

## **TERMS AND CONDITIONS OF CONTRACT**

**Provision of Portable Appliance Testing  
MLT-PAT-2020/1**

**DATE**

THIS AGREEMENT is made the *[Insert date]* day of *[Insert Month]* *[Insert year]*

Between

(1) **Minerva Learning Trust, 7 Shay House Lane, Sheffield, Company Number 09200332** (“The Client”)

And

(2) ***[Insert company name, registered address and company registration number]***  
 (“The Supplier”)

### **Definition of Terms**

In these Conditions:

“Agreement” means the agreement between the Client and the Supplier consisting of these Conditions and any attached Schedules, the Invitation to Tender, [the Supplier’s Tender] [and any other documents (or parts thereof) specified by the Client].

“Approval” and “Approved” means the written consent of the Client’s Contract Manager.

“Client” means the **Minerva Learning Trust (MLT)** and includes, but is not limited to, the Contract Manager.

“Client Property” means any property, other than real property, issued or made available to the Supplier by the Client in connection with the Agreement.

“Commencement Date” means *[Insert date]*

“Commercially Sensitive Information” means the subset of Confidential Information listed in the Commercially Sensitive Information Schedule comprised of information:  
(a) which is provided by the Supplier to the Client in confidence for the period set out in that Schedule; and/or  
(b) that constitutes a trade secret.

“Commercially Sensitive Information Schedule” means the Schedule containing a list of the Commercially Sensitive Information.

“Condition” means a condition within the Agreement.

“Confidential Information” means any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information which relates to the business, affairs, properties, assets, trading practices, Services, developments, trade secrets, Intellectual Property Rights, know-how, personnel, customers and suppliers of either party, [all personal data and sensitive personal data

within the meaning of the Data Protection Act 1998] and the commercially sensitive information.

“Contract Manager” means the person for the time being appointed by the Client as being authorised to administer the Agreement on behalf of the Client or such person as may be nominated by the Contract Manager to act on its behalf.

“Agreement Price” means the price exclusive of any applicable tax, payable to the Supplier by the Client under the Agreement, as set out in the Pricing Schedule, for the full and proper performance by the Supplier of its part of the Agreement as determined under the Conditions of the Agreement but before taking into account the effect of any adjustment of price in accordance with the Price Variation Clause <<insert price variation clause number>>.

“Default” means any breach of the obligations of either party (including but not limited to fundamental breach or breach of a fundamental term) or any default, act, omission, negligence or statement of either party, its employees, agents or sub-contractors in connection with or in relation to the subject matter of the Agreement and in respect of which such Party is liable to the other.

“Equipment” means the supplier’s equipment, plant, materials, etc. used in the performance of its obligations under the Agreement.

“Intellectual Property Rights” means patents, inventions, trade marks, service marks, logos, design rights (whether registrable or otherwise), applications for any of the foregoing, copyright, database rights, domain names, trade or business names, moral rights and other similar rights or obligations whether registrable or not in any country (including but not limited to the United Kingdom) and the right to sue for passing off.

“Key Personnel” mean those persons named in the Specification as being key personnel.

“Law” means any applicable law, statute, bye-law, regulation, order, regulatory policy, guidance or industry code, rule of court or directives or requirements of any Regulatory Body, delegated or subordinate legislation or notice of any Regulatory Body.

“Monitoring Schedule” means the Schedule containing details of the monitoring arrangements.

“Month” means calendar month.

“Party” means a party to this Agreement and “Parties” shall be construed accordingly.

“Premises” means the location where the Services are to be performed, as specified in the Specification.

“Pricing Schedule” means the Schedule containing details of the Agreement Price.

“Schedule” means a schedule attached to this Agreement.

“Services” means the services to be provided as specified in the Specification.

“Specification” means the description of the Services to be provided under the Agreement and attached as the Specification Schedule.

“Specification Schedule” means the Schedule containing details of the Specification.

“Supplier” means the person, firm or company with whom the Client enters into this Agreement.

**WHEREAS:**

The Client wishes to acquire certain services from The Supplier and The Supplier is willing to provide such services to The Client on the terms and conditions set out in this Agreement.

## 1 Term & Scope

- 1.1 This Agreement will:
  - 1.1.1 Come into force as soon as both parties have signed it or, if earlier, as soon as The Supplier provides such Services to The Client (the 'Commencement Date')
  - 1.1.2 Apply in relation to Services supplied by The Supplier to The Client under this Agreement on or after the Commencement Date; and
  - 1.1.3 Remain in force until [insert date] or until terminated by either party in accordance with these Conditions, or otherwise lawfully terminated or extended pursuant to Clause [insert Clause number]
- 1.2 No relationship of agency, joint venture or partnerships will be created or will be deemed to exist between the parties by virtue of the execution or performance of this Agreement. Unless this Agreement expressly provides otherwise, neither party will have authority to bind the other party without the other party's written consent.

## 2 Provision of the Services

- 2.1 The Supplier shall provide the Services during the Agreement Period in accordance with the Client's requirements as set out in the Specification or Schedule and the terms of this Agreement. The Client shall have the power to inspect and examine the performance of the Services at any reasonable time.
- 2.2 If the Client informs the Supplier that the Client considers that any part of the Services do not meet the requirements of the Agreement or differ in any way from those requirements, and this is other than as a result of default on the part of the Client, the Supplier shall at its own expense re-schedule and perform the work correctly within such reasonable time as may be specified by the Client without prejudice to the Client's other rights arising from any breach of the Agreement. If the defect is not remedied within a reasonable time the Client may seek alternative remedies to be funded by the Supplier. Timely supply of the Services shall be of the essence of the Contract, including in relation to commencing the supply of the Services within the time agreed or on a specified date.
- 2.3 Without prejudice to any other rights and remedies the Client may have pursuant to this agreement, the Supplier shall reimburse the Client for all reasonable costs incurred by the Client which have arisen as a direct consequence of the Supplier's delay in the performance of the Agreement which the Supplier has failed to remedy after being given reasonable notice by the Client.

2.4 The Supplier acknowledges that it:

- has sufficient information about the Client and the Specification and that it has made all appropriate and necessary enquires to enable it to perform the Services in accordance with the Agreement.
- shall neither be entitled to any additional payment nor excused from any obligation or liability under the Agreement due to any misinterpretation or misunderstanding by the Supplier of any fact relating to the Specification or otherwise to the Agreement; and
- shall comply with all lawful and reasonable directions of the Client relating to its performance of the Services.

2.5 The Services include assisting other suppliers providing services to the Client or any other member of the Client's Group at no additional cost to the Client to the extent that such assistance or management of other suppliers is as described in, contemplated by or reasonably to be inferred from the Services or the nature or manner of the supply thereof.

2.6 Notwithstanding the above, the Supplier shall, where directed by the Client, provide at no cost all reasonable assistance, information and co-operation to any other third party with which any member of the Client's Group has a relationship subject to the signature of confidentiality agreements between the Supplier and those third parties.

### **3 Warranties and Representations**

3.1 The Supplier warrants and represents that:

- a) the Supplier has the full capacity and authority and all necessary consents (including, but not limited to, where its procedures so require, the consent of its parent company) to enter into and perform this Agreement and that this Agreement is executed by a duly authorised representative of the Supplier;
- b) the Supplier shall discharge its obligations hereunder with all due skill, care and diligence including, but not limited to, good industry practice and (without limiting the generality of this Condition) in accordance with its own established internal procedures;
- c) all obligations of the Supplier pursuant to the Agreement shall exercise in the performance of the Services the reasonable skill, care and diligence to be expected of an appropriately qualified practitioner holding himself out as having the competence, experience and resources necessary for the proper performance of such services in connection with a project of a size and scope and complexity similar to that of the Project.

- d) the Supplier is not in default in the payment of any due and payable taxes or in the filing, registration or recording of any document or under any legal or statutory obligation or requirement which default might have a material adverse effect on its business, assets or financial condition or its ability to observe or perform its obligations under this Agreement.

#### **4 Personnel and Competencies**

- 4.1 The Supplier will employ the Key Personnel to supervise the performance of the Services. Any changes to the Key Personnel must be discussed with the Client in advance.
- 4.2 The Client may, by notice in writing to the Supplier, object to any of the Supplier's personnel and the Supplier will immediately remove such person from performing the Services and provide a suitable replacement at no additional cost to the Client.
- 4.3 The Supplier undertakes that it will not introduce or supply any personnel to the Client unless it has first obtained confirmation of their identity, that they have the experience, training, qualifications and any authorisations which the Client considers are necessary or which are required by law to deliver the Service.
- 4.4 The Supplier shall ensure that its personnel have all the necessary administrative and legal authorisations including (without limitation) entry visas, residence permits and work permits; and ensure that personnel required by the Client to be security cleared obtain clearance prior to commencement of the Services; and enter into a confidentiality agreement with the Client in a form acceptable to the Client.

#### **5 Assignment and Sub-Contracting**

- 5.1 Neither party shall assign the Agreement or any of its rights or obligations there under without first having received the written approval of the other party
- 5.2 The Supplier shall not sub-Contract the Agreement or any part thereof without having first obtained the written permission of the Client provided that this restriction shall not apply to sub-Contracts for materials or minor details or any part of the work to be performed or materials or equipment to be supplied for which the sub-Contractor is named in the Agreement.
- 5.3 The Supplier shall be responsible for the acts, defaults and omissions of its sub-contractors, whether approval has been given to their appointment under this Clause or not, as if they were his own and any consent given under this Clause shall not relieve the Supplier of any of his obligations under the Agreement.

#### **6 Variation of the Services**

- 6.1 The Client reserves the right on giving reasonable written notice to require changes to the Services (whether by way of the removal of Services, the addition of new Services, or increasing or decreasing the Services or specifying the order

in which the Services are to be performed or the locations where the Services are to be provided) for any reasons whatsoever. Such a change is hereinafter called “a Variation”.

- 6.2 The substance of any Variation must be agreed between parties. Any Variation shall be confirmed by the Client to the Supplier in accordance with the change control provision of this Agreement.
- 6.3 In the event of a Variation the Agreement Price may also be varied. Such Variation in the Agreement Price shall be calculated by the Client and agreed in writing with the Supplier and shall be such amount as properly and fairly reflects the nature and extent of the Variation in all the circumstances.

## **7 Time is of the Essence**

- 7.1 The time for delivery and/or completion of the work to be performed under the Agreement shall be of the essence of this Agreement.

## **8 Liquidated Damages**

- 8.1 If the Contractor completes the work late, the Client shall be entitled to impose liquidated damages on the contract sum. For the application of this Clause, the date of completion shall be the date specified in accordance with Sub-clause 1.1.3.

## **9 Free Issue Equipment or Material**

- 9.1 In the event that the Specification states that free issue equipment or material is to be made available in connection with the Agreement then **MLT** will make available or supply to the Supplier such equipment and material upon the terms set out in the Specification.
- 9.2 The Supplier will at the time of taking possession of the equipment and material check that it is in good condition and of a quality suitable for use by the Supplier in performance of the Services and will certify any supplier's advice note or notify the Client in writing accordingly and return any such advice note within fourteen days to the Client's supplier of such equipment or material. Any damage or loss will be reported immediately to the Agreement Manager and, if relevant, the Client's suppliers of such equipment or material and the carriers of the equipment or material. In the event that such report is not made the Supplier will be responsible for any loss or damage existing at the time of receipt which would have been apparent on a visual check of quantities and condition and in any event will be responsible for any damage or loss of the equipment or material occurring whilst such equipment or material is in its possession.
- 9.3 If the Client makes available equipment and material to the Supplier, the Client makes no warranty in relation to the quality and fitness for purpose of the equipment and material.
- 9.4 The Supplier will ensure that all free issue equipment and material made available by the Client is securely located at the Supplier's premises and is clearly labelled as the property of the Client at all times while used in the Services.



## **10 Property in Materials and Goods**

- 10.1 Title and property in the Equipment and/or Premises will remain with the Client and all materials and/or goods supplied under the Agreement will vest in the Client when they are brought on to the Client Premises. Property in such materials and/or goods will only re-vest in the Supplier to the extent that any such materials or goods are surplus to the requirements of the Agreement.
- 10.2 The Supplier will not and will ensure that its sub-contractor or any other person will not have a lien, charge or encumbrance on or over any such materials or goods which are vested in the Client under this Clause for any sum due to the Supplier or its sub-contractors or other persons and the Supplier will take all reasonable steps as may be necessary to ensure that the title of the Client and the exclusion of any such lien charge or encumbrance are brought to the notice of sub-contractors and other persons dealing with any such materials or goods. The Client will not be liable to the Supplier in respect of any loss or damage to materials or goods that vest in the Client under this Clause.

## **11 Environment**

- 11.1 Supplier warrants that prices for alternative products, where such products exist, which are free from harmful toxins, chemicals or gases, or which are manufactured from recycled material, and which are in any case proven to be less detrimental to the environment. Supplier agrees to provide goods/services which accord with the Client's policy on the environment. The Supplier shall, when working at the Client's premises, perform the Agreement in accordance with the Client's environmental policy, which is to conserve energy, water, wood, paper and other resources, reduce waste and phase out the use of ozone depleting substances and minimise the release of greenhouse gases, volatile organic compounds and other substances damaging to health and the environment.

## **12 Construction (Design and Management) Regulations 2007**

- 12.1 For the purposes of the construction (Design and Management) Regulations 2007 and any amendment thereafter ("the CDM Regulations") the Client appoints and/or reserves the right to appoint as part of the Services the Supplier to act as any or all of the following:
- a. Client's agent pursuant to Regulation 4(1) of the CDM Regulations;
  - b. Planning Supervisor pursuant to Regulation 6(1)(a) of the CDM Regulations;
  - c. Principal Contractor pursuant to Regulation 6(1)(b) of the CDM Regulations.
- 12.2 The Supplier accepts and/or agrees to accept any such appointment if so appointed and agrees to carry out all obligations imposed by the CDM Regulations on the Client's agent, the Planning Supervisor and/or the Principal Contractor (including those requirements relating to the Health and Safety Plan under Regulation 15 of the CDM Regulations) as the case may be. Any such

appointment made after the date of execution of the Form of Agreement will be classed as a Variation and the Charges will be varied by reference to the sums set out in Schedule (if any).

- 12.3 The Parties will provide each other with all necessary assistance that they may reasonably require in order to fulfil their respective obligations under the CDM Regulations, any applicable Standard and pursuant to any appointment made under Clause 12.1 above.

### **13 Insurance**

- 13.1 Without prejudice to its liability to indemnify the Client, the Supplier will arrange and maintain throughout the duration of the Agreement (unless otherwise stated):-
- 13.2 Employer's liability insurance in respect of the Supplier's liability for any person in the Supplier's employment in the sum of not less than £10 million per incident or such other minimum level as may from time to time be required by law;
- 13.3 Public and Product liability insurance in respect of the Supplier's liability in the sum of not less than £5 million , per occurrence, as may be set out in Schedule with financial loss extension and shall be endorsed to provide that no act or omission on the part of the Supplier shall prejudice the Client's rights under such policy as principal
- 13.4 Professional indemnity insurance in a sum normal and customary for a supplier in the business of providing services of a similar scope, nature and complexity to the Services but not less than the sum as may be set out in Schedule in the aggregate per annum for the duration of the Agreement and for twelve (12) years after expiry or termination of the Agreement;
- 13.5 Insurance of all materials acquired by or delivered to the Supplier for the purposes of performing its obligations under the Agreement (whether or not the property of the Supplier or of the Client) against loss, destruction and damage for their full re-instatement value until such time as such materials are delivered to the Client and/or the Services are completed.
- a) any other insurances specified in Schedule E (Insurances)
  - b) and the insurances referred to in this Clause and any other insurance which the Agreement refers to or is obliged to take out under the provisions of the Agreement are for the purposes of this clause only called "the Insurances"
  - c) without prejudice to these Insurance provisions, the Supplier will ensure that it has sufficient insurances to cover its legal liability (including liability assumed under the Agreement) that may arise out of or in the course of or by reason of its performance, non-performance or part-performance of the Agreement and that the Insurances extend to indemnify the Client as principal

13.6 The Supplier shall:

- a) provide evidence satisfactory to the Client prior to the Commencement Date and at least five business days prior to each anniversary of the Commencement Date that the Insurances have been effected and are in force. Where any of the Insurances is due for renewal during the duration of the Agreement, the Supplier shall within five business days of the date of renewal also provide the Client with satisfactory evidence that such insurance has been renewed;
- b) if required by the Client, procuring that prior to cancelling or changing any term of any of the Insurances, the insurer or insurers under any such insurances give the Client not less than thirty days' notice of intention to cancel or make such change;
- c) not take or shall not fail to take any action or (insofar as it is reasonably within its power) permit anything to occur in relation to it which would entitle any insurer to refuse to pay any claim under any of the Insurances;
- d) notify the Client as soon as reasonably practicable in writing of any anticipated or actual event or circumstance which may lead or has led to any Insurance lapsing or being terminated or the cover under it being reduced or modified;
- e) notify the Client as soon as reasonably practicable in writing upon becoming aware of any claim, event or circumstance which is likely to give rise to any claim or claims in aggregate in respect of the Services in excess of £[] on any of the Insurances and, if requested by the Client and where not otherwise subject to an obligation of confidentiality, provide full details of such claim, event or circumstance (and such other relevant information as the Client may reasonably require) within 3 business days of the Client's request;
- f) promptly and diligently deal with all claims under the Insurances relating to the Services and in accordance with all insurer requirements and recommendations; and
- g) in relation to any claim settled under the Insurances in respect of the Services, and to the extent that the proceeds of such claim are payable to the Supplier, pay the proceeds to the person who suffered the loss or damage that gave rise to the claim (whether the Client, any member of the Client's Group or any third party).

13.7 If the Supplier is in breach of these Insurance provisions, then without prejudice to any of its other rights, powers or remedies, the Client may pay any premiums required to keep any of the Insurances in force or itself procure such Insurances.

In either case, the Client may recover such premiums from the Supplier, together with all expenses incurred in procuring such Insurances as a debt. Further should the Client be required to extend the period of its insurance coverage due to the negligence or other default of the Supplier, the Supplier shall pay to the Client the costs of the said extended insurance.

13.8 The Supplier will comply with the terms and conditions of the Insurances and all reasonable requirements of the insurers, including without limitation, in connection with the prosecution and settlement of claims, the recovery of losses and the prevention of accidents. The Supplier will bear the cost of all excesses, exclusions and limitations under the Insurances.

13.9 In relation to all the Insurances except that required under these Insurance provisions:-

- a. the Supplier will not compromise, settle or waive any claim which the Supplier may have under the Insurances without the prior written consent of the Client, and
- b. the Supplier agrees that the Client will have the right to control and to supervise all dealings with the media in relation to any incident, event, claim or action.
- c. the Supplier's liability under the Agreement will not be restricted, limited or altered by any stipulation or arrangement in the Agreement with regard to insurance or by any approval of insurance policies and all losses and/or damages for which Supplier is liable and which are not recovered under insurances will be for the Supplier's account.

## **14 Possible Extension of Contract Period**

14.1 Subject to satisfactory performance by the Supplier during the Agreement Period, the Client may wish to extend the Agreement for a further period of up to [ ] year(s). The Client may approach the Supplier if it wishes to do so before the end of the Contract Period. The Conditions in this Contract will apply throughout any such extended period.

## **15 Co-operation in Handover**

15.1 The Supplier will provide, at no cost, such reasonable assistance to the Client and to any third party nominated by the Client as is required to migrate the Contract to a new Supplier effectively and efficiently, either at the natural termination date or if terminated at will in accordance with Clause 32 below. This Clause will extend to the full Expiration Year and the three months after the Expiration Date in order that the Client may successfully, and with minimum risk, engage a successor supplier to provide the Services or to commence to provide those services in-house, using its own staff and resources. In particular (but without limitation) the Supplier will, where so required provide all reasonable help, assistance and co-operation:-

- a. in the transfer of the provision of all facilities associated with the provision of the Services from the Supplier to the Client and/or to the “Successor Supplier”.
  - b. to effect the transfer of such Documentation as is necessary to enable the “Successor Supplier” and/or the Client to set up and effect the changeover.
- 15.2 Without prejudice to the above, the Supplier will on or prior to the Expiration Date transfer to the Client such Documentation relating to the Services as the Client may request.
- 15.3 The Supplier's obligation to effect a smooth transfer of records, information, functions and the like in relation to the Services, either to the Client or a “Successor Supplier” will be carried out in such a manner so as not to interfere with use and enjoyment of the Services and without the Client's business being unduly disrupted or hindered. For the avoidance of doubt and notwithstanding other provisions contained in the Agreement, the Supplier will be obliged to meet the requirements of the Agreement during the whole of the Expiration Year.

## **16 Construction**

- 16.1 The Schedules, Annexes and Appendices expressly referred to in and attached to this Agreement form part of this Agreement and are contractually binding on both parties.

## **17 Notices**

- 17.1 Except as otherwise expressly provided within the Agreement, no notice or Communication from one Party to the other shall have any validity under this Agreement unless confirmed in writing by or on behalf of the Party concerned.



## **18 Entire Agreement**

- 18.1 The Agreement constitutes the entire agreement between the Parties relating to the subject matter of the Agreement. This Agreement supersedes all prior negotiations, representations and undertakings; whether written or oral, except that this Clause shall not exclude liability in respect of any fraudulent misrepresentation.

## **19 Survival**

- 19.1 The provisions of [21]) will survive the termination or Expiration Date of the Agreement and continue in full force and effect, along with any other Clauses or Schedules of the Agreement necessary to give effect to them. In addition, any other provision of the Agreement which by its nature or implication (including in respect of any accrued rights and liabilities) is required to survive the termination or Expiration Date of the Agreement will survive such termination or Expiration Date.

## **20 Waiver**

- 20.1 Any failure by the (Client) to insist at any time upon the performance of any of the terms, provisions or undertakings of the (Supplier) contained in the Agreement or to exercise any rights thereunder shall not constitute or be construed as a waiver thereof or a relinquishment of the (Client's) rights to require the future performance of any such term, provision or undertaking but the obligation of the (Supplier) with regard to the same shall continue in full force and effect.

## **21 Confidentiality, Intellectual Property and Data Protection**

21.1 Other than by statute, each party shall treat the Agreement and any information it may have obtained or received in relation thereto or arising out of or in connection with the performance of the Agreement or its negotiation or relating to the business or affairs of the other as private and confidential and neither party shall publish or disclose the same or any particulars thereof without the prior written consent of the other or as may be permitted under the later provision of this Clause.

21.2 The obligations expressed in Clause 21.1 shall not apply to any information which:

- a) is or subsequently comes into the public domain otherwise than by breach of this Clause
- b) is already in the possession of the receiving party without an accompanying obligation of confidentiality
- c) is obtained from a third party who is free to divulge the same
- d) is independently and lawfully developed by the recipient or its sub Contractor outside the scope of the Agreement
- e) is required by law – The Contractor acknowledges that the Client is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with the Client to enable the Client to comply with its Information disclosure obligations. The Contractor shall and shall ensure that any sub-contractors shall transfer to the Client all Requests for Information that it receives as soon as practicable and in any event within [two] Working Days of receiving a Request for Information;
  - (i) provide the Client with a copy of all Information in its possession, or power in the form that the Client requires within [five] Working Days (or such other period as the Client may specify) of the Client's request; and
  - (ii) provide all necessary assistance as reasonably requested by the Client to enable the Client to respond to the Request for Information within the time for compliance set out in section 10 of the FOIA or Regulation 5 of the Environmental Information Regulations.



- 21.3 The Client shall be responsible for determining in its absolute discretion and notwithstanding any other provision in this Agreement or any other agreement whether the Commercially Sensitive Information and/or any other Information is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations.
- 21.4 In no event shall the Contractor respond directly to a Request for Information unless expressly authorised to do so by the Client.
- 21.5 So far as it may be necessary for the performance of the Supplier for the operation and maintenance of the subject matter of the Agreement each party may divulge any information to be kept confidential under sub-Clause 1 of this Clause to their employees, agents and sub-contractors on a “need to know” basis but undertake that they will take all steps necessary to ensure compliance by such employees, agents, and sub-contractors with the obligations as to confidentiality expressed in this Clause, including without limitation incorporating such clauses into their own agreements with such persons, and will be responsible to the other party for any failure by any employee, agent or sub-Contractor to comply with such obligations whether such employee, agent or sub-Contractor was aware of them or not.
- 21.6 All intellectual property rights in all works or supplies provided under this Agreement which are written or produced on a bespoke or customised basis, including, without limitation, all future such rights when the said works are created, shall be owned by the Client and the Supplier shall ensure that it executes all documents necessary to effect such ownership. Where the Supplier provides existing intellectual property right protected material to the Client under this Agreement it shall disclose this to Client, warrants it has the right to do so and shall fully indemnify and hold Client harmless against all loss or liability arising from any third party intellectual property rights claims arising both from such existing material and in relation to any such bespoke work. Except as provided above both parties retain ownership of their pre-existing intellectual property rights protected material

## **22 Conflicts of Interest, Fraud and Competition Law**

- 22.1 The Supplier shall take all appropriate steps to ensure that neither it nor any employee, servant, agent, supplier or sub-contractor is placed in a position where there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier or such persons and the duties owed to the Client under the provisions of the Agreement. The Supplier shall disclose to the Client full particulars of any such conflict, or potential conflict of interest which may arise. If any such conflict arises the Supplier shall notify the Client in writing and the Client shall agree the most appropriate action.
- 22.2 The Supplier shall safeguard the Client against fraud. The Supplier shall notify the Client immediately if it has reason to suspect that any fraud has occurred or is occurring or is likely to occur.

- 22.3 The Supplier warrants that it has engaged in no price fixing, bid rigging, illegal price information exchange agreement or other arrangement in breach of UK, EU or other competition laws relevant to the Supplier arrangements between the parties.
- 22.4 The Supplier warrants that it and its sub-contractors and suppliers and its and their respective employees and agents have not committed, and shall not offer or agree to give to any servant, employee, officer or agent of the Company any gift or consideration of any kind as an inducement or reward:-
- a. for any act or failure to act in relation to the obtaining or performance of this Agreement or any other Agreement or arrangement with the Company and a third party; or
  - b. for any favour or disfavour to any person in relation to this Agreement or any other such agreement; or
  - c. for entering into this Agreement or any other such agreement where commission or rebates have been paid or agreed to be paid by it or on its behalf or to its knowledge without the Company's prior agreement
- 22.5 The Supplier warrants that it and its sub-contractors and suppliers, and respective employees and agents have not committed, and shall not commit, any offence under legislation creating offences in respect of fraudulent acts or at Common Law in respect of fraudulent acts relating to this Agreement or any other agreement with the Company or defraud or make any attempt to defraud the Company.
- 22.6 If requested by the Company, the Supplier shall terminate the employment of any of its personnel who breach the provisions of this Clause. The Supplier shall include a provision in each of its sub-contracts entitling it to terminate the employment of the sub-contractor's employees in such circumstances.

## **23 The Contracts (Rights of Third Parties) Act 1999**

- 23.1 No person who is not a Party to the Agreement (including without limitation any employee, officer, agent, representative, or sub-contractor of either the Client or the Supplier) shall have any right to enforce any term of the Agreement. This Clause does not affect any right or remedy of any person which exists or is available otherwise than pursuant to that Act.

## **24 Statutory Regulations**

- 24.1 Both parties shall in all matters relating to the performance of the Agreement comply with all Acts of Parliament and with all orders, regulations and bye-laws made with statutory authority by Government Departments or by local or other authorities. The cost to each party of meeting the requirements of this Clause shall be borne by that party.
- 24.2 If the cost to the (Supplier) of the performance of the Agreement shall be increased or reduced by reason of the making after the date of the Agreement of any new law or order or regulation having the force of law as referred to in sub-Clause 1 above or of the making of any change to any such law, order or regulation in force at the date of Agreement that shall be applicable to the Agreement (other than any tax on profits), the amount of such increase or reduction shall be paid to or repaid by the (Supplier) as appropriate.

## **25 Discrimination**

- 25.1 The Supplier shall not unlawfully discriminate within the meaning and scope of any law or regulation relating to discrimination (whether in race, gender, religion, disability, age, sexual orientation or otherwise) in employment. The Supplier shall take all reasonable steps to secure the observance of this provision by all servants, employees or agents of the Supplier and all suppliers and sub-contractors employed in the execution of the Agreement.

## **26 Publicity**

- 26.1 Neither party shall without the written consent of the other (the giving of which consent shall be at the sole discretion of that party) advertise, publicly announce or provide to any other person information relating to the existence or details of the Agreement or use the other party's name in any format for any promotion, publicity, marketing or advertising purpose.

## **27 Terms of Payment**

- 27.1 The Supplier shall be entitled to invoice the Client at the times and in the manner specified in the Agreement.
- ***Monthly Invoices in arrears of work carried out.***
  - ***Payment to be made 30 days from date of receipt of the invoice***
  - ***Invoices to either be posted to company address or ideally emailed to [finance@minervalearningtrust.co.uk](mailto:finance@minervalearningtrust.co.uk)***
- 27.2 Provided that the invoice was one which under the Agreement the Supplier was entitled to submit the Client shall pay the Supplier within the period of days specified in the Agreement above, from the date of receipt of the invoice subject to any right of deduction which the Client may have by way of setoff or abatement. If the Client does make any such deduction then he shall notify the Supplier accordingly in writing with reasons.

- 27.3 If the Client shall fail to make any payment to the Supplier to which the Supplier is entitled under this Clause after deduction of any amount which the Client is entitled to deduct, then the Client shall pay to the Supplier, where so demanded by the Supplier, in addition to the amount not properly paid simple interest for the period in days until such payment is made. The rate of interest shall be **[10%]** per annum over the Base Rate of the Bank of England ruling at the date when the payment became overdue.

## **28 Recovery of sums due**

- 28.1 All damages, costs, charges, expenses, debts, sums or other amounts owing to, or incurred by the Client, arising out of or attributable to, the Agreement or any other agreement with the Supplier may be deducted by the Client from monies due or which may become due to the Supplier under such contracts.

## **29 Right of audit**

- 29.1 The Supplier shall keep secure and maintain until two years after the final payment of all sums due under the agreement, or such longer period as may be agreed between the parties, full and accurate records of the services and expenditure reimbursed by the Client and all payments made by the Client.
- 29.2 The Supplier shall grant to the Client or its authorised agents, such access to those records as they may reasonably require in order to check the Suppliers compliance with the agreement.

## **30 Parent company guarantee**

- 30.1 The Supplier will provide, at its expense, on signature of the Agreement, a parent company guarantee (from the Supplier's ultimate parent company unless otherwise agreed with the Client) and/or a performance bond as specified in, and substantially in the format contained in the Schedule. The Client will not be obliged to make any payments under the Agreement until the parent company guarantee and/or performance bond has been provided in a form satisfactory to the Client.

## **31 Force Majeure**

- 31.1 For the purpose of the Agreement the term Force Majeure shall mean:
- a. war and other hostilities (whether war be declared or not) invasion, terrorist activity, act of foreign enemies, mobilisation, requisition or embargo
  - b. rebellion, revolution, insurrection, military or usurped power or civil war
  - c. riot, commotion or disorder except where solely restricted to employees of the Supplier or its sub-contractors or sub-suppliers
  - d. natural physical disasters except to the extent that any such disaster is caused by, or its effects contributed to by, the party claiming force majeure
  - e. a general industrial dispute not limited to the employees of the Supplier or the employees of any of its sub-contractors or sub-suppliers.

- 31.2 If either party considers that any circumstance of Force Majeure has occurred which may affect materially the performance of its obligations then he shall forthwith notify the other in writing to that effect giving full details of the circumstances giving rise to the Force Majeure event.
- 31.3 Neither party shall be considered to be in default of its obligations under the Agreement to the extent that it can establish that the performance of such obligations is prevented by any circumstance of Force Majeure which arises after the date of the Agreement and which was not foreseeable at the date of the Agreement.
- 31.4 If the performance of the obligations of either party under the Agreement is so prevented by circumstances of Force Majeure and shall continue to be so prevented for a period of less than 30 days, then during that period the Agreement shall be considered as suspended. Upon the ending of the Force Majeure event the Contractual obligations of the parties shall be reinstated with such reasonable modifications to take account of the consequences of the Force Majeure event as may be agreed between the parties or, in default of such agreement, as may be determined under the dispute resolution clause notwithstanding such suspension the Supplier shall use his best endeavours to assist the Client in the performance of the Agreement.
- 31.5 If performance of the obligations of either party under the Agreement is so prevented by circumstances of Force Majeure and shall continue to be so prevented for a period in excess of 30 days then the Agreement shall be terminated by mutual consent and, subject to Clause 31.6 below neither party shall be liable to the other as a result of such termination.
- 31.6 If the Agreement is so terminated then subject to the transfer to the Client of the benefit referred to in Clause 32 below the Client shall pay to the Supplier such reasonable sum as may be agreed between the parties or in default of agreement as may be determined by Expert Determination in accordance with Clause 33 in respect of costs incurred and commitments already entered into by the Supplier at the date of the Force Majeure notice, less the amount of any payments already made to the Supplier at the date of the Force Majeure notice. If the amount of such advance payments made to the (Supplier) exceeds the sum due to the Supplier under this sub-Clause then the Supplier shall repay the balance to the Client.
- 31.7 The Supplier shall transfer to the Client the benefit of all work done by him or his sub-contractors and sub-suppliers in the performance of the Agreement up to the date of the Force Majeure notice, and if applicable it shall include the rights in any licensed and developed software and licensed firmware so far as the rights in the same have accrued to the Client prior to the Force Majeure notice or will do so on the payment under Clause 31.6 above.

## **32 Termination**

- 32.1 Either party may terminate this Agreement forthwith by written notice to the other effective from the date of service of such notice if:

- a. There is a breach by the other party of any provision of the Agreement which expressly entitles the party not in breach to terminate the Agreement.
  - b. There is a material or persistent breach of any other term of the Agreement, which is not remedied within 30 days of the service of written notice to the defaulting party specifying the breach and requiring it to be remedied.
- 32.2 On termination the Client shall pay the Supplier monies due in accordance with the Agreement in respect of the materials supplied and/or services performed by the Supplier up to the date of termination together with the costs of the commitments already entered into by the Supplier at the date of termination of the Agreement, less the amount of any payments already made to the Supplier up to the date of termination. If the amount of payments already made to the Supplier at the date of termination exceeds the sum due to the Supplier under this sub- Clause then the Supplier shall repay the balance due to the Client. Any such payment shall be in full satisfaction of the Supplier's rights to payment, compensation or damages in respect of the termination or the breach of Agreement giving rise to the right of termination.
- 32.3 On payment of the sum due under Clause 32.2 the Supplier shall transfer to the Client the benefit of all work done and the property in all materials supplied by the Supplier or his sub-contractors, and title and ownership will pass in accordance with this agreement.
- 33 Termination at will clause**
- 33.1 The buying organisation may terminate the contract at any time, subject to a specified period of notice detailed in the Contract and Schedule of Performance. The Buying Organisation will pay the Contractor fair and reasonable prices for goods, material, charges, commitments and services performed up to a limit of [£500].
- 34 Dispute resolution**
- 34.1 The parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Contract within 20 working days of either party notifying the other of the dispute and such efforts shall involve the escalation of the dispute to the [finance director (or equivalent)] of each party.
- 34.2 Nothing in this dispute resolution procedure shall prevent the Parties from seeking from any court of competent jurisdiction an interim order restraining the other Party from doing any act or compelling the other Party to do any act.
- 34.3 If the dispute cannot be resolved by the Parties pursuant to clause 33.1 the Parties shall refer it to mediation pursuant to the procedure set out in clause 33.5 unless
  - (a) the Client considers that the dispute is not suitable for resolution by mediation; or



- (b) the Contractor does not agree to mediation.
- 34.4 The obligations of the parties under the Contract shall not cease, or be suspended or delayed by the reference of a dispute to mediation (or arbitration) and the contractor and the staff shall comply fully with the requirements of the Contract at all times.
- 34.5 The procedure for mediation and consequential provisions relating to mediation are as follows:
- (a) a neutral adviser or mediator (the **“Mediator”**) shall be chosen by agreement between the parties or, if they are unable to agree upon a Mediator within 10 working days after a request by one party to the other or if the Mediator agreed upon is unable or unwilling to act, either party shall within 10 working days from the date of the proposal to appoint a Mediator or within 10 working days of notice to either party that he is unable or unwilling to act, apply to *[an appropriate mediation provider]* to appoint a Mediator.
  - (b) The parties shall, within 10 working days of the appointment of the Mediator, meet with him in order to agree a programme for the exchange of all relevant information and the structure to be adopted for negotiations to be held. If considered appropriate, the parties may, at any stage, seek assistance from *[an appropriate mediation provider]* to provide guidance on a suitable procedure.
  - (c) Unless otherwise agreed, all negotiations connected with the dispute and any settlement agreement relating to it shall be conducted in confidence and without prejudice to the rights of the parties in any future proceedings.
  - (d) If the parties reach agreement on the resolution of the dispute, the agreement shall be recorded in writing and shall be binding on the parties once it is signed by their duly authorised representatives.
  - (e) If the parties fail to reach agreement in the structured negotiations within 60 working days of the Mediator being appointed, or such longer period as may be agreed by the parties, then any dispute or difference between them may be referred to the Courts [unless the dispute is referred to arbitration pursuant to the procedures set out in clause 33.6].
- 34.6 Subject to clause 33.2, the Parties shall not institute court proceedings until the procedures set out in clauses 33.1 and 33.3 have been completed save that:
- (a) the client may at any time before court proceedings are commenced, serve a notice on the contractor requiring the dispute to be referred to and resolved by arbitration in accordance with clause 33.7

- (b) if the Contractor intends to commence court proceedings, it shall serve written notice on the Client of its intentions and the Client shall have 21 days following receipt of such notice to serve a reply on the Contractor requiring the dispute to be referred to and resolved by arbitration in accordance with clause 33.7
- (c) the Contractor may request by notice in writing to the Client that any dispute be referred and resolved by arbitration in accordance with clause 33.7, to which the Client may consent as it sees fit

34.7 In the event that any arbitration proceedings are commenced pursuant to clause 34.6:

- (a) the arbitration shall be governed by the provisions of the Arbitration Act 1996
- (b) the Client shall give a written notice of arbitration to the Contractor (the **“Arbitration Notice”**) stating
  - (i) that the dispute is referred to arbitration; and
  - (ii) providing details of the issues to be resolved;
- (c) the London Court of International Arbitration (**“LCIA”**) procedural rules in force at the date that the dispute was referred to arbitration in accordance with 34.7(b) shall be applied and are deemed to be incorporated by reference to the Contract and the decision of the arbitrator shall be binding on the Parties in the absence of any material failure to comply with such rules;
- (d) the tribunal shall consist of a sole arbitrator to be agreed by the parties;
- (e) if the parties fail to agree the appointment of the arbitrator within 10 days of the Arbitration Notice being issued by the client under clause 34.7 (b) or if the person appointed is unable or unwilling to act, the arbitrator shall be appointed by the LCIA;
- (f) the arbitration proceedings shall take place in London and in the English language; and
- (g) the arbitration proceedings shall be governed by, and interpreted in accordance with, English law.

## 35 Law and Jurisdiction

35.1 The construction, performance and validity of the Agreement shall in all respects be governed by the laws of England and Wales and the parties agree to submit to



the non exclusive jurisdiction of the English courts in connection with any dispute hereunder.

**AS WITNESS** the hands of the parties or their duly authorised representatives the day and year first above written:

For and on behalf of

**Minerva Learning Trust**

SIGNED: .....

NAME: .....

POSITION: .....

For and on behalf of

**Insert Name of Supplier Organisation:**

SIGNED: .....

NAME: .....

POSITION: .....

#### SCHEDULE A - SPECIFICATION SCHEDULE

- *The specification (MLT-PAT-2020/ 1) attached forms part of this contract*

#### SCHEDULE B - PRICING SCHEDULE

- *Per Unit price - £,*
- *Repairs Price - £,*
- *Consumables*
- *Plugs - £,*
- *Fuses - £,*

#### SCHEDULE C - MONITORING SCHEDULE

- *All work carried out will be subject to inspection as per the terms of this contract.*
- *All reports submitted will be subject to inspection and checking to ensure that the correct class of equipment has been tested*

#### SCHEDULE D - COMMERCIALLY SENSITIVE INFORMATION SCHEDULE

- *All information and data provided by the trust and its schools will remain the property of the school.*
  - *Tender Documentation*
  - *Specifications.*
  - *Terms and Conditions Documents*

#### SCHEDULE E – Insurances

- *The following information was provided by the supplier as the insure and level of cover.*