**CONTRACT FOR THE SUPPLY OF SERVICES**

**ORDER FORM**

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Supplier details** | | | | | | |
| Name: | [INSERT NAME OF INDIVIDUAL AND/OR LIMITED COMPANY] | | | | | |
| Address: | [INSERT ADDRESS /COMPANY REGISTRATION NUMBER/DETAILS] | | | | | |
| Supplier Contact Details: | [INSERT CONTACT DETAILS AND NAME OF REPRESENTATIVE IF DIFFERENT] | | | | | |
| Key Personnel: | [INSERT INDIVIDUAL NAME, WHERE PROCURED THROUGH A LIMITED COMPANY] | | | | | |
| Contact and Address for Notices (clause 16.7): | [INSERT] | | | | | |
| **LJMU details** | | | | | | |
| Name: | Liverpool John Moores University (LJMU) | | | | | |
| Address: | Liverpool John Moores University, a Higher Education Corporation established under the Education Reform Act 1988 whose administrative offices are at Egerton Court, 2 Rodney Street, Liverpool L1 2UA | | | | | |
| LJMU Contact Details: | Ian Jenkinson  I.D.Jenkinson@ljmu.ac.uk | | | | | |
| Contact and Address for Notices (clause 16.7) | FAO: University Secretary and General Counsel  Exchange Station, Tithebarn Street, Liverpool L2 2QP | | | | | |
| **Key Terms** | | | | | | |
| Commencement Date: | [insert] If no date is specified the signature of this Order Form. | Term: | The completion of the Services as more particularly described in Appendix 1. | | | |
| Services: | As described in the Specification document set out at Appendix 1 | | | | | |
| Key Dates: | As described in the Specification document set out at Appendix 1 | | | | | |
| Data Processing: | |  |  | | --- | --- | | The subject matter and duration of Processing | The subject matter of the Processing is personal data of employees, staff, key personnel and any sub-contractors of the respective parties in relation to the performance of the Contract. The Processor will Process the personal data for the duration of this Contract. | | The nature and purpose of the Processing | The nature of the Processing is the Processing of contact data of each of the respective parties for the purposes of delivering the Services and complying with each of the parties respective obligations under the Contract. | | The type of personal data being Processed | The type of personal data being Processed concerns the following categories:  Name  Other contact information – email, telephone number;  Work address | | The categories of data subjects | Employees, key personnel, sub-contractor or sub-consultants of each of the respective parties. | | | | | | |
| Insurance: | If different from the limits referenced in clause 9 specify the limits of insurance available per claim or series of related claims   |  |  | | --- | --- | | **Insurance Type** | **Minimum Limit per claim or series of related claims £** | | Public Liability | £5,000,000 | | Employer Liability | $5,000,000 | | Professional Indemnity | £1,000,000 | | | | | | |
| Main Terms | It is acknowledged by the Supplier that:   1. the Provider is receiving funding from the Liverpool City Region Combined Authority (the “Funder”) in order to procure the Services; 2. the Employer and Funder are simultaneously to enter into a grant funding agreement on the basis of the template Funder Terms and Conditions attached at Schedule 2 (“Main Terms”) with commercial information to be included.   The Employer acknowledges and agrees that it will comply in all respects with the Main Terms, as they are applicable to the Services to be provided to the Employer and shall not do, or omit to do anything, which would or may cause the Employer to be in breach of the Main Terms. | | | | | |
| Charges (including charge rate and expenses) exclusive of VAT: | £[to be inserted] | | | Payment Terms: | | In accordance with clause 8.1 (c ) of the Main Terms – in arrears when costs have been incurred. |
| This Order Form and the attached Conditions which are expressly incorporated (together the **"Contract"**) set out the basis on which LJMU appoints the Supplier to provide the Services and the Conditions apply to the exclusion of any other terms that the Supplier seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing. By signing below, the parties agree and accept the terms of this Contract. | | | | | | |
| Authorised signature for **Liverpool John Moores University** | | | | | Authorised signature for the **Supplier** | |
| Signed …………………………………….…………. | | | | | Signed …………………………………….…………. | |
| Name …………………………………….…………. | | | | | Name …………………………………….…………. | |
| Dated …………………………………….…………. | | | | | Dated …………………………………….…………. | |

# THE CONDITIONS

# Terms of Appointment

## The Order Form constitutes an offer by LJMU to purchase the Services in accordance with these Conditions.

## The Order Form shall be deemed to be accepted on the earlier of the Supplier issuing a written acceptance of the Order Form and the Supplier doing any act consistent with fulfilling the Order Form, at which point the Contract shall come into existence.

## The Services shall begin on the Commencement Date and shall continue for the Term unless or until terminated as set out in the Order Form or in accordance with clause 13 of these Conditions.

## The appointment of the Supplier is on a non-exclusive basis and nothing in this Contract binds LJMU to any minimum volume of orders or commitments.

# Performance of the Services

## The Supplier warrants that it shall (and shall procure that any Key Personnel shall), in providing the Services:

### co-operate with LJMU in all matters relating to the Services and comply with LJMU's reasonable instructions and provide all equipment, tools, vehicles, information and such other items as are required to provide the Services;

### perform the Services with reasonable care, skill and diligence in accordance with Good Industry Practice and in accordance with all Applicable Laws;

### ensure that any Key Personnel are suitably skilled, experienced and qualified to perform tasks assigned to them, and of sufficient number to ensure that the Supplier performs its obligations in accordance with the Contract;

### ensure that the Services and Deliverables correspond with their description and the Specification and that the Deliverables are of satisfactory quality (within the meaning of the Supply of Goods and Services Act 1982) free from defects in design, material and workmanship and fit for any purpose held out by the Supplier or expressly or impliedly made known to the Supplier by LJMU;

### be responsible, at its own cost and expense, to correct any errors made in the performance of the Services;

### obtain and at all times maintain all necessary licences, permissions, authorisations, consents and permits that it needs to carry out the Services and its obligations under the Contract, including but not limited to any work permits or visas demonstrating that the Supplier or if applicable any Key Personnel are legally entitled to work in the United Kingdom.

### observe and procure that the Key Personnel observe all health and safety rules and regulations and any other security requirements that apply at any of LJMU's premises (including being responsible for all personal belongings or other property (including vehicles) which the Supplier may bring on to LJMU's Premises);

### keep and maintain all LJMU Materials in safe custody at its own risk, maintain the LJMU Materials in good condition until returned to LJMU and not dispose of or use the LJMU Materials other than in accordance with LJMU's written instructions or authorisation; and

### accommodate any reasonable requests for changes to the Services;

### not do or omit to do anything, which may bring the name or reputation of LJMU into disrepute or prejudice the interests of the business of LJMU, or cause LJMU to lose any licence, authority, consent or permission on which it relies for the purposes of conducting its business.

### The Supplier shall:

### 2.1.11.1 ensure that the Services and Deliverables comply in all respects with all applicable LJMU Policies;

### 2.1.11.2 provide all necessary assistance, cooperation and information as reasonably requested by LJMU to enable LJMU to comply with its obligations under the FOIA and EIRs and in particular:

### 2.1.11.2 transfer to LJMU all Requests for Information relating to the Contract that it receives as soon as practicable and in any event within 2 (two) Business Days of receipt; and

### 2.1.22.2.2 not respond directly to a Request for Information unless authorised in writing to do so by LJMU.

## 2.2 If the Supplier is unable to provide the Services by the dates and times agreed between the parties, the Supplier shall inform LJMU as soon as reasonably practicable. For the avoidance of doubt, no Charges shall be payable in accordance with clause 4 (Charges and payment) in respect of any period during which the Services are not provided.

# LJMU obligations

# LJMU shall provide the Supplier with reasonable access at reasonable times to LJMU's premises for the purpose of providing the Services, and shall provide such information to the Supplier as the Supplier may reasonably request which is necessary for the purpose of providing the Services.

# Charges and payment

## The Charges for the Services shall be the charges as set out in the Order Form and shall be the Supplier's full and exclusive remuneration for the performance of the Services (including the supply of the Deliverables).

## Unless specified in the Order Form, the Supplier may invoice LJMU for the Charges after completion of the Services (to LJMU's satisfaction). LJMU shall pay correctly rendered and undisputed invoices (with all queries resolved) within 30 (thirty) days of receipt of the invoice .

## If LJMU disputes the whole or any part of an invoice, it may withhold payment in respect of the disputed amount provided that it gives notice in writing to the Supplier of any intention to withhold payment, specifying the amount to be withheld and the grounds for withholding payment.

## Except where LJMU withholds an amount due to a bona fide dispute pursuant to clause 4.3, the Supplier may charge interest on overdue amounts at the rate of 2% per annum above Bank of England's base rate from time to time, from the due date until actual payment of the overdue amount, whether before or after judgment. The Supplier agrees that the right to claim interest under this clause 4.4 is a substantial remedy for late payment of undisputed invoices.

## LJMU may at any time, without limiting any of its other rights or remedies, set off any liability (including but not limited to any liability for payment of tax and/or National Insurance contributions where LJMU determines that such deductions should be made) of the Supplier (whether under the Contract or not) to LJMU against any liability of LJMU to the Supplier.

# Status

5.1 This Contract constitutes a contract for the provision of services and not a contract of employment and accordingly the Supplier shall be responsible for and shall fully indemnify and hold LJMU harmless for and in respect of:

## 5.1.1 any and all income tax, national insurance and social security deductions and contributions and any other liability, deduction, contribution, assessment or claim arising from or made in connection with the performance of the Services, where such recovery is not prohibited by law;

## all reasonable costs and expenses and any penalty, fine or interest incurred or payable by LJMU in connection with or in consequence of any such contribution, liability, deduction, other contribution, assessment or claim; and

## any and all liability for any employment-status or worker-status claim (including reasonable costs and expenses) brought by the Supplier (or any of its sub-contractors, employees and/or Key Personnel) against LJMU arising out of or in connection with the provision of the Services.

## This clause 5 shall survive termination of the Contract.

# Intellectual Property Rights

## The Supplier assigns absolutely and with full title guarantee to LJMU all Intellectual Property Rights arising in the performance of the Services (including the Deliverables) such that such rights shall forthwith on creation vest in LJMU (**"Assigned Rights"**). Insofar as they do not so vest automatically by operation of law or under this Contract, the Supplier shall hold legal title in the Assigned Rights on trust for LJMU and shall take whatever steps as may be necessary to legally assign those rights to LJMU.

## The Supplier shall and shall procure that all persons employed or engaged by the Supplier (including the Key Personnel) waive any moral rights in the Assigned Rights to which he or she is now or may at any future time be entitled under Chapter IV of the Copyright Designs and Patents Act 1988 or any similar provisions of Applicable Law.

## The Supplier shall promptly at LJMU's request do (or procure) all such further acts and the execution of all such other documents as LJMU may from time to time require for the purpose of securing for LJMU the full benefit of the Contract, including all right, title and interest in and to the Intellectual Property Rights assigned to LJMU pursuant to clause 6.1.

## The Supplier acknowledges that all rights in the LJMU Materials are and shall remain the exclusive property of LJMU.

# Liability and Indemnity (SUPPLIER'S ATTENTION IS DRAWN TO THIS CLAUSE)

## In addition to any other right or remedy available to LJMU, the Supplier shall indemnify, keep indemnified and hold harmless LJMU from and against all liabilities, costs, expenses, (including legal and other professional adviser's fees), damages, fines, penalties and losses suffered or incurred by LJMU as a result of or in connection with any claim made against LJMU:

### for actual or alleged infringement of a third party's Intellectual Property Rights arising out of or in connection with the receipt, use or supply of the Services and the Deliverables (except to the extent that the claim is attributable to compliance with any LJMU Materials or specifications supplied by LJMU);

### for death, personal injury or damage to property arising out of or in connection with the supply of the Services including: (i) any defect in any Deliverable; or (ii) any act or omission of the Supplier (including Key Personnel) or its employees, agents or subcontractors;

### any breach or alleged breach of clause 6 (Intellectual Property), clause 10 (Confidentiality), clause 11 (Data Protection) or clause 12 (Ethics);

## Subject to clause 7.3 the maximum aggregate liability of LJMU in any year (from the anniversary date of entering into this Contract) in relation to this Contract, howsoever arising and including as a result of breach of contract, tort (including negligence) or statutory duty shall not exceed 100% of the Charges paid to the Supplier in respect of that year.

## Nothing in the Contract shall limit either party's liability for: (i) death or personal injury arising from its negligence; (ii) fraudulent misrepresentation; or (iii) any other liability that cannot be excluded by law.

## This clause 7 shall survive termination of the Contract.

# Right of Substitution

# The Supplier reserves the right to substitute any personnel (including Key Personnel) for the provision of the Services, provided LJMU is given advance notice of the Supplier exercising the right of substitution and LJMU is reasonably satisfied that any proposed substitute possesses the necessary skills, experience and qualifications for the satisfactory completion of the Services. The Supplier will remain liable for the Services completed by the substitute personnel and bear any costs.

# Insurance

During the term of the Contract (and for a period of six years after the termination or expiry of the Contract), the Supplier shall maintain in force with a reputable insurance company appropriate insurance policies, including without limitation professional indemnity insurance, product liability insurance and public liability insurance to cover the liabilities that may arise under or in connection with the Contract to cover in respect of each policy a minimum of £5 million (five million pounds) per claim or series of related claims (or such other amounts required by LJMU and specified in the Order Form), and shall, on LJMU's reasonable request, produce both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance policy.

# Confidentiality

## Subject to clause 10.2, the Supplier shall and shall procure that the Key Personnel, employees, agents, subcontractors shall:

### use LJMU's Confidential Information solely for the performance of the Contract; and

### keep LJMU's Confidential Information strictly confidential and not, without LJMU's prior written consent, disclose it to any other person.

## The Supplier may disclose LJMU's Confidential Information:

### to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the Supplier's rights or carrying out its obligations under or in connection with the Contract and the Supplier shall ensure that such persons comply with this clause 10.2;

### as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority; and

### if such information is public knowledge or already known to the Supplier at the time of disclosure or subsequently becomes public knowledge in each instance other than by breach of any duty of confidentiality (contractual or otherwise).

## This obligation shall not extend to information:

### which is or comes into the public domain at the time of its disclosure or observation or subsequently enters the public domain other than by breach of this Contract; or

### disclosure of which is required by law, provided that each party shall seek to limit such disclosure as far as possible; or

### which comes into a party's possession prior to disclosure by the other party or is acquired lawfully and in good faith from an independent third party free from obligations of confidence.

## This clause 10 shall survive termination of the Contract.

# Data Protection

## For the purpose of this clause 11, reference to articles numbers are article numbers of the GDPR and unless defined in these Conditions, the terms shall have the same meaning and effect as defined under the Privacy Laws.

## If either party receives or processes any Personal Data for which the other party is data controller (the **“Processing Party”**), the Processing Party will (and shall procure its Key Personnel in accordance with Article 28(3) will): (i) only act on the documented instructions of the party who is the data controller of such Personal Data (the “**Controlling Party**”) in relation to the processing and storage of Personal Data; (ii) only use it for the purpose of fulfilling its obligations under this Contract; (iii) only process Personal Data in accordance with and shall comply with the Privacy Laws; and (iv) ensure such processing (whether by the Processing Party, Key Personnel or its employees, agents or subcontractors) is subject to obligations of confidentiality.

## The parties will document in the Order Form: (i) the subject matter and duration of the processing; (ii) the nature and purpose of the processing; (iii) the type of personal data and categories of data subjects; and (iv) the obligations and rights of the party processing the information.

## The Processing Party shall:

### not transfer any Personal Data of the Controlling Party to any Non-Adequate Country without the prior written consent and instructions of the Controlling Party;

### ensure that all technical and organisational measures are in place pursuant to Article 32 (and in conformance with Article 28 (3)(f)) to ensure the security of Personal Data of the Controlling Party including: (i) appropriate encryption and pseudonymisation of the Personal Data; (ii) measures which ensure the confidentiality, integrity, availability and resilience of such systems that process the Personal Data; (iii) ensuring appropriate technical and organisational measures are taken against unauthorised or unlawful processing of the Personal Data and against accidental loss, destruction or damage to the Personal Data (having regard to the state of technological development and the cost of implementing such measures); and (iv) ensuring that a process is in place to regularly test the effectiveness of such measures referred to above;

### notify the Controlling Party immediately if it becomes aware of any actual or suspected data security breach involving the Personal Data of the Controlling Party (which shall include, without limitation, any breach of this clause 11 or other unauthorised or unlawful processing or loss of, or destruction or damage to, the Personal Data) (such notice to include a description of such breach or suspected breach and the category of approximate number of Data Subjects concerned);

### provide reasonable assistance to the Controlling Party to demonstrate compliance with this clause 11 and allow for and contribute to audits conducted by the Controlling Party upon its reasonable request, including providing any information to enable the Controlling Party to ensure both parties are meeting their obligations under Privacy Laws;

### notify the Controlling Party without delay if, in its opinion, an instruction given by the Controlling Party breaches Privacy Laws;

### not transfer or permit the processing of the Personal Data of the Controlling Party by any third party without the prior written consent of the Controlling Party. Where such consent is given, the Processing Party shall ensure that such third party is under similar or equivalent obligations (ie. a written contract) to those set out in this clause 11. The Processing Party shall remain liable to the Controlling Party for the acts of any such sub-contractor(s) in relation to the processing of such Personal Data; and

### within 5 (five) Business Days of a request from the Controlling Party, comply with any request in relation to one or more identified data subjects and provide all such assistance requested by the Controlling Party so that it can comply with its obligations under the Privacy Laws.

## Upon request of the Controlling Party, and in the event of termination or expiry of the Contract (unless the Controlling Party agrees otherwise), the Processing Party shall deliver up all relevant Personal Data of the Controlling Party and promptly (or in accordance with any reasonable timescales stipulated by the Controlling Party at the time) securely delete or destroy all such Personal Data (except such Personal Data which is required to be stored in accordance with the Privacy Laws). The Processing Party will provide reasonable evidence to demonstrate compliance with this clause on request.

# Ethics

## The Supplier shall:

### comply with all Applicable Laws in the provision of the Services including but not limited those relating to anti-bribery, anti-slavery, equality and prevention of facilitation of tax evasion including but not limited to the Bribery Act 2010, the Equality Act 2010, the Modern Slavery Act 2015 and the Criminal Finances Act 2017 (**"Relevant Requirements"**);

### not engage in any activity, practice or conduct which would constitute an offence under the Relevant Requirements if such activity, practice or conduct had been carried out in England or Wales ;

### provide the Services without any breach of the Relevant Requirements and in a manner reflecting a commitment to the prevention of facilitation of tax evasion, safety and human rights in the workplace;

### comply with the Policies relating to equality and diversity, anti-bribery, prevention of facilitation of tax evasion, and anti-slavery and enforce them where appropriate (Relevant Policies);

### promptly report to LJMU:

#### any breach, or potential breach, of the Relevant Requirements and/or Relevant Policies;

#### any actual or suspected slavery or human trafficking in a supply chain which has any connection with the Contract and/or LJMU; and

#### any request or demand for any undue financial or other advantage (including the facilitation of tax evasion) of any kind received by the Supplier in connection with the performance of its obligations under the Contract.

## The Supplier warrants and represents that at the date of the Contract coming into force neither the Supplier, any Key Personnel nor any of its officers, employees, agents:

### has been convicted of any offence under the Relevant Requirements; and

### to the best of its knowledge, has been or is the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence in connection with the Relevant Requirements.

## Breach of this clause 12 shall be deemed a material breach of the Contract.

# Termination

## Without limiting its other rights or remedies, LJMU may terminate the Contract with immediate effect by giving written notice to the Supplier if:

### the Supplier commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 14 (fourteen) days of being notified in writing to do so;

### the Supplier repeatedly breaches any term of the Contract in such manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of the Contract;

### performance of the Contract would in LJMU's reasonable opinion, or LJMU reasonably believes, would adversly affect its reputation and/or cause LJMU to be in breach of any Applicable Law;

### LJMU reasonably believes that a Force Majeure Event has impacted or may materially impact on the Supplier's ability to perform its obligations under the Contract;

### the Supplier (being a body corporate) is declared or becomes insolvent, has a moratorium declared in respect of any of its indebtedness, enters into administration, receivership, administrative receivership or liquidation or threatens to do any of these things (an **"Insolvency Event"**);

### the Supplier (being an individual) is declared bankrupt, enters into any composition or arrangement with his creditors, has a receiver appointed to any of his assets, or ceases to carry on business (also an **Insolvency Event**)) (or, the Supplier being a partnership, has a partner to whom any Insolvency Event applies);

### the Supplier (being an individual) (or any Key Personnel) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation;

### the Supplier suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business;

### the Supplier's financial position deteriorates to such an extent that in LJMU's opinion the Supplier's capability to fulfil its obligations under the Contract adequately has been jeopardised; or

### the individual providing the Services on behalf of the Supplier is deemed to have employment status with LJMU for tax purposes under Chapter 10 of Part 2 of ITEPA 2003.

## LJMU may terminate the Contract for convenience on the provision of 3 months written notice to the Supplier.

## The Supplier may terminate in the event that LJMU has failed to pay an undisputed invoice, following the expiry of 60 days from receipt by LJMU of a notice from the Supplier notifying LJMU of such delayed payment, or if LJMU undergoes an Insolvency Event as referenced above.

## On termination of the Contract for any reason, the Supplier shall immediately deliver to LJMU all Deliverables whether or not complete and return all LJMU Materials to LJMU. If the Supplier fails to do so, LJMU may enter the Supplier's premises and take possession of them. Until such items have been delivered or returned, the Supplier shall be solely responsible for their safekeeping and shall not use them for any purpose not connected with the Contract.

## Termination of the Contract, however arising, shall not affect any of the parties' rights, remedies, obligations or liabilities that have accrued as at termination.

## Conditions that expressly or by implication survive termination of the Contract shall continue in full force and effect.

# Remedies

14.1 If the Supplier has supplied Services that do not comply with the requirements of clause 2 or has failed to deliver the Services by any Key Date (as defined in the Commercial Terms) then, without limiting or affecting other rights or remedies available to it, LJMU shall have one or more of the following rights and remedies:

* + 1. to terminate the Contract with immediate effect by giving written notice to the Supplier;
    2. to return the Deliverables to the Supplier at the Supplier's own risk and expense;
    3. to require the Supplier to provide repeat performance of the Services, or to provide a full refund of the price paid for the Services (if paid);
    4. to refuse to accept any subsequent performance of the Services which the Supplier attempts to make;
    5. to recover from the Supplier any expenditure incurred by LJMU in obtaining substitute services or deliverables from a third party; and
    6. to claim damages for any additional costs, loss or expenses incurred by LJMU arising from the Supplier's failure to comply with clause 2 or to meet a Key Date; and
    7. to require a refund form the Supplier of sums paid in advance for the Services that the Supplier has not provided.

14.2 These Conditions shall extend to any substituted or remedial services and/or repaired or replacement goods supplied by the Supplier.

14.3 LJMU’s rights and remedies under the Contract are in addition to, and not exclusive of, any rights and remedies implied by statute and common law.

# Force majeure

Neither party shall be in breach of the Contract or liable for delay in performing, or failure to perform, any of its obligations under it, if such breach, delay or failure results from a Force Majeure Event, provided that (i) the party affected promptly notifies the other of the cause and likely duration of the breach, delay or failure, (ii) uses all reasonable endeavours to remove or avoid the effects of the Force Majeure Event and (iii) resumes performance of its obligations under the Contract without delay when the Force Majeure Event ceases to have effect.

# General

## **Assignment and other dealings**

### LJMU may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with any or all of its rights or obligations under the Contract.

### The Supplier may not assign, transfer, mortgage, charge, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of LJMU.

## **Subcontracting**

The Supplier may not subcontract any or all of its rights or obligations under the Contract without LJMU's prior written consent save in the exercise of its right to substitute in accordance with clause 8. The Supplier shall remain liable for all the acts and omissions of any subcontractor or substitute or sub-processor as if they were its own acts and omissions.

## **Entire** **agreement**

The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

## **Variation**

No variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is agreed in writing and signed by LJMU.

## **Waiver**

No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of, or prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

## **Severance**

If any provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision shall be deemed deleted. Any modification or deletion of a provision under this condition shall not affect the validity and enforceability of the rest of the Contract.

## **Notices**

Any notice given to a party under or in connection with the Contract shall be in writing and shall be delivered by hand or by pre-paid first-class post or by a signed-for next working day delivery service to the address for Notices as set out in the Order Form.

## **Third party rights**

No one other than a party to the Contract and their permitted assignees shall have any right to enforce any of its terms.

## **Relationship**

Nothing in the Contract is intended to, or shall be deemed to, establish any partnership, employment relationship or joint venture between the Supplier and LJMU, constitute either party the agent of the other party or authorise either party to make or enter into any commitments for or on behalf of the other party.

## **Governing** **law and jurisdiction**

The Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by, and construed in accordance with, the laws of England, and the courts of England shall have exclusive jurisdiction to settle any such dispute or claim.

## **Announcements**

The Supplier shall not refer to the Contract or LJMU in any customer list, presentation, article or other promotional material without LJMU's prior written consent.

# Definitions and Interpretation

## The following definitions shall apply to the Conditions and the Order Form:

**Applicable Law:** any and all laws, regulations and industry standards or guidance (including any applicable British Standard) and any binding judgment of a relevant court of law which is or are relevant to the Contract;

**Business Day:** a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business;

**Charges:** the charges payable by LJMU for the supply of the Services as set out in the Order Form;

**Commencement Date:** the date set out in the Order Form;

**Conditions:** the terms and conditions set out in this document as amended from time to time in accordance with clause 15.4;

**Confidential Information:** any and all know-how, documentation and information, whether commercial, financial, technical, research, personal data, operational or otherwise, relating to the business, affairs, customers, suppliers, employees, affiliates, products, methods, research and/or processes of LJMU and disclosed to or otherwise obtained by the Supplier in connection with the Contract;

**Contract:** the contract between LJMU and the Supplier for the supply of Services which incorporates these Conditions and the Order Form, and any other additional documents referred to in the Order Form;

**Deliverables:** all documents, products and materials developed by the Supplier or the Key Personnel as part of or in relation to the Services in any form or media, including drawings, maps, plans, diagrams, designs, pictures, computer programs, data, specifications and reports (including drafts);

**EIRs:** the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations (as updated from time to time);

**FOIA:** the Freedom of Information Act 2000 ("**Act**"), 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 ( as updated from time to time);

**Force Majeure Event:** an event that is beyond the reasonable control of a party, which that party is unable reasonably to prevent or avoid and which hinders, delays or prevents performance by that party, provided that such event or circumstance is limited to the following (i) Acts of God, flood, drought, earthquake or other natural disaster; (ii) terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations; (iii) nuclear, chemical or biological contamination or sonic boom; (iv) any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition, and (v) collapse of buildings, fire, explosion or accident.

**GDPR:** Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data;

**Good Industry Practice:** the use of standards, practices, methods and procedures conforming to Applicable Law and the exercise of that degree of skill, care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person engaged in the provision of services similar to the Services to an entity of a similar size and nature as LJMU under the same or similar circumstances;

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

**Key Personnel:** the personnel engaged by the Supplier in the performance of the Contract including those names in the Order Form;

**LJMU:** Liverpool John Moores University, a Higher Education Corporation established under the Education Reform Act 1988 whose administrative offices are Egerton Court, 2 Rodney Street, Liverpool L1 2UA or any of its affiliated or related companies ;

**LJMU Materials:** all materials, equipment and tools, drawings, specifications and data supplied or made available by LJMU to the Supplier;

**Non Adequate Country:** means a country or territory which is outside the European Economic Area and in respect of which there has not been an adequate decision (being a finding under Article 25(2) of the Data Protection Directive or Article 25 of the GDPR that a country or territory ensures an adequate level of protection);

**Order Form:** LJMU's order for the supply of the Services, as attached to these Conditions;

**Policies:** LJMU's policies and procedures provided or made available to the Supplier from time to time;

**Privacy Laws:** means the GDPR, Data Protection Act 2018 and any other applicable or related legislation;

**Request for Information:** a request for information under the Code of Practice on Access to Government Information, FOIA or the EIRs;

**Services:** the services, including without limitation any Deliverables, to be provided by the Supplier under the Contract;

**Specification:** the specification for the Services that is referred to in the Order Form agreed in writing by LJMU and the Supplier; and

**Supplier:** the person or firm from whom LJMU purchases the Services as set out in the Order Form.

## **Interpretation** In these Conditions, the following rules apply:

### a reference to a statute or statutory provision is a reference to such statute or provision as amended, re-enacted or superseded and includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;

### any phrase introduced by the terms **including**, **include**, **in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms;

### headings are used in these Conditions for convenience only and shall not alter its construction or interpretation. The Order Form shall have the effect as is set out in these Conditions;

### Unless expressly stated otherwise, in the case of any conflict or inconsistency in relation to any of the following elements of the Contract, they shall prevail in the following order:

#### the Order Form; and

#### the Conditions.

#### **Appendix 1**

**Quotation for an independent analysis to inform the development of a collaborative model for higher-technical education involving regional Further Education Colleges, Group Training Associations, and Universities**

**Industry:** Research and development services and related consultancy services

**Location of contract:** NW

**Value of contract:** £0 - £24,999

**Published date:** XX/XX/2021

**Closing date:** XXXX

**Closing time:** 23.59

**Contract start date:** XX June 2021

**Contract end date:** 20 August 2021

**Description**

The Liverpool City Region Combined Authority (LCRCA) has commissioned a study involving Liverpool John Moores University (LJMU), three regional Further Education Colleges (FEC), two Group Training Associations (GTA), and the Merseyside Colleges Association, to explore the feasibility and definition of a regional model of higher technical skills progression.

The aim is to conduct a robust and reliable study to provide a level of confidence in the viability of the model, with a view to piloting the model starting September 2022. This first step involves a 3-month piece of work focused on the Engineering curriculum. The work will include working 1-2-1 with partners to deliver:

1. Confirmation of the working model and feasible delivery timelines.
2. Independent analysis of the levels of demand, potential growth, and risk assessment.
3. An Outline Business Case and associated ROI.

LJMU seeks a quotation from a suitably skilled consultancy, with experience in higher technical skills as a driver for current and future economic growth and productivity gains.

Please direct any queries or requests for further information to:

Professor Ian Jenkinson, Faculty of Engineering & Technology, Liverpool John Moores University

Email: [i.d.jenkinson@ljmu.ac.uk](mailto:i.d.jenkinson@ljmu.ac.uk)

**More information**

Higher technical skills in the Liverpool City Region feasibility study project brief and terms of reference

**Higher technical skills in the Liverpool City Region feasibility study project brief and terms of reference**

# Introduction

Productivity gains through socially-inclusive green growth and innovation are at the heart of national and regional government plans to Build Back Better. The UK has the second lowest productivity rate in the G7. Over the last 10 years productivity has fallen from an annual rate of 2.6 per cent to around 0.4 per cent. The capacity of firms to absorb innovation is strongly linked to the availability of skilled technical labour at Levels 4 to 5 (HNC, and HND) delivered by the regional Further Education Colleges (FEC) and Group Training Associations (GTA), and Level 6, 7, and 8 (Degree, Masters, Professional Doctorate) technical and management qualifications delivered by universities. **It will be the skills of a region’s workforce that will determine whether opportunities for innovation are recognised and taken up by firms, and aspirations for regional productivity growth realised.**

Government policy recognises the role of Further Education in addressing the problems of productivity, social mobility, the increasing need for labour market flexibility, and the acute national and regional shortage of skilled technicians.[[1]](#footnote-2) Technicians occupy roles that require intermediate skills in technical subjects (Levels 3 to 5). The availability of technicians significantly increases the capacity of businesses to innovate.[[2]](#footnote-3) A recent research study concluded that degrees and apprenticeships alone will not be enough to fill the UK’s higher technical skills gap. [[3]](#footnote-4) While in Germany 20% of the younger workforce have a Higher Technical Vocational qualification, in the UK just 4% hold similar qualifications. This compares with over 30% who have a qualification at Level 3 (e.g. A-Level) and Level 6 (degree)[[4]](#footnote-5).

# Problem to be addressed

(1) Large numbers of people with ‘Craft’ Level 3 Apprenticeships are currently unable to progress to higher technical qualifications, at Levels 4 to 5; (2) Low numbers of learners at Levels 4 and 5 results in individual colleges being unable to economically deliver specialist technical units (particularly at Level 5); (3) Low numbers of people progressing to Level 5 qualifications leads to lower numbers being able to process to Level 6 top-up degree programmes, which in turn affects the viability of these courses.

# Proposal to address the problem

The Liverpool City Region (LCR) is exploring the opportunity to simplify the plethora of L4 and L5 delivery options[[5]](#footnote-6) using the existing regional FE/GTA skills infrastructure – with Higher Education (HE) helping plug curriculum and staffing/delivery gaps (specialist engineering and construction subject knowledge; delivery staff; specialist equipment and infrastructure).

Skills delivery post-pandemic needs to be low-risk, capital-lite and agile. If feasible, this model could provide a flexible and responsive alternative to the current portfolio of FE-HE collaboration models -merger (e.g., London South Bank University Group); strategic partnership (e.g., Middlesex University-Capital City Colleges Group); Institutes of Technology; and Foundation Degrees.

# Higher technical skills in the Liverpool City Region

The City-Region aspires to replace fragmented provision and learner confusion with a ‘joined-up’ system of higher technical skills training that supports innovation, part-time learning and enables seamless skills progression and upskilling opportunities for all age groups throughout their working lives. It aims to address this through the development of a model for regional Further Education Colleges, Group Training Asiocations, and Universities to be able to collaborate to deliver technical vocational education from Levels 4 to 8 (HNC to Professional Doctrorate).

# Scope of work

Independent analysis is required to inform a design and implementation plan for a regional higher technical skills progression framework to underpin innovation in the region and respond to demand from new and emerging sectors.

The work will include working 1-2-1 with partners to deliver:

1. Confirmation of the working model and feasible delivery timelines.
2. Independent analysis of the levels of demand, potential growth, and risk assessment.
3. An Outline Business Case and associated ROI.

The output from this study should include:

1. Isolation of a viable curriculum with partners
2. Proposed outline delivery model
3. Analysis of demand and potential growth
4. Development of the Financial Case with partner Finance teams
5. The Socio-Economic Case
6. Final report

We require a robust and reliable feasibility study, to provide a level of confidence among delivery partners in the financial viability of the model, with a view to piloting the model starting September 2022. It is anticipated the scope of the pilot will include:

1. Regional provision for Level 3 ‘bridging/access’ programmes designed for people with a Level 3 'Craft’ apprenticeship qualifications to progress to Level 4+.
2. The development of a shared core curriculum at Levels 4 to 5, and sharing of specialist technical higher education modules which are currently not viable in terms of student numbers and recruitment/retention of specialist staff. A model of pooling student numbers from a number of regional colleges to achieve critical masses of learners.
3. Establishing a viable collaborative model for degree apprenticeships between the region’s FECs and GTAs, and regional HE.

# Information to be provided in the quotation

1. A comprehensive proposal covering all aspects of the scope of work.
2. A project plan with defined stages, including key deliverables at each stage and overall timeframe.
3. A demonstrable track record of experience in the relevant field, to include a statement of experience listing any similar projects and CV(s) of the consultant(s) who will undertake the project.
4. A budgetary estimate of the fixed price (inclusive of VAT).
5. A statement agreeing to sign a Non-Disclosure Agreement to protect commercially sensitive data and to share all intellectual property (IP) with the partner consortium and the LCRCA.

Quotations are required by XX , with an anticipated start date of XXX, or earlier at mutual agreement.

The final report is required by.

# Assessment criteria

Project plan (20%)

Evidence of understanding of the policy area, and track record in this field (30%)

Project budget (30%)

Evidence of professional/technical ability to undertake the work (20%)

Please limit responses to a maximum 4 A4 pages.

**Schedule 2**

**Template Funder Terms and Conditions**

**Dated 2021**



**Liverpool City Region Combined Authority**

**- and -**

**[ ]**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Grant Funding Agreement for Pre-Development Work**

**[ ]**

**[PDV REF]**

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**THIS AGREEMENT** is dated 2021

**Parties:**

1. **LIVERPOOL CITY REGION COMBINED AUTHORITY** of No.1 Mann Island, Liverpool, L3 1BP (“the Funder”); and
2. **Liverpool John Moores University** of Egerton Court, Rodney Street, Liverpool ] (“the Recipient”)

(each a “Party” and together the “Parties”).

# Background

1. The Recipient is proposing to undertake a development project in the Liverpool City Region. Based on information provided by the Recipient, the Funder considers that this project falls within the objectives of its investment strategy to drive sustainable economic growth within the Liverpool City Region.
2. The Recipient has applied to the Funder for funding to support pre-development work on the project. The Funder has agreed to pay the Grant to the Recipient to assist the Recipient in carrying out this pre-development work, with a view to determining the feasibility of the project and whether an application for further funding from the Funder’s Strategic Investment Fund will be required to deliver it.
3. The Funder does not require the Recipient to carry out the pre-development work or the project, and the Recipient is not obliged to carry these out, but the Funder makes the Grant conditional on the terms and conditions of this Agreement in order to safeguard the funds contained in the Grant and to ensure the appropriate use of the Grant by the Recipient.

**Agreed terms**

# Definitions and Interpretation

1.1 In this Agreement the following terms shall have the following meanings:

## **Application:** The Recipient’s application for pre-development funding support from the Funder’s Strategic Investment Fund, as set out in Schedule 1.

## **Eligible Costs**: costs which are reasonably incurred by the Recipient in carrying out Pre-Development Works.

Grant: the maximum amount of [ ] to be paid by the Funder from the Strategic Investment Fund (SIF) to the Recipient in accordance with this Agreement.

Pre-Development Work: the activities in connection with the Project set out in Schedule 2 of this Agreement.

Project: the development project that the Recipient is proposing to undertake as detailed in the Application.

Project Consultants: the third party or third parties procured by the Recipient to undertake all or part of the Pre-Development Work.

Scope of Work: the document or documents setting out the scope of the Pre-Development Work, in addition to Schedule 2 of this Agreement.

Subsidy Control: the UK’s subsidy control regime, including subsidy control commitments contained in the UK-EU Trade and Co-operation Agreement, commitments on subsidies arising from the UK’s membership of the WTO (including but not limited to the Agreement on Subsidies and Countervailing Measures) and any system of subsidy control developed and maintained by the UK Government in accordance with the UK-EU Trade and Co-operation Agreement and/or the European Union (Future Relationship) Act 2020.

Terms of Reference: the document or documents setting out the terms of reference which will guide delivery of the Project including the Pre-Development Works.

Working Day: means a day, other than a Saturday or Sunday, on which banks are open for general business in the United Kingdom.

1.2 In the event of any conflict between the terms of this Agreement and the Application or any other document relating to the subject matter of this Agreement, the terms of this Agreement shall prevail.

# Pre-Development Work

## Prior to the commencement of the Pre-Development Work, the Funder and the Recipient will agree on a Scope of Work for the Pre-Development Work, which will include setting out the work to be undertaken by the Project Consultants.

## Prior to any Grant being paid by the Funder to the Recipient, the Recipient will:

## [Insert details of any conditions specified by Investment Team e.g. evidence of match funding]

## Any revisions to the Scope of Work must be agreed in writing by the Parties.

## The Recipient must deliver, and ensure that the Project Consultants undertake to deliver, the Pre-Development Work in accordance with this Agreement and the agreed finalised Scope of Work (or any subsequent agreed revised Scope of Work), unless agreed otherwise in writing by the Funder.

## The Recipient will ensure that any Project Consultants instructed to carry out all or any part of the Pre-Development Work are suitably skilled, qualified and experienced to carry out the tasks that they are instructed to perform and hold a sufficient level of professional indemnity insurance to cover any risks or potential losses that may arise in relation to those tasks. The Recipient will provide evidence of the Project Consultants’ skills, qualifications, experience and insurance cover to the Funder upon request.

# Use of the Grant

## The Recipient shall use the Grant only to cover Eligible Costs and in accordance with the terms of this Agreement.

## The Grant shall not be used for any other purpose without the prior written agreement of the Funder.

## The Funder is under no obligation to provide the Recipient with any further funding in respect of the Pre-Development Work, the Project or for any other purpose.

## The Recipient may not obtain any funding towards the costs of the Pre-Development Work from any third party without the prior written agreement of the Funder.

## The Recipient shall ensure that all use of the Grant is in accordance with the Funder’s Strategic Investment Fund Strategy for the Liverpool City Region and any other guidelines or policies that the Funder may specify to the Recipient as being relevant to the Project.

## The Recipient shall ensure that its receipt and use of the Grant is in accordance with Subsidy Control. The Recipient agrees to maintain appropriate records of compliance with Subsidy Control and agrees to take all reasonable steps to assist the Funder to make any reports or respond to any investigation(s) in respect of its use of the Grant and the Project as a whole.

# The Grant payment

## The Grant shall be paid by the Funder to the Recipient in instalments based on the items listed in the Activity Schedule Table contained in Schedule 2 of this Agreement.

## Payment of the Grant instalments shall be made within 30 calendar days of receipt by the Funder from the Recipient of evidence that the Eligible Costs relating to item(s) in the Activity Schedule Table have been paid by the Recipient.

# Reduction, withdrawal and repayment of the Grant

## The Funder may withdraw or reduce, or require the Recipient to repay all, or any proportion of, the Grant on the grounds in Schedule 3.

## Should the Funder require the Recipient to repay all or any proportion of the Grant, it will notify the Recipient in writing. The Recipient must make that repayment within 15 Working Days of the date of that notice or by any later deadline agreed by the Funder in writing.

# Pre-Development Completion Report

## Within 30 Working Days of completion of the Pre-Development Work, the Recipient shall provide the Funder with a report (in such form as may reasonably be required by the Funder) setting out the following:

### A breakdown of how the Grant has been utilised;

### The outcome of the Pre-Development Work and any changes to the Project resulting from this. If the Recipient considers that the Project is no longer feasible as a result of the Pre-Development Work, then detailed reasons for this conclusion must be provided;

### Information relating to how the Project will support the Funder’s strategic objectives that has been identified or substantiated by the Pre-Development Works; and

### Whether the Recipient intends to submit an application to the Funder for further funding to deliver the Project and the proposed timescale for this application and delivery of the Project. This should include details of any alternative funding sources that have been considered in order to reduce or remove the need for funding from the Funder.

## If required, the Funder may ask for copies of any reports prepared by the Project Consultants to be annexed to the report provided under clause 6.1.

# Accounts and records

## The Recipient shall keep separate, accurate and up-to-date accounts and records of the receipt and expenditure of the Grant.

## The Recipient shall keep all invoices, receipts, and accounts, and any other relevant documents, relating to the expenditure of the Grant for a period of at least six years following the day on which the final Grant payment is made. The Funder shall have the right to review, at the Funder's reasonable request, the Recipient's records that relate to the expenditure of the Grant.

# Procurement

## In procuring the services of the Project Consultants to undertake the Pre-Development Work, the Recipient must:

1. comply with all applicable law, including the Public Contract Regulations 2015;
2. upon the Funder’s request, demonstrate to the Funder that it has obtained best value through its procurement process and provide documentary evidence to the Funder that it has carried out the procurement exercise in accordance with such contract procedure rules and laws as are applicable to the Recipient; and
3. include in its contracts with the Project Consultants a written condition providing that the Project Consultants may invoice only in arrears (i.e. after costs have been incurred) for services provided by them in undertaking the Pre-Development Work.

# Warranties

## In accepting the Grant and any payment of it, the Recipient represents and warrants that:

1. it is validly existing and the execution on behalf of the Recipient of this Agreement has been validly authorised and the obligations expressed as being assumed by the Recipient under this Agreement constitute valid legal and binding obligations of the Recipient enforceable against the Recipient in accordance with their terms;
2. it has full capacity and authority to deliver the Pre-Development Work and the Project, including procuring the services of the Project Consultants to undertake the Pre-Development Work;
3. in relation to the Pre-Development Work and its use of the Grant, it has and will continue to comply with any applicable law, guidance or industry code, rule of court or directives or requirements of any regulatory body;
4. it has obtained and will continue to have any consents or approvals, and has the resources and expertise necessary to deliver the Pre-Development Work and procure the services of the Project Consultants to undertake the Pre-Development Work, and to comply with the terms of this Agreement;
5. it has disclosed in writing to the Funder all information which would or might reasonably be thought to influence the Funder’s decision to award the Grant and which might materially and adversely impact on the Recipient’s ability to deliver the Pre-Development Work or the Project, including procuring the services of the Project Consultants to undertake the Pre-Development Work, or comply with the terms of this Agreement; and
6. the information and evidence in, and relating to or disclosed to the Funder in relation to the Grant, the Pre-Development Work and the Project, remain true, complete and accurate, and that it will advise the Funder of any fact, matter or circumstance which would render any such information or evidence false or misleading.

# Duration

## Except where otherwise specified, the terms of this Agreement shall apply from the date of this Agreement until the later of the date of the final Grant payment and the date on which all obligations under this Agreement are fulfilled to the satisfaction of the Funder.

## Any obligations under this Agreement that remain unfulfilled following the expiry or termination of the Agreement shall survive such expiry or termination and continue in full force and effect until they have been fulfilled.

# Intellectual property

## The Funder and the Recipient agree that all rights, title and interest in or to any information, data, reports, documents, procedures, forecasts, technology, know-how and any other intellectual property rights (“the Intellectual Property Rights”) owned by either Party before the start of the Pre-Development Work or developed by either Party for or as part of the Pre-Development Work shall remain the property of that Party. The Recipient hereby grants to the Funder an irrevocable royalty free, non-exclusive licence to use any Intellectual Property Rights funded in whole or in part by the Grant for or in connection with the discharge of its functions.

# Termination

## The Funder may terminate this Agreement and any obligation to make any further payment of Grant on giving the Recipient one month’s written notice should it be required to do so by financial restraints or a change in legislation or Government policy, or if in the reasonable view of the Funder it is no longer necessary or appropriate to support the Project to achieve the Funder’s objectives.

## The Funder may terminate this Agreement and any Grant payment immediately and without notice following the occurrence of any of the grounds listed in Schedule 3.

# Limitation of liability

## The Funder’s liability under this Agreement is limited to payment of the Grant.

## The Recipient remains entirely responsible for its risks and liabilities in delivering the Pre-Development Work and the Funder accepts no liability for any consequences, whether direct or indirect, that may arise from the Recipient delivering the Pre-Development Work, the Recipient’s use of the Grant or any reduction, withdrawal or repayment of the Grant.

## The Recipient shall indemnify and hold harmless the Funder, its employees, agents, officers or sub-contractors with respect to all claims, demands, actions, costs, expenses, losses, damages and all other liabilities arising from or incurred by reason of the actions and/or omissions of the Recipient in relation to the Pre-Development Work or the Recipient’s use of the Grant, the non-fulfilment of obligations of the Recipient under this Agreement or its obligations to third parties. The Recipient shall hold sufficient insurance to cover its potential liabilities under this clause 13 and shall provide evidence of such insurance to the Funder on request.

# Assignment etc.

## The Recipient may not, without the prior written consent of the Funder, assign, novate, sub-contract or otherwise transfer the benefit and/or the burden of this Agreement or, except as contemplated as part of the Pre-Development Work, transfer or pay to any other person any part of the Grant.

# Variation

## Any variation to the terms of this Agreement shall be agreed in writing between the Parties and shall take effect following execution by the Parties of a valid deed of variation or other written instrument appropriate to the variation.

# Freedom of information

## The Recipient acknowledges that the Funder is subject to the requirements of the Freedom of Information Act 2000 and the Environmental Information Regulations 2004, and shall assist and co-operate with the Funder to enable the Funder to comply with these requirements.

# Data protection

## The Recipient shall (and shall procure that any of its staff or contractors involved in connection with the activities under this Agreement shall) comply with all applicable requirements and all of its obligations under the Data Protection Act 2018 and any other national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in the UK, and any successor legislation, which arise in connection with this Agreement.

# Confidentiality and Publicity

## The Recipient shall not publish any material referring to the Pre-Development Work, the Project or this Agreement without the prior written agreement of the Funder. Each Party shall during the term of this Agreement and thereafter keep secret and confidential all business, technical or commercial information disclosed to it by the other Party as a result of the Agreement and shall not disclose the same to any person save to the extent necessary to perform its obligations in accordance with the terms of this Agreement, to meet any legal or regulatory requirements or as expressly authorised in writing by the other party.

# Notices

## All notices and other communications in relation to this Agreement shall be in writing and shall be deemed to have been duly given personally delivered or mailed (first class postage prepaid), to the address of the relevant Party, as referred to above or otherwise notified in writing. If personally delivered all such communications shall be deemed to have been given when received (except that if received on a non-Working Day or after 5.00 pm on any Working Day they shall be deemed received on the next Working Day) and if mailed all such communications shall be deemed to have been given and received on the second Working Day following such mailing.

# No partnership or agency

## This Agreement shall not create any partnership or joint venture between the Funder and the Recipient, nor any relationship of principal and agent, nor authorise any Party to make or enter into any commitments for or on behalf of the other Party.

# Waiver

## No failure or delay by either Party to exercise any right or remedy under this Agreement shall be construed as a waiver of any other right or remedy.

# Third Party rights

## This Agreement does not and is not intended to confer any contractual rights or benefits on any person for the purposes of the Contracts (Rights of Third Parties) Act 1999.

# Law and jurisdiction

## This Agreement shall be governed by and construed in accordance with the law of England, and the Parties irrevocably submit to the exclusive jurisdiction of the courts of England and Wales.

# Entire Agreement

## This Agreement constitutes the entire agreement between the Parties, and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

## This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

|  |  |  |
| --- | --- | --- |
| **The Common Seal** of | ) |  |
| **LIVERPOOL CITY REGION COMBINED** | ) |  |
| **AUTHORITY** | ) |  |
|  | ) |  |
| is affixed opposite and is authenticated by: | ) |  |
|  |  |  |
|  |  |  |
| ……………………………………. |  |  |
| Authorised Officer |  |  |
|  |  |  |
| Name: |  |  |
| (block capitals) …………………………… |  |  |

|  |  |  |  |
| --- | --- | --- | --- |
| **EXECUTED AS A DEED** by the **RECIPIENT** acting by two directors or one director and its company secretary |  | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Signature  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Name (print)  Director | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Signature  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Name (print)  Director / Secretary |

**Schedule 3**

**Grounds for reduction, withdrawal and repayment of the Grant**

In accordance with clause 5.1, the Funder may withdraw or reduce, or require the Recipient to repay all, or any proportion, of the Grant, on any of the following grounds.

1. The Recipient fails to comply with the terms of this Agreement and the non-compliance is not remedied within a reasonable period or is not capable of remedy;
2. The Funder has reasonable grounds to consider that the Recipient has used the Grant other than in accordance with the terms of this Agreement;
3. The Funder has reasonable grounds to consider that the information and evidence provided by the Recipient in relation to the Pre-Development Works or the Grant has not been complete and accurate or supplied honestly and in good faith;
4. There is a change to the Pre-Development Works which the Funder reasonably considers to be material and has not agreed to in writing;
5. The Grant or any proportion of the Grant remain unspent or uncommitted to the delivery of the Pre-Development Works by [DATE];
6. There has been a change to the Recipient’s circumstances which the Funder reasonably considers makes (or would have made) a material difference to the Recipient’s eligibility for the Grant or the conditions on which it is appropriate to award the Grant;
7. There is a finding of Subsidy Control non-compliance by a Court or other agency of competent jurisdiction which leads to the Recipient being ordered to repay the Grant or any part of it;
8. The Recipient becomes insolvent or goes into liquidation whether voluntary or otherwise or shall have a receiver or administrator appointed by the Court, any debenture holder or any other party;
9. The Recipient is convicted of a criminal offence relating to its business or profession;
10. The Recipient ceases or threatens to cease to carry on its business; or
11. There is a risk or a genuine belief that there is a risk that reputational damage to the Funder will occur as a result of this Agreement continuing.

1. Skills for jobs white paper [↑](#footnote-ref-2)
2. [‘Technicians and Innovation: A Literature Review’](https://www.gatsby.org.uk/uploads/education/technicians-and-innovation.pdf) Lewis (2019) for Gatsby Charitable Foundation [↑](#footnote-ref-3)
3. [‘Higher technical education consultation – analysis’](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/903521/Higher_technical_education_consultation_analysis_York_Consulting.pdf) Department for Education (2020) [↑](#footnote-ref-4)
4. Post-16 education: highest level of achievement by age 25 (Department for Education, 2018). [↑](#footnote-ref-5)
5. Almost 3,400 qualifications from 150 different awarding bodies are offered at Levels 4/5 [↑](#footnote-ref-6)