

Catalyst Housing - Standard Terms & Conditions of Purchase

1 Definitions

1.1 In this Contract:

Business Day means a day (other than a Saturday or Sunday) on which banks are generally open for normal banking business in London;

Business Hours means 9.00 a.m. to 5.00 p.m. in the relevant location on a Business Day;

Connected Persons means, in relation to the Supplier and to the extent (directly or indirectly) involved in the provision of the Supplies, any company or other entity which is at the relevant time a subsidiary or holding company of the Supplier or a subsidiary of any such holding company (the words **Subsidiary** and **Holding Company** having the meanings given in section 1159 of the Companies Act 2006) (and any and all of such entities' Personnel);

Contract means a contract between a CHL Entity and the Supplier consisting of the PO (as accepted by the Supplier), these Terms, the Contract Details (if any) and any other documents (or parts of them) incorporated into them or notified in writing by CHL to the Supplier;

Contract Details means the document (if any) agreed between the parties setting out terms in addition to those in these Terms and the Purchase Order;

Goods mean any goods, products, materials or items (including any instalment or any part of them) that are the subject of the Purchase Order (or Contract Details) or supplied in the course of providing the Services;

Indemnified Parties means CHL and CHL's Personnel.

Intellectual Property Rights means any and all copyright, database rights, rights in designs, trade marks, domain names, goodwill, patents, rights in confidential information and any other intellectual property rights (including, where relevant, all extensions, reversions, revivals and renewals of the same and including know-how and trade secrets), in each case whether registered or unregistered and including all applications (and rights to apply) for protection of such rights and all similar or equivalent rights or forms of protection which now, or will in the future, subsist in any part of the world;

Catalyst or 'CHL' means Catalyst Housing Limited (and its subsidiaries), a registered social housing provider (company registration number 16561R), whose registered office is at Ealing Gateway, 26-30 Uxbridge Road, London. W5 2AU.

Losses means any liabilities, losses and damage, claims, actions, demands, costs, charges and expenses of any nature whatsoever, including any legal fees or other costs incurred by a person in enforcing its rights under this Contract;

Materials means all materials and works (in whatever form, including text, visual materials, information and software), or part of the same, created by or for the Supplier as part of or in connection with the provision of the Supplies (excluding materials or works, or part of the same, comprising Intellectual Property Rights subsisting before the date of this Contract and developed independently of the Supplier's obligations under this Contract);

Personnel means, in relation to a person, any and all officials, officers, trustees, members, directors, employees, consultants, advisers, agents, representatives, clients, contractors and sub-contractors of such person;

Premises means the location(s) where the Supplies are to be delivered, as specified in the PO or Contract Details (or advised by CHL to the Supplier within a reasonable time before such delivery);

Price means the price of the Supplies stated in the PO or Contract Details;

Purchase Order or PO means the document setting out the Supplies incorporating these Terms and the Contract Details (if any);

Service Levels means those standards of performance (if any) incorporated in the Contract Details to be achieved by the Supplier in providing the Supplies;

Services means any work or services (or any part of them) to be provided by the Supplier, as described in the PO or the Contract Details;

Supplier means the person that is to provide the Supplies under this Contract, as specified in the PO and whose registered number, registered address and other details have been provided to CHL, in the Supplier Details Form if applicable, or via general correspondence;

Supplier Details Form means CHL's standard supplier details form as completed by the Supplier in connection with CHL's first order for the purchase of goods and/or services from the Supplier;

Supplies means the Works, Goods and/or the Services, depending on the context; and

Terms means CHL's standard terms and conditions of procurement of goods and/or services as set out in this document.

1.2 In this Contract, unless the context otherwise requires, any reference to:

(a) a **clause** is to a clause of these Terms;

(b) in relation to Supplies, delivery or provision (and related words) shall be interpreted as a reference to the delivery, provision, supply, performance, licence, lease, hire and/or loan of Supplies;

(c) including, other or any similar word shall not limit the generality of any preceding words;

(d) **parties** means the parties to this Contract, and any reference to party shall be construed accordingly;

(e) a **person** includes any individual, company, partnership, joint venture, association, organisation, trust, state or state agency (in each case whether or not having separate legal personality);

(f) **writing** or **written** includes fax transmission and comparable means of communication, but not email;

(g) the singular includes the plural and vice versa, and use of any gender includes the other genders;

(h) headings shall be disregarded in the interpretation of this Contract;

(i) any document to which this Contract refers shall be construed as a reference to such document as amended, varied, supplemented, novated and/or replaced in any way from time to time; and

(j) a statute or statutory provision is a reference to that statute or statutory provision as amended, consolidated, replaced and/or re-enacted from time to time and includes any subordinate legislation from time to time in force made under it.

1.3 In this Contract, unless the context otherwise requires, an obligation imposed on the Supplier shall include an obligation on the Supplier to procure compliance by the Connected Persons with such obligation.

2 Offer and acceptance

2.1 Receipt of a PO by the Supplier constitutes an offer by CHL to obtain Supplies and/or Services (as applicable) from the Supplier in accordance with the Terms which shall be deemed to have been accepted on the Supplier either confirming its acceptance in writing duly signed by or on behalf of the Supplier or any act providing (or beginning to provide) all or part of the Supplies and/or Services (as applicable) at which point the Contract shall come into existence.

2.2 This Contract applies to the exclusion of any other terms and conditions submitted in any way by or on behalf of the Supplier in respect of the Supplies (**Supplier Conditions**) despite any contrary provisions in any of the Supplier Conditions, and the Supplier waives any right that it otherwise might have to rely on the Supplier Conditions.

2.3 This Contract supersedes any prior agreement between CHL and the Supplier relating to Supplies, except where specific reference is made by CHL in a PO or Contract Details referring to the terms of a previous agreement between the parties and stating that they apply to these Supplies. For the avoidance of doubt, the Supplier may not rely on any previous agreement without a specific reference within a PO or Contract Details by CHL.

2.4 All of the Terms shall apply to the supply of Supplies and Services except where the application to one or the other is specified.

2.5 Each Contract is entered into severally by each CHL Entity with the Supplier. Each CHL Entity may raise Purchase Orders in accordance with a Contract. No CHL Entity is responsible for any breach of this Contract by another CHL Entity. No CHL Entity is agent for or has authority to commit any other CHL Entity.

2.6 For the avoidance of doubt CHL gives no undertaking that it will serve POs in respect of all or any particular volume of Supplies and does not grant any exclusively to the Supplier.

3 Delivery

3.1 The Supplier shall deliver the Supplies in accordance with the instructions and date(s) specified in the PO or Contract Details (or, if no date or timescale is specified, within fourteen (14) days after the date of the PO within or such earlier time as may be reasonable in all the circumstances). Time is of the essence for delivery of the Supplies.

3.2 The Supplier shall ensure that:

(a) the Goods are marked and delivered in accordance with CHL's instructions and any applicable regulations or requirements of the carrier and properly packed and secured so as to reach their destination in a good and undamaged condition in the ordinary course; and

(b) each delivery of Goods is accompanied by a delivery note which shows the PO number, date of order, number of packages and contents and, in the case of part delivery, the outstanding balance remaining to be delivered.

3.3 Unless otherwise agreed by CHL in writing, all Goods shall be delivered to the Premises during Business Hours with transportation charges and any other applicable charges pre-paid by the Supplier. CHL shall not be obliged to carry out any work to enable delivery of Supplies to take place. The Supplier shall off-load Goods at its own risk, as directed by CHL. Except where expressly agreed in writing to the contrary, the Supplier shall at its own cost provide all materials, parts, components and replacements and all computer programs needed to provide the Supplies. The Supplier shall on demand provide to CHL, without charge, copies of the Materials, available technical data, safety data, technical bulletins and other appropriate information and material relating to the Supplies.

3.4 CHL and, if applicable, the Supplier shall inspect the Goods as soon as reasonably practicable following delivery and agree an inventory of the quality and quantity delivered. CHL shall not be liable for any damage found on such inspection. If CHL in its reasonable opinion considers any of the Goods to be in an unsuitable condition or of the wrong quantity either on delivery or subsequently, CHL shall notify the Supplier who shall promptly arrange repair, remedy, correction or replacement of such Goods within forty eight (48) hours following the time of CHL so notifying the Supplier. If the Supplier has not fully repaired, remedied or corrected (as appropriate) such Goods by the expiration of such period, CHL shall be entitled to enforce the remedies set out in Clause 11.

3.5 Unless otherwise specified, the Supplier shall be responsible for installing, commissioning and decommissioning the Goods.

3.6 The Supplier shall give CHL at least three (3) Business Days' prior written notice of the delivery under this Contract of any Goods having a hazard to the health and safety of persons or property, identifying those hazards and giving full details of any precautions to be taken by CHL on the delivery of such Goods and their subsequent storage or handling. The Supplier shall notify CHL in writing of all requirements and restrictions imposed by governmental and other authorities or persons relating to the possession, use or onward supply of the Goods.

3.7 The Supplier shall, and shall ensure any Personnel used to supply the Supplies shall, comply with all applicable laws and regulations including where applicable monitoring under the Safeguarding Vulnerable Groups Act 2006 and all reasonable conditions of access.

3.8 Unless otherwise stated in the PO, CHL shall have the right to inspect and test the Goods at any time before delivery and acceptance.

3.9 If following such inspection or testing CHL considers that the Goods do not conform or are unlikely to comply with the Supplier's undertakings in clause 6.1, CHL shall inform the Supplier and Supplier shall take such remedial action as is necessary to ensure compliance within such time (not being less than seven (7) days) as CHL specifies and following such remedial action CHL may again inspect and/or test the

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- Goods before acceptance. Time shall be of the essence in respect of any remedial action required under this clause.
- 3.10 If CHL considers that Goods do not comply with this Contract after two (2) sets of inspecting and testing, CHL may reject these Goods by notice in writing to the Supplier.
- 3.11 Notwithstanding any such inspection or testing, the Supplier shall remain fully responsible for compliance with the Contract in respect of the Goods and any such inspection or testing shall not reduce or otherwise affect the Supplier's obligations under this Contract, and CHL shall have the right to conduct further inspections and tests after the Supplier has carried out any remedial action.
- 4 Title, risk and insurance
- 4.1 Where CHL is purchasing Goods:
- (a) title to the Goods shall pass to CHL upon the earlier of delivery or the first payment by CHL in respect of the Goods and Supplier shall take all reasonable steps to pass title in such Goods to CHL including, where requested, completing a vesting certificate; and
- (b) risk in the Goods shall only pass to CHL upon delivery of the Goods in accordance with this Contract.
- 4.2 Where CHL is hiring Goods:
- (a) title to the Goods indicated as being hired by CHL from the Supplier shall remain the property of the Supplier. CHL agrees to keep such Goods free of any encumbrance and not to sell or otherwise deal with such Goods other than in accordance with these terms. The Supplier shall supply all associated plant, tackle, tools and documentation necessary for commissioning, use and decommissioning of such Goods as set out in this Contract;
- (b) the Supplier hereby permits CHL, its contractors and other entities authorised by CHL to use such Goods in accordance with the manufacturer's reasonable instructions and recommendations between the dates specified (**Hire Period**) subject to these terms and conditions;
- (c) the Supplier shall not be entitled to charge for: damage comprising a reasonable level of wear and tear; damage or defect which is determined to pre-exist CHL's use of such Goods, whether or not identified during the course of the hand-over inspection; any modification to such Goods which has been authorised by the Supplier; any damage resulting from improper design or manufacture; any damage resulting from an action, omission or breach by the Supplier; or any other damage which is not notified by the Supplier to CHL by the date of the final post contract settlement invoice (together **Excluded Damage**);
- (d) within thirty (30) days after return to the Supplier, the Supplier shall deliver an invoice to CHL, for the Supplier's actual, reasonable and substantiated costs to repair, remediate or correct damage other than Excluded Damage, on the same rates (if any) as in this Contract. Such invoice shall be in full and final settlement for all claims in connection with such Goods; and
- (e) CHL shall have no liability or responsibility for: (i) any loss or damage to and any charges or other payments to the Supplier for, any property of the Supplier including such Goods which occurs after the date due for collection by Supplier; or (ii) theft or loss of Goods not caused by the negligence of CHL.
- 4.3 The Supplier shall, upon the request of CHL, acting reasonably, provide CHL or its nominee with: (a) such financial information relating to the Supplier as CHL requests; (b) access to its lenders/bankers, and copies of any necessary authorisations to such lenders/bankers, to provide CHL with full disclosure of information in the possession of the lenders/bankers concerning the Supplier; (c) the right to review any and all of the Supplier's financial and production information, and will provide such access to premise and personnel, information and authorisations as are necessary for it to make such assessment and/or confirmation; and (d) access to the Supplier's production, operational and other facilities for the purposes of conducting inspections; (e) the right, upon reasonable notice to the Supplier and during the Supplier's regular business hours, to inspect or audit the Supplier's books and records to verify any matter relating to the Supplier's performance hereunder. CHL reserves the right to require the Supplier to enter into commitments entitling CHL to take possession of the Goods when CHL considers there is a risk of Supplier or any Supplies suffering financial distress.
- 4.4 The Supplier shall, without prejudice to its obligations under this Contract or otherwise at law, at its own cost effect and maintain for the term of this Contract (and thereafter in compliance with good industry practice and applicable laws) insurance in an adequate amount (as may reasonably be expected to be maintained by a competent supplier experienced in providing supplies equivalent to the Supplies) and with a reputable insurer to cover all risks of and incidental to this Contract, including where applicable risk in the Goods before such risk passes under this Contract. The Supplier shall, on request, supply to CHL a copy of each insurance policy effected under this Contract, shall observe and perform all the warranties and conditions in each such policy and shall ensure that all premiums are paid when due, and that each such policy is maintained in full force and effect. The Supplier shall accept risk in any property of CHL which the Supplier removes from the Premises in performing this Contract.
- 5 Price and payment
- 5.1 The Price shall, unless otherwise agreed in writing by CHL, be in sterling and exclusive of VAT, but inclusive of all other taxes, duties, costs and charges (including charges for packaging, packing, shipping, carriage, insurance, warehousing prior to delivery and delivery to the Premises). CHL shall be entitled to any discount for prompt payment, bulk purchase or volume of purchase customarily granted by the Supplier.
- 5.2 CHL shall pay all invoices that are in CHL's reasonable opinion valid, correct and compliant in all respects with this clause 5, thirty (30) days following the date the correctly rendered invoice is received at CHL's accounts payable department (or such greater period as the parties may agree in writing). This obligation shall be subject to any withholding obligations imposed on CHL by any authority having jurisdiction over this Contract. CHL reserves the right to deduct from any monies due or becoming due to the Supplier any monies due from the Supplier to CHL, whether in respect of this Contract or otherwise.
- 5.3 Invoices may be rendered only after the Supplies have been correctly delivered or provided in accordance with this Contract. The Supplier must issue invoices which quote the respective PO number and which, if the Supplier is VAT-registered, are valid VAT invoices. The Supplier must render invoices as soon as is reasonable after the delivery of Goods, and in any case within six (6) months of delivery. CHL reserves the right to refuse payment of an invoice received otherwise than in compliance with the terms of this clause.
- 5.4 If any sum under this Contract is not paid when due, then, as a substantial remedy for late payment, that sum shall bear interest accruing on a daily basis from the due date until actual payment at two percent (2%) per annum over the base rate from time to time of Barclays Bank plc. The Supplier is not entitled to suspend deliveries of Supplies even if CHL is in breach (including for non payment). No payment shall be made for rejected Goods. This clause shall not apply to payments that CHL disputes in good faith.
- 5.5 The Supplier shall not be entitled to assert any credit, set-off or counterclaim against CHL in order to justify withholding payment of any such amount in whole or in part. CHL may, without limiting its other rights or remedies, set off any amount owing to it by the Supplier against any amount payable by CHL to the Supplier under this Contract.
- 5.6 Payment by CHL shall be without prejudice to any claims or rights which CHL may have against the Supplier and shall not constitute an admission by CHL as to the performance by the Supplier of its obligations under this Contract.
- 5.7 The Supplier shall maintain complete and accurate records of the time spent and materials used by the Supplier in providing the Goods and Services, and the Supplier shall provide CHL with this information within three (3) Business Days of CHL's request for the same.
- 5.8 The Supplier is required to retain all relevant time sheets, wages, books, vouchers, comparative quotations and invoices, in connection with the Contract for a period of six (6) years following payment of the final account or until notified by CHL, whichever is the earlier.
- 6 Quality of Supplies
- 6.1 The Supplier warrants, represents and undertakes that the Supplies will:
- (a) be of satisfactory quality, design, material and workmanship;
- (b) be fit for any purpose held out by the Supplier or made known to the Supplier in writing (including, for these purposes, email) at the time when the PO is placed;
- (c) be free from defects and any third-party lien, charge, claim, title, interest or other encumbrance;
- (d) conform in all respects with the PO and the Contract Details (or sample approved in writing by CHL) and all laws, orders, regulations and bye-laws that are applicable to the Supplies;
- (e) be provided in a proper and efficient manner by appropriately qualified, trained and experienced personnel under proper management and supervision, with all due care, skill and diligence, in accordance with good industry practice and to such high standard of quality as it is reasonable for CHL to expect in all the circumstances from a competent supplier experienced in providing supplies equivalent to the Supplies;
- (f) not contain anything that is offensive or harmful, nor bring (nor will the Supplier bring) CHL into disrepute; and
- (g) meet the Service Levels (if any).
- 6.2 The Supplier will:
- (a) cooperate with CHL and comply with all instructions of CHL relating to be Services; and
- (b) maintain in force all licences and consents it requires to enable it to carry out the Services, and comply with applicable laws and regulations;
- 6.3 CHL's rights under this Contract are in addition to the statutory provisions implied in favour of CHL by the Sale of Goods Act 1979 and/or the Supply of Goods and Services Act 1982.
- 6.4 The Supplier warrants and represents to CHL that it owns all of the rights and interests in and has title to all of the Intellectual Property Rights in the Materials and the use of the Materials or the Intellectual Property Rights in the Materials will not infringe the rights of any third party.
- 6.5 Where the Goods are hired to CHL the Supplier shall enforce all manufacturers' warranties applicable to such Goods for the benefit of CHL and shall reimburse CHL for any costs paid by CHL for repair of any such Goods, to the extent such repair is covered by a manufacturer's warranty or by or through an insurance claim.
- 6.6 The Supplier shall comply with any policies, procedures and codes of conduct of CHL (Including, but not limited to; Equality of Treatment, Data Protection, Confidentiality, Anti-bribery & Corruption, Environmental, Sustainability), that are notified by CHL to the Supplier from time to time or published on CHL's website from time to time.
- 7 Intellectual property
- 7.1 In consideration of payment of the Price, the Supplier hereby unconditionally and irrevocably:
- (a) grants and assigns to CHL with full title guarantee and free from all third party rights the entire right, title and interest (whether vested, contingent or future), including all Intellectual Property Rights, present and (to the extent permitted by law) future, in and to the Materials to hold the same to CHL absolutely and throughout the world for the full period during which such rights subsist (including all renewals, revivals, reversions and extensions of the same) and thereafter (to the fullest extent possible) in perpetuity;
- (b) to the extent that Intellectual Property Rights other than those assigned to CHL under clause 7.1 are required for CHL's use of the Supplies, grants (or, to the extent not owned or controlled by the Supplier, shall, where reasonably practicable, procure the unconditional, irrevocable grant in writing by the relevant third-party rights-holder(s) to CHL of) a royalty-free, non-exclusive and perpetual licence (or, where applicable, authorised sub-licence) to use, reproduce, maintain and modify such rights; and
- (c) waives and undertakes not to assert, and shall procure that all Connected Persons involved in the creation or production of the Materials shall (in writing) unconditionally and irrevocably waive and undertake not to assert, to the extent

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- permitted by law, any moral rights or similar rights or other non-transferable rights that it or they may have in the Materials under any and all laws now or in future in force in any part of the world.
- 7.2 The Supplier shall execute all such documents and do all such acts (and/or procure the execution and doing) as CHL may reasonably require to give effect to this clause 7.
- 8 Data protection
- The Supplier shall:
- (a) at all times comply with the Data Protection Directive (95/46/EC) and any equivalent national laws (Data Protection Legislation) in the performance of its obligations under this Contract;
 - (b) in relation to its processing of any personal data (as defined in the Data Protection Legislation) transferred to the Supplier by CHL (or collected or generated by the Supplier on CHL's behalf), ensure that appropriate technical and organisational measures are taken against unlawful processing and/or accidental loss of such personal data;
 - (c) promptly notify CHL on receipt of any subject access request requiring the release of such personal data and co-operate with CHL promptly in responding to any such subject access request within such reasonable timescales as may be specified by CHL; and
 - (d) not cause any such personal data to be transferred outside the European Economic Area without CHL's prior written consent which may be given or withheld at CHL's absolute discretion and, where given, may be conditional on entry by the Supplier into such further terms as may be prescribed or recommended by any court or regulatory body.
- 9 Confidentiality and Security
- 9.1 In this clause 9, **Confidential Information** means information (in any form whatsoever) that is confidential to a party (the **Disclosing Party**) or to any third party to whom the Disclosing Party owes a duty of confidentiality (including the provisions of the PO and Contract Details and any other Component of the Contract), but excluding confidential information which, at the time of its disclosure by the Disclosing Party, is in the public domain otherwise than by breach of the terms of this Contract or law.
- 9.2 Without prejudice to any confidentiality undertaking signed by on or behalf of the Supplier before the date of the Contract, the **Receiving Party** shall:
- (a) treat Confidential Information as strictly confidential;
 - (b) not disclose Confidential Information to any third party except: (i) to Connected Persons (if bound by equivalent obligations of confidentiality) that reasonably need to know the same in connection with the Receiving Party's obligations under this Contract; or (ii) if required to be disclosed by applicable law or order of a court of competent jurisdiction or other competent authority;
 - (c) if requested, procure that each of the Connected Persons to whom Confidential Information is disclosed shall execute promptly and deliver a suitable confidentiality undertaking to the Disclosing Party; and
 - (d) not use Confidential Information for any purpose whatsoever other than to fulfil the Receiving Party's obligations under the Contract.
- 9.3 The Supplier shall comply with the security policy and requirements as notified to it by CHL from time to time.
- 9.4 This clause 9 shall survive the termination of the Contract.
- 10 Remedies
- 10.1 If the Contract is terminated pursuant to Clause 13.2 or the Supplier fails, in any material respect, to provide the Supplies (or any substantial part of them) in accordance with any of the provisions of this Contract or otherwise fails to comply with this Contract, CHL shall be entitled to, without prejudice to its other rights or remedies (and whether or not all or any part of the Supplies have been accepted by CHL):
- (a) rescind this Contract (in whole or in part);
 - (b) reject the Supplies (in whole or in part) and, where possible, either: (i) return the rejected Goods to the Supplier at the risk and cost of the Supplier on the basis that a full refund for such Goods (including the cost of any such return) shall be promptly paid by the Supplier; or (ii) request (orally, in writing or by email) that the Supplier collect the Goods at the first reasonable opportunity, failing which CHL may dispose of them at its discretion and recover any reasonable costs of disposal from the Supplier;
 - (c) give the Supplier the opportunity, at the Supplier's expense, within ten (10) days after receipt of notice from CHL either: (i) to remedy any remediable defect in the Supplies; or (ii) to supply replacement Supplies and/or to carry out any other necessary work to ensure that the provisions of this Contract are fulfilled;
 - (d) refuse to accept any further supply of the Supplies, but without any further liability to the Supplier and without thereby coming under any obligation to pay for the Goods;
 - (e) recover from the Supplier any expenditure reasonably incurred by CHL in obtaining the equivalent supplies in substitution from another supplier;
 - (f) carry out at the Supplier's expense any work reasonably necessary to make the Supplies comply with this Contract;
 - (g) where CHL has paid in advance for Services that have not been provided by the Supplier and or Supplies which have not been delivered by the Supplier, to have such sums refunded by the Supplier; and/or
 - (h) claim for Losses incurred in consequence of the Supplier's breach of this Contract.
- 10.2 If the Supplies are not delivered by the applicable date, CHL may, at its option, claim or deduct 10% of the price of the Supplies for each week's delay in delivering by way of liquidated damages, up to a maximum of 50% of the total price of the Supplies. If CHL exercises its rights under this clause 10.2 it shall not be entitled to any of the remedies set out in clause 10.1 in respect of the Supplier's late delivery.
- 10.3 These conditions shall apply to any substituted or remedial services and/or repaired or replacement goods supplied by the Supplier.
- 10.4 The Customer's rights under the Contract are in addition to its rights and remedies implied by statute and common law.
- 10.5 Any remedy under this Contract shall be without prejudice to any other right or remedy which has already accrued, or subsequently accrues, to CHL, unless expressly agreed otherwise.
- 11 Indemnity
- 11.1 The Supplier shall indemnify and keep indemnified each Indemnified Party on demand against the full costs of any Losses incurred or suffered by such Indemnified Party as a result of or in connection with:
- (a) any breach of the warranties, representations and undertakings contained in this Contract (including under clause 6.1);
 - (b) any liability under the Consumer Protection Act 1987 in respect of the Goods or arising as a consequence of a breach of clause 3.7;
 - (c) any act or omission of the Supplier or the Connected Persons in connection with the provision of the Supplies;
 - (d) any claim that the Supplies or their possession or use by an Indemnified Party breaches any statute or regulation or constitutes, or is alleged to constitute, a tort against a third party; and/or
 - (e) any infringement or alleged infringement of any Intellectual Property Rights or moral rights of any third party arising from the provision or use of the Supplies or the possession or use of any Materials supplied under this Contract.
- 11.2 No limitation of liability shall apply to the indemnity under clause 11.1(e).
- 12 Liability
- 12.1 Nothing in this Contract shall exclude or restrict: (a) the Supplier's liability for damage to or loss of property (including loss by theft); or (b) either party's liability for death or personal injury resulting from the negligence of that party or for any other liability which cannot be excluded by law.
- 12.2 Without prejudice to clause 12.1 and subject to clause 11.2, neither party shall be liable to the other under this Contract for:
- (a) any loss of profits, business, contracts, data, market share, anticipated savings, goodwill or revenue; or
 - (b) any indirect, special or consequential loss or damage whatsoever,
- howsoever arising out of or in connection with the performance of its obligations under this Contract or any breach of this Contract, even if it was advised in advance of the possibility of such loss or damage.
- 12.3 Without prejudice to any other limitation or exclusion of liability under this Contract (but subject to clauses 11.2, 12.1 and 12.4), the total liability for all claims in contract, tort, misrepresentation, restitution or otherwise arising in connection with the performance or contemplated performance of this Contract shall be limited to a sum equivalent to:
- (a) for CHL to the Supplier, the Price; and
 - (b) for the Supplier to CHL, 125% of the Price.
- 12.4 The limit on liability under clause 11.3(b) shall not apply to any liability of the Supplier to the extent that the loss is either covered by insurance of the Supplier under this Contract or would have been covered but for any act or omission of the Supplier in relation to such requirement.
- 12.4 For the duration of the Contract and for a period of six (6) years thereafter, the Supplier shall maintain in force, with a reputable insurance company;
- (a) professional indemnity insurance to the extent that it is relevant to the supply of Goods and/or Services for the amount of £5,000,000 (five million pounds);
 - (b) product liability insurance to the extent that it is relevant to the supply of Goods and/or Services for the amount of £5,000,000 (five million pounds);
 - (c) public liability insurance for the amount of £5,000,000 (five million pounds);
 - (d) employer's liability insurance for the amount of at least £5,000,000 (five million pounds);
- in respect of any single occurrence or series of occurrences arising out of a single event, to cover the liabilities that may arise under or in connection with the Contract shall, on CHL's request, produce both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance.
- 12.5 If upon the expiry or termination of the Contract, any employee of the Suppliers transfers to CHL under the Transfer of Undertakings (Protection of Employment) Regulations 2006, the Supplier shall keep CHL indemnified in full against any costs and liabilities incurred by it as a result of such transfer, including any redundancy payments.
- 13 Expiry, termination, cancellation and change
- 13.1 This Contract shall expire on thirty (30) days' notice by CHL to the Supplier.
- 13.2 CHL may, without prejudice to its other rights or remedies, terminate this Contract with immediate effect by giving notice to the Supplier at any time if the Supplier:
- (a) commits a material breach of this Contract and (if such breach is capable of remedy) fails to remedy the breach within ten (10) days (or such other period as CHL may reasonably specify in the circumstances) after receiving CHL's request in writing to do so; or
 - (b) the Supplier commits repeated breaches (not being individually material) of this Contract, the cumulative effect of which constitutes a material breach and/or is sufficient to justify the reasonable inference that the Supplier would continue to deliver a sub-standard service in relation to a material provision of this Contract; or

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- (c) is in breach of Clause 3.7; or
- (d) suffers an Insolvency Event (as defined in the following clause); or

13.3 **Insolvency Event** means, in relation to the Supplier, that it: (a) enters into any composition or arrangement with all or any class of its creditors; or (b) is the subject of any execution, distress, sequestration or other process enforced against any part of its undertaking or assets; or (c) is unable to pay, or has no reasonable prospect of being able to pay, its debts within the meaning of sections 123, 267 and 268 of the Insolvency Act 1986 (as applicable); or (d) brings or commences, or is the subject of, winding-up, bankruptcy or any other insolvency proceedings; or (e) has a receiver, manager, administrative receiver or administrator appointed over all or any part of its undertaking or assets; or (f) takes, suffers or is the subject of (or proposes to take or is threatened with) any similar or analogous action, event or proceedings in any jurisdiction in consequence of debt; or (g) ceases, or threatens to cease, to carry on its business in the normal course.

13.4 CHL may cancel any PO in respect of all or part of the Supplies, defer the date of delivery and/or payment in respect of any Supplies ordered or reduce the volume or scale of any Supplies ordered if the Supplier's performance of this Contract is prevented or delayed for more than 14 days.

13.5 CHL may (i) increase or decrease in part all or any part of the Supplies with a corresponding increase or reduction in the Price; or (ii) cancel in full the quantities of Supplies in any PO; at any time prior to the due date for their provision by giving the Supplier at least 14 days' notice.

13.6 Following expiry of this Contract or cancellation pursuant to Clauses 13.3, 13.5 or 13.5 of the whole or part of any PO by CHL:

- (a) CHL may return any Goods in accordance with clause 10.1(b);
- (b) CHL's sole liability in respect of Services shall be to pay to the Supplier a fair and reasonable price for all Services performed before the date of expiry or cancellation, provided that the Supplier submits a valid invoice for such price within sixty (60) days after such date and provided that under no circumstances will the Supplier's claim include payment of any allowance for overhead or loss of profit; and

13.7 On any expiry, cancellation or termination the Supplier shall deliver up to CHL, or otherwise dispose of at CHL's direction, all Materials, Confidential Information and any other CHL property (including data) that may be in the Supplier's or any Connected Person's possession (and/or the Supplier shall procure such delivery up or disposal).

13.8 Expiry or termination of this Contract for whatever reason shall not affect either party's rights or remedies that have accrued prior to the date of termination, nor the coming into force or the continuance in force of any provision of this Contract which expressly or by implication is intended to come into or continue in force by or after expiry or termination, including clauses 1, 7, 8, 9, 10, 11, 12, 13.7, 13.8, 14, 15 and 16.

13.9 Except pursuant to Clause 13.5 or as otherwise permitted under this Contract, if CHL requests a change to the Contract the Supplier shall respond promptly to such request with a proposal for delivery and adjustment to the Price (if any). No variation of this Contract shall have effect unless expressly agreed in writing and signed by the duly authorised representatives of CHL and the Supplier, and CHL shall not be liable for any charges or costs relating to any changes to the Supplies or additional Supplies unless such changes are so agreed.

14 Notices

14.1 Any notice to be given under this Contract shall be in writing, in English and signed by or on behalf of the party giving it and shall be served by hand, registered post (or, if posted to or from the United Kingdom, an internationally recognised courier service) or fax to:

- (a) the Supplier's address or email as specified on the Supplier Details Form; or
- (b) CHL's registered office on the first page of these Terms marked for the urgent attention of Company Secretary; or
- (c) such other address or fax number as the recipient may designate in accordance with this clause.

14.2 A notice shall be deemed to have been received:

- (a) if delivered by hand, at the time of delivery;
- (b) if sent by registered post, 48 hours after posting (or, if sent by an internationally recognised courier service, 48 hours from the date of delivery to the courier service); and
- (c) if transmitted by fax, at the time of successful transmission,

provided that, where delivery occurs outside Business Hours, notice shall be deemed to have been received at the start of Business Hours on the next following Business Day.

15 General

15.1 The Supplier may not, without CHL's prior written approval, assign, charge or otherwise dispose of all or any part of the benefit of this Contract or sub-contract any or all of its obligations under it. The Supplier shall provide CHL with reasonable details of any approved sub-contractors and shall remain solely liable to CHL for the performance of the Supplier's obligations under this Contract. Nothing in this Contract shall restrict CHL from assigning, charging, novating or otherwise disposing of this Contract (or any part of it).

15.2 This Contract contains the entire agreement of the parties in relation to the Supplies. Each party acknowledges that, in entering into this Contract, it is not relying on any representation or other assurance except as expressly set out or referred to in this Contract, provided that nothing in this Contract shall limit or exclude any liability for fraud. If the Supplies are to be delivered by instalments, this Contract shall be treated as a single contract and not severable.

15.3 No breach of any provision of this Contract shall be waived or discharged except with the express written consent of the parties. No failure to exercise or delay in exercising any right or remedy under this Contract shall operate as a waiver of that or any other right or remedy.

15.4 If a provision of this Contract is, becomes or is found to be illegal, invalid or unenforceable (in whole or in part), the legality, validity and enforceability of the remainder of this Contract shall not be affected.

15.5 Nothing in this Contract constitutes a partnership, relationship of agency or contract of employment between the parties.

15.6 Neither party shall be liable to the other as a result of any delay or failure to perform its obligations under the Contract if and to the extent such delay or failure is caused by an event or circumstance which is beyond the reasonable control of that party which by its nature could not have been foreseen by such party or if it could have been foreseen, was unavoidable.

16 Disputes

The parties shall use reasonable endeavours to resolve any dispute or claim arising in connection with this Contract (Dispute) by prompt discussion in good faith at a managerial level appropriate to the Dispute. Such discussion shall not be a pre-condition to the commencement of legal proceedings before any court. Unless this Contract has already been terminated, the parties shall continue to perform their obligations under this Contract regardless of the nature of the Dispute.

17 Governing law and jurisdiction

This Contract shall be governed by, and construed in accordance with, the law of England and Wales. Each party irrevocably submits for all purposes in connection with this Contract to the exclusive jurisdiction of the courts of England and Wales.