

Standard Terms and Conditions for the Purchase of Goods and Services

1.0 Interpretations

1.1 Capitalised terms and expressions used in these standard terms and conditions shall have the meanings set out below:

Commencement date	The commencement date set out within the purchase order or any special terms and conditions.
Company	In relation to the contract, the group member which has ordered the relevant goods and/or services as specified on the purchase order.
Contract	The contract comprised and set out in under clause 2.
Contract period	The period as set out in the purchase order, special terms and conditions or tender and any extension in accordance with 2.1.2.
Delivery instructions	The instructions provided in the purchase order and any other information that the company considers appropriate to the provision of the goods and/or services.
Goods	The goods supplied or to be supplied by the supplier under the contract, as specified in the purchase order or tender.
Group member	Beyond Housing is a Community Benefit Society registered under the Co-operative and Community Benefit Societies Act 2014 with registration number 7814 and whose registered office address is Brook House, 4 Gladstone Road, Scarborough, North Yorkshire, YO12 7BH and any subsidiary or holding company from time to time (and subsidiary and holding company shall have the meanings given to them by section 1159 of the Companies Act 2006).
Invitation to tender	The company’s invitation to the supply market for offers to supply it with the goods and/or Services pursuant to the contract.
Key personnel	Those persons named in the purchase order, special terms and conditions or tender document as being key personnel and any replacement from time to time under clause 2.6.4.
Purchase order	The company’s pre-printed and numbered form used by the company to enter into an agreement to purchase goods and/ or services.
Price	The price of the goods and/or services as set out in the purchase order, special terms and conditions or pricing schedule as the



	case may be. Unless otherwise stated, any reference to price shall be regarded as being exclusive of properly chargeable VAT, which shall be separately accounted for.
Pricing schedule	Where applicable, the schedule from the tender detailing the pricing and more particularly defined in the contract particulars (if applicable).
Service/s	The services described in the specification to be supplied by the supplier together with all equipment required and any associated goods provided by the supplier in relation to those services.
Special terms and conditions	Where applicable, any additional terms and conditions as set out in the purchase order and/ or invitation to tender.
Specification	The specification and requirements for any goods or services to be supplied under the contract.
Standard terms and conditions	The terms and conditions set out in this document.
Supplier	The supplier identified on the purchase order and where applicable this shall include the supplier's employees, sub-contractors, agents, representatives and permitted assigns and, if the supplier is a consortium or consortium leader, the consortium members.
Tender	The invitation to tender and supplier's response to the invitation to tender for the supply of the goods and/or services pursuant to the contract and any additional or supporting documentation.

1.2 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

1.3 A reference to a party includes its successors and permitted assigns.

1.4 A reference to a statute or statutory provision is a reference to it as amended or re-enacted and includes all subordinate legislation made under that statute or statutory provision.

1.5 Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

2.0 **Ordering, warranty and performance**

2.1 This contract is made between the company and the supplier and comprises the agreement in respect of the provision of the goods and/or services consisting of the following documents, which shall be read as one document. In the event of ambiguity, conflict or contradiction between these documents the conflict will be resolved according to the following order of priority:



- i. The purchase order
- ii. The special terms and conditions (if any)
- iii. Tender documents
- iv. These standard terms and conditions.

2.2 Contract period

2.2.1 The contract shall commence on the commencement date and shall continue for the contract period unless terminated in accordance with the contract or otherwise lawfully terminated, or is extended under clause 2.1.2.

2.2.2 The company may extend the contract beyond the contract period by notifying the supplier in writing prior to the commencement of the extension. If no such notification is issued the contract shall automatically expire at the end of the contract period.

2.3 Performance

2.3.1 The supplier shall supply and, where relevant, install the goods in accordance with the contract and supply the company with any instruction or other information required to enable the company to accept delivery of the goods.

2.3.2 The supplier shall supply the services in accordance with the company's requirements as set out in this contract. The supplier will supply the company with any instruction or other information required to enable the company to accept performance of the services.

2.3.3 The goods and/or services shall be delivered in accordance with the delivery instructions. If no time for delivery is stated in the delivery instructions the goods and/or services shall be delivered between 9am and 5pm on a normal business day in England. The company reserves the right to amend any delivery instructions before or during the performance of the contract.

2.3.4 Time of delivery of the goods and/or performance of the services shall be of the essence. If the supplier fails to deliver the goods and/or perform the services within the time specified in the contract the company may (at its absolute discretion):

- i. Release itself from any obligations to accept or pay for the goods and/or services
- ii. Make deductions from the price or, if the company has paid the price, to claim from the supplier by way of liquidated damages as may be agreed between parties in the purchase order or special terms and conditions
- iii. Cancel the order (or any part) or any other orders placed with the supplier without liability by the company and purchase substitute goods or services elsewhere and recover from the supplier any loss or additional costs incurred



- iv. Terminate the contract and each right or remedy of the company under this clause 2.2.4 is without prejudice to any other right or remedy of the company, whether under the contract or otherwise.
- 2.3.5 The company shall be under no obligation to accept or pay for any goods supplied or services performed earlier than the agreed date (if any) for supply or performance as applicable.
- 2.3.6 If requested by the company, the supplier shall provide the company with samples of the goods at the supplier's cost and expense.
- 2.3.7 The supplier shall ensure that the goods are fully compatible with the company's equipment, to the extent specified in the specification, special terms and conditions or the tender as the case may be.
- 2.3.8 The company shall be entitled to observe the supplier's performance of the services and to inspect or test the goods whether they are complete or during the process of manufacture at any location that the services are performed or the goods are located, during any normal business hours on reasonable notice to the supplier.
- 2.3.9 If the supplier at any time becomes aware of any act or omission, or proposed act or omission by the company which prevents or hinders, or may prevent or hinder the supplier from performing the services and/or in delivering the goods in accordance with the contract, the supplier shall inform the company and the company may, in its absolute discretion and without prejudice to any other right or remedy available to it, agree to:
- i. To extend the time of delivery or performance
 - ii. Vary the specification (such variation to be in accordance with clause 8.9).
- 2.3.10 Where the goods are delivered by the supplier, the point of delivery shall be when they are removed from the transporting vehicle and delivered in accordance with the delivery instructions. Where the goods are collected by the company from the supplier, the point of delivery shall be when the company, or the company's representative, accepts custody of the goods.
- 2.3.11 Except otherwise provided in the contract, delivery shall include the uploading or stacking of the goods by the supplier at such places the company may direct.
- 2.3.12 The issue by the company of a receipt for the goods shall not constitute any acknowledgement of the condition or nature of those goods. The company shall not be deemed to have accepted any goods until it has had reasonable opportunity to inspect them following delivery or within a reasonable time after any latent defect in the goods becomes apparent.
- 2.3.13 A delivery note stating the number of the order must accompany each consignment of the goods and must be displayed prominently.



- 2.3.14 All goods must be properly packaged to survive transit without damage, clearly and legibly labeled and addressed. The company will not be liable to pay for any pallets, packages or containers in which the goods are supplied and, if required by the company, the supplier will pay all reasonable costs incurred by the company for the disposal of any packaging in accordance with all relevant laws.
- 2.3.15 Unless expressly agreed to the contrary, the company shall not be obliged to accept delivery by installments. If the company does specify or agree to delivery by installments, delivery of any one installment not in accordance with the delivery instructions shall, without prejudice to any other rights or remedies of the company, entitle the company to terminate the whole of any unfulfilled part of the contract without further liability to the supplier.
- 2.3.16 The supplier shall inform the company immediately on becoming aware of any material matter that could affect the goods or services.
- 2.3.17 The company retains the supplier for the performance of the service or provision of the goods on a non-exclusive basis.
- 2.3.18 Without prejudice to clause 4, the company may, at its absolute discretion, reject all or part of the goods or the services which are not supplied or performed in accordance with the contract, including a right to reject defective goods even if the defect is minor, and shall be entitled to:
- i. A refund of all sums paid in relation to the rejected goods or services
 - ii. Require the supplier to provide replacement goods and/or service in accordance with the contract as soon as reasonably practicable and in any event within 14 days of a request to do so.
- 2.3.19 The company shall not be deemed to have accepted the goods merely by virtue of its having incorporated or converted them into other products or works.
- 2.3.20 The company shall not be deemed to have accepted the goods or services by virtue of having required the supplier to repair or replace goods or services under the contract.

2.4 **Contract manager**

- 2.4.1 Where stipulated in the purchase order or tender document as being required, the supplier shall employ a competent contract manager (the contract manager) with authority to act on behalf of the supplier for all purposes connected with the contract.
- 2.4.2 The supplier shall give reasonable notice in writing to the company of any change in the identity, address and telephone numbers of the appointed contract manager.



2.4.3 The company reserves the right to refuse the appointment of the contract manager under the contract who is, in the reasonable opinion of the company is unacceptable or undesirable. Were the company exercises its right to refuse the appointment of the contract manager, the supplier shall suggest an alternative appointment to the company for consideration.

2.5 **Ordering process**

2.5.1 Where this contract is identified as requiring multiple orders the supplier shall accept orders made in writing by the company.

2.5.2 Except where specified orders are required to call off goods and/or services the company gives no guarantees whatsoever as to when any order will be placed during the contract period or under the contract.

2.6 **Risk in and title to goods**

2.6.1 Risk in any goods supplied under the contract shall pass to the company upon delivery without prejudice to any rights of rejection which may accrue to the company under the contract or otherwise.

2.6.2 The property in any goods supplied under the contract shall pass to the company on the earlier of:

- i. Delivery in accordance with any delivery instructions or
- ii. Payment for the goods.

2.7 **Warranty**

2.7.1 The supplier warrants to the company that it is fully experienced, qualified and equipped to perform its obligations under the contract, and warrants that the goods and any goods, equipment or consumables which are provided as part of the services will:

- i. Be of satisfactory quality within the meaning of the Sale of Goods Act 1979 and fit for purpose as required by the specification or held out by the supplier
- ii. Be free from defects in design, material and workmanship
- iii. Be provided in accordance with the contract
- iv. Correspond with any relevant specification, drawings, samples or descriptions
- v. Be so formulated, designed, constructed, finished and packaged as to be safe and without risk to health
- vi. Comply with the general requirements of safety in terms of risk presented to the health and safety of persons.

2.7.2 The supplier warrants to the company that to the extent services are associated with the installation/delivery of the goods such services will be performed by appropriately qualified,



trained and experienced personnel with a high standard of skill, care and diligence and in accordance with good industry practice.

2.7.3 The supplier warrants to maintain all necessary licenses and consent to carry out the services and shall not do or omit to do anything which may cause the company to lose any license, authority or consent upon which it relies for the purpose of carrying on its business.

2.7.4 The supplier warrants to the company that the services will be provided:

- i. In a proper, skillful and workmanlike manner
- ii. By a sufficient number of appropriately qualified, trained and experienced personnel with a high standard of skill, care and due diligence and in accordance with good industry practice
- iii. In accordance with the contract and any descriptions provided by the supplier
- iv. With all reasonable care and skill by appropriately trained personnel and in accordance with agreed service levels (if any)
- v. To the reasonable satisfaction of the company
- vi. By key personnel (if any) who shall not be released from providing the Services permanently without the agreement of the Company, except:
 - By reason of sickness, maternity leave, paternity leave, termination of employment
 - At the request of the company
 - The element of the services in respect of which the individual was engaged has been completed to the company's satisfaction or other extenuating circumstance explained to the company and any replacements for the key personnel shall be subject to the agreement of the company and such replacements shall be of at least equal status or of equivalent experience and skills to the key personnel being replaced and be suitable for the responsibilities of that person in relation to the services. The cost of effecting such replacement shall be borne by the supplier.
- vii. In a way that the supplier takes every reasonable precaution to safeguard the company's property entrusted to the care of the supplier.

2.8 Supplier personnel

2.8.1 The company reserves the right under the contract to refuse to admit to or to withdraw permission to remain on, any premises occupied by or on behalf of the company, any supplier personnel (which means any employee, staff or volunteer of the supplier the contract manager and any employees or volunteer engaged by a sub-contractor, agent or servant of the supplier) whose admission or continued presence would be, in the reasonable opinion of the company, undesirable.

2.8.2 The supplier shall provide a list of the names and the capacity in which they act and such other details as the company may reasonably require of any person who it is expected may require



admission in connection with the contract to any premises occupied by or on behalf of the company.

- 2.8.3 Supplier personnel engaged within the boundaries of any of the company's premises, shall comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force from time to time.
- 2.8.4 Following the removal of any supplier's personnel for any reason, the supplier shall ensure such person is replaced promptly with another person with the necessary qualification, training and skills to supply or perform the services.
- 2.8.6 The supplier shall bear the cost of or costs arising from any notice, instruction or decision of the company under this clause 2.7.
- 2.8.7 Where the provision of services requires any of the supplier personnel to work in a regulated activity (as defined by the Disclosure and Barring Service) with children and/or vulnerable adults, the supplier will make enhanced checks in respect of such Supplier Personnel with the Disclosure & Barring Service or such other checks as are required by law prior to that individual being engaged and ensure such checks are renewed every three years.
- 2.8.8 The supplier will not employ, continue to employ or engage any person to provide any regulated activity (as defined in the Safeguarding of Vulnerable Groups Act 2006) under the contract who is prevented from carrying out such activities.
- 2.8.9 Where the provision of the Services does not require any of the supplier's personnel to work in a regulated activity but where the supplier personnel may nonetheless have contact with children and/or vulnerable adults the supplier will in respect of such personnel:
- i. Carry out appropriate employment checks
 - ii. Carry out such other checks as may be required by the DBS from time to time throughout the Contract Period and
 - iii. Ensure that they are of suitable standing and good character.
- 2.8.10 Unless required for the proper performance of the services, in which case clause 2.7.7 or 2.7.9 shall apply as the case may be, supplier personnel shall not have direct contact with children and/or vulnerable adults during any delivery or attendance at the premises of the company.

3.0 Price and payment

- 3.1.1 The company shall pay the price for the goods and/or services to the supplier. Unless otherwise stated the price shall include all charges for packaging, carriage and insurance of the goods and/or services to the company in accordance with the delivery instructions. No additional charges, costs or expenses will be effective unless agreed in writing by the company.



- 3.1.2 The company shall be entitled to a discount for prompt payment, bulk purchase, volume or purchase customarily granted by the supplier.
- 3.1.3 Unless otherwise stated the supplier may only invoice the company on or after delivery of the goods or the supply of the services with a separate invoice for each individual delivery or supply. Invoices must set out the unique identification number and be sent to the address set out in the relevant purchase order.
- 3.1.4 Payment of any undisputed invoice will be made no later than thirty (30) days following the date of receipt of the invoice by the company. The Company reserve the right to use the full thirty (30) day credit period to fulfil payment obligations. Time of payment shall not be of the essence of the contract.
- 3.1.5 All amounts payable by the company 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 company, the company 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.
- 3.1.6 The company reserves the right to withhold payment of the relevant part of the price without payment of interest where the supplier has failed to provide the goods and/or services in full and any invoice relating to such goods and/or services will not be paid unless or until the goods and/or services have been provided to the company's satisfaction.
- 3.1.7 The supplier is not entitled to suspend provision of the goods and/or services as a result of any overdue sums.
- 3.1.8 The company may at any time without notice to the supplier set off any liability of the company to the supplier against any liability of the supplier to the company whether any such liability is present or future, liquidated or un-liquidated. The company's rights under this clause will be without prejudice to any other rights or remedies available to the company under this contract or otherwise.
- 3.1.9 All adjustments or variation to the suppliers rates and prices must be agreed in writing and signed by all parties, and take effect from the date of signing, unless expressly agreed otherwise.
- 3.1.10 Where applicable, the supplier agrees to pay any sub-contractors employed to perform services for or in relation to the contract within 30 days.



4.0 Termination and consequences of termination

4.1 Termination

4.1.1 Subject to the provisions of clause 5.3 (force majeure) the company may terminate the contract in whole or in part, with immediate effect by notice in writing to the supplier on or at any time if:

- i. The supplier is unable to pay its debts as they fall due or is insolvent
- ii. The supplier suspends making payments on any of its debts or announces an intention to do so
- iii. A moratorium is declared in respect of the supplier's indebtedness
- iv. The supplier ceases or threatens to cease to carry on its business or substantially the whole of its business
- v. The supplier is dissolved or struck off
- vi. Any action, legal proceedings or other procedure or step is taken by any person in any jurisdiction in relation or with a view to:
 - The winding up, dissolution, administration or re-organisation of the supplier
 - A composition, assignment or arrangement with any creditor of the supplier
 - The appointment of a liquidator, trustee in bankruptcy, judicial custodian, compulsory manager, receiver, administrative receiver, administrator, nominee, supervisor or similar officer in respect of the supplier or any of its assets
 - The enforcement of any security over any of the assets of the supplier.
- vii. The commencement of any analogous procedure or step in relation to the supplier in any jurisdiction other than England and Wales
- viii. The company reasonably believes that any of the events mentioned above is about to occur in relation to the supplier and notifies the supplier accordingly
- ix. The supplier is convicted of a criminal offence
- x. The supplier has a change in control which the company believes will have a substantial impact on the performance of the contract
- xi. There is a risk or a genuine belief that reputational damage to the company will occur as a result of the contract continuing
- xii. The supplier is in material breach of any of its obligations under this contract that is capable of remedy and which has not been remedied to the satisfaction of the company within 14 days, or such other reasonable period as may be specified by the company or there is a material breach by the supplier of any of its obligations under this contract which is incapable of remedy
- xiii. The supplier commits persistent minor breaches of this contract whether remedied or not.

4.1.2 Material breach means a breach (including an anticipatory breach) which is serious in the widest sense of having an effect on the benefit which the company would otherwise derive under the



contract regardless of whether any actual loss has been incurred or will be incurred as a consequence of the breach or intended breach.

4.1.3 The company reserves the right to terminate the contract at will, in whole or in part, at any time by giving written notice of not less than 30 to supplier, or such other period as may be agreed in the purchase order, special terms and conditions or tender document.

4.1.4 Clauses 2.5 (Risk in and Title to the Goods), 4.1 (Termination), 4.2 (Consequences of Termination), 5.1 (insurance), 5.2 (Indemnity and Liability), 6.1 (Intellectual Property), 6.2 (Confidentiality and Publicity), 6.4 (Record Keeping and Monitoring), 7.1 (Compliance with Applicable Law and Policies), 7.2 (TUPE), 7.3 (Non Solicitation), 8.5 (Severance) and 8.10 (Law and Jurisdiction) shall survive termination or expiry of the contract.

4.2 Consequences of termination

4.2.1 Any expiry or termination of this contract for whatever reason shall not affect any rights or liabilities which have accrued on or before the date of termination or expiry and the provisions of any clauses expressed to have effect after expiry or termination of this contract shall continue to have effect.

4.2.2 If this contract is terminated in whole or in part the company shall:

- i. Be liable to pay to the supplier only such elements of the price that have properly accrued in accordance with the contract or the affected part of the contract up to the time of the termination
- ii. Except for termination under clause 4.1.3, be entitled to deduct from any sum or sums which would have been due from the company to the supplier under this contract, or any other contract with the supplier, and to recover the same from the supplier as a debt any sum in respect of any loss or damage to the company resulting from or arising out of the termination of this contract. Such loss or damage shall include the reasonable cost to the company of the time spent by its officers in terminating the contract and in making alternative arrangements for the supply of the goods and/or services or any parts of them
- iii. Where termination arises under clause 4.1.3, pay to the supplier any reasonable, quantifiable costs incurred by the supplier due to early termination subject to the maximum liability provision in clause 5.

4.2.3 In the event that any sum of money owed by the supplier to the company exceeds any sum of money owed by the company to the supplier under this contract then the company shall, at its sole discretion, be entitled recover the difference from the supplier debt as a civil debt.

4.2.4 Termination of the contract shall not affect the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of the contract which existed at or before the date of termination.



4.3 **Dispute resolution procedure**

- 4.3.1 If a dispute arises between the company and the supplier in connection with the contract, the parties shall each use reasonable endeavours to resolve such dispute by means of prompt discussion at an appropriate managerial level.
- 4.3.2 If a dispute is not resolved within 14 days then either party may refer it to an appropriate nominated senior manager or officer of each party for resolution who shall meet for discussion within 14 days or longer period as the parties may agree.
- 4.3.3 A dispute not resolved in accordance with clauses 4.3.1 and 4.3.2, may be referred at the request of either party to a mediator appointed by agreement between the parties within 10 days of one party requesting mediation or, where no agreement is reached in that time, either party may apply to the centre for dispute resolution to appoint a mediator. Parties' liability for costs of mediation to be determined by the mediator.
- 4.3.4 Nothing in this clause shall preclude either party from applying at any time to the English courts for such interim or conservatory measures as may be considered appropriate.

5.0 **Insurance and liabilities**

5.1 **Insurance**

- 5.1.1 Unless expressly agreed otherwise, from the commencement date the supplier shall maintain in force at its own expense the following insurance policies for the duration of the contract:
- i. Professional indemnity insurance cover in a sum of not less than £5,000,000
 - ii. Public and product liability insurance cover in a sum of not less than £5,000,000
 - iii. Employer's liability insurance cover in a sum of not less than £10,000,000 and shall, on the company'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.
- 5.1.2 If the supplier does not maintain the necessary insurances under the contract the company may insure against any risk in respect of the default and may charge the supplier the cost of such insurance together with a reasonable administration charge.

5.2 **Indemnity and liability**

- 5.2.1 Neither party seeks to exclude or limit its liability for:
- i. Death or personal injury caused by its negligence (but each party will not be liable for death or personal injury caused by the other party's negligence)
 - ii. Fraudulent misrepresentation



iii. Any other matter in respect of which, as a matter of Law, liability cannot be excluded or limited.

5.2.2 Except as specifically provided, neither party shall in any event be liable to the other for any indirect or consequential loss (including loss of profit, loss of business opportunity, loss of business, loss of goodwill, loss of production and pure economic loss) however caused.

5.2.3 Unless expressly agreed otherwise, each party's liability to the other under the contract whether in contract, tort (including negligence) or otherwise shall be limited to 100% of the proportion of the price which is paid and payable at the time that the liability arises.

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

- i. Any claim made against the company 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
- ii. Any claim made against the company by a third party for death, personal injury or damage to property arising out of, or in connection with, defects in the goods, as delivered, or in the performance of the services
- iii. Any claim made against the company by a third party arising out of or in connection with the supply of the goods or the performance of the services.

5.3 Force majeure

Neither party shall be in breach of the contract nor liable for delay in performing, or failure to perform, any of its obligations under it if such delay or failure results from an event, circumstance or cause beyond its reasonable control and which is not attributable to any act or failure to take preventative action by that party, including without limitation acts of god, war, industrial action, protests, fire, flood, storm, tempest, epidemic, explosion, acts of terrorism and national emergencies, violent storm, persistent and malicious damage. If the period of delay or non-performance continues for two months, the party not affected may terminate the contract by giving 30 days written notice to the affected party.

6.0 Protection of information

6.1 Intellectual property

6.1.1 Nothing in this contract shall give the supplier any rights in respect of any specification or intellectual property rights (which means patents, inventions, trademarks, service marks, logos,



design rights, applications for any of the foregoing, copyright, know-how rights, brand names, database rights, domain names, trade or business names, moral rights and other similar rights or obligations in any country including but not limited to the United Kingdom and the right to sue for passing off and including all applications and rights to apply for any of the same together with all or any goodwill relating to the same) of the company.

- 6.1.2 Unless otherwise expressly agreed, all intellectual property rights in any specifications, instructions, plans, data, drawings, databases, patents, patterns, models, designs or other material provided to the supplier by the company shall belong to the company.
- 6.1.3 The supplier will assign with full guarantee and all attached rights, all intellectual property rights created by this contract or in relation to the goods and services to the company as soon as reasonably practicable or on the reasonable request of the company.
- 6.1.4 The supplier shall obtain necessary approval before using any material, in relation to the performance of the contract, which is or may be subject to any third party intellectual property rights. The supplier shall grant or procure that the owner of the intellectual property rights shall grant to the company a non-exclusive license, or if the supplier is itself a licensee of those rights, the supplier shall grant to the company an authorised sub-license, to use, reproduce, and maintain the intellectual property rights. Such license or sub-license shall be non-exclusive, royalty-free, perpetual and irrevocable, and shall include the right to sub-license, transfer, novate or assign to other group companies, the replacement supplier or to any other third party providing services to the company, and shall be granted at no cost to the company.
- 6.1.5 It is a condition of the contract that the goods and/or services will not infringe any intellectual property rights of any third party.
- 6.1.6 At the termination of the contract or at any time during the contract period if requested by the company, the supplier shall at the request of the company immediately return to the company all materials, work or records held in relation to the goods and/or services, including any back-up media.

6.2 Confidentiality and publicity

- 6.2.1 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 or is designated as such by either party in writing (confidential information) 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, its products and services which the receiving party may obtain. The receiving party shall only disclose such confidential information to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the receiving party's obligations under the contract, and shall ensure that such employees, agents and subcontractors comply with the obligations set out in this clause



as though they were a party to the contract. The receiving party may also disclose such of the disclosing party's confidential information as is required to be disclosed by law, any governmental or regulatory authority or by a court of competent jurisdiction or where the receiving party can demonstrate by documentary evidence, that it has been in its possession prior to disclosure by the other party and that it is not subject to any other obligations as to confidentiality.

6.2.2 Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the contract.

6.2.3 Without prejudice to any other rights and remedies each party may have each party agrees that the confidential information is valuable and that damages may not be an adequate remedy for any breach of clause 6.2 and accordingly each party agrees that the parties will be entitled, without proof of special damages, to the remedy of an injunction and other equitable relief for any actual or threatened breach of clause 6.2.

6.2.4 Without prejudice to the company's obligations under the EIR neither party shall make any press announcements or publicise the contract or any part thereof in any way, except with the written consent of the other party (such consent not to be unreasonably withheld or delayed).

6.3 **Change of control**

6.3.1 If the supplier has a change of control (which has the meaning given in section 1124 of the Corporation Tax Act 2010), and the expression change of control shall be construed accordingly, the supplier shall inform the company as soon as reasonably practicable.

6.3.2 The company may in its absolute discretion terminate the contract if the supplier experiences a change of control where the company believes this will have a substantial impact on the performance of the contract.

6.4 **Record keeping, secure destruction and monitoring**

6.4.1 The supplier shall keep and maintain for six years or such longer time period required in accordance with any specific legislation after the contract has been completed, full and accurate records of the contract including the goods and/or services supplied under it, all expenditure reimbursed by the company, and all payments made by the company.

6.4.2 The supplier will at its own cost, provide any information that may be required by the company to comply with the company's internal procedures for monitoring of the contract.

6.4.3 The supplier will, on being given reasonable notice by the company, permit the company to audit any aspect of compliance by the supplier, or any supplier personnel or sub-contractors, with its obligations under the contract, and will provide such information and access to staff as the company may require for this purpose.



7.0 Statutory obligations

7.1 Compliance with applicable law and company policies

7.1.1 In performing its obligations under the contract, the supplier shall comply with all applicable laws, statutes, regulations and codes from time to time in force.

7.1.2 The supplier shall comply with all company policies and rules, such as, but not limited to:

- i. Equality and Diversity Policy
- ii. Information, Security and Data Protection Policy
- iii. Whistleblowing and/or Confidential Reporting policies
- iv. Modern Slavery and Human Trafficking policies
- v. Probity Policy
- vi. Health & Safety policies
- vii. ICT Policy
- viii. All site rules relevant to the fulfillment of the contractor's obligations in the performance of the service

7.2 TUPE

7.2.1 Unless expressly agreed otherwise, the supplier undertakes and warrants that it will procure that no employees, as defined by the Transfer of Undertakings (Protection of Employment) Regulations 2006 (TUPE), will transfer by operation of TUPE from the supplier and/or its agents and or sub-contractors directly or indirectly to the company, their agents and/or sub-contractors on the termination or expiry of all or part of the contract or otherwise in connection with the contract.

7.2.2 The supplier will indemnify and keep the company indemnified from and against each and every direct, indirect or consequential cost, claim, liability, expense, loss or demand (including legal costs and other professional expenses on an indemnity basis) awarded against or incurred or paid by the company, its agents and/or sub-contractors as a result of any breach of the warranty given in clause 7.2.1.



7.3 **Non-solicitation**

7.3.1 The supplier undertakes that it will not during the term of the contract and for a period of one year following termination or expiry of the contract, without the prior written consent of the company actively employ, engage, solicit, entice, endeavour to solicit and/or entice a third party to engage and/or employ any of the employees and/or contractors of the company who:

- i. Have been engaged to work to a substantial extent in relation to the contract over the twelve months preceding such action or
- ii. Have had direct contact with the supplier over the twelve months preceding such action save that this clause 7.3.1 will not apply in relation to any person who replies unsolicited to an open advertisement placed by the supplier.

8.0 **General provisions**

8.1 The supplier shall not without the prior written consent of the company, assign all or any of its rights and obligations under this contract either in whole or part. The company shall be entitled to assign, novate or dispose of its rights and obligations under this contract either in whole or part.

8.2 Each of the parties will pay their own costs and expenses incurred in connection with the negotiation, preparation, execution, completion and implementation of this contract.

8.3 Nothing in the contract shall be construed to create a partnership, joint venture, agency relationship or employment relationship between the company and the supplier. Neither party has the right or authority to assume or to create any obligation on behalf of the other party.

8.4 In no event shall any delay, neglect or forbearance on the part of any party in enforcing (in whole or in part) any provision of the contract be or be deemed to be a waiver of any other provision or shall in any way prejudice the right of that party under the contract.

8.5 The invalidity, illegality or unenforceability of any of the provisions of the contract shall not affect the validity, legality or enforceability of the remaining provisions of the contract.

8.6 Save as expressly provided in the contract, no other third party shall have any right to enforce this contract. Any right of a third party to enforce the contract may be varied and/or extinguished by agreement between the parties to the contract without the consent of such third party.

8.7 No purported variation of the contract shall take effect unless made in writing and signed by an authorised representative of each party who is affected by such variation.

8.8 Any notice, request, instruction or other documentation to be given under the contract shall be delivered or sent by first class post or by fax or electronic mail to the address of the other party set out in the contract (or such other address as the other may have notified the first party for this



purpose) and any such notice or other document shall be deemed to have been served, (if delivered) at the time of delivery or (if sent by post) upon the expiration of 48 hours after posting and (if sent by fax or electronic mail) upon transmission unless a notice of non-delivery is received within two hours after transmission.

- 8.9 This contract contains the whole agreement between the parties and it supersedes any prior written or oral agreement between them and is not affected by any other promise, representation, warranty, usage, custom or course of dealing. The parties confirm that they have not entered into this contract on the basis of any representation that is not expressly incorporated into this contract. Nothing in this contract shall exclude liability for any fraudulent statement or act made prior to the date of this contract.
- 8.10 This contract is governed by and interpreted in accordance with English law and the parties agree to submit to the exclusive jurisdiction of the English courts.

