



Star

**CONTRACT TO SUPPLY GOODS**

**[insert name of goods being purchased]**

**[insert start date] to [insert end date]**

**at**

**STAR ACADEMIES**

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## Section 1 Parties to the Contract

THIS CONTRACT is made the \_\_\_\_\_ day of \_\_\_\_\_ [insert year]

### BETWEEN

- (1) [insert name of TRUST or the Corporation whichever is the legal entity] of Shadsworth Road, Blackburn, BB1 2HT ("the Trust") and
- (2) [insert name of contractor] Registered in England and Wales Company Registration No. [insert Registration No] the Registered Office of which is at [insert address of the Contractor] ("the Supplier");

### BACKGROUND

- (A) The Trust wishes to appoint a [insert name of goods being purchased] provider to meet its requirements.
- (B) The **Supplier** is a specialist and experienced provider of [insert name of goods being purchased].
- (C) Following the receipt of a tender from the **Supplier** dated [insert date of tender return] ("the Tender") the Trust has accepted the Tender of the **Supplier** to provide the Goods, on the basis that the **Supplier** 's Tender was the most economically advantageous tender to the Trust, and the **Supplier** has agreed to provide the Goods on the terms and conditions of this Contract.

IT IS HEREBY AGREED between the Trust and the **Supplier** that:

1. This Contract constitutes the entire agreement between the parties in respect of the Goods.
2. So long as the **Supplier** shall supply the Goods in accordance with this Contract and to the satisfaction of the Trust, the Trust shall pay the **Supplier** the Contract Sum in accordance with the terms of the Contract.

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## **2.1. Definitions and Interpretations**

- 2.1.1. The following definitions shall be used for the purposes of interpreting this Contract and all documents relating thereto (and other definitions that are not applicable to all Sections shall be stated in the Section where the definition is first used and shall apply only to that Section and subsequent Sections as appropriate) except where the context requires otherwise:

**“Additional Goods”** means any goods which are not within the scope of the Goods but which the Trust requests that the **Supplier** supplies from time to time;

**“Approved”** or **“Approval”** means approved in writing;

**“Change of Control”** means the direct or indirect acquisition of either the majority of the voting stock, or of all, or substantially all of the assets, of the **Supplier** by another entity in a single transaction or a series of transactions.

**“Charging Rate”** means as defined in **Section 5** (Schedule of Prices);

**“Trust’s Representative”** shall mean the [insert Title of the person at the Trust responsible for this contract] or his/her nominated representative;

**“Commencement Date”** shall be [insert the commencement date];

**“Conditions”** means these Conditions of Contract (including the Schedules attached hereto);

**“Contract”** shall comprise the following documents (the **“Contract Documents”**) which shall be read as one document and which, in the event of conflict or contradiction between Sections, shall be given precedence in the order listed:

- a. Section 1 – Parties to Contract, entire agreement and appointment
- b. Section 2 – Conditions Of Contract
- c. Section 3 – Service Level Agreement
- d. Section 4 – Specification
- e. Section 5 – Schedule Of Prices;

**“Supplier’s Representative”** shall mean the named person responsible to the **Supplier** for the management of the Contract;

**“Contract Period”** shall mean the period from the Commencement Date up to [insert end date of the contract], unless extended at the option of the Trust in accordance with **Clause 2.12.2** or terminated by the Trust in accordance with this Contract;

**“Contract Sum”** shall mean subject to **Clause 2.29**, the price calculated in accordance with **Section 5** (Schedule of Prices);

**“Contract Year”** means each 12 month period from the Commencement Date

during the Contract Period;

**"Data Breach"** means any act or omission that (i) compromises the security, confidentiality or availability of the Personal Data; (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 Trust or **Supplier** to be in breach of data protection Law (in particular the GDPR).;

**"Data Controller"** has the meaning set out in the GDPR;

**"Data Protection Particulars"** means, in relation to any Processing under this 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.;

**"Data Subject"** has the meaning set out in the GDPR;

**"DPA"** means the Data Protection Act 2018 and the rules and regulations made or having effect under it.

**"Equivalent Hourly Wage"** shall mean the hourly wage paid to an employee and calculated using the same method as prescribed by the National Minimum Wage Act 1998 and related applicable law to assess whether an employee is at any time receiving the national minimum wage (as identified in that Act);

**"FOIA"** shall mean the Freedom of Information Act 2000;

**"GDPR"** means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) OJ L 119/1, 4.5.2016.;

**"Goods"** shall mean any such goods as are to be supplied by the Supplier (or by the Supplier's sub-contractor) under the Contract as detailed in the Specification;

**"Information"** has the meaning given to it in **Clause 2.32**;

**"the National Living Wage"** shall mean the most recently identified National Living Wage hourly figure (or equivalent set figure) published by the UK government;

**"Personal Data"** has the meaning set out in the DPA. For the purposes of this Contract, Personal Data shall include Special Category to Personal Data;

**"Premises"** means the location where the Goods are to be delivered and/or, where relevant, installed as set out in the Specification.

**"Processing"** has the meaning set out in the GDPR 8, and "Process" and "Processed" shall be construed accordingly;



**"Processor"** has the meaning of set out in the GDPR;

**"Relevant Staff"** shall mean all employees and other staff (including without limitation temporary and casual workers and agency staff as defined by Regulation 3 of the Agency Workers Regulations 2010 as amended by the Agency Workers Regulations 2011, and whether such staff are engaged or employed on a full or part time basis, but not including unpaid volunteers, interns or apprentices), who are employed or engaged to assist in the supply of the Goods for 2 or more hours of work in any given day in a week, for 8 or more consecutive weeks in a year.;

**"Review Date"** means the date of the annual review of the Contract, to take place on an agreed date, as more particularly detailed in the Specification;

**"Special Category of Personal Data"** means Personal Data that reveals such categories of data as are listed in Article 9(1) of the GDPR;

**"Service Level Agreement"** shall mean the document detailing the service levels the Supplier must perform to as set out in **Section 3**;

**"Specification"** shall mean the specification detailing the Goods to be provided as set out in **Section 4**;

**"Staff"** shall mean personnel Approved in advance by the Trust provided by the Supplier to perform its obligations under the Contract;

**"Termination Date"** means the date of termination or expiry of this Contract;

**"Variations"** shall mean an executed variation in compliance with the requirements of **Clause 2.25**;

**"Variation to Contract Form"** means the form set out in Annex A to this Contract;

**"Working Days"** means a day that is not a Saturday or Sunday, Christmas Day, Good Friday or any day that is a bank holiday under the Banking and Financial Dealings Act 1971.

- 2.1.2. References to any enactment, order, regulation or other similar instrument shall be construed as a reference to the enactment, order, regulation or instrument as amended by any subsequent enactment, order, regulation or instrument.
- 2.1.3. The interpretation and construction of this Contract shall be subject to the following provisions:
  - a. The headings in this Contract are for the convenience of the parties only and do not affect its interpretation.
  - b. Words importing the singular meaning include where the contract so admits the plural meaning and vice versa.
  - c. Where the contract so admits words denoting the masculine gender includes the feminine and neuter genders and words denoting natural persons include Trusts and firms and all such words shall be construed interchangeably in that

manner.

- d. Reference to a Condition, Clause, Schedule or a Section is to a Condition, Clause, Schedule or a Section of this Contract.

2.1.4. The word “**indemnify**” in this Contract shall mean to indemnify, keep indemnified and hold harmless the indemnified party from and against all costs (including the costs of enforcement), expenses, liabilities (including any tax liability), injuries, direct, indirect or consequential loss, pure economic loss, loss of profits, loss of business, depletion of goodwill and like loss, damages, claims, demands, proceedings or legal costs (on a full indemnity basis) and judgement which the indemnified party incurs or suffers and “**indemnity**”, “**indemnities**” and “**indemnifies**” have a corresponding meaning.

2.1.5. The word “**month**” means calendar month.

## **2.2. The Goods**

2.2.1. The Supplier shall supply and, where relevant, install the Goods in accordance with the Specification.

2.2.2. If requested by the Trust, the Supplier shall provide the Client with samples of Goods for evaluation and approval, at the Supplier’s cost and expense.

2.2.3. The Supplier shall ensure that the Goods are fully compatible with any equipment, to the extent specified in the Specification.

2.2.4. The Supplier acknowledges that the Trust relies on the skill and judgment of the Supplier in the supply of the Goods and the performance of its obligations under the Contract.

## **2.3. Delivery**

2.3.1. The Supplier shall deliver the Goods at the time(s) and date(s) specified in the Specification.

2.3.2. Unless otherwise stated in the Specification, where the Goods are delivered by the Supplier, the point of delivery shall be when the Goods are removed from the transporting vehicle at the Premises. Where the Goods are collected by the Trust, the point of delivery shall be when the Goods are loaded on the Trust’s vehicle.

2.3.3. Except where otherwise provided in the Contract, delivery shall include the unloading, stacking or installation of the Goods by the Staff or the Supplier’s suppliers or carriers at such place as the Trust or duly authorised person shall reasonably direct.

2.3.4. Time of delivery shall be of the essence and if the Supplier fails to deliver the Goods within the time promised or specified in the Specification, the Trust may release itself from any obligation to accept and pay for the Goods and/or terminate the Contract, in either case without prejudice to any other rights and remedies of the Trust.

- 2.3.5. The Trust shall be under no obligation to accept or pay for any Goods delivered in excess of the quantity ordered. If the Trust elects not to accept such over-delivered Goods it shall give notice in writing to the Supplier to remove them within 5 Working Days and to refund to the Trust any expenses incurred by it as a result of such over-delivery (including but not limited to the costs of moving and storing the Goods), failing which the Trust may dispose of such Goods and charge the Supplier for the costs of such disposal. The risk in any over-delivered Goods shall remain with the Supplier unless they are accepted by the Trust.
- 2.3.6. The Trust shall be under no obligation to accept or pay for any Goods supplied earlier than the date for delivery stated in the Specification.
- 2.3.7. Unless expressly agreed to the contrary, the Trust shall not be obliged to accept delivery by instalments. If, however, the Trust does specify or agree to delivery by instalments, delivery of any instalment later than the date specified or agreed for its delivery shall, without prejudice to any other rights or remedies of the Trust, entitle the Trust to terminate the whole of any unfulfilled part of the Contract without further liability to the Trust.

**2.4. Risk and Ownership**

- 2.4.1. Subject to Clause **2.3.5**, risk in the Goods shall, without prejudice to any other rights or remedies of the Trust (including the Trust's rights and remedies under Clause **2.6** (Inspection, Rejection and Guarantee), pass to the Trust at the time of delivery.
- 2.4.2. Ownership in the Goods shall, without prejudice to any other rights or remedies of the Trust (including the Trust's rights and remedies under Clause **2.6** (Inspection, Rejection and Guarantee), pass to the Trust at the time of delivery (or payment, if earlier).

**2.5. Non - Delivery**

- 2.5.1. On dispatch of any consignment of the Goods the Supplier shall send the Trust an advice note specifying the means of transport, the place and date of dispatch, the number of packages and their weight and volume. Where the Goods, having been placed in transit, fail to be delivered to the Trust on the due date for delivery, the Trust shall, (provided that the Trust has been advised in writing of the dispatch of the Goods), within 10 Working Days of the notified date of delivery, give notice to the Supplier that the Goods have not been delivered and may request the Supplier free of charge to deliver substitute Goods within the timescales specified by the Trust [or terminate the Contract in accordance with Clause **2.3.4** (Delivery)].

**2.6. Inspection, Rejection and Guarantee**

- 2.6.1. The Trust or its authorised representatives may inspect or test the Goods either complete or in the process of manufacture during normal business hours on reasonable notice at the Supplier's premises and the Supplier shall provide all reasonable assistance in relation to any such inspection or test free of charge. No failure to make a complaint at the time of any such inspection or test and no approval given during or after such inspection or test shall constitute a waiver by

the Trust of any rights or remedies in respect of the Goods and the Trust reserves the right to reject the Goods in accordance with Clause **2.6.2**.

2.6.2. The Trust may by written notice to the Supplier reject any of the Goods which fail to conform to the approved sample or fail to meet the Specification. Such notice shall be given within a reasonable time after delivery to the Trust of such Goods. If the Trust rejects any of the Goods pursuant to this Clause **2.6.2** the Trust may (without prejudice to other rights and remedies) either:

2.6.2.1. have such Goods promptly, and in any event within 5 Working Days, either repaired by the Supplier or replaced by the Supplier with Goods which conform in all respects with the approved sample or with the Specification and due delivery shall not be deemed to have taken place until such repair or replacement has occurred; or

2.6.2.2. treat the Contract as discharged by the Supplier's breach and obtain a refund (if payment for the Goods has already been made) from the Supplier in respect of the Goods concerned together with payment of any additional expenditure reasonably incurred by the Trust in obtaining other goods in replacement provided that the Trust uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement goods.

For the avoidance of doubt, the Trust will be deemed to have accepted the Goods if it expressly states the same in writing or fails to reject the Goods in accordance with this Clause **2.6.2**.

2.6.3. The issue by the Trust of a receipt note for the Goods shall not constitute any acknowledgement of the condition, quantity or nature of those Goods, or the Trust's acceptance of them.

2.6.4. The Supplier hereby guarantees the Goods for the period from the date of delivery to the date [18] months thereafter against faulty materials or workmanship. If the Trust shall within such guarantee period or within 25 Working Days thereafter give notice in writing to the Supplier of any defect in any of the Goods as may have arisen during such guarantee period under proper and normal use, the Supplier shall (without prejudice to any other rights and remedies which the Trust may have) promptly remedy such defects (whether by repair or replacement as the Trust shall elect) free of charge.

2.6.5. Any Goods rejected or returned by the Trust as described in Clause **2.6.2** shall be returned to the Supplier at the Supplier's risk and expense.

## **2.7. Labelling and Packaging**

2.7.1. The Goods shall be packed and marked in a proper manner and in accordance with the Trust's instructions and any statutory requirements and any requirements of the carriers. In particular the Goods shall be marked with the contract number (or other reference number if appropriate) and the net, gross and tare weights, the name of the contents shall be clearly marked on each container and all containers of hazardous Goods (and all documents relating thereto) shall bear prominent and

adequate warnings.

**2.8. Manner of Carrying out Installation Work (If Applicable)**

- 2.8.1. The Supplier shall not deliver any materials or plant nor commence any work on the Premises without obtaining prior Approval. Notwithstanding the foregoing, the Supplier shall, at the Trust's written request, remove from the Premises any materials brought into the Premises by the Supplier, which in the reasonable opinion of the Trust are either hazardous, noxious or not in accordance with the Contract and substitute proper and suitable materials at the Supplier's expense as soon as reasonably practicable.
- 2.8.2. Any access to, or occupation of, the Premises which the Trust may grant the Supplier from time to time shall be on a non-exclusive licence basis free of charge. The Supplier shall use the Premises solely for the purpose of performing its obligations under the Contract and shall limit access to the Premises to such Staff as is necessary for that purpose. The Supplier shall co-operate (and ensure that its Staff co-operate) with such other persons working concurrently on the Premises as the Trust may reasonably request.
- 2.8.3. When the Supplier reasonably believes it has completed the Installation Works it shall notify the Trust in writing. Following receipt of such notice, the Trust shall inspect the Installation Works and shall, by giving written notice to the Supplier:
  - 2.8.3.1. accept the Installation Works, or
  - 2.8.3.2. reject the Installation Works and provide reasons to the Supplier if, in the Trust's reasonable opinion, the Installation Works do not meet the requirements set out in the Specification.
- 2.8.4. If the Trust rejects the Installation Works in accordance with Clause **2.8.3.2** the Supplier shall immediately rectify or remedy any defects and if, in the Trust's reasonable opinion, the Installation Works do not, within [5] Working Days, meet the requirements set out in the Specification, the Trust may terminate the Contract with immediate effect by notice in writing.
- 2.8.5. The Installation Works shall be deemed to be completed when the Supplier receives a notice issued by the Trust in accordance with Clause **2.8.3.1**. Notwithstanding acceptance of any Installation Works in accordance with that Clause, the Supplier shall remain solely responsible for ensuring that the Goods and the Installation Works conform to the Specification. No rights of estoppel or waiver shall arise as a result of the acceptance by the Trust of the Installation Works.
- 2.8.6. Throughout the Contract Period, the Supplier shall:
  - 2.8.6.1. have at all times all licences, approvals and consents necessary to enable the Supplier and Staff to carry out the Installation Works;
  - 2.8.6.2. provide all tools and equipment (or procure the provision of all tools and equipment) necessary for completion of the Installation Works;

2.8.6.3. not, in the performance of its obligations under the Contract, in any manner endanger the safety or unlawfully interfere with the safety or convenience of the public.

2.8.7. On completion of any Installation Works the Supplier shall remove its plant, equipment, and unused materials and all packaging at its own cost and shall leave the Premises in a clean, safe and tidy condition. The Supplier is solely responsible for making good any damage to the Premises or any objects contained therein, other than fair wear and tear, which is caused by the Supplier or any Staff.

## **2.9. Service of Notice**

2.9.1. Any notice or other communication which the Trust is required to give under this Contract shall be sufficiently given if sent by recorded or registered post or by facsimile to the last known address of the Supplier, or if delivered by hand to an authorised representative of the Supplier or the Supplier's Representative.

## **2.10. Conditions Affecting Execution Of The Contract**

2.10.1. The Supplier shall be deemed to have satisfied himself as regards the means of communication with and access to the Trust, the conditions under which the Goods may be delivered and/or installed and generally to have obtained its own information on all matters affecting the execution of the Goods and the prices tendered therefore.

2.10.2. No claim by the Supplier for additional payment shall be allowed on the grounds of any misunderstanding or misapprehension in respect of any such matter set out in **Clause 2.10.1** or otherwise or on the grounds of any allegation or fact that incorrect information was given to him by any person whether in the employment of the Trust or not, or of the failure on its part to obtain correct information nor shall the Supplier be relieved from any risks or obligations imposed on or undertaken by the Supplier under this Contract on any such grounds.

2.10.3. In the case of any information provided by the Trust, the Trust makes no representations as to the accuracy of that information and shall accept no responsibility for representations or omissions in any document or other instruction provided by the Trust.

## **2.11. Care And Diligence**

Subject to Clause **2.2**:

2.11.1. The Supplier shall perform its obligations under the Contract in accordance with the terms of this Contract and with due skill, care and diligence and Good Industry Practice using the most efficient and cost effective means and methods.

2.11.2. In performing its obligations under the Contract the Supplier shall comply with all applicable legal requirements and the Trust's requirements set out in the Specification or as otherwise notified to the Supplier from time to time and Conditions including (without limitation) insurer's requirements.

- 2.11.3. The Supplier shall deliver and/or install the Goods in such a way as to ensure that the activities of the Trust are not disturbed or disrupted.

**2.12. Contract Period**

- 2.12.1. The Supplier shall provide the Goods from the Commencement Date and throughout the Contract Period unless terminated in accordance with this Contract.
- 2.12.2. The Trust may, prior to the last day of the Contract Period, extend the Contract for a further period or periods of any duration, but in any case, the total duration of any extensions shall not exceed [ ] months from the last day of the Contract Period.

**2.13. Invoicing**

- 2.13.1. All invoices should be sent by the Supplier to the Trust to:

[insert the name and address of the person who should receive the invoices]

- 2.13.2. The Supplier shall ensure that each invoice contains all appropriate references and a detailed breakdown of the work completed and Goods supplied and that it is supported by any other documentation reasonably required by the Trust to substantiate the invoice.
- 2.13.3. The Supplier shall add Value Added Tax to the Contract Sum at the prevailing rate as applicable.
- 2.13.4. Where the Supplier submits an invoice to the Trust in accordance with paragraph 2.13, the Trust will consider and verify that invoice in a timely fashion;
- 2.13.5. The Trust shall pay the Supplier any sums due under such an invoice no later than a period of 30 days from the date on which the Trust has determined that the invoice is valid and undisputed;
- 2.13.6. Where the Trust fails to comply with paragraph 1 and there is an undue delay in considering and verifying the invoice, the invoice shall be regarded as valid and undisputed for the purposes of paragraph (2) after a reasonable time has passed;
- 2.13.7. Where the Supplier enters into a Sub-Contract, the Supplier shall include in that Sub-Contract:
- 2.13.7.1. Provisions having the same effect as Clauses 2.13.4-2.13.6 of this Contract; and
  - 2.13.7.2. A provision requiring the counterparty to that Sub-Contract to include in any Sub-Contract which it awards provisions having the same effect as Clauses 2.12.4-2.12.6 of this Contract.
  - 2.13.7.3. In Clause 2.13.7, "Sub-Contract" means a contract between two or more suppliers, at any stage of remoteness from the Trust in a subcontracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this Contract.

**2.14. Returns**

- 2.14.1. Without prejudice to **Clause 2.35**, the Supplier shall report in writing each calendar month to the Trust's Representative in a format to be approved by the Trust, providing all relevant information as may be requested by the Trust from time to time. The Supplier warrants that such reports shall be accurate and complete.

**2.15. Correspondence**

- 2.15.1. All correspondence by the Supplier to the Trust shall be sequentially numbered and sent to the designated Trust's Representative.
- 2.15.2. The Supplier is required to inform the Trust's Representative prior to the Commencement Date (or if details change) of the contact name, address, telephone (including mobile telephone) and facsimile numbers and e-mail address of the Supplier's Representative.

**2.16. Supplier's Contract Manager And On-Site Representative**

- 2.16.1. The Supplier's Representative shall be the duly authorised representative of the Supplier for all purposes connected with this Contract and accordingly any information, instruction or other communication given and/or addressed to the Supplier's Representative shall be deemed to have been given or made to the Supplier. The Supplier shall not change the Supplier's Representative without the prior Approval of the Trust (not to be unreasonably withheld).
- 2.16.2. The Supplier shall inform the Trust's Representative from time to time of the identity of any person proposed to be authorised to act for any period as deputy for the Supplier's Representative before the start of such period. Any person proposed to be authorised to act as deputy for the Supplier's Representative shall first be Approved by the Trust.

**2.17. Programme**

- 2.17.1. The Supplier shall provide no less than one month prior to the Commencement Date, a detailed programme indicating the operations that shall be performed during the Contract Period in order to fulfil the obligations of the Contract. The details of such programme (which shall be attached to the Specification) shall require the Approval of the Trust and thereafter shall form an integral part of this Contract.

**2.18. Performance Monitoring**

- 2.18.1. The Supplier's Representative shall attend monthly performance monitoring meetings called by the Trust's Representative at which a Monthly Contract Review Report shall be submitted by the Supplier, as defined in the Service Level Agreement.
- 2.18.2. The Trust will measure the Supplier's performance against the Key Performance Indicators defined within the Service Level Agreement and the associated thresholds as defined in the Service Level Agreement.



- 2.18.3. If the Supplier fails to meet the KPI thresholds as defined in [insert number of Schedule(s)] in any one month it shall be deemed to be in default of the Contract and the Trust may without prejudice to its other rights and remedies invoke any of the provisions set out in **Clause 2.41**.

**2.19. Disaster Recovery**

- 2.19.1. The Supplier shall produce a written disaster recovery plan to ensure the Goods are not affected, such plan to be provided to the Trust by no later than the Commencement Date and to be subject to Approval by the Trust. Any subsequent amendments to such disaster recovery plan must be approved in advance by the Trust.

**2.20. Security Procedures**

- 2.20.1. The Supplier shall ensure that all Staff and sub-contractors, who may require access to the Trust in connection with its obligations under the Contract are provided with an identity document issued by the Trust through the Trust's Representative and this shall be visible at all times.
- 2.20.2. The Supplier's Representative shall ensure that all security requirements are met, including obtaining the necessary documents for Supplier Staff and sub-contractors and vehicles, the safe custody of those documents and their ultimate recovery and return on completion of this Contract. The Supplier's Representative shall also be responsible for complying with any additional security requirements which may arise during the Contract Period. The Supplier shall familiarise the Staff and its sub-Supplier s with the security arrangements within the Trust.
- 2.20.3. The Supplier shall not employ any individual who does not have the right to work in the United Kingdom. The Supplier shall comply with all relevant legislation, including (without limitation) the Asylum and Immigration Act 1996 and the code of practice (Full guide to employers on preventing illegal working in the UK October 2013) or such other act or regulations in force and provide evidence in writing to the Trust of its compliance. The Supplier shall indemnify the Trust for any breach of this Clause.

**2.21. Equal Opportunities Policy**

- 2.21.1. The Supplier shall comply with the Trust's Equal Opportunities Policy, a copy of which can be obtained from the Trust. The Supplier shall provide a copy of its Equal Opportunities Policy and monitoring processes.

**2.22. General**

- 2.22.1. The failure or delay of either party at any time to enforce any provision of the Contract shall in no way affect its right thereafter to require complete performance by the other party, nor shall the waiver of any breach of any provision be taken or held to be a waiver of any subsequent breach of any provision or be a waiver of the provision itself.

- 2.22.2. All intellectual property rights produced from or arising as a result of the performance of the Contract, so far as not already vested, are hereby assigned by the Supplier to the Trust and shall become the absolute property of the Trust. The Supplier shall do all that is reasonably necessary to ensure that such rights vest in the Trust by the execution of appropriate instruments or the making of agreements with third parties.
- 2.22.3. In the event that any term, condition, provision of a Clause of this Contract shall be nullified or made void in whole or in part by any statute, regulation or order or by the decision or order of any Court having jurisdiction, the remaining terms conditions and provisions and the remainder of the affected provision shall remain in full force and effect.
- 2.22.4. Except as expressly stated otherwise, an entity which is not expressly a party to this Contract shall have no right under the Contracts (Rights of Third Parties) Act 1999 ("**the Act**") to enforce any term of this Contract and the provisions of the Act shall be expressly excluded from this Contract.
- 2.22.5. The Supplier shall act as an independent contractor for the purposes of this Contract and nothing in this Contract shall and no action taken by the parties pursuant to this Contract shall constitute or be deemed to constitute a partnership, association, joint venture or other co-operative entity between the Trust and the Supplier and neither party is authorised to act as agent for the other.
- 2.22.6. Neither the Supplier nor any of the Supplier 's employees, agents or sub-contractors are authorised to incur any expenditure on behalf of or for the account of the Trust, or to pledge the credit of the Trust, or to hold itself out as an authorised signatory of the Trust, without the Trust's prior written consent.
- 2.22.7. The rights and remedies provided in this Contract are cumulative and not exclusive of any rights or remedies otherwise provided by Law.
- 2.22.8. Each party warrants to the other that the signatory or signatories to this Contract are duly authorised and empowered to execute this Contract on its behalf and so as to bind it to the terms of this Contract.
- 2.22.9. This Contract may be executed in any number of counterparts, each of which, when executed shall be an original, and all the counterparts together shall constitute one and the same instrument.
- 2.22.10. This Contract together with the documents referred to herein set out the entire agreement between the parties in relation to the subject matter hereof and supersede any previous agreement relating to the subject matter of this Contract, whether written or oral. Each party acknowledges and agrees that, except where otherwise specified, in entering into this Contract it places no reliance on any representation or warranty in relation to the subject matter of this Contract, nor shall have any remedy in relation to the subject matter of the same, save as expressly set out in this Contract. The only remedy available to either party for breach of such warranties or representations shall be for breach of contract under the terms of this Contract. Nothing in this Clause or in this Contract shall operate to exclude or restrict any remedy or liability for fraud or fraudulent

misrepresentation.

**2.23. Transfer And Sub-Letting**

- 2.23.1. The Supplier shall not assign, sub-let, sub-contract, transfer or otherwise dispose of this Contract or any part thereof without the prior Approval of the Trust.
- 2.23.2. The Supplier shall manage the change over of any sub-contractors to ensure there is no break or disruption to service.

**2.24. Not used**

- 2.24.1. The Supplier shall comply with the current Working Time Regulations 1998.

**2.25. Variations**

- 2.25.1. The Contract shall be subject to adjustment only when a Variation to Contract Form has been signed by the Trust's Representative.
- 2.25.2. The Supplier shall notify the Trust of any occurrence it considers should give rise to the issue of a Variation to Contract Form within five (5) working days of the event first becoming known to the Supplier. The notification shall be fully supported with detailed time and cost implications.
- 2.25.3. The value of all additions and omissions agreed by the Trust on a Variation to Contract Form shall be added to or deducted from the Contract Sum.
- 2.25.4. Any instruction issued orally varying the terms of the Contract shall have no effect until confirmed by the Trust by a Variation to Contract Form within 24 hours following such instruction.
- 2.25.5. The Supplier shall forthwith comply with any Variation to Contract Forms issued by the Trust's Representative.
- 2.25.6. Should the Supplier fail to commence to carry out, within 14 (fourteen) working days of the date of issue, any reasonable instructions issued in accordance with this Condition on receipt of a Variation to Contract Form, the Trust's Representative may issue a written notice requesting compliance. If the Supplier fails to comply with the instructions directed by the Trust's Representative within 7 (seven) working days of receipt of such a notice the Trust may, notwithstanding its rights of termination, have the instructions carried out by his own employees or other contractors. Any excess costs incurred by the Trust shall be recoverable from the Supplier subject to the addition of a reasonable percentage (subject to a minimum 10%) to cover the Trust's supervision and establishment charges.
- 2.25.7. The value of all variations, additions and omissions shall be ascertained by valuation in accordance with rates contained in **Section 5** (Schedule of Prices).
- 2.25.8. Should the Trust's Representative issue a Variation to Contract Form and a dispute arise regarding the valuation of the work under the Variations then **Clause 2.48** shall apply.

2.25.9. The Trust may instruct the Supplier to supply Additional Goods from time to time.

**2.26. Price**

2.26.1. The amount payable to the Supplier for the provision of the Goods (excluding any Variations of Contract) in accordance with this Contract shall be the sum set out in **Section 5** (Schedule Of Prices) and entitled "Contract Sum".

2.26.2. The price payable to the Supplier for the provision of the Goods shall be subject to review in accordance with **Clause 2.29**.

2.26.3. Variations will be valued and paid as **Clause 2.25**.

2.26.4. The Charging Rates will be subject to review in accordance with **Clause 2.29**.

2.26.5. Without limitation the Contract Sum and the Charging Rate are inclusive of all items and matters set out in **Clauses 2.2, 2.36, 2.37, and 2.44**.

2.26.6. The Contract Sum and Charging Rates are exclusive of VAT, but inclusive of all other costs, charges and expenses whatsoever.

**2.27. Value Added Tax**

2.27.1. The Trust shall pay to the Supplier, in addition to the Contract Sum, where applicable, a sum equal to the Value Added Tax chargeable on the value of the Service provided in accordance with this Contract.

2.27.2. The Supplier shall, if so requested by the Trust, furnish such information as may reasonably be required by the Trust as to the amount of Valued Added Tax chargeable on the Service in accordance with the Contract and payable by the Trust to the Supplier in addition to the Contract Sum. Any overpayment by the Trust to the Supplier shall be a sum of money recoverable from the Supplier for the purposes of **Clause 2.28**, Recovery of Sums Due.

**2.28. Recovery Of Sums Due**

2.28.1. Whenever under this Contract, any sum of money shall be recoverable from or payable by the Supplier, the same may be deducted from any sum then due, or which at any time thereafter may become due, to the Supplier under this Contract or under any other Contract with the Trust.

**2.29. Review Of Price And Charging Rates**

2.29.1. The Contract Sum and the Charging Rates shall be reviewed on the first Review Date and each subsequent Review Date during the Contract Period by the Trust and the Supplier. If the parties are unable to reach agreement as to the revised Contract Sum and Charging Rates to apply during that Contract Year within one month following such Review Date then, the Contract Sum and Charging Rates then in force under the terms of this Contract shall be increased in accordance with the yearly increase figures stated in Section 5 (Schedule of Prices)

**2.30. Unlawful Discrimination**

- 2.30.1. The Contractor shall not unlawfully discriminate within the meaning and scope of the provisions of any enactment or regulation relating to the employment or recruitment of Staff or personnel.
- 2.30.2. The Supplier shall take all reasonable steps to secure the observance of the provisions of **Condition 2.30.1** by all Staff or agents of the Supplier and all sub-contractors employed in the execution of the Contract.

**2.31. Corrupt Gifts and Payment of Commission**

- 2.31.1. The Supplier shall not offer or give, or agree to give, to any employee or representative of the Trust, any gift or consideration of any kind as an inducement or reward for doing or refraining from, or for having done, any act in relation to the obtaining or execution of this Contract or any other contract with the Trust, or for showing or refraining from showing favour or disfavour to any person in relation to this Contract or any other contract with the Trust. The Supplier's attention is drawn to the criminal offences created by the Bribery Act 2010.
- 2.31.2. Any breach of this Condition by the Supplier or by anyone employed by him or acting on his behalf (whether with or without his knowledge), shall entitle the Trust to terminate this Contract and recover from the Supplier the amount of any loss resulting from such determination and/or recover from the Supplier the amount or value of any such gift, consideration or commission, as the Trust shall think fit.

**2.32. Confidentiality and Data Protection**

- 2.32.1. The Supplier undertakes to:
  - 2.32.1.1. keep confidential and procure that its managers and other staff keep confidential all information (written, oral or in any form) concerning the affairs of the Trust that it shall have obtained or received as a result of the discussions leading up to or the entering into or performance of this Contract or otherwise obtains or receives during or in connection with the supply of the Goods ("the **Information**"). The term "Information" extends to all knowledge and information relating to the activities, operations, organisations, finances, business, processes, methods of and concerning the Trust and any of its staff, students or suppliers;
  - 2.32.1.2. not without the Trust's written consent to disclose the Information in whole or in part to any other person, save those of its employees, agents and sub-contractors involved in the supply of the Goods and who have a need to know the same; and
  - 2.32.1.3. use the Information solely in connection with the supply of the Goods and not for its own benefit or the benefit of any third party.

- 2.32.2. The provisions of **Clause 2.32.1** shall not apply to the whole or any part of the Information to the extent that it is:
- 2.32.2.1. already in the Supplier's possession on the date of its disclosure without breach of any obligation of confidentiality;
  - 2.32.2.2. in the public domain other than as a result of a breach of this Clause;  
or
  - 2.32.2.3. independently developed by the Supplier without reference to or use of the Information.
- 2.32.3. The Supplier undertakes to make all its relevant staff, employees, agents and sub-contractors aware of the confidentiality of the Information and the provisions of this **Clause 2.32**, and, without limitation to the foregoing, to take all such steps as shall from time to time be necessary to ensure compliance by its Staff, employees, agents and sub-contractors with the provisions of this **Clause 2.32**.
- 2.32.4. If Personal Data is processed by the Supplier on the instructions of the Trust the parties acknowledge that under GDPR and the DPA that the Trust is the Controller and the Supplier is the Processor. The only Processing of Personal Data that the Supplier is authorised to do as a Processor of the Trust are listed in Schedule 1 (Data Protection Particulars) of this Contract.
- 2.32.5. The Supplier shall Process Personal Data only to the extent, and in such a manner, as is necessary for the purposes specified in the Specification and in accordance with the Trust's written instructions from time to time and shall not Process Personal Data for any other purpose. If the Supplier is required by Law to Process Personal Data otherwise than in accordance with this Clause 2.32, immediately inform the Trust of the legal requirement before Processing Personal Data (unless prohibited from doing so by Law).
- 2.32.6. The Supplier shall provide all reasonable assistance to the Trust in the preparation of any data protection impact assessment, as defined in the GDPR, prior to commencing any Processing. Such assistance may, at the discretion of the Trust, include:
- 2.32.6.1. a systematic description of the envisaged Processing operations and the purpose of the Processing;
  - 2.32.6.2. an assessment of the necessity and proportionality of the Processing operations in relation to the Specification;
  - 2.32.6.3. an assessment of the risks to the rights and freedoms of Data Subjects; and
  - 2.32.6.4. the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.

- 2.32.7. The Supplier will not Process Personal Data, or disclose Personal Data to any party who carries on business, outside the European Economic Area except with the Trust's prior written consent and where such consent is given, take such actions and enter into such agreements as the Trust may require to ensure that such transfer or disclosure complies with Law.
- 2.32.8. The Supplier will keep a record of any Processing of Personal Data it carries out under the Contract.
- 2.32.9. The Supplier shall not disclose Personal Data to any person except under this Contract or with your written consent.
- 2.32.10. The Supplier shall ensure that access to Personal Data is limited to:
- 2.32.10.1. those employees who need access to Personal Data to meet the Supplier 's obligations under this Contract; and
  - 2.32.10.2. 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.
- 2.32.11. The Supplier shall ensure that employees that require access to Personal Data:
- 2.32.11.1. are informed of the confidential nature of Personal Data;
  - 2.32.11.2. have undertaken training in handling Personal Data in accordance with the GDPR and DPA; and
  - 2.32.11.3. are aware both of the Supplier 's duties and their personal duties and obligations under the GDPR, DPA and this Contract.
- 2.32.12. 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.
- 2.32.13. The Supplier shall not disclose Personal Data to any Data Subject or to a third party other than at the request of the Trust or as provided for in this Contract.
- 2.32.14. 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 that have been reviewed and approved by the Trust as appropriate having taken account of the:
- 2.32.14.1. nature of the Personal Data to be protected;

- 2.32.14.2. harm that might result from a Data Breach;
  - 2.32.14.3. state of technological development; and
  - 2.32.14.4. cost of implementing any measures.
- 2.32.15. 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.
- 2.32.16. The Supplier shall, upon becoming aware, immediately and in any event within 24 hours notify the Trust of any Data Breach and shall work together with the Trust to provide the Trust with full co-operation and assistance, including to investigate the Data Breach (including by (i) assisting with any investigation launched by the Trust; (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 Trust to investigate the Data Breach or otherwise comply with Law or the requests of any competent regulatory authority in relation to the Data Breach or its investigation).
- 2.32.17. The Supplier shall not engage another Processor to Process Personal Data ("a Sub-Processor") except with the Trust's prior specific written authorisation and, where such authorisation is given, enter into a contract with the Processor that imposes the same contractual obligations set out in this Clause on that Processor, and remain liable for any Processor that it engages in accordance with the terms of this Clause.
- 2.32.18. The Supplier shall assist and fully co-operate with the Trust to enable it to comply with its obligations as a Data Controller under and in accordance with Law 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 Trust 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 this Contract.
- 2.32.19. The Supplier shall promptly comply with any request from the Trust requiring the Supplier to amend, transfer or delete Personal Data. At the Trust's request, the Supplier shall provide to the Trust a copy of all Personal Data held by it in the format and on the media reasonably specified by the Trust.



- 2.32.20. The Supplier shall at any time on the request of the Trust, return all Confidential Information and/or data (including any Personal Data that the Supplier Processes for and on behalf of the Trust) to that Trust and/or permanently delete the same from its systems, including any back-up copies.
- 2.32.21. The Supplier shall at the Trust's option, delete or return to the Trust all Personal Data on termination of the Contract and delete any existing copies of Personal Data except to the extent that the Trust is required to retain Personal Data by Law.
- 2.32.22. The Supplier shall make available to the Trust all information necessary to demonstrate our compliance with the obligations under this Clause and allow for and contribute to audits, including inspections, conducted by the Trust or another auditor mandated by the Trust.
- 2.32.23. The Supplier shall immediately inform the Trust if, in its opinion, an instruction from the Trust infringes Law.
- 2.32.24. The Supplier shall, in connection with this Contract, comply in all respects with Law relating to data protection and have established procedures to ensure continued compliance with Law. The Supplier shall comply with its obligations as a Processor under and in accordance with Law.
- 2.32.25. 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.
- 2.32.26. The Trust may, at any time on not less than 30 working days' notice, revise this Clause by replacing it with any applicable controller to processor standard Clauses or similar terms forming part of an applicable certification scheme.
- 2.32.27. The parties agree to take account of any guidance issued by the Information Commissioner's Office. The Trust may on not less than 30 working days' notice to the Supplier amend this Contract to ensure that it complies with any guidance issued by the Information Commissioner's Office.
- 2.32.28. The Supplier shall Process Personal Data in performing its instructions as notified by the Trust only for as long as required and for no longer than the term of this Contract.
- 2.32.29. The Supplier warrants that it shall:

2.32.29.1. Process the Personal Data in compliance with Law; and

2.32.29.2. take appropriate technical and organisational measures against Data Breach.

2.32.30. The Supplier agrees to indemnify and keep indemnified and defend at its own expense the Trust against all costs, claims, damages or expenses incurred by the Trust or for which the Trust may become liable due to any failure by the Supplier or its employees or agents to comply with any of its obligations under this Clause.

### **2.33. Freedom of Information Act**

2.33.1. The Supplier acknowledges and agrees that the Trust is subject to the FOIA and insofar as the Supplier acts as agent for the Trust and holds records and information in relation thereto shall:

2.33.1.1. comply with the Trust's instructions and directions, including any publication scheme, policies and codes of practice issued by the Trust from time to time in relation to FOIA;

2.33.1.2. subject to Clause **2.33.1** otherwise to comply with FOIA;

2.33.1.3. promptly and properly comply with any valid lawful access requests pursuant to the Trust's publication scheme from time to time;

2.33.1.4. promptly notify and keep informed (with full supporting details if requested) the Trust of all and any access requests, all complaints and investigations in relation to the FOIA (whether by an individual, the Office of the Information Commissioner or otherwise) and to deal with the same in accordance with the Trust's instructions from time to time.

2.33.2. The Supplier agrees to and hereby indemnifies the Trust for losses incurred or suffered as a result of a direct or indirect breach of this **Clause 2.33** and/or due to the negligence of the Supplier in relation thereto. This indemnity shall survive termination of this Contract.

### **2.34. Use of Documents, Information, etc.**

2.34.1. Except with the prior written consent of the Trust, the Supplier shall not disclose this Contract or any provision thereof or any matters relating thereto to any person other than a person employed by the Supplier in carrying out this Contract or any sub-contractor, supplier or other person concerned with the same. Such disclosure shall be made in confidence and shall extend so far only as may be necessary for the purposes of this Contract.

2.34.2. Except with the prior written consent of the Trust, the Supplier shall not make use of this Contract or any information issued or furnished by or on behalf of the Trust, otherwise than for the purposes of this Contract.

- 2.34.3. Any specifications, plans, drawings or other documents or IT equipment, software or hardware issued by or on behalf of the Trust for the purposes of this Contract remain the property of the Trust and shall be returned to the Trust immediately on the Termination Date.
- 2.34.4. Nothing in this Contract shall grant to the Supplier any right, title or interest in any intellectual property owned or controlled by the Trust.
- 2.34.5. If, at the Trust's absolute discretion, the Supplier or any of its staff are given access to the Trust's IT systems (including without limitation the Trust's intranet) the Supplier warrants that it shall and shall procure that such staff shall only use such systems and any information accessed for the strict purpose of performing the Contract or complying with the Trust's instructions and shall keep the same confidential and shall not disclose information accessed to any third party without the express written consent of the Trust.

**2.35. Right Of Audit**

- 2.35.1. The Supplier shall keep full and proper records and all the documents relating to the transactions affecting the Goods. The Trust shall have, at all reasonable times and upon notice to the Supplier, access to and the right to reproduce the Supplier's and its sub-contractors books, documents, correspondence, instructions, receipts, vouchers and memoranda of any description including that stored on microfilm or in computers which shall be made available in legible form together with any other information (such as codes) needed for its comprehension. (hereinafter referred to collectively as 'the Documents'), plus access to the Supplier's personnel and Staff and their records relating to the Goods undertaken under this Contract for the purpose of auditing and verifying costs of the Goods and for any other reasonable purposes. The Supplier, or its sub-contractors shall preserve the Documents for seven (7) years after the Termination Date.

**2.36. Advertising**

- 2.36.1. The Supplier shall not publish or reproduce or arrange any press releases in connection with this Contract without prior written consent of the Trust.

**2.37. Rates of Wages, Hours and Conditions**

- 2.37.1. The Supplier shall ensure;
  - 2.37.1.1. that all Relevant Staff employed or engaged by the Supplier are paid an Equivalent Hourly Wage which is equal to or exceeds the National Living Wage;
  - 2.37.1.2. that all Relevant Staff employed or engaged by its subcontractors (if any) pay an Equivalent Hourly Wage which is equal to or exceeds the National Living Wage'
  - 2.37.1.3. that they provide to the Trust such information concerning the National Living Wage and the performance of its obligations under this Clause 2.37 as the Trust may reasonably require and within the deadlines it reasonably imposes.

## **2.38. Supplier's Responsibilities And Indemnification**

- 2.38.1. Subject to **Clause 2.39**, the Supplier shall be responsible for all damage to or loss of property (including destruction) and injury to or death of any person arising out of or in consequence of this Contract and shall indemnify and keep indemnified the Trust and all its respective employees, agents, Supplier s and invitees against all claims proceedings, damages, costs and expenses in respect of any such damage, loss, injury or death save to the extent that the Supplier shall not be responsible for any damage, loss or injury to or death of any person caused by the negligence or wilful act or omission of the Trust.
- 2.38.2. The Supplier shall in all matters arising in the supply of the Goods at all times observe, perform and comply with all statutory and other obligations, regulations and by-laws applicable to the supply of the Goods (including without limitation health, hygiene and safety regulations) and shall keep the Trust and all its respective employees, agents, contractors and invitees indemnified from and against all costs, claims, expenses and damages arising from any breach of any such obligations, regulations or by-laws or arising from the negligence or wilful default of the Supplier.
- 2.38.3. Without prejudice to the generality of the foregoing the Supplier shall observe, perform and comply with all the relevant provisions of the Fire Precautions Act 1971, Health & Safety at Work Act 1974, Control of Pollution Act 1974, Provision and Use of Work Equipment Regulations 1998, Control of Major Accident Hazard Regulations 1999, Control of Substances Hazardous to Health Act, the Public Health Acts, any amendments or re-enactment thereof and/or any other relevant legislation and good working practice.

## **2.39. Limitation of Liability**

- 2.39.1. The following provisions set out the parties' entire liability (including any liability for the acts and omissions of their respective employees, agents or sub-contractors) to each other in respect of:
  - 2.39.1.1. any breach of their respective contractual obligations under this Contract; and
  - 2.39.1.2. any representation, statement or tortuous act or omission, including negligence, arising under or in connection with this Contract.
- 2.39.2. Any act or omission on the part of either party or its employees, agents or sub-contractors, falling within **Clause 2.39** shall, for the purpose of this **Clause 2.39** be know as an "**Event of Default**".
- 2.39.3. Notwithstanding any other provision in this Contract the Supplier accepts unlimited liability for:
  - 2.39.3.1. death or personal injury caused by the negligence of the Supplier, and

- 2.39.3.2. any breach of its obligations implied by section 2 of the Supply of Goods and Services Act 1982; and
- 2.39.3.3. fraud committed by the Supplier.
- 2.39.4. Notwithstanding any other provision in this Contract the Trust accepts unlimited liability for:
  - 2.39.4.1. death or personal injury caused by the negligence of the Trust; and
  - 2.39.4.2. any breach of its obligations implied by section 2 of the Supply of Goods and Services Act 1982; and
  - 2.39.4.3. fraud committed by the Trust.
- 2.39.5. The Trust will be under no liability to the Contract whatsoever (whether in contract, tort (including negligence), breach of statutory duty, restitution or otherwise) for any indirect or consequential loss, pure economic loss, loss of profits, loss of business, loss of contract, depletion of goodwill and like loss and including contractual damages suffered by the Supplier and/or payable by the Supplier to a third party.
- 2.39.6. Subject to **Clause 2.39.4** the Trust's liability for each Event of Default shall not exceed the value of this Contract over one Contract Year, save that such limitation will not apply in respect of any liability of the Trust for the Charges.
- 2.39.7. The parties each confirm that all exclusions and limitations of liability set out in this Clause **2.39** are fair and reasonable having regard to the value and term of this Contract.
- 2.40.     Supplier's Insurances**
  - 2.40.1. The Supplier shall carry and maintain in force for the duration of this Contract, the following insurance's:
    - 2.40.1.1. **Public/Products Liability Insurance** – unless the Trust shall have approved in writing other arrangements satisfactory to the Trust, the Supplier or any of its sub-contractors shall, from the Commencement Date until the Termination Date, insure against the Supplier's liability in respect of any loss or damage arising from any Public and/or Product liability. Such insurance's shall be effected with a reputable insurer. The Supplier shall produce to the Trust's Representative, the policy and/or satisfactory evidence of insurance cover at least 12 weeks prior to Commencement Date and, annually during the Contract Period and, from time to time as may be required. All monies received under such policy shall be applied in or towards the loss or damages but this provision shall not affect the Supplier's liabilities under this Contract.
    - 2.40.1.2. The Supplier shall, prior to the Commencement Date insure against

its liability for damage or injury occurring during the Contract Period to any person (including any employee of the Trust) or to any property. Such insurance shall be effective for an amount not being less than **£5,000,000 (five million pounds)**, with a reputable insurer. The Supplier shall from time to time, when so required by the Trust, produce the policy and the receipts for the premiums or other satisfactory evidence of insurance cover.

- 2.40.1.3. **Employers Liability Insurance** – the Supplier shall insure and shall keep insured with a reputable insurer, for an amount not being less than **£5,000,000 (five million pounds)** in respect of the Supplier's liability arising from personal injury to or death of any person under a contract of service or apprenticeship with the Supplier or any sub-contractor. The Supplier shall from time to time when so required by the Trust produce the policy and the receipts for the premiums or satisfactory evidence of insurance cover. The terms of any such policy shall also include the provision to indemnify the Trust as mentioned in **Clause 2.38** provided always that in respect of such persons in such manner that the Trust is indemnified under the policy but the Supplier shall require such sub-contractor to produce to the Trust when required, the policy, the receipt for premiums or other such satisfactory evidence of the insurance cover.

## **2.41. Default**

- 2.41.1. If the Supplier fails to comply with any of its obligations under this Contract at any time, including (without limitation) failure to meet the Key Performance Indicators as defined in the Service Level Agreement ("**Default**"), then without prejudice to any other right or remedy which the Trust may possess in respect of such a failure the Trust may do one or more of the following:

- 2.41.1.1. Without prejudice to the provisions of **Clauses 2.43** issue a default notice ("**Default Notice**") to the Supplier requiring the Supplier to remedy such Default within such time as may be specified in the Default Notice by providing, or providing again (as the case may be) without further charge to the Trust any part of the Goods to which such failure relates.
- 2.41.1.2. Without terminating this Contract in whole or part itself provide or procure the provision of any part of the Goods to which such Default relates until such time as the Supplier's Representative shall have provided to the satisfaction of the Trust's Representative that such part of the Goods will once more be provided by the Supplier to the specified standard or at the Trust's option until such later time as the Trust's Representative may specify as being reasonable in all the circumstances.
- 2.41.1.3. Without terminating the whole of this Contract, terminate any aspect of the Goods to which the Default relates, and thereafter itself provide or procure the provision of the said Goods and without terminating the whole of this Contract in whole or part deduct from

any monthly Contract Sum payable to the Supplier such proportion thereof as is fair and reasonable having regard to the period of the relevant Default and to the terms of this Contract.

2.41.2. The remedies of the Trust under **Clause 2.41.1** may be exercised successively in respect of any Default by the Supplier. Where the Supplier fails to remedy the Default as defined in the Default Notice, or fails to remedy the Default within the time allowed, the Trust will be entitled (without prejudice to any other rights and remedies it may have) to levy a charge (a “monetary default”) for each Default Notice. The valuation of a monetary default in a Default Notice will reflect the genuine value of the work that the Supplier has contracted to do but has not done, or has not done in the satisfactory manner. Where a monetary default has been levied and the Supplier has rectified the Default but then, within a short time, fails to maintain the standard of service, the Trust shall immediately without prejudice to its other rights and remedies be entitled to levy further monetary default(s).

2.41.3. As part of a monetary default the Trust may charge the Supplier the cost of any services provided or procured by it under **Clauses 2.41.1.2 and 2.41.1.3** together with an administration charge equal to 10% of the cost of such Goods to the Supplier which represents a genuine pre-estimate of the additional management time and costs to the Trust in procuring the Goods due to a default by the Supplier.

## **2.42. Disclosure**

2.42.1. Provided that disclosure is not prevented by Stock Exchange regulations the Supplier, whether a company as defined in the Companies Act 1985 or a partnership as defined in the Partnership Act 1890 shall immediately inform the Trust in writing of any proposal or negotiations which will, result in control of the Supplier’s affairs passing to another company or other individuals. The Trust shall treat any information given by the Supplier under this condition in confidence.

## **2.43. Termination**

2.43.1. This Contract may be terminated by notice in accordance with Clause **2.43.4**, and may be terminated earlier:

2.43.1.1. immediately by the Trust if the Supplier, having been given written notice by the Trust’s Representative that the Goods are not in accordance with this Contract due to material or persistent breach (persistent breach meaning more than 3 Default Notice issued within a consecutive 60 day period), fails within 30 days to correct the matters, in which circumstances the Trust may by notice in writing forthwith terminate this Contract without compensation to the Supplier;

2.43.1.2. immediately by the Trust if the Supplier being a company, summons a meeting of its creditors, makes a proposal for a voluntary arrangement, becomes subject to any voluntary arrangement, is unable to pay its debts within the meaning of section 123 Insolvency Act 1986, has a receiver, manager, administrator or administrative receiver appointed over any of its assets, undertakings or income,

has passed a resolution for its winding-up (save for the purpose of a voluntary reconstruction or amalgamation), is subject to a petition presented to any Court for its winding up (save for the purposes of a voluntary reconstruction or amalgamation), is subject to a petition presented to any Court for its administration, has a provisional liquidator appointed, has a proposal made for a scheme of arrangement under section 425 Companies Act 1985 or is the subject of a notice to strike off the register at Companies House or it is subject to an administration order in which circumstances the Trust may by notice in writing forthwith terminate this Contract without compensation to the Supplier;

- 2.43.1.3. immediately by the Trust if the Supplier ceases or threatens to cease to trade;
  - 2.43.1.4. immediately by the Trust if the Trust is notified of any proposed change under Clause **2.42** or if there is a Change of Control of the Supplier provided that the Trust serves notice of termination within three months of the date on which the Supplier informs the Trust (by written notice of the Change of Control or on which the Trust otherwise becomes aware of the Change of Control);
  - 2.43.1.5. upon the Trust serving 6 (six) months' notice to the Supplier where the Contract has been subject to a substantial modification which would have required a new procurement procedure in accordance with Regulation 72(9) of the Public Contracts Regulations 2015;
  - 2.43.1.6. immediately by the Trust where the Supplier has, at the time of contract award, been in one of the situations referred to in Regulation 57(1) of the Public Contracts Regulations 2015, including as a result of the application of Regulation 57(2) of the same, and should therefore have been excluded from the procurement procedure;
  - 2.43.1.7. immediately by the Trust where the contract should not have been awarded to the Supplier in view of a serious infringement of the obligations under the Treaties and the Public Contracts Directive that has been declared by the Court of Justice of the European Union in a procedure under Article 258 of TFEU.
- 2.43.2. Any termination under this Contract shall not prejudice or affect any right of action or remedy which shall have accrued or shall accrue thereafter to the Trust. On termination, the Trust may hold and retain all monies due or thereafter to become due to the Supplier or those claiming under him by this Contract until all monies becoming due to the Trust have been covered. Any excess monies shall then be paid to the Supplier.
- 2.43.3. For a period of six (6) months following any termination of the Contract (other than pursuant to **clause 2.43.4**), the Trust may, cover the Goods and recover from the Supplier the costs (if any) incurred by the Trust either by itself, or by employing other contractors to provide the Goods that are in excess of that which would have



become payable under this Contract. In calculating such excess cost there shall also be added a reasonable administration charge to cover the Trust's supervision and establishment charges.

- 2.43.4. The Trust shall in any event at any time be entitled to terminate this Contract on the giving of **six (6) months'** written notice of such termination to the Supplier. The Supplier shall not be entitled to any payment by way of compensation, damage or otherwise following such termination but shall, for the avoidance of doubt, be entitled to receive payment due for the **six (6) month** notice period.

#### **2.44. Effect of Termination**

- 2.44.1. Any termination of this Contract for any reason shall not affect any accrued rights or liabilities of either party, nor the coming into force, or the continuance in force, of any provision of this Contract which is expressly or by implication intended to come into or continue in force on or after such termination, including without limitation **Clauses 2.10, 2.20, 2.23, 2.26, 2.27, 2.30, 2.31, 2.32, 2.33, 2.34, 2.35, 2.38, 2.39, 2.40, 2.41, 2.43, 2.44, 2.45, 2.47, 2.48.**

- 2.44.2. Upon the termination of this Contract:

- 2.44.2.1. the Supplier shall remain liable for and shall indemnify the Trust against all wages, holiday pay, employment benefit, costs, redundancy costs and unfair dismissal costs and awards in respect of all employees and former employees of the Supplier, save in the case of those employees who become employed by the Trust with effect from the Termination Date when the Supplier's indemnity shall apply only in respect of such employees insofar as and to the extent that such wages, pay, costs and awards arise on or in respect of any date or period before the Termination Date;
- 2.44.2.2. without limitation to the foregoing, the Supplier shall take all such steps as shall be necessary to agree with the Trust a plan for the orderly hand-over of the Goods to the Trust (or its nominee), and will supply any information the Trust reasonably requires (including but not limited to information relating to employees employed by the Supplier to supply the Goods and the terms and conditions on which such employees are employed), such that the Goods can be carried on with the minimum of interruption and inconvenience to the Trust and to effect such handover;
- 2.44.2.3. with effect from the Termination Date, and until such time as the plan for the handover of the Goods has been fully implemented, the Supplier agrees to continue the provision of the Goods to the Trust in accordance with the terms and conditions of this Contract, except that it shall be entitled to be paid for such Goods. Such charges shall be payable by the Trust within thirty (30) days of the Trust receiving a valid invoice for such Goods containing a break-down of the Staff, charging rates and the materials and their costs incurred in connection with this Clause;

- 2.44.2.4. immediately following the Termination Date the Supplier shall promptly deliver up to the Trust all property supplied by it together with all work performed up to and including the Termination Date and all materials incorporating any Information (as defined in **Clause 2.33.1.2**), and will destroy any Information contained in any materials prepared by the Supplier Supplier. If the Supplier fails to return or destroy (as the case may be) any such property, work or materials, the Trust shall be entitled, and is licensed, to enter the Supplier's premises and seize and destroy the same.
- 2.44.3. Subject as otherwise provided in this Contract, or subject to any rights or obligations which have accrued prior to termination, neither party shall have any further obligation to the other under this Contract.
- 2.45. Approvals**
- 2.51.1 No approvals, comments, instructions, consents or advice or indication of satisfaction given by or from the Trust nor any enquiry or inspection which the Trust may make or have carried out for its benefit or on its behalf shall operate to reduce, extinguish, exclude, limit or modify the Supplier's obligation to fulfil its duties and obligations under this Contract.
- 2.46. Waiver**
- 2.46.1. The failure of either party at any time to enforce any provision of this Contract shall in no way affect its right thereafter to require complete performance by the other party, nor shall the waiver of any breach of any provision be taken or held to be a waiver of any subsequent breach of any provision or be a waiver of the provision itself.
- 2.47. Force Majeure**
- 2.47.1. In the event of any act of God, hostilities, riot, civil commotion, public demonstration, terrorist act or any other circumstances (whether or not of a similar nature to any of the foregoing) beyond the reasonable control of either party ("Force Majeure Event"), neither party shall be deemed to be in breach of this Contract or otherwise liable to the other party in any manner whatsoever for any failure or delay in performing its obligations under this Contract.
- 2.47.2. If a party's performance of its obligations under this Contract is affected by Force Majeure Event, upon service of a notice of suspension by the party affected on the other party the obligation of the affected party to perform its obligations shall forthwith be suspended until the party affected serves notice on the other party that such circumstances have ceased and the other party shall not be liable to make payments under this Contract in respect of the period of such suspension. In circumstances where formal notice is impracticable the Supplier shall use its reasonable endeavours to notify the Trust of the suspension as soon as possible by whatever means.
- 2.47.3. If the Force Majeure Event in question prevails for a continuous period in excess of one month after the date on which the Force Majeure Event begins, the party not

in default may give notice in writing to the defaulting party to terminate this Contract. This notice to terminate must specify the termination date, which must not be less than 15 days after the date on which the notice to terminate is given. Once a notice to terminate has been validly given, this Contract will terminate on the termination date set out in the notice.

## **2.48. Disputes**

- 2.48.1. All disputes or differences not otherwise resolved as set out in **Clause 2.41 (Default)**, which shall at any time arise between the Supplier and the Trust in respect of the construction or effect of this Contract, or the rights, duties and liabilities of the parties hereunder, or any matter or event connected with or arising out of this Contract (a '**Relevant Event**') shall in the first instance be referred for resolution between the Supplier's Representative and the Trust Representative. If the Supplier's Representative and Trust Representative cannot resolve the dispute to the satisfaction of each party within 14 days of the matter being referred to them, the dispute shall be referred to the Supplier's managing director and the Trust's Principal / CEO for resolution. If the managing director and the Principal cannot resolve the dispute to the satisfaction of each party within 14 days of the matter being referred to them, the dispute shall be referred to such independent third party (the '**Third Party**') as the Supplier and the Trust shall jointly nominate.
- 2.48.2. If the Supplier and the Trust fail to nominate a Third Party within 14 days of the date of occurrence of the Relevant Event, then the Third Party shall be nominated at the request of either the Trust or the Supplier by the President for the time being of the Chartered Institute of Arbitrators.
- 2.48.3. The Third Party (whether appointed under **Clause 2.48.1 or 2.48.2**) shall act as an expert and not as an arbitrator whose decision (including as to costs) shall, except in the case of manifest error, be final and binding upon the Supplier and the Trust.

## **2.49. Law And Jurisdiction**

- 2.49.1. This Contract (and all matters, including any non-contractual obligations, arising under or in connection with it) shall be governed by, and construed in accordance with the provisions of English law as interpreted in an English Court.
- 2.49.2. Nothing in Clause **2.49** shall prevent either Party applying to court for injunctive or other interim relief and to this extent the parties submit to the non-exclusive jurisdiction of the English courts.
- 2.49.3. No person other than a contracting party may enforce any provision of this Contract by virtue of the Contracts (Rights of Third Parties) Act 1999.

## **2.50. Health And Safety**

- 2.50.1. The Supplier shall comply with all applicable Health & Safety regulations. The Supplier is required to read and comply with all Trust Health & Safety instructions (verbal and written) including the Trust Health & Safety Manual.
- 2.50.2. The Supplier must undertake to provide Staff with all relevant training to enable

them to complete their tasks safely and efficiently. All appropriate courses will be undertaken at the Supplier' s cost.

## **ANNEX A: VARIATION TO CONTRACT FORM**

<u>Site Address:</u>	<u>Contract:</u> Contract For
<u>Supplier:</u>	<u>Job Reference:</u>
	<u>Issue Date:</u>
	<u>Instruction No.</u>

The Contract Sum will be adjusted where applicable in accordance with the terms of the Contract.		Omit	Add
Instruction		£                      p	£                      p
Signature of Supplier's Representative:	Contract Sum		
	Value of previous instructions		
	Sub-total		

Signature of Trust's Representative:	Value of this instruction		
	Adjusted Total		

### **Section 3 Service Level Agreement**

[To be agreed at award of contract or inserted from the ITT where applicable]

#### **Section 4 Specification**

[To be inserted from the Tender Document].



## Section 5 Schedule of Prices

[Completed Pricing Schedule to be inserted from the Supplier's Tender Response]

# Schedule 1 of the Contract

## Schedule 1: Data Protection Particulars

### DATA PROTECTION PARTICULARS

<i>The subject matter and duration of the Processing</i>	<i>The parties will Process Personal Data in the context of: [●] [describe the relevant services 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.]</i>
<i>The nature and purpose of the Processing</i>	<i>The Processing will be for the purposes of: [●] [describe what processing of the personal data will take place and for what purpose e.g. for the provision of IT services to individual students, record of usernames etc...]</i>
<i>The type of Personal Data being Processed</i>	<i>The Personal Data will include: [●] [e.g. Names, e-mail addresses, postal address, ip address, username and related password, student ID number, national insurance number.]</i>
<i>The categories of Data Subjects</i>	<i>The Data Subjects will include: [●] [e.g. contractors, students, employees etc...]</i>

This Contract is entered into on the date hereof: \_\_\_\_\_

**Signed on Behalf of [insert name of Trust or the Corporation whichever is the legal entity]  
(The Trust):**

Authorised Signatory 1: \_\_\_\_\_

Date: \_\_\_\_\_

Name: \_\_\_\_\_

Designation: \_\_\_\_\_

Authorised Signatory 2: \_\_\_\_\_

Date: \_\_\_\_\_

Name: \_\_\_\_\_

Designation: \_\_\_\_\_

**SIGNED on behalf of [insert name of Supplier] (The Supplier) by (A Director and its Secretary  
or two Directors):**

Authorised Signatory 1: \_\_\_\_\_

Date: \_\_\_\_\_

Name: \_\_\_\_\_

Designation: \_\_\_\_\_

Authorised Signatory 2: \_\_\_\_\_

Date: \_\_\_\_\_

Name: \_\_\_\_\_

Designation: \_\_\_\_\_