



HIGH  
SPEED  
RAIL

## **Terms and conditions for the purchase of an Audio Visual system and related services**



## 1. Interpretation

### 1.1 **Definitions.** In these Conditions, the following definitions apply:

‘Acceptance’ means that Authorised Officer has accepted that the System as meeting the requirements of the Contract following successful completion of Testing, in accordance with clause 6.3.

‘Acceptance Date’ means the date of Acceptance of the System.

‘Acceptance Milestone Date’ means the date by which the System is to be Implemented and capable of Acceptance, being July 2017.

‘Agreement Manager’ shall have the meaning as set out in clause 3.

‘Articles’ means all tools, materials, drawings, specifications and other equipment and data provided or loaned to the Supplier by the College.

‘Authorised’ means signed by one of the Authorised Officers.

‘Authorised Officer’ means the College’s employee authorised either generally or specifically by College to enter into the Contract and act on behalf of the College in relation to the Contract.

"Business Day": means a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.

‘Change’ means any change or amendment to this Contract, including the requirements for the System and / or the Services.

‘Change Request’ has the meaning given in clause 18.2.

‘Charges’ means the charges for the provision of the System and the performance of the Services as set out in the Order.

"College": means The National College of High Speed Rail.

‘College Responsibilities’ has the meaning given in clause 5.4.

"Conditions": means the terms and conditions set out in this document.

"Contract": means the contract between the College and the Supplier for the supply of the System and related Services in accordance with clause 2.

‘Data Protection Legislation’ means the DPA and any other applicable laws from time to time relating to the processing of Personal Data under this Agreement including without limitation the Privacy and Electronic Communications (EC Directive) Regulations 2003 and all related regulations, regulatory codes of practice and guidance issued from time to time, including from the Information Commissioner’s Office;

‘DPA’ means the Data Protection Act 1998 as modified, amended, extended, consolidated, re-enacted and/or replaced and in force from time to time, including without limitation by any primary or secondary legislation



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implementing the General Data Protection Regulation (Regulation (EU) 2016/679) in the UK;

‘Data Controller’ has the meaning set out in the DPA

‘Data Subject’ has the meaning set out in the DPA

“Deliverables”: means all documents, products and materials developed by the Supplier or its agents, contractors and employees as part of or in relation to the Services in any form or media, including without limitation drawings, maps, plans, diagrams, designs, pictures, computer programs, data specification and reports.

“Goods”: means the goods (or any part of them) forming part of the System as set out in the Order.

‘Good Industry Practice’ means the exercise of such degree of skill, diligence, care and foresight which would reasonably and ordinarily be expected from a skilled and experienced supplier engaged in the supply of systems, goods and services similar to the System and Services under the same or similar circumstances as those applicable to the Contract.

‘Implementation’ means the implementation of the System in the designated location and into the operating environment specified by College at the Premises and ‘Implement’ shall be interpreted accordingly.

‘Intellectual Property Rights’ means patents, copyright, registered and unregistered design rights, utility models, trade marks (whether or not registered), database rights, rights in know-how and confidential information and all other intellectual and industrial property rights and similar or analogous rights existing under the laws of any country and all rights to apply for or register such rights.

‘ITT’ means the College’s Invitation to Tender for an Audio Visual system and related services, dated 13 April 2017.

‘ITT Response’ means the Supplier’s response to the ITT, dated 17 May 2017 together with subsequent clarifications dated 17 May 2017.

‘Key Personnel’ means those individuals nominated by the College as being of importance to the completion or delivery of the Services, as set out in the Order.

‘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

"Order": means the College's completed purchase order form, incorporating these Conditions and signed by the parties, forming part of the Contract.

‘Order Amendment’ means an issued and Authorised Order amendment from the College or series of Order Amendments



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‘Package’ means any type of package including bags, cases, carboys, cylinders, drums, pallets, tanks, wagons and other containers.

‘Personal Data’ has the meaning set out in the DPA

‘Premises’ means the location(s) where the System and Services are to be delivered or performed, as stipulated in the Order or otherwise specific by the College from time to time.

‘Project Plan’ means the project plan setting out the milestone dates and activities for the delivery and Implementation of the System, that is annexed to, or otherwise referenced in, the Order.

‘Request’ has the meaning set out in the Freedom Of Information Act 2000, (FOIA), and the Environmental Information Regulations 2004 (EIR)

“Services”: means the services to be provided by the Supplier under the Contract as set out in the Service Specification.

‘Service Levels’ means those levels of performance set out in the Service Specification.

“Service Specification”: means the description or specification of the College’s requirements for Services, that is annexed to, or otherwise referenced in, the Order.

‘Software’ means the software (or any part) forming part of the System as set out in the Order.

‘Software as a Service’ means software which is provided to the market as a service rather than in a tangible form, made available through an internet connection via a web browser.

“Specification”: the System Specification and the Services Specification

"System Specification": means the specification of the College’s requirements for the System, including any related plans and drawings, that is annexed to, or otherwise referenced in, the Order.

"Supplier": means the person or firm from whom the College purchases the System and Services, as specified in the Order.

‘System’ means the Goods and the Software operating together.

‘Testing’ means any testing required to be carried out under the Contract, including system testing, integration testing (if required) and user acceptance testing.

‘TUPE’ means the Transfer of Undertakings (Protection of Employment) Regulations 2006.



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1.2 **Construction.** In these Conditions, unless the context requires otherwise, the following rules apply:

- (a) A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- (b) A reference to a party includes its personal representatives, successors or permitted assigns.
- (c) A reference to a statute, regulation or other statutory provision is a reference to such statute or provision as amended or consolidated or re-enacted or replaced. A reference to a statute, regulation or other statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or consolidated or re-enacted or replaced.
- (d) Any phrase introduced by the terms **including, include, in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- (e) A reference to **writing** or **written** includes faxes and e-mails.

## 2. **Basis of contract**

- 2.1 The Order constitutes an offer by the College to purchase the System and the Services in accordance with the Contract which is accepted by both parties signing the same.
- 2.2 The Contract shall comprise any Order Amendments, the Order, these Conditions and the Specification(s). In the event of any conflict between the provisions they shall be read in the following order of precedence:
  - (a) Any Order Amendments (each Order Amendment having precedence over any earlier Order Amendments);
  - (b) The Order;
  - (c) The Conditions;
  - (d) The Specification(s); and
  - (e) The ITT Response.
- 2.3 All of these Conditions shall apply to the supply of both the System and the Services except where the application to one or the other is specified.

## 3. **Agreement Management**

- 3.1 The Supplier shall nominate an Agreement Manager from time to time who shall have sufficient authority to ensure that the System and the Services meet the requirement of the Contract, including the Specification and the required Service Levels, to ensure sufficient resources are allocated to the Contract, and to pro-actively co-ordinate and communicate relevant orders and to provide comprehensive support and links between the College and the Supplier. This must include sales and Implementation support,



information and advice on the System and the Services. The Agreement Manager shall be the prime contact between the Supplier and College and any notice, communication, information or instruction given or made to or by the Agreement Manager shall be deemed given to / received by the Supplier. It shall be the responsibility of the Agreement Manager to ensure all staff involved in the Contract are fully aware of their obligations.

- 3.2 The Supplier's initial Agreement Manager shall be as set out in the Order. The Supplier shall not change in the Agreement Manager without obtaining the College's prior written consent (not to be unreasonably withheld or delayed).

#### **4. Supply of System**

- 4.1 The Supplier shall supply and Implement the System:
- (a) so as to comply in all respects with the System Specification; and
  - (b) in accordance with the ITT Response and the provisions of the Contract.
- 4.2 The Supplier warrants that the System shall:
- (a) provide in all respects the functionality described in, and perform in all respects in accordance with, the System Specification;
  - (b) not infringe any Intellectual Property Rights; and
  - (c) comply with all applicable Laws.
- 4.3 The Supplier further warrants that the Goods shall:
- (a) be free from material defects in design, material and workmanship, correspond with their description;
  - (b) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979, as amended); and
  - (c) be new (unless otherwise specified on the Order).
- 4.4 The Supplier further warrants that the Software shall:
- (a) be free from material design and programming errors;
  - (b) be currently supported versions of the Software.
- 4.5 Supplier warrants to the College that the System will be provided and Implemented:
- (a) in a proper, skilful and workmanlike manner.
  - (b) by a sufficient number of appropriately qualified, trained and experienced personnel with a high standard of skill, care and due diligence and in accordance with Good Industry Practice
  - (c) in accordance with the Contract.
  - (d) to the reasonable satisfaction of the Authorised Officer.



- 4.6 The Supplier will remedy and make good any breach of the warranties in this clause 4 that the College discovers at any time during the term of the Contract through provision of Services or otherwise as necessary to ensure that any such breach is fully remedied and made good.
- 4.7 The Supplier shall ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Contract.

## 5. Implementation

- 5.1 The Supplier shall comply with the Project Plan and ensure that the System is Implemented and capable of Acceptance by the Acceptance Milestone Date.
- 5.2 The Supplier shall ensure that:
  - (a) the Goods will be properly packaged to survive transit and storage without damage, clearly and legibly labelled and addressed.;
  - (b) each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, the College's Order number (if any), the type and quantity of the Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered.
- 5.3 The Supplier shall deliver the Goods:
  - (a) to the Premises; and
  - (b) during the College's normal business hours, or as instructed by the College.
- 5.4 The Supplier shall provide the Software to the College either by way of tangible copies and licence, or by way of Software as a Service, as indicated in the Order. In either case the Supplier shall install and Implement the Software in accordance with the Specification.
- 5.5 The Supplier shall, in relation to Implementation, cooperate as reasonably required by the College, with the College's IT Blueprint partner KPMG LLP and its subcontractor CoreAzure Limited to deploy the System on to its Azure network.
- 5.5 The College will comply with the College responsibilities and obligations set out in the Order ("College Responsibilities").
- 5.6 If the Supplier at any time becomes aware of any failure of the College to comply with the College Responsibilities or any other act or omission, or proposed act or omission by the College which prevents or hinders, or may

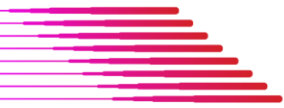


prevent or hinder the Supplier from Implementation and provision of the System and Services in accordance with the Contract, the Supplier shall inform, in writing, the College. The Supplier shall use its reasonable endeavours to mitigate the consequences of any such failure, act or omission but, provided it complies with the foregoing, will be granted a reasonable extension of time and relief from any liability arising under the Contract arising in respect of such failure, act or omission.

## **6. Testing and Acceptance**

- 6.1 The Supplier shall perform system Testing and integration Testing in accordance with the Specification and as otherwise necessary to ensure that the System shall comply with the provisions of this Contract. The Supplier shall notify the College in writing when such Testing has been successfully completed and shall provide the College with such written details evidencing the same as the College shall reasonably require.
- 6.2 Following successful completion of system Testing and integration Testing as set out in clause 6.1, the College shall be perform user acceptance Testing on the System in accordance with the Specification and as otherwise necessary to ensure that the System shall comply with the provisions of this Contract. The Supplier shall provide such cooperation and assistance in respect of such Testing as the College shall reasonably require. In the event that such Testing reveals any defect in the System or any failure of the System to meet any of the requirements of the Contract, including providing the functionality described in, and performing in accordance with, the System Specification, the College shall notify the Supplier and the Supplier shall promptly correct such defect or failure so as to enable user acceptance Testing to continue.
- 6.3 The College shall accept System as meeting the requirements of the Contract when it is reasonably satisfied that all Testing has been successfully completed and demonstrates that the requirements of the Contract have been satisfied, including demonstrating that the System will provide in all respects the functionality described in, and perform in all respects in accordance with, the System Specification.
- 6.4 The College shall, prior to Acceptance, have the right to reject the System, whether or not paid for in full or in part, at any time following the Acceptance Milestone Date if user acceptance Testing demonstrates that the System does not conform to the requirements of the Contract and the Supplier has failed to successfully remedy such non-compliance within 10 Business Days of a request from the College to do so. If the College rejects the System, it shall promptly return the System, including all Goods, Software and other Deliverables, to the Supplier, or give written notice to the Supplier that it may collect the same, and the Supplier shall forthwith give a full refund to the College of all Charges paid, following which this Contract shall terminate.





- 6.5 Notwithstanding Acceptance, the Supplier shall remain solely responsible for the term of the Contract for ensuring that the System meets the requirements of the Contract, including providing in all respects the functionality described in, and performing in all respects in accordance with, the System Specification.
- 7. Not used**
- 8. Support**
- 8.1 The Supplier shall following Acceptance provide support Services in respect of the System as set out in the Service Specification.
- 9. Spares**
- 9.1 The Supplier shall make available to the College, or any nominated third party maintenance provider, on request, with reasonable dispatch and at reasonable prices, all spares and replacement parts for the Goods as the College shall require.
- 9.2 The Supplier shall maintain a supply of such spares or replacement parts for a period of five (5) years from the date of delivery or the Acceptance Date, whichever is the latest.
- 9.3 Such spares or replacement parts shall be fully compatible with, and maintain as a minimum the same levels of performance as the Goods originally supplied, but need not be identical to those items.
- 10. Operating manuals**
- 10.1 The Supplier shall supply to the College all operating manuals and other documentation including but not limited to all uncompiled program files, configuration files and graphical user interface files necessary for the satisfactory operation of the System, and in any event all documentation so required. If after the Acceptance Date the operating manuals and documentation need updating or replacing the Supplier shall be responsible for notifying the College of the availability of such updates or replacements and shall supply them at reasonable prices upon receipt of written instructions. The Supplier shall provide the operating manuals and other documentation in the media format in which they are available at the appropriate time.
- 11. Not used**
- 12. Training**
- 12.1 The Supplier shall provide such training in the use and operation of the System as is set out in the Service Specification or as is otherwise agreed by the parties.
- 13. Hazardous Goods and Safety**
- 13.1 Where the Goods comprise or include substances hazardous to health, the Supplier will supply to the College on or before Delivery with all data



necessary to allow the College to form a suitable and sufficient assessment of the attendant risks and of the steps that need to be taken in order to meet the requirements of all relevant applicable Laws.

#### **14 Supply of Services**

- 14.1 The Supplier shall from the date set out in the Order and for the duration of this Contract provide the Services to the College in accordance with the terms of this Contract.
- 14.2 The Supplier shall in performing the Services ensure that it meets the Service Levels.
- 14.3 In providing the Services, the Supplier shall:
- (a) co-operate with the College in all matters relating to the Services, and comply with all reasonable instructions of the College;
  - (b) perform the Services with reasonable care, skill and diligence in accordance with Good Industry Practice;
  - (c) use personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled in accordance with this Contract;
  - (d) ensure the Services and the Deliverables will conform with all descriptions and specifications set out in the Service Specification
  - (e) provide all equipment, tools and vehicles and such other items as are required to provide the Services;
  - (f) obtain and at all times maintain all necessary licences and consents and comply with all applicable Laws;
  - (g) observe all health and safety rules and regulations and any other security requirements that apply at any of the College's Premises;
  - (h) hold all materials, equipment and tools, drawings, specifications and data supplied by the College to the Supplier, or to which the Supplier is otherwise given access, ("College's Materials") in safe custody at its own risk, maintain the College's Materials in good condition until returned to the College and not dispose of or use the College's Materials other than in accordance with the College's written instructions or authorisation; and
  - (i) provide the Services via the Key Personnel (if any) who shall not be released from providing the Services to the College, except for reason of sickness, maternity leave, paternity leave, termination of employment or because they have been requested to do so by the College, or the element of the Service in respect of which the individual was engaged has been completed to the College's reasonable satisfaction, without obtaining the College's prior written consent (not to be unreasonably withheld or delayed). Any



replacements for the Key Personnel shall be subject to the agreement of the College and such replacements shall be of at least equal status or of equivalent experience and skills to the Key Personnel being replaced and be suitable for the responsibilities of that person in relation to the Services. The cost of effecting such replacement shall be borne by Supplier.

- 14.4 The Supplier shall ensure that all personnel engaged in the provision of the Services are vetted in accordance with Good Industry Practice and, where applicable, any specific security requirements of the College specified in the Order or the Services Specification.

**15 Not used**

**16 Not used**

**17 Work on the Premises**

- 17.1 In respect of the Supply of the System and the provision of any Services which Supplier performs on the Premises the following clauses shall apply:
- (a) the Supplier shall ensure that the Supplier and their employees, sub-contractors and their employees and any other persons associated with the Supplier will adhere in every respect to the obligations imposed upon the Supplier by applicable Laws;
  - (b) the Supplier shall ensure that the Supplier and their employees, sub-contractors and their employees and any other person associated with the Supplier will comply with any regulations or policies that the College may notify to the Supplier in writing;
  - (c) when required, the Supplier and their employees, sub-contractors and their employees shall comply with any security requirements including a right to search when entering or leaving the Premises. The College reserves the right to remove from the Premises anyone suspected of being under the influence of alcohol, or any other substance which has the effect of impairing performance, or otherwise unsuitable to undertake work in respect of this Contract.
- 17.2 The Supplier shall make no delivery of materials, plant or other things nor commence any work on the Premises without obtaining the College's prior consent.
- 17.3 Access to the Premises shall not be exclusive to the Supplier but only such as shall enable the performance of the Contract concurrently with the execution of work by others. The Supplier shall co-operate with such others as the College may reasonably require.
- 17.4 The College shall have the power at any time during the progress of the Contract to require in writing:



- (a) the removal from the Premises of any materials which in the College's opinion are either hazardous or not in accordance with the Contract, and/or:
  - (b) the substitution of proper and suitable materials.
- 17.5 On completion of the Contract the Supplier shall remove their plant, equipment and unused materials and shall clear away from the Premises all rubbish arising out of the Contract and leave the Premises in a neat and tidy condition within the timescales instructed to the Supplier by the College.
- 17.6 The Supplier shall ensure that their employees, sub-contractors and their employees and any other persons associated with the Supplier shall be dressed appropriately. The College reserves the right to remove from the Premises anyone who is, in the College's absolute discretion, not complying with this requirement.
- 17.7 The Supplier shall limit access to the Premises to such personnel as are necessary to enable it to perform its obligations under the Contract.

## **18 Change**

- 18.1 Unless otherwise stated in this Contract, any Change shall be made only in accordance with this clause 18.
- 18.2 The parties shall deal with Change as follows:
  - (a) either party may at any time request a Change by giving notice in writing to the other party identifying the proposed Change ("Change Request");
  - (b) the Authorised Officer shall have the right to request amendments to a Change Request, approve it or reject it in the manner set out in clause 18.4;
  - (c) the Supplier shall have the right to reject a Change Request solely in the manner set out in clause 18.5; and
  - (d) in any preparation of a Change Request each Party will be liable for their own costs.
- 18.3 The Supplier shall (in good faith) submit to the College in writing, within ten (10) Business Days (or such longer period as may be agreed) of receipt of a written Change Request from the Authorised Officer (or at the same time as any written Change Request that the Supplier may submit):
  - (a) a full written quotation including a detailed breakdown and such supporting evidence of its costs and resources as the College shall reasonably require for such Change;
  - (b) particulars of any changes which would be required to the Specification in order to implement the proposed Change;



- (c) particulars of the other changes (if any) which would be required to this Contract in order to implement the proposed Change; and
- (d) the full cost and risk implications for the College that would result from the Change, including any proposed amendment to the Charges, provided that any such amendment to the Charges must be reasonable and proportionate in the circumstances,

(together, the "Change Request Information").

**18.4** Upon receipt of the Change Request Information:

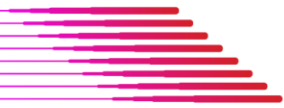
- (a) the College may elect, subject to clause 18.6, to approve the proposed Change, in which case this Contract will be amended accordingly and the parties shall forthwith complete and sign an Order Amendment in such form as the Authorised Officer shall reasonably require recording the Change that shall include the Change Request Information; or
- (b) the Authorised Officer may, in his absolute discretion reject the Change, in which case he shall notify the Supplier of the rejection; or
- (c) where the Authorised Officer reasonably considers that the Supplier has not complied with clause 18.3, he may require the Supplier to resubmit the Change Request Information, in which event the Supplier shall make such modifications as are necessary to comply with clause 18.3 and resubmit the same to the Authorised Officer within five (5) Business Days of the Authorised Officer's request and the provisions of this clause 18.4 shall apply thereto.

**18.5** Following a Change Request if the Supplier reasonably believes, and demonstrates to the Authorised Officer's reasonable satisfaction, that any proposed Change which is requested by the Authorised Officer:

- (a) would materially and adversely affect the risks to the health and safety of any person; and/or
- (b) would require the Services to be performed or the System to be provided in a way that infringes any law; and/or
- (c) is technically impossible to implement,

then the Supplier shall be entitled to reject the proposed Change and shall notify the Authorised Officer of its reasons for doing so within five (5) Business Days.

**18.6** Until such time as any Change is formally accepted in accordance with clause 18.4(a) and the applicable Order Amendment has been signed by a representative of the College having the necessary authority, the same shall not be binding on the College and the Supplier will, unless otherwise agreed in writing, continue to perform and be paid as if no Change had been required.



## **19 Compliance with applicable Laws**

- 19.1 The Supplier shall (at no additional cost to the College) at all times, prepare, manufacture, deliver, Implement, carry out and provide the System and Services in compliance with all Laws.
- 19.2 The Supplier shall neither be relieved of its obligations to supply the Goods and Services in accordance with the terms of the Contract nor be entitled to an increase in the Charges as the result of any modifications to the Laws.

## **20 Service Improvement and Technology Refresh**

- 20.1 The Supplier shall, at its own cost, submit a report to the College within 30 days of the end of each year of the term of the Contract which shall identify the emergence of new and evolving relevant technologies and processes which could improve the System and Services. Such report shall be provided in sufficient detail to enable the College to evaluate properly the benefits of the new technology or process.
- 20.2 If the College wishes to incorporate any improvement identified by the Supplier pursuant to clause 20.1, it shall submit a Change Request and the provisions of clause 18 shall apply.

## **21 Remedies**

- 21.1 The Supplier shall keep the College indemnified in full against all costs, expenses, damages and losses (whether direct or indirect), including any interest, penalties, and legal and other professional fees and expenses awarded against or incurred or paid by the College as a result of or in connection with any claim made against the College for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the receipt, use or supply of the System or the Services. This clause 21.1 shall survive termination of the Contract.
- 21.2 The College's rights and remedies under the Contract are in addition to its rights and remedies implied by statute and common law.
- 21.3 The Supplier must take out and maintain insurance adequate to cover the risks set out in the Contract and in any event shall take out and maintain:
  - (a) Product Liability Insurance coverage of not less than five million pounds sterling (£5,000,000) for any one, or series of claims that may arise; and
  - (b) Professional Indemnity Insurance coverage of not less than two million pounds sterling (£2,000,000) for any one, or series of claims that may arise; and
  - (c) Public Liability Insurance coverage of not less than five million pounds sterling (£5,000,000) for any one, or series of claims that may arise.



- 21.4 The Supplier will take out and maintain such insurances as set out in clause 21.3 with a reputable insurance company and shall at the College's request provide evidence of the insurance policy or policies and of payment of the premiums. Supplier's failure to maintain such insurances shall be treated as a material breach of the Contract and shall give College the right to terminate the Contract in accordance with clause 30.

## **22 Liability**

- 22.1 This clause sets out each party's entire liability (including any liability for the acts or omissions of its employees, agents, consultants and sub-contractors) to the other in respect of any breach by the other of any provision of this Contract and any representation, statement or tortious act or omission (including negligence) arising under or in connection with the Contract.
- 22.2 Nothing in the Contract limits or excludes either party's liability:
- (a) for death or personal injury resulting from negligence; or
  - (b) for fraud or fraudulent misrepresentation; or
  - (c) for any matter which by law may not be limited or excluded.
- 22.3 Subject to clause 22.2, neither party shall be liable for:
- (a) loss of profits; or
  - (b) loss of business; or
  - (c) loss of contracts; or
  - (d) any indirect or consequential loss.
- 22.4 Subject to clause 22.2, each party's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising in connection with the Contract shall be limited aggregate to and shall not exceed 125% of the Charges paid or payable under the Contract.

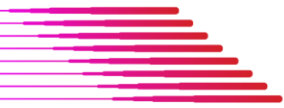
## **23. Title and risk**

- 23.1 Title and risk in the Goods shall pass to the College on completion of delivery to the Premises.

## **24. Price and payment**

- 24.1 The Charges shall be as set out in the Order.
- 24.2 The Charges shall be the full and exclusive remuneration of the Supplier in respect of the performance of all of its obligations under the Contract. Unless otherwise agreed in writing by the College, the Charges shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the provision of the System (including Implementation) and performance of the Services and its other obligations under the Contract.





- 24.3 The Supplier may invoice the College for the Charges in respect of provision of the System and Implementation in accordance with the payment profile set out in the Order upon achievement of each payment milestone so stated with the final instalment due following Acceptance. The Supplier may invoice the College for the Charges in respect of performance of the Services [monthly in arrears]. Each invoice shall include such supporting information required by the College to verify the accuracy of the invoice, including but not limited to the relevant Order number.
- 24.4 The College shall pay correctly rendered invoices within 30 days of receipt of the invoice. Payment shall be made to the bank account nominated in writing by the Supplier.
- 24.5 All amounts payable by the College under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time ("VAT"). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the College, the College shall on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Goods and/or Services at the same time as payment is due for the supply of the Goods and/or Services.
- 24.6 The College may, without limiting any other rights or remedies it may have, set off any amount owed to it by the Supplier against any amounts payable by it to the Supplier under the Contract.

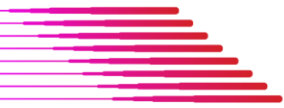
**25. Confidential information**

- 25.1 A party ("receiving party") shall keep in strict confidence all technical or commercial know-how, Specifications, inventions, processes or initiatives which are disclosed to the receiving party by the other party ("disclosing party"), its employees, agents or subcontractors, and any other confidential information concerning the disclosing party's business, its products or its services which the receiving party may obtain. Subject to any express provisions of the Contract, the receiving party shall only disclose such confidential information to those of its employees, agents or subcontractors who need to know the same for the purpose of discharging the receiving party's obligations under the Contract, and shall ensure that such employees, agents or subcontractors shall keep such information confidential.

**26. Publicity**

- 26.1 Unless expressly permitted in writing by the College, the Supplier shall not publish or permit to be published either alone or in conjunction with any other person any information, articles, photographs or other illustrations relating to or connected with the Contract or the work of the College.





## **27. Intellectual Property**

27.1 All Intellectual Property Rights in any Specifications, instructions, plans, data, drawings, databases, patents, patterns, models, designs or other material:

- (a) provided to the Supplier by the College shall remain the College's property absolutely;
- (b) pre-existing at the commencement of the Contract and owned or licensed by the Supplier, or prepared by or for the Supplier in relation to the performance of the Contract, shall remain the Supplier's property absolutely, but subject to the provisions of clause 27.2.

27.2 The Supplier hereby licences the College to use the Software and any other IPR in the System and Services as necessary to enable the College (and its employees and learners) to enjoy the benefit of and make full use of the System and the Services, on a perpetual, worldwide, irrevocable and royalty-free basis, with a right to grant sub-license on the same terms to contractors of the College for the benefit of the College only. This clause 27.2 shall survive termination of the Contract.

27.3 The provisions of clause 27.2 shall apply to all Software that forms part of the System or is used in the provision of the Services, whether provided to the College in a tangible form or made available to the College as Software as a Service. In the case of Software stated in the Order to be made available by way of Software as a Service, the College acknowledges that it may not be provided with a physical copy of such software and that use of such software is restricted to use by way of Software as a Service, and the provisions of this Clause 27.3 shall be construed accordingly. Software as a Service will be provided for the duration of the Contract only and not on a perpetual basis.

## **28 Anti-Bribery**

28.1 The Supplier shall:

- (a) comply with all applicable laws, statutes, regulations, and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 ("Relevant Requirements");
- (b) not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;
- (c) have and shall maintain in place throughout the term of this agreement its own policies and procedures, including but not limited to adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements and clause 28.1(b), and will enforce them where appropriate; and



- (d) promptly report to the College any request or demand for any undue financial or other advantage of any kind received by the Supplier in connection with the performance of this agreement;

28.2 Breach of this clause 28 shall entitle the College to terminate the Contract with immediate effect.

## 29 Data Protection

- 29.1 The Supplier shall process the Personal Data in respect of which the College is Data Controller ("College Personal Data") on behalf of the College and only to the extent, and in such a manner, as is necessary for the purposes specified in the Specification and in accordance with the College's instructions from time to time and shall not process the College Personal Data for any other purpose. The Supplier will keep a record of any processing of College Personal Data it carries out under the Contract.
- 29.2 The Supplier shall only collect any Personal Data in a form which is fully compliant with the Data Protection Act 1998 which will contain a data protection notice informing the data subject of the identity of the Data Controller, the identity of any data protection representative it may have appointed, the purposes or purposes for which their Personal Data will be processed and any other information which is necessary having regard to the specific circumstances in which the data is, or is to be, processed to enable processing in respect of the Data Subject to be fair.
- 29.3 If the Supplier receives any complaint, notice or communication which relates directly or indirectly to the processing of the College Personal Data or to either party's compliance with the Data Protection Legislation, it shall immediately notify the College and it shall provide the College with full co-operation and assistance in relation to any such complaint, notice or communication.
- 29.4 At the College's request, the Supplier shall provide to the College a copy of all College Personal Data held by it in the format and on the media reasonably specified by the College.
- 29.5 The Supplier shall not transfer the College Personal Data outside the European Economic Area without the prior written consent of the College.
- 29.6 The Supplier shall promptly inform the College if any College Personal Data is lost or destroyed or becomes damaged, corrupted, or unusable. The Supplier will restore such College Personal Data at its own expense.
- 29.7 The Supplier shall ensure that access to the College Personal Data is limited to:
  - (a) those employees who need access to the College Personal Data to meet the Supplier's obligations under this Contract; and



- (b) in the case of any access by any employee, such part or parts of the College Personal Data as is strictly necessary for performance of that employee's duties.

29.8 The Supplier shall ensure that all employees:

- (a) are informed of the confidential nature of the College Personal Data;
- (b) have undertaken training in the laws relating to handling Personal Data; and
- (c) are aware both of the Supplier's duties and their personal duties and obligations under such laws and this Contract.

29.9 The Supplier shall take reasonable steps to ensure the reliability of any of the Supplier's employees who have access to the College Personal Data.

29.10 The Supplier warrants that:

- (a) it will process the College Personal Data in compliance with all Data Protection Legislation; and
- (b) it will take appropriate technical and organisational measures against the unauthorised or unlawful processing of College Personal Data and against the accidental loss or destruction of, or damage to, College Personal Data to ensure the College's compliance with the seventh data protection principle.

29.11 The Supplier shall notify the College immediately if it becomes aware of any unauthorised or unlawful processing, loss of, damage to or destruction of the College Personal Data;

29.12 The Supplier may not authorise any third party or sub-contractor to process the College Personal Data.

29.13 The Supplier not do, or omit to do, anything, which would cause the College to be in breach of its obligations under Data Protection Legislation

### **30. Term and Termination**

30.1 This Contract shall commence on the Effective Date and, subject to the rights of earlier termination in this Contract, shall continue in force until the third anniversary of the Acceptance Date. The College may extend the Contract for further 12 months by giving not less than one month's notice in writing to the Supplier prior to the third anniversary of the Acceptance Date.

30.2 The College may terminate the Contract with immediate effect by giving written notice to the Supplier if:

- (a) the Supplier commits a material or persistent breach of the Contract and (if such breach is remediable) fails to remedy that breach within 14 days of receipt of notice in writing of the breach;
- (b) the Supplier suspends, or threatens to suspend, payment of its debts, or is unable to pay its debts as they fall due or admits inability



to pay its debts, or (being a company) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;

- (c) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Supplier, other than for the sole purpose of a scheme for a solvent amalgamation of the Supplier with one or more other companies or the solvent reconstruction of the Supplier;
- (d) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Supplier;
- (e) a person becomes entitled to appoint a receiver or administrative receiver over the Supplier's assets or a receiver or administrative receiver is appointed over the Supplier's assets;
- (f) any event occurs, or proceeding is taken, with respect to the Supplier in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the foregoing events; or
- (g) the Supplier suspends, or threatens to suspend, or ceases or threatens to cease to carry on, all or substantially the whole of its business.

30.3 The Supplier may terminate the Contract with immediate effect by giving written notice to the College if the College fails to pay any correctly rendered invoice that is properly due by its due date and fails to remedy that breach within 30 days of receipt of notice in writing from the Supplier addressed to the College's Commercial Finance Director specifying the failure and that continuing non-payment will result in termination.

## **31. Consequences of Termination**

31.1 On termination of the Contract for any reason:

- (a) where the Services are terminated, the Supplier shall immediately deliver to the College all Deliverables, whether or not then complete, and return the Articles. If the Supplier fails to do so, then the College may without limiting its other rights or remedies enter the Supplier's premises and take possession of them. Until they have been returned or delivered, the Supplier shall solely be responsible for their safe keeping and will not use them for any purpose not connected to this Contract;
- (b) the accrued rights and remedies of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination;



- (c) clauses which expressly or by implication have effect after termination shall continue in full force and effect; and
- (d) the Supplier will provide all reasonable assistance to the College to transfer any of the College's data, materials and content in the possession or control of Supplier or its subcontractors to the College in such standard format as the College may reasonably require and assist with any reasonable queries and issues that the College may have in loading such College's data, materials and content onto a replacement network, system or service.

### **32. Force majeure**

- 32.1 Neither party shall be liable to the other for any delay or failure in performing its obligations under the Contract to the extent that such delay or failure is caused by an event or circumstance that is beyond the reasonable control of that party, and which by its nature could not have been foreseen by such party or, if it could have been foreseen, was unavoidable, provided that the Supplier shall use all reasonable endeavours to cure any such events or circumstances and resume performance under the Contract. If any events or circumstances prevent the Supplier from carrying out its obligations under the Contract for a continuous period of more than 30 Business Days, the College may terminate this Contract immediately by giving written notice to the Supplier.

### **33 Freedom of Information and Environmental Regulations**

- 33.1 The Supplier acknowledge that the College is subject to the requirements of the Freedom Of Information Act 2000, (FOIA), and the Environmental Information Regulations 2004 (EIR) and the Supplier agrees to assist and cooperate with the College (at the Supplier's expense) as mandated by the College in relation to these Laws.
- 33.2 Any Requests received by the Supplier shall be forwarded to the College immediately.
- 33.3 The provisions of clause 33 shall extend to sub-contractors and the Supplier shall ensure compliance with this requirement.
- 33.4 The Supplier acknowledges that the College may, acting in accordance with the FOIA, or the EIR be obliged to disclose information:-
  - (a) without consulting with the Supplier; or
  - (b) following consultation with the Supplier and having taken the Supplier's views into account.

### **34 Articles on Loan**

- 34.1 All Articles loaned by the College to the Supplier in connection with the Contract shall remain always the College's property and shall be surrendered to the College upon demand in good and serviceable condition (fair wear and tear allowed) and are to be used by the Supplier



solely for the purpose of completing the Contract. The Supplier agrees that no copy of any of the Articles will be made without the consent in writing of the Authorised Officer. Until the Supplier return all the Articles to the College they shall be at the Supplier's risk and shall be insured by the Supplier at the Supplier's expense against the risk of loss, damage or theft. Any loss of or damage to such Articles shall be made good by Supplier at their expense. All scrap arising from the supply of such Articles must be disposed of at the College's discretion and all proceeds of sales of such scrap must be promptly paid to the College.

### **35 Supplier Employees**

- 35.1 When directed by the College, the Supplier shall provide a list of the names and addresses of all persons (if any) who it is expected may require admission in connection with the Contract to the Premises, specifying the capacities in which they are concerned with the Contract and giving such other particulars as the College may reasonably require.
- 35.2 The Supplier's employees and those (if any) of the Supplier's sub-contractors or agents engaged within the boundaries of any of the College Premises, shall comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force from time to time for the conduct of personnel when at that establishment, and when outside that establishment.
- 35.3 The College's decision as to whether any person is to be refused access to any Premises occupied by or on behalf of the College shall be final and conclusive.
- 35.4 The Supplier shall take all reasonable steps to ensure that any employees, servants or agents of the Supplier and any sub-contractors, their employees, servants or agents, employed in the execution of the Contract are entitled to obtain employment in the United Kingdom and are not claiming any benefit payable to persons registered as unemployed.

### **36 Re-tendering and Handover**

- 36.1 Within twenty one (21) days of being so requested by the College, the Supplier shall provide and thereafter keep updated, in a fully indexed and catalogued format, all the information necessary to enable the College to issue invitations to tender for the future provision of the System and Services.
- 36.2 Where, in the opinion of the College, TUPE is likely to apply to the Contract on its termination or expiration, the information to be provided by the Supplier under clause 36.1 shall include, as applicable, accurate information relating to the employees who would be transferred under the same terms of employment under TUPE, including in particular (but not limited to): -



- (a) the number of employees who would be transferred, but with no obligation on the Supplier to specify their names; and
- (b) in respect of each of those employees, their dates of birth, sex, salary, length of service, hours of work and rates, and any other factors affecting redundancy entitlement, any specific terms applicable to those employees individually and any outstanding claims arising from their employment; and
- (c) the general terms and conditions applicable to those employees, including probationary periods, retirement age, periods of notice, current pay agreements and structures, special pay allowances, working hours, entitlement to annual leave, sick leave, maternity and special leave, injury benefit, redundancy rights, terms of mobility, any loan or leasing agreements, and any other relevant collective agreements, facility time arrangements and additional employment benefits.

36.3 The Supplier shall co-operate fully with the College during the handover arising from the completion or earlier termination of the agreement. This co-operation, during the setting up operations period of the replacement Supplier (if any), shall extend to allowing full access to, and providing copies of all documents, reports, summaries and other information necessary in order to achieve an effective transition.

**37. Not used**

**38. General**

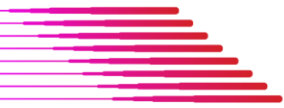
**38.1 Assignment and subcontracting.**

- (a) The College may at any time assign, transfer, charge, subcontract or deal in any other manner with any or all of its rights or obligations under the Contract.
- (b) The Supplier may not assign, transfer, charge, subcontract or deal in any other manner with any or all of its rights or obligations under the Contract without the College's prior written consent, not to be unreasonably withheld or delayed.

**38.2 Notices.**

- (a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this clause, and shall be delivered personally, or sent by pre-paid first class post, recorded delivery, commercial courier or fax.
- (b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to





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in clause 38.2(a); if sent by pre-paid first class post or recorded delivery, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed; or, if sent by fax, one Business Day after transmission.

- (c) The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

### 38.3 **Severance.**

- (a) If any court or competent authority finds that any provision of the Contract (or part of any provision) is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.
- (b) If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

38.4 **Waiver.** A waiver of any right or remedy under the Contract is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict the further exercise of that or any other right or remedy.

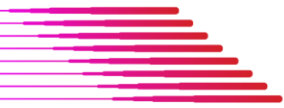
38.5 **Third party rights.** A person who is not a party to the Contract shall not have any rights under or in connection with it.

38.6 **Variation.** Except as set out in the Contract, any variation to the Contract, including the introduction of any additional terms and conditions, and minimum turnover requirements shall only be binding when agreed in writing and signed by the College.

38.7 **Conflict.** Any employee of the Supplier shall not be directly or indirectly engaged, concerned or have any financial interest in any capacity with a College or any of their employees, unless prior written approval is obtained from the College concerned.

38.8 **Governing law and jurisdiction.** This Contract and proceedings relating to any dispute or claim, arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be brought in the courts whereby the College and/or Supplier is domiciled. Each party agrees that the specified courts shall have exclusive jurisdiction over such disputes or claims save that any counterclaim may be brought in any proceedings already commenced.





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38.9 The parties shall attempt to resolve any dispute arising out of or relating to this contract through negotiations between senior executives of the parties, who have authority to settle the same. If the matter is not resolved by negotiation within 30 days of receipt of a written 'invitation to negotiate', the parties will attempt to resolve the dispute in good faith through an agreed Alternative Dispute Resolution (ADR) procedure, or in default of agreement, through an ADR procedure as recommended to the parties by the President or the Vice President, for the time being, of the Chartered Institute of Arbitrators.

If the matter has not been resolved by an ADR procedure within 60 days of the initiation of that procedure, or if any party will not participate in an ADR procedure, the dispute may be referred to arbitration by any party. Should the parties be unable to agree on an arbitrator or arbitrators, or be unable to agree on the Rules for Arbitration, any party may, upon giving written notice to other parties, apply to the President or the Vice President, for the time being, of the Chartered Institute of Arbitrators for the appointment of an Arbitrator or Arbitrators and for any decision on rules that may be necessary. Nothing in this clause shall be construed as prohibiting a party or its affiliate from applying to a court for interim injunctive relief.

If the Supplier is not based within the United Kingdom then all disputes arising out of or in connection with the present Contract shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules.