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# **MATERIALS SUPPLY CONTRACT**

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**Supply of Building Materials and Associated Products**

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## **SCHEDULES**

**Schedule 1 Specification (with Appendices)**

**Schedule 2 Pricing Schedule (and Price List)**

**Schedule 3 KPI Handbook**

**Schedule 4 Supplier's Method Statement**

**Schedule 5 Order Form**

**PARTIES:**

- (1) **GREAT PLACES HOUSING GROUP LIMITED** (Registered Society Number 30045R) whose registered office is at Southern Gate, 729 Princess Road, Manchester, M20 2LT (“**the Client**”); and
- (2) [ ] (company registration number [ ]) whose registered office is at (“**the Supplier**”).

**INTRODUCTION**

- A The Client wishes the Supplier to supply and deliver or provide for hire (as applicable) building materials, equipment and/or associated items on the terms of this Contract.
- B The supply is to be predominantly to the Warehouse but with the option for deliveries direct to the Client’s Properties.
- C This Contract has been awarded to the Supplier following a tender process run under the Public Contracts Regulations 2015 (as amended).

**THIS DEED WITNESSES THAT:**

**A. GENERAL**

**A1 Definitions and interpretation**

A1.1 In this Contract unless the context otherwise requires the following terms shall have the meanings given to them below:

<b>“Actual Delivery Time”</b>	the actual time and date on which an Item is delivered;
<b>“Approval”</b>	the prior written approval of the Client and <b>“Approve”</b> shall be construed accordingly;
<b>“Central Overheads”</b>	the percentage payable under the Pricing Schedule on the Throughput for the Supplier’s central and corporate costs including: <ul style="list-style-type: none"><li>• head and regional office costs;</li><li>• insurances;</li><li>• corporate administration and financing costs; and</li><li>• Branch running costs for all Branches other than the Dedicated Stores;</li></ul>
<b>“Cessation Date”</b>	the date on which the Supplier or any relevant Sub-supplier ceases to be an LGPS Admitted

	Body other than on the Termination Date or because it ceases to employ Eligible Employees;
<b>“Code of Practice”</b>	any Code of Practice or guidance issued by a Regulatory Body;
<b>“Commencement Date”</b>	[insert];
<b>“Confidential Information”</b>	<p>any information which has been designated as confidential by either Party in writing either specifically or in general terms, that is required by Law to be kept confidential (including Personal Data to the extent required by the DPA), information the disclosure of which would, or would be likely to, prejudice the commercial interests of any person, trade secrets, Intellectual Property Rights and know-how of either Party and all Personal Data and sensitive personal data within the meaning of the DPA. Confidential Information does not include information which:</p> <ul style="list-style-type: none"> <li>• was public knowledge at the time of disclosure (otherwise than by breach of Clause E2 [Confidential Information]);</li> <li>• was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;</li> <li>• is received from a third party (who lawfully acquired it) without restriction as to its disclosure; or</li> <li>• which is independently developed without access to other Confidential Information.</li> </ul> <p>Information concerning the Supplier’s purchasing costs, discounts and rebates is Confidential Information;</p>
<b>“Contract Documents”</b>	this Contract including all Schedules to it and all Appendices to those Schedules, the RfS and the Order Form;
<b>“Contract Period”</b>	the period from the Commencement Date to the Expiry Date or, if this Contract is terminated earlier, the Termination Date;
<b>“Contract Year”</b>	the period from the Commencement Date until 31 <sup>st</sup> March 201[8] (“ <b>Contract Year 1</b> ”); from 1 <sup>st</sup> April 201[8] to 31 <sup>st</sup> March 201[9] (“ <b>Contract Year 2</b> ”) and each successive 12 (twelve) month period but, with the final Contract Year being the period from the 1 <sup>st</sup> April immediately preceding the Termination Date to the Termination Date;
<b>“Core Item”</b>	an Item listed in the Price List which the Supplier is required to keep available for immediate

	delivery as set out in the Specification
<b>“CPI”</b>	the All Items Consumer Prices Index published by the Office of National Statistics or, if such index is replaced or discontinued, the index that the Parties agree or (in default of agreement) it is determined under the Dispute Resolution Procedure most closely resembles it;
<b>“Data Processor”</b>	has the meaning given in the DPA;
<b>“Default”</b>	<p>any of the following:</p> <ul style="list-style-type: none"> <li>• a material breach of the obligations of the relevant Party (including a fundamental breach or breach of a fundamental term) under this Contract;</li> <li>• any other default, act, omission, negligence or negligent misstatement of the relevant Party in connection with or in relation to this Contract and in respect of which the other Party is entitled to terminate this Contract;</li> <li>• in the case of the Supplier, the Supplier failing to implement a Rectification Plan under Clauses B5.8 or B5.9 <i>[KPIs]</i>;</li> <li>• in the case of the Supplier, the Supplier failing under Clause H.5 <i>[Disruption]</i> to propose adequate arrangements to continue the supply of Items despite the industrial action;</li> <li>• Fraud by the Supplier or a Sub-supplier or a member of their respective Staff not acting independently of the Supplier as set out in Clause D1.3;</li> <li>• a failure to terminate the employment of a Sub-Supplier or a Staff member’s employment under Clause D1.4 where that Sub-Supplier or Staff member has committed Fraud but acting independently of the Supplier;</li> <li>• a breach of Clause F1 <i>[Transfer and Subcontracting]</i>;</li> </ul>
<b>“Defect”</b>	any Item not being in accordance with the requirements set out in the Specification or the Order;
<b>“Defective Item”</b>	an Item with a Defect, and <b>“Defective”</b> shall be construed accordingly;
<b>“Delivery Date”</b>	the actual time and date on which an Item is to be delivered in accordance with the Order and/or the Specification;
<b>“Delivery Deadline”</b>	the period following the issue of an Order within which an Item is to be delivered in accordance

	with an Order and/or the Specification;
<b>“Delivery Services”</b>	providing and managing the Dedicated Stores, making deliveries (except Emergency Order deliveries) and providing the infrastructure necessary to comply with all of the Supplier’s obligations under this Contract;
<b>“Disallowed Costs”</b>	costs and Liability for which the Supplier is not reimbursed under the Contract as set out in of the Pricing Schedule;
<b>“Dispute Resolution Procedure”</b>	the procedures set out in Part I [ <i>Disputes and Law</i> ];
<b>“DPA”</b>	the Data Protection Act 1998 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such Law;
<b>“DPS”</b>	the Material DPS
<b>“Early Warning”</b>	a warning given under Clause B4.1 [ <i>Early Warning</i> ];
<b>“Emergency Order”</b>	an Order for a Core Item that is stated on the face of the Order to be for an Emergency or a Priority Urgent category under the repair response timescales set out at Paragraph 5 of the Client’s Homes Standard;
<b>“Expiry Date”</b>	<b>[INSERT]</b>
<b>“Force Majeure”</b>	<p>any event or occurrence which is outside the reasonable control of the Party concerned and which is not attributable to any act or failure to take preventative or remedial action by that Party and which affects that Party’s ability to carry out the whole or a substantial part of its obligations under this Contract whilst it continues, including fire; flood; violent storm; pestilence; explosion; malicious damage; armed conflict; acts of terrorism; nuclear, biological or chemical warfare; or any other disaster, natural or man-made, but excluding:</p> <ul style="list-style-type: none"> <li>• any industrial action occurring within the Supplier’s or any Sub-supplier’s organisation;</li> <li>• any industrial action occurring within the Client; or</li> <li>• the failure by any Sub-supplier to perform its obligations under any Subcontract;</li> </ul>
<b>“Fraud”</b>	any offence under Laws creating offences in respect of fraudulent acts or at common law in

	respect of fraudulent acts in relation to this Contract;
<b>“Good Industry Practice”</b>	standards, practices, methods and procedures conforming to the Law and the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person or body engaged in a similar type of undertaking as the Supplier under the same or similar circumstances;
<b>“Inflation”</b>	the percentage increase or decrease in the CPI over the 12 (twelve) month period up to September immediately preceding the start of the Contract Year;
<b>“Initial KPI Period”</b>	3 Months after the Commencement Date;
<b>“Insurances”</b>	the insurances the Supplier is required to maintain under this Contract;
<b>“Intellectual Property Rights”</b>	patents, inventions, trademarks, service marks, logos, design rights (whether registrable or otherwise), applications for any of them, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registrable or not in any country (including the United Kingdom) and the right to sue for passing off;
<b>“IP Materials”</b>	has the meaning given in Clause E4 [ <i>Intellectual Property Rights</i> ];
<b>“Items”</b>	any goods, materials, plant and/or equipment (including Hire Items) that are to be supplied by the Supplier (or by the Supplier’s Sub-supplier) under this Contract as set out in the Specification
<b>“IT System”</b>	the Client’s IT System or the Supplier’s IT System (as applicable);
<b>“KPI”</b>	a key performance indicator for measurement of the Supplier’s performance under this Contract as set out in Schedule 3 [ <i>KPI Handbook</i> ];
<b>“KPI Handbook”</b>	the document at Schedule 3 [ <i>KPI Handbook</i> ] setting out the KPIs, MLAPs and KPI Performance Targets;
<b>“KPI Performance Target”</b>	a performance target for a KPI as set out in Schedule 3 [ <i>KPI Handbook</i> ];

<b>“Law”</b>	<p>any of the following :</p> <ul style="list-style-type: none"> <li>• an Act of Parliament;</li> <li>• subordinate legislation (as defined in section 21(1) of the Interpretation Act 1978);</li> <li>• an exercise of the royal prerogative;</li> <li>• an enforceable community right (as defined in section 2 of the European Communities Act 1972); or</li> <li>• a determination direction or statutory guidance having the force of law, including any modification, amendment or re-enactment;</li> </ul>
<b>“Liability”</b>	<p>all demands, direct losses, actions, proceedings, claims, charges, expenses, indebtedness, liability, costs (including professional fees on an “inter-parties” basis), damages and third party claims but excluding any liability for loss of business, goodwill or anticipated savings or any other consequential or indirect losses under or in connection with this Contract;</p>
<b>“Liability Cap”</b>	<p>a cap on liability of £500,000 (five hundred thousand pounds) in any Contract Year as provided for in Clause G1.4 subject to the exceptions provided for in that Clause;</p>
<b>“Market Volatile Item”</b>	<p>an Item alongside which the initials “MV” are included in the Price List to indicate that market prices for that Item are volatile;</p>
<b>“Measurement Period”</b>	<p>a period over which performance is measured in relation to a KPI;</p>
<b>“Method Statements”</b>	<p>the Supplier’s method statements for delivering the materials supply arrangements set out in this Contract as set out in Schedule 4 [<i>Supplier’s Method Statements</i>];</p>
<b>“MLAP”</b>	<p>a minimum level of acceptable performance in relation to a KPI such that performance below the level specified as the MLAP for that KPI in the KPI Handbook will, if not remedied in accordance with this Contract, lead to the Client being entitled to terminate this Contract for Default by the Supplier;</p>
<b>“Month”</b>	<p>a period of a calendar month in any Contract Year;</p>
<b>“Monthly Payment”</b>	<p>the payments to be made each Month by the Client to the Supplier for the Items supplied in the immediately preceding Month as set out in the Pricing Schedule;</p>

<b>“Operative”</b>	a Client trade worker;
<b>“Order”</b>	an order raised and issued by completion of an Order Form by the Client (in accordance with the Specification) to provide one or more Items;
<b>“Order Form”</b>	the order form completed by the Client and submitted to the Supplier in the form set out in Schedule 5 [ <i>Order Form</i> ];
<b>“Parties”</b>	the Parties to this Contract and <b>“Party”</b> means either of them;
<b>“Personal Data”</b>	has the meaning given in the DPA;
<b>“Previous Supplier”</b>	a person or Organisation providing supplies to the Client similar to the Items before the Commencement Date;
<b>“Price”</b>	the amount payable for each Item (and where applicable, its delivery) as set out in the Pricing Schedule;
<b>“Price List”</b>	the catalogue of all Items and their Prices under this Contract which the Supplier is required to maintain as set out in the Specification and Pricing Schedule;
<b>“Pricing Schedule”</b>	Schedule 2 [ <i>Pricing Schedule (and Price List)</i> ] setting out the basis of payment for the Items;
<b>“Profit”</b>	the Supplier’s profit percentage under the Pricing Schedule on the Throughput and either the Management Fee or the Actual Management Costs (as applicable) (as set out in the Pricing Schedule);
<b>“Properties”</b>	all of the properties owned or managed by the Client including any depots, offices and premises and <b>“Property”</b> means any of them;
<b>“Quality Standards”</b>	the quality standards published by BSI British Standards, the National Standards Body of the United Kingdom, the International Organisation for Standardisation or equivalent European body, (and their successor bodies) that a skilled and experienced operator in the same type of industry or business sector as the Supplier would reasonably and ordinarily be expected to comply with in relation to the Items, and as may be further detailed in the Specification;
<b>“Receipt”</b>	the physical or electronic arrival of invoices at such address that the Client notifies the Supplier

	from time to time is to be used by the Supplier for the submission of invoices;
<b>“Rectification Plan”</b>	a plan prepared by the Supplier under Clauses B5.4 to B5.6 <i>[KPIs]</i> following a failure to achieve KPI Performance Targets;
<b>“Refund”</b>	an amount due to the Client from the Supplier for the Price of any Items that are returned as being incorrect or that contain a Defect;
<b>“Regulatory Bodies”</b>	the Homes and Communities Agency and other regulatory or statutory bodies, government departments and other entities, committees, ombudsmen and bodies which, whether under statute, rules, regulations, codes of practice or otherwise, are entitled to regulate, investigate, or influence the matters dealt with in this Contract or any other affairs of the Client and <b>“Regulatory Body”</b> shall be construed accordingly;
<b>“Representatives”</b>	the representatives of each Party appointed under Clause A4.3 <i>[Representatives]</i> ;
<b>“Resident”</b>	a tenant or leaseholder of the Client, or of any organisation whose properties are managed and/or maintained by the Client;
<b>“RfS”</b>	The RfS issued by the Client;
<b>“Specification”</b>	the Client’s requirements for materials supply and the associated services to be provided by the Supplier under this Contract as set out in Schedule 1 <i>[Specification (with Appendices)]</i> ;
<b>“Staff”</b>	all persons employed or engaged by the Supplier to perform its obligations under this Contract together with the Supplier’s Sub-suppliers and their respective employees, workers and agents used in the performance of its obligations under this Contract;
<b>“Stock Items”</b>	Items that are not Core Items but that the Supplier has or usually keeps available in its Branches;
<b>“Subcontract”</b>	a contract between the Supplier and a Sub-supplier;
<b>“Sub-supplier”</b>	a supplier or subcontractor to the Supplier being either a manufacturer, wholesaler, trade supplier for specific Items or delivery subcontractor;
<b>“Successor Supplier”</b>	any third party supplier appointed by the Client to supply Items which are substantially similar to

	any of the Items and which the Client receives in substitution for any of the Items following the expiry, termination or partial termination of this Contract;
<b>“Supplier’s IT System”</b>	the information technology system (being software, hardware, any interfaces, and any combination of them) used by the Supplier in connection with providing the Items;
<b>“Taxes Act”</b>	the Income and Corporation Taxes Act 1988;
<b>“Tender”</b>	the document(s) submitted by the Supplier to the Client in response to the Client’s invitation to suppliers admitted to the DPS for formal offers to supply it with the Items;
<b>“Termination Date”</b>	the date of termination of this Contract on either the Expiry Date or the date of earlier termination under Clause H1, H2 or H3 [Termination];
<b>“The Client’s Data”</b>	all data, information, records and documentation in any electronic or tangible form relating to the Properties, Residents, the Client’s employees and contractors and the details of the Items Ordered and supplied and the identity of the person placing each Order that is held on the Client’s IT System, the Supplier’s IT system or in paper form;
<b>“The Client’s IT System”</b>	the Client’s information technology system (including both software and hardware) as referred to in the Specification which is to be used and/or connected to by the Supplier in connection with the supply of the Materials, further details of which are set out in the Specification;
<b>“Throughput”</b>	the Prices payable under the Price List and the Pricing Schedule for all Items (other than Direct Items) supplied or delivered in each Month;
<b>“Trainee”</b>	a formal apprentice or trainee;
<b>“VAT”</b>	value added tax in accordance with the provisions of the Value Added Tax Act 1994;
<b>“Working Day”</b>	a day (other than a Saturday or Sunday) on which banks are open for business in the City of London.

A1.2

In this Contract:

- references to Clauses and Schedules are (unless stated otherwise) references to Clauses and Schedules of this Contract;

- any reference to a Sub-Clause or Paragraph (unless stated otherwise) is a reference to the relevant sub-Clause or paragraph of the Clause or Schedule in which it appears;
- the contents section, headings and references to them are not to affect its interpretation;
- references to the masculine include the feminine and neuter and to the singular include the plural and vice versa;
- any references to Law, shall be construed as references to that law as amended, replaced, consolidated or re-enacted and in relation to Acts of Parliament shall include all regulations, determinations, directions and statutory guidance having the force of Law made or given under it;
- references to “consent” or “approval” are to the prior written consent of the consenting or approving Party and any breach of the terms of any consent given is to be a breach of this Contract;
- the terms “including” and “in particular” are illustrative only and are not intended to limit the meaning of the words which precede them and neither the ejusdem generis rule of construction nor any similar rule or approach shall apply to the construction of this Contract;
- references to “persons” include individuals, firms, partnerships, companies, industrial and provident societies, corporations, associations, organisations, governments, states, agencies, foundations, trusts, unincorporated bodies of persons and any organisations having legal capacity (in each case whether or not having separate legal personality) and their successors, permitted assignees and transferees; and
- references to any document are (unless specified) references to such document as amended or supplemented from time to time.

A1.3 The Schedules and introduction to this Contract are an integral part of this Contract and are to have effect as if set out in full in the body of this Contract. References to this Contract include the Schedules and introduction.

A1.4 Where this Contract requires something to be done:

- it must be done in accordance with this Contract;
- if it is to be done within a period after an action is taken, the day on which that action is taken does not count in the calculation of that period; and
- if the last day of the period within which it must be done is not a working day, the period shall be extended to include the following Working Day.

A1.5 Nothing in this Contract shall require the Client to do anything that is inconsistent with its obligations as a charitable company or as a registered provider of social housing.

## **A2 Contract Period**

A2.1 This Contract shall take effect on the Commencement Date and shall continue until midnight on the Expiry Date unless it is otherwise terminated in accordance with the provisions of this Contract, or otherwise lawfully terminated.

## **A3 Supplier’s status**

At all times during this Contract Period the Supplier shall be an independent contractor and nothing in this Contract shall create a contract of employment,

a relationship of agency or partnership or a joint venture between the Parties and accordingly neither Party shall be authorised to act in the name of, or on behalf of, or otherwise bind the other Party save as expressly permitted by the terms of this Contract.

**A4 Notices**

A4.1 Formal notices or other communications under this Contract will be duly served if given by and sent to the nominated representative of the Party to be served in accordance with the following table (and the date of service and method of proof of service are to be as set out in it):

<b>Method of service</b>	<b>Date of service</b>	<b>Proof of service</b>
Personal delivery to the Representative.	Day of delivery.	Proof of handing to the Representative.
Personal delivery of a letter addressed to the Representative at the address for service.	Day of delivery if before 16.00 on a working day otherwise 10.00 on the next working day thereafter.	Proof of delivery.
Delivery of a prepaid first class letter addressed to the Representative at the address for service.	48 hours after posting if that is a working day otherwise 10.00 on the next working day thereafter.	Proof of posting unless returned through the post office undelivered service within 21 days of posting.

A4.2 Communications by email shall be valid communications under this Contract subject to proof of their having been received (in the form of an acknowledgement or read receipt) but this shall not apply to notices under Clause H [*Default Disruption and Termination*] which may not be served by email.

A4.3 The Representatives under this Contract are:

- for the Client: the holder for the time being of the post of [INSERT] (being, at the date of this Contract, [INSERT]); and
- for the Supplier: the holder for the time being of post of Company Secretary of the Supplier.

A4.4 Each Party’s address for service is the address set out at the start of this Contract or such other address as it notifies to the other(s) in writing. In relation to service by email, each Party’s Representative’s email addresses for services are (unless that Party notifies the other in writing of a change to the email address for services) as follows

- for the Client: [INSERT]; and
- for the Supplier: **Insert email address**

A4.5 The Representative of each Party may exercise all the powers and discretions given to that Party under this Contract except to the extent that the Party concerned has notified the other in writing of any limitations on its Representative’s authority. The Representative may delegate “operational

functions” (but not “strategic functions”) but any delegation is not to take effect until the Representative has notified the other Party in writing of the name of the delegate and the precise functions delegated to them.

A4.6 Each Party may change its address for service, facsimile number of Representative by prior written notice to the other Party.

## **B. SUPPLIER’S OBLIGATIONS**

### **B1 Specification and Orders**

B1.1 Subject to Clause B1.4, when the Client wishes to purchase Items during the Contract Period the Client shall issue an Order to the Supplier for the supply of such Items in accordance with the Specification.

B1.2 Subject to Clause B1.4, the Supplier shall supply and (where so specified in the Order) deliver all Items ordered in accordance with each Order and/or the Specification.

B1.3 The Supplier acknowledges that the Client relies on the skill and judgment of the Supplier in the supply of the Items and the performance of its obligations under this Contract.

B1.4 Where the Client considers it appropriate to do so, the Client may obtain goods and materials similar to the Items from other suppliers. However, the Client may not use this Clause as an alternative to termination and will continue to issue Orders to the Supplier throughout this Contract Period.

### **B2 Risk, ownership and guarantee**

B2.1 Subject to the Client’s rights to reject Items as set out in the Specification and without prejudice to any other rights or remedies the Client:

- risk in Items supplied shall pass to the Client at the time of delivery or collection of such Items; and
- ownership in such Items will pass to the Client on payment for them (in cleared funds) under this Contract (but without prejudice to the ability of the Client to use and install such Items from their date of delivery).

B2.2 The Supplier shall repair, replace or refund the cost of all Items supplied under this Contract that are or become Defective within 12 (twelve) Months from the date of supply.

B2.3 The Supplier shall procure such manufacturer’s warranties in favour of the Client as are specified in the Price List. The Supplier assigns to the Client the benefit of all manufacturer’s warranties relating to Items supplied under this Contract to the extent that such warranties are capable of assignment.

### **B3 Supplier’s performance**

B3.1 The Supplier shall perform its obligations under this Contract:

- in accordance with this Contract Documents and the Supplier’s Method Statements;
- using appropriately experienced, qualified and trained personnel;

- with all due skill, care and diligence;
- in accordance with Good Industry Practice; and
- in compliance with all applicable Laws.

B3.2 Throughout this Contract Period, the Supplier shall not, in the performance of its obligations under this Contract, in any manner endanger the safety or unlawfully interfere with the safety or convenience of the public.

#### **B4 Early Warning**

B4.1 If either Party becomes aware of any matter adversely affecting or threatening its performance or the other Party's performance under this Contract, it must give that other Party a written warning of this as soon as is reasonably practicable. Such warning may include proposals for avoiding or remedying such matter.

B4.2 Within 5 (five) Working Days of the date of the Early Warning, **the Client** shall give notice to convene a meeting unless **the Client** and the Supplier agree what to do as a result of the Early Warning within 2 (two) Working Days of the date it is given.

B4.3 The purpose of the meeting convened following an Early Warning will be to agree an appropriate course of action in response to the Early Warning.

#### **B5 KPIs**

B5.1 The Client will monitor the performance of the Supplier with reference to the KPIs on a Monthly basis. the Client may also undertake reviews from time to time.

B5.2 The Supplier shall provide to the Client such information as may reasonably be necessary to demonstrate progress against its KPIs.

B5.3 The Client may by written notice require the Supplier to produce a Rectification Plan if the Supplier:

- fails to achieve any KPI Performance Target for any KPI over 3 (three) out of 6 (six) monthly Measurement Periods (ignoring any Measurement Periods in which failure to achieve each of these KPI Performance Targets was primarily due to Force Majeure); or
- fails to achieve the Performance Targets for 3 (three) or more KPIs for any Measurement Period for reasons other than Force Majeure.

B5.4 A Rectification Plan must demonstrate to the satisfaction of the Client how the Supplier will achieve performance equal to or above the KPI Performance Targets for the KPIs where performance was below their KPI Performance Targets.

B5.5 The Supplier must provide a draft of the Rectification Plan within 20 (twenty) Working Days of the Client's written notice under Clause B5.4.

B5.6 Within 10 (ten) Working Days of the receipt of the draft Rectification Plan under Clause B5.5 (or such longer period as the Client and Supplier agree) the Client will by written notice to the Supplier:

- approve the draft Rectification Plan;

- approve the draft Rectification Plan subject to the Supplier making specific changes to it that are set out in the notice;
- reject the draft Rectification Plan and inform the Supplier of the contents of it that need to be changed to secure the Client's approval; or
- reject the Rectification Plan and inform the Supplier of the Client's reasons for doing so.

B5.7 Where the Client approves the draft Rectification Plan under Clause B5.6 the Supplier must implement that Rectification Plan within any timescales set out in the Rectification Plan.

B5.8 Where the Client approves a draft Rectification Plan under Clause B5.6 subject to amendments, the Supplier must indicate in writing to the Client within 5 (five) Working Days of the approval whether those amendments are acceptable. Where the Supplier's notice indicates that the amendments are:

- acceptable, the Supplier must implement that Rectification Plan within any timescales set out in the Rectification Plan;
- not acceptable, Clause B5.11 will apply.

B5.9 Where the Client rejects the draft Rectification Plan:

- the Supplier must provide the revised Rectification Plan within 10 (ten) Working Days of the date of rejection; and
- Clauses B5.5 to this Clause B5.11 will apply to the revised Rectification Plan and any further revisions to it.

B5.10 Where the Supplier's performance of this Contract is worse than the MLAP for any one or more KPIs, the Client may serve a written notice on the Supplier to that effect. The notice must:

- give details of each KPI where performance is worse than the MLAP, stating:
  - the performance level achieved;
  - the period over which that KPI performance was measured; and
  - that performance in relation to that KPI is worse than the MLAP;
- tell the Supplier within what period (of no less than 1 (one) Month from the date of the notice) performance in relation to each of those KPIs must be improved so that it is better than the MLAP and over what period (not exceeding 3 (three) Months starting on the date 1 (one) Month from the date of the notice) performance that is better than the MLAP for those KPIs must be maintained; and
- warn the Supplier that if performance is not improved so that it is better than the MLAP for all of those KPIs within the period specified or that performance better than the MLAP is not maintained over the period specified, this Contract may be terminated in accordance with Clause H2.1 [*Termination for Default*].

B5.11 The Parties are committed to continuous improvement in order to maximise the potential for innovation and elimination of waste in the supply and delivery of the Items. The Parties shall work with each other to achieve a cost effective building materials supply function seeking to achieve continuous improvement through regularly questioning the best approaches to delivering value through the supply chain to avoid disputes and settle any that arise quickly and amicably.

## **C. PAYMENT**

## **C1 Prices**

- C1.1 In consideration of the Supplier's performance of its obligations under this Contract and following the Receipt of valid VAT invoices, the Client shall pay the Prices for Items supplied in accordance with the Price List.
- C1.2 All Prices exclude VAT. The Client will pay VAT at the applicable rate on all invoices.
- C1.3 The Management Fee, Prices and VAT paid under each invoice are for the performance of all of the Supplier's obligations relating to the Items Ordered under this Contract. No payment or reimbursement of expenses is to be made by the Client other than that set out in the Pricing Schedule.

## **C2 Payment and VAT**

- C2.1 Subject to any other invoicing and payment arrangements set out in the Pricing Schedule, VAT invoices shall be submitted to the Client by the Supplier after the end of each Month for all Orders completely fulfilled in that Month.
- C2.2 The Supplier shall ensure that each invoice contains all appropriate references and a detailed breakdown of the Items supplied in accordance with the Orders to which it relates and that it is supported by such other documentation as is required by the Pricing Schedule.
- C2.3 The Client shall pay all sums properly due to the Supplier within 30 (thirty) days of receipt of a valid VAT invoice, and the supporting information required by Clause C2.2.
- C2.4 The Supplier shall not suspend the supply of the Items or related services unless the Supplier is entitled to terminate this Contract under Clause H2.2 [*Termination for Default*] for failure to pay bona fide undisputed sums of money.
- C2.5 Interest shall be payable by the Client on the late payment of any undisputed sums of money properly invoiced at a rate of 4% (four per cent) above the base rate of National Westminster Bank plc which interest shall be in lieu of interest under the Late Payment of Commercial Debts (Interest) Act 1998.

## **C3 Volumes**

- C3.1 The Client gives no representations or warranties to the Supplier about the amount or value of Orders the Client will place under this Contract, although the Client confirms that some Orders will be issued under this Contract. Any indications of these amounts or values in the procurement documents or Contract Documents are estimates only.
- C3.2 The Supplier is not entitled to claim for any loss of profit, loss of business or otherwise if the volume or timing of Orders is different in amount, value or scope than anticipated.

**C4 Price adjustment**

C4.1 The Prices under this Contract shall be subject to such adjustments, if any, as are stated in the Pricing Schedule.

**D. STATUTORY OBLIGATIONS AND REGULATIONS**

**D1 Prevention of Fraud**

D1.1 The Supplier shall take all reasonable endeavours, in accordance with Good Industry Practice, to prevent Fraud by the Supplier, or Sub-suppliers (including their respective Staff, shareholders, members and directors) in connection with the receipt of monies from the Client.

D1.2 The Supplier shall notify the Client immediately if it has reason to suspect that any Fraud has occurred, is occurring or is likely to occur.

D1.3 If a Fraud is committed by the Supplier, a Sub-Supplier or any of their respective Staff not acting independently of the Supplier, then the Client may terminate this Contract with immediate effect by giving written notice to the Supplier and such Fraud shall be deemed to be a Default that is not capable of remedy.

D1.4 If a Fraud is committed by a member of the Supplier's Staff, a Sub-Supplier or any of their respective Staff acting independently of the Supplier, then the Client may give written notice to the Supplier requiring the Supplier to terminate the Staff member's employment or the Sub-Supplier's appointment and (if necessary) procure the performance of their duties by another person. If such steps are not carried out within 20 (twenty) Working Days of the date of such notice this failure to terminate shall be deemed to be a Default that is not capable of remedy and the Client may terminate this Contract with immediate effect by giving written notice to the Supplier.

D1.5 Where this Contract is terminated under Clause H2.1 or H2.2 the Client may recover in full from the Supplier any other direct losses sustained by the Client in consequence of any breach of Clause H2.1, save that if any proportion of those losses were sustained primarily as a result of a fault, act or omission of the Client then the Client may not recover that proportion of those losses.

**D2 Discrimination**

D2.1 Neither Party shall unlawfully discriminate either directly or indirectly on any grounds such as race, colour, ethnic or national origin, disability, sex or sexual orientation, religion or belief, age or any other protected characteristics. In particular neither Party shall unlawfully discriminate within the meaning and scope of the Equality Act 2010, the Human Rights Act 1998 or other relevant or equivalent Law.

D2.2 The Supplier shall take all reasonable steps to secure the observance of Clause D4.1 by all Staff. the Client shall take all reasonable steps to secure the observance of Clause B3.1 by all of its employees.

**D3 The Contracts (Rights of Third Parties) Act 1999**

Nothing in this Contract shall confer any benefit on a person who is not a Party or give any such third party a right to enforce any of its terms.

#### **D4 Environmental and Social Requirements**

D4.1 The Supplier shall perform its obligations under this Contract in accordance with Good Industry Practice in relation to environmental matters and in accordance with the Client's Environmental Impact Statement at the Commencement Date together with any change to that Environmental Impact Statement or any environmental policy.

D4.2 In performing its obligations under this Contract the Supplier shall take all reasonable and practicable steps to:

- conserve energy, water, wood, paper and other resources;
- reduce waste and phase out the use of ozone depleting substances; and
- minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment.

D4.3 The Supplier shall:

- ensure that its activities promote investment in the communities in which it and the Client operates;
- promote the employment and training of people in the Client's neighbourhoods to reduce long term unemployment and promote the uptake of courses which train and upskill people in the locality;
- co-operate as a community partner with the Client to promote well-being of the neighbourhoods in which it operates;
- ensure that the proportion of turnover which is indicated as being spent in the locality during the procurement process is spent in the Client's local area to assist the Client in promoting its corporate objectives of for economic and social inclusion and investment in its communities.

#### **D5 Health and Safety**

D5.1 The Supplier shall comply with the Health and Safety at Work etc Act 1974 and any other Law and Codes of Practice relating to health and safety, which may apply to Staff and others in the performance of its obligations under this Contract.

D5.2 The Supplier shall provide a copy of its current health and safety policy statement (as required by the Health and Safety at Work etc Act 1974) to the Client within 5 (five) Working Days of a request from the Client made at any time during the Contract Period.

#### **E. INFORMATION HANDLING**

##### **E1 Data Protection Act**

E1.1 The Supplier shall (and shall ensure that all of its Staff) comply with any notification requirements under the DPA in relation to the acquisition, holding and processing of Personal Data in connection with this Contract.

- E1.2 Both Parties will duly observe all their obligations under the DPA which arise in connection with this Contract.
- E1.3 In particular, where the Supplier is processing Personal Data as a Data Processor for the Client the Supplier shall ensure that it has in place appropriate technical and organisational measures to ensure the security of that Personal Data (and to guard against unauthorised or unlawful processing of the Personal Data and against accidental loss or destruction of, or damage to, the Personal Data), as required under the seventh data protection principle in Schedule 1 to the DPA;
- E1.4 The Supplier shall:
- on request provide the Client with such information as the Client may reasonably request to satisfy itself that the Supplier is complying with its obligations under the DPA;
  - promptly notify the Client of any breach of the security measures to be put in place pursuant to this Clause; and
  - ensure that it does not knowingly or negligently do or omit to do anything which places the Client in breach of the Client's obligations under the DPA.

## **E2 Confidential Information**

- E2.1 Except to the extent set out in this Clause or where disclosure is expressly permitted elsewhere in this Contract, each Party shall:
- treat all Confidential Information belonging to the other Party as confidential and use all reasonable endeavours to prevent their Staff from making any disclosure to any person of any such Confidential Information; and
  - not disclose any Confidential Information belonging to the other Party to any other person without the prior written consent of the other Party, except to such persons and to such extent as may be necessary for the performance of either Party's obligations under this Contract or except where disclosure is otherwise expressly permitted by this Contract.
- E2.2 Nothing in Clause E2.1 shall prevent the Client disclosing any Confidential Information obtained from the Supplier:
- for the purpose of an audit of the Client's accounts as set out in Clause E6;
  - where such disclosure is required by Law or any court order, or any regulatory body.
- E2.3 Subject to Clause E2.4 nothing in Clause E2.1 shall prevent the Client disclosing any Confidential Information obtained from the Supplier:
- to any consultant the identity and independence of whom is approved in advance by the Supplier in writing (such approval not unreasonably to be withheld or delayed) engaged by the Client and provided that in disclosing information under this Clause E2.3 the Client discloses only the information which is necessary to instruct such consultant and requires the consultant to treat the information in confidence;
  - to any legal advisers to the Client
  - or in connection with any legal proceedings; or
  - as part of a tender process for the appointment of a Successor Supplier to the extent that such information is required to be disclosed to comply with the Client's obligations under Regulation 4(3) of the Public Contract

Regulations 2006, but on the basis that no Confidential Information concerning the Supplier's prices or costs is to be disclosed in such tender process.

E2.4 Before making any disclosure under Clause E2.5 the Client shall, except where prevented by Law, inform the Supplier in advance of such disclosure and give the Supplier the opportunity to make representations as to why such Confidential Information should not be disclosed. the Client shall take into account such representations in determining whether to disclose the Confidential Information.

E2.5 The disclosure by either Party of Confidential Information belonging to the other Party in breach of Clauses E2.1 to E2.3 shall be a Default except to the extent that the Party disclosing that Confidential Information was required to be disclosed by Law or by any court order.

### **E3 Freedom of Information**

E3.1 This Clause E3 shall apply if during the Contract Period, the Client is subject to the FOIA, or is subject to the EIR due to carrying out functions of a public nature in relation to the environment but not otherwise. Where this Clause E3 applies, the Supplier must assist and cooperate with the Client so as to enable the Client to comply with its obligations under the FOIA or the EIR (as applicable) in accordance with this Clause E3.

E3.2 The Supplier must and must procure that its Subcontractors:

- transfer any Request for Information it receives to the Client as soon as practicable and in any event within 2 (two) Working Days of receiving it;
- provide the Client with a copy of all such information in its possession or power in the form that the Client requires within 5 (five) Working Days (or such other period as the Client may specify) of the Client requesting that information; and
- provide all assistance as reasonably requested by the Client to enable the Client to respond to a Request for Information within the time for compliance set out in Section 10 of the FOIA or Regulation 5 of the EIR.

E3.3 The Supplier must not respond directly to a Request for Information unless expressly authorised to do so by the Client.

E3.4 The Supplier acknowledges that the Client is responsible for determining at its absolute discretion (but having regard to any guidance or codes of practice issued by the Information Commissioner or the Ministry of Justice or its predecessors):

- whether any information is exempt from disclosure under the FOIA or the EIR;
- in the case of a qualified exemption, whether the public interest in disclosing the information is greater than the public interest in maintaining the exemption; and
- whether any information is to be disclosed in response to a Request for Information.

E3.5 The Supplier acknowledges that the Client may, acting in accordance with the Secretary of State for Constitutional Affairs' Code of Practice on the discharge of public authorities' functions under Part 1 of the FOIA (issued under section

45 of the FOIA), be obliged under the FOIA or the EIR) to disclose information:

- without consulting with the Supplier; or
- following consultation with the Supplier and having taken its views into account.

E3.6 Where the Client receives a Request for Information relating to any Confidential Information, the Client must (unless it has decided not to disclose that information either because the FOIA, and/or the EIR does not apply or because it is exempt from disclosure under the FOIA or the EIR) use reasonable endeavours to:

- notify the Supplier of the Request for Information in accordance with Part VII of the Code of Practice issued by the Secretary of State under section 45 of the FOIA or if the requirements to disclose that Confidential Information (as applicable); and
- consider any representations made by the Supplier before disclosing that Confidential Information under the FOIA or the EIR.

E3.7 The Supplier acknowledges that any lists or schedules provided by it outlining Confidential Information are of indicative value only and that the Client may nevertheless be obliged to disclose Confidential Information.

E3.8 If the Client decides to disclose any Confidential Information under the FOIA and/or the EIR, it must use reasonable endeavours to notify the Supplier of this decision before making the disclosure.

E3.9 Where the Supplier holds information on behalf of the Client, the Supplier must:

- have regard to any code of practice issued under section 46 of the FOIA;
- comply with any practice recommendation issued to it under section 48 of the FOIA; and
- comply with any retention and destruction of information policy maintained by the Client under the FOIA which the Client notifies to it.

#### **E4 The Client's data held on the Supplier's IT System**

E4.1 The Supplier must:

- store all the Client's Data safely and separately from any data not relating to the Client or this Contract;
- provide, maintain and update (where necessary) the Supplier's IT System so that, at all times during this Contract Period, it is suitable for recording the availability, price, Ordering, delivery or collection of Items and payment for Items and for keeping the Client's Data up to date in connection with this;
- keep its IT System available during the hours prescribed in the Specification (other than when it is necessary to close down its IT System to rectify faults or undergo maintenance of which the Client has been given reasonable notice);
- make all the Client's Data maintained on the Supplier's IT System readily available to the Client at all times during this Contract Period (subject, in the case of any of the Client's Data to which "real time" access is not required to be provided under this Contract, to the Client giving reasonable notice of when the Client requires access to such the Client Data); and
- return the Client's Data to the Client following the Termination Date.

- E4.2 Each Party warrants to the other that:
- it will take all reasonable steps not to introduce any virus, Trojan horse, malware, keylogger or other harmful software into the other's IT System;
  - it will regularly check all software and transfer media used in connection with this Contract (including any software and transfer media used on or connected to the other Party's IT System) with an up-to-date virus checker throughout this Contract Period; and
  - granting the other Party access to use its IT System to the extent required under this Clause does not breach any Intellectual Property Rights of any third party.
- E4.3 The Supplier:
- acknowledges that the Client's Data belongs solely to the Client;
  - must not modify, alter or reconfigure the Supplier's IT System other than as required by the Specification in order to provide the required functionality set out in the Appendix to the Specification;
  - must not modify, alter, delete or overwrite any of the Client's Data without the prior written consent of the Client;
  - must always maintain a back-up and records of any of the Client's Data it has so modified or deleted for a minimum of 15 (fifteen) months after the modification or deletion;
  - must, if any of the Client's Data is lost or corrupted as a result of any action or inaction by the Supplier, restore or procure the restoration of the Client's Data to its state immediately before the corruption or loss;
  - must access, interface with and use the Client's IT System only for the purpose of and to the extent required by this Contract and when doing so must comply with any reasonable requirements on its use that are issued by the Client from time to time;
  - must ensure that the Client is able to use any software necessary to access and use any the Client's Data held on the Supplier's IT System both during this Contract Period and for 12 months after the Termination Date. If the Client so requires by written notice given to the Supplier at any time during this Contract Period, this includes entering into an escrow agreement in the standard form of National Computer Centre Limited (or such other industry standard body the Client approves) to protect the Client's access to any software:
    - that is necessary to access and use the Client's Data;
    - in which the Supplier has the Intellectual Property Rights; and
    - which is not widely available for commercial purchase.
  - warrants that the Supplier's IT System will operate and interface seamlessly with the Client's IT System to the extent required by the Appendix to the Specification; and
  - must provide and enhance the interfaces between the Client's IT System and the Supplier's IT System from time to time to maintain such functionality.
- E4.4 The Client acknowledges that all Intellectual Property Rights in the Supplier's IT System shall continue to belong to the Supplier and that the Supplier's IT System shall be the Supplier's Confidential Information.
- E4.5 The Client must notify the Supplier promptly and in any event within 2 (two) Working Days of any actual potential threatened breach of any of the warranties it has given under Clause E4.2.

E4.6 The Supplier must notify the Client promptly and, in any event, within 2 (two) Working Days if it becomes aware of any actual, potential or threatened breach of Clause E4.3 or of any of the warranties it has given in Clause E4.2.

E4.7 If through a breach of the obligations of the Supplier, the Client's Data transmitted or processed in connection with this Contract is either lost or sufficiently degraded as to be unusable, the Supplier shall be responsible for the cost of reconstitution of that the Client's Data and shall reimburse the Client in respect of any charge levied for its transmission and any other costs charged in connection with this.

## **E5 Publicity**

E5.1 Neither Party shall make any press announcement or publicise this Contract or any part thereof in any way, except with the written consent of the other Party.

E5.2 Both Parties shall take reasonable steps to ensure that their employees, agents, subcontractors, suppliers, professional advisors and consultants comply with Clause E5.1.

## **E6 Audit and Inspection**

E6.1 The Supplier shall keep and maintain full and accurate records of this Contract including the Items supplied under it, and all payments made by the Client for 6 years after the end of the Contract Period, or as long a period as may be agreed between the Parties.

E6.2 Subject to Clause E6.3 the Supplier shall on request either (at the Supplier's option):

- afford the Client, the Client's auditors and/or a Regulatory Body such access on reasonable notice and during normal business hours to or copies of the Supplier's records and documents relating to Supplier's IT Systems used with this Contract, as may be requested by the Client, the Client's auditors or a Regulatory Body (as applicable); or
- procure that Supplier's auditors (who shall be members of the ICAEW or equivalent and independent of the Supplier) provide a report satisfactory to the Client's auditors or the Regulatory Body (as applicable) in relation to any specific aspects of this Contract or payments made under it as required by the Client auditors or the Regulatory Body (as applicable) and on the basis that the Supplier's auditors either accept a duty of care to the Client or such Regulatory Body (as applicable) or are jointly instructed by the Supplier and the Client in relation to such report.

E6.3 Clause E6.2 shall not require the Supplier to provide access to the Supplier purchase costs (other than in relation to Direct Items where the invoice cost shall be disclosable) or rebate information.

## **F. CONTROL OF THIS CONTRACT**

### **F1 Transfer and Subcontracting**

F1.1 The Supplier shall not assign, subcontract or in any other way dispose of this Contract or any part of it without prior Approval. Breach of this Clause F.1.1 shall be a Default by the Supplier. the Client Approves the subcontracting of the manufacture and supply of individual Items under this Contract to manufacturers, wholesalers and trade suppliers.

F1.2 Subcontracting any part of this Contract shall not relieve the Supplier of any of its obligations or duties under this Contract and the Supplier shall be responsible for the acts and omissions of any Sub-supplier as though they are its own.

## **F2 Waiver**

F2.1 The failure of either Party to insist upon strict performance of any provision of this Contract, or the failure of either Party to exercise, or any delay in exercising, any right or remedy shall not constitute a waiver of that right or remedy and shall not cause a diminution of the obligations established by this Contract.

F2.2 No waiver shall be effective unless it is expressly stated to be a waiver and communicated to the other Party in writing in accordance with Clause A4 *[Notices]*.

F2.3 A waiver of any right or remedy arising from a breach of this Contract shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of this Contract.

## **F3 Severability**

If any provision of this Contract is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions of this Contract shall continue in full force and effect as if this Contract had been executed with the invalid, illegal or unenforceable provision eliminated.

## **F4 Remedies cumulative**

Except as otherwise expressly provided by this Contract, all remedies available to either Party for breach of this Contract are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

## **F5 Entire agreement**

F5.1 This Contract constitutes the entire agreement between the Parties in respect of the matters dealt with therein. This Contract supersedes all prior negotiations between the Parties and all representations and undertakings made by one Party to the other, whether written or oral, except that this Clause shall not exclude liability in respect of any Fraud or fraudulent misrepresentation.

F5.2 In the event of, and only to the extent of, any conflict between the Clauses of this Contract, any document referred to in those Clauses and the Schedules,

the conflict shall be resolved in accordance with the following descending order of precedence:

- the Clauses of this Contract;
- the Schedules; and
- any other document referred to in the Clauses of this Contract.

## **G. LIABILITY**

### **G1 Liability and Insurance**

G1.1 Neither Party excludes or limits liability to the other Party for:

- death or personal injury caused by its negligence;
- fraud or fraudulent misrepresentation; or
- any breach of any obligations implied by Section 12 of the Sale of Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982.

G1.2 Subject to Clauses G1.3 and G1.4, the Supplier shall pay to the Client a sum equal to the amount of any Liability which the Client may suffer arising from or from the consequences of:

- any breach of this Contract by the Supplier or its Sub-suppliers except to the extent that such liability arises as a result of any negligence, breach of this Contract or action (other than to enforce or exercise its rights or remedies) under this Contract by the Client or its Staff, agents or subcontractors;
- any Defect in any Item supplied which is not rectified in accordance with, and within any timescales set out in this Contract;
- the actions or omissions of the Supplier or any of its or its Sub-supplier's Staff or agents whilst on a Property or on any Operative's property; and
- the presence of any of the Client's employees, agents, contractors, service providers or any of their employees or agents, at the Dedicated Stores or any Branch (and the Supplier's liability as occupier of the Dedicated Stores or that Branch) except to the extent that such liability arises as a result of any negligence or breach of this Contract by the Client or such Staff.

G1.3 The Supplier shall not be responsible for any injury, loss, damage, cost or expense if and to the extent that it is caused by the negligence or wilful misconduct of the Client or by breach by the Client of its obligations under this Contract. The remedies in Schedule 1 [*Specification (with Appendices)*] shall be the sole financial remedy of the Client in relation to the Supplier's failure to supply any Items on time or as required by that Schedule but this is without prejudice to the right of the Client to terminate this Contract and recover the compensation payable on termination as provided for in it due to the cumulative effect of such failures.

G1.4 The maximum Liability of the Supplier under this Contract (including where there is a requirement to Indemnify) in any Contract Year (other than in respect of death or personal injury) shall not exceed the Liability Cap for that Contract Year but such amount shall not include:

- any sums that are recovered under any of the Insurances;
- any sums that would have been recovered under the Insurances but were not recovered due to a breach of the Supplier's obligation to take out and

maintain those Insurances or to make and diligently pursue an insurance claim under Clause G1.8]<sup>1</sup>.

- G1.5 The Supplier shall effect and maintain with a reputable insurance company a policy or policies of insurance providing the minimum levels of cover specified in Clause G1.6 in respect of all risks which may be incurred by the Supplier under each of the categories of insurance specified in Clause G1.6, arising out of the Supplier's performance of its obligations under this Contract, including death or personal injury, loss of or damage to property or any other loss. Such insurance shall be maintained for the duration of this Contract Period.
- G1.6 The minimum levels of insurance the Supplier must maintain (in respect of the following areas of cover) are:
- employer's liability - £5 million (five million pounds) in the aggregate over each period of 12 (twelve) months; and
  - public liability - £10 million (ten million pounds) and in the aggregate over each period of 12 (twelve) months;
  - product liability - £5 million (five million pounds) in the aggregate over each period of 12 months.
- G1.7 The Supplier shall give the Client, on request, either (at the Supplier's option) copies of all insurance policies referred to in this Clause or a broker's verification of insurance including confirmation that premiums have been paid up to date to demonstrate that the appropriate cover is in place.
- G1.8 If, for whatever reason, the Supplier fails to maintain the insurances required under Clause G1.6 or to provide evidence of them under Clause G1.7, the Client may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Supplier. [The Supplier shall make and use all reasonable endeavours diligently to pursue all claims under those Insurances in relation to which the Client has suffered any Liability]<sup>2</sup>.
- G1.9 The provision of any insurance shall not relieve the Supplier of any Liabilities under this Contract.
- G1.10 Neither Party shall be liable to the other for pure economic loss (other than as expressly provided in it), loss of business, depletion of goodwill or loss of anticipated savings in each case whether direct, indirect or consequential.

## **H. DEFAULT, DISRUPTION AND TERMINATION**

### **H1 Termination on insolvency**

- H1.1 Either Party may terminate this Contract with immediate effect by notice in writing to the other Party if, in relation to that other Party:
- a proposal is made in relation to that Party for a voluntary arrangement within Part I of the Insolvency Act 1986 or of any other composition scheme or arrangement with, or assignment for the benefit of, its creditors;

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<sup>1</sup> This wording is provided in alternative form for the successful Supplier to choose either alternative The second alternative also requires the Supplier to include the additional wording in Clause G1.8

<sup>2</sup> Wording to be included only if the Supplier adopts the second alternative wording in Clause G1.4.

- a shareholders' meeting is convened for the purpose of considering a resolution that that Party be wound up or a resolution for its winding-up is passed (other than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation);
- a petition is presented for the Party's winding up (which is not dismissed within 14 days of its service) or an application is made for the appointment of a provisional liquidator or a creditors' meeting is convened pursuant to section 98 of the Insolvency Act 1986;
- a receiver, administrative receiver or similar officer is appointed over the whole or any part of that Party's business or assets;
- an application order is made either for the appointment of an administrator in relation to that Party or for an administration order, an administrator is appointed, or notice of intention to appoint an administrator is given;
- that Party is or becomes insolvent within the meaning of section 123 of the Insolvency Act 1986;
- that Party fails to honour any guarantee or indemnity it has given of any loans or debts of a third Party which has become due and called upon and steps have been taken to enforce it; or
- that Party is the subject of any equivalent or similar insolvency related procedure or event in England & Wales or in any other legal jurisdiction.

## **H2 Termination for Default**

H2.1 The Client may terminate this Contract by written notice to the Supplier, either with immediate effect or with effect from such future date as is specified in the notice if the Supplier:

- commits a Default that is capable of being remedied and does not remedy that Default to the reasonable satisfaction of the Client within 10 (ten) Working Days (or such longer period as may be specified by the Client) of the date of a written notice served on the Supplier:
  - o specifying the Default;
  - o requiring it to be remedied; and
  - o warning that this Contract may be terminated for Default by the Supplier if it is not remedied within that period;
- commits a Default that is not capable of remedy;
- fails to improve performance of this Contract as measured by the KPIs above MLAP for any KPI following the process set out in Clause B5.10 [KPIs]; or
- (except during the Initial KPI Period) having had 2 (two) draft Rectification Plans rejected by the Client under Clause B5.6 [KPIs] provides a further draft Rectification Plan that is also rejected under that Clause.

H2.2 The Supplier may terminate this Contract by written notice to the Client, either with immediate effect or with effect from such future date as is specified in the notice, if:

- subject to Clause H2.3, the Client fails to pay the Supplier any undisputed amount due to the Supplier within 10 (ten) Working Days (or such longer period as may be specified by the Supplier) of the date of a written notice served on the Client:
  - o stating the amount outstanding;
  - o explaining what it relates to; and
  - o warning that this Contract may be terminated for Default by the Client if such amount is not paid within that period; or

- The Client commits a Default which substantially prevents the Supplier from complying with the Supplier's obligations under this Contract which either is not capable of being remedied or in the case of a Default that is capable of being remedied does not remedy such Default to the reasonable satisfaction of the Supplier within 10 (ten) Working Days (or such longer period as may be specified by the Supplier) of the date of written notice served on the Client:
  - o specifying the Default;
  - o requiring it to be remedied; and
  - o warning that this Contract may be terminated for Default by the Client if it is not remedied within that period.

H.2.3 The Supplier's right of termination under Clause H2.2 shall not apply where the failure to pay is due to the Client exercising its rights under Clause C4.1 *Recovery of Sums Due*].

### **H3 Break**

H3.1 The Client may terminate this Contract by giving 3 (three) Months' prior written notice to the Supplier to do so at any time.

H3.2 The Supplier may terminate this Contract Date by giving 6 (six) Months' prior written notice to the Client to do so at any time.

### **H.4 Consequences of Expiry or Termination**

H4.1 Where the Client terminates this Contract under Clause H1 [*Termination on insolvency*], Clause H2 [*Termination for Default*] or Clause D1.3 [*Prevention of Fraud*] the Client may (subject to Clause H4.2) recover from the Supplier:

- any costs properly incurred by the Client as a result of making other arrangements for the supply of the Items (including retendering costs); and
- any additional expenditure incurred by the Client in connection with the supply, hire and delivery of materials and equipment equivalent to the Items for the period of 6 (six) months from the Termination Date.

H4.2 Save as otherwise expressly provided in this Contract:

- termination or expiry of this Contract shall be without prejudice to any rights, remedies or obligations accrued under this Contract prior to termination or expiration and nothing in this Contract shall prejudice the right of either Party to recover any amount outstanding at such termination or expiry; and
- termination of this Contract shall not affect any rights, remedies or obligations of the Client or the Supplier that are intended to continue beyond termination.

### **H5 Disruption**

H5.1 The Supplier shall take reasonable care to ensure that in the performance of its obligations under this Contract it does not disrupt the operations of the Client, its employees or any contractor, service provider or other supplier employed by the Client.

H5.2 The Supplier shall immediately inform the Client of any actual or potential industrial action, whether such action be by their own employees or others,

which affects or might affect its ability at any time to perform its obligations under this Contract.

H5.3 In the event of industrial action by the Staff, the Supplier shall seek Approval to its proposals to continue to perform its obligations under this Contract.

H5.4 If the Supplier's proposals referred to in Clause H5.3 are considered insufficient or unacceptable by the Client acting reasonably, then the Client may serve notice under Clause H2.1 [*Termination for Default*] giving notice of the Client's intention to terminate for Default by the Supplier if the Default is not remedied within the period specified in the notice.

## **I. GOVERNING LAW AND JURISDICTION**

I1.1 the Client and the Supplier accept the exclusive jurisdiction of the English courts in relation to this Contract.

I1.2 This Contract and all non-contractual obligations and other matters arising from or connected with it are to be governed and construed according to English Law.

## **J. DISPUTES AND LAW**

### **J1 Informal Dispute Resolution**

J1.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with this Contract within 20 (twenty) Working Days of either Party notifying the other of the dispute. Such efforts shall involve the escalation of the dispute to the Deputy Chief Executive/Managing Director (or equivalent) of each Party.

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**SCHEDULE 1: SPECIFICATION**

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**SCHEDULE 1  
SPECIFICATION**

**[Note: See separate document]**

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**SCHEDULE 2: PRICING SCHEDULE**

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**SCHEDULE 2  
PRICING SCHEDULE**

**[Note: See separate document]**

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**SCHEDULE 3: KPI HANDBOOK**

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**SCHEDULE 3  
KPI Handbook**

***[Note: See separate document]***

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**SCHEDULE 4: SUPPLIER'S METHOD STATEMENT**

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**SCHEDULE 4  
SUPPLIER'S METHOD STATEMENT**

***[Note: To be inserted from Supplier's Final Tender]***

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**SCHEDULE 5: ORDER FORM**

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**GREAT PLACES HOUSING GROUP  
LIMITED**

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**Order Form**

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**Material Supply DPS**

**PART A: CONTRACT DETAILS (the "Contract Details")<sup>3</sup>**

**DATE:** [TBC]

<b>Contract Ref.</b>	[TBC]
<b>Lot:</b>	[TBC]
<b>Sub-Category:</b>	[TBC, IF APPLICABLE]
<b>Area:</b>	[TBC]
<b>The Client Contact:</b>	Name: [NAME] Title: [TITLE] Email: [EMAIL] Fax: [FAX] Telephone: [NUMBER] Postal Address: [POSTAL ADDRESS]
<b>The Client Contact address:</b>	[TBC]
<b>Supplier:</b>	[TBC]
<b>Supplier 's address:</b>	[TBC - REGISTERED OFFICE ADDRESS]
<b>Supplier 's VAT number:</b>	[TBC, IF APPLICABLE]
<b>Supplier 's Representative:</b>	Name: [NAME] Title: [TITLE] Email: [EMAIL] Fax: [FAX] Telephone: [NUMBER] Postal Address: [POSTAL ADDRESS]
<b>Services:</b>	[TBC - SUMMARY DESCRIPTION OF SERVICES BEING PURCHASED WILL BE INSERTED], as further detailed in the Services Specification.
<b>Contract Start Date:</b>	[TBC]

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1.1.1 <sup>3</sup> Suppliers are to note that these Contract Details will be populated by the Client upon Contract Award to the successful Tenderer

<b>Initial Contract Term:</b>	[TBC]
<b>Service Delivery Location:</b>	[TBC], as described in the Services Specification
<b>[Goods Delivery Location:]</b>	[TBC], as described in the Goods Specification
<b>[Goods:]</b>	[TBC - BRIEF DESCRIPTION OF GOODS BEING PURCHASED WILL BE INSERTED], as further detailed in the Goods Specification.
<b>[Required Approvals:] (if applicable)</b>	[TBC - BRIEF DESCRIPTION OF SPECIFIC APPROVALS NEEDED WILL BE INCLUDED, AS APPLICABLE], as further described in the Services Specification.
<b>[Deliverables:] (if applicable)</b>	[TBC – BRIEF DESCRIPTION OF SPECIFIC DELIVERABLES WILL BE INCLUDED, AS APPLICABLE], as further described in Services Specification.
<b>Charges:</b>	as further detailed in <b>Error! Reference source not found.</b> 3 (Charges).

1. This Contract is made up of the following:

- (a) Part A: the Contract Details;
- (b) Part B: the Conditions and the Schedules

and signature of the Contract Details by the parties constitutes a binding contract between them.

2. In the event of, and only to the extent of, any conflict or inconsistency between the documents listed in paragraph 1, such conflict or inconsistency shall be resolved according to the following order of priority:

- (a) the Conditions and the Schedules, excluding Schedule 2 (*Supplier's Method Statement*);
- (b) the Contract Details; and
- (c) Schedule 2 (*Supplier's Method Statement*)

This Contract has been entered into on the date stated at the beginning of it.

Signed by [NAME]

.....

for and on behalf of GREAT PLACES HOUSING GROUP [Authorised signatory]  
LIMITED

Signed by [NAME OF DIRECTOR]

.....

for and on behalf of [NAME OF SUPPLIER]

[Authorised Signatory (Director)]

**EXECUTED and DELIVERED** )  
as a **DEED** by **GREAT PLACES HOUSING** )  
**GROUP LIMITED** )

Board Member

Board Member/Secretary

**EXECUTED and DELIVERED** )  
as a **DEED** by [ ] )

Director

Director/Secretary