

General Conditions of Purchase

Contents

1. Definitions	2
2. Interpretation	4
3. Conditions Applicable	4
4. General	5
5. Warranty, Specification and Supplier's Obligations	6
6. Inspection and Rejection	7
7. Contract Administrator	7
8. Price	7
9. Payment	7
10. Indemnity	9
11. Insurance	10
12. Compliance with Applicable Laws	10
13. Term and Termination	10
14. Dispute Resolution	11
15. Notices	12
16. Variations	12
17. Assignment and Sub Contracting	12
18. Waiver	12
19. Force Majeure	12
20. Confidentiality	12
21. Conflict of Interest	13
22. Intellectual Property	14
23. Equality and Diversity	14
24. Legal Relationship	15
25. Rights of Third Parties	15
26. Governing Law	16

Appendix A Data Processing Agreement

1. Definitions

The following words and expressions shall have the following meanings:

“Business Days” – shall mean any day which is not a Saturday, a Sunday, a public holiday or a bank holiday;

“Conditions” – shall mean the Conditions of Contract as laid out in this document, and include any supplementary or special conditions agreed in writing between the Company and the Supplier;

“Confidential Information” – shall mean all documents, papers, databases, drawings, diagrams, calculations, figures, data and other information whether in physical form or otherwise, whether expressed to be confidential or not, and in whatever media or format provided or orally disclosed by the Disclosing Party to the Receiving Party in the course of, or in connection with the performance of each Party’s obligations under the Contract;

“Contract” – has the meaning given to it in paragraph 1 of the Form of Agreement;

“Contract Administrator” – shall mean the person nominated by the Company to act as the Company’s representative for the purpose of the Contract;

“Commencement Date” has the meaning given to it in the Agreement and ITT;

“Company” – shall mean Wythenshawe Community Housing Group Limited;

“CPI” – shall mean the United Kingdom general index of consumer prices published by the Office for National Statistics (or any other government department or other body upon which the duties in connection with such index have devolved) or any index which replaces it from time to time;

“Disclosing Party” – shall mean the Party to the Contract who discloses Confidential Information to the other Party to the Contract;

“Extended Expiry Date” has the meaning given to it in the ITT and Agreement;

“Force Majeure” – shall mean any cause preventing either Party from performing any or all of its obligations under this Contract which arises from or is attributable to acts, events, omissions or accidents beyond the reasonable control of the Party so prevented including, however without limitation, acts of God, war, riot, civil commotion, malicious damage, compliance with any applicable law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or tempest (but for the avoidance of doubt excluding strikes, lockouts or other industrial disputes which have their origin within the employees of the Party so prevented or default of suppliers or sub-contractors or breakdown of vehicles);

“Initial Expiry Date” has the meaning given to it in the ITT and Agreement;

“Invitation to Tender (ITT)” – the document issued by the Company which includes the Contract Specification;

“Party” – shall mean a Party or Parties to the Contract;

“Permitted Purpose” – shall mean (for the purposes of Condition 20 below) the respective obligations of each of the Parties under the Contract;

“Previous Supplier” - shall mean the previous provider of supplies/services substantially similar to the Supplies/Services;

“Price” – shall mean the Price payable to the Supplier for the provision of the Supplies/Services as stated in Pricing Schedule and/or the Purchase Order or Request for Supplies/Services;

“Purchase Order” – shall mean the order for the Supplies/Services issued by the Company, in either printed or electronic format to the Supplier;

“Receiving Party” – shall mean the Party to the Contract who receives Confidential Information from the other Party to the Contract;

“Request for Supplies/Services” – shall mean an order for the Supplies/Services (other than a Purchase Order) in the form of a request issued by the Company to the Supplier;

“Retendering Information” – means such information relating to the persons engaged or employed by the Supplier or any Subcontractor in providing the Supplies/Services which the Company may reasonably require to facilitate any subsequent provider of supplies/services to assess and include the cost of TUPE in any subsequent bid for supplies/services similar to the Supplies/Services and to assist in the transfer of the Supplies/Services to a subsequent service provider, such information to include (without limitation) details of the persons’:

- identity (or reference number);
- date of birth;
- age;
- sex;
- date of commencement of employment;
- length of service;
- job title; and
- grade and terms and conditions of employment,

“Review Date” - shall mean the anniversary of the Commencement Date;

“Site” – shall mean the place or places where the Company requires the Supplies/Services to be provided;

“Specification” – shall mean the Specification of the Supplies/Services as set out in the ITT and shall include all quotations, plans, drawings, specifications, standards and performance requirements relating to the Supplies/Services;

“Staff” – shall mean all individuals employed by the Supplier from time to time in connection with providing the Supplies/Services to the Company;

“Subcontractor” – shall mean a person or organisation who has a contract with the Supplier to undertake all or part of the Supplies/Services;

“Subsequent Transfer Date” – shall mean the date when either a new Supplier selected to provide supplies/services to the Company similar to the Supplies/Services, or the Company, takes over the provision of the Supplies/Services from the Supplier;

“Supplier” – means the person, firm or company appointed by the Company under the Contract;

“Supplies/Services” – shall mean the Supplies/Services as stated in the Specification.

“Term” – shall mean the period commencing on the Commencement Date and, subject to earlier termination in accordance with the provisions of this Contract, ending on either: (i) the Initial Expiry Date; or (ii) if the Company exercises its option pursuant to clause 13.2, the Extended Expiry Date;

“TUPE” – shall mean the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended);

2. Interpretation

In these Conditions unless the context otherwise requires:

- 2.1 any reference to gender shall include all other genders, and the singular shall include the plural, and vice versa.
- 2.2 the expression ‘person’ shall mean any individual, firm, company, incorporated association, partnership or joint venture.
- 2.3 any reference to a statute or a statutory provision shall be construed as a reference to the same from time to time as amended, consolidated, modified, extended, re-enacted or replaced.

3. Conditions Applicable

- 3.1 The Conditions shall apply to the provision of the Supplies/Services by the Supplier to the exclusion of all other terms or conditions, including any terms and conditions which the Supplier may purport to apply under any purchase order, confirmation of order or similar document.
- 3.2 Provision of the Supplies/Services by the Supplier shall be deemed to constitute the Supplier’s acceptance of these Conditions.
- 3.3 Any variation of the Conditions (including any supplementary or special terms and conditions agreed between the Parties) shall have no effect unless agreed in writing between the Parties.

4. General

- 4.1 The Company engages the Supplier to be a non-exclusive provider of the Supplies/Services for the Term of the Contract subject to and in accordance with these Conditions.

- 4.2 The Company shall not be under any obligation to issue any Purchase Order or Request for Supplies/Services to the Supplier and reserves the right to procure the provision of services/supplies of the same or a similar type to the Supplies/Services from any other Supplier at its sole discretion.
- 4.3 The Supplier shall be deemed to satisfied itself as to its liability (if any) which may accrue under TUPE, and to have included within the Price the cost of such liability (if any).
- 4.4 The Supplier undertakes to the Company that it shall comply with its obligations under TUPE in relation to the staff of the Previous Supplier, and shall use all reasonable endeavours to procure a smooth transfer of such staff where appropriate.
- 4.5 The Supplier shall be responsible for employing and paying the salaries and wages of and any other expenses (including, without limitation, all employment related taxes) of the Staff, and shall also be responsible for terminating the employment of the Staff.
- 4.6 The Supplier shall indemnify the Company in relation to all costs, claims, expenses, demands, actions, proceedings and orders whatsoever (including but not limited to legal and professional fees and expenses) arising out of a breach of the employment conditions of, or termination of employment of, any member of Staff or any other act or omission in relation to the Staff which occurred on or prior to the Subsequent Transfer Date.
- 4.7 The Parties agree that at the date of termination or expiry of the Contract or part thereof TUPE may apply and that to the extent that TUPE applies there shall be a "relevant transfer", (as defined in TUPE) of the relevant employees or part of them to the Company or the new Supplier selected to provide supplies/services to the Company similar to the Supplies/Services.
- 4.8 During the 12 (twelve) months immediately preceding the end of the Term or from notice of earlier termination of the Contract for whatever reason the Supplier shall:
 - 4.8.1 provide Retendering Information at no cost to the Company within a maximum of 10 (ten) Business Days of a request;
 - 4.8.2 notify the Company in writing of any material changes to the Retendering Information promptly as and when such changes arise;
 - 4.8.3 ensure that neither the Contractor nor any Subcontractors without the Company's prior written consent:
 - 4.8.3.1 make any material increase or decrease in the numbers of persons engaged or employed by them in providing the Supplies/Services;
 - 4.8.3.2 increase the remuneration or otherwise change the terms of employment or engagement of the persons engaged or employed by them in providing the Supplies/Services; or
 - 4.8.3.3 transfer any of the persons engaged or employed by them in providing the Supplies/Services to another part of their business or move other employees from elsewhere in their

business who have not previously been employed or engaged in providing the Supplies/Services.

4.9 The Supplier agrees to indemnify the Company and, at the Company's request, any new contractor selected to provide supplies/services to the Company similar to the Supplies/Services, against all liability from:

4.9.1 the Supplier or a Subcontractor failing to provide the Company with any Retendering Information promptly; or

4.9.2 any material inaccuracy in or omission from the Retendering Information.

5. Warranty, Specification and Supplier's Obligations

5.1 The Supplier warrants to the Company that the Supplies:

5.1.1 shall be in accordance with the Specification, including for the avoidance of doubt, any sample provided by the Supplier;

5.1.2 shall be fit for the purpose they are required, whether expressly stated or reasonably implied;

5.1.3 shall be of satisfactory quality within the meaning of the Sale of Goods Act 1979;

5.1.4 shall be free from defects in design, materials and workmanship; shall comply in all respects with all statutory and EU regulations relating to the Supplies and the packaging and labelling of the Supplies.

5.2 The Supplier warrants to the Company that the Services:

5.2.1 shall be provided with the high degree of professional skill, sound practices and good judgement normally exercised by recognised professional firms or by highly skilled and experienced suppliers providing services of a similar nature to the Services;

5.2.2 shall be provided in accordance with the Specification;

5.2.3 shall be provided in accordance with all applicable laws.

5.3 The Supplier shall comply with the rules, regulations and reasonable directions of the Company whilst at the Site.

5.4 The Supplier shall act diligently and in good faith in its dealings with the Company and use its best endeavours to promote the interests of the Company and maintain the Company's goodwill.

5.5 The Supplier shall maintain at its own expense all licences, permissions and consents necessary to perform its obligations under the Contract.

5.6 The provisions of this Condition 5 shall survive the termination of the Contract, however arising.

6. Inspection and Rejection

- 6.1 The Company shall have the right to inspect the Supplies/Services and perform tests as it considers reasonable to ascertain the conformance of the Supplies/Services with the Specification.
- 6.2 The Company shall be entitled to reject any Supplies/Services provided which are not in accordance with the Specification, and shall not be deemed to have accepted any Supplies/Services until the Company has had reasonable time to inspect them following provision or, if later, within a reasonable time after any latent defect in the Supplies/Services has become apparent.
- 6.3 If the Company rejects the Supplies/Services in accordance with Condition 6.2 then the Contractor shall, at the Company's sole option and at the Supplier's sole cost, and as soon as reasonably practicable, but in any event within twenty (20) Business Days of the Company's notice in writing:
 - 6.3.1 re-provide the rejected Supplies/Services; or
 - 6.3.2 pay to or credit the Company with a refund of the Price paid in respect of the rejected Supplies/Services; or
 - 6.3.3 provide a combination of the remedies set out in Conditions 6.3.1 to 6.3.2.
- 6.4 The making of payment by the Company to the Supplier shall not prejudice the Company's right of rejection under Condition 6.2.
- 6.5 The Company may at any time at its absolute discretion refuse to accept or continue to accept the presence on its premises of any particular person engaged or employed by the Supplier or by a Subcontractor in the provision of the Supplies/Services.

7. Contract Administrator

- 7.1 The Company shall nominate the Contract Administrator and may at its sole discretion change any nomination from time to time by notifying the Supplier.

8. Price

- 8.1 The Price payable for the provision of the Supplies/Services shall be as stated in Pricing Schedule, and/or the Purchase Order or Request for Supplies/Services.
- 8.2 The Price shall include for all the Supplier's obligations under the Contract, whether expressly stated or reasonably implied.
- 8.3 No increase in the Price will be made without the prior consent of the Company in writing.

9. Payment

- 9.1 The Supplier's official invoice should be sent promptly to the Company after the provision of the Supplies/Services to the address indicated in the Purchase Order or Request for Supplies/Services, unless otherwise instructed and must show:

- 9.1.1 the Company's Purchase Order number (if applicable);
- 9.1.2 the Supplier's invoice number;
- 9.1.3 a full description of the Supplies/Services provided;
- 9.1.4 the full details of the Price;
- 9.1.5 current VAT requirements;
- 9.1.6 the Request for Supplies/Services originator (if applicable).

Failure to include such information with the invoice will entitle the Company to delay payment until such information is provided.

- 9.2 The Company shall make payment (subject to deduction of any Disputed Amounts (as defined in Condition 9.6) against each invoice within thirty (30) days after the receipt by the Company of the invoice and all information required under Condition 9.1 (the "**Due Date for Payment**"). If the Supplier fails to provide any of the information or documents that it should have provided in complying with its obligations under Condition 9.1 then the Company may reject the invoice and Condition 9.7 shall not apply.
- 9.3 The Company shall be entitled to make deductions from payments due to the Supplier under this Contract where there is a payment deduction mechanism set out in the Specification under the heading "Payment Deductions Linked to Contract Performance".
- 9.4 Payment by the Company shall be without prejudice to any claims or rights which the Company may have against the Supplier and shall not constitute any admission by the Company as to performance by the Supplier of its obligations under the Contract.
- 9.5 The Company shall have the right to amend the procedure for submission of invoices by the Supplier if it deems necessary. This may involve, but shall not be limited to, varying the batching, frequency/timescale, computerised invoicing, documentation requirements, etc. The Contract Administrator shall give the Supplier written notification of any such amendment and the Supplier shall comply within fourteen (14) days of receipt of the notification.
- 9.6 If the Company disputes in good faith its obligations to pay part or all of an invoice submitted by the Supplier under this Contract (the "**Disputed Amount**"), then the following provisions shall apply:
 - 9.6.1 The Company shall pay the undisputed amount to the Supplier in accordance with the provisions of this Condition 9;
 - 9.6.2 The Company shall notify the Supplier before the payment becomes due of the Disputed Amount and the reasons why it considers it is not obliged to pay the Disputed Amount;
 - 9.6.3 The Company's failure to pay the Disputed Amount, pending resolution of the dispute, will not be a breach of this Contract;
 - 9.6.4 Where the Company has notified the Supplier under Condition 9.6.2 that there is a Disputed Amount, the Supplier must notify the Company within five (5) Business Days following receipt of that notification if it does not agree with the Company's position (as notified to it under Condition 9.6.2)

and the reasons why it does not agree; failing which the Supplier will be deemed to agree that the Disputed Amount is not payable;

- 9.6.5 The Parties shall refer to the dispute resolution procedure under Condition 14 the issue of whether or how much of the Disputed Amount is payable to the Supplier;
- 9.6.6 Upon the payment of the Disputed Amount which is payable by the Company (if any) being determined through the dispute resolution procedure under Condition 14, the Company must pay that amount to the Supplier, within fifteen (15) Business Days of receipt of a corrected invoice from the Supplier for the Disputed Amount (or relevant part of it) as so determined; and
- 9.6.7 Where the Supplier agrees, or it is determined, that an invoice contains an error, and a subsequent invoice contains an equivalent error, the Company will be under no obligation to pay any part of the subsequent invoice until the error has been rectified and a correct invoice has been submitted and, for the avoidance of doubt, the time allowed for payment of the correct invoice under this clause will run from the date on which it is re-presented correctly.
- 9.7 If the Company fails to make any payment which (in accordance with Condition 9.2) is due in full on the due date the Supplier may charge the Company interest (both before and after judgement) on the amount unpaid from time to time at the rate of 2% above the Bank of England base rate from time to time.
- 9.8 The Price (as set out in the Pricing Schedule) - where not fixed for a specific duration - will be subject to a review on the Review Date and thereafter on each anniversary of the Review Date. Any adjustment in the Price shall be by agreement between the Company and the Supplier and shall not exceed the percentage adjustment of the CPI over the previous 12 months.
- 9.9 Value Added Tax, where applicable, shall be shown separately on all invoices at the prevailing rate.
- 9.10 The Company shall be entitled to off-set against any invoice, any monies due to the Supplier under the Purchase Order or Request for Supplies/Services or under any other contractual arrangement.

10. Indemnity

10.1 The Supplier will indemnify the Company in full against the following:

- 10.1.1 all loss, liability, revenue, goodwill, damages, costs, expenses (including legal expenses), anticipated savings or injury whatsoever and whenever arising caused to the Company, or for which the Company may be liable to third parties due to defective workmanship or unsound quality of the Supplies/Services provided.
- 10.1.2 all claims in respect of death or injury, howsoever caused, to any of the employees, or those of the agent or sub-contractors, of the Supplier, while in or about the Company's premises.

10.1.3 any indirect or consequential loss or damage sustained by the Company for which the Company may be liable, as a result of the failure of the Supplier to provide the Supplies/Services as stated in the Specification.

10.2 The provisions of this Condition 10 shall survive the termination of the Contract, however arising.

11. Insurance

11.1 The Supplier shall hold – or take out - and maintain in full force and effect with a reputable insurance company the minimum insurance requirements as specified in the ITT.

11.2 The Supplier shall when required by the Company provide evidence of the insurance required under Condition 11.1. In the event that the Supplier at any time fails to maintain the insurance required under Condition 11.1, the Company may take out such insurance and the Supplier shall pay to the Company the cost and expenses so incurred by the Company.

12. Compliance with Applicable Laws

12.1 In providing the Supplies/Services the Supplier shall at all times comply with all applicable laws including, but not limited to:

12.1.1 the Health & Safety at Work Act 1974;

12.1.2 the Environmental Protection Act 1990;

12.1.3 the Data Protection Act 1998 (*see 12.2*);

12.1.4 the General Data Protection Regulation (GDPR) (*see 12.2*)

12.1.5 the Freedom of Information Act 2000;

12.1.6 the Equality Act 2010;

12.1.7 the Bribery Act 2010;

12.1.8 The Modern Slavery Act 2015;

12.1.9 the Waste Electronic and Electrical Equipment Regulations 2006.

and any subsequent re-enactments or amendments.

12.2 Data Protection

12.2.1 If the Supplier is required to process Personal Data in order to perform its obligations under this Agreement, please refer to *Appendix A* "Data Processing Agreement" which will apply.

13. Term and Termination

13.1 Subject to earlier termination in accordance with its terms, the Contract shall commence on the Commencement Date and shall continue for the duration of the Term.

13.2 No later than one (1) month prior to the Initial Expiry Date the Company may, in its absolute discretion, give written notice to the Supplier that it wishes the Contract to continue until the Extended Expiry Date.

- 13.3 If the Company gives notice in accordance with clause 13.2 the Contract shall continue until the Extended Expiry Date, subject to the provisions for earlier termination contained in the Contract.
- 13.4 The Company shall be entitled to terminate the Contract without liability to the Supplier by giving notice to the Supplier at any time if:
- 13.4.1 the Supplier makes any voluntary arrangement with its creditors (within the meaning of the Insolvency Act 1986) or (being an individual, or firm) becomes bankrupt or (being a company) becomes subject to an administration order or goes into liquidation (otherwise than for the purpose of amalgamation or reconstruction);
 - 13.4.2 the Supplier ceases, or threatens to cease to carry on business;
 - 13.4.3 the Supplier dies or by reason of any illness becomes unable to comply with its obligations under the Contract;
 - 13.4.4 the Supplier commits an offence under the Bribery Act 2010;
 - 13.4.5 the Supplier fails to comply with any or all applicable laws;
 - 13.4.6 the Supplier commits any criminal offence whilst providing the Supplies/Services;
 - 13.4.7 the Contract has been subject to a substantial modification which would have required a new procurement procedure in accordance with Regulation 72(9) of the Public Contracts Regulations 2015;
 - 13.4.8 the Supplier has, at the time of Contract award, been in one of the situations referred to in Regulation 57(1) of the Public Contracts Regulations 2015, and should therefore have been excluded from the procurement procedure;
 - 13.4.9 the Contract is subject to a declaration of ineffectiveness by the Court.
- 13.5 Where the Company terminates the Contract in accordance with Condition 13.4, the Company shall be entitled to recover from the Supplier all additional cost, loss or expense reasonably incurred by the Company in procuring the Supplies/Services (or any part of them) from an alternative Supplier.
- 13.6 The Company shall have the right to terminate the Contract at any time by providing the Supplier with three (3) months' written notice of the Company's intention to terminate.
- 13.7 Either Party shall have the right to terminate the Contract immediately by notice to the other Party if the other Party is in material breach of the Contract and either the other Party fails to remedy such breach within ten (10) Business Days of notification of the breach, or such breach is incapable of remedy.
- 13.8 Upon the termination of the Contract the Supplier shall (if required by the other Company) promptly return to the Company all Confidential Information, data, materials and other property of the Company.
- 13.9 Termination of the Contract shall not prejudice any rights, powers or remedies of either Party which had arisen on or before the date of termination of the Contract.

14. Dispute Resolution

- 14.1 If any dispute arises out of or in respect of the Contract, a representative of each Party shall, within thirty (30) days of a written request from one Party to the other, meet in a good faith effort to resolve the dispute.
- 14.2 Failing resolution of such dispute by such dispute within a period of ten (10) Business Days of the reference to them, the dispute shall immediately be referred in writing by either Party to the respective directors of each of the Parties who shall seek to reach agreement upon such dispute within one (1) calendar month of the reference to them. The dispute may, by agreement between the Parties, be referred to mediation. A neutral person (a mediator) shall be chosen by agreement between the Parties or within fourteen (14) days of notice apply to the Centre for Dispute Resolution (“CEDR”) to appoint a mediator.

15. Notices

- 15.1 Any notice to be served on a Party by the other Party shall be in writing and shall be addressed to the other Party.

16. Variations

- 16.1 The Company reserves the right to from time to time in writing to the Supplier, to alter, amend, omit, add to or otherwise vary the provision of Supplies/Services. Any alteration to the Price or the completion date arising from such variation shall be agreed in writing by both Parties.

17. Assignment and Sub Contracting

- 17.1 The Supplier shall not assign or sub contract the Contract or any part of it without the prior consent of the Company in writing.
- 17.2 The Company may on giving reasonable notice in writing to the Supplier, transfer or assign all or any rights and/or obligations under the Contract.

18. Waiver

- 18.1 No waiver shall be effective unless it is communicated to the other Party in writing and the failure of either Party to exercise any right or remedy shall not constitute a waiver.

19. Force Majeure

- 19.1 Neither Party to the Contract shall be deemed to be in breach of the Contract, or otherwise liable to the other Party in any manner whatsoever, for any failure or delay in performing its obligations under the Contract due to Force Majeure.

20. Confidentiality

- 20.1 The Receiving Party shall at all times keep secret and confidential the Confidential Information and shall not disclose the same to any third Party without the prior written consent of the Disclosing Party.

- 20.2 The Receiving Party shall use at least the same degree of care to avoid unauthorised dissemination or publication of Confidential Information disclosed to it by the Disclosing Party under the Contract as it employs with respect to its own information which it does not desire to have disseminated or published.
- 20.3 The Receiving Party shall only use the Confidential Information internally for the Permitted Purpose and shall disclose it only to its employees who have a need to know the same for the Permitted Purpose. Any employee to whom Confidential Information is disclosed shall be informed of these Confidentiality provisions contained in this Condition 20 and the confidential nature of the Confidential Information.
- 20.4 The Receiving Party shall not make copies of or reproduce in any media the Confidential Information save that a number of copies or reproductions may be made for the Permitted Purpose and all such copies and reproductions shall be regarded as Confidential Information.
- 20.5 The provisions of Conditions 20.1 to 20.4 above shall not apply with respect to any information received by the Receiving Party from the Disclosing Party which:
- 20.5.1 the Receiving Party can demonstrate by evidence in writing was already in the Receiving Party's possession prior to the date hereof and was not obtained (whether directly or indirectly) from the Disclosing Party; or
 - 20.5.2 is subsequently developed independently by the Receiving Party without any reference to or use of the Confidential Information; or
 - 20.5.3 is in the public domain or subsequently enters into the public domain otherwise than by breach of the Contract by the Receiving Party or any other obligation of confidentiality owed by the Receiving Party to the Disclosing Party; or
 - 20.5.4 is subsequently disclosed to the Receiving Party by a third Party lawfully in possession of the same who is not under a duty of confidentiality to the Disclosing Party; or
 - 20.5.5 is approved in writing by the Disclosing Party for use or disclosure.
- 20.6 The provision of Confidential Information by the Disclosing Party does not create any obligation to the Receiving Party as to the accuracy of such Confidential Information.
- 20.7 The Supplier shall not even after the expiry or terminations of the Contract disclose such Confidential Information except with the written consent of the Company.
- 20.8 The provisions of this Condition 20 shall survive the termination of the Contract, however arising.

21. Conflict of Interest

- 21.1 In carrying out its obligations under the Contract the Supplier shall ensure that no conflict of interest arises which will or will be likely to prejudice its independence and objectivity or otherwise detrimentally affect the Supplier's ability to perform or cause embarrassment or reputational harm to the Company.

- 21.2 Upon becoming aware of any such conflict of interest the Supplier shall immediately notify the Company in writing, giving particulars and shall provide any further information as may reasonably be required.
- 21.3 Where there is reasonable opinion that such conflict presents harm the Company may require the Supplier to take reasonable steps to avoid or remove conflict. The Company may terminate the Contract by notice in writing if there is a failure to comply.

22. Intellectual Property

22.1 The Supplier shall promptly disclose to the Company full details of the following, which shall be treated by the Supplier as confidential to the Company insofar as the Supplier shall not disclose any details of any of the following other than to the Company and the Supplier shall be bound by, and shall observe the provisions of Condition 20 above:

22.1.1 any logo, trade or service mark, design or copyright work, whether or not capable of registration, created by the Supplier or its personnel in the course of provision of the Supplies/Services to the Company which for the avoidance of doubt shall include any software created by the Supplier or its personnel;

22.1.2 any invention, development, design, discovery, arrangement, scheme, process or improvement in procedure made, discovered, or devised by the Supplier or its personnel in the course of the provision of the Supplies/Services to the Company.

22.2 The Supplier shall assign to the Company all right, title and interest in and to any item within Condition 22.1.1 and any invention within 22.1.2 so that the property, including all intellectual property rights in the Supplies/Services and in any such logo, trade or service marks, design or copyright work and in the inventions, shall vest in the Company absolutely.

22.3 The Supplier assigns to the Company (including, to the extent necessary, by way of present assignment of future copyright and design right) all future copyright and design right, and all copyright and design rights and all other intellectual property rights for their full terms throughout the world, which have been or will be created by the Supplier or its personnel in providing the Supplies/Services together with the right to claim for damages or other remedies as a result of any infringement of such rights.

22.4 The provisions of this Condition 22 shall survive the termination of the Contract, however arising.

23. Equality and Diversity

23.1 The Supplier shall adopt a policy to comply with the Company's statutory obligations under the relevant equality legislation.

23.2 The Supplier shall not discriminate directly or indirectly against any person in decisions to recruit, train, promote, discipline or dismiss employees on the grounds of the following:

- 23.2.1 age;
- 23.2.2 disability;
- 23.2.3 gender reassignment;
- 23.2.4 marriage and civil partnership;
- 23.2.5 pregnancy and maternity;
- 23.2.6 race;
- 23.2.7 religion and belief;
- 23.2.8 sex;
- 23.2.9 sexual orientation.

23.3 The Supplier shall positively assert equality and harmony and promptly prepare and give to the Company all information about the Supplier's employees to enable the Company to comply with its obligations under relevant equality legislation to the extent they apply to the Contract.

23.4 The Supplier shall observe all the relevant guidance and codes of practice issued by the Equality and Human Rights Commission and its legacy commissions, as the case may be.

23.5 The Supplier shall observe all their public duties as described under the Equality Act 2010, and all subsequent re-enactments and amendments.

23.6 The Supplier shall provide to the Company, at the commencement of the Contract, a copy of all its equality schemes and documents. The Supplier shall also provide to the Company its equality scheme monitoring results on an annual basis.

23.7 The Supplier will provide evidence of, prior to the commencement of the Contract and thereafter on an annual basis throughout the Contract, details of training proposed and undertaken for all Supplier employees in respect of equality and diversity.

23.8 The Supplier shall impose on any sub-contractor appointed in accordance with Condition 17 obligations substantially similar to those imposed on the Supplier by this Condition 23.

24. Legal Relationship

24.1 Nothing in the Contract shall be construed so as to create a partnership or joint venture between the Parties.

24.2 Neither of the Parties shall describe itself as the agent of the other, nor shall it make or represent that it has authority to make any commitments on the other Party's behalf.

25. Rights of Third Parties

25.1 No term of the Contract is enforceable under the Contracts (Rights of Third Parties) Act 1999 by a person who is not a Party to the Contract.

26. Governing Law

26.1 The Contract shall be governed by and construed in accordance with the laws of England and the courts of England will have exclusive jurisdiction to settle any disputes which may arise out of or in connection with the Contract.

Data Processing Agreement

DEFINITIONS

Agreement: this contract;

Data Protection Legislation: (i) the GDPR, the LED and any applicable national implementing Laws as amended from time to time (ii) the DPA 2018 [subject to Royal Assent] to the extent that it relates to processing of personal data and privacy; (iii) all applicable Law about the processing of personal data and privacy;

Data Protection Impact Assessment: an assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data.

Controller, Processor, Data Subject, Personal Data, Personal Data Breach Data Protection Officer take the meaning given in the GDPR.

Data Loss Event: any event that results, or may result, in unauthorised access to Personal Data held by the Supplier under this Agreement, and/or actual or potential loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach.

Data Subject Access Request: a request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data.

DPA 2018: Data Protection Act 2018

GDPR: the General Data Protection Regulation (*Regulation (EU) 2016/679*)

Law: means any law, subordinate legislation within the meaning of Section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of Section 2 of the European Communities Act 1972, regulation, order, regulatory policy, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements with which the Supplier is bound to comply.

LED: Law Enforcement Directive (*Directive (EU) 2016/680*)

Party: a Party to this Agreement

Protective Measures: appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of 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 such measures adopted by it.

Sub-processor: any third Party appointed to process Personal Data on behalf of the Supplier related to this Agreement.

Supplier: means all directors, officers, employees, agents, consultants and Suppliers of the Supplier and/or of any Sub-Contractor engaged in the performance of its obligations under this Agreement.

CLAUSES

- 1.1 The parties acknowledge that for the purposes of the Data Protection Legislation, WCHG is the Controller and the Supplier is the Processor. The only processing that the Supplier is authorised to do is listed in Schedule One by WCHG and may not be determined by the Supplier.
- 1.2 The Supplier shall notify WCHG immediately if it considers that any of WCHG's instructions infringe Data Protection Legislation.
- 1.3 The Supplier shall provide all reasonable assistance to the WCHG in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of WCHG, include:
 - (a) a systematic description of the envisaged processing operations and the purpose of the processing;
 - (b) an assessment of the necessity and proportionality of the processing operations in relation to the Services;
 - (c) an assessment of the risks to the rights and freedoms of Data Subjects; and
 - (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 1.4 The Supplier shall, in relation to any Personal Data processed in connection with its obligations under this Agreement:
 - (a) process that Personal Data only in accordance with Schedule One, unless the Supplier is required to do otherwise by Law. If it is so required the Supplier shall promptly notify WCHG before processing the Personal Data unless prohibited by Law;
 - (b) ensure that it has in place Protective Measures, as appropriate to protect against a Data Loss Event having taken account of the:
 - (i) nature of the data to be protected;
 - (ii) harm that might result from a Data Loss Event;
 - (iii) state of technological development; and
 - (iv) cost of implementing any measures;
 - (c) ensure that :
 - (i) the Supplier Personnel do not process Personal Data except in accordance with this Agreement (and in particular Schedule One);
 - (ii) it takes all reasonable steps to ensure the reliability and integrity of any Supplier Personnel who have access to the Personal Data and ensure that they:
 - (A) are aware of and comply with the Supplier's duties under this clause;
 - (B) are subject to appropriate confidentiality undertakings with the Supplier or any Sub-processor;

- (C) are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by WCHG or as otherwise permitted by this Agreement; and
 - (D) have undergone adequate training in the use, care, protection and handling of Personal Data; and
- (d) not transfer Personal Data outside of the EU unless the prior written consent of WCHG has been obtained and the following conditions are fulfilled:
 - (i) WCHG or the Supplier has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by WCHG;
 - (ii) the Data Subject has enforceable rights and effective legal remedies;
 - (iii) the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist WCHG in meeting its obligations); and
 - (iv) the Supplier complies with any reasonable instructions notified to it in advance by WCHG with respect to the processing of the Personal Data;
- (e) at the written direction of WCHG, delete or return Personal Data (and any copies of it) to WCHG on termination of the Agreement unless the Supplier is required by Law to retain the Personal Data.

1.5 Subject to clause 1.6, the Supplier shall notify WCHG immediately if it:

- (a) receives a Data Subject Access Request (or purported Data Subject Access Request);
- (b) receives a request to rectify, block or erase any Personal Data;
- (c) receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
- (d) receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement;
- (e) receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
- (f) becomes aware of a Data Loss Event.

1.6 The Supplier's obligation to notify under clause 1.5 shall include the provision of further information to WCHG in phases, as details become available.

1.7 Taking into account the nature of the processing, the Supplier shall provide WCHG with full assistance in relation to either party's obligations under Data Protection Legislation and any complaint, communication or request made

under Clause 1.5 (and insofar as possible within the timescales reasonably required by WCHG) including by promptly providing:

- (a) WCHG with full details and copies of the complaint, communication or request;
- (b) such assistance as is reasonably requested by WCHG to enable WCHG to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
- (c) WCHG, at its request, with any Personal Data it holds in relation to a Data Subject;
- (d) assistance as requested by WCHG following any Data Loss Event;
- (e) assistance as requested by WCHG with respect to any request from the Information Commissioner's Office, or any consultation by WCHG with the Information Commissioner's Office.

1.8 The Supplier shall maintain complete and accurate records and information to demonstrate its compliance with this clause. This requirement does not apply where the Supplier employs fewer than 250 staff, unless:

- (a) WCHG determines that the processing is not occasional;
- (b) WCHG determines the processing includes special categories of data as referred to in Article 9(1) of the GDPR or Personal Data relating to criminal convictions and offences referred to in Article 10 of the GDPR; and
- (c) WCHG determines that the processing is likely to result in a risk to the rights and freedoms of Data Subjects.

1.9 The Supplier shall allow for audits of its Data Processing activity by WCHG or WCHG's designated auditor WCHG is entitled, on giving at least three days' notice to the Supplier, to inspect or appoint representatives to inspect all facilities, equipment, documents and electronic data relating to the processing of Personal Data under this Agreement by the Supplier. The requirement to give notification in advance will not apply if WCHG believes that the Supplier is in breach of any of its obligations under this Agreement. The Supplier shall designate a data protection officer if required by the Data Protection Legislation.

1.10 Before allowing any Sub-processor to process any Personal Data related to this Agreement, the Supplier must:

- (a) notify WCHG in writing of the intended Sub-processor and processing;
- (b) obtain the written consent of WCHG;
- (c) enter into a written agreement with the Sub-processor which give effect to the terms set out in this clause such that they apply to the Sub-processor; and
- (d) provide WCHG with such information regarding the Sub-processor as WCHG may reasonably require.

1.11 The Supplier shall remain fully liable for all acts or omissions of any Sub-processor.

- 1.12 The Supplier may, at any time on not less than 30 Working Days' notice, revise this clause 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 incorporated by attachment to this Agreement).
- 1.13 The parties agree to take account of any guidance issued by the Information Commissioner's Office. WCHG may on not less than 30 Working Days' notice to the Supplier amend this agreement to ensure that it complies with any guidance issued by the Information Commissioner's Officer.
- 1.15 The Supplier shall undertake all of the above processing activities at its own expense and at no extra cost to WCHG.
- 1.16 WCHG retention and disposal schedule as provided will be followed by the Supplier where appropriate and relevant; no decisions on retention or disposal are to be made by the Supplier unless it is part of detailed Processing under this Agreement.
- 1.17 The Supplier shall without undue delay inform WCHG if any Personal Data is lost or destroyed or becomes damaged, corrupted, or unusable. The Supplier will make regular backups of the Personal Data and will restore such Personal Data at its own expense.

EXAMPLE

Schedule One: Processing, Personal Data and Data Subjects

- The Supplier shall comply with any further written instructions with respect to processing by WCHG. Any such further instructions shall be incorporated into this Schedule.

Description	Details
Subject matter of the processing	<i>Please provide a high level, short description of the subject matter of the processing</i>
Duration of the processing	<i>Clearly set out the duration of the processing including any dates</i>
Nature and purposes of the processing	<i>Please be as specific as possible, but make sure that you cover all intended purpose. The nature of the processing mean any operation such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not by automated means) etc. The purpose might include: employment processing, statutory obligation, recruitment assessment, etc.</i>
Type of Personal Data	<i>Examples here include: name, address, date of birth, NI number, telephone number, pay, images, biometric data, etc.</i>
Categories of Data Subject	<i>Examples include: Tenants, residents, staff (including volunteers and temporary workers), customers/clients, suppliers, members of the public, users of a particular website, etc.</i>
Plan for return and destruction of the data once the processing is complete UNLESS requirement under union or member state law to preserve that type of data	<i>Describe how long the data will be retained for, how it be returned or destroyed?</i>
Data Protection Officer	<i>Provide contact details of person appointed responsibility for data protection within your organisation</i>