

Terms and Conditions for the supply of goods and services

1 Definitions

1.1 In these terms and conditions the following expressions shall have the following meanings unless inconsistent with the context:

Business Day means a day (other than a Saturday, Sunday or public holiday) when banks in London are open for non-automated banking business.

Conditions means these terms and conditions as amended from time to time in accordance with clause 14.8.

Contract means the agreement between Customer and the Supplier which incorporates these Conditions and the requirements set out in the Order.

Customer means Plymouth Community Homes Limited, an Industrial and Provident Society with registered number 30637R, of Plumer House, Tailyour Road, Plymouth, PL6 5DH.

Data Processing Details means the description of the Supplier's Personal Data processing activities contemplated by the Contract, as set out in the Annex.

Data Protection Law means all applicable: (i) laws and regulations; and (ii) guidance issued by a DP Regulator, in each case pertaining to the security, confidentiality, protection or privacy of Personal Data, as amended or re-enacted from time to time, including (without limitation and to the extent applicable) the GDPR.

Deliverables means 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 without limitation drawings, maps, plans, diagrams, designs, pictures, computer programs, data, specifications and reports (including drafts).

DP Regulator means a regulatory, administrative, supervisory or governmental agency, body or authority (whether regional, national or supranational) with jurisdiction over the Personal Data processing activities contemplated by the Contract.

GDPR means the European General Data Protection Regulation, namely Regulation (EU) 2016/679.

Goods means the goods (or any part of them) set out in the Order.

Goods Specification means any specification for the Goods, including any related plans and drawings, which is agreed in writing by the Customer and the Supplier.

Intellectual Property Rights means all intellectual property rights (including without limitation patents, trademarks, designs, design rights, copyright, inventions, trade secrets, know-how and confidential information) and all applications for protection of any of the same.

Legislation means all laws, statutory instruments, regulations in force from time to time in the United Kingdom.

Losses means all losses (including (without limitation) any direct, indirect or consequential losses, loss of profit, loss of business, loss of reputation, depletion of goodwill) liabilities, costs (including (without limitation) legal costs and VAT), charges, expenses, interest, actions, procedures, claims, fines, penalties, demands and damages (including (without limitation) the amount of damages awarded by a court of competent jurisdiction).

Order means the Customer's written instructions to the Supplier to supply Goods and/or Services incorporating these Conditions.

Personal Data means the personal data that is processed by the Supplier on behalf of the Customer in accordance with the Contract, as further described in the Data Processing Details.

Security Incident means: (a) the unlawful or unauthorised processing of Personal Data; or (b) any breach of security affecting the Personal Data (including (without limitation) a personal data breach as defined in the GDPR).

Services mean any services, duties and responsibilities, including without limitation any Deliverables, to be provided, performed and observed by the Supplier pursuant to the Contract as set out in the Service Specification.

Service Specification means the description or specification for Services agreed in writing by the Customer and the Supplier.

Supplier means the person, firm or company to whom the Order is addressed.

Working Day means Monday to Friday inclusive but not including any public holiday.

VAT means value added tax chargeable under the Value Added Tax Act 1994 and any similar replacement or added tax.

1.2 A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate legislation for the time being in force made under it.

1.3 Unless the context otherwise requires, the terms **controller**, **processor**, **processing**, **process**, **personal data** and **data subject** shall be interpreted and construed by reference to Data Protection Law.

1.4 References to a law of the European Union include a reference to that law as incorporated into the laws of the United Kingdom at any time before or after the United Kingdom ceases to be a Member State of the European Union.

- 1.5 Condition headings do not affect the interpretation of these Conditions.
- 2 Basis of Contract**
- 2.1 The Order will specify whether:
- 2.1.1 the Order constitutes an offer by the Customer to purchase Goods and/or Services from the Supplier in accordance with these Conditions; or
- 2.1.2 the Order constitutes acceptance of an offer by the Supplier to supply Goods and/or Services to the Customer in accordance with these Conditions.
- 2.2 The Order shall be deemed to be accepted on the earlier of:
- 2.2.1 the Supplier issuing written acceptance of the Order; or
- 2.2.2 any act by the Supplier consistent with fulfilling the Order, at which point and on which date the Contract shall come into existence (**Commencement Date**).
- 2.3 The acceptance of an Order and the supply of Goods and/or Services to Customer by the Supplier shall be deemed to be conclusive evidence of the acceptance of these terms and conditions by the Supplier.
- 2.4 These Conditions shall apply to the Contract to the entire exclusion of all other terms, conditions or representations that the Supplier seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.5 All of these Conditions shall apply to the supply of both Goods and Services except where the application to one or the other is specified.
- 3 Supply of Goods**
- 3.1 The Supplier shall ensure that the Goods shall:
- 3.1.1 correspond with their description and any applicable Goods Specification;
- 3.1.2 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979) and fit for any purpose held out by the Supplier or made known to the Supplier by the Customer, expressly or by implication, and in this respect the Customer relies on the Supplier's skill and judgment;
- 3.1.3 where applicable, be free from defects in design, materials and workmanship and remain so for twelve (12) months after delivery; and
- 3.1.4 comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods.
- 3.2 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 the Contract in respect of the Goods.
- 3.3 The Customer shall have the right to inspect and test the Goods at any time before or after delivery.
- 3.4 If following such inspection or testing the Customer considers that the Goods do not conform or are unlikely to comply with the Supplier's undertakings at clause 3.1, the Customer shall inform the Supplier and the Supplier shall immediately take such remedial action as is necessary to ensure compliance.
- 3.5 Notwithstanding any such inspection or testing, the Supplier shall remain fully responsible for the Goods and any such inspection or testing shall not reduce or otherwise affect the Supplier's obligations under the Contract, and the Customer shall have the right to conduct further inspections and tests after the Supplier has carried out its remedial actions.
- 4 Deliveries**
- 4.1 The Supplier shall deliver the Goods:
- 4.1.1 on the date specified in the Order either expressly or by reference to the Supplier's quotation or, if no such date is specified, then within 14 days of the date of the Order;
- 4.1.2 to the location as is specified in the Order (**Delivery Location**);
- 4.1.3 during the Customer's normal hours of business on a Working Day, or as instructed by the Customer.
- 4.2 Delivery notes must be supplied with every delivery against an Order. Every delivery note and all correspondence must quote Customer's Order number and must provide the full contact name, address and telephone number of the Supplier.
- 4.3 Delivery of the Goods shall be completed on the completion of unloading of the Goods at the Delivery Location.
- 4.4 If the Supplier fails to deliver the correct quantity of Goods ordered, the Customer reserves the right to reject the Goods or the excess Goods delivered, 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 Customer accepts the delivery, a pro rata adjustment shall be made to the invoice for the Goods.
- 4.5 The Supplier shall not deliver the Goods in instalments without the Customer'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 Customer to the remedies set out in clause 6.
- 4.6 Without prejudice to any right of return or rejection that the Customer may have under these Conditions, title and risk in the Goods shall pass to the Customer on completion of delivery.
- 4.7 Unless expressly agreed in writing otherwise, time shall be of the essence for the supply of Goods and/or Services.

- 4.8 If there is, or is likely to be, any delay in completing an Order the Supplier shall give written notice to the Customer giving the reasons for any actual or anticipated delay and details of any alternative delivery dates proposed. The Customer may in its absolute discretion waive its rights under clause 4.7 and may grant in writing a reasonable extension of time for delivery if and to the extent that in the reasonable opinion of Customer the delay is solely due to a cause beyond the Supplier's control and such delay will not materially adversely affect the value and/or purpose of the Goods and/or Services.
- 5 **Services**
- 5.1 The Supplier shall from the Commencement Date and for the duration of this Contract provide the Services to the Customer in accordance with the terms of the Contract.
- 5.2 The Supplier shall meet any performance dates for the Services specified in the Order or notified to the Supplier by the Customer.
- 5.3 In providing the Services, the Supplier shall:
- 5.3.1 co-operate with the Customer in all matters relating to the Services, and comply with all reasonable instructions of the Customer;
- 5.3.2 perform the Services with all reasonable skill, care and diligence in accordance with best practice in the Supplier's industry, profession or trade;
- 5.3.3 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 this Contract;
- 5.3.4 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 expressly or impliedly made known to the Supplier by the Customer;
- 5.3.5 provide all equipment, tools and vehicles and such other items as are required to provide the Services;
- 5.3.6 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 Customer, will be free from defects in workmanship, installation and design;
- 5.3.7 obtain and at all times maintain all necessary licences and consents, and comply with all applicable laws and regulations;
- 5.3.8 observe all health and safety rules and regulations and any other security requirements that apply at any of the Customer's premises;
- 5.3.9 hold all materials, equipment and tools, drawings, specifications and data supplied by the Customer to the Supplier (**Customer Materials**) in safe custody at its own risk, maintain the Customer Materials in good condition until returned to the Customer, and not dispose or use the Customer Materials other than in accordance with the Customer's written instructions or authorisation; and
- 5.3.10 not do or omit to do anything which may cause the Customer 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 Customer may rely or act on the Services.
- 6 **Customer Remedies**
- 6.1 If the Supplier fails to deliver the Goods in accordance with clauses 3 and 4 and/or perform the Services in accordance with clause 5 by the applicable date, the Customer shall, without limiting its other rights or remedies, have one or more of the following rights:
- 6.1.1 to terminate the Contract or the relevant Order with immediate effect by giving written notice to the Supplier;
- 6.1.2 to refuse to accept any subsequent performance of the Services and/or delivery of the Goods which the Supplier attempts to make;
- 6.1.3 to recover from the Supplier any costs incurred by the Customer in obtaining substitute goods and/or services from a third party;
- 6.1.4 where the Customer has paid in advance for Services that have not been provided by the Supplier and/or Goods which have not been delivered by the Supplier, to have such sums refunded by the Supplier; and
- 6.1.5 to claim damages for any additional costs, loss or expenses incurred by the Customer which are in any way attributable to the Supplier's failure to meet such dates.
- 6.2 If the Supplier has delivered Goods that do not comply with the undertakings set out in clause 3.1, then, without limiting its other rights or remedies, the Customer shall have one or more of the following rights, whether or not it has accepted the Goods:
- 6.2.1 to reject the Goods (in whole or in part) whether or not title has passed and to return them to the Supplier at the Supplier's own risk and expense;
- 6.2.2 to terminate the Contract with immediate effect by giving written notice to the Supplier;
- 6.2.3 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);
- 6.2.4 to refuse to accept any subsequent delivery of the Goods which the Supplier attempts to make;
- 6.2.5 to recover from the Supplier any expenditure incurred by the Customer in obtaining substitute goods from a third party; and
- 6.2.6 to claim damages for any additional costs, loss or expenses incurred by the Customer arising from the Supplier's failure to supply Goods in accordance with clause 3.1.

- 6.3 These Conditions shall extend to any substituted or remedial services and/or repaired or replacement goods supplied by the Supplier.
- 6.4 The Customer's rights under this Contract are in addition to its rights and remedies implied by statute and common law.
- 7 Customer's Obligations**
- The Customer shall:
- 7.1 provide the Supplier with reasonable access at reasonable times to the Customer's premises for the purpose of providing the Services; and
- 7.2 provide such information as the Supplier may reasonably request for the provision of the Services and the Customer considers reasonably necessary for the purpose of providing the Services.
- 8 Charges and Payment**
- 8.1 The price for the Goods shall be the price set out in the Order, or if no price is quoted, the price set out in the Supplier's published price list as provided to the Customer and shall be inclusive of all other charges (including costs of packaging, insurance and carriage of the Goods).
- 8.2 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 Customer, the charges shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the performance of the Services.
- 8.3 In respect of Goods, the Supplier shall invoice the Customer on or at any time after completion of delivery. In respect of Services, the Supplier shall invoice the Customer on completion of the Services. Each invoice shall include such supporting information required by the Customer to verify the accuracy of the invoice, including but not limited to the relevant purchase order number.
- 8.4 In consideration of the supply of Goods and/or Services by the Supplier, the Customer shall, subject to clause 8.5, 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.
- 8.5 All amounts payable by the Customer under the Contract 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 under the Contract by the Supplier to the Customer, the Customer 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.
- 8.6 If the Customer 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 8 per cent per annum above the bank rate for the time being of the Bank of England 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 the Customer disputes in good faith.
- 8.7 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 Customer to inspect such records at all reasonable times on request.
- 8.8 The Customer may, without limiting its other rights or remedies, set off any amount owing to it by the Supplier against any amount payable by the Customer to the Supplier under the Contract.
- 9 Indemnity**
- 9.1 The Supplier shall fully indemnify, keep indemnified and hold harmless the Customer on demand from and against any and all Losses arising out of or in connection with :
- 9.1.1 any claim made against the Customer by a third party for death, personal injury or damage to property arising out of, or in connection with, defects in Goods, to the extent that the defect in the Goods is attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors;
- 9.1.2 any claim made against the Customer by a third party arising out of, or in connection with, the supply of the Goods or 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
- 9.1.3 any claim made against the Customer for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the manufacture, supply or use of the Goods, or receipt, use or supply of the Services.
- 9.2 For the duration of the Contract and for a period of one (1) year thereafter, the Supplier shall maintain in force, with a reputable insurance company, professional indemnity insurance for not less than £2 million for each and every claim, product liability insurance for not less than £5 million for each and every claim and/or public liability insurance for not less than £5 million per claim with no limit on the number of such claims (as applicable) to cover the liabilities that may arise under or in connection with the Contract and shall, on the Customer'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.
- 9.3 For the avoidance of doubt, the Supplier shall not be liable to indemnify the Customer for any loss, damage or injury to the extent that the same arises directly and solely out of or in connection with any act or omission of the Customer, its employees, agents or subcontractors.
- 9.4 This clause 9 shall survive termination of the Contract.
- 10 Data Protection**
- 10.1 The Supplier shall comply with Data Protection Law.

- 10.2 The Supplier shall take all steps reasonably requested by the Customer to assist the Customer in complying with the obligations applicable to the Customer under Data Protection Law.
- 10.3 The parties acknowledge and agree that, for the purposes of Data Protection Law, the Supplier acts as a processor in its processing of Personal Data on behalf of the Customer (as controller) in the performance of the Supplier's obligations under the Contract.
- 10.4 Further information about the Personal Data processing activities contemplated by the Contract is set out in the Data Processing Details.
- 10.5 The Supplier shall:
- 10.5.1 only process the Personal Data for the purposes of performing its obligations under the Contract and in accordance with the written instructions given by the Customer from time to time, unless the Supplier is subject to an obligation under applicable law (including Data Protection Law) of the European Union or a member state of the European Union to do otherwise, in which case the Supplier shall (unless prohibited by law on important grounds of public interest) notify the Customer in advance of that legal obligation;
- 10.5.2 notify the Customer immediately if an instruction from the Customer breaches a requirement of Data Protection Law); and
- 10.5.3 not disclose the Personal Data to any third party in any circumstances other than on the Customer's written instructions, with the Customer's specific written consent or where required to do so by applicable law (including (without limitation) Data Protection Law).
- 10.6 Taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, the Supplier shall, with respect to the Personal Data, implement and maintain appropriate technical and organisational measures to ensure a level of security appropriate to that risk, including, as appropriate, the measures referred to in Article 32(1)(a), (b), (c) and (d) of the GDPR, and the measures shall, at a minimum, comply with the requirements of Data Protection Law, including Article 32 of the GDPR.
- 10.7 The Supplier shall ensure that all personnel with access to Personal Data are subject to a contractual duty of confidence to hold the Personal Data in strict confidence and only process the Personal Data in the manner permitted by this clause 10.
- 10.8 The Supplier shall, at the Customer's request, provide the Customer with such assistance as is contemplated by Article 28(3)(f) of the GDPR.
- 10.9 The Supplier shall promptly and without undue delay (and in any event within twenty four (24) hours) notify the Customer in writing of each Security Incident of which it becomes aware. The Supplier shall (to the extent feasible) ensure that the initial notification comprises the information required under Article 33(3) of the GDPR and such other information as the Customer may require from time to time.
- 10.10 In the event that the Supplier is unable to provide all of the information required under clause 10.9 in accordance with the time limits set out in that clause, the Supplier shall provide as much information as it is able to within those time limits and shall provide all further information as soon as reasonably practicable thereafter.
- 10.11 Without prejudice to clauses 10.9 and 10.10, upon the occurrence of a Security Incident the Supplier shall take such steps and provide such support, assistance and information to the Customer as the Customer requires to deal with and respond to the Security Incident, including (without limitation) immediately conducting a full investigation and taking all necessary steps to prevent, contain and mitigate the impact of the Security Incident. Without prejudice to clause 10.9, the Supplier shall not make any announcement or issue any notice about a Security Incident without the prior written consent of the Customer.
- 10.12 The Supplier shall, at the Customer's request, assist the Customer with all data subject rights requests received from data subjects of the Personal Data, including (without limitation) by providing to the Customer such assistance as is contemplated by Article 28(3)(e) of the GDPR.
- 10.13 Without prejudice to clause 10.12, if the Supplier receives any complaint, notice, request (including any subject access request) or communication (whether from a data subject, DP Regulator or other person) which relates directly or indirectly to the processing of Personal Data or to either party's compliance with Data Protection Law, it shall immediately notify the Customer in writing and it shall provide the Customer with full cooperation and assistance in relation to the same. The Supplier shall not respond to the complaint, notice, request or communication without the prior written consent of the Customer (except to the extent required by law), provided that the Supplier may acknowledge receipt.
- 10.14 The Supplier shall not transfer, access or process the Personal Data outside the United Kingdom save where expressly authorised or instructed by the Customer in writing to do so.
- 10.15 In the event that the Customer authorises or instructs the Supplier to transfer, access or process the Personal Data outside the United Kingdom, the Supplier shall take such steps as are requested by the Customer to ensure that the transfer, access or processing at all times complies with Data Protection Law.
- 10.16 The Supplier shall not subcontract the processing of Personal Data to a subprocessor without the prior written consent of the Customer.
- 10.17 In the event that the Customer provides its consent, the Supplier shall (prior to the subprocessor processing the Personal Data) enter into an agreement with the subprocessor on terms that provide no less protection for the Personal Data than those set out in this clause 10 and meet the requirements of Data Protection Law; the Supplier shall ensure that the agreement remains in force for the duration of the subprocessor's processing of Personal Data.

- 10.18 The Supplier shall remain fully liable for the acts and omissions of each subprocessor.
- 10.19 The Supplier shall (at the Customer's option) securely return to the Customer or securely destroy the Personal Data, together with all copies in any form and in any media, in the Supplier's power, possession or control promptly following the earlier of:
- 10.19.1 termination or expiry of the Contract;
- 10.19.2 a request from the Customer; or
- 10.19.3 if the Supplier no longer needs the Personal Data in connection with the performance of its obligations under the Contract,
- 10.20 The Supplier shall provide the Customer with all information requested by the Customer to enable the Customer to verify the Supplier's (and each subprocessor's) compliance with this clause 10.
- 10.21 Without prejudice to clause 10.20, the Customer shall be entitled to inspect, test and audit or appoint representatives to inspect, test and audit, all facilities, premises, equipment, systems, documents and electronic data relating to the processing of Personal Data by or on behalf of the Supplier and the Supplier shall cooperate and assist the Customer (and its representative) with each inspection, test and audit.
- 10.22 Without prejudice to the Customer's other rights and remedies, in the event that the Customer identifies any non-compliance with the Contract as a result of the exercise of its rights under clause 10.20 or clause 10.21, the Supplier shall:
- 10.22.1 remedy the non-compliance and shall take such steps as the Customer reasonably requests for this purpose; and
- 10.22.2 reimburse the Customer for the costs and expenses incurred by the Customer in connection with the exercise of its rights.
- 10.23 The Supplier shall fully indemnify, keep indemnified and hold harmless the Customer on demand from and against any and all Losses arising out of or in connection with the Supplier's (or its subprocessor's) failure to comply with provisions of this clause 10 or Data Protection Law. For the purposes of this clause 10, Losses shall include (without limitation) investigative and remediation expenses, legal fees and costs, costs of mailing notice of a Security Incident, expenses incurred in responding to a DP Regulator, public relations consulting expenses, expenses to set up a call centre, credit monitoring services expenses and regulatory fines or penalties.

11 Confidentiality

A party (**Receiving Party**) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Receiving Party by 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. The Receiving Party shall 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. This clause 10 shall survive termination of the Contract.

12 Intellectual Property

- 12.1 In respect of the Goods and any goods that are transferred to the Customer as part of the Services under this Contract, including without limitation 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 the Customer, it will have full and unrestricted rights to sell and transfer all such items to the Customer.
- 12.2 The Supplier assigns to the Customer, with full title guarantee and free from all third party rights, all Intellectual Property Rights in the products of the Services, including for the avoidance of doubt the Deliverables.
- 12.3 The Supplier shall obtain waivers of all moral rights in the products, including for the avoidance of doubt the Deliverables, of the Services 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.
- 12.4 The Supplier shall, promptly at the Customer's request, do (or procure to be done) all such further acts and things and the execution of all such other documents as the Customer may from time to time require for the purpose of securing for the Customer the full benefit of the Contract, including all right, title and interest in and to the Intellectual Property Rights assigned to the Customer in accordance with clause 12.2.
- 12.5 All Customer Materials are the exclusive property of the Customer.

13 Termination

- 13.1 Without limiting its other rights or remedies, the Customer may terminate the Contract with immediate effect by giving written notice to the Supplier if:
- 13.1.1 the Supplier commits a material or persistent breach of the Contract and (if such a breach is remediable) fails to remedy that breach within seven (7) days of receipt of notice in writing of the breach;
- 13.1.2 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;

- 13.1.3 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;
- 13.1.4 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;
- 13.1.5 the Supplier (being an individual) is the subject of a bankruptcy petition order;
- 13.1.6 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;
- 13.1.7 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);
- 13.1.8 a floating charge holder over the assets of the Supplier (being a company) has become entitled to appoint or has appointed an administrative receiver;
- 13.1.9 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;
- 13.1.10 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 13.1.2 to clause 13.1.9 (inclusive);
- 13.1.11 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
- 13.1.12 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.
- 13.2 Without limiting its other rights or remedies, the Customer may terminate the Contract:
- 13.2.1 in respect of the supply of Services, by giving the Supplier twenty eight (28) days' written notice; and
- 13.2.2 in respect of the supply of Goods, with immediate effect by giving written notice to the Supplier, in which case the Customer shall pay the Supplier fair and reasonable compensation for any work in progress on any other Goods at the date of termination but such compensation shall not include loss of anticipated profits or any consequential loss.
- 13.3 In any of the circumstances in these Conditions in which the Customer may terminate the Contract, where both Goods and Services are supplied, the Customer may instead terminate part of the Contract in respect of the Goods, or in respect of the Services, and the Contract shall continue in respect of the remaining supply.
- 14 Consequences of termination**
- On termination of the Contract or any part of it for any reason:
- 14.1 where the Services are terminated, the Supplier shall immediately deliver to the Customer all Deliverables, whether or not then complete, and return all Customer Materials. If the Supplier fails to do so, then the Customer may without limiting its other rights or remedies 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 Contract;
- 14.2 the accrued rights and remedies 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
- 14.3 clauses which expressly or by implication have effect after termination shall continue in full force and effect.
- 15 General**
- 15.1 **Force majeure** - 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 supplying the Goods and/or Services for more than six (6) months, the Customer 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.
- 15.2 Assignment and subcontracting**
- 15.2.1 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 the Customer.
- 15.2.2 The Customer 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.
- 15.3 Notices**
- 15.3.1 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 to the other party's main fax number.
- 15.3.2 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 Working 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, on the next Working Day after transmission.

15.3.3 This clause 15.3 shall not apply to the service of any proceedings or other documents in any legal action. For the purposes of this clause, "writing" shall not include e-mails and for the avoidance of doubt notice given under this Contract shall not be validly served if sent by e-mail.

15.4 **No Waiver:** No failure to exercise or delay in exercising any right, power or remedy under or in connection with the Contract shall operate as a waiver thereof, and no single or partial exercise of any right, power or remedy shall preclude any further or other exercise thereof, or the exercise of any other right or remedy.

15.5 **Severance**

15.5.1 If any provision of these Conditions (or part of a provision) is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.

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

15.6 **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.

15.7 **Third Parties:** A person who is not a party to this Contract shall have no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Contract. This clause does not affect any right or remedy of any person which exists or is available other than pursuant to this Act.

15.8 **Variation:** Any variation, including any additional terms and conditions, to the Contract shall only be binding when agreed in writing and signed by the Customer.

15.9 **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, English law, and the parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.

15.10 **Entire Agreement:**

15.10.1 These Conditions constitute the whole agreement and understanding of the parties and supersede any previous arrangement, understanding or agreement between them relating to the subject matter of these Conditions or any Order. Each party acknowledges that, in entering into these Conditions and/or any Order, it has not relied on any statement, representation, assurance or warranty (whether made negligently or innocently) other than those expressly set out or referred to in these Conditions. Nothing in this condition shall limit or exclude any liability for fraud.

15.10.2 These Conditions shall prevail over any inconsistent terms or conditions contained, or referred to, in the Supplier's quotation, confirmation of order, specification, or any other document supplied by the Supplier, or implied or law, trade custom, practice or course of dealing and by supplying the Goods and/or Services the Supplier confirms its acceptance of these Conditions.