to participate in a mediation, or the withdrawal by either Party from a mediation, is not a breach of this Contract.
- 15.3.5 Either Party may, unless that Party has expressly agreed in writing to accept the outcome of the Mediation as a final and binding resolution of the Dispute, subsequently give notice to the other to refer the same Dispute to adjudication, litigation or (where applicable) arbitration.

15.4 Expert decision

- 15.4.1 As a means of Dispute resolution this Contract may provide or the Parties may agree to refer a Dispute to decision by an Expert.
- 15.4.2 The Expert must have appropriate qualifications and practical experience to resolve the particular Dispute and must either be agreed by the Parties or appointed under Clause 15.4.3.
- 15.4.3 If the Parties cannot agree the identity of the Expert within 10 (ten) Business Days of either Party proposing at least 2 (two) possible appropriate Experts to the other, the Expert is to be appointed by the person stated in the Contract Details on the application of either Party.
- 15.4.4 The Parties must promptly give the Expert (imposing appropriate obligations of confidence if they wish) all information reasonably requested by the Expert relating to the Dispute.
- 15.4.5 The Expert may determine the procedure (if any) to be adopted to reach a decision.
- 15.4.6 The Expert must give the decision within 25 (twenty-five) Business Days following receipt of the information requested or such longer period as the Parties agree. The Parties must co-operate fully with the Expert to achieve this objective.
- 15.4.7 The Parties are to share equally the fees and expenses of the Expert except to the extent that, as a result of the decision reached, the Expert decides that one Party should bear all or a greater proportion of the fees and expenses of the Expert. The decision of the Expert is final and binding upon each of the Parties (but this Clause is not to exclude the operation of any set off permissible under this Contract).

15.5 Arbitration

- 15.5.1 Subject to Clause 15.5.2, where the Contract Details specify Arbitration as the forum for the final resolution of Disputes under this Contract, then either Party may refer a Dispute to arbitration at any time after the exhaustion of the procedure in Clause 15.1 [*Dispute escalation procedure*].
- 15.5.2 Arbitration is not to apply to any Dispute:
- that involves the CIS or VAT (where the applicable Law provides an alternative dispute resolution procedure);
 - concerning the enforcement of an Adjudicator's decision; or
 - relating to termination of this Contract, including a Dispute over a decision to terminate this Contract or over a Party's entitlement to do so.
- 15.5.3 Any arbitration is to be conducted in accordance with the latest edition of the Construction Industry Model Arbitration Rules (CIMAR) current at the time the referral is made to the Arbitrator.
- 15.5.4 The Arbitration Act 1996 will apply to any arbitration relating to this Contract and the seat of the arbitration will be England and Wales.
- 15.5.5 Nothing in this clause is to prevent either Party applying for an injunction or other interim relief via the courts.

15.6 Settlement of Disputes

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