

Appendix D

EMH terms and condition of contract for maintenance services

1. Interpretation

1.1 In these terms and conditions:

Agreement	means the contract between (i) EMH and (ii) the Supplier constituted by the Supplier's acceptance of the Form of Contract, Purchase Order or Works Order
Bribery Act	means the Bribery Act 2010 and any subordinate legislation made under that Act from time to time together with any guidance or codes of practice issued by the relevant government department concerning the legislation;
Charges	means the charges for the Services as specified in the Form of Contract;
Confidential Information	means all information, whether written or oral (however recorded), provided by the disclosing Party to the receiving Party and which (i) is known by the receiving Party to be confidential; (ii) is marked as or stated to be confidential; or (iii) ought reasonably to be considered by the receiving Party to be confidential;
Data Protection Legislation	means the General Data Protection Regulation ((EU) 2016/679), the Data Protection Act 2018, the Privacy and Electronic Communications (EC Directive) Regulations 2003, and all applicable laws and regulations relating to the processing of personal data and privacy, including any amending or replacement legislation in force from time to time and including where applicable the guidance and codes of practice issued by the Information Commissioner;
EIRs	means the Environmental Information Regulations 2004;
EMH	means the company(s) identified in the Form of Contract, Purchase Order or Works Order
Expiry Date	means the date for expiry of the Agreement as set out in the Form of Contract;
Form of Contract	means the Form of Contract, Purchase Order or Works Order provided to the Supplier relating to the Services indicating that these terms and conditions apply;
Key Personnel	means any persons specified as such in the Form of Contract or otherwise notified as such by EMH to the Supplier in writing;
Mandatory Policies	means any EMH's mandatory policies for suppliers where specified in the invitation to tender and notified by EMH to the Supplier from time to time prior to entering into the Agreement and as may be subsequently reasonably amended by notification to the Supplier;
MSA	means the Modern Slavery Act 2015;
PA	means the Procurement Act 2023;
Purchase Order Number	means EMH's unique number relating to the supply of the Services
Regulations	means the standards, codes of practice and any guidance or policies issued by the Regulator which may apply to EMH from time to time and (where EMH is a registered provider of social housing) any other

	regulations and guidance that apply from time to time to registered providers of social housing;
Regulator	means the Regulator of Social Housing or any replacement regulator from time to time;
Request for Information	has the meaning set out in the EIRs as relevant (where the meaning set out for the term “ request ” shall apply);
Services	means any services to be supplied by the Supplier to EMH under the Agreement;
Specification	means the specification for the Services (including as to quantity, description and quality) as specified in the Form of Contract;
Staff	means all directors, officers, partners, employees, agents, consultants and contractors of the Supplier and/or of any sub-contractor of the Supplier engaged in the performance of the Supplier’s obligations under the Agreement
Staff Vetting Procedure	means any vetting procedures that accord with good industry practice or, only where specified by EMH, EMH’s procedures for the vetting of personnel as provided to the Supplier from time to time;
Supplier	means the company named as the Supplier in the Form of Contract
Term	means the period from the start date of the Agreement set out in the Form of Contract to the Expiry Date as such period may be extended in accordance with the Form of Contract or terminated in accordance with the terms and conditions of the Agreement;
VAT	means value added tax in accordance with the provisions of the Value Added Tax Act 1994; and
Working Day	means, a day (other than a Saturday or Sunday) on which banks are open for business in the City of London.

1.2 In these terms and conditions unless the context otherwise requires:

- 1.2.1 references to numbered clauses are references to the relevant clause in these terms and conditions;
- 1.2.2 any obligation on any Party not to do or omit to do anything shall include an obligation not to allow that thing to be done or omitted to be done;
- 1.2.3 the headings to the clauses of these terms and conditions are for information only and do not affect the interpretation of the Agreement;
- 1.2.4 any reference to an enactment includes reference to that enactment as amended or replaced from time to time and to any subordinate legislation or byelaw made under that enactment; and
- 1.2.5 the word “**including**” shall be understood as meaning “**including without limitation**”.

2. Basis of agreement

2.1 The Form of Contract constitutes an offer by EMH to purchase the Services subject to and in accordance with the terms and conditions of the Agreement.

- 2.2 The offer comprised in the Form of Contract shall be deemed to be accepted by the Supplier on receipt by EMH of a copy of the Form of Contract countersigned by the Supplier.

3. Supply of Services

- 3.1 In consideration of EMH's agreement to pay the Charges, the Supplier shall supply the Services to EMH for the Term subject to and in accordance with the terms and conditions of the Agreement.
- 3.2 In supplying the Services, the Supplier shall:
- 3.2.1 co-operate with EMH in all matters relating to the Services and comply with all EMH's instructions;
 - 3.2.2 perform the Services with all reasonable care, skill and diligence in accordance with good industry practice in the Supplier's industry, profession or trade;
 - 3.2.3 use Staff who are suitably skilled and experienced to perform the tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled in accordance with the Agreement;
 - 3.2.4 ensure that the Services shall conform with all descriptions, specifications, and key performance indicators as set out in the Specification and elsewhere in the Form of Contract;
 - 3.2.5 comply with the Mandatory Policies and all applicable laws including the Data Protection Legislation, the Regulations, the MSA, the PA and the Bribery Act; and
 - 3.2.6 provide all equipment, tools and vehicles and other items as are required to provide the Services.
- 3.3 EMH may by written notice to the Supplier at any time request a variation to the scope of the Services. In the event that the Supplier agrees to any variation to the scope of the Services, the Charges shall be subject to fair and reasonable adjustment to be agreed in writing between EMH and the Supplier.

4. Term

- 4.1 The Agreement shall take effect on the date specified in the Form of Contract and shall expire on the Expiry Date, unless it is otherwise extended in accordance with the dates specified in the Form of Contract.

5. Charges, Payment and Recovery of Sums Due

- 5.1 The Charges for the Services shall be as set out in the Form of Contract and shall be the full and exclusive remuneration of the Supplier in respect of the supply of the Services. Unless otherwise agreed in writing by EMH, the Charges shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the performance of the Services.
- 5.2 All amounts stated are exclusive of VAT which shall be charged at the prevailing rate. EMH shall, following the receipt of a valid VAT invoice, pay to the Supplier a sum equal to the VAT chargeable in respect of the Services.

- 5.3 The Supplier shall invoice EMH as specified in the Agreement. Each invoice shall include such supporting information required by EMH to verify the accuracy of the invoice, including the relevant Purchase Order Number and the breakdown of the Services supplied in the invoice period.
- 5.4 In consideration of the supply of Services by the Supplier, RMH shall pay the Supplier the invoiced amounts no later than 30 days after verifying that the invoice is valid and undisputed and includes a valid Purchase Order Number. EMH may, without prejudice to any other rights and remedies under the Agreement, withhold or reduce payment in the event of unsatisfactory performance.
- 5.5 If EMH fails to consider and verify an invoice in a timely fashion the invoice shall be regarded as valid and undisputed for the purpose of paragraph 5.4 after a reasonable time has passed.
- 5.6 If there is a dispute between the Parties as to the amount invoiced, EMH shall pay the undisputed amount. The Supplier shall not suspend the supply of the Services unless the Supplier is entitled to terminate the Agreement for a failure to pay undisputed sums in accordance with clause 16.4. Any disputed amounts shall be resolved through the dispute resolution procedure detailed in clause 19.
- 5.7 If a payment of an undisputed amount is not made by EMH by the due date, EMH shall pay the Supplier interest at the interest rate specified in the Late Payment of Commercial Debts (Interest) Act 1998.
- 5.8 Where the Supplier enters into a sub-contract, the Supplier shall include in that sub-contract:
- 5.8.1 provisions having the same effects as clauses 5.3 to 5.7 of this Agreement and
 - 5.8.2 a provision requiring the counterparty to that sub-contract to include in any sub-contract which it awards provisions having the same effect as 5.3 to 5.8 of this Agreement.
 - 5.8.3 In this clause 5.8, "sub-contract" means a contract between two or more suppliers, at any stage of remoteness from EMH in a subcontracting chain, made wholly or substantially for the purpose of performing (or continuing to the performance of) the whole or any part of this Agreement.
- 5.9 If any sum of money is recoverable from or payable by the Supplier under the Agreement (including any sum which the Supplier is liable to pay to EMH in respect of any breach of the Agreement), that sum may be deducted unilaterally by EMH from any sum then due, or which may come due, to the Supplier under the Agreement or under any agreement or contract with EMH. The Supplier shall not be entitled to assert any credit, set-off or counterclaim against EMH in order to justify withholding payment of any such amount in whole or in part.

6. Premises and equipment

- 6.1 If necessary, EMH shall provide the Supplier with reasonable access at reasonable times to its premises for the purpose of supplying the Services. All equipment, tools and vehicles brought onto EMH's premises by the Supplier or the Staff shall be at the Supplier's risk.
- 6.2 If the Supplier supplies all or any of the Services at or from EMH's premises, on completion of the Services or termination or expiry of the Agreement (whichever is earlier) the Supplier

shall vacate EMH's premises, remove the Supplier's plant, equipment and unused materials and all rubbish arising out of the provision of the Services and leave EMH's premises in a clean, safe and tidy condition. The Supplier shall be solely responsible for making good any damage to EMH's premises or any objects contained on EMH's premises which is caused by the Supplier or any Staff, other than fair wear and tear.

- 6.3 If the Supplier supplies all or any of the Services at or from its premises or the premises of a third party, EMH may, during normal business hours and on reasonable notice, inspect and examine the manner in which the relevant Services are supplied at or from the relevant premises.
- 6.4 EMH shall be responsible for maintain the security of its premises in accordance with its standard security requirements. While on EMH's premises the Supplier shall, and shall procure that all Staff shall, comply with all EMH's security requirements.
- 6.5 Where all or any of the Services are supplied from the Supplier's premises, the Supplier shall, at its own cost, comply with the security requirements specified by EMH in writing.
- 6.6 Without prejudice to clause 3.2.6, any equipment provided by EMH for the purposes of the Agreement shall remain the property of EMH and shall be used the Supplier and the Staff only for the purpose of carrying out the Agreement. Such equipment shall be returned promptly to EMH on expiry or termination of the Agreement.
- 6.7 The Supplier shall reimburse EMH for any loss or damage to the equipment (other than deterioration resulting from normal and proper use) caused by the Supplier or any Staff. Equipment supplied by EMH shall be deemed to be in good condition when received by the Supplier or relevant Staff unless EMH is notified otherwise in writing within 5 Working days of receipt.

7. Staff and Key Personnel

- 7.1 If EMH reasonably believes that any of the Staff are unsuitable to undertake work in respect of the Agreement, it may, by giving written notice to the Supplier:
 - 7.1.1 refuse admission to the relevant person(s) to EMH's premises:
 - 7.1.2 direct the Supplier to end the involvement in the provision of the Services of the relevant person(s); and/or
 - 7.1.3 require that the Supplier replace any person removed under this clause with another suitably qualified person and procure that any security pass issued by EMH to the person removed is surrendered,And the Supplier shall comply with any such notice.
- 7.2 The Supplier shall:
 - 7.2.1 ensure that all Staff are vetted in accordance with any requirement of the specification and / or any applicable Mandatory Policies and if requested, comply with any Mandatory Policies as supplied from time to time;
 - 7.2.2 if and when requested, provide EMH with evidence of DBS checks where specifically required for working in the premises
 - 7.2.3 ensure that all Staff comply with any rules, regulations and requirements reasonably specified by EMH (including the Data Protection Legislation, the Regulations, the MSA, the Bribery Act and the PA).

8. Assignment and sub-contracting

- 8.1 The Supplier shall not without the written consent of EMH assign, sub-contract, novate or in any way dispose of the benefit and/or burden of the Agreement or any part of the Agreement. EMH may, in the granting of such consent, provide for additional terms and conditions relating to such assignment, sub-contract, novation or disposal. The Supplier shall be responsible for the acts and omissions of its sub-contractors as though those acts and omissions were its own.
- 8.2 Where EMH has consented to the placing of sub-contracts, the Supplier shall, at the request of EMH, send copies of each sub-contract, to EMH as soon as reasonably practicable.
- 8.3 EMH may assign, novate, or otherwise dispose of its rights and obligations under the Agreement to any member of its group (as defined in the Companies Act 2006) without the consent of the Supplier or, provided that such assignment, novation or disposal shall not increase the burden of the Supplier's obligations under the Agreement, to any other entity.

9. Intellectual Property Rights

N/A

10. Governance and Records

- 10.1 The Supplier shall:
 - 10.1.1 attend progress meetings with EMH at the frequency and times specified by EMH and shall ensure that its representatives are suitably qualified to attend such meetings; and
 - 10.1.2 submit progress reports to EMH at the times and in the format specified by EMH.
- 10.2 The Supplier shall keep and maintain until 6 years after the end of the Agreement, or as long a period as may be agreed between the Parties, full and accurate records of the Agreement including the Services supplied under its and all payments made by EMH. The Supplier shall on request afford EMH or EMH's representatives such access to those records as may be reasonably requested by EMH in connection with the Agreement.

11. Confidentiality, Transparency and Publicity

- 11.1 Subject to clause 11.2, each Party shall:
 - 11.1.1 treat all Confidential Information it receives as confidential, safeguard it accordingly and not disclose it to any other person without the prior written permission of the disclosing Party; and
 - 11.1.2 not use or exploit the disclosing Party's Confidential Information in any way except for the purposes anticipated under the Agreement.
- 11.2 Notwithstanding clause 11.1, a Party may disclose Confidential Information which it receives from the other Party:
 - 11.2.1 where disclosure is required by applicable law or by a court of competent jurisdiction;

- 11.2.2 to its auditors or for the purposes of regulatory requirements;
- 11.2.3 on a confidential basis, to its professional advisors;
- 11.2.4 to the Serious Fraud Office where the Party has reasonable grounds to believe that the other Party is involved in activity that may constitute a criminal offence under the Bribery Act;
- 11.2.5 where the receiving Party is the Supplier, to the Staff on a need to know basis to enable performance of the Supplier's obligations under the Agreement provided that the Supplier shall procure that any Staff to whom it discloses Confidential Information pursuant to this clause 11.2.5 shall observe the Supplier's confidentiality obligations under the Agreement; and
- 11.2.6 where the receiving Party is EMH:
 - (a) on a confidential basis to the employees, agents, consultants and contractors of EMH;
 - (b) on a confidential basis to any other member of its group (as defined in the Companies Act 2006), or any company to which EMH transfers or proposes to transfer all or any part of its business;
 - (c) to the extent that EMH (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions; or
 - (d) in accordance with clause 12

and for the purpose of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on EMH under this clause 11.

- 11.3 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the EIR's, the content of the Agreement is not Confidential Information and the Supplier hereby gives its consent for EMH to publish this Agreement in its entirety to the general public (but with any information that is exempt from disclosure in accordance with the EIR's redacted) including any changes to the Agreement agreed from time to time. EMH may consult with the Supplier to inform its decision regarding any redactions but shall have the final decision in its absolute discretion whether any of the content of the Agreement is exempt from disclosure in accordance with the provisions of the EIR's.
- 11.4 The Supplier shall not, and shall take reasonable steps to ensure that the Staff shall not, make any press announcements or publicise the Agreement or any part of the Agreement in any way, except with the prior written consent of EMH.

12. Environmental Information Regulations

- 12.1 The Supplier acknowledges that EMH is subject to the requirements of the EIRs and shall:
 - 12.1.1 provide all necessary assistance and cooperation as reasonably requested by EMH to enable EMH to comply with its obligations under the EIRs;
 - 12.1.2 transfer to EMH all Requests for Information relating to the Agreement that it receives as soon as practicable and in any event within 2 Working Days of receipt;

- 12.1.3 provide EMH with a copy of all information belonging to EMH requested in the Request for Information which is in its possession or control in the form that EMH requires within 5 Working Days (or such other period as EMH may reasonably specify) of EMH's request for such information; and
 - 12.1.4 not respond directly to a Request for Information unless authorised in writing to do so by EMH.
- 12.2 The Supplier acknowledges that EMH may be required under the EIRs to disclose information concerning the Supplier or the Services (including commercially sensitive information) without consulting or obtaining consent from the Supplier. In these circumstances EMH shall, in accordance with any relevant guidance issued under EIRs, take reasonable steps, where appropriate, to give the Supplier advance notice, or failing that, to draw the disclosure to the Supplier's attention after such disclosure.
- 12.3 Notwithstanding any other provision in the agreement, EMH shall be responsible for determining in its absolute discretion whether any information relating to the Supplier or the Services is exempt from disclosure in accordance with the EIRs.

13. Protection of Personal Data and Security of Data

- 13.1 Terms defined in the Data Protection Legislation shall have the same meanings in this clause 13
- 13.2 The Parties shall comply with their respective obligations under the Data Protection Legislation when processing and personal data in connection with the Agreement (**Shared Data**) including (without limitation) the provision of suitable privacy notices to affected data subjects.
- 13.3 Where the Supplier processes Shared Data as a data processor:
 - 13.3.1 it shall do so only to the minimum extent necessary to comply with its legal obligations and for the purposes of performing the Services and its other obligations under the Agreement (**Agreed Purpose**);
 - 13.3.2 it shall not process the Shared Data for any purpose other than the Agreed Purpose without the prior written instructions or agreement of EMH;
 - 13.3.3 save where otherwise required by virtue of legal obligation to retain the Shared Data for a longer period, it shall cease processing the Shared Data once the Agreed Purpose has been achieved;
 - 13.3.4 it shall forward any complaints, requests or similar communications from data subjects regarding the Shared Data to EMH within 2 Working Days of receipt; and
 - 13.3.5 it shall not transfer the Shared Data to any third party without the prior written permission of EMH. Any permission granted under this clause 13.3.5 shall be subject to the Supplier entering into a written agreement with the third party with data protection requirements that are not less onerous than this clause 13.
- 13.4 In respect of the Shared Data, the parties shall co-operate with each other in meeting their respective obligations under the Data Protection Legislation including (without limitation) compliance with data subject requests.

- 13.5 The Supplier shall adhere to the data protection policy and procedures of EMH as notified to it from time to time or with its own data protection policy and procedures provided that these have been approved by EMH.
- 13.6 The Supplier shall maintain appropriate technical and organisational data security measures including (without limitation) ensuring that all Staff carry out data protection training.
- 13.7 The Supplier shall indemnify, and keep indemnified, EMH in full against all cost, expenses, damages and losses (whether direct or indirect), including any interest, penalties, and reasonable legal and other professional fees awarded against or incurred or paid by EMH as a result of or in connection with any breach of clause 13.

14. Liability

- 14.1 The Supplier shall not be responsible for any injury, loss, damage or cost or expense suffered by EMH if and to the extent that it is caused by the negligence or wilful misconduct of EMH or by breach of EMH of its obligations under the Agreement.
- 14.2 Subject always to clauses 14.3 and 14.4:
- 14.2.1 the aggregate liability of the Supplier, in respect of all defaults, claims, losses or damages howsoever caused, whether arising from breach of Agreement, the supply or failure to supply of the Services, misrepresentation (whether tortious or statutory), tort (including negligence), breach of statutory duty or otherwise shall in no event, exceed a sum equal to 125% of the Charges paid or payable to the Supplier; and
- 14.2.2 except in the case of claims arising under clauses 7.2, 9.4, 13.7, 17.5 and 18.3, in no event shall the Supplier be liable to EMH for any:
- (a) loss of profits;
 - (b) loss of business;
 - (c) loss of revenue;
 - (d) loss or damage to goodwill;
 - (e) loss of savings (whether anticipated or otherwise); and/or
 - (f) any indirect, special or consequential loss or damage.
- 14.3 Nothing in the Agreement shall be construed to limit or exclude either Party's liability for:
- 14.3.1 death or personal injury caused by its negligence or that of its Staff;
- 14.3.2 fraud or fraudulent misrepresentation by it or that of its Staff; or
- 14.3.3 any other matter which, by law, may not be excluded or limited.

15. Force Majeure

Neither Party shall have any liability under or deemed to be in breach of the Agreement for any delays or failures in performance of the Agreement which result from circumstances beyond the reasonable control of the Party affected. Each Party shall promptly notify the other Party in writing when such circumstances cause a delay or failure in performance and when they cease to do so. If such circumstances continue for a continuous period of more than two months, either Party may terminate the Agreement by written notice to the other Party.

16. Termination

- 16.1 EMH may terminate the Agreement at any time by notice in writing to the Supplier to take effect on any date falling at least six months later than the date of service of the relevant notice.
- 16.2 Without prejudice to any other right or remedy it might have, EMH may terminate the Agreement by written notice to the Supplier with immediate effect if the Supplier:
 - 16.2.1 (without prejudice to clause 16.2.5), is in material breach of any obligation under the Agreement which is not capable of remedy;
 - 16.2.2 repeatedly breaches any of the terms and conditions of the Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms and conditions of the Agreement;
 - 16.2.3 is in material breach of any obligation which is capable of remedy, and that breach is not remedied within 30 days of the Supplier receiving notice specifying the breach and requiring it to be remedied;
 - 16.2.4 undergoes a change of control within the meaning of section 416 of the Income and Corporation Taxes Act 1988;
 - 16.2.5 breaches any of the provisions of clauses 7, 11, 12, 13 and 17;
 - 16.2.6 becomes insolvent, or if an order is made or a resolution is passed for the winding up of the Supplier (other than voluntarily for the purpose of solvent amalgamation or reconstruction), or if an administrator or administrative receiver is appointed in respect of the whole or any part of the Supplier's assets or business, or if the Supplier makes an composition with its creditors or takes or suffers any similar or analogous action (to any of the actions detailed in this clause 16.2.6) in consequence of debt in any jurisdiction; or
 - 16.2.7 fails to comply with legal obligations in the fields of environmental, social or labour law.
- 16.3 The Supplier shall notify EMH as soon as practicable of any change of control as referred to in clause 16.2.4 or any potential such change of control.
- 16.4 The Supplier may terminate the Agreement by written notice to EMH if EMH has not paid any undisputed amounts within 90 days of the falling due.
- 16.5 EMH may terminate the Agreement by written notice to the Supplier with immediate effect where it is in its reasonable opinion required to do so by the PA.
- 16.6 Termination or expiry of the Agreement shall be without prejudice to the rights of either Party accrued prior to termination or expiry and shall not affect the continuing rights of the Parties under this clause or any other provision of the Agreement that either expressly or by implication has effect after termination.
- 16.7 Upon termination or expiry of the Agreement the Supplier shall:
 - 16.7.1 give all reasonable assistance to EMH and any incoming supplier of the Services; and

16.7.2 return all requested documents, information and data to EMH as soon as reasonably practicable.

17. Compliance

17.1 The Supplier shall promptly notify EMH of any health and safety hazards which may arise in connection with the performance of its obligations under the Agreement. EMH shall promptly notify the Supplier of any health and safety hazards which may exist or arise at EMH's premises and which may affect the Supplier in the performance of its obligations under the Agreement.

17.2 The Supplier shall:

17.2.1 comply with all EMH's health and safety measures while on EMH's premises;

17.2.2 notify EMH immediately in the event of any incident occurring in the performance of its obligations under the Agreement on EMH's premises where that incident causes any personal injury or damage to property which could give rise to personal injury;

17.2.3 comply with the PA; and

17.2.4 comply with the MSA.

17.3 The Supplier shall:

17.3.1 perform its obligations under the Agreement in accordance with all applicable equality Law and all Mandatory Policies, including EMH's equality and diversity policy as provided to the Supplier from time to time:

17.3.2 take all reasonable steps to secure the observance of clause 17.3.1 by all Staff.

17.4 The Supplier shall supply the Services in accordance with EMH's environmental policy as provided to the Supplier from time to time.

17.5 The Supplier shall comply with, and ensure that its Staff shall comply with, the provisions of:

17.5.1 the Mandatory Policies; and

17.5.2 The Regulations.

The Supplier shall indemnify, and keep indemnified, EMH in full against all cost, expenses, damages and losses (whether direct or indirect), including and interest, penalties, and reasonable legal and other professional fees awarded against or incurred or paid by EMH as a result or in connection with any breach of this clause.

18. Prevention of Fraud and Corruption

18.1 The Supplier shall not offer, give or agree to give anything, to any person an inducement or reward for doing, refraining from doing, or having done or refrain from doing, any act in relation to obtaining or execution of the Agreement or for showing or refraining from showing favour or disfavour to any person in relation to the Agreement.

18.2 The Supplier shall take all reasonable steps, in accordance with good industry practice, to prevent fraud by the Staff and the Supplier (including its shareholders, members and directors) in connection with the Agreement and shall notify EMH immediately if it has reason to suspect that any fraud has occurred or is occurring or is likely to occur.

18.3 If the Supplier or the Staff engages in conduct prohibited by clause 18.1 or commits fraud in relation to the Agreement or any other contract with EMH), EMH may:

18.3.1 terminate the Agreement and recover from the Supplier the amount of any loss suffered by EMH resulting from the termination, including the cost reasonably incurred by EMH of making other arrangements for the supply of the Services/Goods and any additional expenditure incurred by EMH throughout the remainder of the Agreement; or

18.3.2 recover in full from the Supplier any other loss sustained by EMH in consequence of any breach of this clause.

19. Dispute Resolution

19.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Agreement and such efforts shall involve the escalation of the dispute to an appropriately senior representative of each Party.

19.2 If the dispute cannot be resolved by the Parties within one month of being escalated as referred to in clause 19.1, the dispute may by agreement between the Parties be referred to a neutral advisor or mediator (the “**Mediator**”) chosen by agreement between the Parties. All negotiations connected with the dispute shall be conducted in confidence and without prejudice to the rights of the Parties in any further proceedings.

19.3 If the Parties fail to appoint a Mediator within one month, or fail to enter into a written agreement resolving the dispute within one month of the Mediator being appointed, either Party may exercise any remedy it has under applicable law.

20. General

20.1 Each of the Parties represents and warrants to the other that it has full capacity and authority, and all necessary consents, licences and permissions to enter into and perform its obligations under the Agreement, and that the Agreement is executed by its duly authorised representative.

20.2 A person who is not a party to the Agreement shall have no right to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of the Parties.

20.3 The Agreement cannot be varied except in writing signed by a duly authorised representative of both the Parties.

20.4 The Agreement contains the whole agreement between the Parties and supersedes and replaces any prior written or oral agreements, representations or understandings between them. The Parties confirm that they have not entered into the Agreement on the basis of any representation that is not expressly incorporated into the Agreement. Nothing in this clause shall exclude liability for fraud or fraudulent misrepresentation.

20.5 Any waiver or relaxation either partly, or wholly of any of the terms and conditions of the Agreement shall be valid only if it is communicated to the other Party in writing and expressly stated to be a waiver. A waiver of any right or remedy arising from a breach of contract shall not constitute a waiver of any right or remedy arising from any other breach of the Agreement.

- 20.6 The Agreement shall not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the Parties other than the contractual relationship expressly provided for in the Agreement. Neither Party shall have, nor represent that it has, any authority to make any commitments on the other Party's behalf.
- 20.7 Except as otherwise expressly provided by the Agreement, all remedies available to either Party for breach of the Agreement (whether under the Agreement, statute or common law) are cumulative and may be exercised concurrently or separately, and the exercise of one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.
- 20.8 If any provision of the Agreement is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision shall, to the extent required, be severed from the Agreement and rendered ineffective as far as possible without modifying the remaining provisions of the Agreement, and shall not in any way affect the other circumstances of or the validity or enforcement of the Agreement.

21. Notices

- 21.1 Any notice to be given under the Agreement shall be in writing and may be served by personal delivery, first class recorded, or e-mail to the address of the relevant Party set out in the Form of Contract, or such other address as that Party may from time to time notify the other Party in accordance with this clause:
- 21.2 Notices served as above shall be deemed served on the Working Day of delivery provided delivery is before 5:00pm on a Working Day. Otherwise delivery shall be deemed to occur on the next Working Day. An e-mail shall be deemed delivered when sent unless an error message is received.

22. Governing Law and Jurisdiction

The validity, construction and performance of the Agreement, and all contractual and non-contractual matters arising out of it, shall be governed by English law and shall be subject to the exclusive jurisdiction of the English courts to which the Parties submit.