

Dated

201[]

PARAGON ASRA HOUSING LIMITED

and

[SUPPLIER]¹

SUPPLY OF GOODS AND SERVICES AGREEMENT

For the provision of []

¹ Insert name of Supplier



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Telephone 020 7682 7576
DX 33856 Finsbury Square

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Schedule 1 – Specifications
Schedule 2 – Pricing Document
Schedule 3 – Contract Specific Key Performance Indicators
Schedule 4 – Details and delivery of the improvements to economic, social and environmental matters by the Supplier
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THIS AGREEMENT IS MADE ON THE DAY OF 201[]

BETWEEN

- (1) **PARAGON ASRA HOUSING LIMITED** a registered society, as defined in section 1(1) of the Co-Operative and Community Benefit Societies Act 2014, with registered number RS007536 whose registered office is at Third Floor, Pentagon House, 52-54 Southwark Street, London SE1 1UN (the “**Client**”); and
- (2) **[SUPPLIER]** incorporated and registered in England and Wales with company number **[NUMBER]** whose registered office is at **[REGISTERED OFFICE ADDRESS]**² (the “**Supplier**”).

WHEREAS

- (A) The Client is a registered provider of social housing.
- (B) The Supplier, having the necessary expertise and resources, is able and willing to undertake the supply of Goods and/or Services as may be instructed from time to time by the Client for the consideration and on the terms set out in this Agreement.
- (C) In consideration of the payments to be made by the Client to the Supplier under this Agreement the Supplier agrees with the Buyer to supply the Goods and/or Services in accordance with the provisions of this Agreement.

IT IS HEREBY AGREED

1. INTERPRETATION

- 1.1 The definitions and rules of interpretation in this Clause apply in this Agreement.

Agreement: means this agreement, including its Schedules.

Background Information: means information relating to the subject matter of this Agreement disclosed by the Client to the Supplier and its advisers prior to the Commencement Date.

Business Day: means a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

Charges: the charges payable by the Client for the supply of the Goods and/or Services in accordance with Clause 13, calculated by reference to the Pricing Document.

Client Materials: has the meaning given to that term in Clause 9.2(l).

Client Policies: means the following policies of the Client together with any updates or replacements thereof that the Client may notify the Supplier of from time to time:

² Details of Supplier to be inserted

(i) [Data Protection

(ii) Health & Safety

(iii) Diversity, Equality & Inclusion]³

Client Representative: means the representative appointed by the Client pursuant to Clause 15.4.

Commencement Date: means the date of this Agreement.

Completion of Delivery: means the receipt and written acceptance of the Goods by the Client.

Completion of Performance: means the written acceptance of the Client indicating the satisfactory completion of the Services.

Control: shall be defined as in section 1124 of the Corporation Tax Act 2010, and the expression **change of Control** shall be construed accordingly.

Data Protection Legislation means the Data Protection Act 2018, the EU Data Protection Directive 95/46/EC, the General Data Protection Regulation (EU) 2016/679, the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), the Electronic Communications Data Protection Directive 2002/58/EC, the Privacy and Electronic Communications (EC Directive) Regulations 2003 and all applicable laws and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner and any additions, updates thereof.

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).

EIR: means the Environmental Information Regulations 2004 and any guidance and/or codes of practice issued by the Information Commissioner in relation to such regulations.

Force Majeure Event: has the meaning given to that term in Clause 23.1.

FOIA: means the Freedom of Information Act 2000 and any subordinate legislation made under that Act from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner in relation to such legislation.

³ The PA Housing policies that the Supplier is required to comply with should be confirmed on a case by case basis.

Good Industry Practice: means adopting and/or complying with:

- (i) standards, practices, methods and procedures conforming to the law;
- (ii) applicable and relevant standards; and
- (iii) that degree of skill, care, diligence, prudence and foresight,

which would reasonably and ordinarily be expected from a skilled and experienced person engaged in a similar type of undertaking under the same or similar circumstances.

Goods: means the goods to be supplied by the Supplier under this Agreement as more particularly set out in the Goods Specification and the relevant Order.

Goods Specification: means the specification for the Goods as set out in Part 1 of Schedule 1.

Information: has the meaning given under section 84 of the FOIA;

Intellectual Property Rights: means patents, rights to inventions, copyright and related rights, trade marks, trade names, domain names, rights in get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including without limitation know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all existing and future rights capable of present assignment, applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world.

Order: means each individual order for the Goods and/or Services placed with the Supplier by the Client in accordance with Clause 6.

Party: means either party to this Agreement.

Pricing Document: means the pricing document appended at Schedule 2.

Replacement Supplier: means a party chosen by the Client to take over the supply of all or part of the Goods and/or Services.

Request for Information: means a request for information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the EIR.

Services: means the services to be supplied by the Supplier under this Agreement as more particularly set out in the Services Specification and the relevant Order.

Services Specification: means the specification for the Services as set out in Part 2 of Schedule 1.

Supplier Personnel means all employees, agents, consultants and contractors of the Supplier and/or of any authorised subcontractor.

Supplier's Representative: means the representative appointed by the Supplier pursuant to Clause 15.1.

Virus: means, without limitation, any malicious code, trojans, worms and viruses, lock, authorisation key or similar device that impairs or could impair the operation of the Supplier's performance of its obligations under this Agreement.

- 1.2 Clause, schedule and paragraph headings shall not affect the interpretation of this Agreement.
- 1.3 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.4 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.5 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.6 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.7 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.
- 1.8 A reference to **writing** or **written** includes faxes and e-mail.
- 1.9 Any phrase introduced by the words **including, includes, in particular** or **for example**, or any similar phrase, shall be construed as illustrative and shall not limit the generality of the related general words.
- 1.10 References to clauses and schedules are to the Clauses and Schedules of this Agreement. References to paragraphs are to paragraphs of the relevant Schedule.
- 1.11 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's personal representatives, successors or permitted assigns.
- 1.12 If there is an inconsistency between any of the provisions in the main body of this Agreement and the Schedules, the provisions in the main body of this Agreement shall prevail.

2. COMMENCEMENT AND DURATION

- 2.1 This Agreement shall commence on the Commencement Date and, subject to earlier termination in accordance with its terms, shall continue until []⁴, unless extended pursuant to Clause 2.2.

⁴ Initial expiry date to be confirmed

2.2 The Client may extend this Agreement for []⁵ further period[s] of []⁶ months by giving written notice to the Supplier. The provisions of this Agreement will apply throughout any such extended period.

3. DUE DILIGENCE

3.1 The Supplier acknowledges and agrees that it is responsible for obtaining, reviewing and investigating any information necessary for the performance of its obligations under this Agreement.

3.2 The Supplier shall be deemed to have:

(a) satisfied itself as to the rights and the nature and extent of the risks assumed by it in relation to the subject matter of this Agreement (including any risk or contingency that may affect the performance of its obligations under this Agreement and which is not expressly referred to herein as being either the responsibility of the Client or is otherwise a risk to be shared between the Parties); and

(b) gathered all information necessary to perform its obligations under this Agreement,

and the Supplier shall accept entire responsibility for all costs and consequences of, and any other implications arising in connection with, any risk, condition, contingency and circumstance (other than those expressly referred to herein as being either the responsibility of the Client or otherwise being a risk to be shared between the Parties) that affects the performance of its obligations under this Agreement.

3.3 The Supplier shall not in any way be relieved from any of its obligations under this Agreement nor shall it be entitled to claim against the Client on grounds that any information, whether obtained from the Client or otherwise (including the Background Information) is incorrect or insufficient and shall make its own enquiries as to the accuracy and adequacy of that information.

4. WARRANTIES

4.1 The Supplier warrants, represents and undertakes to the Client that on the date hereof:

(a) it is properly constituted and incorporated under the laws of England and Wales and has the corporate power to own its assets and to carry on its business as it is now being conducted;

(b) it has the power to enter into and to exercise its rights and perform its obligations under this Agreement;

⁵ To be confirmed

⁶ To be confirmed

- (c) all necessary action to authorise the execution of and the performance of its obligations under this Agreement has been taken or, in the case of any document in connection with the subject matter of this Agreement executed after the date of this Agreement, will be taken before such execution;
- (d) the execution, delivery and performance by it of this Agreement does not contravene any provision of:
 - (i) any law either in force, or enacted but not yet in force binding on the Supplier;
 - (ii) the Memorandum and Articles of Association of the Supplier;
 - (iii) any order or decree of any court or arbitrator or adjudicator; or
 - (iv) any obligation which is binding upon the Supplier or upon any of its assets or revenues;
- (e) no claim is presently being assessed in respect of the Supplier and no litigation, arbitration or administrative proceedings are presently in progress or, to the best of the knowledge of the Supplier, pending or threatened against it or any of its assets which will or might have a material adverse effect on the ability of the Supplier to perform its obligations under this Agreement;
- (f) there are no material facts or circumstances in relation to the financial position or operational constitution of the Supplier which have not been fully and fairly disclosed to the Client and which if disclosed might reasonably have been expected to affect the decision of the Client to enter into this Agreement,

and the Client relies upon such warranties, representations and undertakings.

4.2 The Supplier warrants, represents and undertakes to the Client that:

- (a) [all representations made by the Supplier in its tender submission for this Agreement are true, complete, accurate and not misleading];⁷
- (b) the Supplier shall not make any statement, orally or in writing, publicly or privately, or do any act or otherwise conduct itself in such a manner as will or may in the reasonable opinion of the Client disparage the Client, its clients or customers, its or their business, products or services;
- (c) the Client's use of any third-party materials, including any materials supplied by the Supplier to the Client, shall not cause the Client to infringe the rights, including any Intellectual Property Rights, of any third party;

⁷ Include if the Supplier submitted a tender for the Agreement. Otherwise delete

- (d) any software, system or telecommunications provided by or on behalf of the Supplier will be tested for Viruses and any identified Viruses deleted in accordance with Good Industry Practice before the date of delivery or use of such software, systems or telecommunications by the Supplier; and
- (e) all personnel and subcontractors used by the Supplier in the performance of this Agreement are adequately skilled and experienced for the activities they are required to perform

and the Client relies upon such warranties, representations and undertakings.

5. PARENT COMPANY GUARANTEE

If so required by the Client, the Supplier shall as a condition precedent to the performance by the Client of its obligations under this Agreement deliver to the Client a guarantee duly executed by the ultimate parent company of the Supplier in such form as may be reasonably required by the Client.

6. ORDERS FOR GOODS AND/OR SERVICES

- 6.1 The Client shall be entitled to instruct the Supplier to supply Goods and/or Services at any time during the term of this Agreement by issuing the Supplier with an Order, and the Supplier shall supply such Goods and/or Services as and when instructed by the Buyer on the terms and conditions of this Agreement.
- 6.2 The decision whether to instruct the Supplier to supply any Goods and/or Services shall be at the sole discretion of the Client. The Client does not warrant that the Supplier will receive a minimum level of goods and/or services under this Agreement and the Supplier hereby understands and agrees that it shall have no claim for loss of business, profit, overheads or any other losses and/or damages against the Client in respect of the volume of goods and/or Services ordered, if any, by the Client under this Agreement.
- 6.3 The Parties acknowledge and agree that the terms of this Agreement shall apply to the supply of Goods and/or Services under any Order placed pursuant to this Agreement, to the exclusion of all other terms.

7. SUPPLY OF GOODS

- 7.1 The Supplier shall ensure that the Goods shall:
 - (a) correspond with their description and any applicable Specification;
 - (b) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979, as amended) and fit for any purpose held out by the Supplier or made known to the Supplier by the Client expressly or by implication, and in this respect the Client relies on the Supplier's skill and judgement;

- (c) where they are manufactured products, be free from defects in design, material and workmanship and remain so for twelve (12) months after delivery; and
 - (d) comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods.
- 7.2 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 this Agreement in respect of the Goods.
- 7.3 The Client may inspect and test the Goods at any time before delivery. The Supplier shall remain fully responsible for the Goods despite any such inspection or testing and any such inspection or testing shall not reduce or otherwise affect the Supplier's obligations under this Agreement.
- 7.4 If following such inspection or testing the Client considers that the Goods do not comply or are unlikely to comply with the Supplier's undertakings at Clause 7.1, the Client shall inform the Supplier and the Supplier shall immediately take such remedial action as is necessary to ensure compliance.
- 7.5 The Client may conduct further inspections and tests after the Supplier has carried out its remedial actions.

8. DELIVERY OF GOODS

- 8.1 The Supplier shall ensure that:
- (a) the Goods are properly packed and secured in such manner as to enable them to reach their destination in good condition;
 - (b) each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, the Order number (if any), the type and quantity of the Goods (including the code number of the Goods (where applicable)), special storage instructions (if any) and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and
 - (c) it states clearly on the delivery note any requirement for the Client to return any packaging material for the Goods to the Supplier. Any such packaging material shall only be returned to the Supplier at the cost of the Supplier.
- 8.2 The Supplier shall deliver the Goods:
- (a) on the date specified in the Order or, if no such date is specified, then within []⁸ days of the date of the Order;

⁸ The "default" timescale for the delivery of Goods under this Agreement should be confirmed and inserted here before the Agreement is signed

- (b) to the Client's premises at [REDACTED]⁹ or such other location as is set out in the Order or as instructed by the Client before delivery (the “**Delivery Location**”); and
 - (c) during the Client's normal hours of business on a Business Day, or as instructed by the Client.
- 8.3 Delivery of the Goods shall be completed on the completion of unloading of the Goods at the Delivery Location.
- 8.4 If the Supplier:
 - (a) delivers less than [95]¹⁰% of the quantity of Goods ordered, the Client may at its sole discretion reject the Goods; or
 - (b) delivers more than [105]¹¹% of the quantity of Goods ordered, the Client may at its sole discretion reject the Goods or the excess Goods,and any rejected Goods shall be returnable at the Supplier's risk and expense. If the Supplier delivers more or less than the quantity of Goods ordered, and the Client accepts the delivery, the Supplier shall make a pro rata adjustment to the invoice for the Goods.
- 8.5 The Supplier shall not deliver the Goods in instalments without the Client's prior written consent. Where it is agreed that the Goods are delivered by instalments, they may be invoiced and paid for separately. However, failure by the Supplier to deliver any one instalment on time or at all or any defect in an instalment shall entitle the Client to the remedies set out in Clause 11.1.
- 8.6 Title and risk in the Goods shall pass to the Client on completion of delivery.

9. SUPPLY OF SERVICES

- 9.1 The Supplier shall from the date set out in the relevant Order and for the duration of this Agreement supply the Services to the Client in accordance with the terms of this Agreement.
- 9.2 In providing the Services the Supplier shall:
 - (a) co-operate with the Client in all matters relating to the Services, and comply with all instructions of the Client;
 - (b) perform the Services in accordance with Good Industry Practice;

⁹ To be confirmed

¹⁰ Percentage to be confirmed on a case by case basis.

¹¹ Percentage to be confirmed on a case by case basis.

- (c) perform the Services in accordance with any timetable notified to the Supplier by the Client in writing;
- (d) perform the Services in accordance with any key performance indicators set out in Schedule 3 or otherwise notified to the Supplier by the Client in writing;
- (e) use personnel 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;
- (f) ensure that the Services and Deliverables will conform with all descriptions and specifications set out in the Service Specification, and that the Deliverables shall be fit for any purpose that the Client expressly or impliedly makes known to the Supplier;
- (g) provide all equipment, tools and vehicles and such other items as are required to provide the Services;
- (h) 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 the Client, will be free from defects in workmanship, installation and design;
- (i) obtain and at all times maintain all licences and consents which may be required for the provision of the Services;
- (j) comply with all applicable laws, regulations, regulatory policies, guidelines or industry codes which may apply to the provision of the Services, and with the Client Policies;
- (k) observe all health and safety rules and regulations and any other security requirements that apply at any of the Client's premises;
- (l) hold all materials, equipment and tools, drawings, specifications and data supplied by the Client to the Supplier (the "**Client Materials**") in safe custody at its own risk, maintain the Client Materials in good condition until returned to the Client, and not dispose or use the Client Materials other than in accordance with the Client's written instructions or authorisation;
- (m) not do or omit to do anything which may cause the Client to lose any licence, authority, consent or permission upon which it relies for the purposes of conducting its business, and the Supplier acknowledges that the Client may rely or act on the Services;
- (n) comply with any additional obligations as set out in the Service Specification; and
- (o) forthwith give notice to the Client of any matter which is causing or is likely to cause delay in the completion of an Order beyond the date stated for its completion. For the avoidance of doubt, such notice shall not excuse or exempt the Supplier from its obligations under this Agreement.

- 9.3 Any defects, deficiencies or other faults in the delivery of the Services which become apparent within twelve (12) months of the supply of the Services which are due to the erroneous execution of the Services shall be made good by the Supplier at no cost to the Client.

10. CHANGE CONTROL

- 10.1 If either Party wishes to change of any part of this Agreement, its subject matter and/or the Charges payable under it, it shall submit details of the requested change to the other in writing.
- 10.2 If either Party requests a change in accordance with Clause 10.1, the Supplier shall, within a reasonable time (and in any event not more than 7 (seven) Business Days after receipt of the Client's request), provide a written estimate to the Client of:
- (a) the likely time required to implement the change;
 - (b) the likely effect of the change on the scope of the Supplier's obligations under this Agreement;
 - (c) any variations to the Charges arising from the change; and
 - (d) any other impact of the change on this Agreement
- 10.3 Unless both Parties consent to a proposed change, there shall be no change to this Agreement.
- 10.4 If both Parties consent to a proposed change, the change shall be made, only after agreement of the necessary variations to the Supplier's obligations under this Agreement and any other relevant terms of this Agreement to take account of the agreement that has been reached.

11. CLIENT'S REMEDIES

- 11.1 If the Goods and/or Services are not delivered on the date they are due as referred to in Clause 8.2(a) and/or Clause 9.2(c), or do not comply with the undertakings set out in Clauses 7.1 and/or 9.1, then, without limiting any of its other rights or remedies, Client shall have the right to any one or more of the following remedies, whether or not it has accepted the Goods and/or Services:
- (a) to terminate the Order with immediate effect by giving written notice to the Supplier;
 - (b) to reject the Goods (in whole or in part) and return them to the Supplier at the Supplier's own risk and expense;
 - (c) to require the Supplier to repair or replace the rejected Goods, or to provide a full refund of the price of the rejected Goods (if paid);
 - (d) to refuse to accept any subsequent delivery of the Goods which the Supplier attempts to make;

- (e) to require the Supplier to re-perform the Services, or to provide a full refund of the price of the rejected Services (if paid);
 - (f) to refuse to accept any subsequent performance of the Services which the Supplier attempts to make;
 - (g) to recover from the Supplier any costs incurred by Client in obtaining substitute goods or services from a third party;
 - (h) where Client has paid in advance for Goods and Services that have not been provided by the Supplier, to have such sums refunded by the Supplier; and/or
 - (i) to claim damages for any other costs, loss or expenses incurred by Client which are in any way attributable to the Supplier's failure to carry out its obligations under this Agreement.
- 11.2 The provisions of this Clause 11 shall apply to any repaired or replacement goods supplied by the Supplier and to any substituted or remedial services provided by the Supplier.
- 11.3 The Client's rights and remedies under the provisions of this Clause 11 are in addition to its rights and remedies implied by statute and common law.

12. CLIENT'S OBLIGATIONS

The Client shall provide such information to the Supplier as the Supplier may reasonably request and the Client considers reasonably necessary for the purpose of providing the Goods and Services.

13. CHARGES AND PAYMENT

- 13.1 The Charges for the Goods shall be the price set out in the Order and shall be inclusive of packaging, insurance and carriage of the Goods, unless otherwise agreed in writing by the Client.
- 13.2 The Charges for the Services shall be set out in the Order and shall be the full and exclusive remuneration of the Supplier in respect of the performance of the Services. Unless otherwise agreed in writing by the Client, the charges shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the performance of the Services
- 13.3 In respect of Goods, the Supplier shall invoice the Client on or at any time after Completion of Delivery.
- 13.4 In respect of Services, the Supplier shall invoice the Client [on Completion of Performance of the Services] OR [on a monthly basis in arrears.]¹²
- 13.5 Each invoice submitted pursuant to Clause 13.3 and 13.4 shall include such supporting information required by the Client to verify the accuracy of

¹² Amend as appropriate on a case by case basis.

the invoice, including but not limited to the relevant purchase order number.

- 13.6 In consideration of the supply of Goods and/or Services by the Supplier, the Client shall pay the invoiced amounts within thirty (30) days of the date of a correctly rendered invoice to a bank account nominated in writing by the Supplier.
- 13.7 All amounts payable by the Client are exclusive of amounts in respect of valued added tax chargeable from time to time (**VAT**). Where any taxable supply for VAT purposes is made by the Supplier to the Client, the Client shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Goods and/or Services at the same time as payment is due for the supply of the Goods and/or Services.
- 13.8 If the Client fails to make a payment due to the Supplier under this Agreement by the due date, then the Client shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this Clause 13.8 will accrue each day at 2% a year above the Bank of England's base rate from time to time, but at 2% a year for any period when that base rate is below 0%. This Clause shall not apply to payments that the Client disputes in good faith.
- 13.9 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 the Client to inspect such records at all reasonable times on request.
- 13.10 The Supplier shall not be entitled to assert any credit, set-off or counterclaim against the Client in order to justify withholding payment of any such amount in whole or in part. The Client may, without limiting any other rights or remedies it may have, set off any amount owed to it by the Supplier against any amounts payable by it to the Supplier.

14. INTELLECTUAL PROPERTY RIGHTS

- 14.1 All Intellectual Property Rights in or arising out of or in connection with the Services (other than Intellectual Property Rights in any Client Materials) shall be owned by the Supplier.
- 14.2 The Supplier grants to the Client, or shall procure the direct grant to the Client of, a fully paid-up, worldwide, non-exclusive, royalty-free perpetual and irrevocable licence to copy and modify the Deliverables (excluding Client Materials) for the purpose of receiving and using the Services and the Deliverables.
- 14.3 The Client grants the Supplier a fully paid-up, non-exclusive, royalty-free non-transferable licence to copy any materials provided by the Client to the Supplier for the term of this Agreement for the purpose of providing the Services to the Client.
- 14.4 All Client Materials are the exclusive property of the Client.

15. REPRESENTATIVES

15.1 Supplier's Representative

The Supplier shall employ a representative, the identity of whom will be subject to the prior approval of the Client (such approval not to be unreasonably withheld or delayed), to act as the Supplier's Representative in connection with this Agreement. The name and address of the Supplier's Representative shall, at all times, be made known to the Client by the Supplier as shall a telephone number on which the Supplier's Representative or his delegate can be contacted during normal business hours on each Business Day.

15.2 Authority of Supplier's Representative

The Supplier's Representative shall have full authority to act on behalf of the Supplier for all purposes of this Agreement. The Client and the Client Representative shall be entitled to treat any act of the Supplier's Representative in connection with this Agreement as being expressly authorised by the Supplier (save where the Supplier has notified the Client in writing that such authority has been revoked) and the Client shall not be required to determine whether any express authority has in fact been given.

15.3 Appointment of Successor

The Supplier may, with the prior approval of the Client (such approval not to be unreasonably withheld or delayed), terminate the appointment of the Supplier's Representative and appoint a successor.

15.4 Client Representative

The Client shall appoint an individual to be the Client Representative and as such to liaise with the Supplier's Representative, and shall keep the Supplier informed of the identity from time to time of the Client Representative.

15.5 Authority of Client Representative

The Client Representative shall have full authority to act on behalf of the Client for all purposes of this Agreement. The Supplier shall be entitled to treat any act of the Client Representative in connection with this Agreement as being expressly authorised by the Client (save where the Client has notified the Supplier that such authority has been revoked) and the Supplier shall not be required to determine whether any express authority has in fact been given.

16. INDEMNITY

16.1 The Supplier shall keep the Client indemnified against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by the Client arising out of or in connection with:

- (a) any claim made against the Client for actual or alleged infringement of a third party's intellectual property rights arising out of, or in connection with, the supply or use of the Goods and/or Services;
- (b) any negligence of or breach of this Agreement by the Supplier or any of its employees or agents; and/or
- (c) any defects in the Goods.

17. INSURANCE

During the term of this Agreement and for a period of six (6) years thereafter, 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 this Agreement, and shall, on the Client's request, produce both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance.

18. CONFIDENTIALITY

18.1 Each Party undertakes that it shall not at any time during this Agreement and for a period of five (5) years after termination or expiry of this Agreement disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other Party, except as permitted by Clause 18.2.

18.2 Each Party may disclose the other party's confidential information:

- (a) to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the Party's obligations under this Agreement. Each Party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other Party's confidential information must comply with this Clause 18; and
- (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

18.3 Neither Party shall use the other Party's confidential information for any purpose other than to perform its obligations under this Agreement.

19. DATA PROTECTION AND FREEDOM OF INFORMATION

19.1 The Supplier shall comply in all respects with its obligations under the Data Protection Legislation in performing its obligations under this Agreement, and the Supplier shall indemnify the Client and keep the Client indemnified against all actions, claims, demands, proceedings, damages, costs, charges and expenses (including reasonable legal expenses) whatsoever in respect of any breach of this Clause 19.

19.2 Nothing in the Agreement shall prevent the Client from disclosing any Information which the Client in its absolute discretion considers it is required to disclose in order to comply with the FOIA and/or the EIR and any other statutory requirements whether or not existing at the date of this

Agreement, and the Client reserves the right to make such disclosure without reference to the Supplier.

19.3 If the Client shall at any time notify the Supplier that it has received a Request for Information in respect of which the Client requires the Supplier's assistance then:

(a) the Supplier shall at its own cost provide and procure that its subcontractors provide all necessary assistance required by the Client in order to allow the Client to comply with the request for Information within the period or periods when it is obliged to respond to the request for Information;

(b) without limitation to the foregoing the Supplier shall at its own cost within five (5) Business Days of request supply and procure that its subcontractors supply to the Client such Information and documents requested by the Client in such form as reasonably prescribed by the Client; and

19.4 This Clause 19 shall survive the termination or expiry of this Agreement.

20. HEALTH AND SAFETY

20.1 The Supplier shall immediately notify the Client of any health and safety hazards, which may arise in connection with use or handling of the Goods and / or the performance of the Services and / or in the event of any incident occurring in the performance of Services where that incident causes any personal injury or damage to property that could give rise to personal injury.

20.2 The Supplier shall comply with any health and safety measures implemented by the Client in any way connected with the provision of the Services or the use of the Goods.

20.3 The Supplier shall comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to any persons in the performance of the Services or the use or delivery of the Goods.

20.4 The Supplier shall ensure that the following documents relevant to the Goods and / or Services are made available to the Client on request:

(a) Health and Safety policy, together with codes of practice, operational guidelines, provisions and procedures;

(b) Health and Safety Plan;

(c) Method Statements;

(d) Risk Assessments;

(e) COSHH Assessments;

(f) Accident Book; and

(g) Prohibition Notices

21. TERMINATION

- 21.1 Without prejudice to any rights that have accrued under this Agreement or any of its rights or remedies, the Client may terminate this Agreement at any time on giving not less than []¹³ months written notice to the Supplier.
- 21.2 Without prejudice to any rights that the Parties have accrued under this Agreement or any of their respective remedies, obligations or liabilities either Party may terminate this Agreement with immediate effect by giving written notice to the other Party if:
- (a) the other Party commits an irremediable material breach of any of its obligations under this Agreement;
 - (b) the other Party commits a remediable material breach of any of its obligations under this Agreement and fails to remedy that breach within a period of [fifteen (15)]¹⁴ days after receipt of a written notice giving full particulars of the breach and requiring it to be remedied; or
 - (c) the other Party ceases, or threatens to cease, to carry on its business, becomes insolvent, or has a liquidator, trustee in bankruptcy, receiver, manager, administrator or administrative receiver appointed in respect of its assets, or suffers any event analogous to any of the foregoing in any jurisdiction in which it is incorporated or resident.
- 21.3 Without prejudice to any rights that have accrued under this Agreement or any of its rights or remedies, the Client may terminate this Agreement forthwith by written notice to the Supplier if:
- (a) there is a change of Control of the Supplier;
 - (b) the Supplier's financial position deteriorates to such an extent that in the Client's reasonable opinion the Supplier's capability to adequately fulfil its obligations under this Agreement has been placed in jeopardy; or
 - (c) without prejudice to Clause 21.2 or Clause 35.5, the Supplier has committed any other breach of this Agreement and has not remedied such breach to the satisfaction of the Client within [twenty five (25)]¹⁵ days, or such other period as may be specified by the Client, after issue of a written notice from the Client to the Supplier specifying the breach and requesting it to be remedied.

¹³ Notice period to be confirmed on a case by case basis.

¹⁴ To be confirmed

¹⁵ To be confirmed

22. CONSEQUENCES OF TERMINATION

- 22.1 Any provision of this Agreement which expressly or by implication is intended to come into or continue in force on or after termination of this Agreement shall remain in full force and effect.
- 22.2 Termination of this Agreement, for any reason, shall not affect the accrued rights, remedies, obligations or liabilities of the parties existing at termination.
- 22.3 Without prejudice to the remaining provisions of this Clause 22 the Parties shall continue to perform their obligations under this Agreement, notwithstanding the service by either Party of a termination notice, until such time as such termination becomes effective (if later than the time of service of such notice).
- 22.4 In the event of termination or expiry of this Agreement for whatever reason the following provisions shall apply:
- (a) the Client shall not be liable to the Supplier for any loss of profits, loss of contracts or other costs, losses and/or expenses incurred by the Supplier as a result of or in connection with such termination or expiry;
 - (b) the Supplier shall (at its own expense) work with any Replacement Supplier and shall provide all reasonable assistance to the Client to ensure a smooth and comprehensive handover to the Replacement Supplier. For the avoidance of doubt and unless otherwise agreed in writing, the Supplier shall not be entitled to charge for any services provided by it in discharging its obligations under this Clause 22.4(b);
 - (c) the Supplier shall immediately deliver to the Client all Deliverables whether or not then complete, and return all Client Materials. If the Supplier fails to do so, then the Client 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 this Agreement; and
 - (d) the Supplier shall co-operate fully with the Client in order to enable an efficient and detailed knowledge transfer from the Supplier to the Client on the termination or expiry of this Agreement and in addition, to minimise any disruption to routine operational requirements. To facilitate this transfer, the Supplier shall provide the Client free of charge with full access to its staff, and in addition, copies of all documents, reports, summaries and any other information requested by the Client. The Supplier shall comply with the Client's request for information no later than fifteen (15) Business Days from the date that that request was made.
- 22.5 If this Agreement is terminated by the Client pursuant to Clause 21.2, 21.3 or 35.5 then:
- (a) the Client shall cease to be under any obligation to make further payment until the costs, loss and/or damage resulting from or arising

out of the termination of the Supplier's appointment (and/or resulting for or arising out of any breach of this Agreement by the Supplier) shall have been calculated and such calculation shows a net sum or sums due to the Supplier (in which event Clauses 22.5(d) and 22.5(e) will apply); and

- (b) the Client shall be entitled to repossess any of its materials, equipment or other goods loaned or hired to the Supplier if applicable and to exercise a lien over any of the materials, equipment or other goods belonging to the Supplier for any sum due hereunder or otherwise from the Supplier to the Client; and
- (c) the Client shall be entitled to employ and pay other persons to provide and complete the supply of the Goods and/or Services and to use all such Supplier's materials, equipment or other goods for the purposes; and
- (d) the Client shall be entitled to deduct from any sum or sums which would have been due from the Client to the Supplier under this Agreement or any other contract or be entitled to recover the same from the Supplier as a debt and any loss or damage to the Client resulting from or arising out of the termination of the Supplier's appointment. Such loss or damage shall include the reasonable cost to the Client of the time spent by its officers in terminating the Supplier's appointment and in making alternative arrangements for the supply of the Goods and/or the Services; and
- (e) when the total costs, loss and/or damage resulting from or arising out of the termination of the Supplier's appointment has been calculated and deducted so far as practicable from any sum or sums which have been due to the Supplier any balance shown as due to the Client shall be recoverable as a debt or alternatively the Client shall pay to the Supplier any balance shown as due to the Supplier after the exercise of this right of set off.

22.6 The Supplier shall, within five (5) Business Days of a request from the Client, provide to the Client any information reasonably considered to be relevant by the Client to permit the Client to prepare any necessary documentation and carry out any retendering of the Goods and/or Services or goods or services similar to the same.

23. **FORCE MAJEURE**

23.1 Neither Party shall have any liability to the other under this Agreement if it is prevented from, or delayed in, performing its obligations under this Agreement, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including strikes, lock-outs or other industrial disputes, act of God, war, riot, civil commotion, compliance with any law or regulation, fire, flood or storm (each a "**Force Majeure Event**")

23.2 Each of the Parties hereto agrees to give notice forthwith to the other upon becoming aware of a Force Majeure Event such notice to contain details of the circumstances giving rise to the Force Majeure Event.

23.3 If a Party incurs a delay due to a Force Majeure Event which continues for more than one (1) month then the other Party shall be entitled to terminate this Agreement. Neither Party shall have any liability to the other in respect of the termination of this Agreement as a result of a Force Majeure Event.

24. AUDIT

The Supplier shall allow the Client and any person, firm or organisation authorised by the Client to have access to and to audit and inspect all records maintained by the Supplier in relation to the performance by the Supplier of its obligations under this Agreement. The Supplier shall assist the Client or any party authorised by the Client (as the case may be) in the conduct of the audit and/or inspection.

25. WAIVER

No failure or delay by a Party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

26. SEVERANCE

If any provision or part-provision of this 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 shall not affect the validity and enforceability of the rest of this Agreement.

27. ENTIRE AGREEMENT AND AMENDMENT

This Agreement constitutes the entire agreement between the Parties and supersedes all previous discussions, correspondence, negotiations, arrangements, understandings and agreements between them relating to its subject matter.

28. ASSIGNMENT AND SUBCONTRACTING

28.1 The Supplier shall not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights and obligations under this Agreement without the prior written consent of the Client.

28.2 If the Supplier assigns or subcontracts any of its obligations under this Agreement to any third party, the Supplier shall be fully responsible to the Client for the proper performance of those obligations and for any act or omission of the third party in relation thereto.

28.3 The Client may at any time assign, transfer, mortgage, charge or deal in any other manner with any or all of its rights and obligations under this Agreement, provided that the Client gives prior written notice to the Supplier.

28.4 Notwithstanding Clause 18, a Party assigning any or all of its rights under this Agreement may disclose to a proposed assignee any information in its

possession that relates to this Agreement or its subject matter, the negotiations relating to it and the other party which it is reasonably necessary to disclose for the purposes of the proposed assignment, provided that no disclosure pursuant to this Clause 28.4 shall be made until notice of the identity of the proposed assignee has been given to the other Party.

29. NO PARTNERSHIP OR AGENCY

Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the Parties, constitute any Party the agent of another party, nor authorise any Party to make or enter into any commitments for or on behalf of any other party.

30. THIRD-PARTY RIGHTS

30.1 A person who is not a party to this Agreement shall not have any rights under or in connection with it by virtue of the Contracts (Rights of Third Parties) Act 1999.

30.2 The right of the Parties to terminate, rescind or agree any variation, waiver or settlement under this Agreement is not subject to the consent of any person that is not a Party to this Agreement.

31. RIGHTS AND REMEDIES

Except as expressly provided in this Agreement, the rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

32. NOTICES

Any notice, request, instruction or other documentation to be given under this Agreement shall be delivered or sent by first class post or by fax or electronic mail to the address of the other Party set out in this Agreement (or such other address as the other may have notified the first Party for this purpose) and any such notice or other document shall be deemed to have been served, (if delivered) at the time of delivery or (if sent by post) upon the expiration of forty eight (48) hours after posting and (if sent by fax or electronic mail) upon transmission unless a notice of non-delivery is received within two (2) hours after transmission.

33. DISPUTE RESOLUTION

33.1 If there is a dispute between the Parties concerning any matter arising from or in connection with this Agreement, the Parties will use reasonable endeavours to settle the matter in accordance with the dispute resolution procedure set out below.

33.2 Any dispute which has not been resolved between the Parties within fourteen (14) days of the matter being raised by one to the attention of the other, may be escalated by either Party to a member of the senior management team of the other Party, by notice in writing.

33.3 If the dispute has not been resolved within fourteen (14) days of a notice under Clause 33.2, the Parties will attempt to settle it by mediation in

accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the Parties, the mediator will be nominated by CEDR. To initiate the mediation a Party must give notice in writing (“**ADR notice**”) to the other Party to the dispute requesting a mediation. A copy of the request should be sent to CEDR. The mediation will start not later than twenty (20) days after the date of the ADR notice.

- 33.4 Escalation of a dispute or the commencement of a mediation will not prevent the Parties commencing or continuing court proceedings at any stage.

34. GOVERNING LAW AND JURISDICTION

- 34.1 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.
- 34.2 Each Party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

35. ANTI-BRIBERY

- 35.1 The Supplier shall and shall procure that any of its officers, employees, agents, advisers, suppliers, subcontractors, service providers, Supplier Personnel or other persons associated with it shall:
- (a) comply with all applicable laws, statutes and regulations relating to anti-bribery and anti-corruption (and for this purpose the UK’s Bribery Act 2010 (the “**Bribery Act**”) shall be deemed to apply (“**Relevant Laws**”);
 - (b) not do, or omit to do, any act that will cause or lead the Client or any of its group companies to be in breach of any of the Relevant Laws or the Client’s anti-bribery policy (the “**Policy**”), a copy of which will be provided to the Supplier upon request;
 - (c) have and shall maintain in place throughout the period of the Agreement its own policies and procedures, including adequate procedures under the Bribery Act, to ensure compliance with the Relevant Laws and the Policy, and will enforce them where appropriate;
 - (d) promptly report to the Client (in writing) any breach of the Relevant Laws or the Policy by it or any of its officers, employees, agents, advisers, suppliers, subcontractors, service providers, Supplier Personnel or other persons associated with it;
 - (e) promptly report to the Client (in writing) any request or demand for any undue financial or other advantage of any kind received by the Supplier (or any of its officers, employees, agents, advisers, suppliers, subcontractors, service providers, Supplier Personnel or

other persons associated with it) in connection with the performance of this Agreement; and

- (f) if requested, provide the Client with any reasonable assistance, at the Client's reasonable cost, to enable the Client to perform any activity required for the purpose of compliance with any of the Relevant Laws or the Policy.
- 35.2 The Supplier shall indemnify the Client or any of its group companies against any losses, damages, claims or expenses incurred by, or awarded against, the Client or any of the Client's group companies as a result of any breach of this Clause 35 by the Supplier or any of its officers, employees, agents, advisers, suppliers, subcontractors, service providers, Supplier Personnel or other persons associated with it.
- 35.3 The Supplier warrants and represents to the Client that neither the Supplier nor any of its officers, employees, agents, advisers, suppliers, subcontractors, service providers, Supplier Personnel or other persons associated with it:
- (a) has been convicted of any offence involving bribery or corruption, fraud or dishonesty;
 - (b) to the best of its knowledge, has been or is the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence under the Relevant Laws; or
 - (c) has been or is listed by any government agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or other government contracts.
- 35.4 The Supplier shall promptly notify the Client if, at any time during the term of this Agreement, its circumstances, knowledge or awareness or that of its officers, employees, agents, advisers, suppliers, subcontractors, service providers, Supplier Personnel or other persons associated with it, changes such that it (or they) would not be able to repeat the warranties set out in Clause 35.3 at the relevant time.
- 35.5 The Client may terminate this Agreement with immediate effect upon written notice to the Supplier if at any time after entry into this Agreement the Supplier or any of its officers, employees, agents, advisers, suppliers, subcontractors, service providers, Supplier Personnel or other persons associated with it:
- (a) breaches Clause 35.1;
 - (b) is unable to repeat the warranties set out in Clause 35.3;
 - (c) pleads guilty to or is convicted of any offence involving bribery or corruption, fraud or dishonesty;
 - (d) is the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body

regarding any offence or alleged offence under the Relevant Laws; and/or

- (e) is listed by any government agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or other government contracts.

36. MODERN SLAVERY

36.1 The Supplier shall (and shall procure compliance by its officers, employees, agents, advisers, suppliers, subcontractors, service providers, Supplier Personnel or other persons associated with it), at its own cost, comply with its obligations under the Modern Slavery Act 2015 (“**MSA 2015**”).

36.2 The Supplier shall respond promptly to any questionnaire or due diligence enquiries put to it by the Client or its representatives relating to the subject of modern slavery and human trafficking and the Supplier warrants that any such information provided shall be true and accurate in all material respects having made such internal enquiries as would be expected by a reasonably prudent and diligent supplier.

36.3 The Supplier warrants to the Client that:

- (a) none of its officers, employees, agents, advisers, suppliers, subcontractors, service providers, Supplier Personnel or other persons associated with it have been convicted of any offence involving slavery and human trafficking; and
- (b) none of its officers, employees, agents, advisers, suppliers, subcontractors, service providers, Supplier Personnel or other persons associated with it have been or are 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 the warranties so provided by the Supplier shall be deemed repeated to the Client on each one (1) month anniversary of the Commencement Date.

36.4 The Supplier undertakes that it shall:

- (a) implement due diligence procedures for its own suppliers, subcontractors and other participants in its supply chains, to ensure that there is no slavery or human trafficking in its supply chains; and
- (b) undertake such training as may be reasonably required to procure that its business and supply chain are and remain free of any human trafficking or slavery.

37. **[TUPE]**

The provisions of Schedule 5 shall form part of this Agreement and the Client and the Supplier shall comply with the obligations set out in Schedule 5.]¹⁶

38. **[SOCIAL VALUE]**

The Supplier shall comply with its obligations in Schedule 4.]¹⁷

IN WITNESS whereof this Agreement has been executed **[as a deed]**¹⁸ on the date and year stated at the beginning of this Agreement

Executed **[as a deed]**¹⁹ by)
PARAGON ASRA HOUSING)
LIMITED acting by:

Authorised signatory

Name

Position

Executed **[as a deed]**²⁰ by)
[SUPPLIER]²¹ acting by:)

Authorised signatory

Name

Position

¹⁶ Clause 37 and Schedule 5 to be included if TUPE may apply on commencement and/or on termination of the Agreement. If TUPE will not be relevant then delete clause 37 and Schedule 5 and reference to it in Table of Contents.

¹⁷ Clause 38 and Schedule 4 to be included if it has been agreed that the Supplier will deliver social value as part of this Agreement.

¹⁸ Include wording if the Agreement is being executed as a deed. Delete wording if not.

¹⁹ Include wording if the Agreement is being executed as a deed. Delete wording if not.

²⁰ Include wording if the Agreement is being executed as a deed. Delete wording if not.

²¹ Insert name of Supplier

SCHEDULE 1 - SPECIFICATIONS

Part 1 – [Goods Specification]²²

²² Insert specification of Goods to be supplied under the Agreement. If Agreement is for Services only, leave blank

Part 2 – [Services Specification] ²³

²³ Insert specification of Services to be supplied under the Agreement. If Agreement is for Goods only, leave blank

SCHEDULE 2 – PRICING DOCUMENT²⁴

²⁴ Insert Supplier's pricing document setting out prices / rates agreed for the Goods and/or Services

SCHEDULE 3 – CONTRACT SPECIFIC KEY PERFORMANCE INDICATORS (KPIs)²⁵

²⁵ Insert KPIs on a case by case basis

**SCHEDULE 4 – DETAILS AND DELIVERY OF THE IMPROVEMENTS TO ECONOMIC,
SOCIAL AND ENVIRONMENTAL MATTERS BY THE SUPPLIER ²⁶**

²⁶ Insert on a case by case basis

[SCHEDULE 5 – TUPE]²⁷

1 Definitions

The following definitions apply to this Schedule 5. Save as otherwise stated in this paragraph, the definitions and interpretation set out in this Agreement shall also apply to Schedule 5:

| | |
|--------------------------------------|--|
| Former Employee | means an employee who was employed by the Supplier in connection with the goods and/or services supplied under this Agreement whose contract of employment has been terminated for whatever reason at the Termination Date; |
| Second Transferring Employees | means those employees who immediately prior to the Termination Date are employed by the Supplier in connection with the goods and/or services supplied under this Agreement who have a right under the Transfer Regulations to transfer to any New Supplier; |
| Termination Date | means the date that this Agreement is terminated or determines for any reasons (including by expiry); |
| Transferring Employee | means those persons whose names are set out in paragraph 4 of this Schedule 5 and “ Transferring Employees ” shall be construed accordingly; and |
| Transfer Regulations | means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended). |

2 Transferring Employees

- 2.1 The Supplier hereby acknowledges to the Client that the Supplier will become the employer of the Transferring Employees from the date of this Agreement as if (which both Parties believe to be the case) the engagement of the Supplier under this Agreement gives rise to a transfer to which the Transfer Regulations apply.
- 2.2 All salaries and other emoluments including holiday pay, taxation and national insurance contributions and contributions to retirement benefit schemes relating to the Transferring Employees shall be borne by the Supplier with effect from the date of this Agreement.
- 2.3 The Supplier shall indemnify the Client in full for and against all claims, costs expenses or liabilities whatsoever and howsoever arising incurred or suffered by the Client including without limitation all legal expenses and other professional fees in relation to:

²⁷ Schedule 5 to be included if TUPE may apply on commencement and/or on termination of the Agreement. If TUPE will not be relevant then delete Schedule 5.

2.3.1 any failure by the Supplier to comply with its obligations under the Transfer Regulations and

2.3.2 anything done or omitted to be done by the Supplier in respect of any of the Transferring Employees whether before or after the date of this Agreement.

3 Termination

3.1 The provisions of this Schedule 5 will continue notwithstanding the termination of this Agreement.

3.2 If this Agreement is terminated or determines in circumstances in which the Transfer Regulations apply the following provisions will apply:

3.2.1 With effect from the Termination Date the Client or such other organisation as the Client engages to perform the goods and/or services under the Agreement (the “**New Supplier**”) will become the employer of the Second Transferring Employees;

3.2.2 The Supplier shall be liable for all salaries, wages, bonuses, pension contributions, income tax and National Insurance contributions or other emoluments relating to the Second Transferring Employees up to and including the Termination Date and shall indemnify the Client or, as the case may be, the New Supplier in respect thereof;

3.2.3 The Supplier will indemnify the Client and/or the New Supplier against any loss, damage, expenses, costs (including reasonable legal fees) suffered or incurred by reason of any proceeding, claim or demand by or on behalf of any Second Transferring Employee or Former Employee relating to any act or omission by the Supplier on or before the Termination Date in relation to the employment of any Second Transferring Employee or Former Employee;

3.2.4 The Supplier warrants that it will comply in full with its obligations under Regulations 11, 13 and 14 of the Transfer Regulations and will indemnify the Client and/or the New Supplier against any loss, damage, expenses, costs (including reasonable legal fees) suffered or incurred by the Client as a result of a breach of this warranty.

3.3 Twelve (12) months prior to the expiry of this Agreement, following notice to terminate this Agreement or whenever the Supplier is on notice that the Client will terminate this Agreement whichever is the earlier, the Supplier shall:

3.3.1 not vary any terms or conditions of employment of the employees engaged in the goods and/or services under this Agreement at that time (the “**Assigned Employees**”) without the Client's prior written consent;

3.3.2 be precluded from making any material increase or decrease in the numbers of, or from replacing any of the Assigned Employee(s) save in circumstances where an Assigned Employee resigns and then only with the Client's prior written consent;

3.3.3 be precluded from transferring any Assigned Employee to another part of its business or moving other employees from elsewhere in its business who have not previously been employed or engaged in providing the goods and/or services under the Agreement, or from materially decreasing/increasing the

number of hours worked by any Assigned Employee in connection with the provision of the goods and/or services under the Agreement save with the Client's prior written consent.

3.4 The Supplier agrees that on request by the Client during any time within twelve (12) months prior to expiry of this Agreement the Supplier shall provide to the Client or at the Client's direction, to the New Supplier copies and/or allow it access to such employment records and/or employee information in relation to the Assigned Employees as the Client reasonably requests.

4 Transferring Employees

[]²⁸

²⁸ Insert list of employees that will be in scope to TUPE transfer to the Supplier on commencement of the Agreement.