

ST MUNGO'S COMMUNITY HOUSING ASSOCIATION - PURCHASE ORDER STANDARD TERMS AND CONDITIONS
(PURCHASE OF SERVICES)

1 INTERPRETATION

1.1 Definitions

In these Conditions, the following definitions apply:

- "Authorised Officer"** means a person authorised, either generally or specifically, by Purchaser to either sign an Order, or raise an Order by telephone, e-mail, fax, or other means;
- "Business Day"** means a day (other than a Saturday, Sunday or a public holiday) when banks in London are open for business;
- "Charges"** means the charges payable by Purchaser for the supply of the Services in accordance with Clause 6;
- "Commencement Date"** has the meaning set out in Clause 2.3;
- "Conditions"** means these terms and conditions as amended from time to time in accordance with Clause 19.10;
- "Contract"** means the contract between Purchaser and the Supplier for the supply of Services in accordance with (in order of precedence) any Order Amendments, the Order, the Specification and these Conditions and any other documents referred to therein or agreed in writing between the parties as applicable to the contract between them;
- "Deliverables"** means all documents, inventions, databases, products and any other items or materials developed or created 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 of any such things);
- "DPA"** means the Data Protection Act 1998 and the rules and regulations made or having effect under it and the General Data Protection Regulation (GDPR) from 25th May 2018 and the rules and regulations made or having effect under it;
- "Eighth Data Protection Principle"** means the eighth data protection principle set out in the DPA and the whole of Chapter 5 of the GDPR;
- "Intellectual Property Rights"** means all patents, rights to inventions, utility models, copyright and related rights, trade marks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database rights, topography rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection in any part of the world;
- "Order"** means Purchaser's order for the supply of Services, as set out in Purchaser's purchase order form;
- "Order Amendment"** means Purchaser's authorised order amendment or series of order amendments, adding to, deleting or modifying the Services, each order amendment having precedence over any earlier order amendment;
- "Personal Data"** has the meaning given to that term in the DPA until 24th May 2018 and the GDPR from 25th May 2018;
- "Process"** has the meaning given to that term in the DPA and the GDPR and "Processed" and "Processing" shall be construed accordingly;
- "Purchaser"** means St. Mungo's Community Housing Association (company number: 8225808) 3 Thomas More Square, Tower Hill, London, E1W 1YW;
- "Purchaser Materials"** has the meaning set out in Clause 3.3.8;
- "Services"** means the services, including any Deliverables, to be provided by the Supplier under the Contract as set out in the Specification;
- "Seventh Data Protection Principle"** means the seventh data protection principle set out in the DPA and the sixth data protection principle set out in the GDPR;
- "Specification"** means the description or specification for the Services described in the Order or otherwise specified by Purchaser to the Supplier;
- "Supplier"** means the person from whom Purchaser purchases the Services and to whom it submits an Order; and
- "Supplier Personnel"** means the employees, agents and contractors of the Supplier (including the employees, agents and contractors of any sub-contractor of the Supplier) who are engaged in the provision of the Services.

1.2 Construction

In these Conditions, the following rules apply:

- 1.2.1 a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- 1.2.2 a reference to a party includes its personal representatives, successors or permitted assigns;
- 1.2.3 a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
- 1.2.4 a reference to a **Clause** or **Annex** is a clause or annex of these Conditions;
- 1.2.5 any phrase introduced by the terms **including**, **include**, **in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and
- 1.2.6 a reference to **writing** or **written** includes faxes and e-mails.

2 BASIS OF CONTRACT

No request for a quotation by Purchaser shall constitute an offer to purchase services.

The Order constitutes an offer by Purchaser to purchase Services in accordance with these Conditions.

The Order shall be deemed to be accepted on the earlier of:

- 2.3.1 the Supplier issuing written acceptance of the Order; or
- 2.3.2 any act by the Supplier consistent with fulfilling the Order, at which point and on which date the Contract shall come into existence ("**Commencement Date**").
- 2.4 Purchaser reserves the right to withdraw or cancel any Order or request for a quotation without notice at any time prior to receipt of, or deemed, acceptance pursuant to Clause 2.3 above.
- 2.5 These Conditions apply to the Contract 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. In the event that this Contract is held by a court of competent jurisdiction to include the Supplier's terms, if there is any conflict or apparent conflict between these Conditions and the Supplier's terms, these Conditions shall always prevail.
- 2.6 No previous correspondence, writings, facsimiles, e-mails (or other electronic communications) or verbal communications between the Supplier and Purchaser regarding the Services shall form any part of or be incorporated into the Contract unless specifically referred to on the Order. For the avoidance of doubt, nothing in the Contract shall exclude or limit liability for fraudulent misrepresentation.

3 SUPPLY OF SERVICES

- 3.1 The Supplier shall from the Commencement Date and for the duration of this Contract provide the Services to Purchaser in accordance with the terms of the Contract.
- 3.2 The Supplier shall meet any dates for performance of the Services specified in the Order or notified to the Supplier by Purchaser.
- 3.3 In providing the Services, the Supplier shall:
- 3.3.1 co-operate with Purchaser in all matters relating to the Services, and comply with all instructions and regulations of Purchaser;
- 3.3.2 perform the Services with the best care, skill and diligence in accordance with best practice in the Supplier's industry, profession or trade;
- 3.3.3 ensure that the Services and Deliverables will conform with all descriptions and specifications set out in the Specification, and that the Deliverables shall be fit for any purpose expressly or impliedly made known to the Supplier by Purchaser;
- 3.3.4 provide all equipment, tools and vehicles and such other items as are required to provide the Services;
- 3.3.5 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 Purchaser, will be free from defects in workmanship, installation and design;
- 3.3.6 obtain and at all times maintain all necessary licences and consents, and comply with all applicable laws and regulations;
- 3.3.7 observe all health and safety rules and regulations and all legal requirements of the United Kingdom in relation to health, safety and environment and any other security requirements that apply at any of Purchaser's premises;
- 3.3.8 hold all materials, equipment and tools, drawings, specifications and data supplied by Purchaser to the Supplier ("**Purchaser Materials**") in safe custody at its own risk, maintain Purchaser Materials in good condition until returned to Purchaser, and not dispose or use Purchaser Materials other than in accordance with Purchaser's written instructions or authorisation;
- 3.3.9 not do or omit to do anything which may cause Purchaser to lose any licence, authority, consent or permission on which it relies for the purposes of conducting its business, and the Supplier acknowledges that Purchaser may rely or act on the Services; and
- 3.3.10 where the Services are performed in London, pay such personnel that are engaged in performing the Services, the London living wage in force from time to time.
- 3.4 Without prejudice to Clause 2.4, Purchaser shall have the right, before delivery of a Service, to send the Supplier an Order Amendment. If the Order Amendment will cause a change to the Charges or delivery of the relevant Service, the Supplier must suspend performance of the Contract and notify Purchaser without delay, calculating the new Charges at the same level of cost and profitability as the original Charges. The Supplier must allow Purchaser at least 10 Business Days to consider any new Charges. The Order Amendment shall take effect on Purchaser's Authorised Officer accepting in writing the new Charges within the time period the Supplier has stipulated. If Purchaser's Authorised Officer fails to confirm the Order Amendment within the time period the Supplier has stipulated then performance of the Contract shall immediately resume as though the said Order Amendment had not been issued.
- 3.5 The Supplier agrees to act in a way which is consistent with the best interests of the Purchaser. The Supplier undertakes to declare to the Purchaser any competing interest which may affect the provision of the Services by the Supplier to the Purchaser or which may conflict with the best interests of the Purchaser or cause, or be likely to

cause, the Supplier to act in a way which is inconsistent with the best interests of the Purchaser and will provide a written declaration of any such conflict of interest to the Purchaser.

4 PURCHASER RIGHTS AND REMEDIES

- 4.1 If the Supplier fails to perform the Services by the applicable dates, Purchaser shall, without limiting its other rights or remedies, have one or more of the following rights:
- 4.1.1 to terminate the Contract with immediate effect by giving written notice to the Supplier;
- 4.1.2 to refuse to accept any subsequent performance of the Services which the Supplier attempts to make;
- 4.1.3 to recover from the Supplier any costs incurred by Purchaser in obtaining substitute services from a third party; where Purchaser has paid in advance for Services that have not been provided by the Supplier, to have such sums refunded by the Supplier; or
- 4.1.4 to claim damages for any additional costs, loss or expenses incurred by Purchaser which are in any way attributable to the Supplier's failure to meet such dates.
- 4.2 These Conditions shall extend to any substituted or remedial services provided by the Supplier.
- 4.3 Purchaser's rights under this Contract are in addition to its rights and remedies implied by statute and common law, including the Sale and Supply of Goods and Services Act 1982.

5 PURCHASER'S OBLIGATIONS

- 5.1 Purchaser shall:
- 5.1.1 if necessary, provide the Supplier with reasonable access at reasonable times to Purchaser's premises for the sole purpose of providing the Services; and
- 5.1.2 provide such information to the Supplier as the Supplier may reasonably request and Purchaser considers reasonably necessary for the purpose of providing the Services.

6 CHARGES AND PAYMENT

- 6.1 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 Purchaser, the Charges shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the performance of the Services.
- 6.2 The Supplier shall invoice Purchaser on completion of the Services. Each invoice shall include such supporting information required by Purchaser to verify the accuracy of the invoice, including the relevant purchase order number.
- 6.3 In consideration of the proper supply of the Services by the Supplier in accordance with the terms of the Contract, subject to Clause 6.4, Purchaser shall pay the invoiced amounts no later than the end of the calendar month following the calendar month in which delivery was made or Services rendered and receipt of a correct invoice submitted by the Supplier whichever shall happen last, to a bank account nominated in writing by the Supplier.
- 6.4 If Purchaser disputes any invoice or other request for payment, Purchaser shall immediately notify the Supplier in writing. The parties shall negotiate in good faith to attempt to resolve the dispute promptly. The Supplier shall provide all such evidence as may be reasonably necessary to verify the disputed invoice or request for payment. Where only part of an invoice is disputed, the undisputed amount shall be paid on the due date as set out in Clause 6.3. For the avoidance of doubt, the Supplier's obligations to provide the Services shall not be affected by any payment dispute, including its obligations to provide the Services to which the payment dispute relates.
- 6.5 The Supplier's invoice must be addressed to the department or division of Purchaser indicated on the Order and must quote the full Order number. Purchaser shall not be held responsible for delays in payment caused by the Supplier's failure to comply with Purchaser's invoicing instructions.
- 6.6 All amounts payable by Purchaser under the Contract are exclusive of amounts in respect of value added tax chargeable for the time being ("**VAT**"). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to Purchaser, Purchaser 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 Services at the same time as payment is due for the supply of the Services.
- 6.7 If Purchaser fails to pay any amount properly due and payable by it under the Contract, the Supplier shall have the right to charge interest on the overdue amount at the rate of two (2) per cent per annum above the base rate for the time being of The Royal Bank of Scotland plc accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgment. This Clause shall not apply to payments that Purchaser disputes in good faith pursuant to Clause 6.4.
- 6.8 The Supplier shall maintain complete and accurate records of the time spent and materials used by the Supplier in providing the Services, and shall allow Purchaser to inspect such records at all reasonable times on request.
- 6.9 Purchaser may, without limiting its other rights or remedies, set off any amount owed to it by the Supplier against any amount payable by Purchaser to the Supplier under the Contract.

7 INTELLECTUAL PROPERTY RIGHTS

- 7.1 In respect of any goods that are transferred to Purchaser under this Contract, including the Deliverables or any part of them, the Supplier warrants that it has full clear and unencumbered title to all such items, and that at the date of delivery of such items to Purchaser, it will have full and unrestricted rights to transfer all such items to Purchaser.
- 7.2 The Supplier assigns to Purchaser, with full title guarantee and free from all third party rights, all Intellectual Property Rights in Deliverables and Purchaser shall have the sole right to determine whether any intellectual property protection shall be sought in respect of the Deliverables.
- 7.3 The Supplier shall obtain waivers of all moral rights in the Deliverables, to which any individual is now or may be at any future time entitled under Chapter IV of Part I of the Copyright Designs and Patents Act 1988 or any similar provisions of law in any jurisdiction.
- 7.4 The Supplier shall, promptly at Purchaser's request, do (or procure to be done) all such further acts and things and the execution of all such other documents as Purchaser may from time to time require for the purpose of securing for Purchaser the full benefit of the Contract, including all right, title and interest in and to the Intellectual Property Rights assigned to Purchaser in accordance with Clause 7.2.
- 7.5 All Purchaser Materials are the exclusive property of Purchaser.

8 DATA PROTECTION

- 8.1 If and to the extent that the Supplier (for the purpose of this Clause 8, the "**Data Processor**") Processes any Personal Data on behalf of the Purchaser under this Agreement (for the purpose of this Clause 8, the "**Data Controller**"), the Data Processor undertakes to the Data Controller that the Data Processor:
- 8.1.1 shall comply with the obligations imposed on the Data Controller by the Security Data Protection Principle, namely:
- 8.1.1.1 to maintain technical and organisational security measures sufficient to comply at least with the obligations imposed on the Data Controller by the Security Data Protection Principle and take reasonable steps to ensure the reliability of any employees of the Data Processor who have access to Personal Data;
- 8.1.1.2 only to Process Personal Data for and on behalf of the Data Controller for the purpose of performing and in accordance with this Agreement (and where necessary only on instructions from the Data Controller to ensure compliance with the DPA/GDPR, whichever is in force); and
- 8.1.1.3 to allow representatives of the Data Controller to audit the Data Processor's compliance with the requirements of this Clause 8 on reasonable notice and/or, at the option of the Data Controller, on request to provide the Data Controller with evidence of its compliance with such requirements;
- 8.1.1.4 not to engage another processor without prior specific or general written authorisation of the Data Controller;
- 8.1.2 shall not transfer any Personal Data outside the European Economic Area without the prior written consent of the Purchaser, and in granting consent to the transfer, the Purchaser may impose such terms on the Processing of the Personal Data and on the Supplier and/or any overseas processor of the data as the Purchaser requires to ensure that the Personal Data is adequately protected (as required by the International Transfer Data Protection Principle); and
- 8.1.3 shall assist the Data Controller to comply with any obligations imposed on the Data Controller by the DPA in relation to any Personal Data Processed by the Data Processor including:
- 8.1.3.1 providing the Data Controller with reasonable assistance in complying with any subject access request served on the Data Controller under the DPA;
- 8.1.3.2 promptly informing the Data Controller about the receipt of any subject access request received by the Data Processor in relation to Personal Data Processed pursuant to any Contract; and
- 8.1.3.3 not disclosing any Personal Data in response to a subject access request without first consulting with and obtaining the consent of the Data Controller.
- 8.2 On expiry or termination of the Contract, the Supplier shall immediately cease Processing the Personal Data and, at Purchaser's option or direction, arrange for the prompt and safe return and/or destruction of all of the Personal Data with all copies in its possession or control and, where requested by the Purchaser, certify that such destruction or return has taken place.

9 PERSONNEL

- 9.1 The Supplier shall ensure that all Supplier Personnel have the appropriate skills, qualifications, training and experience to carry out those parts of the Services for which they are responsible with all due care, skill and diligence and in a professional and workmanlike manner, and the Supplier shall ensure that Supplier Personnel are provided in sufficient number to ensure that the Supplier's obligations are fulfilled in accordance with this Contract.
- 9.2 The Supplier shall use its reasonable endeavours to ensure the continuity of Supplier Personnel assigned to perform the Services. If the Supplier is required to replace Supplier Personnel it shall provide a replacement of comparable skill, qualification and experience, and any required handover or period of familiarisation shall be at the expense of the Supplier.

10 EQUALITY AND DIVERSITY

- 10.1 The Supplier shall, and shall procure that the Supplier Personnel, comply with any and all applicable anti-discrimination legislation, including the Equality Act 2010.
- 10.2 The Supplier will provide evidence to Purchaser, on written request, of the Supplier's compliance with any and all applicable anti-discrimination legislation in provision of the Services (including in the Supplier's employment practices), in order to satisfy Purchaser that the Supplier takes all reasonable steps to promote equality and diversity in provision of the Services to Purchaser and in the Supplier's work environment.
- 10.3 Where the Services are performed in London, the Supplier shall pay such personnel that are engaged in performing the Services, the London living wage in force from time to time and where the Services are performed outside London, the National living wage

11 MODERN SLAVERY

11.1 The Supplier represents and warrants that: (i) it has not been and is not engaged in any practices involving the use of child labour, forced labour, the exploitation of vulnerable people, or human trafficking, including any activity or practice that would constitute an offence under section 1, section 2 and section 4 of the Modern Slavery Act 2015, if carried out in the UK ("**Slavery and Human Trafficking**"); (ii) its employees and agency workers are paid in compliance with all applicable employment laws and minimum wage requirements; (iii) it will take reasonable steps to prevent Slavery and Human Trafficking in connection with the Supplier's business; (iv) it will include in its contracts with its subcontractors and suppliers in connection with this Contract Slavery and Human Trafficking provisions that are at least as onerous as those set out in this Contract; and (v) it will respond to all reasonable requests for information required by Purchaser for the purposes of completing Purchaser's annual anti-Slavery and Human Trafficking statement.

12 RIGHT TO AUDIT

12.1 Purchaser shall have the right, during normal business hours and on reasonable notice, to inspect and take copies of all relevant records relating to the work that the Supplier carries out under the terms of this Contract (including evidence of expenses and expenditure, amounts which the Supplier holds or has held on Purchaser's behalf, and invoices issued to or by suppliers/agencies), or to authorise an agent or representative to carry out that work on Purchaser's behalf. The aim of that inspection will be to verify the Supplier's performance under and in accordance with this Contract including how the Supplier's costs are incurred and how the Supplier has used any amounts held by the Supplier on Purchaser's behalf. This right will exist during the life of this Contract and for one year after its expiry or termination. The Supplier agrees to co-operate with the inspection and where requested, provide access to its staff, systems and premises.

13 INDEMNITY

13.1 The Supplier shall indemnify Purchaser and keep Purchaser indemnified on demand and in full against all costs, expenses, damages and losses (whether direct or indirect), including any interest, fines, legal and other professional fees and expenses awarded against or incurred or paid by Purchaser as a result of or in connection with:

13.1.1 any claim made against Purchaser by a third party arising out of, or in connection with, the supply of the Services, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Contract by the Supplier, its employees, agents or subcontractors; and

13.1.2 any claim brought against Purchaser for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the receipt, use or supply of the Services or any Deliverable.

13.2 For the duration of the Contract and for a period of six (6) years thereafter, the Supplier shall maintain in force, with a reputable insurance company to cover the liabilities that may arise under or in connection with the Contract and shall, on Purchaser's request, produce both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each of the following risks:

13.2.1 professional indemnity insurance cover with a minimum limit of £5,000,000 (five million pounds Sterling) for any one claim in any one policy year;

13.2.2 employer's liability insurance cover with a minimum limit of £5,000,000 (five million pounds Sterling) per occurrence; public liability insurance cover with a minimum limit of £5,000,000 (five million pounds Sterling) per occurrence; and risks against which it is usual to insure a business of the type carried out by the Supplier or which Purchaser specifically asks the Supplier to take out at the time that the Contract is signed.

13.3 This Clause 12 shall survive termination of the Contract.

14 CONFIDENTIALITY

14.1 A party ("**Receiving Party**") shall keep in strict confidence information which is of a confidential nature and which has been disclosed to, or otherwise obtained by, the Receiving Party by or from the other party ("**Disclosing Party**"), its employees, agents or subcontractors, and any other confidential information concerning the Disclosing Party's business or its products or its services which the Receiving Party may obtain.

14.2 Each party agrees not to use confidential information relating to any other party for any purpose other than the purpose for which it is supplied under the Contract and the Receiving Party agrees to restrict disclosure of such confidential information to such of its employees, agents or subcontractors as need to know it for the purpose of discharging the Receiving Party's obligations under the Contract, and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Receiving Party. The Deliverables and information comprised in the Deliverables, that is confidential in nature shall be deemed to be, and be treated as, the confidential information of Purchaser.

14.3 The obligations in this Clause 13 shall not apply in relation to:

14.3.1 information which is or becomes public knowledge other than as a result of a breach of Clauses 13.1 or 13.2;

14.3.2 information which the party using or disclosing the information either knew prior to the other party's first disclosure to it or received from a third party entitled to disclose the same;

14.3.3 information which any party is required to disclose by law, any Court of competent jurisdiction, any Government agency or regulatory body lawfully requesting the same or by the regulations of any stock exchange.

14.4 This Clause 14 shall survive termination of the Contract.

14.5 Neither party shall make any announcement relating to any Contract or its subject matter without the prior written approval of the other party.

15 COMPLIANCE

15.1 In connection with any Contract formed between Purchaser and the Supplier, the Supplier will comply with all applicable laws, statutes, regulations and codes relating to anti-bribery and anti-corruption including the Bribery Act 2010 and will not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010. Without limiting the foregoing, the Supplier will not make any payments, or offer or transfer anything of value, to any government official or government employee, to any political party official or to any other third party and will promptly report to Purchaser any request or demand for any undue financial or other advantage of any kind received by the Supplier in connection with the performance of any Contract.

15.2 The Supplier shall ensure that any person associated with the Supplier who is performing services in connection with any Contract does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on the Supplier in this Clause 14 ("**Relevant Terms**"). The Supplier shall be responsible for the observance and performance by such persons of the Relevant Terms, and shall be directly liable to Purchaser for any breach by such persons of any of the Relevant Terms.

15.3 In the event of any breach of this Clause 14, Purchaser shall, without prejudice to any other rights it may possess, be at liberty immediately to terminate this and any other Contract and to recover from the Supplier any loss or damage resulting from such termination.

16 TERMINATION

16.1 Without prejudice to any other right or remedy which Purchaser may have, if any Services are not supplied in accordance with, or the Supplier fails to comply with, any of the terms of the Contract Purchaser shall be entitled to avail itself of any one or more of the following remedies at its discretion, whether or not any part of the Services have been accepted by Purchaser:

16.1.1 to terminate the Contract;

16.1.2 at Purchaser's option to give the Supplier the opportunity at the Supplier's expense either to remedy any defect in the Services or to supply replacement Services and carry out any other necessary work to ensure that the terms of the Contract are fulfilled;

16.1.3 to refuse to accept any further Services under the Contract or any other contract between Purchaser and the Supplier but without any liability to the Supplier;

16.1.4 to carry out at the Supplier's expense any work necessary to make the Services comply with the Contract; and

16.1.5 to claim such damages as may have been sustained in consequence of the Supplier's breaches of the Contract.

16.2 Without limiting its other rights or remedies, Purchaser may terminate the Contract with immediate effect by giving written notice to the Supplier if:

16.2.1 the Supplier commits a material or persistent breach of the Contract and (if such a breach is remediable) fails to remedy that breach within twenty eight (28) days of receipt of notice in writing of the breach;

16.2.2 the Supplier suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;

16.2.3 the Supplier commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (where a company) for the sole purpose of a scheme for a solvent amalgamation of the Supplier with one or more other companies or the solvent reconstruction of the Supplier;

16.2.4 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Supplier (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the Supplier with one or more other companies or the solvent reconstruction of the Supplier;

16.2.5 the Supplier (being an individual) is the subject of a bankruptcy petition order;

16.2.6 a creditor or encumbrancer of the Supplier attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;

16.2.7 an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Supplier (being a company);

16.2.8 a floating charge holder over the assets of the Supplier (being a company) has become entitled to appoint or has appointed an administrative receiver;

16.2.9 a person becomes entitled to appoint a receiver over the assets of the Supplier or a receiver is appointed over the assets of the Supplier;

16.2.10 any event occurs, or proceeding is taken, with respect to the Supplier in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in Clause 16.2.2 to Clause 16.2.9 (inclusive);

16.2.11 the Supplier suspends or threatens to suspend, or ceases or threatens to cease to carry on, all or a substantial part of its business; or

16.2.12 the Supplier (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.

16.3 Without limiting its other rights or remedies, Purchaser may terminate the Contract by giving the Supplier three (3) months' written notice.

17 CONSEQUENCES OF TERMINATION

17.1 On termination of the Contract for any reason:

17.1.1 The Supplier shall immediately deliver to Purchaser all Deliverables whether or not then complete, and return all Purchaser Materials. If the Supplier fails to do so, then Purchaser may enter the Supplier's premises and take possession of the Deliverables and/or the Purchaser Materials (as the case may be). Until Deliverables and/or the Purchaser Materials (as the case may be) 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 Contract;

17.1.2 the accrued rights, remedies, obligations and liabilities of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination; and

17.1.3 Clauses which expressly or by implication have effect after termination shall continue in full force and effect.

18 MULTI-TIERED DISPUTE RESOLUTION PROCEDURE

18.1 If a dispute arises out of or in connection with this Contract or the performance, validity or enforceability of it ("**Dispute**") then, the parties shall follow the procedure set out in this Clause:

18.1.1 either party shall give to the other written notice of the Dispute, setting out its nature and full particulars ("**Dispute Notice**"), together with relevant supporting documents. On service of the Dispute Notice, a nominated representative of the Supplier and a nominated representative of Purchaser shall attempt in good faith to resolve the Dispute;

18.1.2 if the nominated representative of the Supplier and the nominated representative of Purchaser are for any reason unable to resolve the Dispute within 30 days of service of the Dispute Notice, the Dispute shall be referred to a senior representative of the Supplier and a senior representative of Purchaser who shall attempt in good faith to resolve it; and

18.1.3 if the senior representative of the Supplier and the senior representative of Purchaser are for any reason unable to resolve the Dispute within 30 days of it being referred to them, 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 shall be nominated by CEDR Solve. To initiate the mediation, a party must serve notice in writing ("**ADR notice**") to the other party to the Dispute, requesting a mediation. A copy of the ADR notice shall be sent to CEDR Solve. The mediation will start not later than 30 days after the date of the ADR notice.

18.2 The commencement of mediation shall not prevent the parties commencing or continuing court proceedings in relation to the Dispute under Clause 18.9 which Clause shall apply at all times.

19 GENERAL

19.1 **Matters beyond control:** Neither party shall be liable to the other as a result of any delay or failure to perform its obligations under the Contract if and to the extent such delay or failure is caused by an event or circumstance which is beyond the reasonable control of that party which by its nature could not have been foreseen by such a party or if it could have been foreseen was unavoidable. If such event or circumstances prevent the Supplier from providing any of the Services for more than six (6) weeks, Purchaser shall have the right, without limiting its other rights or remedies, to terminate this Contract with immediate effect by giving written notice to the Supplier.

19.2 **Assignment and subcontracting:**

19.2.1 The Supplier shall not assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract without the prior written consent of Purchaser (such consent not to be unreasonably withheld or delayed). The Supplier will be responsible for all acts and omissions of its subcontractors (including any sub-subcontractors) as though they were its own.

19.2.2 Purchaser may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party or agent.

19.3 **Notices:**

19.3.1 Any notice or other communication required to be given to a party under or in connection with this Contract shall be in writing and shall be delivered to the other party personally or sent by prepaid first-class post, recorded delivery or by commercial courier, at its registered office (if a company) or (in any other case) its principal place of business, or sent by fax or e-mail to the other party's main fax number or e-mail address.

19.3.2 Any notice or communication shall be deemed to have been duly received if delivered personally, when left at the address referred to above or, if sent by prepaid first-class post or recorded delivery, at 9.00 am on the second Business Day after posting, or if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed, or if sent by fax or e-mail, on the next Business Day after transmission.

19.3.3 This Clause 19.3 shall not apply to the service of any proceedings or other documents in any legal action.

19.4 **Waiver and cumulative remedies:**

19.4.1 A waiver of any right under the Contract is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor preclude or restrict its further exercise. 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.

19.4.2 Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.

19.5 **Severance:**

19.6 If a court or any other competent authority finds that any provision (or part of any provision) of the Contract is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.

19.7 If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

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

19.9 **Third parties:** A person who is not a party to the Contract shall not have any rights under or in connection with it.

19.10 **Variation:** Any variation, including any additional terms and conditions, to the Contract shall only be binding when agreed in writing and signed by an Authorised Officer of Purchaser.

19.11 **Governing law and jurisdiction:** The Contract, 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 laws of England and Wales, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.