**DISCLAIMER -** *This guidance and model documentation has been developed as a suggested* ***starting point*** *for colleges to adapt to suit their own requirements. FE Colleges using the model documentation or guidance should take their own legal and other relevant professional advice in respect of the specific procurement project to be undertaken. Whilst   reasonable endeavor has been made to ensure that the information contained in the guidance and model documentation is correct, no warranty, express or implied, is given as to its accuracy.* ***No*** *liability for loss or damage, which may arise from reliance upon any documentation is accepted, and the use of any of these documents is undertaken entirely at the user’s risk.*

**Terms and Conditions of Contract for the Supply of Building Works**

This document specifies the Terms and Conditions of Contract. No other Terms and Conditions in any correspondence between the Parties shall apply to this Contract unless expressly agreed by the Parties and confirmed in writing.

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47. **Interpretation and Definitions**

1. In these Conditions:

“Articles on Loan” shall mean all tools, free issue materials, patterns, drawings, specifications, software, data, and any other equipment and/or documentation loaned by the College to the Contractor.

“Authorised Officer” shall mean any person(s) nominated by the College and notified to the Contractor on the Purchase Order or at a later date in writing.

“Certificate of Completion” shall mean a document duly authorised by the Estates Officer confirming the stage of Works is practically complete, and authorising payment for that stage of Works, on the condition that the agreed percentage is deducted from the invoice by way of retention.

“Certificate of Final Acceptance” shall mean a document duly authorised by the Estates Officer confirming the stage of Works has been fully completed and accepted, and agreeing to the release of any retention monies previously deducted and held for that stage of Works.

“College” shall mean **[ Insert the College name ]**.

“Consumer Rights Act” shall mean the Consumer Rights Act 2015

“Contract” shall mean the agreement made between The College and The Contractor, including all specifications, patterns, Contractor’s samples, plans, drawings, Purchase Order and other documents, and the Contract shall comprise of these Conditions.

“Contractor” shall mean the Contracting party who undertakes to provide the Works to the College as detailed in the Specification or Purchase Order and as provided for in the Contract, meaning a person or persons, firm, Company or other legal entity whose quotation has been accepted by The College.

"Contract Price" shall mean the price exclusive of Value Added Tax payable to the Contractor by the College under the Contract for the full and proper performance by the Contractor of his part of the Contract.

“Estates Officer” shall mean any suitably qualified and experienced person(s) responsible for building Works, nominated by the College and notified to the Contractor on the Purchase Order or at a later date in writing.

“Goods” shall mean any materials, articles, instruction manuals, certificates, computer programs and data, goods and equipment to be supplied by the Contractor under this Contract in accordance with the Sale of Goods Act.

“Intellectual Property Rights” shall mean all patents, inventions, trademarks, trade names, logos, design rights, registered designs, copyright, software, database right, knowledge and trade secrets.

"Order" shall mean the College’s Purchase Order or other official document specifying the College’s requirements for the Contract to which these Conditions are annexed.

“Order Amendment” shall mean a variation to the original Purchase Order, adding to, deleting or modifying the original requirements.

“Programme” shall mean any timetable or programme of Works agreed by the parties to the Contract which regulates or specifies the period or periods for the performance of the Works or any part of them, together with any activities ancillary to the performance of the Works or the preparation and submission of reports.

"Site" shall mean the land, premises or other places as detailed in the Specification and/or Purchase Order, on, under, in or through which the Works are to be executed and any other lands, premises or places as may be provided, specified or allotted by the College from time to time for the purposes of this Contract.

“Specification” shall include, but not be limited to, any plans, drawings, data, photographs, information or samples which explain the design, structure or operation of the Works to be performed, and which are relied upon in the performance of this Contract.

“Sub Contractor” shall mean any person, firm or company under contract to the Contractor to perform Works or provide professional services and/or manufacture and/or supply any Goods under this Contract.

"Works" shall mean all construction, building repair and refurbishment work which the Contractor is required to supply under the Contract and shall, where the context so admits, include any materials, articles and goods to be supplied in accordance with the Consumer Rights Act 2015.

1. “He” and “His” are used for narrative purposes only and are not meant to favour or refer to a particular gender. As the context requires “he” and “his” may be used in a collective sense in relation to personnel of the Contractor.
2. Use of the singular includes the plural and vice versa, according to context.
3. Unless the context otherwise requires, reference in these Conditions to any enactment, order, Regulation or other similar instrument shall be construed as a reference to the enactment, order, Regulation or instrument as amended or re-enacted by any subsequent enactment, order, Regulation or instrument.
4. The headings to these Conditions shall not affect their interpretation.
5. **Validity**

If any provision of these Conditions is held by any competent authority to be invalid or unenforceable in whole or in part the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected thereby.

1. **Variation of Contract Conditions**

The Works shall be supplied in accordance with these Conditions. Any conditions which the Contractor may seek to impose and which in any way add to, vary or contradict these Conditions shall be excluded and not form part of the Contract, unless each of such conditions has been specifically agreed to in writing by the College.

1. **Purchase Order**
2. A Purchase Order raised electronically or in writing by the College constitutes an

Offer on the part of the College to acquire the Works subject to these Conditions which must be accepted either in writing by the Contractor or by the actual execution of the Purchase Order.

1. Acceptance of the Purchase Order will be deemed to bind the Contractor to these Conditions and the Works shall not be supplied or performed by the Contractor, his employees, agents or representatives, except in accordance herewith. The Contractor's Conditions of Sale do not form any part of the Contract whatsoever.
2. The Contractor is deemed to have understood the nature and extent of the Works and to have visited the site(s) and shall have satisfied itself through its own due diligence and shall make no claim founded on his failure to do so. The College shall not be liable for any Order unless it is issued or confirmed on its Purchase Order or other official document and signed by an Authorised Officer of the College.
3. **Purchase Order Amendment**
4. The College shall have the right, before commencement of the Works to send the Contractor an Order Amendment adding to, deleting or modifying the scope of the Works required.
5. If the Order Amendment will cause a change to any Price or commencement or completion date of the Works then the Contractor must suspend performance of the Contract and notify the College without delay, calculating the new Price and commencement and completion dates at the same level of cost and profitability as the original Price. The Contractor must allow the College at least ten working days to consider any new Price and Works commencement and completion dates.
6. The Order Amendment shall take effect when, but only if, the College accepts in writing the new Price and Works commencement and completion dates within the time the Contractor stipulates. If the College fails to confirm the Order Amendment within the time the Contractor stipulates then performance of the Contract shall immediately resume as though the said Order Amendment had not been issued (except that the College may still exercise the College’s right of cancellation as detailed in the following clause).
7. **College’s Right of Cancellation**
8. In addition to the College’s other rights of cancellation under this Contract, the College may cancel the Purchase Order and any Order Amendment thereto at any time by sending the Contractor a notice of termination.
9. The Contractor shall comply with any instructions that the College may issue with regard to the Works.
10. If the Contractor submits a termination claim then the College may pay to the Contractor the cost of any commitments, liabilities or expenditure which in the College’s reasonable opinion were incurred solely as a consequence of this Contract and only as at the time of termination. The College may request any supporting documentation in respect of any claim submitted. For the avoidance of doubt the total of all payments made or due to the Contractor under this Contract, including any termination payment if applicable, shall not in any event exceed the Contract Price. If the Contractor fails to submit a termination claim within 3 months of the date of the College’s notice of termination then the College shall have no further liability under the Contract.
11. **Contract Price**
12. The College reserves the right to negotiate and introduce an incentive payment scheme for the successful early completion of the Works, delivered and accepted in full by the Estates Officer, at a price less than the Contract Price.
13. The Contract Price shall be quoted in Sterling (GB Pounds) 'Net', that is, after deduction of all agreed discounts. Value Added Tax, where applicable, should be shown as a separate charge.
14. The Contract Price shall be inclusive of all royalties, licence fees or similar expenses in respect of the making, use or exercise by the Contractor of any invention or design for the purpose of performing the Works or supplying any goods under this Contract.
15. All pricing must include the full costs of providing the Works to be performed and the supply of any goods at the locations detailed in the Specification and/or Purchase Order under this Contract.
16. Transportation of personnel and any plant machinery or vehicle between Contractor bases and Works Sites shall be at the expense of the Contractor.
17. Unless there is an explicit provision in this Contract for fluctuations in the cost of building materials the Contract Price shall be fixed for the period between commencement of the Works to accepted delivery and conclusion of the Works,
18. **Invoicing and Payment**
19. Invoices should be submitted after the end of the month for which Works have just been provided or after the completion of a specific stage of the Works, or at interim periods as agreed by the Estates Officer.
20. Invoices must have either a Certificate of Completion or a Certificate of Final Acceptance attached, duly authorised by the Estates Officer.
21. To prevent delays in payment invoices should always quote the Purchase Order number along with any relevant Works advice note numbers and a sufficient description of the Works provided.
22. Value Added Tax (where applicable), shall be shown separately on all invoices as a strictly net extra charge.
23. The College will pay the Contractor in accordance with the agreed Contract rates or as modified from time to time as provided for in the Contract.
24. Whenever under the Contract any sum of money shall be recoverable from, or payable by, the Contractor, the same may be deducted from any sum then due, or which at any time thereafter may become due to the Contractor under this Contract or under any other Contract with the College.
25. Payment for the Works rendered, unless stated otherwise in the Contract, shall be made 30 days after receipt of a correctly submitted invoice.
26. The College will seek to encourage genuine early settlement discounts offered by the Contractor.
27. These Payment Terms shall not be varied without the express written authority of a Director or Authorised Officer of the College.
28. **Retention for Repairs and Defects**
29. All invoices complete with a Certificate of Completion shall have an agreed percentage of [enter percentage] % deducted from them which shall be held by the College by way of retention as security against any defects in materials and/or workmanship as agreed in the Specification and/or Purchase Order and as detailed in the section titled Retention Deduction Period.
30. Retention amounts shall only be released on submission of an invoice complete with a Certificate of Final Acceptance duly authorised by the Estates Officer detailing the original stage of the Works and the retention amount being claimed.
31. **Notices and Correspondence**
32. Any notice required to be given in writing under the Contract shall be sent by, facsimile, first class or Registered post, or delivered by hand to an agreed address of the party for which it is intended.
33. Notices sent by facsimile shall be deemed to have been given and received upon successful transmission to an agreed electronic / telephone line.
34. A correctly addressed envelope, posted 1st class, or sent by Recorded Delivery, shall be sufficient proof of the serving of a notice by post, and shall be assumed to have been received within forty-eight hours of posting.
35. Any notice delivered by hand shall be deemed to have been delivered and received provided this is handed to the College’s Receptionist.
36. **Contract Management**
37. The Contractor and the College shall each confirm in writing the appointment of an individual responsible for Contract Management and general liaison between the parties, and a further individual to be contacted should problems need to be escalated.
38. It is a requirement of this Contract to hold regular Contract Reviews to monitor performance against the terms and conditions of this Contract, to review past performance and to plan for future Works. These meetings will be formally agreed at the start of the Contract, however it is expected that the reviews shall be held at least every week / month, or more frequently if the need is required.
39. The Contractor and the College shall ensure that senior staff assigned to the Contract and other appropriate members of staff attend those meetings required by the Contract.
40. Should the most appropriate member of the Contractor’s or College’s staff be unable to attend the meeting, then a suitable replacement of equivalent status shall be fully briefed and attend on their behalf.
41. The Contractor shall keep sufficient records and management information as requested by the College and shall be required to bring such information to the Contract Reviews.
42. **Contractor’s Status**
43. In carrying out the requirements of this Contract the Contractor shall be acting as principal and not as the agent of the College.
44. The Contractor shall not (and shall procure that his agents and servants do not) say or do anything that might lead any other person to believe that the Contractor is acting as the agent of the College.
45. Nothing in the Contract shall impose any liability on the College in respect of any

liability incurred by the Contractor to any other person, but this shall not be taken to exclude or limit any liability of the College to the Contractor that may arise by virtue of either a breach of the Contract, or any negligence on the part of the College, its staff or agents.

1. **Contractor's Personnel**
2. The Contractor warrants that prior to undertaking work on the College site, Staff will have been subject to a (DBS) Disclosure Barring and Services check if those staff are to leave the designated works area and access services available on site (ie the College shop, Costa, Refectory areas etc) and therefore may come into contact with the College students. At all times the Contractor is obliged to comply with the safeguarding children and safer recruitment in education statutory guidance issued by the Department for Education and Skills (or its successor department from time to time). The cost of complying with this guidance is to be met by the Contractor.  The College shall have the right at any time to require the removal of any Staff or to challenge staff seen on site outside of the designated works area.
3. The Supplier acknowledges that the checks referred to in clause 2.5.3 above must be completed prior to any officer, employer, agent or volunteer being engaged by the Supplier in the delivery of the Services at the Customer’s site.   The Supplier shall make available to the Customer in timely fashion and in such format as the Customer may reasonably require a copy of its policy and procedures relating to the safeguarding of children and safer recruitment in education
4. All Contractor personnel and any sub contractors used in the performance of this Contract shall be deemed to be employed directly by the Contractor at all times throughout the duration of this Contract.
5. The Contractor warrants that all personnel deployed on these Works shall be properly managed and shall perform the Works under direct supervision where appropriate to ensure due care and diligence is taken at all times.
6. If and when instructed by the College, the Contractor shall give to the College a list of names, addresses and telephone numbers of all key personnel who are or may be at any time concerned with this Contract, specifying the capacities in which they are so concerned, and giving such other particulars and evidence of identity and other supporting evidence as the College may reasonably require.
7. The Contractor shall take the steps reasonably required by the College to prevent unauthorised persons being admitted to the Site(s). If the College gives the Contractor notice that any person is not to be admitted to or is to be removed from any Site, or is not to become involved in or is to be removed from involvement in the performance of the Contract, the Contractor shall take all reasonable steps to comply with such notice including the surrender of all identity cards, badges or passes issued to that person.
8. The decision of the College as to whether any person is to be admitted to, or is to be removed from a Site, or is not to become involved in, or is to be removed from involvement in the performance of the Contract, and as to whether the Contractor has furnished the information or taken the steps required of him by this Condition shall be final and conclusive.
9. If required by the College the Contractor shall replace any person removed under this Condition with another suitably qualified and experienced person acceptable to the College.
10. The Contractor shall bear the cost of any notice, instruction or decision of the College under this Condition.
11. **Time of Performance**

The Contractor shall begin performing the Works on the date stated in the Purchase Order and shall complete them by the date stated in the Purchase Order or continue to perform them for the period stated in the Purchase Order (whichever is applicable). Time is of the essence of this Contract.

1. **Testing, Inspection and Progress**
2. All Works and any materials, components, machinery and goods associated with the supply of the Works shall be subject to any tests required in the Purchase Order, at the Contractor’s expense, and the College shall be entitled to be present at all such tests on any Site.
3. The Contractor shall at his own expense provide any programmes of Works that the College may reasonably require and shall notify the College without delay in writing if the Contractor’s progress falls behind or may fall behind any of these programmes.
4. For operational reasons the College may issue a notice to the Contractor requiring him to amend any Works schedules, or to provide particular stages of Works at specified times.
5. If completion of the Works is delayed by the execution of any modified or additional Works instructed by the College, or any negligent act, neglect or default of the College or its Estates Officer, the Contractor shall be entitled to a fair extension of time for completion of the Works provided that the Contractor gives written notice (supported by full and detailed particulars) requesting an extension of time immediately upon the Works being delayed or it becoming apparent that the Works will be delayed. The College shall award an extension of time only where the Contractor has provided full substantiation.
6. The College shall have the right to check progress on all Sites, at the Contractor’s works and at the works of any sub-contractors at all reasonable times, to inspect, test and to reject Works, goods and materials that do not comply with the Contract. The Contractor shall ensure that any sub-contractors shall reserve such right for the College.
7. Any inspection or approval shall not relieve the Contractor from his obligations under this Contract.
8. **Work Requirements and Expectations**
9. The College will be relying upon the Contractor’s skill, judgement, expertise and experience in executing the Works and also upon the accuracy of all representations or statements made and the advice given by the Contractor in connection with the execution of the Works.
10. The Contractor warrants that it has fully satisfied itself as to the scope and nature of the Works and of its obligations under this Contract and has made all necessary and appropriate legal searches, enquiries and inspections and its own due diligence enquiries.
11. Unless expressly stated in this Contract the Contractor shall provide, at his own risk, all facilities, staff, materials, equipment, machinery and other items whatsoever required for the provision of Works under this Contract.
12. Access to the Site(s) shall not be exclusive to the Contractor but only such as shall enable him to carry out the Works concurrently with the execution of work by others. The Contractor shall co-operate with such others to minimise disruption as the College may reasonably require.
13. The Contractor shall make no delivery or removal of materials, equipment, vehicles, plant or other items, nor commence any Works on the Site without obtaining the College’s prior consent.
14. The Works shall at all times be performed in accordance with the Consumer Rights Act, to the usual professional and industry standards, and at a level of quality reasonably expected by the College.
15. The College shall have the power at any time during the progress of the Works to order in writing:
16. The removal from the Site of any materials, vehicles, plant or other items which in the opinion of the College pose a health and safety risk or are not in accordance with the Contract, and/or
17. The substitution of proper and suitable materials or vehicles, plant and/or
18. The proper re-execution of any Works which is not, in the opinion of the College, in accordance with the Contract.
19. **Workmanship and Materials**
20. The Contractor shall execute the Works regularly and diligently and with proper skill and care in a professional and workmanlike manner.
21. The Contractor warrants to the College that the goods and materials used in the provision of the Works:
22. Shall correspond and conform with any quantities, description, samples, presentations, patterns, drawings or other stipulation detailed in the Specification, Purchase Order or any Contractor documentation associated with this Contract;
23. Shall be of satisfactory merchantable quality and fit for their normal purpose and any other purpose made known to the Contractor expressly or by implication and in this respect the College shall rely on the Contractor’s skill, judgement, expertise and experience;
24. Shall be capable of all standards of performance specified in the Contract;
25. Shall be free from defects in design, material and workmanship;
26. Shall be supplied new unless otherwise stated in the Specification or Purchase Order;
27. Shall comply with all current legislation and meet current British Standards where such Standards exist;
28. Shall not have any asbestos content unless stated in the Specification or Purchase Order;
29. Shall comply with all statutory requirements and regulations relating to the sale or supply of the goods.
30. The Contractor shall advise the College of any changes in specification of the goods or materials associated with these Works before such changes are implemented. The College shall confirm to the Contractor the College’s acceptance or rejection of any such proposed change. If the College rejects any such change it shall be entitled to amend or cancel the supply of such goods or materials and shall issue an Order Amendment or Order Cancellation as appropriate.
31. Where the Contract calls for an applied finish to any surface, formation or the like prepared by or on behalf of the College, it is the responsibility of the Contractor to ensure that the surface, formation or the like provided by the College is suitable in all respects for the Works and in each and every case where it is not the Contractor shall notify the Estates Officer immediately in writing and in any event before commencing work.
32. Where the Contract calls for materials likely to be affected by atmospheric conditions, it is the responsibility of the Contractor to ensure that the conditions are suitable in all respects before commencing the Works and in each and every case where they are not the Contractor shall notify the Authorised Officer in writing before commencing work.
33. The Contractor shall be responsible for the protection of the Works against any damage from whatever cause howsoever arising and shall take all necessary precautions in carrying out the Works to prevent damage to the work of others.
34. Failure on the part of the Contractor to conform to the requirements of this clause or any sub clause shall in no way relieve the Contractor from any contractual obligations, warranties or guarantees.
35. **Retention Deduction Period**

It is expressly agreed between the parties that:

1. The retention deduction period for any stage of Works shall be [ 3 / 6 / 12 ] months from the date of practical completion of that stage of Works.
2. Each stage of Works shall be monitored by the Estates Officer who shall issue a Certificate of Completion when he is satisfied that the stage of Works is practically complete. The issue of a Certificate of Completion does not imply that the stage of Works has been approved nor accepted by the College.
3. The Contractor shall ensure the Certificate of Completion is attached to the invoice for that stage of Works and agrees to the temporary deduction of an agreed percentage from the invoice, by way of retention, as security against any faulty materials or workmanship for that stage of Works.
4. The Contractor shall be required to carry out any remedial work requested by the Estates Officer for any stage of Works certified as practically complete for the duration of the retention deduction period.
5. Once the retention deduction period has passed and all remedial work has been undertaken to the satisfaction of the Estates Officer on a specific stage of Works, the Estates Officer shall issue a Certificate of Final Acceptance, enabling the Contractor to invoice the College for the release of the retention money originally deducted for that stage of Works.
6. **Defect Liability Period**

It is expressly agreed between the parties that:

1. The defect liability period for any stage of Works including goods and materials shall be 24 months from the date of completion of that stage of Works.
2. The Contractor shall promptly make good at his own expense any defect in the Works, goods or materials provided to the College and discovered by any party within the first 12 months of performance. Such defects may arise from the Contractor’s faulty design, the Contractor’s erroneous instructions as to use, inadequate or faulty materials, poor workmanship or any other breach of the Contractor’s obligations whether in this Contract or at law.
3. Repairs or replacements for defective Works, goods or materials shall themselves be covered by the above warranty for a period of 24 months from acceptance by the College.
4. The Contractor shall ensure that compatible spares and materials are available to facilitate repairs (where applicable) for a period of at least 5 years from the date of delivery of the Works and associated goods and materials.
5. **Health and Safety**
6. The Contractor shall provide to the College all of the documentation necessary to fulfil the requirements of the Construction (Design and Management) Regulations 2015 and those required in order to complete the project health and safety plan and the project health and safety file.
7. The Contractor warrants that in providing the Works, including the design, manufacture and installation of associated goods and materials, he will comply with all duties imposed on him by the Health & Safety at Work Act 1974, and with all other statutory regulations applicable to the Works and all Sites of work, including College premises.
8. The Contractor shall ensure that all personnel have received sufficient training in all areas of Health and Safety relating to the delivery of this Contract, and that they carry out their duties in compliance with all Regulations currently in force.
9. The Contractor must instruct his staff to take all precautions when working in areas where there is a risk of communicable diseases. The Contractor is required to ensure that all staff are properly trained, protected and equipped to work in such areas.
10. The Contractor shall nominate at least one individual to be responsible for all matters relating to health and safety.
11. The Contractor shall comply with safety and security instructions issued by the

College and shall prohibit his employees from smoking on College Premises.

1. The Contractor shall make all his Health and Safety documents available to the College upon request.
2. All Contractor personnel shall observe the correct procedures for the lifting, handling and movement of equipment in accordance with the Manual Handling Operations Regulations 1992 (MHOR) as amended (2002).
3. All injuries and accidents must be reported immediately to the College’s Health and Safety Manager or a member of his team.
4. The Contractor shall have procedures in place for the reporting and investigation of injuries and accidents, which shall satisfy the requirements of the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations (RIDDOR).
5. For all goods, chemicals, mixtures or other substances hazardous to health the

Contractor shall:

1. ensure the College is fully informed of any risks or hazards known or believed to exist in exposure to, or the transport, storage, handling, or use of, the Goods;
2. comply with all current legislation and guidance under the Control of Substances Hazardous to Health (COSHH) and the Chemical (Hazard Information and Packaging for Supply) Regulations 2002;
3. ensure an English version of the appropriate Material Safety Data Sheet (MSDS), relevant safety information sheets and instructions for use accompanies such goods during transportation, and that a copy of such documentation is presented to the Estates Officer prior to delivery onto College premises.
4. The Contractor shall, when he is given possession of keys, be completely responsible for locking and unlocking as necessary and for Site security during his working period.
5. The Contractor shall ensure that all plant, tools, ladders, equipment, materials and chemicals are secured and stored away where possible at the end of each working day, and that all work areas are left in a reasonable state of cleanliness.
6. On completion of the Works the Contractor shall:
7. permanently restore any damaged areas or surfaces to their original state
8. remove all plant, equipment, vehicles and unused materials
9. correctly dispose of all hazardous and non hazardous material and waste
10. ensure all College Sites are left clean and safe.
11. **Property and Risk**
12. The Contractor warrants that it shall have title free from all claims, liens and encumbrances to all goods and materials supplied under this Contract.
13. Property in all materials, components, goods in the process of being assembled and finished goods shall pass to the College upon appropriation of such items by the Contractor.
14. The Contractor shall bear all risks of loss and damage to all materials, components and goods during delivery to College Sites, and shall insure such items accordingly.
15. Unless expressly provided for in this Contract the College will not be responsible for acceptance, unloading, checking, placing into position, storage, safe custody, loss, damage, or theft or any other matters arising in connection with the Contractor's material, goods, equipment or plant.
16. Should the College unload or assist with the unloading of the Contractor's material, goods, equipment or plant the Contractor hereby acknowledges that the College will do so without any liability whatsoever.
17. **Intellectual Property Rights**
18. All rights (including ownership and copyright) in any specifications, instructions, plans, drawings, patents, models, designs, or other materials furnished to or made available to the Contractor by the College are hereby assigned to and shall vest in the College absolutely.
19. All reports and other documents and materials and the copyright, intellectual property rights or similar protection therein arising out of the performance of the Services by the Contractor are hereby assigned to the College.
20. It shall be a condition of the Contract that, except to the extent that the Works or goods incorporate designs furnished by the College, the Contractor will not infringe any patent, trade mark, registered design, copyright or other right in the nature of industrial property of any third party, and the Contractor shall indemnify the College against all actions, claims, demands, costs and expenses which the College may suffer or incur as a result of or in connection with any breach of this Condition.
21. In the event of any infringement of the Intellectual Property Rights of any third party by the Contractor during the performance of this Contract, the Contractor shall at his own cost procure for the College a licence to perform the Works and/or use the goods, or shall provide to the College alternative Works and/or goods which are non‑infringing and which are reasonably acceptable to the College.
22. The provisions of these Conditions shall apply during the continuance of the Contract and after its termination howsoever arising.
23. **Assignment and Sub Letting**
24. Any change in ownership of The Contractor’s company or business, or change of partners and in the case of a Company a change in shareholders that constitutes a substantial change in the ownership of the business, whether or not this involves change of name, must be notified by The Contractor to The College in writing fourteen days prior to such change occurring. Failure to do so may be regarded as a breach of Contract.
25. No part of this contract shall be sub-contracted, transferred or assigned to a third party without the express written agreement of the College.
26. In the event of an emergency the Contractor may arrange for temporary sub-letting in order to ensure Works can continue, but must notify the College immediately of its actions. In such circumstances the College will decide whether to permit the continuance of the temporary emergency arrangements or arrange alternative suitable provision itself. Failure to comply with this condition will allow the College to terminate the contract immediately & without warning.
27. **Substitution of Contractor**
28. The College shall be entitled to immediately source an alternative provider to perform any part or the Contractor’s entire obligation under the Contract and the Contractor shall not be paid the sums due for providing the Works during these periods if:
29. The Contractor fails to complete the Works on or by the date and time at the place specified for performance;
30. The Contractor informs the College that the Works shall not be delivered on time as required in the specification;
31. The Contract is suspended or terminated.
32. The Contractor shall co-operate fully with any transfer to another provider as requested by the College to ensure minimal disruption to the College.
33. If the College is required to pay to the replacement Contractor a sum of money greater than that due to the original Contractor the excess may be recovered by the College from the original Contractor as a debt.
34. **Default by Contractor**
35. If the Contractor fails to comply with any terms of the Contract, either in relation to provision of the Works or otherwise, the College shall be entitled (whether or not the Works or any part thereof have been accepted by the College) to avail itself of any of the following remedies at the College’s discretion:
36. rescind the Contract; or
37. give the Contractor the opportunity to carry out remedial work in respect of the Works, solely at the Contractor's expense so that they comply with the terms of the Contract; or
38. refuse to accept any further performance or provision of the Works without any liability to the Contractor; or
39. carry out at the Contractor's expense such Works as may be necessary to satisfy the requirements of the Contract; or
40. claim such damages, costs and expenses as the College may have sustained in consequence of any breach of the terms of the Contract or failure by the Contractor to comply with any statutory or other legal obligations herein specified or implied by law.
41. These rights shall be in addition to and without prejudice to any other rights the College may have.
42. **Liquidated Damages**

If performance of the Works shall not have been achieved by the dates(s) specified in the Contract or, where an extension of time has been agreed, the revised date for delivery/performance, the Contractor shall pay to the College as liquidated damages for each day of delay after the date of delivery or the revised date for delivery, as applicable, a sum of 1% of the total Contract Price, up to a maximum of 5% of the Contract Price.

1. **Data Protection**
2. The Contractor shall take such appropriate technical and organisational measures as are necessary to comply with the Data Protection Act 1998 and in due course the General Data Protection Regulations 2018 to protect against unauthorised or unlawful processing of personal data (as defined in section 1(1) of the Data Protection Act 1998) and against accidental loss or destruction of, or damage to, personal data.
3. The Contractor shall ensure that all technical information (including computer programs and programming information) arising out of or deriving from this Contract is held in strict confidence except for any such information which becomes public knowledge other than by breach of this Contract.
4. **Publicity and Confidentiality**
5. The Contractor shall at all times endeavour to act in the best interests of the College under a duty of trust and confidence.
6. The Contractor and the College shall not, without prior written permission, use any confidential information for any purpose other than is necessary for the performance of its obligations under the Contract, nor make use of any information contained in any material prepared or provided by the College or the Contractor pursuant to the Contract, all of which information shall be deemed to be confidential.
7. The Contractor shall not refer to the College or the Contract nor use the College logo or other identifier in any advertisement or other public announcement without the College’s prior written consent. This does not preclude the Contractor from issuing publicity approved in advance by the College.
8. **Freedom of Information**

1. The Contractor acknowledges that the College is subject to legal duties under

the Freedom Of Information Act 2000 (FOI) and/or Environmental Information Regulations 2004 (EIR) which may require the release of information on request, including matters relating to, arising out of, or under, this Contract.

1. The Contractor shall respond to any related request for assistance from the College, at its own cost within five (5) days.
2. The College shall be entitled to disclose all Information to the extent that it is obliged to do so, within the required twenty (20) days, in order to respond to that request in accordance with FOIA and/or EIR.
3. Where the College believes the information requested is Exempted Information or Confidential Information and should not be disclosed it shall inform the Contractor of the request, and unless agreed otherwise by the Contractor the College shall not disclose the information or confirm or deny that the information is held by the College.
4. If the College is issued with guidance or an enforcement notice by the Information Commissioner it shall inform the Contractor of the details. The Contractor may request the College to appeal to the Information Tribunal against the guidance or enforcement notice and disclosure of the information.
5. The College shall at all times be entitled to seek legal advice where appropriate, and the Contractor shall indemnify the College for all legal costs and expenses incurred in obtaining legal opinion or preventing the release of the information.

1. **Audit Requirements**

The Contractor shall keep and maintain all documentation relating to this Contract until six (6) years after the Contract has been completed and shall make such records available to the College and/or the National Audit Office if requested.

1. **Liability and Indemnity**
2. Without prejudice to his liability for breach of any of his obligations under the Contract the Contractor shall be liable for and shall indemnify the College against any liability, loss, damages, costs, expenses, legal costs and expenses, claims or proceedings whatsoever arising under any statute or at common law as a result of or in connection with:
3. any breach of any warranty given by the Contractor in relation to Works or goods or materials supplied, and/or
4. any claim of infringement of patent, copyright, design, trade mark or other intellectual property rights of any other person
5. any act or omission of any of the Contractor's personnel in connection with the performance of the Works, and/or
6. any loss of or damage to property (whether real or personal), and/or
7. any injury to any person, including injury resulting in death, and/or
8. any financial or economic loss,

except insofar as such loss, damage or injury shall have been caused by negligence on the part of the Institution, its servants or agents.

1. **Insurance**

1. Without prejudice to his liability to indemnify the College the Contractor, and all Sub-Contractors, shall affect and maintain at all times during the period of this Contract, at his own expense, and from a reputable organisation:

**Public Liability Insurance** in a sum not less than (insert required figure) £5 million for each and every occurrence.

**Employer’s Liability Insurance** in a sum not less than (insert required figure) £10 million for each and every occurrence.

1. Any such insurance shall name the College as a Co-insured Party on all relevant policies, and must be endorsed by the Underwriters / Insurers to prevent any exercise or rights of subrogation against the College, its other Contractors, and/or its employees.
2. If the Contractor wishes to self-insure against such risks, details of these arrangements must have first been approved by the College in writing prior to the execution of the Contract.
3. The Contractor shall provide sight of original documentation (including cover notes, policies, and premium receipts) and shall provide copies of this documentation to the College. The Contractor shall notify the College in the event of any change therein, including policy expiry and renewal. The details of such insurance shall be supplied to the College as and when required.
4. If the Contractor defaults in insuring, the College may itself effect insurance and charge the cost together with an administrative charge of 5% to the Contractor.
5. **Conflicts of Interest**

The Contractor 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 Contractor, or such persons, and the duties owed to the College under the provisions of the Contract. The Contractor shall disclose to the College full particulars of any such conflict of interest which may arise.

1. **Fraud**

The Contractor shall safeguard the College’s funding of the Contract against fraud generally and, in particular, fraud on the part of the staff, or the Contractor’s directors. The Contractor shall notify the College immediately if it has reason to suspect that any fraud has occurred, or is occurring, or is likely to occur.

1. **Competition Law**

The Contractor 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 Contract or arrangements between the parties.

1. **Discrimination**
2. The Contractor, his employees and any sub-contractors shall comply with all current legislation relating directly or indirectly to the provision of the Works and shall not discriminate against any individual as detailed in the:
3. Equality Act 2010
4. Human Rights Act 1998 and the Human Rights Act 1998 (Commencement No.2) Order 2000
5. The Contractor, his employees and any sub-contractors shall also comply with the College's policies and procedures to prevent unlawful discrimination on the grounds of sex, race, disability, sexual orientation, age, religion and belief.
6. The Contractor warrants that its own practices and procedures comply with all legislation to prevent unlawful discrimination and that its employees are fully trained on matters relating to the prevention of unlawful discrimination.
7. The Contractor shall provide such information as required by the College in relation to its compliance with anti-discrimination legislation and will co-operate with any investigation by the College or a body empowered to carry out such investigations under the relevant legislation.
8. **Rights of Third Parties**

Nothing in this Contract is intended to confer a benefit of any kind on any third party in relation to it, and in particular a person who is not a Party to the Contract may not enforce any of the terms nor object to any variation, and neither shall any person who is not a Party have any rights under the Contracts (Rights of Third Parties) Act 1999 in relation to this Contract.

1. **Disputes, Adjudication and Arbitration**
2. All disputes or differences which shall at any time arise between the Contractor and the Client in respect of the construction or effect of this Contract, or the rights, duties and liabilities of the parties hereunder, or any matter or event connected with or arising out of this Contract shall in the first instance be referred for resolution between the Contractor’s Representative and the Client Representative. If the Contractor’s Representative and Client Representative cannot resolve the dispute to the satisfaction of each party within 14 days of the matter being referred to them, the dispute shall be referred to the Contractor’s managing director and the Client’s Principal for resolution. If the managing director and the Principal cannot resolve the dispute to the satisfaction of each party within 14 days of the matter being referred to them, the dispute shall be resolved under the procedures set out in sub-clauses B) or C) below
3. The Housing Grants, Construction and Regeneration Act 1996, section 108 as amended by the Local Democracy Economic Development and Construction Act 2009 as amended by he Scheme for Construction Contracts (England and Wales) Regulations 1998 (Amendment)(England Regulations) 2011 (the Amended Scheme) states that a party to a construction contract has the right to refer a dispute arising under the contract for adjudication.
4. Without prejudice to any other clause or sub-clause in this section, either party may at any time give written notice to the other of its intention to refer a dispute or difference to adjudication. The adjudication procedures and the agreement for the appointment of an Adjudicator shall be as set out in the Model Adjudication Procedures published by the Construction Industry Council current at the date of reference. The Adjudicator nominator shall be the President or Vice-President of the Royal Institution of Chartered Surveyors.
5. In the event of any dispute arising from or in connection with the Works or this Contract which cannot be settled by negotiations between the Contractor and the College within 14 days, either party may serve written notice on the other to request the matter is referred to arbitration.
6. For disputes referred to arbitration a sole arbitrator shall be appointed within 28 days in accordance with the terms of the Arbitration Acts 1996, either by the agreement of both parties or, failing such agreement, by the President or Vice President of the Royal Institution of Chartered Surveyors.
7. The seat of arbitration shall be England and the arbitrator’s decision shall be final and binding on both parties. Costs shall be in the award of the arbitrator.
8. **Termination**
9. Without prejudice to any other rights or remedies it may have, the College shall have the right at any time to terminate the Contract forthwith, in whole or in part, and to claim for all resulting losses and expenses (including, without limitation, the cost of replacing the supply requirements in respect of which the Contract has been terminated with supply of a similar description) if:
10. Breach of Contract

The Contractor commits a breach of the Contract and, in the case of such a breach which is capable of remedy, fails to remedy the breach within 7 calendar days (or such longer period as the College may as its option agree in writing) of written notice from the College to do so.

1. Statutory Health and Safety Regulations

There is any infringement by the Contractor of any Statutory Health and Safety Regulation.

1. Insolvency
2. The Contractor shall become insolvent or cease to trade or compound with its creditors; or
3. a bankruptcy petition or order is presented or made against The Contractor or, where The Contractor is a partnership, against any such partner, or if a trustee in sequestration is appointed in respect of the assets of The Contractor or (where applicable) any such partner; or
4. a receiver or an administration receiver is appointed in respect of any of The Contractor’s assets; or
5. a petition for an administration order is presented or such an order is made in relation to The Contractor; or
6. a resolution or petition or order to wind up The Contractor is passed or presented or made or a liquidator is appointed in respect of The Contractor (otherwise than for reconstruction or amalgamation).
7. Corruption
8. The Contractor has offered, given, agreed to give, received or solicited to or from anyone a bribe, gift, consideration, inducement or reward for doing or not doing anything in relation to the Contract, the delivery of the Service, or
9. The Contractor has committed any offence under the Prevention of Corruption Acts 1889-1916, or
10. The Contractor has given any fee or reward the receipt of which is an offence under Section 117(2) of the Local Government Act 1972.
11. Discrimination

The College may terminate the Contract if notice has been given to the Contractor of a substantial or persistent breach of this clause providing that a reasonable period has been given during which the breach may have been rectified and the Contractor has failed to remedy the breach within the stated period.

1. Non Fault Termination
2. Otherwise than by the seller’s insolvency or bankruptcy, the Purchase Order and Contract may be terminated at any time by the College giving the Contractor notice in writing.
3. A fair and reasonable price shall be considered for payment for all work in progress and/or any part of the Goods supplied and Services performed at the time of the cancellation which is subsequently received by the College.
4. The College shall not be liable for any loss to the Contractor including consequential loss.
5. **Consequences of Termination**
6. On termination of this Contract for whatsoever reason, the Supplier shall hand over to the College all Confidential Information, and all Company books, documents, materials, computer discs and software (whether in human readable or machine readable form) and all other property of the College which may then be in its possession or under its control and, if required by the College, shall swear a statutory declaration that it has done so.
7. The Supplier shall if the College so requires deliver to the College any materials or materials which are in preparation and have not yet been provided to the College and the College shall pay a reasonable amount in respect of the same.
8. Termination shall not affect any remedies of either party which have accrued prior to the date of termination.
9. **Force Majeure**
10. For the purpose of the contract the term Force Majeure shall mean:
11. War & hostilities (whether war be declared or not) invasion, act of foreign enemies, mobilisation, requisition or embargo
12. Rebellion, revolution, insurrection, military or usurped power or civil war.
13. Riot, commotion or disorder except where solely restricted to employees of the supplier or its nominated sub contractors or sub suppliers.
14. Earthquake, flood, fire or other natural physical disaster except to the extent that any such disaster is caused by, or its effects contributed to by, the party claiming Force Majeure.
15. A general industrial dispute not limited to the employees of the supplier or the employees of any of its sub contractors or sub suppliers.
16. 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.
17. Neither party shall be considered to be in default of its obligations under the contract 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 contract and which was not foreseeable at the date of the contract.
18. If the performance of the obligations of either party under the contract is so prevented by circumstances of Force Majeure and shall continue to be prevented for a period less than 30 days, then during that period the contract shall be considered as suspended.
19. Upon the ending of the Force Majeure event, the contractual obligations of the parties shall be reinstated with such reasonable modifications as 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 by an independent arbitrator.
20. If performance of the obligations of either party under the contract is so prevented by the circumstances of Force Majeure and shall continue to be so prevented for a period in excess of 30 days, then the contract shall be terminated by mutual consent and, subject to the clauses detailed below; neither party shall be liable to the other as a result of such termination.
21. If the contract is so terminated then subject to the transfer to the College of the benefit referred to in the sub clause below the College shall pay to the Contractor such reasonable sum as may be agreed between the parties or in default of any agreement as may be determined by expert determination in respect of costs incurred and commitments already entered into by the Contractor at the date of the Force Majeure notice, less the amount of any payments already made to the Contractor at the date of the Force Majeure notice. If the amount of such advance payments made to the Contractor exceeds the sum due to him under this sub clause then he shall repay the balance to the College.
22. The Contractor shall transfer to the College the benefit of all work done by him or his sub contractors 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 College prior to the Force Majeure notice, or will do so on payment under the sub clause above.
23. **Waiver**

Any failure or delay by the College to insist at any time upon the performance of any of the terms, provisions or undertakings of the Contractor contained in the Contract, or failure to exercise any rights under the Contract, shall not constitute or be construed as a waiver thereof or a relinquishment of the College’s rights to require the future performance of any such term, provision or undertaking, but the obligation of the Contractor with regard to the same shall continue in full force and effect.

1. **Law**

This Contract shall be governed by and interpreted in accordance with English Law and shall be subject to the jurisdiction of the Courts of England and Wales. The submission to such jurisdiction shall not (and shall not be construed so as to) limit the right of the College to take proceedings against the Contractor in any other court of competent jurisdiction, nor shall the taking of proceedings in any other court of competent jurisdiction preclude the taking of proceedings in any other jurisdiction whether concurrently or not.