

Terms and Conditions for the Supply of Goods and Services

1 Interpretation

1.1 In these terms and conditions:

Agreement	means the contract between (i) Progress and (ii) the Supplier constituted by the Supplier's countersignature or written acceptance of the Order (or, if earlier, Delivery of the Goods and/or provision of the Services) and includes the Order and its schedules, annexures, enclosures and attachments (if any);
Bribery Act	means the Bribery Act 2010 and any subordinate legislation made under that Act from time to time together with any guidance or codes of practice issued by the relevant government department concerning the legislation;
Charges	means the charges for the Goods and/or Services as specified in the Order;
Confidential Information	means all information, whether written or oral (however recorded), provided by the disclosing Party to the receiving Party and which (i) is known by the receiving Party to be confidential; (ii) is marked as or stated to be confidential; or (iii) ought reasonably to be considered by the receiving Party to be confidential;
Data Protection Legislation	the UK Data Protection Legislation and any other legislation relating to personal data and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of Personal Data (including, without limitation, the privacy of electronic communications) and the guidance and codes of practice issued by the relevant data protection or supervisory authority and applicable to a party. This shall include but is not limited to the Data Protection Act 2018, the UK General Data Protection Regulation and the Privacy and Electronic Communications Regulations;
Date of Delivery	means that date by which the Goods must be Delivered to Progress, as specified in the Order.
Deliver	means hand over the Goods to Progress at the address and on the date specified in the Order, which shall include unloading and any other specific arrangements agreed in accordance with Clause 4. Delivered and Delivery shall be construed accordingly.
Deliverables	all documents, products and materials developed by the Supplier or its agents, contractors and employees as part of or in relation to the Services in any form or media, including drawings, maps, plans, diagrams, designs, pictures, computer programs, data, specifications and reports (including drafts).
EIRs	means the Environmental Information Regulations 2004;
FOIA	means the Freedom of Information Act 2000;
Goods	means the goods to be supplied by the Supplier to Progress under the Agreement;

Insurance Policies	means commercial general liability insurance, public liability insurance, employer's liability insurance and professional indemnity insurance, and any other insurance required as part of the contract;
Intellectual Property Right	patents, utility models, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other Intellectual Property Rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world
Key Personnel	means any persons specified as such in the Order or otherwise notified as such by the parties to the Agreement in writing;
Mandatory Policies	means Progress's mandatory policies for contracts as set out in the Order or as may otherwise be notified by Progress to the Supplier from time to time prior to entering into the Agreement and as may be subsequently reasonably amended by notification to the Supplier;
MSA	means the Modern Slavery Act 2015;
Order	means the purchase order, the award letter, or the email (as the case may be) issued by Progress to the Supplier relating to the Goods and specifying the Charges and indicating that these terms and conditions apply;
Party	the Supplier or Progress (as appropriate) and " Parties " shall mean both of them;
PCRs	means the Public Contracts Regulations 2015;
Progress	means Progress Housing Group Limited and any subsidiaries of it (as defined in section 1159 of the Companies Act 2006 which shall apply as if all entities were limited companies)
Purchase Order Number	means Progress's unique number relating to the Order for Deliverables to be supplied by the Supplier to Progress in accordance with the terms of the Agreement;
Regulations	means the standards, codes of practice and any guidance or policies issued by the Regulator which apply to Progress from time to time and (where Progress is a registered provider of social housing) any other regulations and guidance that apply from time to time to registered providers of social housing;
Regulator	means the Regulator of Social Housing or any replacement regulator from time to time;
Request for Information	has the meaning set out in the EIRs and the FOIA (where the meaning set out for the term " request " shall apply);

Services	means the services, including any deliverables, to be supplied by the Supplier to Progress under the Agreement;
Specification	means the specification for the Goods to be supplied by the Supplier to Progress (including as to quantity, description and quality) as specified in the Order and any key performance indicators;
Staff	means all directors, officers, partners, employees, agents, consultants and contractors of the Supplier and/or of any sub-contractor of the Supplier engaged in the performance of the Supplier's obligations under the Agreement;
Staff Vetting Procedures	means vetting procedures that accord with good industry practice or, where applicable, Progress's procedures for the vetting of personnel as provided to the Supplier from time to time;
Supplier	means the person named as Supplier in the Order;
Term	means the period from the start date of the Agreement set out in the Order to the Expiry Date as such period may be extended in accordance with the Order or terminated in accordance with the terms and conditions of the Agreement;
UK Data Protection Legislation	all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679), the Data Protection Act 2018, the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.
VAT	means value added tax in accordance with the provisions of the Value Added Tax Act 1994; and
Working Day	means a day other than a Saturday or Sunday or public holiday in England when banks are open for business in the City of London.

1.2 In these terms and conditions, unless the context otherwise requires:

- 1.2.1 references to numbered clauses are references to the relevant clause in these terms and conditions;
- 1.2.2 any obligation on any Party not to do or omit to do anything shall include an obligation not to allow that thing to be done or omitted to be done;
- 1.2.3 the headings to the clauses of these terms and conditions are for information only and do not affect the interpretation of the Agreement;
- 1.2.4 any reference to an enactment includes reference to that enactment as amended or replaced from time to time and to any subordinate legislation or byelaw made under that enactment; and

1.2.5 the word 'including' shall be understood as meaning 'including without limitation'.

2 Basis of Agreement

- 2.1 The Order constitutes an offer by Progress to purchase the Goods and/or Services from the Supplier subject to and in accordance with these terms and conditions and the terms and conditions of the Agreement.
- 2.2 The Order shall be deemed to be accepted on the earlier of:
 - 2.2.1 the Supplier issuing written acceptance of the Order; or
 - 2.2.2 any act by the Supplier consistent with fulfilling the Order,at which point and on which date the Agreement shall come into existence (**Commencement Date**).
- 2.3 These terms and conditions as amended from time to time apply to the Agreement to the exclusion of any other terms that the Supplier seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.4 All of these terms and conditions shall apply to the supply of both Goods and Services except where the application to one or the other is specified.
- 2.5 In the case of their being any inconsistency between the Order and these terms and conditions, the Order shall be deemed to take precedence. Any concession made or latitude allowed by Progress to the Supplier shall not affect the strict rights of Progress under these terms and conditions.

3 Supply of Goods

- 3.1 In consideration of Progress's agreement to pay the Charges, the Supplier shall supply the Goods to Progress Housing subject to and in accordance with the terms and conditions of the Agreement.
- 3.2 In supplying the Goods, the Supplier shall co-operate with Progress in all matters relating to the supply of Goods and comply with all Progress's instructions.
- 3.3 The Supplier shall supply the Goods in accordance with the Specification. The Supplier warrants, represents, undertakes and guarantees that the Goods supplied under the Agreement shall:
 - 3.3.1 be free from defects (manifest or latent), in design, materials and workmanship and remain so for 12 months after Delivery;
 - 3.3.2 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979) and comply with any applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods;

- 3.3.3 conform with the specifications (including the Specification), drawings, descriptions given in quotations, estimates, brochures, sales, marketing and technical literature or material (in whatever format made available by the Supplier) supplied by, or on behalf of, the Supplier;
 - 3.3.4 be free from design defects; and
 - 3.3.5 be fit for any purpose held out by the Supplier or made known to the Supplier by Progress expressly or by implication, and in this respect, Progress relies on the Supplier's skill and judgement. The Supplier acknowledges and agrees that the approval by Progress of any designs provided by the Supplier shall not relieve the Supplier of any of its obligations under this sub-clause.
- 3.4 The Supplier shall ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Agreement in respect of the Goods
- 3.5 The Supplier shall comply with the Mandatory Policies and all applicable laws, including the Data Protection Legislation, the Regulations, the MSA, the PCR, and the Bribery Act.

4 Delivery of Goods

- 4.1 The Supplier shall Deliver the Goods to Progress:
 - 4.1.1 on or by the Date of Delivery, unless otherwise agreed in writing by Progress; or
 - 4.1.2 on the date and to the address specified in the Order.
- 4.2 Delivery of the Goods shall be completed once the completion of unloading the Goods from the transporting vehicle at the Delivery address has taken place and Progress has signed for the Delivery.
- 4.3 Any access to Progress's premises and any labour and equipment that may be provided by Progress in connection with Delivery of the Goods shall be provided without acceptance by Progress of any liability in respect of any actions, claims, costs and expenses incurred by third parties for any loss of damages to the extent that such loss or damage is not attributable to the negligence or other wrongful act of Progress or its servant or agent. The Supplier shall indemnify Progress in respect of any actions, suits, claims, demands, losses, charges, costs and expenses, which Progress may suffer or incur as a result of or in connection with any damage or injury (whether fatal or otherwise) occurring in the course of Delivery or installation to the extent that any such damage or injury is attributable to any act or omission of the Supplier or any of their sub-suppliers.
- 4.4 Delivery of the Goods shall be accompanied by a delivery note which shows the Purchase Order Number and the type and quantity of the Goods and, in the case of part Delivery, the outstanding balance remaining to be Delivered.

4.5 Unless otherwise stipulated by Progress in the Order, Deliveries shall only be accepted by Progress on Working Days and during normal business hours.

4.6 Where:

- (i) the Supplier fails to Deliver the Goods or part of the Goods; or
- (ii) the Goods or part of the Goods do not comply with the provisions of clause 3, then without limiting any of its other rights or remedies implied by statute or common law, Progress shall be entitled to:

- 4.6.1 terminate the Agreement;
- 4.6.2 request the Supplier, free of charge, to deliver substitute Goods within the timescales specified by Progress;
- 4.6.3 require the Supplier, free of charge, to repair or replace the rejected Goods, or to provide a full refund of the price of the rejected Goods (if paid);
- 4.6.4 reject the Goods (in whole or part) and return them to the Supplier at the Supplier's own risk and expense and Progress shall be entitled to a full refund on those Goods or part of Goods duly returned;
- 4.6.5 buy the same or similar Goods from another supplier and
- 4.6.6 recover any expenses incurred in respect of buying the goods from another supplier which shall include but not be limited to administration costs, chargeable staff time and extra delivery costs.

5 Property and Guarantee of Title

5.1 Without prejudice to any other rights or remedies of Progress, title and risk in the Goods shall pass to Progress when Delivery of the Goods is complete (including off-loading and stacking).

5.2 The Supplier warrants that:

- 5.2.1 it has full clear and unencumbered title to all the Goods; and
- 5.2.2 at the date of Delivery of any of the Goods it shall have full and unrestricted right, power and authority to sell, transfer and deliver all of the Goods to Progress. On Delivery Progress shall acquire a valid and unencumbered title to the Goods.

6 Supply of Services

6.1 In consideration of Progress's agreement to pay the Charges, the Supplier shall supply the Services to Progress for the Term subject to and in accordance with the terms and conditions of the Agreement.

6.2 In supplying the Services, the Supplier shall:

- 6.2.1 co-operate with Progress in all matters relating to the Services and comply with all Progress's instructions;
 - 6.2.2 perform the Services with all reasonable care, skill and diligence in accordance with good industry practice in the Supplier's industry, profession or trade;
 - 6.2.3 use Staff who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled in accordance with the Agreement;
 - 6.2.4 ensure that the Services and Deliverables shall conform with all descriptions, standards, specifications, and key performance indicators as set out in the Specification and elsewhere in the Order and that the Deliverables shall be fit for any purpose that Progress expressly or impliedly makes known to the Supplier;
 - 6.2.5 use the best quality goods, materials, standards and techniques, and ensure that the Deliverables, and all goods and materials supplied and used in the Services or transferred to Progress, will be free from defects in workmanship, installation and design;
 - 6.2.6 comply with the Mandatory Policies and all applicable laws, regulations, regulatory policies, guidelines or industry codes which apply to the provision of the Services including, but not limited to, the Data Protection Legislation, the Regulations, the MSA, the PCR and the Bribery Act;
 - 6.2.7 observe all health and safety rules and regulations and any other security requirements that apply at any of Progress' premises;
 - 6.2.8 provide all equipment, tools and vehicles and other items as are required to provide the Services;
 - 6.2.9 not do or omit to do anything which may cause Progress to lose any licence, authority, consent or permission upon which it relies for the purposes of conducting its business, and the Supplier acknowledges that Progress may rely or act on the Services; and
 - 6.2.10 comply with any additional obligations as set out in the Specification.
- 6.3 Progress may by written notice to the Supplier at any time request a variation to the scope of the Services. In the event that the Supplier agrees to any variation to the scope of the Services, the Charges shall be subject to fair and reasonable adjustment to be agreed in writing between Progress and the Supplier.

7 Premises and equipment

- 7.1 If necessary, Progress shall provide the Supplier with reasonable access at reasonable times to its premises for the purpose of supplying the Services. All equipment, tools and vehicles brought onto Progress's premises by the Supplier or the Staff shall be at the Supplier's risk.

- 7.2 If the Supplier supplies all or any of the Services at or from any of Progress's premises, on completion of Delivery of the Services or termination or expiry of the Agreement (whichever is the earlier), the Supplier shall:
- 7.2.1 vacate Progress's premises;
 - 7.2.2 remove the Supplier's plant, equipment and unused materials and all rubbish arising out of the provision of the Services; and
 - 7.2.3 leave Progress's premises in a clean, safe and tidy condition. The Supplier shall be solely responsible for making good any damage caused to any of Progress's premises or any objects contained on any of Progress's premises which is caused by the Supplier or any Staff, other than fair wear and tear.
- 7.3 If the Supplier supplies all or any of the Services at or from its own premises or the premises of a third party, Progress may, during normal business hours and on reasonable notice, inspect and examine the manner in which the relevant Services are supplied at or from the relevant premises.
- 7.4 Progress shall be responsible for maintaining the security of its premises in accordance with its standard security requirements. While on any of Progress's premises, the Supplier shall, and shall procure that all Staff shall, comply with all Progress's security requirements.
- 7.5 Where all or any of the Services are supplied from the Supplier's premises, the Supplier shall, at its own cost, comply with all security requirements specified by Progress in writing.
- 7.6 Without prejudice to clause 6.2.8, any equipment provided by Progress for the purposes of the Agreement shall remain the property of Progress and shall be used by the Supplier and the Staff only for the purpose of carrying out the Agreement. Such equipment shall be returned promptly to Progress on expiry or termination of the Agreement.
- 7.7 The Supplier shall reimburse Progress for any loss or damage to its equipment (other than deterioration resulting from normal and proper use) caused by the Supplier or any Staff. Equipment supplied by Progress shall be deemed to be in a good condition when received by the Supplier or relevant Staff unless Progress is notified otherwise in writing within 5 Working Days of receipt.

8 Charges, Payment and Recovery of Sums Due

- 8.1 The Charges for the Goods and/or Services shall be as set out in the Order and shall be the full and exclusive remuneration of the Supplier in respect of the supply of the Goods and/or Services. Unless otherwise agreed in writing by Progress, the Charges shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the performance of the Services.
- 8.2 All amounts stated are exclusive of VAT which shall be charged at the prevailing rate. Progress shall, following the receipt of a valid VAT invoice, pay to the Supplier a sum equal to the VAT chargeable in respect of the Goods and/or Services.

- 8.3 The Supplier shall invoice Progress as specified in the Agreement. Each invoice shall include such supporting information required by Progress to verify the accuracy of the invoice, including, but not limited to, the relevant Purchase Order Number and a breakdown of the Goods and/or Services supplied in the invoice period.
- 8.4 In consideration of the supply of the Goods and/or Services by the Supplier, Progress shall pay the Supplier the invoiced amounts no later than 30 days after verifying that the invoice is valid and undisputed and includes a valid Purchase Order Number. Progress may, without prejudice to any other rights and remedies under the Agreement, withhold or reduce payments in the event of unsatisfactory performance.
- 8.5 If Progress fails to consider and verify an invoice in a timely fashion the invoice shall be regarded as valid and undisputed for the purpose of paragraph 8.4 after a reasonable time has passed.
- 8.6 If there is a dispute between the Parties as to the amount invoiced, Progress shall pay the undisputed amount. The Supplier shall not suspend the supply of the Goods and/or Services unless the Supplier is entitled to terminate the Agreement for a failure to pay undisputed sums in accordance with clause 21.4. Any disputed amounts shall be resolved through the dispute resolution procedure detailed in clause 24.
- 8.7 If a payment of an undisputed amount is not made by Progress by the due date, then Progress shall pay the Supplier interest at the interest rate of 2% above Bank of England base rate.
- 8.8 Interest shall not be payable in respect of any amount in dispute as notified to the Supplier unless such amount is subsequently agreed or held to be payable by Progress.
- 8.9 Where the Supplier enters into a sub-contract, the Supplier shall include in that sub-contract:
- 8.9.1 provisions having the same effects as clauses 8.3 to 8.8 of this Agreement; and
 - 8.9.2 a provision requiring the counterparty to that sub-contract to include in any sub-contract which it awards provisions having the same effect as 8.3 to 8.8 of this Agreement.

In this clause 8.9, "sub-contract" means a contract between two or more suppliers, at any stage of remoteness from Progress in a subcontracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this Agreement.

- 8.10 If any sum of money is recoverable from or payable by the Supplier under the Agreement (including any sum which the Supplier is liable to pay to Progress in respect of any breach of the Agreement), that sum may be deducted unilaterally by Progress from any sum then due, or which may become due, to the Supplier under the Agreement or under any other agreement or contract with Progress. The Supplier shall not be entitled to assert any credit, set-off or counterclaim against Progress in

order to justify withholding payment of any such amount in whole or in part.

- 8.11 The Supplier shall maintain complete and accurate records of the time spent and materials used by the Supplier in providing the Services, and the Supplier shall allow Progress to inspect such records at all reasonable times on request

9 Staff and Key Personnel

- 9.1 If Progress reasonably believes that any of the Staff are unsuitable to undertake work in respect of the Agreement, it may, by giving written notice to the Supplier:
- 9.1.1 refuse admission to the relevant person(s) to any of Progress's premises;
 - 9.1.2 direct the Supplier to end the involvement of that member of Staff in the provision of the Goods and/or Services; and/or
 - 9.1.3 require that the Supplier replace any person removed under this clause with another suitably qualified person and procure that any security pass issued by Progress to the unsuitable member of Staff removed is surrendered,
- and the Supplier shall comply with any such notice.
- 9.2 The Supplier shall:
- 9.2.1 ensure that all Staff are vetted in accordance with the Staff Vetting Procedures and (where relevant) any applicable Mandatory Policies and if requested, comply with Progress's Staff Vetting Procedures and Mandatory Policies as supplied from time to time;
 - 9.2.2 if requested, provide Progress with a list of the names and addresses (and any other relevant information) of all persons who may require admission to Progress's premises in connection with the Agreement; and
 - 9.2.3 procure that all Staff comply with any rules, regulations and requirements reasonably specified by Progress (including the Data Protection Legislation, the Regulations, the MSA, the Bribery Act and the PCRs).
- 9.3 Any Key Personnel shall not be released from supplying the Goods and/or Services without the agreement of Progress, except by reason of long-term sickness, maternity leave, paternity leave, termination of employment or other extenuating circumstances.
- 9.4 Any replacements to Key Personnel shall be subject to the prior written agreement of Progress (not to be unreasonably withheld). Such replacements shall be of at least equal status or of equivalent experience and skills to the Key Personnel being replaced and be suitable for the responsibilities of that person in relation to the Goods and/or Services.

10 Assignment and sub-contracting

- 10.1 The Supplier shall not, without the written consent of Progress assign, sub-contract, novate or in any way dispose of the benefit and/ or the burden of the whole or any part of the Agreement. Progress may, in the granting of such consent, provide for additional

terms and conditions relating to such assignment, sub-contract, novation or disposal. The Supplier shall be responsible for the acts and omissions of its sub-contractors as though those acts and omissions were its own.

- 10.2 Where Progress has consented to the placing of sub-contracts, the Supplier shall, at the request of Progress, send copies of each sub-contract, to Progress as soon as is reasonably practicable.
- 10.3 Progress may assign, novate, or otherwise dispose of its rights and obligations under the Agreement to any member of its group (as defined in the Companies Act 2006) without the consent of the Supplier or, provided that such assignment, novation or disposal shall not increase the burden of the Supplier's obligations under the Agreement, to any other entity.

11 Intellectual Property Rights

- 11.1 All Intellectual Property Rights in any materials provided by Progress to the Supplier for the purposes of this Agreement shall remain the property of Progress but Progress hereby grants the Supplier a royalty-free, non-exclusive and non-transferable licence to use such materials as required until termination or expiry of the Agreement for the sole purpose of enabling the Supplier to perform its obligations under the Agreement.
- 11.2 All Intellectual Property Rights in or arising out of or in connection with any materials created or developed by the Supplier pursuant to the Agreement or arising as a result of the provision of the Services shall vest in the Supplier. If, and to the extent, that any Intellectual Property Rights in such materials vest in Progress by operation of law, Progress hereby assigns to the Supplier by way of a present assignment of future rights that shall take place immediately on the coming into existence of any such Intellectual Property Rights all its Intellectual Property Rights in such materials (with full title guarantee and free from all third party rights).
- 11.3 The Supplier hereby grants Progress:
- 11.3.1 a perpetual, royalty-free, fully paid up, irrevocable, non-exclusive licence (with a right to sub-license) to use all Intellectual Property Rights in the materials created or developed pursuant to the Agreement and any Intellectual Property Rights arising as a result of the provision of the Services; and
 - 11.3.2 a perpetual, royalty-free, fully paid up, irrevocable and non-exclusive licence (with a right to sub-license) to use:
 - 11.3.2.1 any Intellectual Property Rights vested in or licensed to the Supplier on the date of the Agreement; and
 - 11.3.2.2 any Intellectual Property Rights created during the Term, but which are neither created or developed pursuant to the Agreement nor arise as a result of the provision of the Services,

including any modifications to or derivative versions of any such Intellectual Property Rights, which Progress reasonably requires in order to exercise its rights and take the benefit of the Agreement including the Services provided.

11.4 The Supplier shall indemnify, and keep indemnified, Progress in full against all costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses), including any interest, penalties, and reasonable legal and other professional fees (calculated on a full indemnity basis) awarded against or incurred or paid by Progress as a result of or in connection with:

11.4.1 any claim made against Progress for actual or alleged infringement of a third party's intellectual property arising out of, or in connection with, the manufacture supply or use of the Goods or receipt, supply or use of the Services, to the extent that the claim is attributable to the acts or omission of the Supplier or any Staff;

11.4.2 any claim made against progress by a third party for death, personal injury or damage to property arising out of or in connection with defects in the Goods as delivered or the Deliverables; and

11.4.3 any claim made against Progress by a third party arising out of or in connection with the supply of the Goods as delivered or the Services.

11.5 This clause shall survive termination of the Agreement.

12 Insurance

12.1 During the term of the Agreement, the Supplier shall maintain in force, with a reputable insurance company, professional indemnity insurance, product liability insurance and public liability insurance to cover the liabilities that may arise under or in connection with the Agreement, and shall, on Progress' request, produce both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance.

12.2 The Supplier shall maintain in force during the Agreement full and comprehensive Insurance Policies.

12.3 The Supplier shall ensure that the Insurance Policies are taken out with reputable insurers acceptable to Progress and that the level of cover and other terms of insurance are acceptable to and agreed by Progress.

12.4 The Supplier shall on request supply to Progress copies of the Insurance Policies and evidence that the relevant premiums have been paid.

12.5 The Supplier shall notify the insurers of Progress's interest and shall cause the interest to be noted on the Insurance Policies together with a provision to the effect that, if

any claim is brought or made by Progress against the Supplier in respect of which the Supplier would be entitled to receive indemnity under any of the Insurance Policies, the relevant insurer will indemnify Progress directly against such claim and any charges, costs and expenses in respect of such claim. If the relevant insurer does not so indemnify Progress, the Supplier shall use all insurance monies received by it to indemnify Progress in respect of any claim and shall make good any deficiency from its own resources.

- 12.6 The Supplier shall comply (and shall procure that the Individual complies) with all terms and conditions of the Insurance Policies at all times. If cover under the Insurance Policies shall lapse or not be renewed or be changed in any material way or if the Supplier is aware of any reason why the cover under the Insurance Policies may lapse or not be renewed or be changed in any material way, the Supplier shall notify Progress without delay.

13 Governance and Records

13.1 The Supplier shall:

13.1.1 attend progress meetings with Progress at the frequency and times specified by Progress and shall ensure that its representatives are suitably qualified to attend such meetings; and

13.1.2 submit progress reports to Progress at the times and in the format specified by Progress.

- 13.2 The Supplier shall keep and maintain until 6 years after the end of the Agreement, or as long a period as may be agreed between the Parties, full and accurate records of the Agreement including the Services supplied under it and all payments made by Progress. The Supplier shall on request afford Progress or Progress's representatives such access to those records as may be reasonably requested by Progress in connection with the Agreement.

14 Confidentiality, Transparency and Publicity

- 14.1 Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 14.3.

14.2 Subject to clause 14.3, each Party shall:

14.2.1 treat all Confidential Information it receives as confidential, safeguard it accordingly and not disclose it to any other person without the prior written permission of the disclosing Party; and

14.2.2 not use or exploit the disclosing Party's Confidential Information in any way except for the purposes anticipated under the Agreement.

- 14.3 Notwithstanding clause 14.1, a Party may disclose Confidential Information which it receives from the other Party:

- 14.3.1 where disclosure is required by applicable law or by a court of competent jurisdiction;
- 14.3.2 to its auditors or for the purposes of regulatory requirements;
- 14.3.3 on a confidential basis, to its professional advisers;
- 14.3.4 to the Serious Fraud Office where the Party has reasonable grounds to believe that the other Party is involved in activity that may constitute a criminal offence under the Bribery Act;
- 14.3.5 where the receiving Party is the Supplier, to the Staff on a need to know basis to enable performance of the Supplier's obligations under the Agreement provided that the Supplier shall procure that any Staff to whom it discloses Confidential Information pursuant to this clause 14.3.5 shall observe the Supplier's confidentiality obligations under the Agreement; and
- 14.3.6 where the receiving Party is Progress:
 - 14.3.6.1 on a confidential basis to the employees, agents, consultants and contractors of Progress;
 - 14.3.6.2 on a confidential basis to any other member of its group (as defined in the Companies Act 2006), or any company to which Progress transfers or proposes to transfer all or any part of its business;
 - 14.3.6.3 to the extent that Progress (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions; or
 - 14.3.6.4 in accordance with the clauses in this agreement.

and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on Progress under this clause 14.

- 14.4 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the EIRs, the content of the Agreement is not Confidential Information and the Supplier hereby gives its consent for Progress to publish this Agreement in its entirety to the general public (but with any information that is exempt from disclosure in accordance with the EIRs redacted) including any changes to the Agreement agreed from time to time. Progress may consult with the Supplier to inform its decision regarding any redactions but shall have the final decision in its absolute discretion whether any of the content of the Agreement is exempt from disclosure in accordance with the provisions of the EIRs.
- 14.5 The Supplier shall not and shall take reasonable steps to ensure that the Staff shall not, make any press announcement or publicise the Agreement or any part of the Agreement in any way, except with the prior written consent of Progress.

15 Environmental Information Regulations

- 15.1 To the extent that Progress is (or may in the future become) subject to the requirements of the EIRs, the Supplier shall:
 - 15.1.1 provide all necessary assistance and cooperation as reasonably requested by Progress to enable Progress to comply with its obligations under the EIRs;
 - 15.1.2 transfer to Progress all Requests for Information relating to the Agreement that it receives as soon as practicable and in any event within 2 Working Days of receipt;
 - 15.1.3 provide Progress with a copy of all information belonging to Progress requested in the Request for information which is in its possession or control in the form that Progress requires within 5 Working Days (or such other period as Progress may reasonably specify) of Progress's request for such information; and
 - 15.1.4 not respond directly to a Request for Information unless authorised in writing to do so by Progress.
- 15.2 The Supplier acknowledges that Progress may be required under the EIRs to disclose Information concerning the Supplier or the Services (including commercially sensitive information) without consulting or obtaining consent from the Supplier. In these circumstances Progress shall, in accordance with any relevant guidance issued under the EIRs, take reasonable steps, where appropriate, to give the Supplier advance notice, or failing that, to draw the disclosure to the Supplier's attention after any such disclosure.
- 15.3 Notwithstanding any other provision in the Agreement, Progress shall be responsible for determining in its absolute discretion whether any information relating to the Supplier or the Services is exempt from disclosure in accordance with the EIRs.

16 Freedom of Information Act

- 16.1 To the extent that Progress is (or may in the future become) subject to the requirements of the FOIA, the Supplier shall:
 - 16.1.1 provide all necessary assistance and cooperation as reasonably requested by Progress to enable Progress to comply with its obligations under the FOIA;
 - 16.1.2 transfer to Progress all Requests for Information relating to the Agreement that it receives as soon as practicable and in any event within 2 Working Days of receipt;
 - 16.1.3 provide Progress with a copy of all information belonging to Progress requested in the Request for information which is in its possession or control in the form that Progress requires within 5 Working Days (or such other period as Progress may reasonably specify) of Progress's request for such information; and

- 16.1.4 not respond directly to a Request for Information unless authorised in writing to do so by Progress.
- 16.2 The Supplier acknowledges that Progress may be required under the FOIA to disclose Information concerning the Supplier or the Services (including commercially sensitive information) without consulting or obtaining consent from the Supplier. In these circumstances Progress shall, in accordance with any relevant guidance issued under the FOIA, take reasonable steps, where appropriate, to give the Supplier advance notice, or failing that, to draw the disclosure to the Supplier's attention after any such disclosure.
- 16.3 Notwithstanding any other provision in the Agreement, Progress shall be responsible for determining in its absolute discretion whether any information relating to the Supplier or the Services is exempt from disclosure in accordance with the FOIA.

17 Data Protection

- 17.1 Terms defined in the Data Protection Legislation shall have the same meanings in this clause 17.
- 17.2 The Parties shall comply with their respective obligations and all applicable requirements of the Data Protection Legislation when processing any personal data in connection with the Agreement (**Shared Data**) including (without limitation) the provision of suitable privacy notices to affected data subjects.
- 17.3 The Parties will ensure that they have all necessary appropriate consents and notices in place to enable lawful transfer of Personal Data for the duration and purposes of this agreement.
- 17.4 Without prejudice to the generality of Clause 17.2, the Supplier shall, in relation to any Personal Data processed in connection with the performance by the Supplier of its obligations under this agreement:
- 17.4.1 it shall do so only to the minimum extent necessary to comply with its legal obligations and for the purposes of performing the Services and its other obligations under the Agreement (**Agreed Purpose**);
- 17.4.2 it shall not process the Shared Data for any purpose other than the Agreed Purpose without the prior written instructions or agreement of Progress;
- 17.4.3 The Supplier shall ensure that it has in place appropriate technical and organisational measures (as defined in the Data Protection Legislation), reviewed and approved by Progress, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where

appropriate, pseudonymising and encrypting

Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it and ensure that all Staff carry out data protection training.

- 17.4.4 not transfer any Personal Data outside of the United Kingdom unless the prior written consent of Progress has been obtained and the following conditions are fulfilled:
 - 17.4.4.1 Progress or the Supplier has provided appropriate safeguards in relation to the transfer;
 - 17.4.4.2 the Data Subject has enforceable rights and effective remedies;
 - 17.4.4.3 the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
 - 17.4.4.4 the Supplier complies with the reasonable instructions notified to it in advance by Progress with respect to the processing of the Personal Data;
- 17.4.5 save where otherwise required by virtue of a legal obligation to retain the Shared Data for a longer period, it shall cease processing the Shared Data once the Agreed Purpose has been achieved;
- 17.4.6. notify Progress immediately if it receives:
 - 17.4.6.1 a request from a Data Subject to have access to that person's Personal Data;
 - 17.4.6.2 a request to rectify, block or erase any Personal Data;
 - 17.4.6.3 receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation (including any communication from the Information Commissioner; and
 - 17.4.6.4 shall forward any complaints, requests or similar communications from data subjects regarding the Shared Data to Progress without undue delay and in any case within 1 Working Day of receipt;
- 17.4.7 process that Shared Data only on the documented written instructions of Progress unless the Supplier is required by Data Protection Legislation to otherwise process that Personal Data. Where the Supplier is relying on laws of a member of a state for whom the Government of United kingdom has deemed

“adequate” with respect to the safeguards for data protections as the basis for processing Personal Data, the Supplier shall promptly notify Progress of this before performing the processing required by the Data Processing Legislation unless the Data protection Legislation prohibits the Supplier from so notifying Progress provided this prevention is in compliance with United Kingdom Law. Any permission granted under this clause 17.4.7 shall be subject to the Supplier entering into a written agreement with the third party with data protection requirements that are not less onerous than this clause 17;

- 17.4.8 assist Progress in responding to any request from a Data Subject and in ensuring compliance with Progress’ obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- 17.4.9 notify Progress without undue delay and in any case within half a working day on becoming aware of a Personal Data breach including without limitation any event that results, or may result, in unauthorised access, loss, destruction, or alteration of Personal Data in breach of this agreement;
- 17.4.10 at the written direction of Progress, delete or return Personal Data and copies thereof to the Customer on termination or expiry of the agreement unless required by the Applicable Laws to store the Personal Data;
- 17.4.11 maintain complete and keep accurate records and information to demonstrate its compliance with this Clause 17 and allow for audits by Progress and immediately inform Progress if, in the opinion of the Supplier, an instruction infringes the Data Protection Legislation.
- 17.5 The Supplier shall adhere to the data protection policy and procedures of Progress as notified to it from time to time or with its own data protection policy and procedures provided that these have been approved by Progress.
- 17.6 The Supplier shall indemnify Progress against any losses, damages, cost or expenses incurred by Progress, including any interest, penalties and reasonable legal and other professional fees awarded against or incurred or paid by Progress arising from, or in connection with, any breach of the Supplier's obligations under this Clause 17.
- 17.7 Where the Supplier intends to engage a sub-contractor and intends for that sub-contractor to process any Personal Data relating to this agreement, it shall:
 - 17.7.1 notify Progress in writing of the intended processing by the sub-contractor;
 - 17.7.2 obtain prior written consent from Progress to the processing;
 - 17.7.3 enter into a written agreement incorporating terms which are substantially similar to those set out in this Clause 17.
- 17.8 Either party may, at any time on not less than 30 Working Days' written notice to the other party, revise this Clause 17 by replacing it with any applicable controller to

processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to this agreement).

- 17.9 The provisions of this clause shall apply during the continuance of the agreement and indefinitely after its expiry or termination.

18 Prevention of Facilitation of tax evasion

- 18.1 The Supplier shall:

18.1.1 comply with all applicable laws, statutes, regulations and codes relating to prevention of facilitation of tax evasion in the UK or abroad including but not limited to the Criminal Finances Act 2017;

18.1.2 not engage, and shall procure that any person associated with it shall not engage in any activity, practice or conduct which would constitute an offence under section 44 and section 45 of the Criminal Finances Act 2017;

18.1.3 comply with Progress's relevant policies to prevent facilitation of tax evasion published from time to time;

18.1.4 ensure that it has in place adequate procedures to prevent facilitation of tax evasion and use all reasonable endeavours to ensure that any person associated with it including but not limited to:

18.4.4.1 all of the Supplier's personnel;

18.4.4.2 all others associated with the Supplier; and

18.4.4.3 all of the Supplier's subcontractors,
involved in performing this Agreement so comply.

18.1.5 prevent the use of offshore intermediaries.

- 18.2 The Supplier shall:

18.2.1 If requested, provide Progress with any reasonable assistance, at Progress' reasonable cost, to enable Progress to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with the Criminal Finances Act 2017;

18.2.2 Within 5 Working Days of the Commencement Date, and annually thereafter, certify to the Purchaser in writing (such certification to be signed by an officer of the Supplier) compliance with this clause 18.2.2 by the Supplier and all persons associated with it or other persons who are supplying goods or services in connection with this agreement. The Supplier shall provide such supporting evidence of compliance as Progress may reasonably request;

18.2.3 Immediately notify Progress as soon as it becomes aware of a breach or possible breach of any of the requirements of this condition.

- 18.3 If the Supplier notifies Progress that it suspects or knows that there may be a breach of

clause 18.1 of this Agreement, the Supplier must respond promptly to Progress's enquiries, co-operate with any investigation, and allow Progress to audit books, records and any other relevant documentation. This obligation shall continue for 10 years following the expiry or termination of the Agreement.

- 18.4 Progress may terminate the Agreement by written notice with immediate effect if the Supplier or any person associated with it (in all cases whether or not acting with the Supplier's knowledge) breaches clause 18.1. In determining whether to exercise the right of termination under this clause 18.4, Progress shall give all due consideration, where appropriate, to action other than termination of the Agreement unless the breach is committed by the Supplier or a senior officer of the Supplier or by an employee, sub-contractor or supplier not acting independently of the Supplier. The expression "not acting independently of" (when used in relation to the Supplier or a sub-contractor) means and shall be construed as acting:

18.4.1 with the Supplier;

18.4.2 with the actual knowledge of any one or more of the directors of the Supplier or sub-contractor (as the case may be); or

18.4.3 in circumstances where any one or more of the directors of the Supplier ought reasonably to have had knowledge.

- 18.5 Any notice of termination under clause 18.4 must specify:

18.5.1 the nature of the activity, practice or conduct which would constitute an offence under section 44 and section 45 of the Criminal Finances Act 2017;

18.5.2 the identity of the party thought to have engaged in such activity, practice or conduct which would constitute an offence; and

18.5.3 The date on which the Agreement will terminate.

- 18.6 Despite clause 24 (Dispute Resolution), any dispute relating to:

18.6.1 the interpretation of clause 18; or

18.6.2 whether an offence has been committed;

shall be determined by Progress and its decision shall be final and conclusive.

- 18.7 Any termination under clause 18.4 will be without prejudice to any right or remedy which has already accrued or subsequently accrues to Progress.

19 Liability

- 19.1 The Supplier shall not be responsible for any injury, loss, damage, cost or expense suffered by Progress if and to the extent that it is caused by the negligence or wilful misconduct of Progress or breach by Progress of its obligations under the Agreement.

- 19.2 Subject always to clauses 19.3 and 19.4:

19.2.1 the aggregate liability of Progress in respect of all (defaults, claims, losses or damages howsoever caused, whether arising from breach of the Agreement,

the supply or failure to supply of the Services, misrepresentation (whether tortious or statutory), tort (including negligence), breach of statutory duty or otherwise) (“Losses”) shall in no event exceed a sum equal to 125% of the Charges paid or payable to the Supplier; and

19.2.2 except in the case of claims arising under clauses 4.3, 11.4, 17.6, 21.5 and 23.4, in no event shall the Supplier be liable to Progress for any:

19.2.2.1 loss of profits;

19.2.2.2 loss of business;

19.2.2.3 loss of revenue;

19.2.2.4 loss of or damage to goodwill;

19.2.2.5 loss of savings (whether anticipated or otherwise); and/or

19.2.2.6 any indirect, special or consequential loss or damage.

19.2.3 the aggregate liability of the Supplier in respect of all Losses shall in no event exceed a sum equal to 125% of the Charges paid or payable to the Supplier; and

19.2.4 except in the case of claims arising under clauses 4.3, 16.6, 22.5 and 24.4, in no event shall the Supplier be liable to Progress for any:

19.2.4.1 loss of profits;

19.2.4.2 loss of business;

19.2.4.3 loss of revenue;

19.2.4.4 loss of or damage to goodwill;

19.2.4.5 loss of savings (whether anticipated or otherwise); and/or

19.2.4.6 any indirect, special or consequential loss or damage.

19.3 Nothing in the Agreement shall be construed to limit or exclude either Party's liability for:

19.3.1 death or personal injury caused by its negligence or that of its Staff;

19.3.2 fraud or fraudulent misrepresentation by it or that of its Staff; or

19.3.3 any other matter which, by law, may not be excluded or limited.

19.4 The Supplier's liability under the indemnity in clauses 4.3, 11.4, 16.6, 22.5 and 24.4 shall be unlimited.

20 Force Majeure

20.1 Neither Party shall have any liability under or be deemed to be in breach of the Agreement for any delays or failures in performance of the Agreement which result from circumstances beyond the reasonable control of the Party affected. Each Party

shall promptly notify the other Party in writing when such circumstances cause a delay or failure in performance and when they cease to do so. If such circumstances continue for a continuous period of more than two months, either Party may terminate the Agreement by written notice to the other Party.

21 Termination

- 21.1 Progress may, without affecting any other right or remedy available to it, terminate the Agreement at any time by notice in writing to the Supplier to take effect on any date falling at least 1 month (or, if the Agreement is less than 3 months in duration, at least 10 Working Days) later than the date of service of the relevant notice.
- 21.2 Without prejudice to any other right or remedy it might have, Progress may terminate the Agreement by written notice to the Supplier with immediate effect if the Supplier:
 - 21.2.1 (without prejudice to clause 21.2.8), is in material breach of any obligation under the Agreement which is not capable of remedy;
 - 21.2.2 there is a change of control of the Supplier;
 - 21.2.3 the Supplier's financial position deteriorates to such an extent that in Progress' opinion the Supplier's capability to adequately fulfill its obligations under the Agreement has been placed in jeopardy;
 - 21.2.4 repeatedly breaches any of the terms and conditions of the Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms and conditions of the Agreement;
 - 21.2.5 is in material breach of any obligation which is capable of remedy, and that breach is not remedied within 30 days of the Supplier receiving notice specifying the breach and requiring it to be remedied;
 - 21.2.6 is in material breach of any of the terms and conditions of the Order;
 - 21.2.7 undergoes a change of control within the meaning of section 416 of the Income and Corporation Taxes Act 1988;
 - 21.2.8 breaches any of the provisions of clauses 9, 10, 15, 16, 17 and 22;
 - 21.2.9 becomes insolvent, or if an order is made or a resolution is passed for the winding up of the Supplier (other than voluntarily for the purpose of solvent amalgamation or reconstruction), or if an administrator or administrative receiver is appointed in respect of the whole or any part of the Supplier's assets or business, or if the Supplier makes any composition with its creditors or takes or suffers any similar or analogous action (to any of the actions detailed in this clause 21.2.9) in consequence of debt in any jurisdiction;
 - 21.2.10 the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or

- 21.2.11 fails to comply with legal obligations in the fields of environmental, social or labour law.
- 21.3 The Supplier shall notify Progress as soon as practicable of any change of control as referred to in clause 21.2.7 or any potential such change of control.
- 21.4 The Supplier may terminate the Agreement by written notice to Progress if Progress has not paid any undisputed amounts within 90 days of them falling due.
- 21.5 Progress may terminate the Agreement by written notice to the Supplier with immediate effect where it is in its reasonable opinion required to do so by the PCRs.
- 21.6 Termination or expiry of the Agreement shall be without prejudice to the rights of either Party accrued prior to termination or expiry and shall not affect the continuing rights of the Parties under this clause and clauses 6.2, 7.1, 7.2, 7.6, 7.7, 9, 11, 13.2, , 14, 15, 17, 19, 20, 22.4, 23, 24 and 25 or any other provision of the Agreement that either expressly or by implication has effect after termination.
- 21.7 Upon termination or expiry of the Agreement, the Supplier shall:
- 21.7.1 give all reasonable assistance to Progress and any incoming supplier of the Services;
 - 21.7.2 immediately deliver to Progress all Deliverables whether or not then complete. If the Supplier fails to do so, then Progress may enter the Supplier's premises and take possession of them. Until they have been returned or delivered, the Supplier shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Agreement; and
 - 21.7.3 return all requested documents, information and data to Progress as soon as reasonably practicable.
- 21.8 Termination or expiry of the Agreement shall not affect the parties' rights and remedies that have accrued as at termination or expiry, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination or expiry.
- 21.9 Any provision of the Agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Agreement shall remain in full force and effect.

22 Compliance

- 22.1 The Supplier shall promptly notify Progress of any health and safety hazards which may arise in connection with the performance of its obligations under the Agreement. Progress shall promptly notify the Supplier of any health and safety hazards which may exist or arise at Progress's premises and which may affect the Supplier in the performance of its obligations under the Agreement.
- 22.2 The Supplier shall:
- 22.2.1 comply with all Progress's health and safety measures while on Progress's

premises;

22.2.2 notify Progress immediately in the event of any incident occurring in the performance of its obligations under the Agreement on Progress's premises where that incident causes any personal injury or damage to property which could give rise to personal injury;

22.2.3 comply with the PCRs; and

22.2.4 comply with the MSA.

22.3 The Supplier shall:

22.3.1 perform its obligations under the Agreement in accordance with all applicable equality Law and all Mandatory Policies, including Progress's equality and diversity policy as provided to the Supplier from time to time;

22.3.2 take all reasonable steps to secure the observance of clause 22.3.1 by all Staff.

22.4 The Supplier shall supply the Services in accordance with Progress's environmental policy as provided to the Supplier from time to time.

22.5 The Supplier shall comply with, and shall ensure that its Staff shall comply with, the provisions of:

22.5.1 the Mandatory Policies; and

22.5.2 the Regulations.

22.6 The Supplier shall indemnify, and keep indemnified, Progress in full against all cost, expenses, damages and losses (whether direct or indirect), including any interest, penalties, and reasonable legal and other professional fees awarded against or incurred or paid by Progress as a result of or in connection with any breach of this clause 22.5.

23 Prevention of Fraud and Corruption

23.1 The Supplier shall not offer, give, or agree to give anything, to any person an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of the Agreement or for showing or refraining from showing favour or disfavour to any person in relation to the Agreement.

23.2 The Supplier shall take all reasonable steps, in accordance with good industry practice, to prevent fraud by the Staff and the Supplier (including its shareholders, members and directors) in connection with the Agreement and shall notify Progress immediately if it has reason to suspect that any fraud has occurred or is occurring or is likely to occur.

23.3 If the Supplier or the Staff engages in conduct prohibited by clause 23.1 or commits fraud in relation to the Agreement or any other contract with Progress's group (including Progress) Progress may:

23.3.1 terminate the Agreement and recover from the Supplier the amount of any

loss suffered by Progress resulting from the termination, including the cost reasonably incurred by Progress of making other arrangements for the supply of the Services and any additional expenditure incurred by Progress throughout the remainder of the Agreement; or

23.3.2 recover in full from the Supplier any other loss sustained by Progress in consequence of any breach of this clause.

24 Dispute Resolution

- 24.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Agreement and such efforts shall involve the escalation of the dispute to an appropriately senior representative of each Party.
- 24.2 If the dispute cannot be resolved by the Parties within one month of being escalated as referred to in clause 0, the dispute may by agreement between the Parties be referred to a neutral adviser or mediator (the “**Mediator**”) chosen by agreement between the Parties. All negotiations connected with the dispute shall be conducted in confidence and without prejudice to the rights of the Parties in any further proceedings.
- 24.3 If the Parties fail to appoint a Mediator within one month or fail to enter into a written agreement resolving the dispute within one month of the Mediator being appointed, either Party may exercise any remedy it has under applicable law.
- 24.4 The commencement of mediation shall not prevent the parties commencing or continuing court proceedings in relation to any dispute under clause 32, which clause shall apply at all times.

25 General

- 25.1 Each of the Parties represents and warrants to the other that it has full capacity and authority, and all necessary consents, licences and permissions to enter into and perform its obligations under the Agreement, and that the Agreement is executed by its duly authorised representative.
- 25.2 A person who is not a party to the Agreement shall have no right to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of the Parties.
- 25.3 The Agreement cannot be varied except in writing signed by a duly authorised representative of both the Parties.
- 25.4 The Agreement contains the whole agreement between the Parties and supersedes and replaces any prior written or oral agreements, representations or understandings between them. The Parties confirm that they have not entered into the Agreement on the basis of any representation that is not expressly incorporated into the

Agreement. Nothing in this clause shall exclude liability for fraud or fraudulent misrepresentation.

- 25.5 Any waiver or relaxation either partly, or wholly of any of the terms and conditions of the Agreement shall be valid only if it is communicated to the other Party in writing and expressly stated to be a waiver. A waiver of any right or remedy arising from a breach of contract shall not constitute a waiver of any right or remedy arising from any other breach of the Agreement.
- 25.6 The Agreement shall not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the Parties other than the contractual relationship expressly provided for in the Agreement. Neither Party shall have, nor represent that it has, any authority to make any commitments on the other Party's behalf.
- 25.7 Except as otherwise expressly provided by the Agreement, all remedies available to either Party for breach of the Agreement (whether under the Agreement, statute or common law) are cumulative and may be exercised concurrently or separately, and the exercise of one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.
- 25.8 If any provision of the Agreement is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision shall, to the extent required, be severed from the Agreement and rendered ineffective as far as possible without modifying the remaining provisions of the Agreement, and shall not in any way affect any other circumstances of or the validity or enforcement of the Agreement.

26 Notices

- 26.1 Any notice to be given under the Agreement shall be in writing and may be served by personal delivery, first class recorded or, subject to clause 26.3, e-mail to the address of the relevant Party set out in the Order, or such other address as that Party may from time to time notify to the other Party in accordance with this clause:
- 26.2 Notices served as above shall be deemed served on the Working Day of delivery provided delivery is before 5.00pm on a Working Day. Otherwise delivery shall be deemed to occur on the next Working Day. An email shall be deemed delivered when sent unless an error message is received.
- 26.3 Notices under clauses 20 (Force Majeure) and 21 (Termination) may be served by email only if the original notice is then sent to the recipient by personal delivery or recorded delivery in the manner set out in clause 26.1.

27 Severance

- 27.1 If any provision or part-provision of the Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion

of a provision or part-provision under this Clause 27 shall not affect the validity and enforceability of the rest of the Agreement.

28 Waiver

28.1 A waiver of any right or remedy under the Agreement or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A failure or delay by a party to exercise any right or remedy provided under the Agreement or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Agreement or by law shall prevent or restrict the further exercise of that or any other right or remedy.

29 No partnership or agency

29.1 Nothing in the Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other, or authorise either party to make or enter into any commitments for or on behalf of the other party.

30 Third party rights

30.1 Unless it expressly states otherwise, the Agreement does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Agreement.

31 Variation

31.1 Except as set out in these Conditions, no variation of the Agreement, including the introduction of any additional terms and conditions, shall be effective unless it is agreed in writing and signed by the parties or their authorised representatives.

32 Governing Law and Jurisdiction

32.1 The validity, construction and performance of the Agreement, and all contractual and non-contractual matters arising out of it, shall be governed by English law and shall be subject to the exclusive jurisdiction of the English courts to which the Parties submit.