



**NHH STANDARD TERMS
FOR THE PURCHASE
OF GOODS AND SERVICES**

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1. INTERPRETATION

1.1 Definitions. In these Conditions, the following definitions apply:

Applicable Law: the laws of England and Wales and the European Union and any other laws or regulations, regulatory policies, guidelines or industry codes which apply to the provision of the Supplies.

Business Day: a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

Commencement Date: has the meaning set out in clause 2.3.

Conditions: these terms and conditions as amended from time to time in accordance with clause 24.7.

Contract: the contract between NHH and the Supplier for the supply of Goods and/or Services in accordance with these Conditions.

Contract Specific IPR: all IPR in the product of the Services and in the Deliverables save for the Supplier Background IPRs.

Data Protection Legislation: the Data Protection Act 1998, the Data Protection Directive (95/46/EC) and all applicable laws and regulations relating to the processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner.

Deliverables: all documents, products and materials developed by the Supplier or its agents, contractors and employees as part of or in relation to the Services in any form or media, including without limitation drawings, maps, plans, diagrams, designs, pictures, computer programs, data, specifications and reports (including drafts).

Delivery Location: has the meaning set out in clause 5.2.2.

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

Goods Specification: any specification for the Goods, including any related plans and drawings, that are agreed in writing by NHH and the Supplier.

IPRs / Intellectual Property Rights: patents, rights to inventions, copyright and related rights, trade marks, the right to sue for passing off, rights in designs, database rights, and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

NHH: North Hertfordshire Homes Limited a mutual society under the Co-operative and Community Benefit Societies Act 2014 and incorporated and registered in England and Wales with company number 30003R and whose registered office is at Rowan House, Avenue One Letchworth Garden City Hertfordshire SG6 2WW (NHH).

NHH Materials: has the meaning set out in clause 6.3.9.

Purchase Order: NHH's order for the supply of Goods and/or Services, as set out in NHH's purchase order form. Purchase Orders will typically contain:

- (a) the scope of the Supply required under the Purchase Order;
- (b) start date for delivery of the obligations of this contract and the end date (if applicable) under the Purchase Order;
- (c) property or properties which are covered by the Purchase Order; and
- (d) the price for the Services / Goods covered by the Purchase Order, calculated in accordance with the agreed rates.

Services: the services, including without limitation any Deliverables, to be provided by the Supplier under the Contract as set out in the Service Specification.

Service Specification: the description or specification for Services agreed in writing by NHH and the Supplier.

Supplier: the person or firm from whom NHH purchases the Goods and/or Services.

Supplier Background IPRs: IPRs owned by or licensed to the Supplier before the Commencement Date, for example IPR subsisting in the Supplier's standard development tools or generic business methodologies; and/or(b) IPRs created by the Supplier independently of the Contract.

Supplier's Personnel: all employees, staff, other workers, agents and consultants of the Supplier and of any subcontractors who are engaged in relation to a Contract from time to time.

1.2 In these Conditions, the following rules apply:

1.2.1 a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);

1.2.2 a references to a party includes its successors or permitted assigns;

1.2.3 a reference to a statute or statutory provision is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;

1.2.4 any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

2. **BASIS OF CONTRACT**

2.1 The Purchase Order constitutes an offer by NHH to purchase Goods and/or Services from the Supplier in accordance with these Conditions.

- 2.2 Subject to the proviso of this clause the Supplier shall not undertake any Supply without a corresponding Purchase Order having been placed in advance by NHH **provided that** in a true emergency (concerning for example the potential for injury or damage to human life and/or property) the Supplier may request a Purchase Order immediately after the Supply has been made.
- 2.3 The Purchase Order shall be deemed to be accepted on the earlier of:
- 2.3.1 the Supplier issuing written acceptance of the Purchase Order; or
- 2.3.2 any act by the Supplier consistent with fulfilling the Purchase Order,
- at which point and on which date the Contract shall come into existence (**Commencement Date**).
- 2.4 The Supplier shall inform the NHH Contract Manager immediately if in any event if it is unable to accept the Purchase Order or perform its obligations under the contract or if the Supplier is aware of anything which may prevent the Supplier from complying with the contract.
- 2.5 These Conditions apply to the Contract to the exclusion of any other terms that the Supplier seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 2.6 All of these Conditions shall apply to the supply of both Goods and Services except where the application to one or the other is specified.

3. **MANAGEMENT OF THE CONTRACT**

- 3.1 The NHH Contract Manager is the person nominated by NHH to act on its behalf for the purposes of a Contract and may:
- 3.1.1 issue instructions, including orders in accordance with this contract, to the Supplier on any matter relating to the provision of Supply; and
- 3.1.2 appoint representatives to act upon his behalf and shall notify the Supplier of such appointment(s).
- 3.2 The Supplier shall appoint a Supplier Contract Manager approved by NHH (such consent not to be unreasonably withheld or delayed). Any notice, instruction or other information given to the Supplier Contract Manager shall be deemed to have been given to the Supplier.
- 3.3 The Supplier shall notify NHH in writing of the name, company address and contact numbers of the Supplier Contract Manager and any deputy.
- 3.4 Any major complaints or instructions with respect to the performance of the contract on behalf of NHH in respect of the Supply by the Supplier shall be referred to the Supplier

Contract Manager and not to the Supplier's Personnel members, except in cases of emergency or minor issues.

4. SUPPLY OF GOODS

4.1 The Supplier shall ensure that the Goods shall:

4.1.1 correspond with their description and any applicable Goods Specification;

4.1.2 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979) and fit for any purpose held out by the Supplier or made known to the Supplier by NHH, expressly or by implication, and in this respect NHH relies on the Supplier's skill and judgment;

4.1.3 where applicable, be free from defects in design, materials and workmanship and remain so for 12 months after delivery; and

4.1.4 comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods.

4.2 The Supplier shall ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Contract in respect of the Goods.

4.3 NHH shall have the right to inspect and test the Goods at any time before delivery.

4.4 If following such inspection or testing NHH considers that the Goods do not conform or are unlikely to comply with the Supplier's undertakings at clause 4.1, NHH shall inform the Supplier and the Supplier shall immediately take such remedial action as is necessary to ensure compliance.

4.5 Notwithstanding any such inspection or testing, the Supplier shall remain fully responsible for the Goods and any such inspection or testing shall not reduce or otherwise affect the Supplier's obligations under the Contract, and NHH shall have the right to conduct further inspections and tests after the Supplier has carried out its remedial actions.

5. DELIVERY OF GOODS

5.1 The Supplier shall ensure that:

5.1.1 the Goods are properly packed and secured in such manner as to enable them to reach their destination in good condition;

5.1.2 each delivery of the Goods is accompanied by a delivery note which shows the date of the Purchase Order, the Purchase Order number (if any), the type and quantity of the Goods (including the code number of the Goods (where applicable)), special storage instructions (if any) and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and

- 5.1.3 if the Supplier requires NHH to return any packaging material for the Goods to the Supplier, that fact is clearly stated on the delivery note. Any such packaging material shall only be returned to the Supplier at the cost of the Supplier.
- 5.2 The Supplier shall deliver the Goods:
 - 5.2.1 on the date specified in the Purchase Order or, if no such date is specified, then unless otherwise agreed by the parties in writing, within 20 Business Days of the date of the Purchase Order;
 - 5.2.2 to the applicable premises or other location as is set out in the Purchase Order or as instructed by NHH before delivery (**Delivery Location**); and
 - 5.2.3 during NHH's normal hours of business on a Business Day, or as otherwise instructed by NHH.
- 5.3 Delivery of the Goods shall be completed on the completion of unloading of the Goods at the Delivery Location.
- 5.4 If the Supplier:
 - 5.4.1 delivers less than the quantity of Goods ordered, NHH may reject the Goods; or
 - 5.4.2 delivers more than the quantity of Goods ordered, NHH may at its sole discretion reject the Goods or the excess Goods,and any rejected Goods shall be returnable at the Supplier's risk and expense. If the Supplier delivers more or less than the quantity of Goods ordered, and NHH accepts the delivery, a pro rata adjustment shall be made to the invoice for the Goods.
- 5.5 The Supplier shall not deliver the Goods in instalments without NHH's prior written consent. Where it is agreed that the Goods are delivered by instalments, they may be invoiced and paid for separately. However, failure by the Supplier to deliver any one instalment on time or at all or any defect in an instalment shall entitle NHH to the remedies set out in clause 17.1.
- 5.6 Title and risk in the Goods shall pass to NHH on completion of delivery.

6. **SUPPLY OF SERVICES**

- 6.1 The Supplier shall from the Commencement Date (or where a date is specified in the Purchase Order for the commencement of the Services from that date) and for the duration of this Contract provide the Services to NHH in accordance with the terms of the Contract.
- 6.2 The Supplier shall meet any performance dates for the Services specified in the Purchase Order or notified to the Supplier by NHH.
- 6.3 In providing the Services, the Supplier shall:

- 6.3.1 co-operate with NHH in all matters relating to the Services, and comply with all instructions of NHH;
- 6.3.2 perform the Services with the best care, skill and diligence in accordance with best practice in the Supplier's industry, profession or trade;
- 6.3.3 use personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled in accordance with this Contract;
- 6.3.4 ensure that the Services and Deliverables will conform with all descriptions and specifications set out in the Service Specification, and that the Deliverables shall be fit for any purpose expressly or impliedly made known to the Supplier by NHH;
- 6.3.5 provide all equipment, tools and vehicles and such other items as are required to provide the Services;
- 6.3.6 use the best quality goods, materials, standards and techniques, and ensure that the Deliverables, and all goods and materials supplied and used in the Services or transferred to NHH, will be free from defects in workmanship, installation and design;
- 6.3.7 obtain and at all times maintain all necessary licences and consents, and comply with all applicable laws and regulations;
- 6.3.8 observe all health and safety rules and regulations and any other security requirements that apply at any of NHH's premises;
- 6.3.9 hold all materials, equipment and tools, drawings, specifications and data supplied by NHH to the Supplier (**NHH Materials**) in safe custody at its own risk, maintain NHH Materials in good condition until returned to NHH, and not dispose or use NHH Materials other than in accordance with NHH's written instructions or authorisation; and
- 6.3.10 not do or omit to do anything which may cause NHH to lose any licence, authority, consent or permission upon which it relies for the purposes of conducting its business, and the Supplier acknowledges that NHH may rely or act on the Services.

7. **PERFORMANCE**

- 7.1 Where set out in the Services Specification (or otherwise requested in writing at any time by NHH), the Supplier shall ensure that only those members of the Supplier Personnel which are in receipt of a valid, up-to-date and satisfactorily enhanced Criminal Record Certificate as issued by the Disclosure and Barring Service (DBS) shall be engaged in carrying out the obligations of this contract at any of NHH's Properties.

- 7.2 The Supplier shall be responsible for providing a copy of the relevant Criminal Record Certificate for each relevant member of Supplier Personnel to NHH prior to the relevant member of staff carrying out any of the obligations of this contract. The costs of complying with clause 7.1 will be borne by the Supplier.
- 7.3 The Supplier shall provide and shall ensure that the Supplier Personnel wear at all times, when engaged in the Supply on NHH's premises, such identification as set out in the Specification or as otherwise notified to the Supplier by NHH in writing.
- 7.4 The Supplier shall comply with NHH's security and access procedures as set out in the Services Specification (or as otherwise notified in writing by NHH to the Supplier) at all times when carrying out the Supply to NHH's Property.
- 7.5 If the Supplier is unable to access a Property the Supplier must promptly inform the NHH Contract Manager.
- 7.6 The Supplier shall ensure that the Supplier Personnel are at all times adequately supervised in carrying out the obligations of this contract.
- 7.7 The Supplier shall not at any time in the provision of the Supply represent itself as being either:
- 7.7.1 the agent of NHH (except as may be expressly authorised in writing and in advance by NHH); or
 - 7.7.2 authorised to enter into any contract or other obligation on NHH's behalf (except as may be expressly authorized in writing and in advance by NHH).
- 7.8 In providing the Supply the Supplier shall at all times:
- 7.8.1 ensure that any of the Supplier's Personnel who are engaged in the provision of any of the Supply shall, if required by NHH attend such meetings at the premises of the NHH or elsewhere as may be reasonably required by NHH;
 - 7.8.2 provide such co-operation and information in relation to the Supply to such of NHH's other suppliers and contractors as NHH may reasonably require for the purposes of enabling any such person to create and maintain any interfaces that NHH may reasonably require.
- 7.9 The Supplier is responsible for providing any materials and equipment, including vehicles, used in connection with the provision of any the obligations of this contract. The Supplier is responsible for the storage of such materials and equipment. In the event that NHH makes storage facilities available to the Supplier in respect of such materials and equipment then they shall remain at the Suppliers risk and NHH shall not be liable for any loss or damage to the goods or equipment, except to the extent solely caused by the negligence of NHH or its employees.

- 7.10 It is a condition of the contract that the Supplier's Personnel shall be supervised at the appropriate level in relation to the Supply.
- 7.11 Upon request from time to time, the Supplier shall promptly provide to NHH:
- 7.11.1 a list of the Supplier's Personnel who it proposes undertake or who are undertaking the provision of the Services; and
- 7.11.2 an organisational chart showing how the Supply to NHH is managed.
- 7.12 NHH reserves the right to require changes to the Supplier's Personnel providing the Supply at any time, but shall not do so without first consulting the Supplier.

8. **PERFORMANCE REVIEWS**

- 8.1 The Supplier's performance of the obligations of this contract to NHH will be kept under regular review by NHH.
- 8.2 The Supplier and NHH will meet periodically when requested by NHH. NHH will send out an agenda for each meeting not less than 3 working days prior to the meeting. NHH and the Supplier will ensure that the Supplier Contract Manager and the NHH Contract Manager, or deputy, attends each meeting, as well as any other relevant individuals in light of the items on the agenda. A note of each meeting shall be taken and circulated by NHH to the Supplier and any other attendees at the relevant meeting.

9. **STATUTORY REQUIREMENTS**

- 9.1 In fulfilling the obligations of this contract, the Supplier shall comply in all respects with the all Applicable Law.
- 9.2 Throughout the contract period the Supplier shall make all reasonable endeavours to reduce any negative impact on the environment caused by the provision of the Supply.
- 9.3 Without prejudice to the generality of clause 9.1, the Supplier shall ensure that in the obligations of this contract that it complies with its duties under the Health and Safety at Work Act 1974. The Supplier shall also comply with NHH's reasonable instructions and/or requirements to enable the Supplier to comply with its duties in relation to the health and safety of visitors, staff and residents of NHH and its Properties.
- 9.4 Without prejudice to the rest of this clause, where new legislation is enacted during the Contract Period, which has the effect of changing the manner in which the Supply or any part of the Supply are to be provided, the Supplier shall ensure that:
- 9.4.1 NHH is informed of the nature and effect of such legislation and the changes necessitated by it in the services; and
- 9.4.2 the Supply is provided in accordance with such legislation.

10. **PREVENTION OF BRIBERY**

10.1 The Supplier:

10.1.1 shall not and shall ensure that its staff do not, in connection with this contract commit a Prohibited Act for the purposes of the Bribery Act 2010; and

10.1.2 warrants, represents and undertakes that it is not aware of any financial or other advantage being given to any person working for or engaged by NHH, or that an agreement has been reached to that effect, in connection with the execution of this contract, excluding any arrangement of which full details have been disclosed in writing to NHH before execution of this Agreement.

10.2 The Supplier shall:

10.2.1 if requested, provide NHH with any reasonable assistance, to enable NHH to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act 2010;

10.2.2 Within 28 days of the commencement date of this contract, and annually thereafter, certify to NHH in writing compliance with this clause 10 by the Supplier and all staff and persons associated with it or other persons who are supplying goods or services in connection with this contract. The Supplier shall provide such supporting evidence of compliance as NHH may reasonably request.

10.3 The Supplier shall have an anti-bribery policy (which shall be disclosed to NHH) to prevent any Supplier or from committing a Prohibited Act and shall enforce it where appropriate.

10.4 If any breach of this clause 10 is suspected or known, the Supplier must notify NHH immediately.

10.5 If the Supplier notifies NHH that it suspects or knows that there may be a breach of this clause 10, the Supplier must respond promptly to NHH enquiries, cooperate with any investigation, and allow NHH to audit books, records and any other relevant documentation.

10.6 NHH may terminate the contract and recover from the Supplier the amount of any loss suffered by NHH resulting from the termination, including the cost reasonably incurred by NHH of making other arrangements for the Supply any additional expenditure incurred by NHH throughout the remainder of the Contract Period; or recover in full from the Supplier any other loss sustained by NHH in consequence of any breach of this clause.

11. **EQUALITY**

11.1 The Supplier shall comply with all anti-discrimination Applicable Law and without prejudice to the foregoing the Supplier shall not unlawfully discriminate either directly or indirectly on

grounds as race, colour, ethnic or national origin, disability, sex or sexual orientation, religion or belief, or age.

- 11.2 The Supplier warrants that in provision of the Supply it shall not treat one group of people or any individual less favourably than others on the grounds of marital status, gender, gender identity, colour, race, religion, nationality, ethnic or cultural origin, disability, age, religious belief, sexual orientation, responsibility for dependents, social class, trade union or political activity contrary to statutory requirements and will act to eliminate such discrimination.
- 11.3 The Supplier shall take all reasonable steps to secure the observance of the provision of clauses 11.1 and 11.2 by all servants, employees or agents of the Supplier and all sub-contractors used by the Supplier in the execution of the Supply.
- 11.4 NHH is committed to responding positively to the wide social diversity of contemporary society. The Supplier is expected to have a similar commitment and uphold all the values and policies that NHH has in place. A copy of NHH's policy will be provided to all of the Supplier's Personnel that will work on this contract.

12. **PREVENTION OF FRAUD**

- 12.1 The Supplier shall take all reasonable steps, in accordance with good industry practice, to prevent fraud by its staff (including its shareholders, members, directors) in connection with the receipt of monies from NHH.
- 12.2 The Supplier shall notify NHH immediately if it has reason to suspect that any fraud has occurred or is occurring or is likely to occur.
- 12.3 If the Supplier or its staff commits fraud in relation to this or any other contract with NHH, NHH may:
 - 12.3.1 terminate the contract and recover from the Supplier the amount of any loss suffered by NHH resulting from the termination, including the cost reasonably incurred by NHH of making other arrangements for the Supply and any additional expenditure incurred by NHH throughout the remainder of the Contract Period; or
 - 12.3.2 recover in full from the Supplier any other loss sustained by NHH in consequence of any breach of this clause.

13. **DATA PROTECTION**

- 13.1 With respect to the parties' rights and obligations under this agreement, the parties agree that NHH is the Data Controller and that the Supplier is the Data Processor.
- 13.2 The Supplier shall:
 - 13.2.1 process the Personal Data only on behalf of the NHH only for the purposes of performing this contract;

- 13.2.2 not disclose or permit the disclosure of any of the Personal Data to any third party unless specifically authorised in writing by NHH;
 - 13.2.3 at all times comply with the provisions of the Seventh Data Protection Principle set out in Schedule 1 of the Data Protection Act 1998 and implement appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful processing and against accidental loss, destruction, damage, alteration or disclosure;
 - 13.2.4 take reasonable steps to ensure the reliability of any of the Supplier's Personnel who have access to the Personal Data;
 - 13.2.5 obtain prior written consent from NHH before transferring the Personal Data to any sub-contractors in connection with the supply;
 - 13.2.6 ensure that only those of the Supplier's Personnel who need to have access to the Personal Data are granted access to such data and only for the purposes of the performance of this agreement and all of the Supplier's Personnel required to access the Personal Data are informed of the confidential nature of the Personal Data and comply with the obligations set out in this clause 13;
 - 13.2.7 promptly notify the NHH if it receives any other communication relating directly or indirectly to the processing of any Personal Data in connection with this contract;
 - 13.2.8 provide NHH with full co-operation, assistance and information in relation to any complaint or request made in respect of any Personal Data;
 - 13.2.9 permit NHH or its external advisers (subject to reasonable and appropriate confidentiality undertakings) to inspect and audit the Supplier's data processing activities and those of its Staff and comply with all reasonable requests or directions by NHH to enable NHH to verify and procure that the Supplier is in full compliance with its obligations under this contract; and
 - 13.2.10 not transfer Personal Data outside the European Economic Area without the prior written consent of NHH.
- 13.3 The parties shall, and the Supplier shall procure that each of its Staff shall, comply at all times with the Data Protection Legislation and shall not perform their obligations under this contract in such a way as to cause either party to breach any of its obligations under the Data Protection Legislation. The Supplier shall immediately notify NHH in the event that it becomes aware of any breach of the Data Protection Legislation by the Supplier or any of its Staff in connection with this contract.
- 13.4 The Supplier shall, at all times during and after the Contract Period, indemnify NHH and keep NHH indemnified against all losses, damages, costs or expenses and other liabilities (including legal fees) incurred by, awarded against or agreed to be paid by NHH arising from any breach of the Supplier's obligations under this clause 13.

14. NOTIFICATION & ASSISTANCE

14.1 The Supplier shall notify NHH of any accident, damage, claim or breach of any statutory provision relating to the obligations of this contract as soon as reasonably possible after becoming aware of such matter.

14.2 If required by NHH, the Supplier shall provide relevant information and assistance in connection with any legal inquiry, arbitration, court proceedings or internal disciplinary proceedings relating to the Supply and if required shall give evidence in such inquiries or proceedings or hearings.

15. OMBUDSMAN

15.1 The Supplier should note that if a complaint is made to NHH by a third party relating to the obligations of this contract, the relevant ombudsman who has the power to investigate such complaint shall be contacted and NHH will require the Supplier fully to co-operate in such investigation.

15.2 If the ombudsman determines against NHH as a result of any act or default of the Supplier, then the Supplier shall indemnify NHH in respect of the costs, expenses and liabilities which NHH has incurred or is liable for as a result of such finding.

16. INDEMNITY & INSURANCE

16.1 The Supplier shall indemnify NHH against all actions, claims, damages, costs and other expenses in relation to the injury to, or death of, any person, and loss of, or damage to, any property, real or personal which is attributable to the negligent act or default of the Supplier in connection with the Supply including the performance of any Supply to NHH.

16.2 The Supplier shall take out and maintain from the Commencement Date and for the duration of this contract, public liability insurance against its liabilities under the performance of this contract for the minimum sum of £10 million in respect of any one event, act or occurrence or series of claims, acts or occurrences and which complies with any statutory requirements.

16.3 The Supplier shall take out and maintain from the Commencement Date and for the duration of this contract, employer's liability insurance for the minimum sum of £10 million in respect of and arising out of each and every claim of any one event, act or occurrence or series of claims, acts or occurrences and which complies with statutory requirements.

16.4 Where the Supply is a supply of consultancy services the Supplier shall maintain from the Commencement Date professional indemnity insurance for the minimum sum of £5 million applying in the aggregate in any one year during the Contract Period and for 6 years afterwards to cover its liability to NHH under the contract.

16.5 The Supplier shall supply to NHH on request copies of all insurance policies, cover notes, premium receipts and other documents necessary to establish compliance with clauses 16.2 to 16.4 inclusive.

17. **NHH REMEDIES**

- 17.1 If the Supplier fails to deliver the Goods and/or perform the Services by the applicable date, NHH shall, without limiting its other rights or remedies, have one or more of the following rights:
- 17.1.1 to terminate the Contract with immediate effect by giving written notice to the Supplier;
 - 17.1.2 to refuse to accept any subsequent performance of the Services and/or delivery of the Goods which the Supplier attempts to make;
 - 17.1.3 to recover from the Supplier any costs incurred by NHH in obtaining substitute goods and/or services from a third party;
 - 17.1.4 where NHH has paid in advance for Services that have not been provided by the Supplier and/or Goods which have not been delivered by the Supplier, to have such sums refunded by the Supplier; and
 - 17.1.5 to claim damages for any additional costs, loss or expenses incurred by NHH which are in any way attributable to the Supplier's failure to meet such dates.
- 17.2 If the Supplier has delivered Goods that do not comply with the undertakings set out in clause 4.1, then, without limiting its other rights or remedies, NHH shall have one or more of the following rights, whether or not it has accepted the Goods:
- 17.2.1 to reject the Goods (in whole or in part) whether or not title has passed and to return them to the Supplier at the Supplier's own risk and expense;
 - 17.2.2 to terminate the Contract with immediate effect by giving written notice to the Supplier;
 - 17.2.3 to require the Supplier to repair or replace the rejected Goods, or to provide a full refund of the price of the rejected Goods (if paid);
 - 17.2.4 to refuse to accept any subsequent delivery of the Goods which the Supplier attempts to make;
 - 17.2.5 to recover from the Supplier any expenditure incurred by NHH in obtaining substitute goods from a third party; and
 - 17.2.6 to claim damages for any additional costs, loss or expenses incurred by NHH arising from the Supplier's failure to supply Goods in accordance with clause 4.1.
- 17.3 These Conditions shall extend to any substituted or remedial services and/or repaired or replacement goods supplied by the Supplier.
- 17.4 NHH's rights under this Contract are in addition to its rights and remedies implied by statute and common law.

18. CHARGES AND PAYMENT

18.1 The price for the Goods:

18.1.1 shall be the price set out in the Purchase Order, or if no price is quoted, the price set out in the Supplier's published price list in force at the Commencement Date; and

18.1.2 shall be inclusive of the costs of packaging, insurance and carriage of the Goods, unless otherwise agreed in writing by NHH. No extra charges shall be effective unless agreed in writing and signed by NHH.

18.2 The charges for the Services shall be set out in the Purchase Order, and shall be the full and exclusive remuneration of the Supplier in respect of the performance of the Services. Unless otherwise agreed in writing by NHH, the charges shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the performance of the Services.

18.3 In respect of Goods, the Supplier shall invoice NHH on or at any time after completion of delivery. In respect of Services, the Supplier shall invoice NHH on completion of the Services.

18.4 Each invoice shall include such supporting information required by NHH to verify the accuracy of the invoice, including but not limited to the relevant Purchase Order number, details of the Supply and the charge specified in the contract or Purchase Order. The Supplier shall provide separate invoices for each Purchase Order.

18.5 Invoices should be provided in a form as may be agreed by NHH and must be submitted by e-mail to accounts.payable@nhh.org.uk. In the event that electronic submission is not possible the Supplier may submit invoices to: Accounts Payable, North Hertfordshire Homes Limited, Rowan House, Avenue One, Letchworth Garden City, Hertfordshire, SG6 2WW. The Supplier will cooperate with NHH in any development of electronic invoicing which may be implemented.

18.6 Subject to the provisions of this clause 18, NHH shall pay the invoiced amounts within 30 days of the receipt of a correctly rendered invoice to a bank account nominated in writing by the Supplier.

18.7 The charges of the Supplier are exclusive of VAT, which shall be added at the prevailing rate as applicable and paid by NHH following delivery of a valid VAT invoice. The Supplier shall indemnify NHH against any liability (including any interest, penalties or costs incurred) which is levied, demanded or assessed on NHH at any time in respect of the Supplier's failure to account for, or to pay, any VAT relating to payments made to the Supplier under this contract.

18.8 If a party fails to make any payment due to the other party under the Contract by the due date for payment, then the defaulting party shall pay interest on the overdue amount at the rate of 2% per annum above Barclay's Bank base rate from time to time. Such interest

shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment.

- 18.9 The Supplier shall maintain complete and accurate records of the time spent and materials used by the Supplier in providing the Services, and the Supplier shall allow NHH to inspect such records at all reasonable times on request.
- 18.10 NHH may at any time, without limiting any of its other rights or remedies, set off any liability of the Supplier to NHH against any liability of NHH to the Supplier, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under the Contract.
- 18.11 If NHH considers that the amount due to the Supplier is less than the amount set out in the Supplier's invoice, NHH will notify the Supplier in writing within 15 days of receipt of the invoice stating the reasons why the invoice is being queried. No payment by NHH shall prevent its later reconsideration or adjustment.

19. INTELLECTUAL PROPERTY RIGHTS

- 19.1 In respect of the Goods and any goods that are transferred to NHH as part of the Services under this Contract, including without limitation the Deliverables or any part of them, the Supplier warrants that it has full clear and unencumbered title to all such items, and that at the date of delivery of such items to NHH, it will have full and unrestricted rights to sell and transfer all such items to NHH.
- 19.2 The Supplier assigns to NHH, with full title guarantee and free from all third party rights, all Contract Specific IPR in the products of the Services, including for the avoidance of doubt in the Deliverables. The Supplier grants NHH an irrevocable and perpetual royalty free licence to use the Supplier background IPRs so as to enable NHH to enjoy the full commercial benefit and use of the products of the Services and the Deliverables.
- 19.3 The Supplier shall, promptly at NHH's request, do (or procure to be done) all such further acts and things and the execution of all such other documents as NHH may from time to time require for the purpose of securing for NHH the full benefit of the Contract, including all right, title and interest in and to the Intellectual Property Rights assigned to NHH in accordance with clause 19.2.
- 19.4 All NHH Materials are the exclusive property of NHH.
- 19.5 The Supplier shall keep NHH indemnified 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 incurred by NHH as a result of or in connection with any claim made against NHH 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.

20. **CONFIDENTIALITY**

20.1 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 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.

20.2 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.

21. **TERMINATION**

21.1 Without limiting its other rights or remedies, NHH may terminate the Contract:

21.1.1 in respect of the supply of Services, by giving the Supplier one months' written notice; and

21.1.2 in respect of the supply of Goods, in whole or in part at any time before delivery with immediate effect by giving written notice to the Supplier, whereupon the Supplier shall discontinue all work on the Contract. NHH shall pay the Supplier fair and reasonable compensation for any work in progress on the Goods at the time of termination, but such compensation shall not include loss of anticipated profits or any consequential loss.

21.2 In any of the circumstances in these Conditions in which NHH may terminate the Contract, where both Goods and Services are supplied, NHH may terminate the Contract in respect of the Goods, or in respect of the Services, and the Contract shall continue in respect of the remaining supply.

21.3 Without limiting its other rights or remedies, NHH may terminate the Contract with immediate effect by giving written notice to the Supplier if on or more of the following occurs:

21.3.1 the Supplier commits a material breach of the terms of the Contract and (if such a breach is remediable) fails to remedy that breach within 21 days of receipt of notice in writing to do so;

21.3.2 the Supplier repeatedly breaches any of the terms of the Contract in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of the Contract;

- 21.3.3 the Supplier suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;
- 21.3.4 the Supplier commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors, other than (where a company) for the sole purpose of a scheme for a solvent amalgamation of the Supplier with one or more other companies or the solvent reconstruction of the Supplier;
- 21.3.5 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Supplier (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the Supplier with one or more other companies or the solvent reconstruction of the Supplier;
- 21.3.6 the Supplier (being an individual) is the subject of a bankruptcy petition or order;
- 21.3.7 a creditor or encumbrancer of the Supplier attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
- 21.3.8 an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Supplier (being a company);
- 21.3.9 the holder of a floating charge over the assets of the Supplier (being a company) has become entitled to appoint or has appointed an administrative receiver;
- 21.3.10 a person becomes entitled to appoint a receiver over the assets of the Supplier or a receiver is appointed over the assets of the Supplier;
- 21.3.11 any event occurs, or proceeding is taken, with respect to the Supplier in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 21.3.3 to clause 21.3.10 (inclusive);
- 21.3.12 the Supplier suspends or ceases, or threatens to suspend, or cease, to carry on all or a substantial part of its business;
- 21.3.13 the Supplier's financial position deteriorates to such an extent that in NHH's opinion, the Supplier's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; and

- 21.3.14 the Supplier (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.
- 21.4 Termination of the Contract, however arising, shall not affect any of the parties' rights and remedies that have accrued as at termination. Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.
22. **CONSEQUENCES OF TERMINATION**
- 22.1 On termination of the Contract for any reason, the Supplier shall immediately deliver to NHH all Deliverables whether or not then complete, and return all NHH Materials. If the Supplier fails to do so, then NHH may enter the Supplier's premises and take possession of them. Until they have been returned or delivered, the Supplier shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract.
23. **FORCE MAJEURE**
- 23.1 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 a delay or failure result from an event, circumstances or cause beyond its reasonable control (**Force Majeure Event**).
- 23.2 The Supplier shall use all reasonable endeavours to mitigate the effect of a Force Majeure Event on the performance of its obligations.
- 23.3 If a Force Majeure Event prevents, hinders or delays the Supplier's performance of its obligations for a continuous period of more than 20 Business Days, NHH may terminate the Contract immediately by giving written notice to the Supplier.
24. **GENERAL**
- 24.1 **Assignment and other dealings.**
- 24.1.1 NHH may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract.
- 24.1.2 The Supplier may not assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with all or any of its rights or obligations under the Contract without the prior written consent of NHH.
- 24.2 **Notices.**
- 24.2.1 Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, or sent by pre-paid first class post or other next working day delivery service.

- 24.2.2 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 24.2.1; if sent by pre-paid first class post or other next working day delivery service, on the second Business Day after posting; or if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.
- 24.2.3 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.
- 24.3 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.
- 24.4 **Waiver.** A waiver of any right or remedy under the Contract or law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.
- 24.5 **No partnership or agency.** Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, nor constitute either party the agent of the other for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.
- 24.6 **Third parties.** A person who is not a party to the Contract shall not have any rights to enforce its terms.
- 24.7 **Variation.** Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is agreed in writing and signed by NHH.
- 24.8 **Governing law.** The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with the law of England and Wales.
- 24.9 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

25. **CONSTRUCTIONLINE**

- 25.1 NHH is working in partnership with Constructionline, a UK government owned certification service for construction and building-related contractors, consultants and material suppliers, to maintain an approved supplier list.
- 25.2 Suppliers who are Constructionline members will have satisfied NHH basic pre-qualification requirements. Suppliers should submit their Constructionline registration number to verify their suitability to trade with NHH.
- 25.3 Suppliers, who are verifying their suitability to supply NHH through Constructionline, must maintain their membership of Constructionline throughout the Contract Period.