Kirklees College

Out of Home Marketing

**CA15965**

**Terms & Conditions of Contract**

**Part 1: Order Form (Contract Particulars)**

| **Item** | **Description** |
| --- | --- |
| **Order Form Reference:** | The Order Form Reference is **CA15965** |
| **Parties** | **Between**:1. **[Institution Name]** (**[UKPRN Number]**)**, of [Institution Address]** (**Institution**); and
2. **[Company Name], [Registered Number], of [Registered Address]** (**Supplier**); and
 |
| **Goods**  | The Goods to be supplied under the Contract are as follows: * [Insert description of the Goods or state “Not Applicable” if the Contract is for the provision of Services]
 |
| **Services**  | The Services to be supplied under the Contract is as follows:* [Insert description of the Services or state “Not Applicable” if the Contract is for the provision of Goods]
 |
| **Date of Supplier’s Tender** | The Supplier’s tender is dated [Insert Date]. |
| **Contract Commencement Date** | The Contract commencement date is [Insert Date].  |
| **Contract End Date** | The Contract end date is [Insert Date]. |
| **Contract Extension** | The Institution shall be entitled to extend the term of the Contract by giving not less than (ninety) (90) days’ notice prior to the end of the then current term in writing to the Supplier by a period or periods equal to or greater than [12 months] and in [12 month] blocks thereafter up to a maximum of [x years] in total. |
| **Delivery Dates** | [**Option 1**]As defined in the [Name of document] within the Supplier Documentation set out in Schedule 4.[Option 2]To be agreed with the Supplier from time to time during the operation of the Contract. |
| **Premises** | The [Goods/Services] are to be supplied at [Insert description of the Institution’s premises]. |
| **Institution Liability Cap**  | Means the amount of £10,000 (ten thousand) pounds. |
| **Supplier Liability Cap**  | Means 200% of Contract value or £5,000,000 (five million pounds), whichever is the higher. |
| **Charges** | As set out in Schedule 5. No adjustment shall be made to the Charges unless an agreed adjustment measure is defined in Schedule 5. |
| **Invoicing** | [Monthly] invoices shall be issued electronically to [Insert email address]. |
| **KPIs** | [Not Applicable]OR[As set out in Schedule 6].OR

|  |  |  |
| --- | --- | --- |
| **Performance Target** | **Key Indicator** | **Performance Measure** |
| Respond to all operational enquiries within four working hours. | Provision of Response  | 95% |
| Invoice accuracy. | Accuracy | 95% of all invoices are submitted accurately |
| Invoice timeliness. | Timeliness | 95% of all invoices are submitted on time |
| Reliability of all ordering systems utilised under this Contract including online ordering system, telephone, email, [punch out from e-marketplace] | Availability and Down Time | Ordering systems are reliable 97% of the time during the Term of this Contract (excluding pre-notified maintenance periods) |

 |
| **Insurances** | Product Liability: £5,000,000 (Five Million Pounds)Public Liability: £5,000,000 (Five Million Pounds)Employer Liability: £10,000,000 (Ten Million Pounds)Professional Indemnity Liability: £2,000,000 (Two Million Pounds) |
| **Support** | [**Option 1**] Support is defined in the [Name of document] within the Supplier Documentation set out in Schedule 4.[**Option 2**] Support shall be provided to the Institution by the Supplier in respect of the [Goods/Services]:* + - * 1. [the provision of a technical helpdesk, available during normal business hours, to provide remote assistance]; and
				2. [upon request, the provision of on-site assistance by appropriately qualified technical staff during normal business hours].
 |
| **Notices and Dispute Resolution** | Any written notice provided under the Contract shall be sent: **In the case of the Institution, by email to:**[Name of the Institution’s Contract Manager] [Email Address of Institution’s Contract Manager]**In the case of the Supplier, by email to:**[Name of the Supplier’s Contract Manager] [Email Address of Supplier’s Contract Manager]These parties will be responsible for initial Dispute Resolution (Clause 25.3). |
| **Data Protection** | [Not Applicable] OR

|  |  |
| --- | --- |
| The subject matter and duration of the Processing | The parties will Process Personal Data in the context of: [●] [describe the relevant services/goods and detail the Supplier’s role, and describe how long the personal data will be processed for- will this be determined by time period or for as long as the purpose continues? Consider longevity of the contract and if the personal data will need to be retained post termination of the contract.]  |
| Location of processing | [detail location] |
| The nature and purpose of the Processing | The Processing will be for the purposes of: [●] [describe what processing of the personal data will take place and for what purpose] |
| The type of Personal Data being Processed | The Personal Data will include:[●] [e.g. Names, e-mail addresses, postal address, IP address] |
| The categories of Data Subjects | The Data Subjects will include:[●] [e.g. contractors, employees etc…] |

 |

* 1. For the avoidance of doubt where you have carried out any work prior to the date of this Contract in any way related to the Goods and/or Services to be supplied under this Contract, the terms and conditions of this Contract shall apply in respect of such work.
	2. Nothing in this Contract shall confer or purport to confer on any third party any benefit or the right to enforce any term of this letter pursuant to the Contracts (Rights of Third Parties) Act 1999.
	3. You must not make any amendments to the Terms and Conditions herein.
	4. Please sign and return a copy of this Order Form to signify your acceptance of its contents. Please also sign and return the attached Terms and Conditions. We will sign the Terms and Conditions and date them as agreed between ourselves and will return one of the dated copies to yourselves.

|  |  |
| --- | --- |
| Yours faithfully.....................................................for and on behalf of [Institution] Name:Designation:Date: | Accepted and acknowledged by:.....................................................for and on behalf of [Supplier]Name:Designation:Date: |

**Part 2 – Terms and Conditions**

**INSTITUTION**

and

**SUPPLIER**

Schedule 1 - Terms and Conditions

Dated:

Between:

1. The Institution; and
2. The Supplier.

(the identities of the Institution and Supplier are set out in the Order Form in Part 1)

Whereas:-

1. The Institution has appointed the Supplier to provide the Goods and/or Services in accordance with the Contract (as defined below).
2. The Supplier is a specialist and experienced provider of the relevant Goods and/or Services.
3. Following the receipt of a tender from the Supplier, the date of which is set out in the Order Form in Part 1 (“the Tender”) the Institution has accepted the Tender of the Supplier to provide the Goods and/or Services on the basis that the Supplier’s Tender was the most advantageous tender to the Institution, and the Institution has agreed.
4. These Terms and Conditions set out the terms and conditions for the provision of the Goods and/or Services and the obligations of the Supplier in the provision of the Goods and/or Services.

Now it is hereby agreed as follows:-

Definitions and Interpretation

## In the Contract the following words and expressions shall have the following meanings:

## **ADR Notice** has the meaning given in Clause 25.5;

**Anti-Slavery Laws** has the meaning given in Clause 27;

**Business Days** a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business;

**Charges** means the charges set out in the Order Form (and **Charge** or **Charge(s)** shall be construed accordingly);

**Commencement Date** means the date detailed as such in the Order Form;

# **Contract** means the written agreement between the Institution and the Supplier consisting of the Order Form (and any appendices thereto) and these Terms and Conditions;

**Contract End Date** means the date detailed as such in the Order Form as such date may be extended pursuant to Clause 3.3 of the Contract;

**Data Protection Legislation** means all applicable data protection and privacy legislation in force from time to time in the UK including the UK GDPR; the Data Protection Act 2018 (DPA 2018) (and regulations made thereunder); and the Privacy and Electronic Communications Regulations 2003 (SI 2003 No. 2426) as amended; and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of Personal Data (including, without limitation, the privacy of electronic communications); and the guidance and codes of practice issued by the Information Commissioner or other relevant data protection or supervisory authority and applicable to a party;

**Delivery Date(s)** means, in respect of each item provided under the Contract, the date(s) for the delivery detailed as such in the Order Form (as may be adjusted under the terms of the Contract);

## **Dispute** means any dispute or difference of whatsoever nature in relation to the formation, operation or interpretation of, or otherwise in connection with, or arising out of, the Contract;

## **Dispute Notice** means a written notice of any Dispute, setting out the Dispute's nature and full particulars of the Dispute and which states it is a "Disputes Notice";

**Documentation** means any data, information, records or documents in any media and form whatsoever (including paper or electronic form);

**EIR** means the Environmental Information Regulations 2004;

**End Date** means the date detailed as such in the Order Form;

**FOIA** means the Freedom of Information Act 2000;

**Force Majeure Event** has the meaning given in Clause 18;

**GBP** means the United Kingdom Pound Sterling;

**Good Industry Practice** means the exercise of such degree of skill, diligence, care and foresight which would reasonably and ordinarily be expected from a skilled and experienced supplier engaged in the provision of Goods and/or Services similar to the Goods and/or Services under the same or similar circumstances as those applicable to the Contract;

**Goods** means any Goods identified as such in the Order Form;

**Institution Liability Cap** means the amount detailed as such in the Order Form;

**Institution's IP** means all Intellectual Property Rights provided by the Institution under the Contract;

**Intellectual Property Rights** means all intellectual property rights anywhere in the world including domain names, patents, design rights, copyrights including rights in computer software and databases (including database rights), rights in source code, topography right, trademarks, trade names, logos, trade secrets and know-how, and any applications or the right to make applications for any of the above, existing now or at any time in the future and whether registered or registrable or not;

**KPIs** means the key performance indicators set out in Schedule 6;

**Law** means any applicable Act of Parliament, subordinate legislation, regulatory policy, guidance or industry code, any applicable judgment of a relevant court of law which is a binding precedent in England, or directives or requirements of any Regulatory Body;

**Losses** means all liabilities, costs, expenses, damages and losses including but not limited to any direct loss, indirect loss or consequential loss, loss of contribution to incidental costs, loss of profit or overheads, loss of reputation and all interest, penalties and legal costs;

**Order Form** means the document used by the Institution to place the Order for the Contract as set out in Part 1;

**Personnel** means those personnel of the Supplier as shall be appointed by the Supplier to supply the Goods and/or Services in accordance with the Contract including the Supplier's employees and subcontractors;

**Premises** means the Institution’s premises detailed as such in the Order Form;

**Project IP** means all Intellectual Property Rights in the Goods and/or Services, and any Documentation provided by the Supplier under the Contract and all other Intellectual Property Rights created or discovered by the Supplier as a result of, for or in connection with the performance of its obligations under the Contract, but excluding Supplier's Background IP;

**Regulatory Body** means any government department and regulatory, statutory and other entity, committee, ombudsman and/or body which, whether under statute, rules, regulations, codes of practice or otherwise, is entitled to regulate, investigate, or influence the matters dealt with in the Contract or any other affairs of the Institution;

**Schedule(s)** means any one or more of the schedules attached to these Terms and Conditions;

**Services** means any services identified as such in the Order Form;

**Supplier** means the Supplier of the Goods and/or Services identified in the Order Form.

**Supplier's Background IP** means all Intellectual Property Rights existing prior to the date of the Contract and used by the Supplier for or in connection with the performance of its obligations under the Contract;

**Supplier Documentation** means the Supplier’s documentation in relation to the Institution’s usage of the Goods and/or Services as set out at Schedule 4 which is applicable directly between the Institution and the Supplier.

**Supplier Liability Cap** means the amount detailed as such in the Order Form;

**Term** means the period from the date of the Contract up to and including the earliest of:

#### the Contract End Date; or

#### the date the Contract is terminated in accordance with the Contract;

**Third Party Agreements** has the meaning given in Clause 6.2;

**TUPE** means the Transfer of Undertakings (Protection of Employment) Regulations 2006;

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

**Value Added Tax** means value added tax at the rate prevailing at the time of the relevant supply charged in accordance with the provisions of the Value Added Tax Act 1994; and

**Variation** has the meaning given in Clause 7.

## In these Terms and Conditions unless the context otherwise requires:

### clause headings are inserted for convenience only and shall not affect the construction and interpretation of the Contract and all references to Clauses, Sub-clauses, or Schedules are to Clauses and Sub-clauses of, and Schedules to, these Terms and Conditions; and

### words denoting the singular number include the plural and vice versa; and

### words denoting the masculine include the feminine and vice versa; and

### references to persons include reference to bodies corporate and unincorporate; and

### references to statutes or statutory instruments or any Law are to be construed as references to any consolidation, modification, extension, amendment, replacement or re-enactment of them from time to time and any subordinate legislation under it; and

Contract Documents

## The Contract consists of the following documents:

#### these Terms and Conditions;

#### the Schedule(s) to these Terms and Conditions; and

#### the Order Form (and any appendices thereto).

## This Contract supersedes all other oral and/or written communications, representations, agreements or undertakings between the parties.

Appointment

## The Institution appoints the Supplier as the supplier of the Goods and/or Services set out in the Order Form.

## The Contract shall take effect on and from the date of the Contract and shall expire automatically at the end of the Term.

## If defined in the Order Form in Part 1, the Institution may, by giving written notice to the Supplier not less than the minimum period set out in the Order Form, extend the Contract End Date for any further period or periods specified in the Order Form. The provisions of the Contract will apply throughout any such extended period.

## Any omission on the part of the Institution to inspect, review or disapprove shall not diminish or relieve the Supplier from any of its obligations or responsibilities under or in connection with the Contract.

## The Supplier shall be responsible for the accuracy of all drawings, documents and information supplied to the Institution by the Supplier in connection with the supply of the Services and shall pay the Institution any extra costs occasioned by any discrepancies, errors or omissions therein.

No Partnership or Agency

## Nothing in the Contract is intended to, or shall be deemed to:

### establish any partnership or joint venture between any of the parties;

### constitute any party as the agent of another party; or

### authorise any party to make or enter into any commitments for or on behalf of any other party.

## The Supplier confirms it is acting on its own behalf and not for the benefit of any other person.

Non Exclusivity

## The Supplier acknowledges that, in entering the Contract, no form of exclusivity has been granted by the Institution for the supply of any Goods and/or Services and that the Institution is at all times entitled to enter into other contracts and arrangements with any other suppliers for the supply of any Goods and/or Services which are the same or similar to that which the Supplier may supply.

Supply of the Goods and/or Services

## The Supplier warrants and undertakes to the Institution that:

#### it shall supply the relevant Goods and/or Services diligently and in accordance with the Contract and in compliance with all applicable Laws and Good Industry Practice;

#### it has exercised and shall continue to exercise in the performance of all its duties under the Contract all the skill, care and diligence reasonably to be expected of a properly qualified and competent supplier experienced in the supply of goods and/or services of a similar nature to the Goods and/or Services;

#### it shall supply the relevant Goods and/or Services in such a manner and at such times so that no act, omission or default of the Supplier shall cause or contribute to any breach of Law;

#### it shall supply the relevant Goods and/or Services in compliance with all instructions given in writing under or in connection with the Contract;

#### it shall at all times observe and provide the Goods and/or Services in accordance with the KPIs;

#### it has the right to enter into the Contract and to provide any Goods that it has agreed to supply on the basis described herein and grant to the Institution a licence and right to use that Goods as contemplated by the Contract;

#### it will co-operate with the Institution in all matters relating to the Services, and comply with all instructions of the Institution;

#### it will use personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Supplier’s obligations are fulfilled in accordance with this Contract;

#### it will obtain and at all times maintain all necessary licences and consents and comply with all applicable Laws;

#### it will observe all health and safety rules and regulations and any other security requirements that apply at any of the Institution’s premises;

#### it will hold all materials, equipment and tools, drawings, specifications and data supplied by the Institution to the Supplier (“The Institution’s Materials”) in safe custody at its own risk, maintain The Institution’s Materials in good condition until returned to the Institution and not dispose of or use The Institution’s Materials other than in accordance with the Institution’s written instructions or authorisation;

#### it will not do or omit to do anything which may cause the Institution to lose any licence, authority, consent or permission upon which it relies for the purposes of conducting its business, and the Supplier acknowledges that the Institution may rely or act on the Services;

#### all relevant Goods and/or Services supplied by the Supplier shall:

##### be fit for the purpose specified by the Institution, and comply with any other requirements documented by the Institution;

##### in respect of any items of Goods that are to be provided by the Supplier on an on-premises basis, comply with the specification for the duration of the Goods warranty period and be free from errors, bugs and defects;

##### in respect of any items of Goods that are to be provided by the Supplier on an off-premises basis, be free from errors, bugs and defects and will comply with the specification for the duration that the Supplier is obliged to provide the Goods under the terms of the Contract;

##### be new, undamaged and free from defects in design, material and workmanship;

##### be of satisfactory quality; and

##### otherwise comply with all applicable Laws.

## The Supplier shall have regard to all obligations on the part of the Institution in any third-party agreements or in any other documentation relating to the Contract to which the Institution is a party to and of which copies (subject to the deletion of any confidential information therein) have been provided by or on behalf of the Institution including but not limited to the Supplier Documentation (**Third-Party Agreements**). The Supplier warrants and undertakes to the Institution that the Supplier will supply the relevant Goods and/or Services and will perform its obligations under the Contract in such a manner and at such times that no act, omission or default of the Supplier shall cause or contribute to any breach by the Institution of any of its obligations under the Third-Party Agreements or other documentation mentioned in this Clause 6.2.

## If the Supplier becomes aware of any matter that may impact on its ability to deliver the relevant Goods and/or Services in accordance with the Contract, it must immediately notify the Institution and shall propose and, if accepted by the Institution, implement any measures which may be practical to overcome or reduce any adverse impact on the Institution. The Supplier shall bear the cost of implementing such measures save where the relevant matter is a direct result of any wilful act, negligence or breach by the Institution of its obligations under the Contract.

## The Supplier shall provide the Goods and/or Services with effect on and from the Commencement Date until the End Date.

Variations to the Contract

## The parties acknowledge that the Institution may, at any time:

### instruct the Supplier to add or omit any Goods and/or Services to or from that which is being supplied under the Contract; or

### instruct a change to the Contract annexed to the Order Form,

### (a **Variation**),

### provided always that such Variation shall not amount to a substantial variation.

## If any Variation instructed by the Institution shall:

### in respect of the Goods and/or Services being supplied under the Contract, increase or decrease the relevant Charge(s);

### the Supplier shall submit a quotation to the Institution within 10 (ten) days of the Variation instruction setting out the proposed increase or decrease to the relevant Charge(s) and Delivery Date(s)/Installation Date and Access Date (if applicable).

## Within 10 (ten) days of receipt of a Supplier's quotation pursuant to Clause 7.2, the Institution shall either accept the quotation, in which case the relevant Charge(s) and Delivery Date(s)/Installation Date and Access Date (if applicable) shall be adjusted accordingly, or withdraw the Variation instruction.

## Until the Supplier's quotation is accepted in accordance with Clause 7.3, the Supplier shall continue to perform its obligations under the Contract as if the Variation had not been instructed and the Supplier agrees that the preparation of a quotation to be provided under Clause 7.2 will not cause any delay to the supply of the relevant Goods and/or Services.

## The Supplier shall have no entitlement to any increase in the relevant Charge or any extension(s) to the relevant Delivery Date(s)/Installation Date and Access Date where it complies with a Variation instruction prior to its quotation being accepted in accordance with Clause 7.3.

## The Institution shall be entitled to refuse any Variation which does or could amount to a substantial variation.

## The Supplier may request, in writing, a variation to the Charge(s) in the event there is a change in Law which was not reasonably foreseeable prior to the date of the Contract which impacts on the Charge under the Contract. If the Supplier so requests a variation, the parties shall meet within 10 (ten) days of the date of such written request and shall agree any changes to the Charge in writing.

Payment of the Charge(s)

## The Institution shall pay the Supplier the Charge(s) as stated in Schedule 5 as full remuneration for the supply of the Goods and/or Services in accordance with the Contract.

## Each Charge is fully inclusive of all costs and expenses of every kind incurred by the Supplier in connection with the supply of the Goods and/or Services.

## For the avoidance of doubt each Charge shall be exclusive of Value Added Tax. The Institution shall account for and pay the total amount of Value Added Tax properly due thereon.

## The Charge(s) shall be paid to the Supplier in accordance with any stages set out in the Order Form and within 30 (thirty) days of receipt of properly rendered invoice(s) in accordance with Clause 8.5.

## The Supplier shall submit invoices to the Institution in respect of any of the Charge(s) properly due to the Supplier under the Contract as set out in the Order Form and all invoices submitted by the Supplier shall show amounts due, amounts invoiced to date and the purchase order number. Where relevant, Supplier to provide all supporting documentation as the Institution may request.

## If the Institution fails to pay an amount due to the Supplier by the relevant due date, simple interest shall be added to the unpaid sum from the final date for payment until the actual date for payment. Such interest shall be calculated on a daily basis at the annual rate of 4% above the Bank of England base rate.

Set Off

## The parties acknowledge that the Institution may at any time, without notice to the Supplier, set-off any liability owed by the Supplier to the Institution against any liability owed by the Institution to the Supplier, whether either liability is present or future, liquidated or unliquidated and whether or not liability arises under the Contract. Any such exercise of set-off by the Institution shall not limit or affect any of the Institution's rights or remedies available under the Contract.

## For the avoidance of doubt, all amounts due from the Supplier to the Institution under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding by the Supplier.

Personnel

## The Supplier warrants to the Institution that all of the Supplier's Personnel shall at all times have the necessary qualifications and experience to meet the standards offered by the Supplier under the Contract.

## The Supplier shall provide such details of its Personnel that may require access to the Premises to perform their duties as required under the Contract as are reasonably requested in writing by the Institution.

## The Supplier shall ensure that when on the Premises, its Personnel at all times comply with all Laws and other requirements that may be in force from time to time in relation to the Premises.

## The Institution may request the removal of any Supplier's Personnel, where in the Institution's reasonable opinion such Personnel's performance or conduct is or has been unsatisfactory. The Supplier shall promptly remove and replace such Personnel at the Supplier's own cost and expense.

Premises

## The Institution grants the Supplier a non-exclusive licence to access the Premises, as may be reasonably required for the sole purpose of performing its obligations under the Contract.

## The Supplier shall co-operate with all other suppliers or personnel who may also have access to the Premises.

## At the end of the Term, the Supplier shall:

### remove from the Premises all the Supplier's equipment and unused materials;

### clear away all rubbish arising out of or in connection with the supply of the relevant Goods and/or Services; and

### leave the Premises in a clean and tidy condition to the Institution's reasonable satisfaction.

## If the Supplier fails to comply with Clause 11.3, the Institution may remove and dispose of the Supplier's equipment and unused materials and clear away and clean the Premises as required by Clauses 11.3.2 and 11.3.3 and the Institution shall be entitled to recover the cost of doing so from the Supplier as a debt.

## Where the Supplier leaves any equipment or materials on the Premises during the Term, it does so at its own risk and the Institution shall have no liability to the Supplier in relation to such equipment or materials.

Assignment and Sub-contracting

## Subject to Clause 12.2, the Supplier shall not assign, charge or transfer any right or obligation under the Contract or in any way deal or part with its interest in the Contract or any part of it to any person, without the Institution's prior written consent.

## The Supplier shall not sub-contract to any person the performance of any of its obligations under the Contract:

#### except with the Institution's prior written consent, the Supplier and any sub-contractors identified in the Supplier Documentation are hereby deemed and agreed to be approved sub-contractors for the purposes of this Clause 12.2 and approved sub-processors for the purposes of Schedule 3;

#### if any such sub-contracting would be inconsistent with the Supplier's tender; and

#### if any such sub-contracting could or would in the sole opinion of the Institution breach any Law.

## If the Institution consents to the Supplier to sub-contract, then the Supplier shall co-ordinate and integrate such services provided by the sub-supplier with his own and no sub-contracting by the Supplier and no consent by the Institution shall in any way relieve the Supplier from any liability or obligation in respect of the performance of its obligations under the Contract.

## The Institution may at any time assign by absolute legal assignment the benefit of all the Supplier's obligations and the entire benefit arising under or out of the Contract to

### any contracting authority;

### any other body established by the Crown or under statue to substantially perform any of the functions that had previously been performed by the Institution;

### any private sector body which substantially performs the functions of the Institution,

### provided that any such assignment shall not increase the Supplier's obligations under the Contract.

## If the Supplier sub-contracts the Contract in accordance with this Clause 12, the sub-contract must be entered into on equivalent and no less onerous terms than the terms of the Contract.

Intellectual Property Rights

## Any Institution's IP shall remain vested in the Institution and the Institution shall grant the Supplier a revocable, non-transferable, non-exclusive, royalty free licence to use such IP for the purpose of performing its obligations under the Contract.

## The Project IP shall immediately vest in the Institution upon its creation or discovery and the Institution shall grant the Supplier an irrevocable, transferable, non-exclusive, royalty free licence to use the Project IP for the purpose of performing its obligations under the Contract.

## The Supplier's Background IP shall remain vested in the Supplier and the Supplier shall grant the Institution an irrevocable, transferable non-exclusive, royalty free licence to use the Supplier's Background IP for any purpose related to the Contract and the Services supplied hereunder.

## All royalties or other sums payable in respect of the supply and use of any patented article, processes or inventions required for and in relation to the performance of the Supplier's obligations under the Contract shall be paid by the Supplier.

Confidentiality and publicity

## The Supplier will keep confidential all financial information, supplier lists, manuals, software (including its source code), trade secrets, business forecasts, specifications, correspondence, books, records, documents, agreements, photographs, quotations, invoices, files, plans, drawings, any other similar material or information relating in any way to the Contract, and/or the business of the Institution. The Supplier will not disclose details of these to any person, other than to its professional advisers, insurers and the Supplier's Personnel, without the consent of the Institution, and then only insofar as such disclosure is necessary for the effective performance of the Supplier's obligations under the Contract. The provisions of this Clause will continue to apply notwithstanding any novation and/or termination of the Contract for any reason and notwithstanding the completion of the performance of the Supplier's obligations under the Contract.

## The Supplier shall not be liable for the disclosure of any confidential material which is referred to in Clause 14.1 which:

#### is or becomes available to the public, other than by means of a breach of the Contract; or

#### is required by Law to be disclosed.

## The Supplier shall not, without the Institution's prior written consent, use the Institution's corporate name or any other unnamed trademark associated with the Institution for any purpose, including but not limited to by illustration, advertising, publicising, marketing or selling services and/or products, except as may otherwise be required by Law. In that event, the Supplier shall provide the Institution with written notice of such request as soon as reasonably practicable, sufficient to allow the Institution an opportunity to object prior to such disclosure.

## Unless expressly permitted in writing by the Institution, the Supplier shall not publish or permit to be published either alone or in conjunction with any other person any information, articles, photographs or other illustrations relating to or connected with the Contract or the work of the Institution.

Freedom of Information

## The Supplier acknowledges that the Institution is subject to the FOIA and the EIR and the Supplier shall, at its cost, use all reasonable endeavours and take all necessary steps to assist the Institution in complying with the FOIA and/or the EIR.

## If the Supplier receives a 'request' from any third party (as that term is defined in the FOIA and the EIR, as applicable), it shall immediately provide the Institution with a written copy of that request.

## The Supplier shall ensure that the provisions of this Clause 15 are included in any subcontract it enters into in respect of the Contract.

Insurance

## The Supplier must take out and maintain insurance adequate to cover the risks set out in the Contract and for a period of 6 years thereafter and in any event, shall take out and maintain

### Product Liability Insurance coverage of not less than the amount stated in the Order Form for any one, or series of claims that may arise;

### Public Liability Insurance coverage of not less than the amount stated in the Order Form for any one, or series of claims that may arise;

### Employer Liability Insurance coverage of not less than the amount stated in the Order Form for any one, or a series of claims that may arise.

### Any other Insurance, including but not limited to Professional Indemnity insurance, coverage, where stated in the Order Form as required, of not less than the amount stated in the Order Form for any one, or series of claims that may arise;

## The Supplier will take out and maintain such insurances as set out in this clause 16 with a reputable insurance company and shall at the Institution’s request provide evidence of the insurance policy or policies and of payment of the premiums. Supplier’s failure to maintain such insurances shall be treated as a material breach of the Contract and shall give Institution the right to terminate the Contract in accordance with clause 17.

Suspension and/or Termination

## The Institution may, in addition to any other rights and remedies which it may have, by giving not less than 7 (seven) days' written notice to the Supplier, suspend or terminate the Supplier's appointment under the Contract. If the Supplier's appointment is suspended pursuant to this Clause 17.1 then the Institution may, by giving not less than 7 (seven) days' written notice, require the Supplier to resume performance at any time within a period of 6 (six) months from the date of suspension. The Supplier shall use all reasonable endeavours to resume performance of its obligations under the Contract as soon as possible after receipt of the Institution's written notice. If the Institution has not required the Supplier to resume performance within such period, then the Supplier's appointment under the Contract shall be deemed to have been terminated.

## The Institution or the Supplier may suspend and/or terminate the Supplier's appointment under the Contract upon serving written notice on the other in the event that:

#### the other is in breach of the Contract in any material respect and the other has failed within 30 (thirty) days of the service of the other's written notice to remedy such breach or breaches; and/or

#### distress or execution is levied or threatened upon any of the other's property or any judgement against the other remains unsatisfied for more than 14 (fourteen) days or the other (being an individual) is bankrupt or unable to pay his debts or seeks an arrangement with his creditors, or the other (being a company) has an administrator appointed of it or a receiver or manager or administrative receiver is appointed of it or any of its assets or it enters into liquidation or it proposes or makes any voluntary arrangement with its creditors; any petition is presented or any resolution passed or any steps or proceedings taken which may lead to any of the foregoing occurrences; the other ceases to carry on business; and/or

#### if any of the termination provisions under the Procurement Act 2023 apply.

## The Institution may terminate the Contract in accordance with

### Schedule 2 (Anti-bribery and Corruption); or

### Schedule 6 (KPIs).

## Suspension or termination of the Supplier's appointment under the Contract, howsoever arising, shall be without prejudice to the rights and remedies of either of the parties in relation to any negligence, omission or default of the other prior to such termination.

## If the Supplier's appointment under the Contract has been suspended or terminated by the Institution pursuant to Clause 17.1, or terminated by the Supplier pursuant to Clause 17.2 then:

### after suspension or termination of the Supplier's appointment under the Contract, the Supplier shall immediately provide to the Institution copies of all Documentation for and in relation to this Contract which has been prepared by it or on its behalf or is in its possession;

### the Supplier shall be entitled to send an invoice to the Institution for all outstanding Charges earned by the Supplier for the Services properly performed (whether wholly or in part) and Value Added Tax due thereon;

### the Institution shall not be liable for any Losses howsoever arising out of or in connection with the suspension or termination of the Contract;

### pursuant to the terms of the Contract, the Institution shall pay to the Supplier any instalments of any Charge and any other amounts which have accrued due prior to the date of suspension or termination, together with a proportion of the next following instalment of any Charge commensurate with the Services properly performed up to the date of suspension or termination carried out prior to the date of suspension or termination; and

## If the Supplier's appointment under the Contract has been suspended or terminated by the Institution pursuant to Clause 17.1, 17.2 or 17.3:

### after termination of the Supplier's appointment under the Contract, the Supplier shall immediately provide the Institution with copies of all Documentation for and in relation to the Contract which has been prepared by it or on its behalf or is in its possession and then delete this data following confirmation from the Institution of receipt;

### the Institution shall not be liable for any Losses howsoever arising out of or in connection with the suspension or termination of the Contract; and

Force Majeure

## Neither party shall be liable to the other for any delay or failure in performing its obligations under the Contract to the extent that such delay or failure is caused by an event or circumstance that is beyond the reasonable control of that party, and which by its nature could not have been foreseen by such party or, if it could have been foreseen, was unavoidable, provided that the Supplier shall use all reasonable endeavours to remedy any such events or circumstances and resume performance under the Contract. If any events or circumstances prevent the Supplier from carrying out its obligations under the Contract for a continuous period of more than 30 Business Days, the Institution may terminate this Contract immediately by giving written notice to the Supplier.

Communications

## Except as otherwise provided for in the Contract, all notices or other communications under or in respect of the Contract to either party must be in writing and shall be deemed to be duly given or made when delivered, in the case of personal delivery or sent by prepaid recorded delivery or registered post, or when posted, deemed to have been received 48 (forty-eight) hours after the same shall have been posted, or when despatched, in the case of e-mail, to the party addressed to him at the address stated in Clause 19.3 or such other address as such party may by notice in writing nominate for the purpose of service.

## A written notice includes a notice by e-mail (confirmed by letter). A notice or other communication received on a non-working day or after normal business hours in the place of receipt, shall be deemed to be given or made on the next following working day in that place.

## Any written notice provided under Clause 19.1 shall be sent:

### in the case of the Institution, as set out in the relevant Order Form; and

### in the case of the Supplier, as set out in the relevant Order Form.

## Either party may change its respective notice correspondence information referred to in Clause 19.3 by prior written notice to the other party.

Indemnities

## The Supplier shall indemnify and keep indemnified in full the Institution from and against all Losses suffered or incurred by the Institution arising out of or in connection with:

### the Supplier allegedly infringing or being held to infringe any Intellectual Property Rights in the performance of the Supplier's obligations under the Contract;

### the Institution allegedly infringing or being held to infringe any Intellectual Property Rights through the use of the Supplier's Background IP, the Project IP or the relevant Goods and/or Services;

### any claim or complaint made to or against the Institution at any time resulting from or in connection with any alleged failure by the Supplier to pay a sum claimed to be due from the Supplier to the Supplier or an approved sub-contractor following receipt by the Supplier of a sum from the Institution incorporating or representing in whole or part any such intended payment sum, or any wilful act, breach or negligent performance or non-performance of its obligations under the Contract by the Supplier;

### the death or personal injury of any person or physical damage to any property attributable to the Supplier's performance or non-performance of its obligations under the Contract; and/or

### any breach or alleged breach by the Supplier of its obligations pursuant to Schedule 3 (Data Protection) of the Contract.

### any breach of the warranties contained in this Contract.

### any breach or negligent performance or non-performance of this Contract.

Limit of liability

## Except where expressly stated elsewhere in the Contract:

### the Supplier's total liability to the Institution for all losses howsoever arising under, for breach of, or in connection with the Contract is limited to, and shall not exceed the Supplier Liability Cap in the aggregate, save in respect of the indemnities granted by it under Clause 20.1 and Clause 31 and Clause 32;

### the Institution's total liability to the Supplier for all losses howsoever arising under, for breach of, or in connection with the Contract is limited to, and shall not exceed the Institution Liability Cap in the aggregate; and

### neither party shall be liable to the other for any indirect loss or consequential loss, loss of contribution to incidental costs, loss of profit or overheads or loss of reputation, howsoever arising under, for breach of, or in connection with the Contract.

## Nothing in the Contract shall limit or exclude:

### either party's liability to the other for death or personal injury resulting from that party's negligence; or

### any damage or liability incurred by either party as a result of fraud or fraudulent misrepresentation by the other; or

### that may not otherwise be limited or excluded by law.

Anti-bribery and Corruption

## The parties shall comply with Schedule 2 in relation to anti-bribery and corruption.

Data Protection

## The parties shall comply with Schedule 3 in relation to data protection.

Conflicts of interest

## The Supplier may not, without the Institution's prior written consent, be directly or indirectly engaged, concerned or have any financial interest in any capacity with the Institution.

## The Supplier shall promptly notify the Institution in writing of any actual or potential conflict of interest which arises during the Term and the Institution shall be entitled to require the Supplier to take such reasonable steps to remedy any conflict of interest as are reasonably required by the Institution.

Dispute Resolution

## If a Dispute arises in respect of the Contract then the procedure set out in this Clause 25 shall apply.

## In the event of a Dispute, either party shall serve on the other party a Dispute Notice, together with any relevant supporting documentation.

## Following the service of any Dispute Notice pursuant to Clause 25.2, the Institution’s Contract Manager and the Supplier’s Contract Manager as set out in the Order Form shall use reasonable endeavours to resolve the Dispute, in good faith.

## If the Institution’s Contract Manager and the Supplier’s Contract Manager are for whatever reason unable to resolve the Dispute within 30 (thirty) days of service of the relevant Dispute Notice, the Dispute shall be referred to the Principal of the Institution and the Managing Director of the Supplier (or persons holding equivalent status) who shall use reasonable endeavours to resolve the Dispute, in good faith.

## If the Principal of the Institution and the Managing Director of the Supplier (or persons holding equivalent status) are for whatever reason unable to resolve the Dispute within 30 (thirty) days of the Dispute being referred to them pursuant to Clause 25.3, the parties will seek to settle the Dispute by mediation in accordance with the CEDR Model Mediation Procedure. The Mediator shall be nominated by CEDR Solve, unless otherwise agreed (in writing) between the parties. To initiate the mediation, a party must provide a written notice (**ADR Notice**) to the other party to the Dispute, requesting mediation. A copy of any such ADR Notice must be sent to CEDR Solve. The mediation will not start later than 15 (fifteen) after the date of the ADR Notice and the party providing the ADR Notice shall be responsible for all costs associated with the provision of such ADR Notice (subject to any agreement made between the parties in relation to costs associated with such mediation).

## In the event that:

### the Dispute is not resolved within 30 (thirty) days after the service of an ADR Notice; or

### either party fails to participate or fails to continue to participate in the mediation before the expiry of such 30 (thirty) days; or

### the mediation terminates before the expiry of such 30 (thirty) days, the Dispute shall be referred to the Courts of England in accordance with Clause 34 of the Contract.

## No party may commence any court proceedings under Clause 34 of the Contract in relation to the whole or any part of a Dispute until 60 (sixty) days after the service of the ADR notice (provided that the right to issue proceedings is not prejudiced by a delay).

Records and Audit Access

## The Supplier shall keep and maintain until 6 (six) years after the date of the end of the Term, full and accurate records and accounts of the operation of the Contract including but not limited to the Goods and/or Services provided under it in accordance with good accountancy practice.

## The Supplier shall provide such records and accounts (together with copies of the Supplier’s published accounts) during the Term and for a period of 6 (six) years after the date of the end of the Term to the Institution and/or the auditor and/or any statutory body entitled by Law on written request and shall provide the Institution and/or the auditor and/or any statutory body entitled by Law access to such records and accounts as may be required from time to time.

## The Supplier shall on written request provide the auditor with all reasonable co-operation and assistance in relation to each audit, including:

#### all information requested by the auditor within the scope of the audit;

#### reasonable access to sites controlled by the Supplier and to equipment and materials used in the provision of the Goods and/or Services; and

#### access to the Supplier's Personnel.

## The parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Clause 26 unless the audit reveals a material breach by the Supplier of good accountancy practice and/or the Contract, in which case the Supplier shall reimburse the Institution for the reasonable costs it incurs in relation to the audit.

Compliance with Anti-Slavery and Human Trafficking Laws and Policies

## In performing its obligations under the Contract, the Supplier shall comply with all applicable labour, anti-slavery and human trafficking legislation and regulations in force from time to time in the United Kingdom, including but not limited to the Modern Slavery Act 2015 (**Anti-Slavery Laws**).

## The Supplier represents and warrants that, as at the date of the Contract, neither the Supplier nor any of its officers, employees or agents have been convicted of any offence involving slavery and/or human trafficking, nor have they been or are the subject of an investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence of or in connection with slavery and/or human trafficking whether pursuant to the Anti-Slavery Laws or any other relevant legislation in force from time to time.

## The Supplier shall, throughout the Term, use its best endeavours to include, in all of its contracts with any of its subcontractors of any tier in the supply chain involved in the production or provision of the Goods and/or Services:

### a provision obliging the relevant subcontractor to provide the Goods and/or Services specified in the relevant subcontract in accordance with Anti-Slavery Laws; and

### provisions (to take effect upon a breach by the subcontractor of its obligation to provide the Goods and/or Services under the relevant subcontract in accordance with Anti-Slavery Laws) which provide that:

#### if a subcontractor's failure to comply with Anti-Slavery Laws has occurred more than once in any 6 (six) month period, the Supplier must serve a written notice on the subcontractor;

##### specifying that the notice is a formal warning notice;

##### giving reasonable details of the subcontractor's breach; and

##### stating that the breach is a breach which, if it recurs frequently or continues, may result in a termination of the Subcontract;

#### if, following service of a warning notice under Clause 27.3.2 (a), the breach specified has continued beyond 14 (fourteen) days or has recurred more than once within a 6 (six) month period after the date of the notice then the Supplier must serve another written notice on the subcontractor:

##### specifying that it is a final warning notice;

##### stating that the breach specified has been the subject of a warning notice served within the 12 (twelve) month period prior to the date of service of the final warning notice; and

##### stating that, if the breach continues or recurs again within the 6 (six) month period after the date of the final warning notice, the subcontract may be terminated; and

#### where a breach continues or recurs pursuant to Clause 27.3.2(b), the Supplier may terminate the subcontract by 7 (seven) days' notice in writing to the subcontractor,

### or provisions that are equivalent to and no less onerous than those set out above.

Contracts (Rights of Third Parties) Act 1999

## Nothing in the Contract shall confer or purport to confer on any third party any benefit or the right to enforce any term of the Contract pursuant to the Contracts (Rights of Third Parties) Act 1999.

Severability

## If any part of the Contract becomes, or is determined by any court or tribunal to be, illegal or unenforceable, the remaining provisions shall remain in full force and effect.

Service Improvement and Technology Refresh

## The Supplier shall, at its own cost, submit a report to the Institution within 30 days of the end of each year of the term of the Contract which shall identify the emergence of new and evolving relevant technologies and processes which could improve the Goods and/or Services. Such report shall be provided in sufficient detail to enable the Institution to evaluate properly the benefits of the new technology or process.

## If the Institution wishes to incorporate any improvement identified by the Supplier pursuant to clause 30.1, the parties shall discuss the implementation of the associated change provided always that if the Supplier's costs in providing the Goods and/or Services reduces as a result of any such change implemented by the Institution 50% of the cost savings shall be passed on to the Institution by way of a consequential and immediate reduction in the price for the Goods and/or Services.

Re-tendering and Handover

## Within twenty-one (21) days of being so requested by the Institution, the Supplier shall provide and thereafter keep updated, in a fully indexed and catalogued format, all the information necessary to enable the Institution to issue invitations to tender for the future provision of the Goods and/or Services.

## Where, in the opinion of the Institution, TUPE is likely to apply to the Contract on its termination or expiration, the information to be provided by the Supplier under clause 31.1 shall include, as applicable, accurate information relating to the employees who would be transferred under the same terms of employment under TUPE, including in particular (but not limited to):

(a) the number of employees who would be transferred, but with no obligation on the Supplier to specify their names; and

(b) in respect of each of those employees, their dates of birth, sex, salary, length of service, hours of work and rates, and any other factors affecting redundancy entitlement, any specific terms applicable to those employees individually and any outstanding claims arising from their employment; and

(c) the general terms and conditions applicable to those employees, including probationary periods, retirement age, periods of notice, current pay agreements and structures, special pay allowances, working hours, entitlement to annual leave, sick leave, maternity and special leave, injury benefit, redundancy rights, terms of mobility, any loan or leasing agreements, and any other relevant collective agreements, facility time arrangements and additional employment benefits.

## The Supplier shall indemnify the Institution against any claim made against the Institution at any time by any person in respect of the liability incurred by the Institution arising from any deficiency or inaccuracy in information, which the Supplier is required to provide under clause 31.1

## The Supplier shall co-operate fully with the Institution during the handover arising from the completion or earlier termination of the agreement. This co-operation, during the setting up operations period of the replacement Supplier (if any), shall extend to allowing full access to, and providing copies of all documents, reports, summaries and other information necessary in order to achieve an effective transition.

TUPE – Transfer of Undertakings (Protection of Employment)

## The Supplier shall indemnify and keep indemnified the Institution against any loss incurred by the Institution connected with or arising from any claim or proceedings by any trade union, elected employee representative or staff association made against the Institution in respect of any or all of the Supplier’s staff or employees or any other employee of the Supplier or its sub-contractors and which arises from or is connected with any failure by the Supplier to comply with its legal obligations in relation thereto whether under Section 188 of the Trade Union and Labour Relations (Consolidation) Act 1992 or TUPE.

## The Supplier shall indemnify and keep indemnified the Institution against any loss incurred by the Institution connected with or arising from the contract of employment or any policy applicable to, or any collective agreement in respect of any of the Supplier’s staff or any other person at any time employed by (or engaged as a consultant by) the Supplier or its sub-contractors made against the Institution at any time for breach of such contract, policy or redundancy, pay, sex, race or disability discrimination, equal pay, unlawful deductions, loss of earnings, industrial or personal injury or otherwise relating to their employment by the Supplier and which results from any act, fault or omission of the Supplier or such other person was employed by the Supplier, save to the extent that the liability arises from any wrongful act by the Institution or its employees.

## The Supplier shall indemnify and keep indemnified the Institution against any loss incurred from any change or proposed change to the terms and conditions of employment of any or all of the Supplier’s staff or any other employee of the Supplier or its sub-contractors where such change is or is proposed to be effected following the transfer of any such person pursuant to the agreement and in respect of any loss incurred by the Institution arising from the employment or proposed employment of any such person otherwise than on terms the same as those enjoyed by any such person immediately prior to such transfer.

## Except with the proper written consent of the Institution, the Supplier shall not vary any terms and conditions of employment of any employee or any policy collective agreement applicable to any employee then assigned by the Supplier or its sub-contractors to the discharge of the Contract (provided always that this provision shall not affect the right of the Supplier to give effect to any pre-existing contractual obligation to any such employee) nor remove or replace any particular employee so assigned (unless requested by such employee or upon the resignation of such employee in which case the Supplier shall replace such person with another person of similar skills, qualifications and experience) after the Institution has served notice of the termination of the Contract or after the Supplier shall have otherwise become aware of the proposed termination or re-tendering of this agreement, any Contract or the provision by it of the Goods and/or Services.

Counterparts

## This Contract may be executed in one or more counterparts. Any single counterpart or set of counterparts executed, in either case, by all the parties shall constitute a full original of the Contract for all purposes.

Governing Law and Jurisdiction

## The terms and conditions of the Contract and any Dispute shall be governed by the laws of England.

## The parties agree that the courts of England shall have exclusive jurisdiction to settle any Dispute.

Waiver

## A party's failure or delay to exercise a power or right under the Contract does not operate as a waiver of that power or right.

## A waiver of a power or right will only be effective:

### if it is in writing and signed by the party who has the benefit of the power or right being waived; and

### in respect of the specific instance to which it relates and for the specific purpose for which it is given.

## Communications between the parties made before the date of the Contract which are not expressly contained within the Contract shall not be deemed to be incorporated into the Contract.

## Notwithstanding any other provision of the Contract, the terms approval or comment or consent when used in the context of any approval, comment or consent to be given by the Institution shall have the meaning acceptance of general principles only and no such approval, comment or consent shall diminish or relieve the Supplier from any of its obligations or responsibilities under or in connection with the Contract.

This document has been entered into by the parties or their duly authorised representatives on the date set out at the beginning of this document.

|  |  |  |
| --- | --- | --- |
| Signed for and on behalf of**INSTITUTION** | ))) | sign here: |
|  |  | print name: |

|  |  |  |
| --- | --- | --- |
| Signed for and on behalf of**SUPPLIER** | ))) | sign here: |
|  |  | print name: |

1. : Anti-bribery and Corruption
2. The term **Prohibited Act** means
	* + - 1. directly or indirectly offering, promising or giving any person working for or engaged by the Institution a financial or other advantage of any kind to:

induce that person to improperly perform a relevant function or activity; or

reward that person for improper performance of a relevant function or activity;

* + - * 1. directly or indirectly requesting, agreeing to receive or accepting any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with the Contract;
				2. committing any offence;

under the Bribery Act 2010;

under Law creating offences in respect of fraudulent acts;

at common law, in respect of fraudulent acts; or

at common law, in respect of fraudulent acts relating to the Contract or any other contract with the Institution or any other public body; or

* + - * 1. defrauding, attempting to defraud or conspiring to defraud the Institution.
1. The Supplier:
2. shall not, and shall procure that the Supplier's Personnel shall not, in connection with the Contract, commit a Prohibited Act;
3. warrants, represents and undertakes that it is not aware of any financial or other advantage being given to any person working for or engaged by the Institution, or that any agreement has been reached to that effect, in connection with the execution of the Contract; and
4. warrants that in entering into the Contract it has not committed any Prohibited Act (as declared by the Supplier pursuant to the Original Tender Process.
5. The Supplier shall:
6. if requested in writing, provide the Institution, at the Institution's reasonable cost, to enable the Institution to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act 2010; and
7. within 20 (twenty) days of the date of the Contract, and annually thereafter, certify in writing to the Institution compliance with this Schedule 2 by the Supplier and all persons associated with it or any other persons who are supplying the Goods and/or Services in connection with the Contract. The Supplier shall provide any such supporting evidence of compliance with this Schedule 2 as the Institution may reasonably request.
8. The Supplier shall put in place and maintain an anti-bribery policy (a copy of which shall be provided to the Institution within 20 (twenty) days of the date of the Contract) which shall, as a minimum, prevent any Personnel from committing a Prohibited Act and shall enforce it where appropriate.
9. If at any time any breach of paragraph 2 above is suspected or known, the Supplier must notify the Institution immediately with the details of any such breach to follow in writing as soon as reasonably practicable.
10. If the Supplier notifies the Institution that it suspects or knows that there may be a breach of this Schedule 2, the Supplier will respond promptly to all of the Institution's enquiries in relation to any such suspected or actual breach and will co-operate at all times with any investigation, and permit the Institution access to and audit of any books, records and any other relevant documents. The obligation under this paragraph shall continue for 7 (seven) years following the expiry or termination of the Contract.
11. The Institution may terminate the Contract by written notice with immediate effect if the Supplier, its Personnel (in all cases whether or not acting with the Supplier’s knowledge) breaches [paragraph](#co_anchor_a101985_1) 2 of this Schedule 2. Any such termination shall be without prejudice to any right or remedy which has already accrued or which subsequently accrues to the Institution.
12. Any notice provided by the Institution pursuant to paragraph 7 must specify:
13. the nature of the Prohibited Act;
14. the identity of the party who the Institution believes has committed the Prohibited Act; and
15. the date on which the Contract will terminate in accordance with the applicable provisions of this Schedule 2.
16. Notwithstanding Clause 25 (Dispute Resolution) of the Contract, the Institution shall determine any Dispute relating to the interpretation of this Schedule 2 and/or the amount or value of any gift, consideration or commission and any such determination by the Institution shall be final and binding upon the parties.
17. : Data Protection

In this Schedule, the following words and expressions shall have the following meanings:

**Controller** means the person which, alone or jointly with others, determines the purposes and means of the processing of Personal Data;

**Data Protection Particulars** means, in relation to any Processing under the Contract: (a) the subject matter and duration of the Processing; (b) the nature and purpose of the Processing; (c) the type of Personal Data being Processed; and (d) the categories of Data Subjects as set out in the Order Form;

**Data Subject** means the identified or identifiable natural living person to whom the Personal Data relates;

**Personal Data** means any information relating to an identified or identifiable living individual;

**Personal Data Breach** means any act or omission that (i) compromises the security, confidentiality or integrity of the Personal Data that the Supplier Processes for and on behalf of the Institution (including, by way of example, the unauthorised loss or disclosure of any such Personal Data by the Supplier); (ii) compromises the physical, technical, administrative or organisational safeguards put in place by the Supplier that relate to the protection of the security, confidentiality or integrity of such Personal Data (including any breach of the IT and data security requirements); or (iii) causes the Institution or Supplier to be in breach of data protection Law (in particular the Data Protection Legislation);

**Processor** means the person which processes Personal Data on behalf of the Controller;

**Processing** means any operation or set of operations which is performed on Personal Data, whether or not by automated means and "**Process**", "**Processes**" and "**Processed**" shall be construed accordingly; and

# **Data Protection**

## The parties acknowledges and agree that:

#### Where stated in the Order Form, the Contract will require the Processing of Personal Data by the Supplier on behalf of the Institution;

#### the Institution shall determine the purposes for which and the manner in which Personal Data will be processed by the Supplier on behalf of the Institution under the Contract;

#### the Institution is the Controller and the Supplier is the Institution's Processor in respect of all such Personal Data; and

#### the only Processing of Personal Data that the Supplier is authorised to do is listed in the Data Protection Particulars

## Where, under or in connection with the Contract, the Supplier Processes Personal Data on behalf of the Institution and the Institution's Processor, the Supplier shall Process the Personal Data only:

#### to the extent, and in such as manner, as is necessary for the performance by the Supplier of its obligations under the Contract and in accordance with the Institution's written instructions; and

#### as otherwise required by Law, in which case the Supplier shall inform the Institution of that legal requirement before Processing the Personal Data (unless that law, on important grounds of public interest, prohibits the Supplier from informing the Institution).

## If the Supplier is required by Law to Process Personal Data otherwise than in accordance with this Schedule 3, the Supplier shall immediately inform the Institution of the legal requirement before Processing Personal Data (unless prohibited from doing so by Law). The Supplier shall immediately inform the Institution if, in its opinion, Processing the Personal Data in accordance with written instruction received from the Institution or in the performance of its obligations under the Contract infringes Data Protection Legislation to which either the Institution or the Supplier is subject.

## The Supplier shall provide all reasonable assistance to the Institution in the preparation of any data protection impact assessment, as defined in the UK GDPR, prior to commencing any Processing. Such assistance may, at the discretion of the Institution, include:

#### a systematic description of the envisaged Processing operations and the purpose of the Processing;

#### an assessment of the necessity and proportionality of the Processing operations in relation to the performance of the Contract;

#### an assessment of the risks to the rights and freedoms of Data Subjects; and

#### the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

## The Supplier will not Process Personal Data, or disclose Personal Data to any party who carries on business, outside the UK/EEA except with the Institution 's prior written consent and where such consent is given, take such actions and enter into such agreements as the Institution may require to ensure that such transfer or disclosure complies with Law.

## The Supplier will keep a record of any Processing of Personal Data it carries out under the Contract.

## The Supplier shall not disclose Personal Data to any person except under the Contract or with the Institution's written consent.

## The Supplier shall ensure that access to Personal Data is limited to:

#### those employees who need access to Personal Data to meet the Supplier's obligations under the Contract; and

#### in the case of any access by any employee, such part or parts of Personal Data as is strictly necessary for performance of that employee's duties.

## The Supplier shall ensure that employees that require access to Personal Data:

#### are informed of the confidential nature of Personal Data;

#### have undertaken training in Law (including Data Protection Legislation) relating to handling Personal Data; and

#### are aware both of the Supplier's duties and their personal duties and obligations under Law (including Data Protection Legislation) and the Contract.

## Without prejudice to Clause 14 of the Contract, the Supplier shall ensure that all persons authorised to Process Personal Data are under an appropriate contractual or other legal obligation of confidentiality in respect of Personal Data.

## The Supplier shall not disclose Personal Data to any Data Subject or to a third party other than at the request of the Institution or as provided for in the Contract.

## The Supplier shall, taking into account the nature of the Processing, implement appropriate technical and organisational measures against unauthorised or unlawful Processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data and to ensure the security of the Personal Data and prevent Personal Data Breaches, having taken account of the:

#### nature of the Personal Data to be protected;

#### harm that might result from a Personal Data Breach;

#### state of technological development; and

#### cost of implementing any measures.

## Appropriate technical and organisational measures include pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, taking reasonable steps to ensure the reliability of its employees with access to Personal Data and regularly assessing and evaluating the effectiveness of such measures adopted.

## The Supplier shall, upon becoming aware, immediately and in any event within 24 hours notify the Institution of any Personal Data Breach and shall work together with the Institution to provide the Institution with full co-operation and assistance, including to investigate the Personal Data Breach (including by (i) assisting with any investigation launched by the Institution; (ii) facilitating interviews with the Supplier’s employees and others involved in the matter; and (iii) making available all relevant records reasonably required by the Institution to investigate the Personal Data Breach or otherwise comply with Law or the requests of any competent regulatory authority in relation to the Personal Data Breach or its investigation).

## The Supplier shall not engage any sub-processor to Process Personal Data on behalf of the Institution except with the Institution's prior specific written authorisation and, where such authorisation is given, enter into a contract with the sub-processor that imposes the same contractual obligations set out in this Schedule 3 on that sub-processor, and remain directly liable at all times to the Institution for all acts and omissions of any sub-processor that it engages in accordance with the terms of this Schedule 3.

## The Supplier shall assist and fully co-operate with the Institution to enable it to comply with its obligations as a Controller under and in accordance with Law (including the Data Protection Legislation) including in relation to the security of Processing, data subject right requests, reporting Personal Data Breaches to the supervisory authority and conducting data privacy impact assessments. The Supplier shall notify the Institution within 24 hours if it receives a request from a Data Subject to exercise its rights under Law or any communication from a Data Subject, the Information Commissioner or any other regulatory authority in connection with Personal Data Processed under the Contract.

## The Supplier shall promptly comply with any request from the Institution requiring the Supplier to amend, transfer or delete Personal Data. At the Institution's request, the Supplier shall provide to the Institution a copy of all Personal Data held by it in the format and on the media reasonably specified by the Institution.

## The Supplier shall at any time on the request of the Institution, return all Confidential Information and/or data (including any Personal Data that the Supplier Processes for and on behalf of the Institution) to that Institution and/or permanently delete the same from its systems, including any back-up copies.

## The Supplier shall at the Institution's option, delete or return to the Institution all Personal Data on termination of the Contract and delete any existing copies of Personal Data except to the extent that the Institution is required to retain Personal Data by Law (including the Data Protection Legislation).

## The Supplier shall make available to the Institution all information necessary to demonstrate the Institution's compliance with the obligations under this Schedule 3 and allow for and contribute to audits, including inspections, conducted by the Institution or another auditor mandated by the Institution.

## The Supplier shall immediately inform the Institution if, in its opinion, an instruction from the Institution infringes Law (including the Data Protection Legislation).

## The Supplier shall, in connection with the Contract, comply in all respects with Law relating to data protection (including the Data Protection Legislation) and have established procedures to ensure continued compliance with Law (including the Data Protection Legislation). The Supplier shall comply with its obligations as a Processor under and in accordance with Law (including the Data Protection Legislation).

## The Supplier shall only collect any Personal Data in a form which is fully compliant with Law which will contain a data protection notice informing the data subject of the identity of the Controller, the identity of any data protection representative it may have appointed, the purposes or purpose for which their Personal Data will be Processed and any other information which is necessary having regard to the specific circumstances in which the data is, or is to be, Processed to enable Processing in respect of the Data Subject to be fair and compliant under Law.

## The Institution may, at any time on not less than 30 working days' notice, revise this Schedule 3 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme.

## The parties agree to take account of any guidance issued by the Information Commissioner's Office. The Institution may on not less than 30 working days' notice to the Supplier amend the Contract to ensure that it complies with any guidance issued by the Information Commissioner's Office.

## The Supplier shall Process Personal Data the performance of the Contract as notified by the Institution only for as long as required and for no longer than the term of the Contract.

## The Supplier warrants that it shall:

#### Process the Personal Data in compliance with Law (including the Data Protection Legislation); and

#### take appropriate technical and organisational measures against Personal Data Breaches occurring.

## The Supplier agrees to indemnify and keep indemnified and defend at its own expense the Institution against all costs, claims, damages or expenses incurred by the Institution or for which the Institution may become liable due to any failure by the Supplier or its employees or agents or the Supplier or approved sub-processors to comply with any of its obligations under this Schedule 3.

1. : Supplier Documentation

The following Supplier Documentation has been provided by the Supplier as part of its tender and agreed between the Institution and the Supplier in relation to the Supplier’s provision or, and the Institution’s use of the Goods and/or Services. Any provisions as to payment of fees or charges by the Institution to the Supplier within the Supplier Documentation are non-applicable.

**[Insert a copy of the Supplier’s Tender Response here].**

**Schedule 5: Charges**

The Charge(s) for this Order including VAT is: £[Amount in figures] ([Amount in words] pounds)

[Insert the Supplier’s tendered Schedule of Prices]

Schedule 6 Key Performance Indicators (KPIs)

1. Where stated as applicable in the Order Form, KPIs are as set out below.
2. The parties agree that the Institution may amend the KPIs during the term as agreed, in writing, with the Supplier or, if relevant, where the KPIs are set out in the Supplier Documentation, as agreed in writing between the Supplier and the Institution.
3. Where the KPIs are not within the Supplier Documentation:
	1. The Supplier shall establish suitable processes to ensure it can monitor its performance of the provision of the Goods and/or Services in accordance with the KPIs under the Contract and that it is able to report on the same to the Institution.
	2. At the end of each quarter during the Term, the Supplier shall provide the Institution with a report containing sufficient data setting out the Supplier's performance of the KPIs. The Supplier acknowledges that the Institution will review such reports to determine the Supplier's effectiveness and efficiency of the Supplier's performance of the KPIs.
	3. If in the Institution's opinion, acting reasonably, the Supplier is not meeting the requirements of the KPIs following a review of the reports provided pursuant to the paragraph above, the Institution may within 15 (fifteen) days give written notice (an **Initial KPI Warning Notice**) to the Supplier setting out:

the matter or matters giving rise to such notice;

the date by which such matters must be rectified by; and

a reminder of the implications of such notice.

Any such Initial KPI Warning Notice shall state on it that is an Initial KPI Warning Notice.

* 1. If the Supplier (in the Institution's reasonable opinion) fails to adequately address the matter or matters set out in the Initial KPI Warning Notice by the date contained in such Initial KPI Warning Notice, the Institution may (at its discretion) issue a further written notice (a **Final KPI Warning Notice**) to the Supplier setting out:

the matter or matters continuing rise to such notice;

the date by which such matters must be rectified by; and

a reminder of the implications of such notice.

Any such Final KPI Warning Notice shall state on it that is a Final KPI Warning Notice.

* 1. Without prejudice to any other rights under the Contract if the Supplier (in the Institution's reasonable opinion) fails to adequately address the matter or matters set out in the Final KPI Warning Notice by the date contained in such Final KPI Warning Notice, the Institution may terminate the Contract by giving not less than 7 (seven) days written notice to the Supplier.