

**CITY COLLEGE PLYMOUTH**  
**STANDARD TERMS AND CONDITIONS**  
**FOR THE PURCHASE OF GOODS AND SERVICES**



**Background and Application:**

These Terms and Conditions shall apply to the supply of goods and the provision of services by the Supplier to the College and shall be incorporated into any agreement made by the College for the purchase of goods and/or services or works unless they are specifically excluded, and shall apply to the extent that they are not inconsistent with any separate condition of contract specifically agreed in writing by the College as taking precedence over these Terms and Conditions. No terms or conditions put forward at any time by the Supplier shall form part of the Agreement unless previously agreed in writing by the College.

**1. Definitions and Interpretation**

1.1 In these Terms and Conditions, unless the context otherwise requires, the following expressions have the following meanings:

- “Agreement”** means either:-
- a) the agreement made by the acceptance of the Supplier of any Order placed with the Supplier by the College, otherwise than in pursuance of a tender or quotation received and accepted in whole or part by the College; or
  - b) the agreement made by the acceptance by the College in whole or part of a tender or quotation, inclusive of any Agreement Documents, submitted by the Supplier to the College where such part of that tender or quotation is confirmed as accepted by way of the Order and these Terms and Conditions and the Agreement Documents shall be construed together as one instrument.
- “Agreement Documents”** means the Request for Quote and Quote Response Document, tender document or similar, all duly priced and submitted by the Supplier to the College, incorporating and priced in accordance with any special conditions, preliminaries, specification, contract drawings and/or schedule of items to be supplied in relation to the Services together with the Order;
- “Business Continuity Event”** means any event or issue that could impact on the operations of the Supplier and its ability to provide the Services including any Force Majeure Event;

<b>“Business Continuity Plan”</b>	means the Supplier’s business continuity plan which includes its plan for continuity of the Services during a Business Continuity Event;
<b>“Business Day”</b>	means, any day (other than Saturday or Sunday) on which ordinary banks are open for their full range of normal business in England and Wales;
<b>“College”</b>	means City College Plymouth (exempt charity) of Kings Road, Devonport, Plymouth, Devon PL1 5QG;
<b>“Commencement Date”</b>	means the date on which provision of the Services will commence, as defined in the Agreement;
<b>“Confidential Information”</b>	means, in relation to either Party, information which is disclosed to that Party by the other Party pursuant to or in connection with the Agreement (whether orally or in writing or any other medium, and whether or not the information is expressly stated to be confidential or marked as such);
<b>“Contract Manager”</b>	means for the College and for the Supplier such person notified by a Party to the other Party from time to time in accordance with clause 19.1;
<b>“Contract Price”</b>	means the price exclusive of VAT that is payable to the Supplier by the College under the Agreement for the full and proper performance by the Supplier of its obligations under the Agreement;
<b>“Convictions”</b>	means, other than in relation to minor road traffic offences, any previous or pending prosecutions, convictions, cautions and binding-over orders (including any spent convictions as contemplated by section 1(1) of the Rehabilitation of Offenders Act 1974 or any replacement or amendment to that Act);
<b>“Data Controller”</b>	shall have the same meaning as set out in the General Data Protection Regulation (GDPR) 2018;
<b>“Data Processor”</b>	shall have the same meaning as set out in the General Data Protection Regulation (GDPR) 2018;
<b>“Data Protection Legislation”</b>	means the General Data Protection Regulation 2018 (“GDPR 2018”) the EU Data Protection Directive (95/46/EC), the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI

Protection Directive (2002/58/EC), the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2426/2003) and all applicable laws and regulations relating to the processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner;

**“Data Subject”** shall have the same meaning as set out in the General Data Protection Regulation 2018;

**“Defective Goods”** has the meaning under clause 4.6;

**“Dispute Resolution Procedure”** means the process for resolving disputes as set out in clause 28;

**“EIR”** means the Environmental Information Regulations 2004 (SI 2004/3391) together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations;

**“Eligible Employees”** means each of the Transferred Staff who immediately before the Employee Transfer Date was a member of, or was entitled to become a member of, or but for their compulsory transfer of employment would have been entitled to become a member of, either the NHS Pension Scheme or a Broadly Comparable scheme as a result of their employment or former employment with an NHS Body (or other employer which participates automatically in the NHS Pension Scheme) and being continuously engaged for more than 50% of their employed time with the Authority (in the case of Transferring Employees) or a Third Party (in the case of Third Party Employees) in the delivery of services the same as or similar to the Services.

**“Employee Transfer Date”** means the Transferred Staff’s first day of employment with the Supplier (or its subcontractor);

**“Employment Liabilities”** means all claims, demands, actions, proceedings, damages, compensation, tribunal awards, fines, costs (including but not limited to reasonable legal costs), expenses and all other liabilities whatsoever;

<b>“Equality Legislation”</b>	means any and all legislation, applicable guidance and statutory codes of practice relating to equality, diversity, non-discrimination and human rights as may be in force in England and Wales from time to time including, but not limited to, the Equality Act 2010, the Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000 and the Fixed-term Employees (Prevention of Less Favourable Treatment) Regulations 2002 (SI 2002/2034) and the Human Rights Act 1998;
<b>“FOIA”</b>	means the Freedom of Information Act 2000 and any subordinate legislation made under the Act from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation;
<b>“Force Majeure”</b>	means any cause affecting the performance by a Party of its obligations under this Agreement arising from acts, events, omissions or non-events beyond its reasonable control, including acts of God, riots, war, acts of terrorism, fire, flood, storm or earthquake and any disaster, but excluding any industrial dispute relating to the Supplier, Supplier’s Staff or any other failure in the Supplier’s supply chain;
<b>“Good Industry Practice”</b>	means the exercise of that degree of skill, diligence, prudence, risk management, quality management and foresight which would reasonably and ordinarily be expected from a skilled and experienced service provider engaged in the provision of services similar to the Services under the same or similar circumstances as those applicable to the Agreement, including in accordance with any codes of practice published by relevant trade associations;
<b>“Goods”</b>	means all goods, materials or items that the Supplier is required to supply to the College under this Agreement;

<b>“Guidance”</b>	means any applicable guidance, direction or determination and any policies, advice or industry alerts which apply to the Services, to the extent that the same are published and publicly available or the existence or contents of them have been notified to the Supplier by the College and/or have been published and/or notified to the Supplier by the Department of Education, the Skills Funding Agency, the Education Funding Agency, the European Commission, the Health and Safety Executive and/or any other regulator or competent body;
<b>“Information”</b>	has the meaning given under section 84 of FOIA;
<b>“Intellectual Property Rights”</b>	means all patents, copyright, design rights, registered designs, trademarks, know-how, database rights, confidential formulae and any other intellectual property rights and the rights to apply for patents and trademarks and registered designs;
<b>“KPI”</b>	means the key performance indicators as set out in the Request for Quote and Quote Response Document;
<b>“Law”</b>	means <ul style="list-style-type: none"> <li>(a) any applicable statute or proclamation or any delegated or subordinate legislation or regulation;</li> <li>(b) any applicable European Union directive, regulation, decision or law</li> <li>(c) any enforceable community right within the meaning of section 2(1) European Communities Act 1972;</li> <li>(d) any applicable judgment of a relevant court of law which is binding precedent in England and Wales;</li> <li>(e) requirements set by any regulatory body; and</li> <li>(f) any applicable code of practice</li> </ul> in each case as applicable in England and Wales;
<b>“Losses”</b>	all damage, loss, liabilities, claims, actions, costs, expenses (including the cost of legal and/or professional services) proceedings, demands and charges whether arising under statute, contract or at common law;

<b>“Order”</b>	means the College’s purchase order to which these Terms and Conditions are annexed;
<b>“Personal Data”</b>	shall have the same meaning as set out in the General Data Protection Regulation (GDPR) 2018;
<b>“Policies”</b>	means the policies, rules and procedures of the College as notified to the Supplier from time to time;
<b>“Rejected Goods”</b>	Has the meaning given under clause 4.2;
<b>“Relevant Transfer”</b>	a relevant transfer for the purpose of TUPE;
<b>“Request for Information”</b>	means a request for information or an apparent request under Code of Practice on Access to Government Information, FOIA or the EIRs;
<b>“Request for Quote and Quote Response Document”</b>	means the documentation issued by the College in the course of the procurement of the Services and the Supplier’s response and specification for the delivery of the Services to the College as agreed by the College;
<b>“Requirement to Recall”</b>	has the meaning given under clause 4.9;
<b>“Special Category”</b>	means sensitive personal data as defined in the General Data Protection Regulation (GDPR) 2018;
<b>“Sub-Contractor”</b>	means the contractors or Supplier’s agents and contractors including each Sub-Contractor;
<b>“Services”</b>	means the services to be provided by the Supplier to the College in accordance with Clause 2 of these Terms and Conditions, as fully defined in the Agreement, and subject to the terms and conditions of the Agreement and shall including without limitation any installation and or any maintenance services in respect of Goods;
<b>“Staff”</b>	means all persons employed or engaged by the Supplier to perform its obligations under this Agreement including any Sub-Contractors and person employed or engaged by such Sub-Contractors;

<b>“Subsequent Transfer Date”</b>	means the point in time, if any, at which services which are fundamentally the same as the Services (either in whole or in part) are first provided by a Successor or the College, as appropriate, giving rise to a relevant transfer under TUPE;
<b>“Subsequent Transferring Employees”</b>	means any employee, agent, consultant and/or contractor who, immediately prior to the Subsequent Transfer Date, is wholly or mainly engaged in the performance of services fundamentally the same as the Services (either in whole or in part) which are to be undertaken by the Successor or College, as appropriate;
<b>“Successor”</b>	means any third party who provides services fundamentally the same as the Services (either in whole or in part) in immediate or subsequent succession to the Supplier upon the expiry or earlier termination of this Agreement;
<b>“Supplier”</b>	means the supplier named on the Order;
<b>“Supplier Personnel”</b>	means any employee, agent, consultant and/or contractor of the Supplier or subcontractor who is either partially or fully engaged in the performance of the Services;
<b>“Term”</b>	means the term of the Agreement as defined within the Order;
<b>“Terms and Conditions”</b>	means the standard terms and conditions of purchase set out in this document;
<b>“Third Party”</b>	Services (either in whole or in part) immediately before the Transfer Date;
<b>“Third Party Employees”</b>	means all those employees, if any, assigned by a Third Party to the provision of a service that is fundamentally the same as the Services immediately before the Transfer Date;
<b>“Transfer Date”</b>	means the Commencement Date;

**“Transferred Staff”** means those employees (including Transferring Employees and any Third Party Employees) whose employment compulsorily transfers to the Supplier or to a subcontractor by operation of TUPE, the Cabinet Office Statement or for any other reasons, as a result of the award of this Contract;

**“Transferring Employees”** means all those employees, if any, assigned by the Authority to the provision of a service that is fundamentally the same as the Services immediately before the Transfer Date;

**“TUPE”** The Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246).

- 1.2 Unless the context otherwise requires, each reference in these Terms and Conditions to:
- 1.2.1 “writing”, and any cognate expression, includes a reference to any communication effected by electronic or facsimile transmission or similar means;
  - 1.2.2 a statute or a provision of a statute is a reference to that statute or provision as amended or re-enacted at the relevant time;
  - 1.2.3 “these Terms and Conditions” is a reference to these Terms and Conditions as amended or supplemented at the relevant time;
  - 1.2.4 a Clause or paragraph is a reference to a Clause of these Terms and Conditions or to a Clause of the Agreement, as appropriate; and
  - 1.2.5 a "Party" or the "Parties" refer to the parties to the Agreement.
- 1.3 The headings used in these Terms and Conditions are for convenience only and shall have no effect upon the interpretation of these Terms and Conditions.
- 1.4 Words imparting the singular number shall include the plural and vice versa.
- 1.5 References to any gender shall include the other gender.
- 1.6 References to persons shall include corporations.

## 2. **Supply of Goods and Provision of Services**

- 2.1 With effect from the Commencement Date, the Supplier shall, throughout the Term of the Agreement supply the Goods ordered by the College and provide the Services to the College under this Agreement.
- 2.2 The Supplier agrees to supply the Goods and provide the Services under this Agreement:-
- 2.2.1 promptly and in any event within any time limits as may be set out in the Agreement;
  - 2.2.2 in accordance with all other provisions of the Agreement;
  - 2.2.3 with reasonable skill and care and in accordance with any quality assurance standards as set out in the Order;

- 2.2.4 in accordance with Law and Guidance;
  - 2.2.5 in accordance with Good Industry Practice; and
  - 2.2.6 in accordance with the Policies.
- 2.3 The Supplier shall comply fully with its obligations set out in the Agreement Documents, including without limitation any defined KPIs.
- 2.4 The Supplier shall comply fully with its obligations set out the Request for Quote and Quote Response Document (to include without limitation, the KPIs and all obligations in relation to the quality, performance, characteristics, supply, delivery, installation, commissioning, maintenance and training in relation to the Goods and their use).
- 2.5 Unless otherwise agreed by the Parties in writing, the Goods shall be new, consistent with any sample, and shall comply with applicable specification set out in this Agreement (to include without limitation the provision of the College's requirements set out in the Request for Quote and Quote Response Document) and any applicable manufacturers' specification.
- 2.6 The Supplier shall ensure that all relevant consents, authorisations, licences and accreditations:
- 2.6.1 required to supply the Goods are in place prior to the delivery of any of the Goods to the College; and
  - 2.6.2 required to provide the Services are in place at the Commencement Date and are maintained throughout the Term.
- 2.7 If the Goods and the Services, or any part of them, are regulated by any regulatory body, the Supplier shall ensure that at the Commencement Date it has in place all relevant registrations and shall maintain such registrations during the Term. The Supplier shall notify the College in writing of any changes to such registration or any other matter relating to its registration that would affect the delivery of quality of the Goods and the Services.
- 2.6 The Supplier shall notify the College forthwith in writing:-
- 2.6.1 of any pending inspection of the Goods and Services, or any part of them, by a regulatory body immediately upon the Supplier becoming aware of such inspection; and
  - 2.6.2 of any failure of the Goods and or Services, or any part of them, to meet the quality standards required by the regulatory body, promptly and in any event within two (2) Business Days of the Supplier becoming aware of any such failure. This shall include without limitation any informal feedback received during or following an inspection raising concerns of any nature regarding the provision of the Goods and Services.
- 2.7 If there are any incidents that in any way relate to or involve the use of the Goods by the College, the Supplier shall co-operate fully with the College in relation to the College's application of the Policies on reporting and responding to all incidents including serious incidents requiring investigation, and shall respond promptly to any reasonable and proportionate enquiries, questions and/or requests for information that the College may have in this context in relation to the Goods.
- 2.8 If there are any quality, performance and/or safety related reports, notices, alerts or other communications issued by the Supplier or any regulatory or other body in relation

to the Goods, the Supplier shall promptly provide the College with a copy of any such reports, notices, alerts or other communications.

- 2.9 Upon receipt of any such reports, notices, alerts or other communications pursuant to Clause 2, the College shall be entitled to request further information from the Supplier and/or a meeting with the Supplier, and the Supplier shall cooperate fully with any such request.
- 2.10 Time shall be of the essence of the Agreement.

### **3. Delivery of the Goods and passing of risk and ownership in the Goods**

- 3.1 The Supplier shall deliver the Goods in accordance with any delivery timescales, delivery dates, and delivery instructions (including without limitation delivery location and delivery time) set out in the Request for Quote and Quote Response Document, and Order or as otherwise agreed with the College in writing.
- 3.2 Delivery shall be completed when the Goods have been unloaded at the location specified by the College and such delivery has been received by a duly authorised agent, employee or representative of the College. Any arrangement by which Goods are collected by the College in return for a discount on the Contract Price shall be agreed by the Parties in writing (where due to an emergency such arrangements cannot be committed prior to writing prior to collection, the Parties shall confirm such arrangements in writing as soon as possible following collection). Where the College collects the Goods, collection is deemed delivery for the purposes of the Agreement.
- 3.3 The Supplier shall ensure that a delivery note shall accompany each delivery of the Goods. Such delivery note shall contain the information specified in the Request for Quote and Quote Response Document or as otherwise agreed with the College in writing. Where such information requirements as to the content of the delivery notes are not specified or separately agreed, such delivery notes shall, as a minimum, contain the College's Order number, the name and address of the College, a description and quantity of the Goods.
- 3.4 Part deliveries and/or deliveries outside of the agreed delivery timescales/dates/instructions may be refused unless the College has previously agreed in writing to accept such deliveries. Where delivery of the Goods is refused by the College in accordance with this clause 3.4 the Supplier shall be responsible for all risks, costs, and expenses associated with the re-delivery of the Goods in accordance with the agreed delivery timescales/dates/instructions.
- 3.5 Unless otherwise set out in the Request for Quote and Quote Response Document or agreed with the College in writing, the Supplier shall be responsible for the carriage, insurance, transport, all relevant licences, all related costs and all other costs associated with the delivery of the Goods to the delivery location and uploading of the Goods at that location. Without limitation to the foregoing provision of this clause 3.5, unless otherwise stated in the Request for Quote and Quote Response Document or agreed with the College in writing, the Supplier shall be responsible for obtaining all export and import licences for the Goods and shall be responsible for any delays in the delivery time due to such licences not being available when required. In the case of any Goods supplied from outside the United Kingdom, the Supplier shall ensure that accurate information is provided to the College as to the country of origin of the Goods and shall be liable to the College for any extra duties or taxes for which the College may be accountable should the country of origin prove to be different from that set out in the Request for Quote and Quote Response Document.

- 3.6 All third party carriers engaged to deliver the Goods shall at no time be an agent of the College and accordingly the Supplier shall be liable to the College for the acts and omissions of all third party carriers engaged to deliver the Goods to the College.
- 3.7 Risk in the Goods shall pass to the College when the Goods are received as specified in this Agreement, or in the case of Goods which require installation by the Supplier, when that installation is complete.
- 3.8 Ownership of the Goods shall pass to the College on the earlier of:
- 3.8.1 full payment for such Goods; or
- 3.8.2 where the Goods are consumables or are non-recoverable at the point such Goods are taken into use. For the avoidance of doubt, where ownership passes in accordance with clause 3.8.2 then the full Contract Price for such Goods shall be recoverable by the Supplier from the College as a debt if there is non-payment of a valid undisputed invoice issued by the Supplier to the College in relation to such Goods.
- 3.9 All tools, equipment and materials of the Supplier required in the performance of the Supplier's obligations under this Agreement shall be and remain at the sole risk of the Supplier where or not they are situated at a delivery location.

#### **4. Inspection, rejection, return and recall of the Goods**

- 4.1 As relevant and proportionate to the Goods in question, and subject to reasonable written notice, the Supplier shall permit any person authorised by the College to inspect work being undertaken in relation to the Goods and or the storage facilities used in the storage of the Goods at all reasonable times at the Supplier's premises or at the premises of any subcontractor or agent of the Supplier in order to confirm that the Goods are being manufactured and/or stored in accordance with Good Industry Practice and in compliance with requirements of this Agreement and or that stock holding and quality assurance processes are in accordance with the requirements of this Agreement.
- 4.2 Without prejudice to the provision of clause 4.6, and subject to clause 4.7 the College shall visually inspect the Goods within a reasonable time following delivery and may by written notice reject any Goods found to be damaged or otherwise not in accordance with the requirements of this Agreement ("Rejected Goods"). The whole of any delivery may be rejected if a reasonable sample of the Goods taken indiscriminately from that delivery is found not to confirm in all material respect to the requirement of the Agreement.
- 4.3 Without prejudice to the provisions of clause 4.5 upon the rejection of any Goods in accordance with clauses 4.2 and 4.6 the Supplier shall at the College's written request:-
- 4.3.1 collect the Rejected Goods at the Supplier's risk and expense within ten (10) Business Days of issue of written notice from the College rejecting the Goods; and
- 4.3.2 without extra charge, promptly and in any event within twenty (20) Business Days or such other time agreed by the Parties in writing acting reasonably supply replacements for the Rejected Goods to the College subject to the College not cancelling its purchase obligations in accordance with clause 4.5.

If the Supplier requests and the College accept that the Rejected Goods should be disposed by the College rather than returned to the Supplier, the College reserves the right to charge the Supplier for the costs associated with the disposal of the Rejected Goods and the Supplier shall promptly pay any such costs.

- 4.4 Risk and title in respect of any of the Rejected Goods shall pass to the Supplier on the earlier of (a) collection by the Supplier in accordance with clause 4.3 or (b) immediately following the expiry of ten (10) Business Days from the College issuing written notification rejecting the Goods. If Rejected Goods are not collected within ten (10) Business Days of the College issuing written notification rejecting the Goods, the College may return the Rejected Goods at the Supplier's risk and expense and charge the Supplier for the cost of storage from the expiry of ten (10) Business Days from the date of notification of the rejection.
- 4.5 Where the College rejects any Goods in accordance with clause 4.2 and or 4.6 and the College no longer requires replacement Goods, the College may by written notice cancel its purchase obligations in relation to such quantity of Rejected Goods. Should the College have paid for such Rejected Goods the Supplier shall refund such payment to the College within thirty (30) days of the College cancelling such purchase obligations and informing the Supplier that the College does not require replacement for such Rejected Goods.
- 4.6 Without prejudice to any other provisions of this Agreement or any warranties or guarantees applicable to the Goods supplied an subject to clause 4.7 if at any time following the date of delivery of any Goods, all or any part of such Goods are found to be defective or otherwise not in accordance with the requirement of this Agreement ("Defective Goods") the Supplier shall at the College's discretion:-
- 4.6.1 upon written request and without charge, promptly (and in any event within twenty (20) Business Days or such other time agreed by the Parties in writing acting reasonably) remedy the deficiency by repairing such Defective Goods; or
- 4.6.2 upon written notice of rejection from the College, treat such Defective Goods as Rejected Goods in accordance with clause 4.2 to 4.5.
- 4.7 The Supplier shall be relieved of its liabilities under clauses 4.2 to 4.5 (inclusive) and or clause 4.6 to the extent only that the Goods are damaged, there are defects in the Goods and/or the Goods fail to comply with the requirements of this Agreement due, in each case, to any acts or omissions of the College.
- 4.8 The College's rights and remedies under 4.6 shall cease within a reasonable period of time from the date on which the College discovers or might reasonably be expected to discover that the Goods are Defective Goods. For the avoidance of doubt, Goods not used before their expiry date shall in no event be considered Defective Goods following the date of expiry provided that at the point such Goods were delivered to the College they met any shelf life requirements set out in the Request for Quote and Quote Response Document.
- 4.9 Where the Supplier is required by Law, Guidance and/or Good Industry Practice to order a product recall ("Requirement to Recall") in respect of the Goods, the Supplier shall:-
- 4.9.1 promptly (taking into consideration the potential impact of the continued use of the Goods on or with employees students visitors and service users and the College as well as compliance by the Supplier with any regulatory requirements)

notify the College in writing of the recall together with the circumstances giving rise to the recall;

- 4.9.2 from the date of the Requirement to Recall treat the Goods the subject of such recall as Defective Goods in accordance with clause 3.6;
- 4.9.3 consult with the College as to the most efficient method of executing the recall of the Goods and use its reasonably endeavours to minimise the impact on the College of the recall; and
- 4.9.4 indemnify and keep the College indemnified against any loss, damages, costs, expenses, (including without limitation legal costs and expenses) claims or proceedings suffered or incurred by the College as a result of such Requirement to Recall.

## **5. Operation of the Services**

- 5.1 The Services shall be provided at such College premises and at such locations within those premises as may be set out in the Agreement Documents or as otherwise agreed by the Parties in writing ("Premises and Locations").
- 5.2 Subject to the Supplier and its Staff complying with all relevant Policies applicable to such Premises and Locations, the College shall grant reasonable access to the Supplier and its Staff to such Premises and Locations to enable the Supplier to provide the Services.
- 5.3. Subject to clause 5.4 of these Terms and Conditions any access granted to the Supplier and its Staff under clause 5.2 above shall be non-exclusive and revocable. Such access shall not be deemed to create any greater rights or interest than so granted (to include, without limitation, any relationship of landlord and tenant) in the Premises and Locations. The Supplier warrants that it shall carry out all such reasonable further acts to give effect to this clause 5.3 of these Terms and Conditions.
- 5.4 Where in order to provide the Services the Supplier requires any greater rights to use or occupy any specific Premises and Locations over and above such reasonable access rights granted in accordance with clause 5.2 and 5.3 of these Terms and Conditions such further rights shall be limited to any rights granted to the Supplier by the College in accordance with any licence and/or lease entered into by the Supplier with the College.
- 5.5 Where it is provided for by a specific mechanism set out in the Agreement Document, the College may increase, reduce or otherwise vary the Premises and Locations in accordance with such mechanism subject to the provision of any licence or lease entered into by the Parties as referred to in clause 5.4 above. Where there is no such specific mechanism set out in the Agreement Documents, any variations to the Premises and Locations where the Services are to be provided shall be agreed in writing by the Parties. If agreement cannot be reached the matter shall be referred to and resolved in accordance with Clause 28 of these Terms and Conditions.
- 5.6 The Supplier shall, as reasonably required by the College, cooperate with any other service providers to the College and/or any other third parties as may be relevant in the provision of the Services.
- 5.7 Unless otherwise set out in the Agreement Documents or otherwise agreed by the Parties in writing any equipment or other items provided by the College for use by the Supplier:-

- 5.7.1 shall be provided at the College's sole discretion;
  - 5.7.2 shall be inspected by the Supplier in order that the Supplier can confirm to its reasonable satisfaction that such equipment and/or item is fit of its intended use and shall not be used by the Supplier until it has satisfied itself of this;
  - 5.7.3 must be returned to the College within any agreed timescales for such return or otherwise upon the request of the College; and
  - 5.7.4 shall be used by the Supplier at the Supplier's risk and the Supplier shall upon written request by the College reimburse the College for any loss or damage relating to such equipment or such other items caused by the Supplier (fair wear and tear exempted).
- 6.8 The Supplier shall notify the College forthwith in writing:
- 6.8.1 of any pending inspection of the Services, or any part of them, by a regulatory body immediately upon the Supplier becoming aware of such inspection; and
  - 6.8.2 of any failure of the Services, or any part of them, to meet the quality standards required by a regulatory body, promptly and in any event within two (2) Business Days of the Supplier becoming aware of any such failure. This shall include without limitation any informal feedback received during or following an inspection raising concerns of any nature regarding the provision of the Services.
- 6.9 Following any inspection of the Services, or any part of them, by a regulatory body, the Supplier shall provide the College with a copy of any report or other communication published or provided by the relevant regulatory body in relation to the provision of the Services.
- 6.10 Upon receipt of notice pursuant to Clause 5.8 or any report or communication pursuant to Clause 5, the College shall be entitled to request further information from the Supplier and/or a meeting with the Supplier, and the Supplier shall cooperate fully with any such request.
- 6.11 Where applicable, the Supplier shall implement and comply with the Policies on reporting and responding to all incidents and accidents, including serious incidents requiring investigation, shall complete the College's incident and accident forms in accordance with the Policies and provide reasonable support and information as requested by the College to help the College deal with any incident or accident relevant to the Services. The Supplier shall ensure that its Contract Manager informs the College's Contract Manager in writing forthwith upon (a) becoming aware that any serious incidents requiring investigation and/or notifiable accidents have occurred; or (b) the Supplier's Contract Manager having reasonable cause to believe any serious incidents and/or notifiable accidents requiring investigation have occurred. The Supplier shall ensure that its Contract Manager informs the College's Contract Manager in writing within forty eight (48) hours of all other incidents and/or accidents that have or may have an impact on the Services.

## 6. Staff

- 6.1 Subject to the requirements of the Agreement and any Law and Guidance, the Supplier shall be entirely responsible for the employment and conditions of service of Staff. The Supplier shall ensure that such conditions of employment are consistent with its obligations under the Agreement.
- 6.2 The Supplier will employ sufficient Staff to ensure that it complies with its obligations under the Agreement. This will include, but not be limited to, the Supplier providing a sufficient reserve of trained and competent Staff to provide the Services during Staff holidays or absence.
- 6.3 The Supplier shall use reasonable endeavours to ensure the continuity of all Staff in the provision of the Services and, where any member of Staff is designated as key to the provision of the Services as set out in the Agreement Documents or as otherwise agreed between the Parties in writing, any redeployment and/or replacement of such member of Staff by the Supplier shall be subject to the prior written approval of the College, such approval not to be unreasonably withheld or delayed.
- 6.4 The Supplier shall ensure that all Staff are aware of, and at all times comply with, the Policies.
- 6.5 The Supplier shall:
- 6.5.1 employ only those Staff who are careful, skilled and experienced in the duties required of them;
  - 6.5.2 ensure that every member of Staff is properly and sufficiently trained and instructed;
  - 6.5.3 ensure all Staff have the qualifications to carry out their duties;
  - 6.5.4 maintain throughout the Term all appropriate licences and registrations with any relevant bodies (at the Supplier's expense) in respect of the Staff; and
  - 6.5.5 ensure all Staff comply with such registration, continuing professional development and training requirements or recommendations appropriate to their role including those from time to time issued by the Department of Education or any relevant regulatory body or any industry body in relation to such Staff.
- 6.6 The Supplier shall ensure that all potential Staff or persons performing any of the Services during the Term who may reasonably be expected in the course of performing any of the Services under this Agreement to have access to or come into contact with children or other vulnerable persons:
- 6.6.1 are questioned concerning their Convictions; and
  - 6.6.2 obtain appropriate disclosures from the Disclosure and Barring Service (or other appropriate body) as required by Law and/or the Policies before the Supplier engages the potential staff or persons in the provision of the Services.
- 6.7 The Supplier shall take all necessary steps to ensure that such potential staff or persons obtain standard and enhanced disclosures from the Disclosure and Barring Service (or other appropriate body) and shall ensure all such disclosures are kept up to date. The obtaining of such disclosures shall be at the Supplier's cost and expense.

- 6.8 The Supplier shall ensure that no person is employed or otherwise engaged in the provision of the Services without the Authority's prior written consent if:
- 6.8.1 the person has disclosed any Convictions upon being questioned about their convictions in accordance with Clause 6.6.1 of these Terms and Conditions;
  - 6.8.2 the person is found to have any Convictions following receipt of standard and/or enhanced disclosures from the Disclosure and Barring Service (or other appropriate body) in accordance with Clause 6.6.2 of these Terms and Conditions; or
  - 6.8.3 the person fails to obtain standard and/or enhanced disclosures from the Disclosure and Barring Service (or other appropriate body) upon request by the Supplier in accordance with Clause 6.6.2 of these Terms and Conditions.
- 6.9 In addition to the requirements of Clause 6.6 to Clause 6.8 of these Terms and Conditions, where the Services are or include regulated activities as defined by the Safeguarding Vulnerable Groups Act 2006 the Supplier:
- 6.9.1 warrants that it shall comply with all requirements placed on it by the Safeguarding Vulnerable Groups Act 2006;
  - 6.9.2 warrants that at all times it has and will have no reason to believe that any member of Staff is barred in accordance with the Safeguarding Vulnerable Groups Act 2006; and
  - 6.9.3 shall ensure that no person is employed or otherwise engaged in the provision of the Services if that person is barred from carrying out, or whose previous conduct or records indicate that they would not be suitable to carry out, any regulated activities as defined by the Safeguarding Vulnerable Groups Act 2006 or may present a risk to College staff, students, service users or any other person.
- 6.10 The Supplier shall ensure that the College is kept advised at all times of any member of Staff who, subsequent to their commencement of employment as a member of Staff receives a Conviction or whose previous Convictions become known to the Supplier or whose conduct or records indicate that they are not suitable to carry out any regulated activities as defined by the Safeguarding Vulnerable Groups Act 2006 or may present a risk to College staff, students, service users or any other person. The Supplier shall only be entitled to continue to engage or employ such member of Staff with the College's written consent and with such safeguards being put in place as the College may reasonably request. Should the College withhold consent the Supplier shall remove such member of Staff from the provision of the Services forthwith.
- 6.11 The Supplier shall immediately provide to the College any information that the College reasonably requests to enable the College to satisfy itself that the obligations set out in Clause 6.6 to Clause 6.10 of these Terms and Conditions have been met.
- 6.12 The College may at any time request that the Supplier remove and replace any member of Staff from the provision of the Services, provided always that the College will act reasonably in making such a request. Prior to making any such request the College shall raise with the Supplier the College's concerns regarding the member of Staff in question with the aim of seeking a mutually agreeable resolution. The College shall be under no obligation to have such prior discussion should the College have concerns regarding staff, student or service user safety.

## **7. Business Continuity**

- 7.1 The Supplier shall use reasonable endeavours to ensure its Business Continuity Plan operates effectively alongside the College's business continuity plan where relevant to the supply of the Goods and the provision of the Services.
- 7.2 Throughout the Term, the Supplier will ensure its Business Continuity Plan provides for continuity during a Business Continuity Event. The Supplier confirms and agrees such Business Continuity Plan details and will continue to detail robust arrangements that are reasonable and proportionate to:
- 7.2.1 the criticality of the Agreement to the College; and
- 7.2.2 the size and scope of the Supplier's business operations, regarding continuity of the supply of the Goods and the provision of the Services during and following a Business Continuity Event.
- 7.3 The Supplier shall test its Business Continuity Plan at reasonable intervals, and in any event no less than once every twelve (12) months or such other period as may be agreed between the Parties taking into account the criticality of this Agreement to the College and the size and scope of the Supplier's business operations. The Supplier shall promptly provide to the College, at the College's written request, copies of its Business Continuity Plan, reasonable and proportionate documentary evidence that the Supplier tests its Business Continuity Plan in accordance with the requirements of this Clause 7.3 and reasonable and proportionate information regarding the outcome of such tests. The Supplier shall provide to the College a copy of any updated or revised Business Continuity Plan within fourteen (14) Business Days of any material update or revision to the Business Continuity Plan.
- 7.4 The College may suggest reasonable and proportionate amendments to the Supplier regarding the Business Continuity Plan at any time. Where the Supplier, acting reasonably, deems such suggestions made by the College to be relevant and appropriate, the Supplier will incorporate into the Business Continuity Plan all such suggestions made by the College in respect of such Business Continuity Plan. Should the Supplier not incorporate any suggestion made by the College into such Business Continuity Plan it will explain the reasons for not doing so to the College.
- 7.5 Should a Business Continuity Event occur at any time, the Supplier shall implement and comply with its Business Continuity Plan and provide regular written reports to the College on such implementation.
- 7.6 During and following a Business Continuity Event, the Supplier shall use reasonable endeavours to continue to supply the Goods and provide the Services in accordance with the Agreement.

## **8. College's Obligations**

- 8.1 Subject to the Supplier supplying the Goods and providing the Services in accordance with the Agreement, the College will pay the Supplier for the Goods and/or Services in accordance with Clause 10 of these Terms and Conditions.
- 8.2 The College shall use all reasonable endeavours to provide all pertinent information to the Supplier that is necessary for the Supplier's supply of the Goods and provision of the Services and shall as appropriate provide copies of or give the Supplier access to such of the Policies that are relevant to the supply of the Goods and the provision of the Services.

- 8.3 The College may, from time to time, issue reasonable instructions to the Supplier in relation to the Supplier's supply of the Goods and the provision of the Services. Any such instructions should be compatible with the specification of the Goods and or Services provided in the Agreement.
- 8.4 In the event that the Supplier requires the decision, approval, consent or any other communication from the College in order to continue with the supply of the Goods and the provision of the Services or any part thereof at any time, the College shall provide the same in a reasonable and timely manner.
- 8.5 If any consents, licences or other permissions are needed from any third parties such as landlords, planning authorities, local authorities or similar, it shall be the College's responsibility to obtain the same in advance of the provision of the Services (or the relevant part thereof).

## **9. Contract Management**

- 9.1 Each Party shall appoint and retain a Contract Manager who shall be the primary point of contact for the other Party in relation to matters arising from the Agreement. Should the Contract Manager be replaced, the Party replacing the Contract Manager shall promptly inform the other Party in writing of the name and contact details for the new Contract Manager. Any Contract Manager appointed shall be of sufficient seniority and experience to be able to make decisions on the day to day operation of the Agreement. The Supplier confirms and agrees that it will be expected to work closely and cooperate fully with the College's Contract Manager.
- 9.2 Each Party shall ensure that its representatives (to include, without limitation, its Contract Manager) shall attend review meetings on a regular basis to review the performance of the Supplier under the Agreement and to discuss matters arising generally under the Agreement. Each Party shall ensure that those attending such meetings have the authority to make decisions regarding the day to day operation of the Agreement. Review meetings shall take place at the frequency specified in the Agreement Documents. Should the Agreement Documents not state the frequency, then the first such meeting shall take place on a date to be agreed on or around the end of the first month after the Commencement Date. Subsequent meetings shall take place at monthly intervals or as may otherwise be agreed in writing between the Parties.
- 9.3 Two weeks prior to each review meeting (or at such time and frequency as may be agreed by the Parties) the Supplier shall provide a written contract management report to the College regarding the supply of the Goods, the provision of the Services and the operation of the Agreement. Unless otherwise agreed by the Parties in writing, such contract management report shall contain:
- 9.3.1 details of the performance of the Supplier when assessed in accordance with the KPIs since the last such performance report;
  - 9.3.2 details of any complaints from or on behalf of College students, staff or other service users, their nature and the way in which the Supplier has responded to such complaints since the last review meeting written report;
  - 9.3.3 the information specified in the Agreement Documents;
  - 9.3.4 a status report in relation to the implementation of any current remedial proposals by either Party; and
  - 9.3.5 such other information as reasonably required by the College.

9.4 The Supplier shall provide such management information as the College may request from time to time within seven (7) Business Days of the date of the request. The Supplier shall supply the management information to the College in such form as may be specified by the College.

## **10. Contract Price and Payment**

10.1 The Contract Price of the Service shall be as stated in the Agreement Documents or similar and no increase shall be accepted by the College before the execution of the Agreement. Unless otherwise stated in the Agreement Documents the Contract Price:-

10.1 shall be payable from the Commencement Date;

10.2 shall remain fixed during the Term;

10.3 is the entire price payable by the College to the Supplier in respect of their supply of Goods and provision of Services and includes, without limitation, any royalties, licence fees, supplies and all consumables used by the Supplier, travel costs, accommodation expense and the cost of Staff.

10.2 The Supplier shall invoice the College for the Contract Price due in accordance with the provisions of the Agreement Documents. Each invoice shall contain such information and be addressed to such individual as the College may inform the Supplier from time to time.

10.3 The Contract Price is exclusive of VAT, which, if properly chargeable, the College shall pay at the prevailing rate subject to receipt from the Supplier of a valid and accurate VAT invoice. Such VAT invoice shall show the VAT calculation as a separate line item.

10.4 Where any payment pursuant to the Agreement is required to be made on a day that is not a Business Day, it may be made on the next following Business Day.

10.5 The College shall pay each undisputed invoice received in accordance with clause 10.2 within thirty (30) days of receipt of such invoice at the latest.

10.6 Where the College raises a query with respect to an invoice the Parties shall liaise with each other and agree a resolution to such query within thirty (30) days of the query being raised. If the Parties are unable to agree a resolution within thirty (30) days the query shall be referred to dispute resolution in accordance with Clause 26 of these Terms and Conditions.

10.7 The Supplier shall pay to the College any service credits that may become due in accordance with the provisions of the Agreement Documents.

10.8 The College reserves the right to deduct any monies due to the Supplier from the College from any monies due to the College from the Supplier under the Agreement.

## **11 Warranties**

11.1 The Supplier warrants and undertakes that:

11.1.1 the Goods shall be suitable for the purposes as referred to in the Request for Quote and Quote Response Document, be of satisfactory quality, fit for their intended purpose and shall comply with the standards and requirements set out in this Agreement;

- 11.1.2 it shall ensure that prior to the actual delivery to the College the Goods are manufactured, stored and/or distributed using reasonable skills and care and in accordance with Good Industry Practice;
- 11.1.3 without prejudice to the generality of the warranty at 11.1.2, it shall ensure that the Goods are manufactured, stored and or distributed in accordance with good manufacturing practice and/or good distribution practice, as may be defined under any Law and/or Guidance relevant to the Goods and in accordance with any specific instructions of the manufacturer of the Goods;
- 11.1.4 it has, or the manufacturer of the Goods has, manufacturing and warehousing capacity sufficient to comply with its obligations under this Agreement;
- 11.1.5 it shall ensure that all facilities used in the manufacture, storage, and distribution of the Goods are kept in a state and condition necessary to enable the Supply to comply with its obligations in accordance with this Agreement;
- 11.1.6 it will ensure sufficient stock levels to comply with its obligations under this Agreement;
- 11.1.7 it shall ensure that the transport and delivery of the Goods mean that they are delivered in good and useable condition;
- 11.1.8 where the Goods are required to be stored at a certain temperature, it shall provide, or shall procure the provision of, complete and accurate temperature records for each delivery of the Goods during the period of transport and/or storage of the Goods from the point of manufacture to the point of delivery to the College;
- 11.1.98 where there is any instruction information, including without limitation Material Safety Data Sheets, that accompany the Goods, it shall provide a sufficient number of copies to the College and provide updated copies should the instruction information change at any time during the Term;
- 11.1.10 all Goods delivered to the College shall comply with any shelf life requirements set out in the Request for Quote and Quote Response Document;
- 11.1.11 it shall not make any significant changes to the Goods without the prior written consent of the College, such consent not to be unreasonably withheld or delayed;
- 11.1.12 any equipment it uses in the manufacture, delivery or installation of the Goods shall comply with all relevant Law and Guidance, be fit for its intended purpose and maintained full in accordance with the manufacturer's specification;
- 11.1.13 it has, and shall as relevant maintain all rights, consents, authorisations, licences and accreditations required to supply the Goods;
- 11.1.14 it has, and shall ensure its Staff shall have, and shall maintain throughout the Term, all appropriate licences and registrations with the relevant bodies to fulfil its obligations under the Agreement;
- 11.1.15 it has all rights, consents, authorisations, licences and accreditations required to provide the Services and shall maintain such consents, authorisations, licences and accreditations throughout the Term;

- 11.1.16 it has and shall maintain a properly documented system of quality controls and processes covering all aspects of its obligations under the Agreement and/or under Law and/or Guidance and shall at all times comply with such quality controls and processes;
- 11.1.17 it shall not make any significant changes to its system of quality controls and processes in relation to the Goods and or Services without notifying the College in writing at least twenty one (21) days in advance of such change (such notice to include the details of the consequences which follow such change being implemented);
- 11.1.18 where any act of the Supplier requires the notification to and/or approval by any regulatory or other competent body in accordance with any Law and Guidance, the Supplier shall comply fully with such notification and/or approval requirements;
- 11.1.19 receipt of the Goods and/or Services by or on behalf of the College and use of the Goods and/or the deliverables or of any other item or information supplied or made available to the College as part of the Services will not infringe any third party rights, to include without limitation any Intellectual Property Rights;
- 11.1.20 it will comply with all Law, Guidance and Policies in so far as is relevant to the supply of the Goods and/or provision of the Services;
- 11.1.21 it will provide the Services using reasonable skill and care and in accordance with Good Industry Practice and shall fulfil all requirements of the Agreement using appropriately skilled, trained and experienced Staff;
- 11.1.22 unless otherwise set out in the Agreement Documents and/or as otherwise agreed in writing by the Parties, it has and/or shall procure all resources, equipment, consumables and other items and facilities required to provide the Services;
- 11.1.23 without limitation to the generality of Clause 11.1.20 of these Terms and Conditions, it shall comply with all health and safety processes, requirements safeguards, controls, and training obligations in accordance with its own operational procedures, Law, Guidance, Policies, Good Industry Practice, the requirements of the Agreement Documents and any notices or instructions given to the Supplier by the College and/or any competent body, as relevant to the supply of the Goods, the provision of the Services and the Supplier's access to the Premises and Locations in accordance with the Agreement;
- 11.1.24 without prejudice to any specific notification requirements set out in the Agreement, it will promptly notify the College of any health and safety hazard which has arisen, or the Supplier is aware may arise, in connection with the goods and/or the performance of the Services and take such steps as are reasonably necessary to ensure the health and safety of persons likely to be affected by such hazards;
- 11.1.25 any equipment it uses in the provision of the Services shall comply with all relevant Law and Guidance, be fit for its intended purpose and maintained fully in accordance with the manufacturer's specification;
- 11.1.26 it shall use Good Industry Practice to ensure that any information and communications technology systems and/or related hardware and/or software it uses are free from corrupt data, viruses, worms and any other computer

programs or code which might cause harm or disruption to the College's information and communications technology systems;

- 11.1.27 it will promptly respond to all requests for information regarding this Agreement and the Goods and the provision of the Services at the frequency and in the format that the College may reasonably require;
  - 11.1.28 all information included within the Supplier's responses in Request for Quote and Quote Response Documents and all accompanying materials is accurate;
  - 11.1.29 it has the right and authority to enter into the Agreement and that it has the capability and capacity to fulfil its obligations under the Agreement;
  - 11.1.30 it is a properly constituted entity and it is fully empowered by the terms of its constitutional documents to enter into and to carry out its obligations under this Agreement and the documents referred to in the Agreement;
  - 11.1.31 all necessary actions to authorise the execution of and performance of its obligations under the Agreement have been taken before such execution;
  - 11.1.32 there are no pending or threatened actions or proceedings before any court or administrative agency which would materially adversely affect the financial condition, business or operations of the Supplier;
  - 11.1.33 there are no material agreements existing to which the Supplier is a party which prevent the Supplier from entering into or complying with the Agreement;
  - 11.1.34 it has and will continue to have the capacity, funding and cash flow to meet all its obligations under the Agreement; and
  - 11.1.35 it has satisfied itself as to the nature and extent of the risks assumed by it under the Agreement and has gathered all information necessary to perform its obligations under the Agreement and all other obligations assumed by it.
- 11.2 The Supplier agrees to use reasonable endeavours to assign to the College upon request the benefit of any warranty, guarantee or similar right which it has against any third party manufacturer or supplier of the Goods in whole or in part.
- 11.3 The Supplier warrants that all information, data and other records and documents required by the College as set out in the Agreement Documents shall be submitted to the College in the format and in accordance with any timescales set out in the Agreement Documents or as shall be reasonably required by the College from time to time.
- 11.4 The Supplier further warrants and undertakes to the College that it will inform the College in writing immediately upon becoming aware that any of the warranties set out in Clause 11 of these Terms and Conditions have been breached or there is a risk that any warranties may be breached.
- 11.5 Any warranties provided under the Agreement are both independent and cumulative and may be enforced independently or collectively at the sole discretion of the enforcing Party.

## 12. **Intellectual property**

- 12.1 Unless specified otherwise in the Agreement, or in the Agreement Documents, the Supplier hereby grants to the College, for the life of the use of the Goods by the

College, an irrevocable, royalty-free, non-exclusive licence of any Intellectual Property Rights required for the purposes of receiving and using and to the extent necessary to receive and use, the Goods (to include any associated technical or other documentation and information supplied or made accessible to the College in any media) in accordance with this Agreement.

- 12.2 The Supplier warrants and undertakes to the College that either it owns or is entitled to use and will continue to own or be entitled to use all Intellectual Property Rights used in the development and provision of the Services and/or necessary to give effect to the Services and/or to use any deliverables, matter or any other output supplied to the College as part of the Services.
- 12.3 Unless specified otherwise in the Agreement or in the Agreement Documents, the Supplier hereby grants to the College, for the life of the use by the College of any deliverables, material or any other output supplied to the College in any format as part of the Services, an irrevocable, royalty-free, non-exclusive licence to use, modify, adapt or enhance such items in the course of the College's normal business operations. For the avoidance of doubt, unless specified otherwise in this Agreement and/or in the Agreement Documents, the College shall have no rights to commercially exploit (e.g. by selling to third parties) any deliverables, matter or any other output supplied to the College in any format as part of the Services.

### 13. **Indemnity**

- 13.1 The Supplier shall be liable to the College for, and shall indemnify and keep the College indemnified against, any loss, damages, costs, expenses (including without limitation legal costs and expenses), claims or proceedings in respect of:

13.1.1 any injury or allegation of injury to any person, including injury resulting in death;

13.1.2 any loss of or damage to property (whether real or personal); and/or

13.1.3 any breach of Clause 11.1.19 and/or clause 12 of these Terms and Conditions;  
and/or

13.1.4 any failure by the Supplier to commence the delivery of the Services by the Commencement Date;

that arise or result from the Supplier's negligent acts or omissions or breach of contract in connection with the performance of the Agreement including the supply of Goods and provision of the Services, except to the extent that such loss, damages, costs, expenses (including without limitation legal costs and expenses), claims or proceedings have been caused by any act or omission by, or on behalf of, or in accordance with the instructions of, the College.

- 13.2 Liability under Clauses 13.1.1, 13.1.3, 18.4, 18.9, 18.14 and 22.6 of these Terms and Conditions shall be unlimited. Liability under Clauses 13.1.2 and 13.1.4 of Terms and Conditions shall be subject to the limitation of liability set out in Clause 14 of these Terms and Conditions.
- 13.3 In relation to all third party claims against the College, which are the subject of any indemnity given by the Supplier under the Agreement, the College shall use its reasonable endeavours, upon a written request from the Supplier, to transfer the conduct of such claims to the Supplier unless restricted from doing so. Such restrictions may include, without limitation, any restrictions:

13.3.1 relating to any legal, regulatory, governance, information governance, or confidentiality obligations on the College; and/or

13.3.2 relating to the College's membership of any indemnity and/or insurance arrangements.

such transfer shall be subject to the Parties agreeing appropriate terms for such conduct of the third party claim by the Supplier (to include, without limitation, the right of the College to be informed and consulted on the on-going conduct of the claim following such transfer and any reasonable cooperation required by the Supplier from the College).

#### **14. Limitation of Liability**

14.1 Nothing in these Terms and Conditions or any other term of the Agreement shall exclude or restrict the liability of either Party:

14.1.1 for death or personal injury resulting from its negligence;

14.1.2 for fraud or fraudulent misrepresentation; or

14.1.3 in any other circumstances where liability may not be limited or excluded under any applicable law.

14.2 Subject to Clauses 13.2, 14.1, 14.3, and 14.5 of these Terms and Conditions, the total liability of each Party to the other under or in connection with the Agreement whether arising in contract, tort, negligence, breach of statutory duty or otherwise shall be limited in aggregate to the greater of: (a) five million GBP (£5,000,000); or (b) one hundred and twenty five per cent (125%) of the total Fees paid or payable by the College to the Supplier for the Goods and the Services.

14.3 There shall be no right to claim losses, damages and/or other costs and expenses under or in connection with the Agreement whether arising in contract (to include, without limitation, under any relevant indemnity), tort, negligence, breach of statutory duty or otherwise to the extent that any losses, damages and/or other costs and expenses claimed are in respect of loss of production, loss of business opportunity or are in respect of indirect loss of any nature suffered or alleged. For the avoidance of doubt, without limitation, the Parties agree that for the purposes of the Agreement the following costs, expenses and/or loss of income shall be direct recoverable losses (to include under any relevant indemnity) provided such costs, expenses and/or loss of income are properly evidenced by the claiming Party:

14.3.1 extra costs incurred purchasing replacement or alternative goods and services;

14.3.2 the costs of extra management time; and/or

14.3.3 loss of income due to an inability to provide education services,

in each case to the extent to which such costs, expenses and/or loss of income arise or result from the other Party's breach of contract, negligent act or omission, breach of statutory duty, and/or other liability under or in connection with the Agreement.

14.4. Each Party shall at all times take all reasonable steps to minimise and mitigate any loss for which that Party is entitled to bring a claim against the other pursuant to the Agreement.

14.5 If the total Contract Price paid or payable by the College to the Supplier over the Term:

- 14.5.1 is less than or equal to one million pounds (£1,000,000), then the figure of five million pounds (£5,000,000) at Clause 14.2 of these Terms and Conditions shall be replaced with one million pounds (£1,000,000);
- 14.5.2 is less than or equal to three million pounds (£3,000,000) but greater than one million pounds (£1,000,000), then the figure of five million pounds (£5,000,000) at Clause 14.2 of these Terms and Conditions shall be replaced with three million pounds (£3,000,000);
- 14.5.3 is equal to, exceeds or will exceed five million pounds (£5,000,000), but is less than ten million pounds (£10,000,000), then the figure of five million pounds (£5,000,000) at Clause 14 of these Terms and Conditions shall not be replaced.
- 14.6 Clause 14 of these Terms and Conditions shall survive the expiry of or earlier termination of the Agreement for any reason.

## **15. Insurance**

- 15.1 Without prejudice to its liability to indemnify the College, the Supplier shall put in place and/or maintain in force at its own cost with a reputable commercial insurer, insurance arrangements in respect of employer's liability, public liability and professional indemnity in accordance with Good Industry Practice with the minimum cover per claim of the greater of five million pounds (£5,000,000) or any sum as required by Law unless otherwise agreed with the College in writing.
- 15.2 The amount of any indemnity cover shall not relieve the Supplier of any liabilities under the Agreement. It shall be the responsibility of the Supplier to determine the amount of indemnity cover that will be adequate to enable it to satisfy its potential liabilities under the Agreement. Accordingly, the Supplier shall be liable to make good any deficiency if the proceeds of any indemnity cover is insufficient to cover the settlement of any claim.
- 15.3 The Supplier warrants that it shall not take any action or fail to take any reasonable action or (in so far as it is reasonable and within its power) permit or allow others to take or fail to take any action, as a result of which its insurance cover may be rendered void, voidable, unenforceable, or be suspended or impaired in whole or in part, or which may otherwise render any sum paid out under such insurances repayable in whole or in part.
- 15.4 The Supplier shall from time to time and in any event within five (5) Business Days of written demand provide documentary evidence to the College that insurance arrangements taken out by the Supplier pursuant to this Clause 15 are fully maintained and that any premiums on them and/or contributions in respect of them (if any) are fully paid

## **16. Term and Termination**

- 16.1 The Agreement shall commence on the Commencement Date and, unless terminated earlier in accordance with the terms of the Agreement or the general law, shall continue until the end of the Term.
- 16.2 The College shall be entitled to extend the Term on one or more occasions by giving the Supplier written notice no less than three (3) months prior to the date on which the Agreement would otherwise have expired, provided that the duration of the Agreement shall be no longer than the total term specified in the Agreement Documents.
- 16.3 Either Party may terminate the Agreement forthwith by notice in writing to the other Party if such other Party:

- 16.3.1 commits a material breach of any of the terms of the Agreement which is:
- 16.3.1.1 not capable of remedy; or
  - 16.3.1.2 in the case of a breach capable of remedy, has failed to remedy such breach within twenty eight (28) days of receipt of notice from the Party not in breach ("A Remedial Notice") to do so; or
- 16.3.2 has been served with at least two (2) previous Remedial Notices as a result of any material breaches which are capable of remedy within any twelve (12) month rolling period whether or not the Party in breach has remedied the breach in accordance with the Remedial Notice. The twelve (12) months rolling period is the twelve (12) months immediately preceding the date of the third breach notice.
- 16.4 The College may terminate the Agreement forthwith by notice in writing to the Supplier if:
- 16.4.1 the Supplier does not commence supply of the Goods and/or delivery of the Services by the Commencement Date;
  - 16.4.2 the Supplier, or any third party guaranteeing the obligations of the Supplier under the Agreement, ceases or threatens to cease carrying on its business; suspends making payments on any of its debts or announces an intention to do so; is, or is deemed for the purposes of any Law to be, unable to pay its debts as they fall due or insolvent; enters into or proposes any composition, assignment or arrangement with its creditors generally; takes any step or suffers any step to be taken in relation to its winding-up, dissolution, administration (whether out of court or otherwise) or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) otherwise than as part of, and exclusively for the purpose of, a bona fide reconstruction or amalgamation; has a liquidator, trustee in bankruptcy, judicial custodian, compulsory manager, receiver, administrative receiver, administrator or similar officer appointed (in each case, whether out of court or otherwise) in respect of it or any of its assets; has any security over any of its assets enforced; or any analogous procedure or step is taken in any jurisdiction;
  - 16.4.3 the Supplier undergoes a change of control within the meaning of sections 450 and 451 of the Corporation Tax Act 2010 (other than for an intra-group change of control) without the prior written consent of the College and the College shall be entitled to withhold such consent if, in the reasonable opinion of the College, the proposed change of control will have a material impact on the performance of the Agreement or the reputation of the College;
  - 16.4.4 the Supplier purports to assign, subcontract, novate, create a trust in or otherwise transfer or dispose of the Agreement;
  - 16.4.5 pursuant to and in accordance with the Clauses 16.5, 27.2 and 29.7 of these Terms and Conditions.
- 16.5 If the College, acting reasonably, has good cause to believe that there has been a material deterioration in the financial circumstances of the Supplier and/or any third party guaranteeing the obligations of the Supplier under this Agreement and/or any material subcontractor of the Supplier when compared to any information provided to and/or assessed by the College as part of any procurement process or other due

diligence leading to the award of this Agreement to the Supplier or the entering into a subcontract by the Supplier, the following process shall apply:-

- 16.5.1 the College may (but shall not be obliged to) give notice to the Supplier requesting adequate financial or other security and/or assurances for due performance of its material obligations under this Agreement on such reasonable and proportionate terms as the College may require within a reasonable time period as specified in such notice;
  - 16.5.2 a failure or refusal by the Supplier to provide the financial or other security and/or assurances requested in accordance with Clause 16.5 of this Agreement in accordance with any reasonable timescales specified in any such notice issued by the College shall be deemed a breach of this Agreement by the Supplier and shall be referred to and resolved in accordance with the Dispute Resolution Procedure; and
  - 16.5.3 a failure to resolve such breach in accordance with such Dispute Resolution Procedure by the end of the escalation stage of such process (as set out in Clause 28 of these Terms and Conditions) shall entitle, but shall not compel, the College to terminate the Agreement in accordance with Clause 16.3.1.1 of these Terms and Conditions.
- 16.6 In order that the College may act reasonably in exercising its discretion in accordance with Clause 16.5 of these Terms and Conditions, the Supplier shall provide the College with such reasonable and proportionate up-to-date financial or other information relating to the Supplier or any relevant third party entity upon request.
- 16.7 The College may terminate the Agreement forthwith in writing to the Supplier at any time on three (3) months written notice.

## **17 Consequences of Termination**

- 17.1 On the expiry of the Term or if the Agreement is terminated for any reason the Supplier shall co-operate fully with the College to ensure an orderly migration of the supply of the Goods or the provision of the Services to the College or, at the College's request a Replacement Supplier.
- 17.2 On termination of the Agreement the Supplier shall procure that all data including without limitation Personal Data, documents and records (whether stored electronically or otherwise) and other material belonging to the College (and all media of any nature containing data belonging to the College or relating to the Goods and or Services in whole or in part) shall be delivered to the College forthwith and the Supplier's Contract Manager shall certify full compliance with this clause 17.2.
- 17.3 Immediately upon expiry or earlier termination of the Agreement any licence or lease entered into with the Supplier shall automatically terminate.
- 17.3 The expiry or earlier termination of the Agreement shall not affect any obligations which expressly or by implication are intended to come into or continue in force on or after such expiry or earlier termination.

## **18 Staff information and the application of TUPE at the end of the Agreement**

- 18.1 Upon the day which is no greater than nine (9) months before the expiry of this Agreement or as soon as the Supplier is aware of the proposed termination of the Agreement the Supplier shall, within twenty eight (28) days of receiving a written

request from the College and to the extent permitted by law, supply to the College and keep updated all information required by the College as to the terms and conditions of employment and employment history of any Supplier Personnel (including all employee liability information identified in regulation 11 of TUPE) and the Supplier shall warrant such information is full, complete and accurate.

- 18.2 No later than twenty eight (28) days prior to the Subsequent Transfer Date, the Supplier shall or shall procure that any subcontractor shall provide a final list to the Successor and/or the College, as appropriate, containing the names of all the Subsequent Transferring Employees whom the Supplier or subcontractor expects will transfer to the Successor or the College and all employee liability information identified in regulation 11 of TUPE in relation to the Subsequent Transferring Employees.
- 18.3 If the Supplier shall, in the reasonable opinion of the College, deliberately not comply with its obligations under Clauses 18.1 and 18.2, the College may withhold payment under Clause 10.
- 18.4 The Supplier shall be liable to the College for, and shall indemnify and keep the College indemnified against, any loss, damages, costs, expenses (including without limitation legal costs and expenses), claims or proceedings that arise or result from any deficiency or inaccuracy in the information which the Supplier is required to provide under Clauses 18.1 and 18.2.
- 18.5 Subject to Clauses 18.6 and 18.7, during the period of nine (9) months preceding the expiry of this Contract or after notice of termination of this Agreement has been served by either Party, the Supplier shall not, and shall procure that any subcontractor shall not, without the prior written consent of the College, such consent not to be unreasonably withheld or delayed:
- 18.5.1 make, propose or permit any material changes to the terms and conditions of employment or other arrangements of any of the Supplier Personnel;
  - 18.5.2 increase or seek to increase the emoluments (excluding cost of living increases awarded in the ordinary course of business) payable to any of the Supplier Personnel;
  - 18.5.3 replace any of the Supplier Personnel or increase the total number of employees providing the Services;
  - 18.5.4 deploy any person other than the Supplier Personnel to perform the Services;
  - 18.5.5 terminate or give notice to terminate the employment or arrangements of any of the Supplier Personnel;
  - 18.5.6 increase the proportion of working time spent on the Services by any of the Supplier Personnel; or
  - 18.5.7 introduce any new contractual term or customary practice concerning the making of any lump sum payment on the termination of employment of any of the Supplier Personnel.
- 18.6 Clause 18.5 shall not prevent the Supplier or any subcontractor from taking any of the steps prohibited in that Clause in circumstances where the Supplier or subcontractor is required to take such a step pursuant to any changes in legislation or pursuant to a collective agreement in force at that time.

- 18.7 Where the obligations on the Supplier under Clause 18 are subject to the Data Protection Legislation, the Supplier will, and shall procure that any subcontractor will, use its best endeavours to seek the consent of the Supplier Personnel to disclose any information covered under the Data Protection Legislation and utilise any other exemption or provision within the Data Protection Legislation which would allow such disclosure.
- 18.8 Having as appropriate gained permission from any subcontractor, the Supplier hereby permits the College to disclose information about the Supplier Personnel to any Interested Party provided that the College informs the Interested Party in writing of the confidential nature of the information.
- 18.9 If on the termination or at the end of the Agreement TUPE does not apply, then all Employment Liabilities and any other liabilities in relation to the Supplier Personnel shall remain with the Supplier or subcontractor as appropriate. The Supplier will, and shall procure that any subcontractor shall, indemnify and keep indemnified the College in relation to any Employment Liabilities arising out of or in connection with any allegation or claim raised by any Supplier Personnel.
- 18.10 In accordance with TUPE, and any other policy or arrangement applicable, the Supplier shall, and will procure that any subcontractor shall, comply with its obligations to inform and consult with the appropriate representatives of any of its employees affected by the subsequent transfer of the Services or services which are fundamentally the same as the Services.
- 18.11 The Supplier will and shall procure that any subcontractor will on or before any Subsequent Transfer Date:
- 18.11.1 pay all wages, salaries and other benefits of the Subsequent Transferring Employees and discharge all other financial obligations (including reimbursement of any expenses and any contributions to retirement benefit schemes) in respect of the period between the Transfer Date and the Subsequent Transfer Date;
  - 18.11.2 account to the proper authority for all PAYE, tax deductions and national insurance contributions payable in respect of the Subsequent Transferring Employees in the period between the Transfer Date and the Subsequent Transfer Date;
  - 18.11.3 pay any Successor or the College, as appropriate, the amount which would be payable to each of the Subsequent Transferring Employees in lieu of accrued but untaken holiday entitlement as at the Subsequent Transfer Date;
  - 18.11.4 pay any Successor or the College, as appropriate, the amount which fairly reflects the progress of each of the Subsequent Transferring Employees towards achieving any commission, bonus, profit share or other incentive payment payable after the Subsequent Transfer Date wholly or partly in respect of a period prior to the Subsequent Transfer Date; and
  - 18.11.5 subject to any legal requirement, provide to the Successor or the College, as appropriate, all personnel records relating to the Subsequent Transferring Employees including, without prejudice to the generality of the foregoing, all records relating to national insurance, PAYE and income tax. The Supplier shall for itself and any subcontractor warrant that such records are accurate and up to date.

- 18.12 The Supplier will and shall procure that any subcontractor will indemnify and keep indemnified the Agreement and/or a Successor in relation to any Employment Liabilities arising out of or in connection with any claim arising from:
- 18.12.1 the Supplier's or subcontractor's failure to perform and discharge its obligations under Clause 18.11;
  - 18.12.2 any act or omission by the Supplier or subcontractor in respect of the Subsequent Transferring Employees occurring on or before the Subsequent Transfer Date;
  - 18.12.3 any allegation or claim by any person who is not a Subsequent Transferring Employee but who alleges that their employment should transfer or has transferred to the Successor or the College, as appropriate;
  - 18.12.4 any emoluments payable to a person employed or engaged by the Supplier or subcontractor (including without limitation all wages, accrued holiday pay, bonuses, commissions, PAYE, national insurance contributions, pension contributions and other contributions) payable in respect of any period on or before the Subsequent Transfer Date;
  - 18.12.5 any allegation or claim by any of the Subsequent Transferring Employees on the grounds that the Successor or College, as appropriate, has failed to continue a benefit provided by the Supplier or subcontractor as a term of such Subsequent Transferring Employee's contract as at the Subsequent Transfer Date where it was not reasonably practicable for the Successor or College, as appropriate, to provide an identical benefit but where the Successor or College, as appropriate, has provided (or offered to provide where such benefit is not accepted by the Subsequent Transferring Employee) an alternative benefit which, taken as a whole, is no less favourable to such Subsequent Transferring Employee; and
  - 18.12.6 any act or omission of the Supplier or any subcontractor in relation to its obligations under regulation 13 of TUPE, or in respect of an award of compensation under regulation 15 of TUPE except to the extent that the liability arises from the Successor's or College's failure to comply with regulation 13(4) of TUPE.
- 18.13 The Supplier will, or shall procure that any subcontractor will, on request by the College provide a written and legally binding indemnity in the same terms as set out in Clause 18.12 to any Successor in relation to any Employment Liabilities arising up to and including the Subsequent Transfer Date.
- 18.14 The Supplier will indemnify and keep indemnified the College and/or any Successor in respect of any Employment Liabilities arising from any act or omission of the Supplier or subcontractor in relation to any other Supplier Personnel who is not a Subsequent Transferring Employee arising during any period whether before, on or after the Subsequent Transfer Date.
- 18.15 If any person who is not a Subsequent Transferring Employee claims or it is determined that their contract of employment has been transferred from the Supplier or any subcontractor to the College or Successor pursuant to TUPE or claims that their employment would have so transferred had they not resigned, then:
- 18.15.1 the College will, or shall procure that the Successor will, within seven (7) days of becoming aware of that fact, give notice in writing to the Supplier;

- 18.15.2 the Supplier may offer (or may procure that a subcontractor may offer) employment to such person within twenty eight (28) days of the notification by the College or Successor;
- 18.15.3 if such offer of employment is accepted, the College will, or shall procure that the Successor will, immediately release the person from their employment; and
- 18.15.4 if after the period in Clause 18.15.2 has elapsed, no such offer of employment has been made or such offer has been made but not accepted, the College will, or shall procure that the Successor will (whichever is the provider of the Services or services of the same or similar nature to the Services), employ that person in accordance with its obligations and duties under TUPE and shall be responsible for all liabilities arising in respect of any such person after the Subsequent Transfer Date.

## **19 Packaging, identification, end of use and coding requirements**

- 19.1 The Supplier shall comply with all obligations imposed on it by Law relevant to the Goods in relation to packaging, identification and obligations following the end of use by the College.
- 19.2 Unless otherwise specified in the Request for Quote and Tender Response Document or otherwise agreed in writing with the College, the Goods shall be securely packed in trade packages of a type normally used by the Supplier for the commercial deliveries of the same or similar goods either in retail or bulk quantities within the United Kingdom.
- 19.3 Unless otherwise (a) specified in the Request for Quote and Tender Response Document: (b) agreed with the College in writing; or (c) required to comply with any regulatory requirements, the following details shall be shown on the outside of every package:-
- 19.3.1 a description of the Goods which shall include, without limitation, the weight of the Goods where available, and any Order number allocated to the Goods by the College and/or the Supplier;
- 19.3.2 the quantity in the package where available;
- 19.3.3 any special directions for storage;
- 19.3.4 the expiry date of the contents where available;
- 19.3.5 the batch number;
- 19.3.6 the name and address of the manufacturer of the Goods and the Supplier.
- 19.4 All Goods that customarily bear any mark, tab, brand, label, serial numbers or other device indicating place or origin, inspection by any government or other body or standard of quality must be delivered with all the marks, tabs, brands, labels, serial numbers, or other devices intact. Without prejudice to the generality of the foregoing, the Supplier shall label all Goods supplied to the College, and the packaging of such Goods, to highlight environmental and safety information as required by applicable Law.
- 19.5 Unless otherwise set out in the Request for Quote and Quote Response Document or agreed with the College in writing, the Supplier shall collect without charge any

returnable containers (including pallets) within twenty one (21) days of the date of the relevant delivery. Empty containers not so removed may be returned by the College at the Supplier's expense or otherwise disposed of at the College's discretion. The Supplier shall credit the college in full for any containers which the College has been charged upon their collection or return.

## **20. Sub-contracting and Assignment**

20.1 Subject to clause 20.3 neither party shall assign, novate or otherwise dispose of any or all of its rights and obligations under the Agreement without the prior written consent of the other Party, neither may the Supplier sub-contact the whole or any part of its obligations under the Agreement except with the express prior written consent of the College.

20.2 In the event the Supplier enters into any Sub-Contract in connection with this Agreement it shall:-

20.2.1 remain responsible to the College for the performance of its obligations under the Agreement notwithstanding the appointment of any Sub-Contractor and be responsible for the acts omissions and neglects of its Sub-Contractors;

20.2.2 impose obligations on its Sub-Contractor in the same terms as those imposed on it pursuant to these Terms and Conditions and any terms and conditions of the Agreement and shall procure that the Sub-Contractor complies with such terms; and

20.2.3 provide a copy, at no charge to the College, of any such Sub-Contract on receipt of a request for such by the College's Contract Manager.

20.3 The College shall be entitled to novate the Agreement to any other body which substantially performs any of the functions that previously had been performed by the College.

## **21. Freedom of Information**

21.1 The Supplier acknowledges that the College is subject to the requirements of the FOIA and EIRs. The Supplier shall:

21.1.1 provide all necessary assistance and co-operation as reasonably requested by the College to enable the College to comply with its obligations under FOIA and EIRs;

21.1.2 transfer to the College all Requests for Information relating to this Agreement that it receives as soon as practicable and in any event within two (2) Business Days of receipt;

21.1.3 provide the College with a copy of all Information belonging to the College requested in the Request for Information which is in its possession or control in the form that the College requires within five (5) Business Days (or such other period as the College may reasonably specify) of the College's request for such Information; and

21.1.4 not respond directly to a Request for Information unless authorised in writing to do so by the College.

21.2 The Supplier acknowledges that the College may be required under the FOIA and EIRs to disclose Information (including Confidential Information) without consulting or

obtaining consent from the Supplier. The College shall take reasonable steps to notify the Supplier of a Request for Information (in accordance with the Secretary of State's section 45 Code of Practice on the Discharge of Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practicable for it to do so but (notwithstanding any other provision in this Agreement) the College shall be responsible for determining in its absolute discretion whether any Commercially Sensitive Information and/or any other information is exempt from disclosure in accordance with the FOIA and/or the EIRs.

21.3 Notwithstanding any other term of the Agreement, the Supplier consents to the publication of the Agreement in its entirety (including variations) subject only to the redaction of Information that is exempt from disclosure in accordance with the provisions of the FOIA and/or the EIRs.

## 22. Data Protection and GDPR 2018

22.1 In this Agreement, the terms "**Personal Data**", "**Data Subject**", "**Data Controller**", "**Information Commissioner**" and "**Data Processor**" shall be as defined in the General Data Protection Regulation 2018; and "**Processing**", "**Process**" and "**Processed**" shall also be construed under the GDPR 2018.

22.2 The parties acknowledge, agree and undertake that each party:-

22.2.1 may collect, Process, hold and protect Personal Data in the performance of its obligations under this Agreement;

22.2.2 is a Data Controller in respect of Personal Data which it collects; and

22.2.3 may, as provided in this Agreement, act as Data Processor in respect of Personal Data provided by the other party.

22.3 To the extent that a party is acting as a Data Controller under this Agreement, it shall comply with all relevant Data Protection Legislation.

22.4 To the extent that a party is acting as a Data Processor under this Agreement, it shall:-

22.4.1 notify the other party within five Business Days if it receives:-

(a) a request from a Data Subject for access to that person's Personal Data; or

(b) a complaint or request relating to the other party's obligations under the Data Protection Legislation;

22.4.2 deal with any Data Subject request in relation to that Data Subject's Personal Data held by it in accordance with all relevant Data Protection Legislation; and, in particular but without limitation, the Provider shall provide the College with all reasonable assistance in complying with subject access requests served on the College and shall consult the College prior to the disclosure by the Provider of any Personal Data received pursuant to or in connection with this Agreement;

22.4.3 promptly provide all information in its possession concerning any unauthorised or accidental disclosure or access made by a member of staff, director, agent, consultant or any other identified or unidentified third party of or to any Personal Data held by it on behalf of the other party;

22.4.4 ensure that the obligations imposed on it under this clause 22 are imposed on any consultant to the extent that such consultant will be holding Personal Data in connection with the performance of this Agreement;

- 22.4.5 maintain appropriate technical and organisational measures against the Processing of Personal Data and against unauthorised, accidental or unlawful access to the Personal Data (having regard to the state of technological development and the costs of implementing any such measures) as well as reasonable security programmes and procedures for the purpose of ensuring that any persons who are authorised to have access to the Personal Data shall respect and maintain all due confidentiality;
- 22.4.6 only Process such Personal Data as is necessary to:-
- (a) perform its obligations under this Agreement; and in particular but without limitation, the Provider shall process Personal Data in relation to the Students only for the purpose of delivering the Programmes in accordance with this Agreement and to ensure compliance with the Data Protection Legislation; and/or
  - (b) comply with the instructions of the Data Controller or the requirements of any relevant Regulator;
- 22.4.7 not Process Personal Data outside the European Economic Area without the prior written consent of the other party and, where the other party consents to a transfer, comply with:-
- (a) the obligations of a Data Controller under Chapter 5 of the General Data Protection Regulation 2018 by providing an adequate level of protection to any Personal Data so transferred; and
  - (b) any reasonable instructions of the other party;
- 22.4.8 comply with the requirement under the Data Protection Legislation in respect of obtaining consent from Data Subjects to the Processing of their Personal Data;
- 22.4.9 take all such actions as are necessary to ensure that it has fulfilled, and shall continue to fulfil and observe, the obligations in this clause 22 in respect of Personal Data as if it were a Data Controller; and
- 22.4.10 subject to the foregoing, promptly comply with any change of instructions from the Data Controller relating to the Personal Data and its role as a Data Processor, as issued in accordance with this Agreement.
- 22.5 Each party shall permit the other party to monitor its compliance with the requirements of this clause 22 on reasonable prior notice and/or to provide the other party with such evidence of such compliance as that other party may reasonably request.
- 22.6 Each party shall use all reasonable endeavours to assist the other party to comply with the Data Protection Legislation.
- 22.7 Each party (the "**Indemnifying Party**") shall indemnify the other party (the "**Indemnified Party**") against any and all loss, liability, damages, costs, charges and/or expenses incurred by the Indemnified Party as a result of or in connection with any claim made, or proceedings brought, by any person in relation to the unauthorised or unlawful Processing or destruction of and/or damage to any Personal Data by the Indemnifying Party (or its employees, agents and consultants), whether in the performance of its obligations under this Agreement or otherwise provided that:
- 22.7.1 the indemnified party shall promptly notify the indemnifying party of any claim under this clause 22.5;

22.7.2 the indemnifying party shall have sole control over the defence and settlement of any such claim; and

22.7.3 the indemnified party shall provide reasonable co-operation and assistance to the indemnifying party in defence of such claim.

Any breach of this clause 22.5, without reasonable excuse, shall release the indemnifying party from any liability hereunder.

22.8 This clause 22 shall continue to apply after the termination of this Agreement without limit in time.

## 23. Confidentiality

23.1 Subject to clause 23.2 of these Terms and Conditions the Parties shall keep confidential all matters relating to the Agreement and shall use all reasonable endeavours to prevent their representatives from making any disclosure to any person of any matters relating hereto.

23.2 Clause 23.1 shall not apply to any disclosure of information:

23.2.1 required by any applicable law, provided that clause 22.1 shall apply to any disclosures required under the FOIA or the EIRs;

23.2.2 that is reasonably required by persons engaged by a Party in the performance of such Party's obligations under the Agreement;

23.2.3 where a Party can demonstrate that such information is already generally available and in the public domain otherwise than as a result of a breach of Clause 23.1;

23.2.4 by the College of any document to which it is a party and which the Parties to the Agreement have agreed contained no Confidential Information;

23.2.5 to enable a determination to be made under clause 28 of these Terms and Conditions;

23.2.6 which is already lawfully in the possession of the receiving party, prior to its disclosure by the disclosure party;

23.2.7 by the College to any other department, office or agency of the Government; and

23.2.8 by the College relating to the Agreement and in respect of which the Supplier has given prior written consent to disclosure.

23.3 On or before the expiry of the Term the Supplier shall ensure that all documents and/or computer records in its possession, custody or control which relate to personal information of the College's staff, students or service users, are securely delivered to the College or securely destroyed.

## 24. Sustainable Considerations

- 24.1 The Supplier shall comply in all material respects with applicable environmental and social Law requirements in force from time to time in relation to the Goods and Services. Where the provisions of any such Law are implemented by the use of voluntary agreements, the Supplier shall comply with such agreements as if they were incorporated into English law subject to those voluntary agreements being cited in the Request for Quote and Quote Response Document. Without prejudice to the generality of the foregoing, the Supplier shall:
- 24.1.1 comply with all Policies and/or procedures and requirements set out in the Request for Quote and Quote Response Document in relation to any stated environmental and social requirements, characteristics and impacts of the Goods and Services and the Supplier's supply chain;
  - 24.1.2 maintain relevant policy statements documenting the Supplier's significant social and environmental aspects as relevant to the Goods and Services being supplied and provided and as proportionate to the nature and scale of the Supplier's business operations; and
  - 24.1.3 maintain plans and procedures that support the commitments made as part of the Supplier's significant social and environmental policies, as referred to at Clause 14.1.2 .
- 24.2 The Supplier shall meet reasonable requests by the College for information evidencing the Supplier's compliance with the provisions of Clause 24.

## 25. **Equality of Opportunity**

- 25.1 The Supplier shall:
- 25.1.1 ensure it does not, whether as an employer or a provider of the Services, engage in any act or omission that would contravene the Equality Legislation; and
  - 25.1.2 ensure it complies with all its obligations as an employer or provider of Services as set out in the Equality Legislation and take reasonable endeavours to ensure its Staff do not unlawfully discriminate within the meaning of the Equality Legislation.
  - 25.1.3 in the management of affairs and the development of its equality and diversity policies, cooperate with the College in light of the College's obligations to comply with its statutory equality duties whether under the Equality Act 2010 or otherwise. The Supplier shall take such reasonable and proportionate steps as the College considers appropriate to promote equality and diversity, including race equality, equality of opportunity for disabled people, gender equality, and equality relating to religion and belief, sexual orientation and age; and
  - 25.1.4 shall impose on all its Sub-contractors and suppliers obligations substantially similar to those imposed on the Supplier by this Clause 25.
- 25.2 The Supplier shall meet reasonable requests by the College for information evidencing the Supplier's compliance with the provisions of this Clause 25.

## 26. **Health and Safety**

- 26.1 The Supplier represents and warrants to the College that the Supplier has satisfied itself that all necessary tests and examinations have been made or will be made prior to the delivery of the Service to ensure that the Service is designed and constructed so as to

be safe and without risk to the health and safety of persons using or affected by the same.

26.2 The Supplier shall undertake the Service with the proper regard to health and safety and shall comply with all statutory enactments, regulations (such as the Health and Safety at Work etc. Act 1974, and by-laws applicable thereto or to the Premises and Locations) the cost of complying with the same being deemed to be included in the Contract Price.

## 27. **Prohibited Acts**

27.1 The Supplier warrants and represents that:

27.1.1 it has not committed any offence under the Bribery Act 2010 or done any of the following ("Prohibited Acts");

27.1.1.1 offered, given or agreed to give any officer or employee of the College any gift or consideration of any kind as an inducement or reward for doing or not doing or for having done or not having done any act in relation to the obtaining or performance of this or any other agreement the College or for showing or not showing favour or disfavour to any person in relation to this or any other agreement with the College; or

27.1.1.2 in connection with this Agreement paid or agreed to pay any commission other than a payment, particulars of which (including the terms and conditions of the agreement for its payment) have been disclosed in writing to the College; and

27.1.2 it has in place adequate procedures to prevent bribery and corruption, as contemplated by section 7 of the Bribery Act 2010.

27.2 If the Supplier or its Staff (or anyone acting on its or their behalf) has done or does any of the Prohibited Acts or has committed or commits any offence under the Bribery Act 2010 with or without the knowledge of the Supplier in relation to this or any other agreement with the College:-

27.2.1 the College shall be entitled:-

27.2.1.1 to terminate the Agreement and recover from the Supplier the amount of any loss resulting from the termination;

27.2.1.2 to recover from the Supplier the amount or value of any gift, consideration or commission concerned; and

27.2.1.3 to recover from the Supplier any other loss or expense sustained in consequence of the carrying out of the Prohibited Act or the commission of the offence under the Bribery Act 2010;

27.2.2 any termination under Clause 27.2.1 shall be without prejudice to any right or remedy that has already accrued, or subsequently accrues, to the College; and

27.2.3 notwithstanding Clause 28, any dispute relating to:

27.2.3.1 the interpretation of this Clause 27; or

27.2.3.2 the amount or value of any gift, consideration or commission,

shall be determined by the College, acting reasonably, and the decision shall be final and conclusive.

## 28. **Dispute Resolution**

28.1 If a dispute arises out of or in connection with the Agreement or the performance or validity or enforceability of it ("Dispute") then the Parties shall follow the procedure set out in this Clause 26:-

28.1.1 either Party shall give to the other written notice of the Dispute, setting out its nature and full particulars ("Dispute Notice") together with relevant supporting documents. On service of the Dispute Notice, the Contract Managers shall attempt in good faith to resolve the Dispute.

28.1.2 if the Contract Managers are for any reason unable to resolve the Dispute within 10 Business Days of service of the Dispute Notice the Dispute shall be referred to the College's Vice Principal (Resources) and the Suppliers' Managing Director or equivalent who shall attempt in good faith to resolve it; and

28.1.3 if the College's Vice Principal (Resources) and the Supplier's Managing Director or equivalent are for any reason unable to resolve the Dispute within 10 Business Days of it being referred to them, the Parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the Parties, the mediator shall be nominated by CEDR Solve. To initiate the mediation a Party must serve notice in writing (ADR Notice) to the other Party to the Dispute, requesting a mediation meeting. A copy of the ADR Notice should be sent to CEDR Solve. The mediation will start not later than 21 Business Days after the date of the ADR Notice.

28.2 The commencement of mediation shall not prevent the parties commencing or continuing court or arbitration proceedings in relation to the Dispute under Clause 33.11 of these Terms and Conditions which shall apply at all times.

## 29. **Force Majeure**

29.1 Subject to the remaining provisions of this Clause 29 neither Party to the Agreement shall be liable to the other for any delay or non-performance of its obligations under the Agreement to the extent that such non-performance is due to a Force Majeure.

29.2 In the event that either Party is delayed or prevented from performing its obligations under the Agreement by a Force Majeure, such party shall:-

29.2.1 give notice in writing of such delay or prevention to the other party as soon as reasonably possible, stating the commencement date and extent of such delay or prevention, the cause thereof and its estimated duration;

29.2.2 use all reasonable endeavours to mitigate the effects of such delay or prevention on the performance of its obligations under the Agreement; and

29.2.3 resume performance of its obligations as soon as reasonably possible after the removal of the cause of the delay or prevention.

29.3 A Party cannot claim relief if the Force Majeure is attributable to that Party's wilful act, neglect or failure to take reasonable precautions against the relevant Force Majeure.

- 29.4 The Supplier cannot claim relief if the Force Majeure is one where a reasonable supplier should have foreseen and provided for the cause in question.
- 29.5 As soon as practicable following the affected Party's notification, the Parties shall consult with each other in good faith and use all reasonable endeavours to agree appropriate terms to mitigate the effects of the Force Majeure and to facilitate the continued performance of the Services. Where the Supplier is the affected Party, it shall take and/or procure the taking of all steps to overcome or minimise the consequences of the Force Majeure in accordance Good Industry Practice.
- 29.6 The affected Party shall notify the other Party as soon as practicable after the Force Majeure ceases or no longer causes the affected Party to be unable to comply with its obligations under the Agreement. Following such notification, the Agreement shall continue to be performed on the terms existing immediately before the occurrence of the Force Majeure unless agreed otherwise by the Parties.
- 29.7 The College may, during the continuance of any Force Majeure, terminate the Agreement by written notice to the Supplier if a Force Majeure occurs that affects all or a substantial part of the Services and which continues for more than twenty (20) Business Days

### **30. Records retention and right of audit**

- 30.1 Subject to any statutory requirement and Clause 30.2 of these Terms and Conditions, the Supplier shall keep secure and maintain for the Term and six (6) years afterwards, or such longer period as may be agreed between the Parties, full and accurate records of all matters relating to this Agreement.
- 30.2 The College shall have the right to audit the Supplier's compliance with the Agreement. The Supplier shall permit or procure permission for the College or its authorised representative during normal business hours having given advance written notice of no less than five (5) Business Days, access to any premises and facilities, books and records reasonably required to audit the Supplier's compliance with its obligations under the Agreement.
- 30.3 Should the Supplier subcontract any of its obligations under the Agreement, the College shall have the right to audit and inspect such third party. The Supplier shall procure permission for the College or its authorised representative during normal business hours no more than once in any twelve (12) months, having given advance written notice of no less than five (5) Business Days, access to any premises and facilities, books and records used in the performance of the Supplier's obligations under this Agreement that are subcontracted to such third party. The Supplier shall cooperate with such audit and inspection and accompany the College or its authorised representative if requested.
- 30.4 The Supplier shall provide reasonable cooperation to the College, its representatives and any regulatory body in relation to any audit, review, investigation or enquiry carried out in relation to the subject matter of the Agreement.
- 30.5 The Supplier shall provide all reasonable information as may be reasonably requested by the College to evidence the Supplier's compliance with the requirements of the Agreement.

### **31. Publicity**

- 31.1 The Supplier shall not:-

31.1.1 make any press announcements or publicise the Agreement or its contents in any way; or

31.1.2 use the College's name or logo in any promotion or marketing or announcement of orders

Except as required by Law, any government or regulatory authority, any court or other authority of competent jurisdiction, without the prior written consent of the College, which shall not be unreasonably withheld or delayed.

## 32. Notices

32.1 Any notice or other communication given to a party under or in connection with the Agreement shall be in writing marked for the attention of the Party's Contract Manager and shall be:

32.1.1 delivered by hand or pre-paid first class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or

32.1.2 sent by fax to its main fax number

32.2 Any notice or other communication shall be deemed to have been received:-

32.2.1 if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;

32.2.2 if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service

32.2.3 if sent by fax, by 9.00 am on the next Business Day after transmission.

32.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution. For the purposes of this clause "writing" shall not include email.

## 33. General

33.1 Each of the Parties is independent of the other and nothing contained in the Agreement shall be construed to imply that there is any relationship between the Parties of partnership or of principal/agent or of employer/employee nor are the Parties hereby engaging in a joint venture and accordingly neither of the Parties shall have any right or authority to act on behalf of the other nor to bind the other by agreement or otherwise, unless expressly permitted by the terms of the Agreement.

33.2 Failure or delay by either Party to exercise an option or right conferred by the Agreement shall not of itself constitute a waiver of such option or right.

33.3 The delay or failure by either Party to insist upon the strict performance of any provision, term or condition of the Agreement or to exercise any right or remedy consequent upon such breach shall not constitute a waiver of any such breach or any subsequent breach of such provision, term or condition.

33.4 Any provision of the Agreement which is held to be invalid or unenforceable in any jurisdiction shall be ineffective to the extent of such invalidity or unenforceability without invalidating or rendering unenforceable the remaining provisions of the Agreement and

any such invalidity or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provisions in any other jurisdiction.

- 33.5 Each Party acknowledges and agrees that it has not relied on any representation, warranty or undertaking (whether written or oral) in relation to the subject matter of the Agreement and therefore irrevocably and unconditionally waives any rights it may have to claim damages against the other Party for any misrepresentation or undertaking (whether made carelessly or not) or for breach of any warranty unless the representation, undertaking or warranty relied upon is set out in the Agreement or unless such representation, undertaking or warranty was made fraudulently.
- 33.6 Each Party shall bear its own expenses in relation to the preparation and execution of the Agreement including all costs, legal fees and other expenses so incurred.
- 33.7 The rights and remedies provided in the Agreement are cumulative and not exclusive of any rights or remedies provided by general law, or by any other contract or document. In this clause 33.7, right includes any power, privilege, remedy, or proprietary or security interest.
- 33.8 Unless otherwise expressly stated in the Agreement, a person who is not a party to the Agreement shall have no right to enforce any terms of it which confer a benefit on such person except that a successor and/or a third party may directly enforce any indemnities or other rights provided to it under the Agreement. No such person shall be entitled to object to or be required to consent to any amendment to the provisions of this Agreement.
- 33.9 This Agreement, any variation in writing signed by an authorised representative of each Party and any document referred to (explicitly or by implication) in this Agreement or any variation to the Agreement, contain the entire understanding between the Supplier and the College relating to the Services to the exclusion of all previous agreements, confirmations and understandings and there are no promises, terms, conditions or obligations whether oral or written, express or implied other than those contained or referred to in the Agreement.
- 33.10 The Agreement, and any dispute or claim arising out of or in connection with it or its subject matter (including any non-contractual claims), shall be governed by, and construed in accordance with, the laws of England and Wales.
- 33.11 Subject to Clause 28 of these Terms and Conditions the Parties irrevocably agree that the courts of England and Wales shall have non-exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with the Agreement or its subject matter.
- 33.12 All written and oral communications and all written material referred to under the Agreement shall be in English.