

**STANDARD TERMS AND CONDITIONS
FOR THE PURCHASE OF SERVICES**

Background and Application:

These Terms and Conditions shall apply to the provision of services by the Supplier to the School and shall be incorporated into any agreement made by the School for the purchase of 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 School 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 School.

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 School, otherwise than in pursuance of a tender or quotation received and accepted in whole or part by the School; or
 - b) the agreement made by the acceptance by the School in whole or part of a tender or quotation, inclusive of any Agreement Documents, submitted by the Supplier to the School 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 School, 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;

“Business Continuity Plan”	means the Supplier’s business continuity plan which includes its plan for continuity of the Services during a Business Continuity Event;
“Business Day”	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;
“Commencement Date”	means the date on which provision of the Services will commence, as defined in the Agreement;
“Confidential Information”	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);
“Contract Manager”	means for the School and for the Supplier such person notified by a Party to the other Party from time to time in accordance with clause 19.1;
“Contract Price”	means the price exclusive of VAT that is payable to the Supplier by the School under the Agreement for the full and proper performance by the Supplier of its obligations under the Agreement;
“Convictions”	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);
“Data Processor”	shall have the same meaning as set out in the Data Protection Act 1998;
“Data Protection Legislation”	means the Data Protection Act 1998 (“DPA 1998”) 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 2000/2699), the Electronic Communications Data 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;

“Dispute Resolution Procedure”	means the process for resolving disputes as set out in clause 26;
“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;
“Equality Legislation”	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;
“FOIA”	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;
“Force Majeure”	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;
“Information”	has the meaning given under section 84 of FOIA;
“Law”	means <ul style="list-style-type: none"> (a) any applicable statute or proclamation or any delegated or subordinate legislation or regulation; (b) any applicable European Union directive, regulation, decision or law (c) any enforceable community right within the meaning of section 2(1) European Communities Act 1972; (d) any applicable judgment of a relevant court of law

which is binding precedent in England and Wales;

(e) requirements set by any regulatory body; and

(f) any applicable code of practice

in each case as applicable in England and Wales;

“Good Industry Practice”	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;
“Guidance”	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 School 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;
“Intellectual Property Rights”	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;
“KPI”	means the key performance indicators as set out in the Request for Quote and Quote Response Document;
“Order”	means the School’s purchase order to which these Terms and Conditions are annexed;
“Personal Data”	shall have the same meaning as set out in the Data Protection Act 1998;
“Policies”	means the policies, rules and procedures of the School as notified to the Supplier from time to time;
“Relevant Transfer”	a relevant transfer for the purpose of TUPE;

“Request for Information”	means a request for information or an apparent request under Code of Practice on Access to Government Information, FOIA or the EIRs;
“Request for Quote and Quote Response Document”	means the documentation issued by the School in the course of the procurement of the Services and the Supplier’s response and specification for the delivery of the Services to the School as agreed by the School;
“School”	means Plymouth Studio School of University of St Mark & St John Campus, Derriford Road, Plymouth, Devon, PL6 8BH;
“Sub-Contractor”	means the contractors or Supplier’s agents and contractors including each Sub-Contractor;
“Services”	means the services to be provided by the Supplier to the School 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;
“Staff”	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;
“Term”	means the term of the Agreement as defined within the Order;
“Terms and Conditions”	means the standard terms and conditions of purchase set out in this document;
“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. Provision of the Services

2.1 With effect from the Commencement Date, the Supplier shall, throughout the Term of the Agreement, provide the Services to the School.

2.2 The Supplier agrees to provide the Services:-

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 ensure that all relevant consents, authorisations, licences and accreditations required to provide the Services are in place at the Commencement Date and are maintained throughout the Term.

2.5 If 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 School 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 Services.

2.6 The Supplier shall notify the School forthwith in writing:-

2.6.1 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

2.6.2 of any failure of the 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 Services.

2.7 Time shall be of the essence of the Agreement.

3. Premises, Locations and Access

3.1 The Services shall be provided as such School 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").

- 3.2 Subject to the Supplier and its Staff complying with all relevant Policies applicable to such Premises and Locations, the School shall grant reasonable access to the Supplier and its Staff to such Premises and Locations to enable the Supplier to provide the Services.
- 3.3. Subject to clause 3.4 of these Terms and Conditions any access granted to the Supplier and its Staff under clause 3.2 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 3.3 of these Terms and Conditions.
- 3.4 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 3.2 and 3.3 of these Terms and Conditions such further rights shall be limited to any rights granted to the Supplier by the School in accordance with any licence and/or lease entered into by the Supplier with the School.
- 3.5 Where it is provided for by a specific mechanism set out in the Agreement Document, the School 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 3.4 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 26 of these Terms and Conditions.

4. Co-operation with third parties

- 4.1 The Supplier shall, as reasonably required by the School, cooperate with any other service providers to the School and/or any other third parties as may be relevant in the provision of the Services.

5. Use of School Equipment

- 5.1 Unless otherwise set out in the Agreement Documents or otherwise agreed by the Parties in writing any equipment or other items provided by the School for use by the Supplier:-
- 5.1.1 shall be provided at the School's sole discretion;
 - 5.1.2 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;
 - 5.1.3 must be returned to the School within any agreed timescales for such return or otherwise upon the request of the School; and
 - 5.1.4 shall be used by the Supplier at the Supplier's risk and the Supplier shall upon written request by the School reimburse the School for any loss or damage relating to such equipment or such other items caused by the Supplier (fair wear and tear exempted).

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 School, 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 School staff, students, service users or any other person.
- 6.10 The Supplier shall ensure that the School 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 School 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 School's written consent and with such safeguards being put in place as the School may reasonably request. Should the School 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 School any information that the School reasonably requests to enable the School 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 School 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 School will act reasonably in making such a request. Prior to making any such request the School shall raise with the Supplier the School's concerns regarding the member of Staff in question with the aim of seeking a mutually agreeable resolution. The School shall be under no obligation to have such prior discussion should the School 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 School's business continuity plan where relevant to 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 School; and
 - 7.2.2 the size and scope of the Supplier's business operations, regarding continuity of 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 School and the size and scope of the Supplier's business operations. The Supplier shall promptly provide to the School, at the School'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 School 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 School 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 School to be relevant and appropriate, the Supplier will incorporate into the Business Continuity Plan all such suggestions made by the School in respect of such Business Continuity Plan. Should the Supplier not incorporate any suggestion made by the School into such Business Continuity Plan it will explain the reasons for not doing so to the School.
- 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 School on such implementation.
- 7.6 During and following a Business Continuity Event, the Supplier shall use reasonable endeavours to continue to provide the Services in accordance with the Agreement.

8. School's Obligations

- 8.1 Subject to the Supplier providing the Services in accordance with the Agreement, the School will pay the Supplier for the Services in accordance with Clause 10 of these Terms and Conditions.
- 8.2 The School shall use all reasonable endeavours to provide all pertinent information to the Supplier that is necessary for the Supplier's 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 provision of the Services.
- 8.3 The School may, from time to time, issue reasonable instructions to the Supplier in relation to the Supplier's provision of the Services. Any such instructions should be compatible with the specification of the Services provided in the Agreement.

- 8.4 In the event that the Supplier requires the decision, approval, consent or any other communication from the School in order to continue with the provision of the Services or any part thereof at any time, the School 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 School'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 School'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 School regarding 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 School 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 School.
- 9.4 The Supplier shall provide such management information as the School 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 School in such form as may be specified by the School.

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 School 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 School to the Supplier in respect of their 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 School 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 School may inform the Supplier from time to time.
- 10.3 The Contract Price is exclusive of VAT, which, if properly chargeable, the School 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 School 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 School 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 School any service credits that may become due in accordance with the provisions of the Agreement Documents.
- 10.8 The School reserves the right to deduct any monies due to the Supplier from the School from any monies due to the School from the Supplier under the Agreement.

11 Warranties

- 11.1 The Supplier warrants and undertakes that:
- 11.1.1 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;
 - 11.1.2 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;

- 11.1.3 it has and shall maintain a properly documented system of quality 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 processes;
- 11.1.4 it shall not make any significant changes to its system of quality processes in relation to the Services without notifying the School 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);
- 11.1.5 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;
- 11.1.6 receipt of the Services by or on behalf of the School and use of the deliverables or of any other item or information supplied or made available to the School as part of the Services will not infringe any third party rights, to include without limitation any Intellectual Property Rights;
- 11.1.7 it will comply with all Law, Guidance and Policies in so far as is relevant to the provision of the Services;
- 11.1.8 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;
- 11.1.9 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;
- 11.1.10 without limitation to the generality of Clause 11.1.7 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 School and/or any competent body, as relevant to the provision of the Services and the Supplier's access to the Premises and Locations in accordance with the Agreement;
- 11.1.11 without prejudice to any specific notification requirements set out in the Agreement, it will promptly notify the School of any health and safety hazard which has arisen, or the Supplier is aware may arise, in connection with 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;
- 11.1.12 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;
- 11.1.13 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 School's information and communications technology systems;

- 11.1.14 it will promptly respond to all requests for information regarding this Agreement and the provision of the Services at the frequency and in the format that the School may reasonably require;
 - 11.1.15 all information included within the Supplier's responses in Agreement Documents and all accompanying materials is accurate;
 - 11.1.16it 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;
 - 11.1.17it 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;
 - 11.1.18 all necessary actions to authorise the execution of and performance of its obligations under the Agreement have been taken before such execution;
 - 11.1.19 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;
 - 11.1.20 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;
 - 11.1.21 it has and will continue to have the capacity, funding and cash flow to meet all its obligations under the Agreement; and
 - 11.1.22 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 warrants that all information, data and other records and documents required by the School as set out in the Agreement Documents shall be submitted to the School in the format and in accordance with any timescales set out in the Agreement Documents or as shall be reasonably required by the School from time to time.
- 11.3 The Supplier further warrants and undertakes to the School that it will inform the School 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.
- 11.4 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 The Supplier warrants and undertakes to the School 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 School as part of the Services.
- 12.2 Unless specified otherwise in the Agreement or in the Agreement Documents, the Supplier hereby grants to the School, for the life of the use by the School of any deliverables, material or any other output supplied to the School 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 School's normal business operations. For the avoidance of doubt, unless specified otherwise in this Agreement and/or in the Agreement Documents, the School shall have no rights to commercially exploit (e.g. by selling to third parties) any deliverables, matter or any other output supplied to the School in any format as part of the Services.

13. Indemnity

13.1 The Supplier shall be liable to the School for, and shall indemnify and keep the School 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 11.1.6 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 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 School.

13.2 Liability under Clauses 13.1.1, 13.1.3, 20.6 and 2.10 of Schedule 2 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 School, which are the subject of any indemnity given by the Supplier under the Agreement, the School 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 School; and/or

13.3.2 relating to the School'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 School 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 School).

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 School to the Supplier for 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 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 School 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 School, 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 Authority 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 School 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 School 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 School may terminate the Agreement forthwith by notice in writing to the Supplier if:

- 16.4.1 the Supplier does not commence 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 School and the School shall be entitled to withhold such consent if, in the reasonable opinion of the School, the proposed change of control will have a material impact on the performance of the Agreement or the reputation of the School;
- 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, 25.2 and 27.7 of these Terms and Conditions.
- 16.5 If the School, 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 School 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 School 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 School 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 03 of this Agreement in accordance with any reasonable timescales specified in any such notice issued by the School 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 26 of these Terms and Conditions) shall entitle, but shall not compel, the

School to terminate the Agreement in accordance with Clause 16.3.1.1 of these Terms and Conditions.

16.6 In order that the School may act reasonably in exercising its discretion in accordance with Clause 16.5 of these Terms and Conditions, the Supplier shall provide the School 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 School 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 School to ensure an orderly migration of the Services to the School or, at the School's request a Replacement Supplier.

17.2 On termination of the Agreement the Supplier shall procure that all data and other material belonging to the School (and all media of any nature containing data belonging to the School or relating to the Services) shall be delivered to the School 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. Sub-contracting and Assignment

18.1 Subject to clause 18.3 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 School.

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

18.2.1 remain responsible to the School 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;

18.2.2 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

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

18.3 The School 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 School.

19. **Freedom of Information**

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

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

19.1.2 transfer to the School 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;

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

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

19.2 The Supplier acknowledges that the School may be required under the FOIA and EIRs to disclose Information (including Confidential Information) without consulting or obtaining consent from the Supplier. The School 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 School 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.

19.3 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.

20. **Data Protection**

20.1 The Supplier shall (and shall procure that any of its Staff involved in the provision of the Services shall) comply with any notification requirements under the DPA 1998 and both Parties shall duly observe all their obligations under the Data Protection Legislation, which arise in connection with the Agreement.

20.2 Notwithstanding the general obligation in clause 20.1, where the Supplier is processing Personal Data as a Data Processor for the School, the Supplier shall ensure that it has in place appropriate technical and contractual measures to ensure the security of the Personal Data (and to guard against unauthorised or unlawful processing of the Personal Data and against accidental loss or destruction of or damage to the Personal Data), as required under the Seventh Data Protection Principle in Schedule 1 to the DPA 1998; and

20.2.1 provide the School with such information as the School may reasonably require to satisfy itself that the Supplier is complying with its obligations under the Data Protection Legislation;

- 20.2.2 promptly notify the School of any breach of the security measures required to be put in place pursuant to Clause 20.2; and
- 20.2.3 ensure it does not knowingly or negligently do or omit to do anything which places the School in breach of the School's obligations under the Data Protection Legislation.
- 20.3 Without limitation to any other requirements set out in the Agreement the Supplier shall:-
- 20.3.1 notify the School forthwith of any information security breaches or near misses (including without limitation any potential or actual breaches of confidentiality or actual information security breaches) in line with the School's Policies; and
- 20.3.2 fully co-operate with any audits or investigations relating to information security and any privacy impact assessments undertaken by the School and shall provide full information as may be reasonably requested by the Authority in relation to such audits, investigations and assessments.
- 20.4 Where required in accordance with the Agreement Documents, the Supplier will ensure that it puts in place and maintains an information security management plan appropriate to the Services and the obligations placed on the Supplier under the Agreement. The Supplier shall ensure that such plan is consistent with any relevant Policies, Guidance, Good Industry Practice and with any relevant quality standards as may be set out in the Agreement Documents.
- 20.5 Where required in accordance with the Agreement Documents the Supplier shall obtain and maintain certification under stated relevant information security standards at the level specified in the Agreement Documents.
- 20.6 The Supplier shall indemnify and keep the School indemnified against any loss, damages, costs, expenses (including without limitation legal costs and expenses) claims or proceedings whatsoever or howsoever arising from the Supplier's unlawful or unauthorised Processing, destruction and/or damage to Personal Data in connection to the Agreement.
- 20.7 The provisions of this Clause 20 shall apply during the continuance of the Agreement and indefinitely after its expiry or termination.

21. **Confidentiality**

- 21.1 Subject to clause 21.2 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.
- 21.2 Clause 21.1 shall not apply to any disclosure of information:
- 21.2.1 required by any applicable law, provided that clause 19.2 shall apply to any disclosures required under the FOIA or the EIRs;
- 21.2.2 that is reasonably required by persons engaged by a Party in the performance of such Party's obligations under the Agreement;
- 21.2.3 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 21.1;

- 21.2.4 by the School of any document to which it is a party and which the Parties to the Agreement have agreed contained no Confidential Information;
 - 21.2.5 to enable a determination to be made under clause 26 of these Terms and Conditions;
 - 21.2.6 which is already lawfully in the possession of the receiving party, prior to its disclosure by the disclosure party;
 - 21.2.7 by the School to any other department, office or agency of the Government; and
 - 21.2.8 by the School relating to the Agreement and in respect of which the Supplier has given prior written consent to disclosure.
- 21.3 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 School's staff, students or service users, are securely delivered to the School or securely destroyed.

22. **Sustainable Considerations**

The Supplier shall in all its operations, including the purchase and supply of materials and Services adopt a sound proactive sustainable approach, designed to minimise harm to the environment, society and economy and be able to provide proof of doing so to the School on demand.

23. **Equality of Opportunity**

23.1 The Supplier shall:

23.1.1 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

23.1.2 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.

23.1.3 in the management of affairs and the development of its equality and diversity policies, cooperate with the School in light of the School'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 School 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

23.1.4 shall impose on all its Sub-contractors and suppliers obligations substantially similar to those imposed on the Supplier by this Clause 23.

23.2 The Supplier shall meet reasonable requests by the School for information evidencing the Supplier's compliance with the provisions of this Clause 23.

24. **Health and Safety**

24.1 The Supplier represents and warrants to the School 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.

- 24.2 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.

25. **Prohibited Acts**

- 25.1 The Supplier warrants and represents that:

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

25.1.1.1 offered, given or agreed to give any officer or employee of the School 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 School or for showing or not showing favour or disfavour to any person in relation to this or any other agreement with the School; or

25.1.1.2 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 School; and

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

- 25.2 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 School:-

- 25.2.1 the School shall be entitled:-
- 25.2.1.1 to terminate the Agreement and recover from the Supplier the amount of any loss resulting from the termination;
 - 25.2.1.2 to recover from the Supplier the amount or value of any gift, consideration or commission concerned; and
 - 25.2.1.3 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;
- 25.2.2 any termination under Clause 25.2.1 shall be without prejudice to any right or remedy that has already accrued, or subsequently accrues, to the School; and
- 25.2.3 notwithstanding Clause 26, any dispute relating to:
- 25.2.3.1 the interpretation of this Clause 25; or
 - 25.2.3.2 the amount or value of any gift, consideration or commission,
- shall be determined by the School, acting reasonably, and the decision shall be final and conclusive.

26. **Dispute Resolution**

- 26.1 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:-
- 26.1.1 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.
 - 26.1.2 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 School's Vice Principal (Resources) and the Suppliers' Managing Director or equivalent who shall attempt in good faith to resolve it; and
 - 26.1.3 if the School'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. 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.
- 26.2 The commencement of mediation shall not prevent the parties commencing or continuing court or arbitration proceedings in relation to the Dispute under Clause 32.11 of these Terms and Conditions which shall apply at all times.

27. Force Majeure

27.1 Subject to the remaining provisions of this Clause 27 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.

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

27.2.1 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;

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

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

27.3 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.

27.4 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.

27.5 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.

27.6 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.

27.7 The School 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

28. Records retention and right of audit

28.1 Subject to any statutory requirement and Clause 28.2 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.

28.2 The School shall have the right to audit the Supplier's compliance with the Agreement. The Supplier shall permit or procure permission for the School 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.

28.3 Should the Supplier subcontract any of its obligations under the Agreement, the School shall have the right to audit and inspect such third party. The Supplier shall procure permission for the School 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 School or its authorised representative if requested.

28.4 The Supplier shall provide reasonable cooperation to the School, 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.

28.5 The Supplier shall provide all reasonable information as may be reasonably requested by the School to evidence the Supplier's compliance with the requirements of the Agreement.

29. **Publicity**

29.1 The Supplier shall not:-

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

29.1.2 use the School'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 School, which shall not be unreasonably withheld or delayed.

30. **TUPE**

30.1 The Parties agree that the provisions of Schedule 1 of these Terms and Conditions shall apply to any Relevant Transfer of staff under the Agreement.

31. **Notices**

31.1 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:

31.1.1 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

31.1.2 sent by fax to its main fax number

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

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

31.2.2 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

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

31.3 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.

32. **General**

32.1 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.

32.2 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.

32.3 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.

32.4 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.

32.5 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.

32.6 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.

32.7 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 32.7, right includes any power, privilege, remedy, or proprietary or security interest.

32.8 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.

32.9 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 School 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.

- 32.10 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.
- 32.11 Subject to Clause 26 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.
- 32.12 All written and oral communications and all written material referred to under the Agreement shall be in English.

Schedule 1

TUPE

1. Interpretation

The definitions and rules of interpretation to this paragraph apply in this Agreement;

Data Protection Legislation: the Data Protection Act 1998, the Data Protection Directive (95/46/EC), the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), the Electronic Communications Data 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

Employee Liability Information: the information that a transferor is obliged to notify to a transferee under regulation 11(2) of TUPE;

- a) the identity and age of the employee;
- b) the employee's written statement of employment particulars (as required under section 1 of the Employment Rights Act 1996);
- c) information about any disciplinary action taken against the employee and any grievances raised by the employee, where a Code of Practice issued under Part IV of the Trade Union and Labour Relations (Consolidation) Act 1992 relating exclusively or primarily to the resolution of disputes applied, within the previous two years;
- d) information about any court or tribunal case, claim or action either brought by the employee against the transferor within the previous two years or where the transferor has reasonable grounds to believe that such action may be brought against the Supplier arising out of the employee's employment with the transferor;
- e) information about any collective agreement that will have effect after the Effective Date or the Service Transfer Date, as the case may be, in relation to the employee under regulation 5 (a) of TUPE.

Employment Liabilities: all claims, including claims without limitation for redundancy payments, unlawful deduction of wages, unfair, wrongful or constructive dismissal compensation, compensation for sex, race, disability, age, religion or belief, gender reassignment, marriage or civil partnership, pregnancy or maternity, or sexual orientation discrimination, claims for equal pay, compensation for less favorable treatment of part-time works, and any claims (whether in tort, contract, statute or otherwise), demands, actions, proceedings and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, disbursement, payment made by way of settlement and costs and expenses already incurred in connection with a claim or investigation (including any investigation by the Equality and Human Rights Commission or other enforcement, regulatory or supervisory body), and of implementing any requirements which may arise from such investigation, and any legal costs and expenses.

Relevant Employees: those employees whose contracts of employment transfer

with effect from the Service Transfer Date to the School or a Replacement Supplier by virtue of the application of TUPE.

Relevant Transfer: a relevant transfer of the Services for the purposes of TUPE.

Replacement Services: any services that are fundamentally the same as any of the Services and which the School receives in substitution for any of the Services following the termination or expiry of this Agreement, whether those services are provided by the School internally or by any Replacement Supplier.

Replacement Supplier: any third party Supplier of Replacement Services appointed by the School from time to time.

Service Transfer Date: the date on which the Services (or any part of the Services) transfer from the Supplier or Sub-Contractor to the School or any Replacement Supplier.

Staffing Information: in relation to all persons detailed on the Supplier's Provisional Staff List, in an anonymised format, such information as the School may reasonably request including the Employee Liability Information and details of whether the personnel are employees, workers, self-employed, contractors or consultants, agency workers or otherwise, and the amount of time spent on the provision of the Services.

Sub-Contractor: the contractors or Suppliers engaged by the Supplier to provide goods, services or works to, for or on behalf of the Supplier for the purposes of providing the Services to the School.

Supplier's Final Staff: the list of all the Supplier's and Sub-Contractor's personnel engaged in, or wholly or mainly assigned to, the provision of the Services or any part of the Services at the Service Transfer Date.

Supplier's Provisional Staff List: the list prepared and updated by the Supplier of all the Supplier's and Sub-Contractor's personnel engaged in, or wholly or mainly assigned to, the provision of the Services or any part of the Services at the date of the preparation of the list.

TUPE: the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended.

2. **Employment Exit Provisions**

- 2.1 This Agreement envisages that subsequent to its commencement, the identity of the provider of the Services (or any part of the Services) may change (whether as a result of termination of this Agreement, or part or otherwise) resulting in a transfer of the Services in whole or in part (Subsequent Transfer). If a Subsequent Transfer is a Relevant Transfer then the School or Replacement Supplier will inherit liabilities in respect of the Relevant Employees with effect from the relevant Service Transfer Date.
- 2.2 The Supplier shall and shall procure that any Sub-Contractor shall on receiving notice of termination of this Agreement or otherwise, on request from the School and at such times as required by TUPE, provide in respect of any person engaged or employed by the Supplier or any Sub-Contractor in the provision of the Services, the Supplier's Provision Staff List and the Staffing Information together with any additional information required by the School, including information as to the application of TUPE to the employees. The Supplier shall notify the School of any material changes to this information as and when they occur.

- 2.3 At least 28 days prior to the Service Transfer Date, the Supplier shall and shall procure that any Sub-Contractor shall prepare and provide to the School and/or at the direction of the School, to the Replacement Supplier, the Supplier's Final Staff List, which shall be complete and accurate in all material respects. The Supplier's Final Staff List shall identify which of the Supplier's and Sub-Contractor's personnel named are Relevant Employees.
- 2.4 The School shall be permitted to use and disclose the Supplier's Provisional Staff List, the Supplier's Final Staff List and the Staffing Information for informing any tenderer or other prospective Replacement Supplier for any services that are substantially the same type as the Services (or any part of the Services).
- 2.5 The Supplier warrants to the School and the Replacement Supplier that the Supplier's Provisional Staff List, the Supplier's Final Staff List and the Staffing Information (TUPE Information) will be true and accurate in all material respects and that no persons are employed or engaged in the provision of the Services other than those included on the Supplier's Final Staff List.
- 2.6 The Supplier shall and shall procure that the Sub-Contractor shall ensure at all times that it has the right to provide the TUPE Information under the Data Protection Legislation.
- 2.7 The School regards compliance with this paragraph 2 as fundamental to the Agreement. In particular, failure to comply with paragraph 2.2 and 2.3 in respect of the provision of accurate information about the Relevant Employees shall entitle the School to suspend payment of the Fees until such information is provided, or indefinitely. The maximum sum equivalent to the Fees that would be payable in the three month period following the Supplier's failure to comply with paragraphs 2.2 and/or 2.3 as the case may be.
- 2.8 Any change to the TUPE Information which would increase the total employment costs of the staff in the six months prior to termination of this Agreement shall not (so far as reasonably practicable) take place without the School's prior written consent, unless such changes are required by law. The Supplier shall and shall procure that any Sub-Contractor shall supply to the School full particulars of such proposed changes and the School shall be afforded reasonable time to consider them.
- 2.9 In the six months prior to termination of this Agreement, the Supplier shall not and shall procure that any Sub-Contractor shall not materially increase or decrease the total number of staff listed on the Supplier's Provisional Staff List, their remuneration, or make any other change in the terms and conditions of those employees without the School's prior written consent.
- 2.10 The Supplier shall indemnify and keep indemnified in full the Authority and each and every Replacement Supplier against all Employment Liabilities relating to:
- 2.10.1 any person who is or has been employed or engaged by the Supplier or any Sub-Contractor in connection with the provision of any of the Services; or
- 2.10.2 any trade union or staff association or employee representative
- arising from or connected with any failure by the Supplier and/or any Sub-Contractor to comply with any legal obligation, whether under regulation 13 or 14 of TUPE or any award of compensation under regulation 15 of TUPE, under the Acquired Rights Directive or otherwise and, whether any such claim arises or has its origin before or after the Service Transfer Date.
- 2.11 The parties shall co-operate to ensure that any requirement to inform and consult with

the employees or employee representatives in relation to any Relevant Transfer as a consequence of a Subsequent Transfer will be fulfilled.

- 2.12 The parties agree that the Contracts (Rights of Third Parties) Act 1999 shall apply from paragraph 2.2 to paragraph 2.11, to the extent necessary to ensure that any Replacement Supplier shall have the right to enforce the obligations owed to, and indemnities given to, the Replacement Supplier by the Supplier or the School in its own right under section 1(1) of the Contracts (Rights of Third Parties) Act 1999.
- 2.13 Despite paragraph 2.12 it is expressly agreed that the parties may be agreement rescind or vary the terms of this Agreement without the consent of any other person who has the right to enforce its terms or term in question despite that such rescission or variation may extinguish or alter that person's entitlement under that right.