

Standard Terms and Conditions for Purchase of Goods and/or Services

Part 1: General Terms and Conditions

These Terms and Conditions constitute a framework agreement between Midland Heart and the Contractor. By accepting these Terms and Conditions (whether by written acceptance, commencement of performance, or continued dealing), the Contractor agrees that these Terms and Conditions shall govern each individual contract formed by each Purchase Order issued by Midland Heart to the Contractor, with each Purchase Order creating a separate contract incorporating these Terms and Conditions.

1 Interpretation

- 1.1 Should there be any inconsistency between the provisions of a Purchase Order and these Terms and Conditions, the Terms and Conditions will take precedence. In the event of any inconsistency of the Terms and Conditions, the conflict should be resolved according to the following descending order of priority: (a) the clauses of the Terms and Conditions, (b) Schedule (Definitions) and (c) the relevant Purchase Order.
- 1.2 Any reference to any legislation includes reference to updates or amendments to such legislation.

2 Commencement, duration and Basis of Contract

- 2.1 Each Purchase Order constitutes an offer by Midland Heart to purchase Goods and/or Services from the Contractor. Each Purchase Order, when accepted, creates a separate individual contract incorporating these Terms and Conditions. Each such contract shall be deemed to come into existence on the earlier of:

- 2.1.1 the Contractor issuing written acceptance of the relevant Purchase Order;
 - 2.1.2 the Contractor commences delivery of the Goods and/or performance of the Services specified in the Purchase Order,
- (the **Commencement Date**).

- 2.2 Each Purchase Order creates a separate contract which incorporates these Terms and Conditions to the exclusion of any other terms that the Contractor seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing. These Terms and Conditions shall apply to the supply of both Goods and/or Services (as applicable) under each such individual contract.

3 Intellectual Property Rights

- 3.1 Each Party will retain all Pre-existing Intellectual Property in any materials provided to the other Party for the purposes of this Agreement.
- 3.2 Midland Heart will grant the Contractor a Midland Heart Intellectual Property Licence and the Contractor will grant Midland Heart the Contractor Historic Intellectual Property Licence.
- 3.3 All Intellectual Property Rights in any materials created or developed or arising from the Deliverables under the Agreement will belong to Midland Heart.
- 3.4 Where the Intellectual Property Rights in any materials created or developed or arising from the Deliverables under the Agreement still belong to the Contractor due to the operation of law pursuant to clause 3.3, the Contractor will grant Midland Heart the Contractor Intellectual Property Licence or if requested by Midland Heart it will assign the Intellectual Property Rights to Midland Heart.
- 3.5 The Contractor represents and warrants that the Deliverables do not and will not infringe any intellectual property rights of any third party .
- 3.6 The Contractor will indemnify, and keep indemnified, Midland Heart in full against all costs, expenses, damages and losses (whether direct or indirect), awarded against or incurred or paid by Midland Heart as a result of or in connection with any claim made against Midland Heart for actual or alleged infringement of a third party's Intellectual Property Rights.

4 Confidentiality

- 4.1 Each Party undertakes that it will not at any time during the Agreement and for a period of six years after termination of the Agreement, disclose to any person any Confidential Information, except as may be required by law (including in particular the Procurement Act 2023), a court of competent jurisdiction or any governmental or regulatory authority.
- 4.2 No Party will use any other Party's Confidential Information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Agreement.
- 4.3 Without prejudice to Midland Heart's obligations under the Procurement Act 2023, or any other legal obligation neither Party shall make any press announcement or publicise the Agreement or any part thereof in any way, except with the written consent of the other Party. Both Parties shall take reasonable steps to ensure that their servants, employees, agents, sub-contractors, suppliers, professional advisors and consultants comply with this clause 4.3. The provisions of this clause 4.3 shall apply during the continuance of this Agreement and indefinitely after its expiry or termination.

5 Data Protection and Information Governance

General Data Protection

- 5.1 The Contractor will at all times comply with the requirements of the Data Protection Laws. The Contractor shall not by any act or omission place Midland Heart in breach of any of its obligations under the Data Protection Laws and shall immediately notify Midland Heart of any breach or potential breach of the Data Protection Laws that affects or may affect Midland Heart and shall indemnify and keep indemnified Midland Heart against all costs, expenses, damages, losses, and regulatory fines or penalties incurred by Midland Heart arising from any breach by the Contractor of the Data Protection Laws or clauses 50 to 5.3.
- 5.2 The Parties acknowledge that for the purposes of this Agreement they are separate data controllers. The Contractor shall enter into a separate data sharing agreement with Midland Heart prior to commencement of this Agreement where required by Midland Heart.
- 5.3 The Parties acknowledge that if for the purposes of the Data Protection Laws, Midland Heart becomes the data controller and the Contractor is the data processor, the Parties will enter into a separate data processing agreement.

STAIRs

- 5.4 The Contractor acknowledges that Midland Heart is a private registered provider of social housing and is subject to the requirements of the Social Tenant Access to Information Requirements (**STAIRs**) (including any publication scheme and information request obligations thereunder) and the Contractor shall assist and cooperate with Midland Heart to enable Midland Heart to comply with its disclosure obligations under the STAIRs.
- 5.5 Where the Contractor receives a request from a tenant (or their designated representative) of Midland Heart for information under the STAIRs which relates to this Agreement, the Goods and/or Services provided under it, or any Personal Data processed under it, the Contractor shall promptly, and in any event within two (2) Working Days of receipt, transfer such request to Midland Heart's nominated representative (as notified in writing by Midland Heart to the Contractor from time to time) and within five (5) Working Days (or such other period as the Midland Heart may reasonably specify) of the Midland Heart's request for such information, shall provide Midland Heart with a copy of all information in its possession or control that is reasonably requested by Midland Heart to enable Midland Heart to respond to such request in accordance with its obligations under the STAIRs.
- 5.6 The Contractor shall not respond directly to any request for information under the STAIRs on behalf of Midland Heart without Midland Heart's prior written consent.
- 5.7 The Contractor acknowledges that Midland Heart shall be responsible for determining in its absolute discretion whether any information relating to this Agreement is exempt from disclosure in accordance with the provisions of the STAIRs. The Contractor may make representations to Midland Heart as to whether any information is commercially sensitive or otherwise exempt from disclosure, but Midland Heart shall not be bound by any such representations and shall be responsible for determining at its absolute discretion whether the information is exempt from disclosure under the STAIRs.
- 5.8 The Contractor shall indemnify Midland Heart against all costs, claims, damages or expenses (including reasonable legal fees) incurred by Midland Heart in connection with any failure by the Contractor to comply with its obligations under clauses 0 to 5.8.

6 Cyber Security

- 6.1 The Contractor agrees to comply with, and procure that its employees, agents, sub-contractors, and use reasonable endeavours to procure that its supply chain, will comply with, the Midland Heart Cyber and Information Security Policy the Cyber Governance Code of Practice and, to the extent applicable, the NIS Regulations 2018 at all times.

- 6.2 The Contractor shall complete and return the Midland Heart Cyber Security Questionnaire within twenty (20) Working Days of Midland Heart's written request (or such other timeframe as agreed between the parties). Such requests shall be made no more than once per contract year, except where an updated version is required pursuant to clause 6.3. The Contractor warrants that all responses are true, accurate, and complete as at the date of submission.
- 6.3 The Contractor shall notify Midland Heart in writing within five (5) Working Days of becoming aware of any material changes to its cybersecurity status that would reasonably affect its responses to the most recent Midland Heart Cyber Security Questionnaire, including data breaches, security incidents, system compromises, changes to security certifications, material policy changes, and regulatory cybersecurity actions.
- 6.4 Midland Heart reserves the right, upon reasonable notice, to audit the Contractor's compliance with the Midland Heart's Cyber and Information Security Policy, the Cyber Governance Code of Practice and, to the extent applicable, the NIS Regulations 2018 at any time during the Agreement.
- 6.5 Where Midland Heart has reasonable concerns about the accuracy or completeness of any responses provided in the Midland Heart Cyber Security Questionnaire, Midland Heart shall have the right to conduct a targeted audit of those specific areas, with at least 10 Working Days written notice, the Contractor's reasonable cooperation, appropriate confidentiality protections, and at no additional cost to Midland Heart. Any material deficiencies identified shall be remediated within timeframes to be agreed between the parties at the Contractor's cost.
- 6.6 In the event that: (i) Midland Heart considers that the Contractor is not acting in compliance with Midland Heart's Cyber and Information Security Policy, the Cyber Governance Code of Practice and, to the extent applicable, the NIS Regulations 2018, (ii) the Contractor fails to provide the Midland Heart Cyber Security Questionnaire within the stipulated timeframe, or (iii) any information provided in the Midland Heart Cyber Security Questionnaire is found to be materially false or misleading, Midland Heart, in its sole discretion, may either:
- 6.6.1 terminate this Agreement with immediate effect on written notice; or
- 6.6.2 direct the Contractor to take all such appropriate remedial actions to address any areas of concern, which the Contractor shall use its best endeavours to undertake promptly, and a failure by the Contractor to remedy any such non-compliance to Midland Heart's reasonable satisfaction after such remedial action is promptly taken, will entitle Midland Heart to terminate the Agreement pursuant to clause 6.6.1.
- 6.7 Where the Contractor experiences or is suspected of experiencing a cybersecurity incident that could reasonably pose a risk to Midland Heart's systems, data, or operations, Midland Heart shall have the right to immediately suspend the Contractor's access to any or all of Midland Heart's ICT systems, networks, interfaces, and data (collectively the ICT Interfaces) without prior notice. Such suspension shall remain in effect until Midland Heart is satisfied in its reasonable opinion that the incident has been contained, remediated, and appropriate preventive measures implemented. The Contractor shall cooperate with any suspension measures and such action shall not constitute a breach by Midland Heart or give rise to any claim for damages by the Contractor.
- 6.8 The Contractor will indemnify, keep indemnified, defend and hold harmless Midland Heart against all loss, costs, proceedings or damages whatsoever arising out of or in connection with any breach by the Contractor of its obligations under this clause 6.
- 7 Compliance with relevant laws and policies**
- In performing its obligations under the Agreement, the Contractor shall: (a) at its cost comply with all applicable laws from time to time in force (including in particular the Separation of Waste (England) Regulations 2024 and the obligation not to dispose Contractor waste on Midland Heart property); and (b) comply with the Mandatory Policies.
- 8 Prevention of Fraud and Corruption**
- 8.1 The Contractor will (a) not offer, give, or agree to give anything, to any person an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to the Agreement; (b) take all reasonable steps to prevent fraud by the Staff; and (c) notify Midland Heart immediately if it has reason to suspect that any fraud has occurred or is occurring or is likely to occur.
- 8.2 Where the Contractor becomes aware of any matter that would constitute a qualifying disclosure under Part IVA of the Employment Rights Act 1996 (as inserted by the Public Interest Disclosure Act 1998) if raised by a Midland Heart employee or worker (including but not limited to suspected fraud, corruption, criminal activity, regulatory breaches, health and safety violations, or other serious wrongdoing relating to Midland Heart's business or operations), the Contractor shall promptly report such matter to the Midland Heart's Company Secretary at company.secretary@midlandheart.org.uk. The Company Secretary will provide appropriate direction regarding the handling and investigation of any such reports. The Contractor shall cooperate fully with any subsequent investigation and shall not take any action that could compromise the integrity of such investigation without prior written direction from the Company Secretary.

8.3 The Contractor will indemnify Midland Heart in full against all liabilities, costs, expenses, damages and losses suffered or incurred by Midland Heart arising out of, or in connection with, any breach by the Contractor of its obligations under this clause 8.

9 Promoting tax compliance

9.1 If, at any point during the Term, an Occasion of Tax Non-Compliance occurs, the Contractor will:

9.1.1 notify Midland Heart in writing of such fact within five Working Days of its occurrence; and

9.1.2 immediately provide to Midland Heart: (a) details of the steps that the Contractor is taking to address the Occasion of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors; and (b) such other information in relation to the Occasion of Tax Non-Compliance as Midland Heart may reasonably require.

10 Modern Slavery Act 2015

The Contractor and its sub-contractors agree to use all reasonable endeavours to ensure that its employees or agents and/or supply chain will, at all times act in a way which is compliant with the Modern Slavery Act 2015.

11 Ethical Trading

11.1 The Contractor and Contractor's sub-contractors are expected to adhere to the following ethical conduct guidelines which reflects the principles set out in the Ethical Trading Initiative Base Code and International Labour Organisation (ILO) Conventions.

11.2 Midland Heart reserves the right to audit this at any time during the contract period, in the event that Midland Heart reasonably considers that the Contractor is not in compliance with the Ethical Trading Initiative Base Code and International Labour Organisation Conventions. The Contractor must take all such appropriate remedial actions as requested by Midland Heart to address any areas of concern.

12 Anti-bribery

12.1 The Contractor shall:

12.1.1 comply with all applicable laws, regulations, codes and sanctions relating to antibribery and anticorruption including but not limited to the Bribery Act 2010 (**Relevant Requirements**);

12.1.2 not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK; and

12.1.3 comply with Midland Heart's anti-bribery and anti-corruption policies (or the Mandatory Policies to the extent they cover anti-bribery matters), in each case as Midland Heart or the relevant industry body may update them from time to time, or have and shall maintain in place throughout the term of this Agreement its own policies and procedures, including but not limited to adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements (**Relevant Policies**), and will enforce them where appropriate.

12.2 The Contractor shall ensure that any person associated with the Contractor who is performing services or providing goods in connection with this Agreement does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on the Contractor in this clause 12 (Relevant Terms). The Contractor shall in all circumstances be responsible for the observance and performance by such persons of the Relevant Terms and shall in all circumstances be directly liable to Midland Heart for any breach by such persons of any of the Relevant Terms howsoever arising.

12.3 Midland Heart reserves the right, upon reasonable notice, to audit the Contractor's compliance with the anti-bribery obligations set out in this clause 12 at any time during the Agreement. The Contractor shall provide reasonable assistance and access to relevant records, policies, and personnel as may be required for such audit.

12.4 For the purpose of this clause 12, the meaning of adequate procedures and foreign public official and whether a person is associated with another person shall be determined in accordance with section 7(2) Bribery Act 2010 (and any guidance issued under section 9 of that Act), sections 6(5) and 6(6) of that Act and section 8 of that Act respectively. For the purposes of this clause 12 a person associated with the Contractor includes but is not limited to any Sub-contractor of the Contractor.

13 Human Rights and Non-Discrimination

- 13.1 The Contractor shall, and shall use reasonable endeavours to ensure that its employees or agents and/or sub-contractors shall, at all times, act in a way which is compatible with the Convention rights within the meaning of Section 1 of the Human Rights Act 1998.
- 13.2 The Contractor shall not unlawfully discriminate within the meaning and scope of the Equality Legislation or any other law, enactment, order, or regulation relating to discrimination (whether in age, race, gender, religion, disability, sexual orientation or otherwise) in employment.
- 13.3 The Contractor shall notify Midland Heart forthwith in writing as soon as it becomes aware of any investigation of or proceedings brought against the Contractor under the Equality Legislation, Human Rights Act 1998.
- 13.4 The Contractor agrees to indemnify and keep indemnified Midland Heart against all loss, costs, proceedings or damages whatsoever arising out of or in connection with any breach by the Contractor of its obligations under clause 13.

14 Social Responsibility

- 14.1 The Contractor shall, at all times, be responsible for and take all such precautions as are necessary to protect the health and safety of all employees, volunteers, service users and any such persons involved in, or receiving goods or services from, the performance of the Agreement and shall comply with the requirements of the Health and Safety at Work Act 1974 and any other Act or Regulation relating to health and safety of persons and any amendment or re-enactment thereof.
- 14.2 The Contractor shall ensure that all employees of the Contractor are eligible to work in the UK, taking into account the nature and location of the Goods and/or Services provided.
- 14.3 Midland Heart shall be entitled at Midland Heart's expense to inspect such books, accounts and records belonging to the Contractor as are necessary to demonstrate compliance with clauses above.

15 Liability

- 15.1 Nothing in the Agreement will be construed to limit or exclude: (a) either Party's liability for death or personal injury, fraud or fraudulent misrepresentation or breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession) any other matter which, by law, may not be excluded or limited; and (b) the Contractor's liability for the indemnities at 3.6 (Intellectual Property Rights), 0 (Data Protection), 5.8 (STAIRs), 6.8 (Cyber Security), 8.3 (Prevention of Fraud and Corruption), 13.4 (Human Rights Act and Non-Discrimination), and 27 (Indemnity for Tenant Compensation).
- 15.2 Subject always to clause 15.1:
- 15.2.1 the total liability of the Contractor in respect of all defaults, claims, losses or damages howsoever caused, whether arising from breach of the Agreement, the supply or failure to supply of the Goods and/or Services, misrepresentation (whether tortious or statutory), tort (including negligence), breach of statutory duty or otherwise will in no event exceed a sum equal to 200% of the charges paid or payable to the Contractor;
- 15.2.2 the total liability of Midland Heart in respect of all defaults, claims, losses or damages howsoever caused, whether arising from breach of the Agreement, misrepresentation (whether tortious or statutory), tort (including negligence), breach of statutory duty or otherwise will in no event exceed a sum equal to the value of the charges paid or payable to the Contractor; and
- 15.2.3 except in the case of claims arising under clause 3.6 (Intellectual Property Rights), in no event will either Party be liable to the other for any: (a) loss of profits; (b) loss of business; (c) loss of revenue; (d) loss of or damage to goodwill; (e) loss of savings (whether anticipated or otherwise); and/or (f) indirect, special or consequential loss or damage.

16 Insurance

The Contractor will maintain in force, with a reputable insurance company, professional indemnity insurance at an amount not less than £2,000,000, public liability insurance at an amount not less than £10,000,000, products liability insurance at an amount not less than £10,000,000, employers' liability insurance at an amount not less than £10,000,000 and cyber insurance at an amount not less than £5,000,000. The Contractor shall provide Midland Heart with copies of insurance certificates on request to demonstrate compliance with this clause 16.

17 Termination

- 17.1 Without affecting any other right or remedy available to it, Midland Heart may terminate the Agreement: (a) with immediate effect by giving written notice to the Contractor if there is a Change of Control of the Contractor; or the Contractor commits

a breach of clause 7 (Compliance with relevant laws and policies) or clause 5 (Data Protection and Information Governance); (b) for convenience by giving the Contractor 30 days' written notice; or (c) if the Contractor commits a material breach of any term of the Agreement and (i) the breach is not remediable; or (ii) the breach is remediable but the Contractor fails to remedy such breach within twenty (20) Working Days (or such other period as Midland Heart may specify) of receiving written notice from Midland Heart specifying the breach and requiring it to be remedied.

17.2 For the purposes of clause 17.1, material breach includes:

17.2.1 a breach of any of the obligations set out in clause 3 (IPR), clause 4 (Confidentiality), clause 5 (Data Protection and Information Governance), clause 6 (Cyber), clause 8 (Fraud), clause 10 (Modern Slavery Act 2015), clause 11 (Ethical Trading), 13 (Human Rights and Non-Discrimination), 27 (Indemnity for Tenant Compensation), clause 28 (Conflict of Interest) and clauses 31.1, 33.1 and 33.3 of Part 2 of these Terms and Conditions.

17.2.2 a breach that has a serious effect on the benefit the terminating party would otherwise derive from this agreement;

17.2.3 any other breach that is expressly designated as a material breach elsewhere in this Agreement.

17.3 On termination of the Agreement, the Contractor shall immediately deliver to Midland Heart all Deliverables and return all Midland Heart Materials. If the Contractor fails to do so, then Midland Heart may enter the Contractor's premises and take possession of them. Until they have been returned or delivered, the Contractor shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Agreement.

17.4 Termination or expiry of the Agreement shall not affect the parties' rights and remedies that have accrued as at termination or expiry, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination or expiry.

17.5 Any provision of the Agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Agreement shall remain in full force and effect.

18 **Audit**

18.1 If Midland Heart gives at least ten (10) Working Days' written notice, Midland Heart (or its representatives) may during normal business hours:

18.1.1 enter and inspect the Contractor's premises, facilities and systems; and

18.1.2 inspect, audit and take copies of relevant records, and other documents as necessary,

to verify the Contractor's compliance with this Agreement.

18.2 This right is in addition to any specific audit rights set out elsewhere in this Agreement, which shall take precedence in respect of their particular subject matter.

18.3 Midland Heart reserves the right to request from the Contractor, upon reasonable notice and no more than once per contract year (unless there are reasonable grounds for concern), a certificate of compliance with clauses 8 (Prevention of Fraud and Corruption), 12 (Anti-bribery), and 28 (Conflicts of Interest). The Contractor shall provide such certificate within twenty (20) Working Days of Midland Heart's written request, signed by an authorised representative of the Contractor, in the format as provided by Midland Heart. Midland Heart may also request reasonable supporting evidence to verify the accuracy of any such certificate, which the Contractor shall provide within a reasonable timeframe.

19 **Force majeure**

19.1 Neither Party will be in breach of the Agreement nor liable for delay in performing, or failure to perform, any of its obligations under the Agreement if such delay or failure result from a Force Majeure Event. The associated obligations of the Party unable to perform will be suspended, and Midland Heart's obligation to pay the charges will also be suspended. Both Parties will mitigate their losses and meet in good faith to agree a plan to limit the consequences of the Force Majeure Event.

19.2 If the period of delay or non-performance due to a Force Majeure Event continues for six weeks, the Party not affected, or where both Parties are affected, either Party, may terminate the Agreement by giving two weeks' written notice to the other Party.

20 **Dispute Resolution**

In the event of any dispute arising under or in connection with this Agreement, the parties shall first attempt to resolve the dispute through good faith negotiations. If the dispute cannot be resolved amicably within 30 days, either party may propose

to resolve the dispute through mediation in accordance with the procedures of a reputable mediation service to be agreed upon by the parties. If the dispute remains unresolved after mediation, either party may then refer the matter to the courts of England, which shall have exclusive jurisdiction. The costs of mediation shall be shared equally between the parties, unless otherwise agreed.

21 **Assignment and sub-contracting**

Neither Party can assign any of its rights and obligations under this Agreement without the other's prior written consent (not to be unreasonably withheld or delayed).

22 **Partnership and LLP**

22.1 The Contractor acknowledges that if it is a partnership, the rights, obligations and liabilities of the partners under this Agreement are joint and several.

22.2 The liabilities of the parties pursuant to this Agreement shall not automatically terminate upon the death, retirement or resignation or any one or more members of the partnership and/or (as applicable) the LLP and/or upon the admission of an additional partner, partners and/or members to the partnership and/or (as applicable) the LLP.

23 **General**

23.1 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.

23.2 Unless expressly stated in this Agreement, a person not party to the Agreement will have no right to enforce any of its provisions without the prior written agreement of the parties.

23.3 Midland Heart may subcontract any or all of its rights or obligations under the Agreement. However, the Contractor cannot subcontract any or all of its rights or obligations under the Agreement without the prior written consent of Midland Heart. If Midland Heart consents to any subcontracting by the Contractor, the Contractor shall remain responsible for all the acts and omissions of its subcontractors as if they were its own.

23.4 The Agreement contains the whole agreement between the parties and supersedes and replaces any prior written or oral agreements, representations or understandings between them. Both parties agree that they have not entered into the Agreement based on any representation that is not expressly incorporated into the Agreement.

23.5 A waiver of any right or remedy under the Agreement or by law is only effective if given in writing and will not be deemed a waiver of any subsequent right or remedy. A failure or delay by a Party to exercise any right or remedy under the Agreement or by law will not constitute a waiver or prevent any further exercise of that or any other right or remedy.

23.6 The Agreement does not constitute or imply any partnership or other relationship between the parties other than the contractual relationship under this Agreement. Neither Party has the authority to make any commitments on the other Party's behalf.

23.7 If any provision of the Agreement is or becomes invalid, illegal or unenforceable, it will be deemed deleted, but will not affect the validity and enforceability of the rest of this Agreement.

23.8 Midland Heart may at any time, set off any liability of the Contractor against any liability of Midland Heart, whether either liability is present or future, liquidated or unliquidated, and whether or not the liability arises under this Agreement. Any exercise by Midland Heart of its rights under this clause shall not limit or affect any other rights or remedies available to it under this Agreement or otherwise

24 **Notices**

24.1 Any notice to be given under the Agreement shall be in writing and may be served by either (i) personal delivery, (ii) first class recorded post or (iii) e-mail. Notices shall be delivered in the relevant form to the address and/or email address for the Contractor or Midland Heart as specified in the Purchase Order, as may be updated by written notice from time to time.

24.2 Notices served as personal delivery or first class recorded post 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. Notices served as email shall be deemed delivered when sent unless an error message is received.

25 **Change control**

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

Governing Law and Jurisdiction

The Agreement is governed by English law and will be subject to the exclusive jurisdiction of the English courts to which the parties irrevocably submit.

27 **Indemnity for Tenant Compensation**

The Contractor shall indemnify and keep indemnified Midland Heart against all costs, expenses, damages, and losses (whether direct or indirect) incurred or paid by Midland Heart as a result of any compensations paid to a Midland Heart Tenant, where such compensation rights have arisen due to any act or omission by the Contractor. This indemnity shall be without prejudice to Midland Heart's right of set-off, which may be exercised as outlined in this Agreement.

28 **Conflicts of Interest**

28.1 If either Midland Heart or the Contractor becomes aware of any possible, actual, potential or perceived Conflict of Interest which may arise between the interests of Midland Heart and the Contractor or the Contractor and the satisfactory performance of the Agreement, the party becoming aware of such information shall as soon as reasonably possible notify the other party.

28.2 Following such notification pursuant to clause 28.1, the parties shall discuss the Conflict of Interest and:

28.2.1 both parties shall use reasonable endeavours to find ways to eliminate or minimise the risk of such a Conflict of Interest continuing or arising; and

28.2.2 both parties shall take such steps as may be agreed to remove or avoid the cause of such Conflict of Interest; and

28.2.3 the Contractor shall implement any requirements stipulated by Midland Heart to avoid the Conflict of Interest putting the Contractor at an unfair advantage in respect of this Agreement.

28.3 Where a Conflict of Interest has arisen which puts the Contractor at an unfair advantage in respect of this Agreement and either:

28.3.1 in Midland Heart's reasonable opinion, such unfair advantage cannot be avoided; or

28.3.2 the Contractor will not take the steps that Midland Heart considers are necessary and has instructed the Contractor to take pursuant to clause 28.2.3 of this Agreement to ensure the Contractor is not put at an unfair advantage,

Midland Heart may terminate this Agreement immediately by written notice to the Contractor.

29 **Exit and Service Transfer**

Upon termination or expiry of this Agreement for any reason, the Contractor shall provide reasonable transitional assistance to Midland Heart. Both parties shall cooperate in good faith to ensure an orderly transfer of the Goods and/or Services (as the case may be) and any related documentation, data, and knowledge reasonably necessary for continuity of delivery.

Part 2: Goods and Services Terms & Conditions

30 Charges and payment

- 30.1 The price for the Goods and/or Services shall be set out in the relevant Purchase Order and it shall be the full and exclusive remuneration of the Contractor in respect of the performance of the Services. No extra charges or price uplifts shall be effective unless agreed in writing and signed by Midland Heart. Midland Heart will not consider or agree to any price increase until the Contractor provides a full breakdown of the basis for the uplift request.
- 30.2 The Contractor shall invoice Midland Heart as set out in the relevant Purchase Order and each invoice shall include such supporting information reasonably required by Midland Heart to verify the accuracy of the invoice. Midland Heart will not process or pay any invoice that does not include the following supporting information:
- 30.2.1 the reason for which payment or stage payments are required with references to the relevant Agreement;
 - 30.2.2 the necessary supporting documents to enable Midland Heart to determine the accuracy of the invoice;
 - 30.2.3 the fees payable together with any VAT payable;
 - 30.2.4 the bank details where payments are to be made; and
 - 30.2.5 valid Purchase Order number.
- 30.3 Midland Heart shall pay the invoiced amounts after verifying that the invoice is valid and undisputed within 30 calendar days of receipt of a valid and undisputed invoice. All amounts stated in a Purchase Order are exclusive of VAT which shall be charged at the relevant rate.
- 30.4 Midland Heart may, without prejudice to any other rights and remedies under the Agreement, withhold or reduce payments in the event of unsatisfactory performance. The Contractor will not be entitled to assert any credit, set-off or counterclaim against Midland Heart in order to justify withholding payment.
- 30.5 If Midland Heart fails to make an undisputed payment due to the Contractor upon request, Midland Heart will pay interest at 0% a year above the Bank of England's base rate from time to time on the overdue undisputed amount from the relevant due date until payment of the overdue undisputed amount.

31 Supply of Goods

- 31.1 The Contractor shall ensure that the Goods shall: (a) correspond with their description as set out in the relevant Purchase Order; (b) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979) and fit for any purpose stated by the Contractor or made known to the Contractor by Midland Heart; (c) where they are manufactured products, be free from defects in design, materials and workmanship and remain so for 12 months after delivery; and (d) comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods.
- 31.2 The Contractor shall ensure that at all times it has and maintains all the licences, permissions, consents that it needs to carry out its obligations under the Agreement in respect of the Goods.
- 31.3 Midland Heart may inspect and test the Goods at any time before delivery. The Contractor shall remain fully responsible for the Goods despite any such inspection or testing and any such inspection or testing shall not reduce or otherwise affect the Contractor's obligations under the Agreement.
- 31.4 If following such inspection or testing Midland Heart considers that the Goods do not comply or are unlikely to comply with the Contractor's undertakings at clause 31.1, Midland Heart shall inform the Contractor and the Contractor shall immediately take such remedial action as is necessary to ensure compliance.

32 Delivery of Goods

- 32.1 The Contractor shall ensure that: (a) the Goods are properly packed and secured in such manner as to enable them to reach their destination in good condition; (b) each delivery of the Goods is accompanied by a delivery note which shows the date of the relevant Purchase Order, the relevant Purchase Order number (if any), the type and quantity of the Goods, special storage instructions (if any) and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered.

- 32.2 Delivery of the Goods will be completed when they are at the delivery location notified by Midland Heart or as specified in the relevant Purchase Order.
- 32.3 The Contractor will not deliver the Goods in instalments without Midland Heart's prior written consent. Where it is agreed that the Goods are delivered by instalments, they may be invoiced and paid for separately to reflect quantities of Goods received by Midland Heart.
- 32.4 Title and risk in the Goods (including Goods delivered in instalments) will pass to Midland Heart on completion of delivery.
- 33 Supply of Services**
- 33.1 The Contractor shall from the Commencement Date and for the duration of the Agreement supply the Services to Midland Heart in accordance with the terms of the Agreement.
- 33.2 The Contractor shall meet any performance dates for the Services specified in the relevant Purchase Order that Midland Heart notifies to the Contractor.
- 33.3 In providing the Services, the Contractor shall: (a) co-operate with Midland Heart and comply with all Midland Heart's instructions; (b) perform the Services with best care, skill and diligence; (c) use personnel who are suitably skilled and experienced to perform tasks assigned to them; (d) ensure that the Services conform with all descriptions set out in the relevant Purchase Order and that the Deliverables shall be fit for any purpose; (e) comply with all applicable laws; (f) obtain and at all times maintain all licences and consents which may be required for the provision of the Services; (g) hold all materials, equipment, specifications and data supplied by Midland Heart (Midland Heart Materials) in safe custody at its own risk.
- 34 Midland Heart remedies**
- 34.1 If the Contractor fails to deliver and/or perform the Goods and/or Services by the applicable date or the Goods and/or Services do not comply with clauses 31.1 and/or 33.3, Midland Heart shall, without limiting or affecting other rights or remedies available to it, have one or more of the following rights and remedies: (a) terminate the Agreement with immediate effect by giving written notice to the Contractor; (b) refuse to accept any subsequent performance of the Services and/or delivery of the Goods which the Contractor attempts to make; (c) recover from the Contractor any costs and expenses (including reasonable professional fees) incurred by Midland Heart in obtaining substitute goods, services and/or deliverables from a third party; (d) to reject the Goods (in whole or in part) whether or not title has passed and/or return the Deliverables, to the Contractor at the Contractor's own risk and expense; (e) require the Contractor to repair or replace the rejected Goods and/or repeat performance of the Services, or to provide a full refund of the price of the rejected Goods and/or the price paid for the Services; and (f) claim damages for any additional costs, loss or expenses incurred by Midland Heart which are in any way attributable to the Contractor's failure.
- 34.2 These Terms and Conditions shall extend to any substituted or remedial services and/or repaired or replacement goods supplied by the Contractor.
- 34.3 Midland Heart's rights and remedies under the Agreement are in addition to, and not exclusive of, any rights and remedies implied by statute and common law.

Schedule - Definitions

1

Where a term is not already defined in the Agreement, the following terms shall have the following meanings:

Agreement means: (a) these Terms and Conditions; and (b) the specific Purchase Order, which together form an individual contract for each Purchase Order;

Commencement Date has the meaning given in clause 2.1;

Confidential Information means all information, whether written or oral (however recorded), provided by the disclosing Party to the receiving Party and which (a) is known by the receiving Party to be confidential; (b) is marked as or stated to be confidential; or (c) ought reasonably to be considered by the receiving Party to be confidential;

Conflict of Interest means a direct or indirect conflict between the financial, professional or personal interests of the Contractor or the Contractor's Staff and the duties owed to Midland Heart under this Agreement, in the reasonable opinion of Midland Heart;

Contractor means the person or firm from whom Midland Heart purchases the Goods and/or Services as detailed in the Purchase Order;

Contractor Historic Intellectual Property Licence means a perpetual, royalty-free, irrevocable and non-exclusive licence (with a right to sub-license) to use (a) any Intellectual Property Rights vested in or licensed to the Contractor on the date of the Agreement; and (b) any Intellectual Property Rights created during the Agreement but which are neither created or developed pursuant to the Agreement nor arise as a result of the provision of the Deliverables, including any modifications to or derivative versions of any such Intellectual Property Rights, which Midland Heart reasonably requires in order to exercise its rights and take the benefit of the Agreement including the Deliverables provided;

Contractor Intellectual Property Licence means the present assignment of future rights and immediately upon coming into existence, all such Intellectual Property Rights (with full title guarantee and free from all third party rights);

Control has the meaning given in section 1124 Corporation Tax Act 2010, and the expression **Change of Control** shall be construed accordingly;

Controller has the meaning set out in the Data Protection Laws;

Cyber Governance Code of Practice means the Department for Science, Innovation and Technology's code of practice published on the GOV.UK website updated from time to time, which is available for public view here: <https://www.gov.uk/government/publications/cyber-governance-code-of-practice/cyber-governance-code-of-practice>;

Data Protection Laws means all applicable data protection and privacy legislation in force from time to time in the UK, including without limitation the UK GDPR, the Data Protection Act 2018 (and regulations made thereunder), the Data (Use and Access) Act 2025, the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426), and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of Personal Data (as defined in the UK GDPR);

Deliverables means all documents, products and materials developed by the Contractor or its agents, contractors and employees as part of or in relation to the Goods and/or Services in any form or media, including drawings, maps, plans, diagrams, designs, pictures, computer programs, data, specifications and reports (including drafts);

Equality Legislation means all Law relating to equality (whether in respect of race, sex, gender reassignment, age, disability, sexual orientation, religion or belief, pregnancy, maternity or otherwise) including the Equality Act 2010 as amended or replaced from time to time;

Ethical Trading Initiative Base Code means the code published by the Ethical Trading Initiative, being the internationally recognised code of labour practice and ethical business conduct, as amended or updated from time to time, which is available to view here: <https://www.ethicaltrade.org/eti-base-code>;

Force Majeure Event means any circumstance not within a party's reasonable control including, without limitation: (a) acts of God, flood, drought, earthquake or other natural disaster; (b) epidemic or pandemic; (c) terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations; (d) nuclear, chemical or biological contamination or sonic boom; (e) any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent; (f) collapse of buildings, fire, explosion or accident;

(g) any labour or trade dispute, strikes, industrial action or lockouts (other than in each case by the Party seeking to rely on this clause, or companies in the same group as that Party); and (h) interruption or failure of utility service;

Goods means the goods (or any part of them) set out in the relevant Purchase Order;

ICT Interfaces has the meaning given to it in clause 6.7;

Intellectual Property Rights means patents, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, rights under licences and consents in relation to any of them, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;

International Labour Organisation Conventions means the international labour standards adopted by the International Labour Conference of the International Labour Organisation, as ratified or given effect in England and Wales from time to time;

Mandatory Policies means the those policies of Midland Heart (as amended) designated as mandatory for its contractors and suppliers, as provided by Midland Heart;

Midland Heart Cyber and Information Security Policy means Midland Heart's policies relating to cyber security, data protection and confidentiality as amended from time to time;

Midland Heart Cyber Security Questionnaire means Midland Heart's standard questionnaire for assessing contractor cybersecurity practices and controls, as provided by Midland Heart to the Contractor from time to time, which may be updated by Midland Heart at its discretion to reflect changes in cybersecurity standards, regulatory requirements, or Midland Heart's risk assessment framework;

Midland Heart Intellectual Property Licence means a royalty-free, revocable, non-exclusive, non-perpetual, non-sublicensable and non-transferable licence to use any materials for the sole purpose of enabling the Contractor to perform its obligations to Midland Heart under the Agreement until termination or expiry of the same;

Midland Heart Materials has the meaning set out in 33.3;

Midland Heart Tenant means any person or persons who have entered into a tenancy agreement, license agreement, lease, or any other occupancy arrangement with Midland Heart for the occupation of residential property provided as part of Midland Heart's housing portfolio;

Midland Heart's Address means Midland Heart's Address set out in the relevant Purchase Order;

NIS Regulations 2018 means the Network and Information Systems Regulations 2018 (SI 2018/506) as amended or replaced from time to time;

Occasion of Tax Non-Compliance means an event whereby the Contractor defaults on or falls foul of any tax codes, laws or regulations that affect either Party's obligations, interests or rights under this Agreement, or affects either Party's business generally;

Personal Data means any data relating to any person relevant to this Agreement including but not limited to name, address, contact details, date of birth, salary or any other data in relation to any person, including Sensitive Personal Data;

Processing has the meaning set out in the Data Protection Laws (and **Process**, **Processes** and **Processed** shall be construed accordingly);

Processor has the meaning set out in the Data Protection Laws;

Pre-existing Intellectual Property means any Intellectual Property Rights which: (a) in the case of Midland Heart, are owned by or licensed to Midland Heart (i) prior to the date of this Agreement; or (ii) after the date of this Agreement otherwise than by or pursuant to the terms of this Agreement; and (b) in the case of the Contractor is identified in writing as being owned by or licensed to the Contractor on delivery of the same to Midland Heart;

Purchase Order means Midland Heart's order for the supply of Goods and/or Services, as set out in Midland Heart's purchase order form;

Relevant Policies has the meaning given to it in clause 12.1.3;

Relevant Requirements has the meaning given to it in clause 12.1.1; **Relevant Terms** has the meaning given to it in clause 12.2;

Services mean the services, including any Deliverables, to be provided by the Contractor under the Agreement as set out in the relevant Purchase Order;

Staff means all directors, officers, employees, agents, consultants and contractors of the Contractor and/or of any sub-contractor of the Contractor engaged in the performance of the Contractor's obligations under this Agreement;

STAIRs has the meaning given to it in clause 0;

Term means the period from the Commencement Date until termination or expiry of the Agreement;

Terms and Conditions means the main body content together with the Schedules;

UK GDPR has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018; and

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