



Purchase Order Standard

**Terms and Conditions of
Contract for the Supply of
Goods and Services**



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Terms and Conditions of Contract for the Supply of Goods and Services

Between

- 1 **Plymouth Community Homes Limited**, a Community Benefit Society with registered number 30637R, of Plumer House, Tailyour Road, Plymouth PL6 5DH (the Customer); and
- 2 the **Supplier** as denoted in the associated Purchased Order.

Background

The Customer wishes to procure, and the Supplier wishes to supply, the Deliverables (as defined below) on the terms and conditions set out herein.

1. Interpretation

1.1 The definitions and rules of interpretation in this clause apply in these terms and conditions (the **Contract**).

Affiliate: in relation to an entity, any other entity which Controls, is Controlled by, or is under common Control with, that entity from time to time.

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

Control: the ownership, directly or indirectly, of more than 50% of the issued ordinary voting share capital or the legal power, directly or indirectly, to direct or cause the direction of the general management and policies of the entity in question (whether by ownership, contract or otherwise);

a **Change of Control** occurs if a person with Control of an entity ceases to do so or if another person acquires Control of it, and **Controls** and **Controlled** shall be interpreted accordingly.

Customer's Equipment: any equipment, systems, cabling or facilities provided by the Customer and used directly or indirectly in the supply of the Services.

Customer's Premises; includes the Customer's offices, commercial premises, residential premises, car parks and land owner and/or managed by the Customer.

Data Processing Details: the description of the Supplier's Personal Data processing activities contemplated by this Contract, as set out in the Purchase Order and/or attachments.

Data Protection Law: 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.

Data Transfer Agreement: a data transfer agreement approved by the Customer based on the Standard Contractual Clauses annexed to Commission Decision (2010/87/EU) of 5 February 2010 on standard contractual clauses for the transfer of personal data to processors established in third countries, or such other agreement approved by the Customer as may replace that agreement from time to time.

Deliverables: consist of:-

Services: the services to be provided by the Supplier as set out in the Purchase Order and/or attachments.

The Goods: the Goods (or any part of them) to be delivered by the Supplier set out in as set out in the Purchase Order and/or attachments.

all Documents, products and materials developed by the Supplier or its agents, subcontractors and employees in relation to the Goods and/or Services in any form, including computer programs, data, reports and specifications (including drafts).

Document: includes, without limitation, in addition to any document in writing, any drawing, map, plan, diagram, design, picture or other image, tape, disk or other device or record embodying information in any form.

DP Regulator: 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 this Contract, including (without limitation) the UK Information Commissioner acting through the Information Commissioner's Office and any successor body or organisation.

GDPR: the European General Data Protection Regulation, namely Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC.

Goods Specification: any specification for the Goods including any related plans and drawings as set out in the Purchase Order and/or attachments.

In-put Material: all Documents, information and materials provided by the Customer to the Supplier relating to the Services including (without limitation), computer programs, data, reports and specifications.

Intellectual Property Rights: 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 right, 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.

Losses: 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).

Mandatory Policies: the Customer's policies as listed in the Supply Chain Code of Conduct and advise in any further advice in the Purchase Order or associated attachments, as amended by notification to the Supplier from time to time.

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

Security Incident:

- a. the unlawful or unauthorised processing of Personal Data; or
- b. the disclosure of, or access to, Personal Data in breach of this Contract; or
- c. the loss or theft of Personal Data; or
- d. any breach of security affecting the Personal Data (including (without limitation) a personal data breach as defined in the GDPR).

Supply Chain Code of Conduct: a set of rules and expectations about the behaviour of the Supplier, their employees, contractors and agents and which is incorporated into this Contract.

Supplier's Equipment: any equipment, including tools, systems, cabling or facilities, provided by the Supplier [or its subcontractors] and used directly or indirectly in the supply of the Services which are not the subject of a separate agreement between the parties under which title passes to the Customer.

VAT: value added tax chargeable under English law for the time being and any similar additional tax.

- 1.2 Headings in this Contract shall not affect its interpretation.
- 1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 Any schedules hereto (as may be amended from time to time) form part of this Contract.
- 1.5 A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.6 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.
- 1.7 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.
- 1.8 A reference to **writing** or **written** includes email but not faxes.
- 1.9 Any obligation in this Contract on a person not to do something includes, without limitation, an obligation not to agree, allow, permit or acquiesce in that thing being done.



2. Commencement and Delivery

- 2.1 The Deliverables shall be provided on a non-exclusive basis by the Supplier to the Customer from the date, and for the period, specified as set out in the Purchase Order and/or attachments. .
- 2.2 The Customer may amend or cancel this Contract, or the commencement date of the Services hereunder, by giving written notice to the Supplier not less than 28 days before the relevant commencement date for those Services. Any such cancellation shall be without prejudice to the accrued rights of the parties prior to such cancellation.
- 2.3 If no time is specified herein for provision of the Deliverables, the Supplier shall provide the Deliverables within a reasonable time of the date of this Contract.

3. Supplier's Responsibilities

- 3.1 The Supplier shall provide and/or deliver any Deliverables to the Customer, in accordance with the terms and conditions of this Contract and shall allocate sufficient resources to to enable it to comply with this obligation.
- 3.2 The Supplier shall meet, and time is of the essence as to, any dates for performance of the Supplier's obligations specified in this Contract or as otherwise agreed between the parties. If the Supplier fails to do so, the Customer may (in its absolute discretion and without prejudice to any other rights it may have):
- a. terminate this Contract in respect of the undelivered Deliverables and in respect of any delivered Deliverables that cannot be commercially and effectively used by the Customer
 - b. refuse to accept any subsequent performance of the Services or delivery of the Goods which the Supplier attempts to make;
 - c. purchase substitute Deliverables from elsewhere;
 - d. hold the Supplier accountable for any loss and additional costs incurred; and
 - e. have all sums previously paid by the Customer to the Supplier under this Contract refunded by the Supplier;

provided that the Supplier shall have no liability for any failure or delay in delivering the Deliverables to the extent that such failure or delay is caused by the Customer's failure to comply with its obligations under this Contract.

3.3 The Supplier shall:

- a. co-operate with the Customer in all matters relating to the Deliverables;
- b. use all due skill, care and diligence in the performance of the Services and perform them in accordance with good industry practice;
- c. where providing Goods ensure that the Goods:-
 - i. conform to the Goods Specification
 - ii. are of satisfactory quality and fit for the purpose intended
 - iii. are delivered in accordance with the Purchase Order and/or attachments.

the Customer acknowledges that providing the Goods are delivered in compliance with this clause, risk shall pass upon receipt of delivery.

- d. observe, and ensure that all employees, consultants, agents and subcontractors which it engages in relation to the Deliverables observe all health and safety rules and regulations and any other security requirements that apply at any of the Customer's Premises and that have been communicated to it under clause 4(d). The Customer reserves the right to refuse such persons access to the Customer's Premises, which shall only be given to the extent necessary for the performance of the Services;

- e. notify the Customer as soon as it becomes aware of any health and safety hazards, product or component recalls or other issues which arise in relation to the Deliverables;
- f. before the date on which the Services are to start, obtain, and at all times maintain, all necessary licences and consents and comply with all relevant legislation in relation to:
 - i. the Services;
 - ii. the installation of the Supplier's Equipment, if applicable.
 - iii. the use of all Documents, information and materials provided by the Supplier or its agents, subcontractors, consultants or employees, relating to the Services which existed prior to the commencement of this Contract, including, without limitation, computer programs, data, reports and specifications; and
 - iv. the use of the Customer's Equipment in relation to the Supplier's Equipment.

3.4 The Supplier acknowledges and agrees that if it considers that the Customer is not, or may not, be complying with any of the Customer's obligations, it shall only be entitled to rely on this as relieving the Supplier of its obligations under this Contract:

- a. to the extent that the Customer's failure restricts or precludes performance or delivery of the Deliverables by the Supplier; and
- b. if the Supplier, promptly after the actual or potential non-compliance has come to its attention, has notified details to the Customer in writing.



- 3.5 The Customer shall be entitled, and where necessary the Supplier shall procure a right for the Customer to, inspect the performance of the Services:
- a. where the Services or any part of them are to be performed at the Customer's Premises, at any time;
 - b. where the Services or any part of them are to be performed at the Supplier's Premises, at any reasonable time; and
 - c. where the Services or any part of them are to be performed at any other premises, upon the Customer giving reasonable notice to the Supplier.
- 3.6 If the Customer notifies the Supplier that the Customer considers all or any part of the Deliverables to be inadequate or do not conform to this Contract, other than as a result of the Customer's default or negligence, the Supplier shall at its own expense re-schedule, re-perform and/or re-deliver such Services within such reasonable time as the Customer may specify so that the Deliverables as re-performed or re-delivered are adequate and meet the requirements of this Contract.
- 3.7 If the Customer notifies the Supplier that the Customer considers all or any part of the Deliverables to be defective, the Supplier shall as soon as reasonably possible rectify such defect at its sole cost and expense.
- 3.8 The Supplier shall reimburse the Customer all reasonable costs that the Customer has incurred as a direct consequence of any failure or delay by the Supplier (including any failure or delay by its employees, agents or subcontractors) in the performance or Delivery of the Deliverables in accordance with this Contract.
- 3.9 The Supplier shall comply with the [Supply Chain Code of Conduct](#) at all times during the operation of this Contract.

4. Customer's Obligations

The Customer shall:

- a. co-operate with the Supplier in all matters relating to the Deliverables;
- b. provide such access to the Customer's Premises[, and such office accommodation and other facilities] as may reasonably be requested by the Supplier and agreed with the Customer in writing in advance, for the purposes of the Deliverables;
- c. provide such information as the Supplier may reasonably request and the Customer considers reasonably necessary (including any In-put Material) , in order to carry out or deliver the Deliverables in a timely manner and ensure that it is accurate in all material respects; and
- d. inform the Supplier of all health and safety rules and regulations and any other reasonable security requirements that apply at any of the Customer's Premises.

5. Charges and Payment

5.1 In consideration of the provision of the Deliverables by the Supplier, the Customer shall pay the charges as set out in the Purchase Order. Clause 5.3 shall apply if the Supplier provides the Services on a time and materials basis. Clause 5.4 shall apply if the Supplier provides the Deliverables for a fixed price. The remainder of this clause 5 shall apply in either case.

5.2 Regardless of whether payment is to be on a time and materials basis, a fixed price basis, or a combination of both, payment under this Contract shall be made by the Customer to the Supplier in full (unless any dispute has arisen in connection with the Services or such payment, or the Customer has exercised any of its rights regarding termination of the Services or this Contract hereunder) within [30] days of the delivery by the Supplier of an invoice for the same,

quoting the relevant Order Number(s), provided that such invoice has been submitted by the Supplier no earlier than the latest of:

- a. The delivery of the relevant Goods; and
- b. the date of completion of the relevant Services; and
- c. where any Services are to be delivered in instalments, the date of completion of the final instalment; and
- d. the date of the Customer's notice of postponement of commencement of the relevant Services in accordance with clause 2.2.

- 5.3 Where Services are provided on a time and materials basis:
- a. the charges payable for the Services shall be calculated in accordance with the Supplier's standard daily fee rates, as set out in this Contract;
 - b. (the Supplier's standard daily fee rates for each individual person are calculated on the basis of [an eight-hour day], worked between [8.00 am] and [5.00 pm] on weekdays (excluding public holidays);
 - c. the Supplier shall not be entitled to charge on a pro-rata basis for part-days unless it has the Customer's prior written consent to do so;
 - d. all charges quoted to the Customer shall be exclusive of VAT, which the Supplier shall add to its invoices at the appropriate rate; and
 - e. the Supplier shall ensure that every individual engaged in delivering the Services completes time sheets recording time spent on the Services, and the Supplier shall use such time sheets to calculate the charges covered by each monthly invoice referred to above. Copies of such time sheets shall accompany the relevant invoice.

5.4 Where Services are provided for a fixed price, the total price for the Services shall be the amount set out in this Contract. If so specified in the Purchase Order, the total price shall be paid to the Supplier in instalments.

- 5.5 The fixed price contained in this Contract:
- a. Includes all costs and expenses incurred by the Supplier and any one whom the Supplier engages in connection with the Services
 - b. Excludes VAT, which the Supplier shall add to its invoices at the appropriate rate.
- 5.6 Invoices covering payment in respect of materials purchased by, or services provided to, the Supplier, or for reimbursement of expenses, shall be payable by the Customer only if accompanied by relevant receipts. In any event, the Customer's prior consent shall be required for any expenditure (whether subject to this clause 5 or otherwise) not included in the schedule of costs.
- 5.7 Without prejudice to any other right or remedy it may have, the Customer reserves the right to set off any amount owing at any time to it by the Supplier against any amount payable by the Customer to the Supplier.

6. Quality of Deliverables

- 6.1 The Supplier shall provide the Deliverables in accordance with the terms and conditions of this Contract to the satisfaction of the Customer, whose decision in such matters will be final and conclusive.
- 6.2 The Supplier warrants to the Customer that:
- a. the Supplier will perform the Services with reasonable care and skill and in accordance with generally recognised commercial practices and standards in the industry for similar services as the Services;
 - b. the Goods will be of satisfactory quality and fit for purpose;
 - c. the Deliverables will conform with all descriptions and specifications provided to the Customer by the Supplier (whether or not contained in this Contract); and
 - d. the Deliverables will be provided in accordance with all applicable legislation from time to time in force, and the Supplier will inform the Customer as soon as it becomes aware of any changes in such legislation.
- 6.3 The Supplier shall guarantee the workmanship in the Services (where set out in the Purchase Order and any associated attachments) and the quality of the Goods for a period of [one year], commencing from the date of completion of delivery of the Services.
- 6.4 The provisions of this clause 6 shall survive any performance, acceptance or payment pursuant to the contract and shall extend to any substituted or remedial services provided by the Supplier.



7. Supplier's Personnel

- 7.1 The Customer reserves the right to refuse to admit to the Customer's Premises any person employed by the Supplier or its subcontractors whose admission the Customer, in its absolute discretion, deems to be undesirable. Any such refusal on the part of the Customer shall not absolve the Supplier of any of its obligations arising hereunder or out of or in connection with this Contract.
- 7.2 If requested by the Customer, the Supplier shall provide a list of the names and addresses of all persons who may from time to time require admission to the Customer's Premises in connection with the provision of the Services by the Supplier, specifying the role that each such person shall be responsible for and providing such other information as the Customer may reasonably require.

8. Intellectual Property Rights

- 8.1 The Supplier assigns to the Customer, with full title guarantee and free from all third party rights, the Intellectual Property Rights and all other rights in the products of the Services).
- 8.2 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 this Contract, including all right, title and interest in and to the Intellectual Property Rights and all other rights assigned to the Customer in accordance with clause 8.1.
- 8.3 The Supplier waives, and shall procure that any person engaged in the provision of the Services waives, any moral rights in the products of the Services to which it is now or may be at any future time entitled under Chapter IV of the Copyright Designs and Patents Act 1988 or any similar provisions of law in any jurisdiction, including (without limitation) the right to be identified, the right of integrity and the right against false attribution, and agrees not to institute, support, maintain or permit any action or claim to the effect that any treatment, exploitation or use of such products or other materials, infringes the Supplier's moral rights.

9. Indemnity and Insurance

- 9.1 The Supplier shall indemnify and hold the Customer harmless from and against all Losses awarded against, or incurred or paid by, the Customer arising out of or in connection with:
- a. any alleged or actual infringement, whether or not under English law, of any third party's Intellectual Property Rights or other rights arising out of the use or supply of the products of the Services (including any Deliverables);
 - a. any claim made against the Customer in respect of any liability, loss, damage, injury, cost or expense sustained by the Customer's employees or agents or by any client of the Customer or third party to the extent that such liability, loss, damage, injury, cost or expense was caused by, relates to or arises from the provision of the Services or the Deliverables including as a consequence of a direct or indirect breach or negligent performance or failure or delay in performance of this Contract by the Supplier; and
 - a. any loss of or damage to the Customer's property or premises attributable to any act or omission of the Supplier, its employees, agents or subcontractors.
- 9.2 For the avoidance of doubt, the Supplier shall not be liable to indemnify the Customer pursuant to this clause 9 for any loss, damage, cost 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.
- 9.3 During the term of this Contract and for a period of twelve months afterwards the Supplier shall maintain in force the following insurance policies with reputable insurance companies:
- a. public liability insurance for not less than £2,000,000 per claim with no limit on the number of such claims; and
 - a. a policy of insurance, with a limit determined by the Customer, covering the risks described in clauses 9.1(b) and 9.1(c); and
 - a. professional indemnity insurance for not less than £ 2,000,000 per claim with no limit on the number of such claims; and
 - a. employer's liability insurance for not less than £5,000,000 per claim with no limit on the number of such claims.
- 9.4 On taking out and on renewing each policy, the Supplier shall promptly send a copy of the receipt for the premium to the Customer. On the Customer's written request, the Supplier shall provide the Customer with copies of the insurance policy certificates and details of the cover provided.
- 9.5 The Supplier's liabilities under this Contract shall not be deemed to be released or limited by the Supplier taking out the insurance policies referred to in this clause.
- 9.6 The provisions of this clause 9 shall survive termination of this Contract, however arising.

10. Data Protection

- 10.1 Both parties will comply with all applicable requirement of the data protection legislation. This clause is in addition to and does not relieve, remove or replace, a party's obligations under the data protection legislation.
- 10.2 The Customer and the Supplier acknowledge that for the purposes of the data protection legislation, the customer is the data controller and the Supplier is the data processor.
- 10.3 Without prejudice to the generality of clause 10.1, the Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of personal data to the Supplier for the duration and purposes of this Contract.
- 10.4 Without prejudice to the generality of clause 10.1, the Supplier shall, in relation to any personal data processed in connection with the performance of this Contract:
- a. Process that personal data only on the written instructions of the Customer and in accordance with data protection laws.
 - b. ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction of damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include where appropriate, pseudonymising and encrypting personal data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to personal data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it),
 - c. ensure that all personnel who have access to and/or process personal data are obliged to keep the personal data confidential,
 - d. not transfer any personal data outside of the European Economic Area unless the prior written consent of the customer has been obtained and the following conditioned are fulfilled:
 - i. the Customer or Supplier has provided appropriate safeguards in relation to the transfer,
 - ii. the data subject has enforceable rights and effective legal remedies,
 - iii. the Customer complies with its obligations under the data protection legislation by providing an adequate level of protection to any personal data that is transferred, and
 - iv. the Supplier complies with reasonable instructions notified to it in advance by the Customer with respect to the processing of the personal data,



- e. assist the Customer in responding to any request from a data subject and in ensuring compliance with its obligations under the data protection legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators,
- f. notify the Customer without undue delay on becoming aware of a personal data breach.
- g. at the written direction of the Customer, delete or return personal data and copies thereof to the Customer on termination of this Contract unless required by applicable law to store the personal data, and
- h. maintain complete and accurate records and information to demonstrate its compliance with this clause.

10.5 Either party may, at any time on not less than 30 days' notice, revise this clause 10 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to the Contract).

10.6 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 any subprocesser'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 and the Customer's Property

- 11.1 The Supplier shall keep in strict confidence all In-put Material and all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Supplier by the Customer, its employees, consultants, agents or subcontractors, and any other confidential information concerning the Customer's business or its products which the Supplier may obtain. The Supplier shall restrict disclosure of such confidential material to such of its employees, consultants, agents or subcontractors as need to know it for the purpose of discharging the Supplier's obligations to the Customer, and shall ensure that they are subject to obligations of confidentiality corresponding to those which bind the Supplier.
- 11.2 All In-put Materials, Customer's Equipment and all other materials, equipment and tools, drawings, specifications and data supplied by the Customer to the Supplier shall, at all times, be and remain the exclusive property of the Customer, but shall be held by the Supplier in safe custody at its own risk and maintained and kept in good condition by the Supplier until returned to the Customer. They shall not be disposed of or used other than in accordance with the Customer's written instructions or authorisation.

12. Termination

- 12.1 Without prejudice to any other rights or remedies which the parties may have, the Customer may terminate this Contract without liability to the Supplier immediately on giving notice to the Supplier if:
- a. the Supplier commits a material breach of any of the terms of this Contract and (if such a breach is remediable) fails to remedy that breach within [5] days of being notified in writing of the breach; or
 - b. the Supplier repeatedly breaches any of the terms of this Contract in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Contract; or
 - c. there is a Change of Control of the Supplier; or
 - d. 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 a natural person) 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; or

- e. 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; or
 - f. a petition is filed, a notice is given, a resolution is passed, or an order is made, for or on connection with the winding up of the Supplier; or
 - g. 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; or
 - h. a floating charge holder over the assets of the Supplier has become entitled to appoint or has appointed an administrative receiver; or
 - i. 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; or
 - j. 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; or
 - k. 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 12.1(d) to clause 12.1(j) (inclusive); or
 - l. the Supplier suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business.
- 12.2 The parties acknowledge and agree that, without limitation, any breach of clauses 6.2(a), 6.2(b), 10 and 11 shall constitute a material breach of a material term for the purposes of this clause 12.
- 12.3 The Customer may terminate this Contract, or any part of the Services to be provided hereunder, at any time by giving the Supplier not less than 28 days notice in writing.
- 12.4 Either party may terminate this Contract by written notice to the other party where any Force Majeure Event (as defined in clause 13 below) prevents the other party from performing its obligations hereunder for any continuous period of three months.
- 12.5 The Supplier may terminate this Contract with immediate effect upon written notice if the Customer is in material breach of any of its obligations hereunder and, if capable of remedy, has not remedied such breach within [30] days of notice from the Supplier identifying such breach and requesting it to be remedied.
- 12.6 On termination of this Contract for any reason, the Supplier shall immediately provide and/or deliver to the Customer:
- a. all In-put Material and all copies of information and data provided by the Customer to the Supplier for the purposes of that Contract. The Supplier shall certify to the Customer that it has not retained any copies of In-put Material or other information or data, except for one copy which the Supplier may use for audit purposes only and subject to the confidentiality obligations in clause 10.1; and
 - b. all specifications, programs (including source codes) and other documentation comprised in the Deliverables and existing at the date of such termination, whether or not then complete. All Intellectual Property Rights in such materials shall automatically pass to the Customer (to the extent that they have not already done so by virtue of clause 8.1), who shall be entitled to enter the premises of the Supplier to take possession of them; and

- c. where the Customer wishes to provide the relevant Services itself, or for the Services and/or Goods to be provided by a third-party provider, all reasonable assistance to ensure that such transition is undertaken with a minimum of disruption to the Customer, its premises and its employees. In such circumstances the Supplier shall co-operate with all reasonable instructions of the Customer in such regard and shall provide the Customer with full access to all data, documents, manuals, working instructions, reports and any other information, whether held in electronic or written form, that the Customer reasonably considers necessary for such transition.
- 12.7 If the Supplier fails to fulfil its obligations under clause 12.6, then the Customer may enter the Supplier's premises and take possession of any items which should have been returned under it. Until they have been returned or repossessed, the Supplier shall be solely responsible for their safe keeping.
- 12.8 On termination of this Contract (however arising), the accrued rights of the parties as at termination shall not be affected and the following clauses shall survive and continue in full force and effect:
- a. Clause 8;
 - b. clause 9;
 - c. clause 10;
 - d. clause 11;
 - e. clause 12; and
 - f. clause 24.

13. Force Majeure

- 13.1 Neither party (or any person acting on its behalf) shall have any liability or responsibility for failure to fulfil any obligation under this Contract so long as, and to the extent to which, the fulfilment of such obligation is prevented, frustrated, hindered or delayed as a consequence of a Force Majeure Event.
- 13.2 A party claiming the benefit of this provision shall, as soon as reasonably practicable after the occurrence of a Force Majeure Event (and in any event within 7 days from the date of such Force Majeure Event):
- a. notify the other party of the nature and extent of such Force Majeure Event; and
 - b. use all reasonable endeavours to remove any such causes and resume performance under this Contract as soon as feasible.
- 13.3 A Force Majeure Event means an event beyond the control of a party (or any person acting on its behalf), which by its nature could not have been foreseen by such party (or such person), or, if it could have been foreseen, was unavoidable, and includes acts of God, storms, floods, riots, fires, sabotage, civil commotion or civil unrest, interference by civil or military authorities, acts of war (declared or undeclared) or armed hostilities or other national or international calamity or one or more acts of terrorism or failure of energy sources but shall not include any labour dispute (including but not limited to strikes, industrial action or lockouts) affecting the Supplier's employees and/or the employees of its subcontractors.

16. Further Assurance

Each party shall (at its own expense) promptly execute and deliver all such documents, and do all such things, or procure the execution and delivery of all documents and doing of all such things as are required to give full effect to this Contract and the transactions contemplated by it.

15. Cost

Save as otherwise provided in this Contract, each party shall pay its own costs in connection with the negotiation, preparation, execution and performance of this Contract, and all documents ancillary to it.

14. No Partnership or Agency

Nothing in this 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.

17. Variation

No variation of this Contract shall be valid unless it is in writing and signed by, or on behalf of, each of the parties.

18. Waiver

- 18.1 A waiver of any right under this Contract is only effective if it is in writing and it applies only to the circumstances for which it is given. No failure or delay by a party in exercising any right or remedy under this 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.
- 18.2 Unless specifically provided otherwise, rights arising under this Contract are cumulative and do not exclude rights provided by law.

19. Severance

- 18.1 If any provision of this Contract (or part of any provision) is found by any court or other authority of competent jurisdiction to be invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed not to form part of the Contract, and the validity and enforceability of the other provisions of the Contract shall not be affected.
- 18.2 If a provision of this Contract (or part of any provision) is found illegal, invalid or unenforceable, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

20. Rights of Third Parties

A person who is not a party to this Contract shall not have any rights under or in connection with it.



21. Assignment and Subcontracting

- 21.1 The Supplier may not assign or transfer or subcontract any of its rights, benefits or obligations under this Contract without the prior written consent of the Customer.
- 21.2 Any assignment, transfer or subcontracting by the Supplier hereunder shall not relieve the Supplier of any of its obligations hereunder and it shall remain fully liable for breach of them by its employees, agents, assigns, transferees and subcontractors.

22. Entire Agreement

- 22.1 Subject to clause 6.2 and clause 22.4, this Contract constitutes the whole agreement and understanding of the parties and supersede any previous arrangement, understanding or agreement between them relating to the subject matter of this Contract. The terms of this Contract shall prevail over any terms or conditions contained, or referred to, in the Supplier's quotation, confirmation of order, or specification, or other Document supplied by the Supplier, or implied by law, trade custom, practice or course of dealing.
- 22.2 Each party acknowledges that, in entering into this Contract, it has not (subject to clause 6.2) relied on any statement, representation, assurance or warranty (whether made negligently or innocently) other than those expressly set out or referred to in this Contract.
- 22.3 Nothing in this clause shall limit or exclude any liability for fraud.

23. Notices

- 23.1 Any notice required to be given under this Contract shall be in writing with email an accepted form of delivery.
- 23.2 This clause 23 shall not apply to the service of any proceedings or other documents in any legal action.

24. Governing Law and Jurisdiction

- 24.1 This 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 law of England and Wales.
- 24.2 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of, or in connection with, this Contract or its subject matter or formation (including non-contractual disputes or claims).

25. Compliance with Relevant Requirements

25.1 The Supplier shall:

- a. Comply and procure that each of its Affiliates comply with all applicable laws, statutes, regulations [and codes] from time to time in force; and
- b. The Mandatory Policies; and
- c. The Contractors' Code of Conduct
- d. comply with all applicable laws, statutes, regulations, and codes relating to anti-bribery, anti-corruption, modern slavery and anti-money laundering

(“**Relevant Terms**”);

25.2 The Supplier shall ensure that any person associated with the Supplier who is performing services or providing goods in connection with this 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 25 (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 the Customer for any breach by such persons of any of the Relevant Terms.

25.3 Breach of this clause 25 shall be deemed a material breach of this Contract by the Supplier which is not capable of remedy, and any such breach shall entitle the Customer to terminate this Contract with immediate effect and without liability by giving the Supplier notice in writing.

25.4 For the purpose of this clause 25, the meaning of adequate procedures and foreign public official and whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act), sections 6(5) and 6(6) of that Act and section 8 of that Act respectively. For the purposes of this clause 25 a person associated with the Supplier includes (but is not limited to) any subcontractor of the Supplier.

26. Equalities

- 26.1 The Supplier shall not (and shall procure that its agents, employees, sub-contractors and other related parties do not):
- act in any way contrary to the Equality Act 2010 (as amended or re-enacted from time to time),
 - cause or contribute to the Customer's breach of any provision of the Equality Act 2010, or
 - act in any way contrary to the Customer's Equality and Diversity Policy and Commitment form (which is available from Procurement).
- 26.2 The Supplier acknowledges that compliance with the Equality Act 2010 and with the Customer's Equality and Diversity Policy and commitment form is a fundamental term of this Contract and that the Customer shall be entitled to terminate the Supplier's appointment under this Contract should the Supplier breach this clause 26. Without prejudice to the Customer's rights to terminate the Supplier's appointment under this Contract,
- 26.3 The Supplier shall fully indemnify, keep indemnified and hold harmless the Customer and the Customer Affiliates on demand from and against any and all Losses arising out of or in connection with the Supplier's (or its subcontractor's) failure to comply with provisions of this clause 26. For the purposes of this clause 26, Losses shall include (without limitation) investigative and remediation expenses, legal fees and costs and damages and costs paid in connection with any claim or complaint.

27. Brand

- 27.1 The Supplier shall not (and shall procure that its agents, employees, sub-contractors and other related parties do not) cause or contribute to any damage, discredit or disrepute to the good name, goodwill or brand of the Customer and shall comply (and procure compliance) at all times with the guidance set out within in the Contractor Code of Conduct (which is available from Procurement).



Plymouth Community Homes



Version:	1	Approved by:	EMT
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