

Framework Agreement for Office, Computer & Library Supplies
Ref: OFF 3068NW

Start Date: 1st August 2019

End Date: 31st July 2021

Extension Date: 31st July 2022 and 31st July 2023

Appendix 6 - Model Contract for the Purchase of Goods

1. Interpretation

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

‘Acceptance’ means that Member Institution Authorised Officer has accepted the Goods as meeting the requirements of the Contract.

‘Acceptance Date’ means the date on which the Authorised Officer has Accepted the Goods.

‘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 Member Institution.

‘Authorised’ means signed by one of the Member Institution’s Authorised Officers.

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

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

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

"Contract": the contract between the Member Institution and the Supplier for the supply of Goods in accordance with **clause 2**.

"Data Breach" means any act or omission that (i) compromises the security, confidentiality or integrity of the Personal Data that Supplier Processes for and on behalf of the Member Institution (including, by way of example, the unauthorised loss or disclosure of any such Personal Data by Supplier); (ii) compromises the physical, technical, administrative or organisational safeguards put in place by the Supplier that relate to the protection of the security, confidentiality or integrity of such Personal Data (including any breach of the IT and data security requirements); or (iii) causes the Member Institution or Supplier to be in breach of data protection Law (in particular the General Data Protection Regulation).

"Data Controller" has the meaning set out in the DPA up to and including 24 May 2018 and has the meaning of "Controller" set out in the GDPR from 25 May 2018.

"Data Protection Particulars" means, in relation to any Processing under this Agreement: (a) the subject matter and duration of the Processing; (b) the nature and purpose of the Processing; (c) the type of Personal Data being Processed; and (d) the categories of Data Subjects.

"Data Subject" has the meaning set out in the DPA up to and including 24 May 2018 and from 25 May 2018 has the meaning set out in the GDPR.

"Delivery": as set out in **clause 5**.

‘Delivery Date’ means the date specified in the Contract.

'Delivery Instructions' means the instructions set out in the Contract for the provision of the Goods, including any other information the Member Institution considers appropriate to the provision of the Goods.

'DPA' means the Data Protection Act 1998 and the rules and regulations made or having effect under it;

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

"Goods": the goods (or any part of them) 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 goods similar to the Goods under the same or similar circumstances as those applicable to the Contract.

"Goods Specification": any specification for the Goods, including any related plans and drawings that are set out by the Member Institution to the Supplier.

'Installation' means the installation of the Goods in the designated location and into the operating environment specified by Member Institution at the site and 'Install' 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.

'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 ; including (but not limited to) the Modern Slavery Act 2015.

"Order": in the Member Institution's purchase order form or overleaf, as the case may be.

'Order Amendment' means an issued and Authorised order amendment from the Member Institution or series of Order Amendments

'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 up to and including 24 May 2018 and from 25 May 2018 has the meaning set out in the GDPR. For the purposes of this Agreement, Personal Data shall include Sensitive Personal Data.

'Premises' means the location(s) where the Goods are to be delivered

"Processing" has the meaning set out in the DPA up to and including 24 May 2018 and has the meaning set out in the GDPR from 25 May 2018, and "Process" and "Processed" shall be construed accordingly;

"Processor" has the meaning of "Data Processor" as set out in the DPA up to and including 24 May 2018 and has the meaning set out in the GDPR from 25 May 2018;

'Regulation' means the Public Contracts Regulations 2015 and "Regulation" will be interpreted accordingly

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

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

"Specification": shall mean any Goods Specification

"Member Institution": UK Health Security Agency

"Supplier": the person or firm from whom the Member Institution purchases the Goods.

'TUPE' means the Transfer of Undertakings (Protection of Employment) Regulations 2006

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 or statutory provision is a reference to such statute or provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted.
- (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.

2. **Basis of contract**

2.1 The Order constitutes an offer by the Member Institution to purchase the Goods in accordance with the Contract.

2.2 The Contract shall comprise any Order Amendments, any 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 Amendments having precedence over any earlier Order Amendments)
- (b) The Order
- (c) The Specification(s)
- (d) The Conditions

2.3 The Order shall be deemed to be accepted on the earlier of:

- (a) the Supplier issuing a written acceptance of the Order; or
- (b) the Supplier doing any act consistent with fulfilling the Order, at which point the Contract shall come into existence.

3. Agreement Management

- 3.1 The Supplier shall nominate an Agreement Manager who shall have sufficient authority to ensure that sufficient resources are allocated to the Contract, maintain performance to the Specification, pro-actively co-ordinate and communicate relevant orders and provide comprehensive support and links between the Member Institution and the Supplier. This must include sales support, information and advice on all Goods. The Agreement Manager shall be the prime contact between the Supplier and Member Institution 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.

4. Supply of Goods

- 4.1 The Supplier shall ensure that the Goods shall:
- (a) be free from defects in design, material and workmanship, correspond with their description and any applicable Goods Specification and shall remain so for 12 months after Acceptance; and
 - (b) be of satisfactory quality (within the meaning of the Sale of Goods Act 1979, as amended) and fit for any purpose held out by the Supplier or made known to the Supplier by the Member Institution expressly or by implication, and in this respect the Member Institution relies on the Supplier's skill and judgement; and
 - (c) be new (unless otherwise specified on the Purchase Order) and free from defects in design, material and workmanship; and
 - d) comply with all applicable Laws..
- 4.2 Supplier warrants to the Member Institution that that the Goods will be provided:
- (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.
- 4.3 The Supplier will make good at its expense any defect in the Goods that the Member Institution discovers under proper usage during the first twelve months of actual use or 18 months from the date of Acceptance by the Member Institution whichever period shall expire first. Such defects may arise due to faulty design or instruction as to the use of the Goods or inadequate or faulty materials or poor workmanship or any other breach of the Supplier's obligations whether in the Contract or at law.
- 4.4 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 or in the Delivery or the Goods.

- 4.5 Repairs or replacements will themselves be covered by this Contract but for a period of 12 months from Acceptance by the Member Institution.

5. Delivery of the Goods

5.1 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. The Member Institution will not be liable to pay for any pallets, packages or containers in which the Goods are supplied. All packaging must be clearly marked to show to whom it belongs. Any packaging that the Supplier requires returning will be done so at the Supplier's cost and risk;
- (b) each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, the Member Institution'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; and
- (c) if the Supplier requires the Member Institution to return any packaging material to the Supplier, that fact is clearly stated on the delivery note. Any such packaging material shall be returned to the Supplier at the cost of the Supplier.
- (d) delivery is free of charge
- (e) orders from multiple manufacturers shall be collated and delivered to Member Institutions in one delivery unless instructed by the Member Institution at no additional cost.

5.2 The Supplier shall deliver the Goods:

- (a) on the date specified in the Order, or, if no such date is specified, within 4 months of the date of the Order;
- (b) to the point of delivery stated in the Order, or as instructed by the Member Institution prior to delivery ("Delivery Location"); and
- (c) during the Member Institution's normal business hours, or as instructed by the Member Institution.
- (d) to locations which may include none ground floor locations without access to a lift at no additional cost and
- (e) to multiple sites if required at the Member Institution request at no additional cost.

5.3 Time of Delivery shall be of essence of the Contract.

5.4 Where the Goods are delivered by the Supplier, delivery shall occur when the Goods are removed from the transporting vehicle and delivered in accordance with the Delivery Instructions. Where the Goods are collected by the Member Institution, delivery shall occur when they are loaded onto the Member Institution's vehicle.

- 5.5 The international rules for the interpretation of trade terms prepared by the International Chamber of Commerce (Incoterms) shall apply but where they conflict with the Contract, the Contract shall prevail.
- 5.6 If the Supplier:
- (a) delivers less than [95]% of the quantity of Goods ordered, the Member Institution may reject the Goods; or
 - (b) delivers more than [105]% of the quantity of Goods ordered, the Member Institution may at its discretion reject the Goods or the excess Goods,
- and any rejected Goods shall be returnable at the Supplier's risk and expense. If the Supplier delivers more or less than the quantity of Goods ordered, and the Member Institution accepts the delivery, a pro rata adjustment shall be made to the invoice for the Goods.]
- 5.7 The Supplier shall not deliver the Goods in instalments without the Member Institution's prior written consent. Where it is agreed that the Goods are to be delivered by instalments, they may be invoiced and paid for separately. However, failure by the Supplier to deliver any one instalment on time or at all or any defect in an instalment shall entitle the Member Institution to the remedies set out in **clause 20**.
- 5.8 Except where otherwise provided in the Contract, delivery shall include the uploading or stacking of the Goods by the Supplier at such places as the Members Institution may direct.
- 5.9 The issue by Member Institution of a receipt note for the Goods shall not constitute any acknowledgement of the condition or nature of those Goods. The Member Institution shall not be deemed to have accepted any Goods other than in accordance with **clause 6**.
- 5.10 If the Supplier at any time becomes aware of any act or omission, or proposed act or omission by the Member Institution which prevents or hinders, or may prevent or hinder the Supplier from supplying the Goods in accordance with the Contract, the Supplier shall inform, in writing, the Member Institution.

6. Acceptance

- 6.1 The Member Institution shall have the right to reject the Goods in whole or in part whether or not paid for in full or in part within a reasonable time of delivery or performance if they do not conform to the requirements of the Contract.

7. Consumables

- 7.1 The Member Institution reserves the right to procure consumables to be used on or with the Goods from the Supplier or such other source as the Member Institution deems appropriate. Such procurement of consumables from a source other than Supplier shall not invalidate the Member Institution's rights under the Contract and in no way affect the provisions in respect of warranties given under the Contract or otherwise provided that the consumables utilised meet the minimum standards as published by Supplier or the manufacturer of the Goods, or where no published standards are available, the standards generally accepted

as being appropriate to the consumable supplies for use on or with the Goods concerned.

- 7.2 In the event that the Supplier shall claim that the use of specific consumables is adversely affecting the standards of performance of the Goods and/or increasing the cost to Supplier of meeting its obligations to provide repair or maintain the Goods it shall be for Supplier to prove that the consumables do not meet the requisite minimum standards, and are affecting the Goods and/or increasing the Supplier's costs. If the Supplier shall prove that the consumables do not meet the requisite minimum standards the Member Institution shall cease using the consumables concerned and procure alternative consumables which meet the standards required.

8. Maintenance

- 8.1 If required by the Member Institution the Supplier shall enter into a separate contract for the maintenance of the Goods on substantially the same terms as those set out in the Contract.

9. Spares

- 9.1 The Supplier shall make available to the Member Institution, 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 Member Institution shall require.
- 9.2 The Supplier shall maintain a supply of such spares or replacement parts for a period of seven (7) 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.
- 9.4 If during the period set out in **clause 9.2** the Supplier or the Supplier's sub-contractor intends to discontinue the manufacture of spares or replacement parts for the Goods the Supplier shall forthwith give notice to the Member Institution of such intention and offer to supply the Member Institution with a perpetual, royalty free, worldwide non exclusive license to use all of the relevant Intellectual Property Rights in all designs, tools, drawings or other items necessary for the Member Institution to procure replacement spares from any third party.

10. Operating manuals

- 10.1 The Supplier shall supply to the Member Institution all operating manuals and other documentation necessary for the satisfactory operation of the Goods, 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 Member Institution 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. Attachment to the Goods

- 11.1 The Member Institution shall have the right to attach to, or install into or onto the Goods any other items or goods (including but not limited to software) which the Member Institution considers to be appropriate and necessary to enable the Goods to be utilised to the fullest extent as required by the Member Institution. If the Member Institution attaches or installs such items or goods then this shall not have the effect of degrading the performance of the Goods and shall not relieve Supplier from meeting its obligations under the Contract provided that:–
- (a) the goods attached or installed are not specified in any of the Supplier's and/or the manufacturer's published specifications as having the effect of degrading the standards of performance or invalidating the Member Institution's rights under the Contract; and
 - (b) the Supplier has not otherwise notified the Member Institution in writing that the attachment or Installation of specific goods will degrade the standards of performance or invalidate the Member Institution's rights under the Contract; and
 - (c) The goods have been attached or installed in accordance with the published instructions of Supplier.
- 11.2 In the event that the attachments and/or Installation is made by the Member Institution and the Supplier can prove that such attachment or Installation is adversely affecting the standard of performance of the Goods then the Supplier shall be entitled to be reimbursed any associated direct costs which the Supplier can demonstrate as being reasonably and necessarily incurred in returning the Goods to the normal standards of performance in accordance with this Contract as a direct result of the attachment or Installation made by the Member Institution (other than where such attachment or Installation has been with the approval of the Supplier).

12 Training

- 12.1 Where appropriate, the Price shall include the cost of instructing the Member Institution's personnel in the use or operation of the Goods, such instructions shall be in accordance with the requirements of the Contract.

13 Hazardous Goods and Safety

- 13.1 Where the Goods comprise or include substances hazardous to health, the Supplier will supply to the Member Institution on or before Delivery with all data necessary to allow the Member Institution 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 Progress and Inspection

- 14.1 The Supplier shall at its expense provide any programmes for the provision of the Goods that the Member Institution may reasonably require.

- 14.2 The Supplier shall notify the Member Institution, in writing, without delay if manufacturing or production progress falls behind or may fall behind any of these programmes.
- 14.3 The Member Institution shall have the right to check progress at the Supplier's manufacturing facilities or offices (including home working) or the offices (including home working) of the Supplier's sub-contractors at all reasonable times to inspect and to reject Goods that do not comply with the Contract. The Supplier's sub-contracts shall reserve such rights for the Member Institution.
- 14.4 Any inspection or approval shall not relieve the Supplier from its obligations under the Contract.

15 Offsite provision of Goods

- 15.1 The Member Institution recognises that some or all of the Goods may be provided from a site or sites (including home working) of the Supplier and for their sub-contractors. In all circumstances where the Goods or part of the Goods are provided from such site or sites, the Supplier shall comply with the following requirements:
- (a) give the Authorised Officer a minimum of one (1) weeks' written notification that off-site working will take place, setting out the reasons for such working, personnel resources (including name, position and role) used and the specific outputs to be delivered by each of the personnel.
 - (b) facilitate the Authorised Officer to contact each of the personnel including but not restricted to, telephone number and/or e-mail addresses for the purpose of ascertaining that the Goods are being provided; and
 - (c) ensure that all invoices submitted have signed and authorised daily approval sheets confirming the details as at **clause 15.1(a)** above.
- 15.2 The Supplier's failure to comply with the terms of this **clause 15** shall give the Member Institution the right not to pay for the Goods provided off-site.
- 15.3 Neither failure of the Member Institution to inspect nor failure to discover or reject any portion of faulty Goods shall be deemed to imply acceptance thereof or in any way relieve the Supplier from its responsibilities under the Contract.

16 Work on the Premises

- 16.1 If the Contract involves any Goods which the Supplier Delivers, Installs or performs on the Premises then 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 Member Institution 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 Member Institution 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.

- 16.2 The Supplier shall make no delivery of materials, plant or other things nor commence any work on the Premises without obtaining the Member Institution's prior consent.
- 16.3 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 Member Institution may reasonably require.
- 16.4 The Member Institution shall have the power at any time during the progress of the Contract to order in writing:
- (a) the removal from the Premises of any materials which in the Member Institution's opinion are either hazardous or not in accordance with the Contract, and/or;
 - (b) the substitution of proper and suitable materials, and/or;
 - (c) the removal and proper re-execution notwithstanding any previous test thereof or interim payment therefore of any work or Goods which, in respect of material or workmanship, is not in the Member Institution's opinion in accordance with the Contract.
- 16.5 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 Member Institution.
- 16.6 The Supplier shall ensure that their employees, sub-contractors and their employees and any other persons associated with Supplier shall be dressed appropriately. The Member Institution reserves the right to remove from the Premises anyone who is, in the Member Institution's absolute discretion, not complying with this requirement.
- 16.7 Any land or Premises made available from time to time to the Supplier by the Member Institution in connection with the Contract, shall be made available to Supplier on a non-exclusive basis free of charge and shall be used by the Supplier solely for the purpose of performing its obligation under the Contract. The Supplier shall have the use of such land or Premises as licensee and shall vacate the same on completion, termination or abandonment of the Contract.
- 16.8 The Supplier shall limit access to the land or Premises to such personnel as is necessary to enable it to perform its obligations under the Contract.
- 16.9 The Supplier agrees that there is no intention on the Member Institution's part to create a tenancy of any nature whatsoever in favour of the Supplier or its personnel and that no such tenancy has or shall come into being and, notwithstanding any rights granted pursuant to the Contract, the Member Institution retains the right at any time to use any Premises owned or occupied by the Member Institution in any manner it sees fit.

17 Variation & Substitution

- 17.1 The Member Institution shall have the right, before delivery, to send the Supplier an Order Amendment adding to, deleting or modifying the requirements. If the Order Amendment will cause a change to the price, or Delivery Date then the Supplier must suspend performance of the Contract and notify the Member Institution without delay, calculating the new price, Delivery Date immediately at the same level of cost and profitability as the original price. The Supplier must allow the Member Institution at least ten (10) working days to consider any new price or Delivery Date. The Order Amendment shall take effect when, but only if, the Authorised Officer accepts it in writing. Subject to other provisions of the Contract, if the Authorised Officer fails to confirm the Order Amendment within the time stipulated then performance of the Agreement shall immediately resume as though the Order Amendment had not been issued.

18 Compliance with applicable Laws

- 18.1 The Supplier shall (at no additional cost to the Member Institution) at all times, prepare, manufacture, Deliver, Install, carry out and provide the Goods in compliance with all Laws. The Supplier shall maintain such records as are necessary pursuant to such Laws and shall promptly on request make them available for inspection by any relevant authority that is entitled to inspect them and by the Member Institution (or its authorised representative).
- 18.2 The Supplier shall neither be relieved of its obligations to supply the Goods in accordance with the terms of the Contract nor be entitled to an increase in the price as the result of any modifications to the Laws.
- 18.3 Without prejudice to **clause 18.2**, the Supplier shall monitor and shall keep the Member Institution informed in writing of any changes in the Laws which may impact the Goods and shall provide the Member Institution with timely details of measures it proposes to take and changes it proposes to make to comply with any such changes.
- 18.4 The Supplier shall consult with the Member Institution (and wherever possible agree with the Member Institution) on the manner, form and timing of changes it proposes to make to meet any changes in Laws where they would impact the Goods. The Supplier shall not implement any change, without the Member Institution's prior written agreement, which would have an adverse effect on the Supplier's ability to provide the Goods in accordance with the Specification.
- 18.5 Without prejudice to the rest of this **clause 18**, the Supplier shall use all reasonable endeavours to minimise any disruption caused by any changes in applicable Laws introduced pursuant to this **clause 18**.

19 Service Improvement and Technology Refresh

- 19.1 The Supplier shall, at its own cost, submit a report to the Member Institution within (not applicable) 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 Goods. Such report shall be provided in sufficient detail to enable the Member Institution to evaluate properly the benefits of the new technology or process.
- 19.2 If the Member Institution wishes to incorporate any improvement identified by the Supplier pursuant to **clause 19.1**, the parties shall discuss the implementation of the associated change provided always that if the Supplier's costs in providing the Goods results of any such change implemented by the Member Institution 10% of

the cost savings shall be passed on to the Member Institution by way of a consequential and immediate reduction in the price for the Goods.

20 Remedies

- 20.1 If the Supplier fails to deliver the Goods on the Delivery Date or if the Goods do not comply with the undertakings set out in **clause 4**, then, without limiting any of its other rights or remedies, the Member Institution shall have the right to any one or more of the following remedies:
- (a) to terminate the Contract with immediate effect;
 - (b) to reject the Goods and return them to the Supplier at the Supplier's own risk and expense;
 - (c) to require the Supplier to repair or replace the rejected Goods or to provide a full refund of the price of the rejected Goods (if paid);
 - (d) to refuse to accept any subsequent performance of the delivery of the Goods which the Supplier attempts to make;
 - (e) to recover from the Supplier any costs incurred by the Member Institution in obtaining substitute goods from a third party; and
 - (f) to claim damages for any other costs, loss or expenses incurred by the Member Institution which are in any way attributable to the Supplier's failure to carry out its obligations under the Contract.
- 20.2 The Contract shall apply to any repaired or replacement Goods supplied by the Supplier.
- 20.3 The Supplier shall keep the Member Institution 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 Member Institution as a result of or in connection with:
- (a) any claim made against the Member Institution for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the manufacture, supply or use of the Goods;
 - (b) any claim made against the Member Institution by a third party arising out of, or in connection with, the supply of the Goods, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Contract by the Supplier, its employees, agents or subcontractors; and
 - (c) any claim made against the Member Institution by a third party for death, personal injury or damage to property arising out of, or in connection with, defects in Goods, to the extent that the defect in the Goods is attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors.
 - (d) the provision of the Goods, including advice and recommendations made and accepted by the Member Institution.
 - (e) any Installation and any Goods and advice given or anything done or omitted to be done under, or in connection with the Contract by the Supplier; and

- (f) any damage to the Member Institution's property or Premises (including any materials, tools or patterns sent to Supplier for any purpose).

This **clause 20.3** shall survive termination of the Contract.

- 20.4 The Member Institution's rights and remedies under the Contract are in addition to its rights and remedies implied by statute and common law.
- 20.5 The Supplier must take out and maintain insurance adequate to cover the risks set out in the Contract and for a period of 6 years thereafter and in any event shall take out and maintain:
 - (a) Product Liability Insurance coverage of not less than two million pounds sterling (£2,000,000) for any one, or series of claims that may arise; and
 - (b) Public Liability Insurance coverage of not less than two million pounds sterling (£2,000,000) for any one, or series of claims that may arise.
 - (d) Employer Liability Insurance coverage of not less than five million pounds sterling (£5,000,000) for any one, or a series of claims that may arise.
- 20.6 The Supplier will take out and maintain such insurances as set out in this **clause 20** with a reputable insurance company and shall at the Member Institution's request provide evidence of the insurance policy or policies and of payment of the premiums. The Supplier's failure to maintain such insurances shall be treated as a material breach of the Contract and shall give the Member Institution the right to terminate the Contract in accordance with **clause 29**.

21 Liability

- 21.1 This clause sets out the Member Institution's entire financial liability (including any liability for the acts or omissions of its employees, agents, consultants and sub-contractors) to the Supplier in respect of any breach by the Member Institution of:
 - (a) The Public Contracts Regulations 2006 or
 - (b) The Contractand any representation, statement or tortious act or omission (including negligence) arising under or in connection with the Contract.
- 21.2 Nothing in the Contract limits or excludes the Member Institution's liability:
 - (a) for death or personal injury resulting from the Member Institution's negligence; or
 - (b) for any damage or liability incurred by the Supplier as a result of fraud or fraudulent misrepresentation by the Member Institution
- 21.3 The Member Institution shall not be liable for:
 - (a) loss of profits; or
 - (b) loss of business; or
 - (c) loss of contract; or
 - (d) loss due to corruption of data; or
 - (e) any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses.

- 21.4 The Member Institution's total liability in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise arising in connection with the performance or contemplated performance of the Contract or in respect of any correspondence between the parties (including any competitive process) shall be limited to and shall not exceed £10,000.

22. Title and risk

- 22.1 Title and risk in the Goods shall pass to the Member Institution on completion of Delivery or Installation, if required.

23. Price and payment

- 23.1 The price of the Goods shall be the price set out in the Order, or, if no price is quoted, the price set out in the Supplier's published price list in force as at the date the Contract came into existence.
- 23.2 The price of the Goods shall be inclusive of the costs of packaging, insurance and carriage of the Goods. No extra charges shall be effective unless agreed in writing and signed by the Member Institution.
- 23.3 The Supplier may invoice the Member Institution after Acceptance. Each invoice shall include such supporting information required by the Member Institution to verify the accuracy of the invoice, including but not limited to the relevant Order number.
- 23.4 The Member Institution 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.
- 23.5 All amounts payable by the Member Institution 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 Member Institution, the Member Institution 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 at the same time as payment is due for the supply of the Goods.
- 23.6 The Member Institution 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.
- 23.7 The Supplier shall ensure that provisions equivalent to **clause 23.5** will be effective within any subcontract concluded by the Supplier and any third party; and further, the Supplier shall require such subcontractors to ensure that their subcontracts contain within them an equal and equivalent provision.

24. Confidential information

- 24.1 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.

25. Publicity

- 25.1 Unless expressly permitted in writing by the Member Institution, 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 Member Institution.

26. Intellectual Property

- 26.1 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 Member Institution shall remain the Member Institution's property absolutely;
 - (b) prepared by or for the Supplier specifically for the Member Institution in relation to the performance of the Contract shall belong to the Member Institution.
 - (c) pre-existing at the commencement of the Contract and owned or licensed by the Supplier shall be licensed to the Member Institution insofar as it is necessary for the Member Institution to exercise its other rights under the Contract. Such a license shall be perpetual, worldwide, irrevocable, royalty-free and capable of sub-license on those terms.

27 Anti-Bribery

- 27.1 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 27.1(b)**, and will enforce them where appropriate; and
 - (d) promptly report to the Member Institution 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;
- 27.2 Breach of this **clause 27** shall entitle the Member Institution to terminate the Contract with immediate effect.

28 Data Protection

- 28.1 The parties acknowledge that the Member Institution is the Data Controller and the Supplier is the Processor. The only Processing of Personal Data that the

Supplier is authorised to do is listed in Schedule 1 (Data Protection Particulars) of this Agreement.

- 28.2 The Supplier shall Process Personal Data only to the extent, and in such a manner, as is necessary for the purposes specified in the Specification and in accordance with the Member Institution's written instructions from time to time and shall not Process Personal Data for any other purpose. If the Supplier is required by Law to Process Personal Data otherwise than in accordance with this Clause, immediately inform the Member Institution of the legal requirement before Processing Personal Data (unless prohibited from doing so by Law).
- 28.3 The Supplier shall provide all reasonable assistance to the Member Institution in the preparation of any data protection impact assessment, as defined in the GDPR, prior to commencing any Processing. Such assistance may, at the discretion of the Member Institution, include:
- (a) a systematic description of the envisaged Processing operations and the purpose of the Processing;
 - (b) an assessment of the necessity and proportionality of the Processing operations in relation to the Specification;
 - (c) an assessment of the risks to the rights and freedoms of Data Subjects; and
 - (d) the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 28.4 The Supplier will not Process Personal Data, or disclose Personal Data to any party who carries on business, outside the EEA except with the Member Institution's prior written consent and where such consent is given, take such actions and enter into such agreements as the Member Institution may require to ensure that such transfer or disclosure complies with Law.
- 28.5 The Supplier will keep a record of any Processing of Personal Data it carries out under the Contract.
- 28.6 The Supplier shall not disclose Personal Data to any person except under this Agreement or with your written consent.
- 28.7 The Supplier shall ensure that access to Personal Data is limited to:
- (a) those employees who need access to 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 Personal Data as is strictly necessary for performance of that employee's duties.
- 28.8 The Supplier shall ensure that employees that require access to Personal Data:
- (a) are informed of the confidential nature of Personal Data;
 - (b) have undertaken training in Law relating to handling Personal Data; and

- (c) are aware both of the Supplier's duties and their personal duties and obligations under Law and this Contract.
- 28.9 The Supplier shall ensure that all persons authorised to Process Personal Data are under an appropriate contractual or other legal obligation of confidentiality in respect of Personal Data.
- 28.10 The Supplier shall not disclose Personal Data to any Data Subject or to a third party other than at the request of the Member Institution or as provided for in this Contract.
- 28.11 The Supplier shall, taking into account the nature of the Processing, implement appropriate technical and organisational measures against unauthorised or unlawful Processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data that have been reviewed and approved by the Member Institution as appropriate having taken account of the:
- (a) nature of the Personal Data to be protected;
 - (b) harm that might result from a Data Breach;
 - (c) state of technological development; and
 - (d) cost of implementing any measures.

Appropriate technical and organisational measures include pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, taking reasonable steps to ensure the reliability of its employees with access to Personal Data and regularly assessing and evaluating the effectiveness of such measures adopted.

- 28.12 The Supplier shall, upon becoming aware, immediately and in any event within 24 hours notify the Member Institution of any Data Breach and shall work together with the Member Institution to provide the Member Institution with full co-operation and assistance, including to investigate the Data Breach (including by (i) assisting with any investigation launched by the Member Institution; (ii) facilitating interviews with the Supplier's employees and others involved in the matter; and (iii) making available all relevant records reasonably required by the Member Institution to investigate the Data Breach or otherwise comply with Law or the requests of any competent regulatory authority in relation to the Data Breach or its investigation).
- 28.13 The Supplier shall not engage another Processor to Process Personal Data except with the Member Institution's prior specific written authorisation and, where such authorisation is given, enter into a contract with the Processor that imposes the same contractual obligations set out in this Clause on that Processor, and remain liable for any Processor that it engages in accordance with the terms of this Clause.
- 28.14 The Supplier shall assist and fully co-operate with the Member Institution to enable it to comply with its obligations as a Data Controller under and in accordance with Law including in relation to the security of Processing, data subject right requests, reporting personal Data Breaches to the supervisory

authority and conducting data privacy impact assessments. The Supplier shall notify the Member Institution within 24 hours if it receives a request from a Data Subject to exercise its rights under Law or any communication from a Data Subject, the Information Commissioner or any other regulatory authority in connection with Personal Data Processed under this Contract.

- 28.15 The Supplier shall promptly comply with any request from the Member Institution requiring the Supplier to amend, transfer or delete Personal Data. At the Member Institution's request, the Supplier shall provide to the Member Institution a copy of all Personal Data held by it in the format and on the media reasonably specified by the Member Institution.
- 28.16 The Supplier shall at any time on the request of the Member Institution, return all Confidential Information and/or data (including any Personal Data that the Supplier Processes for and on behalf of the Member Institution) to that Member Institution and/or permanently delete the same from its systems, including any back-up copies.
- 28.17 The Supplier shall at the Member Institution's option, delete or return to the Member Institution all Personal Data on termination of the Agreement and delete any existing copies of Personal Data except to the extent that the Member Institution is required to retain Personal Data by Law.
- 28.18 The Supplier shall make available to the Member Institution all information necessary to demonstrate our compliance with the obligations under this Clause and allow for and contribute to audits, including inspections, conducted by the Member Institution or another auditor mandated by the Member Institution.
- 28.19 The Supplier shall immediately inform the Member Institution if, in its opinion, an instruction from the Member Institution infringes Law.
- 28.20 The Supplier shall, in connection with this Agreement, comply in all respects with Law relating to data protection and have established procedures to ensure continued compliance with Law. The Supplier shall comply with its obligations as a Processor under and in accordance with Law.
- 28.21 The Supplier shall only collect any Personal Data in a form which is fully compliant with Law which will contain a data protection notice informing the data subject of the identity of the Data Controller, the identity of any data protection representative it may have appointed, the purposes or purpose for which their Personal Data will be Processed and any other information which is necessary having regard to the specific circumstances in which the data is, or is to be, Processed to enable Processing in respect of the Data Subject to be fair and compliant under Law.
- 28.22 The Member Institution may, at any time on not less than 30 working days' notice, revise this clause by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme.

- 28.23 The parties agree to take account of any guidance issued by the Information Commissioner's Office. The Member Institution may on not less than 30 working days' notice to the Supplier amend this Contract to ensure that it complies with any guidance issued by the Information Commissioner's Office.
- 28.24 The Supplier shall Process Personal Data in performing the Services as notified by the Member Institution of this Contract.
- 28.25 The Supplier warrants that it shall:
- (a) Process the Personal Data in compliance with Law; and
 - b) take appropriate technical and organisational measures against Data Breach.
- 28.26 The Supplier agrees to indemnify and keep indemnified and defend at its own expense the Member Institution against all costs, claims, damages or expenses incurred by the Member Institution or for which the Member Institution may become liable due to any failure by the Supplier or its employees or agents to comply with any of its obligations under this Clause.

OR

The parties do not expect that the Supplier will process any Personal Data of the Member Institution as a Processor. Where the Supplier does Process any Personal Data of the Supplier as a Processor, the parties will vary this Agreement and replace this Clause with the Member Institution's standard Data Controller to Processor clause as disclosed to the Supplier prior to commencement of this Agreement.

29. Termination

- 29.1 Without limiting its other rights or remedies the Member Institution may terminate the Contract at any time before Delivery with immediate effect by giving the Supplier written notice, in which case the Member Institution shall pay the Supplier fair and reasonable compensation for work-in-progress at the time of termination, but such compensation shall not include loss of anticipated profits or any consequential loss.
- 29.2 The Member Institution 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 [7] 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, or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the Insolvency Act 1986, or (being a partnership) has any partner to whom any of the foregoing apply;

- (c) the Supplier commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors;
- (d) (being a company) 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;
- (e) (being an individual) the Supplier is the subject of a bankruptcy petition or order;
- (f) a creditor or encumbrancer of the Supplier attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 days;
- (g) (being a company) 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;
- (h) (being a company) a floating charge holder over the Supplier's assets has become entitled to appoint or has appointed an administrative receiver;
- (i) a person becomes entitled to appoint a receiver over the Supplier's assets or a receiver is appointed over the Supplier's assets;
- (j) 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 events mentioned in **clause 29.2(b)** to **clause 29.2(i)** inclusive;
- (k) the Supplier suspends, or threatens to suspend, or ceases or threatens to cease to carry on, all or substantially the whole of its business;
- (l) the Supplier's financial position deteriorates to such an extent that in the Member Institution's opinion the Supplier's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; or
- (m) (being an individual) the Supplier dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.

29.3 The Member Institution may immediately terminate this Contract where—

- (a) the Contract has been subject to a substantial modification which would have required a new procurement procedure in accordance with Regulation 72(9);
- (b) the Supplier has, at the time of Contract award, been in one of the situations referred to in Regulation 57(1), including as a result of the application of Regulation 57(2), and should therefore have been excluded from the procurement procedure; or
- (c) the Contract should not have been awarded to the Supplier in view of a serious infringement of the obligations under the Treaty on European Union and the Public Contracts Directive 2014/24 or the Treaty on the

Functioning of the European Union that has been declared by the Court of Justice of the European Union in a procedure under Article 258 of Treaty on the Functioning of the European Union

30. Consequences of Termination

30.1 On termination of the Contract for any reason:

- (a) 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; and
- (b) clauses which expressly or by implication have effect after termination shall continue in full force and effect.

31. Force majeure

31.1 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 Member Institution may terminate this Contract immediately by giving written notice to the Supplier.

32. Freedom of Information and Environmental Regulations

- 32.1 The Supplier acknowledges that the Member Institution 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 Member Institution (at the Supplier's expense) as mandated by the Member Institution in relation to these Laws.
- 32.2 Any Requests received by the Supplier shall be forwarded to the Member Institution immediately.
- 32.3 The provisions of **clause 32** shall extend to sub-contractors and the Supplier shall ensure compliance with this requirement.
- 32.4 The Supplier acknowledges that the Member Institution 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.

33 Articles on Loan

33.1 All Articles loaned by the Member Institution to the Supplier in connection with the Contract shall remain always the Member Institution's property and shall be surrendered to the Member Institution 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 returns all the Articles to the Member Institution 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 Member Institution's discretion and all proceeds of sales of such scrap must be promptly paid to the Member Institution.

34 Supplier Employees

- 34.1 When directed by the Member Institution, 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 Member Institution may reasonably require.
- 34.2 The Supplier's employees and those (if any) of the Supplier's sub-contractors or agents engaged within the boundaries of any of the Member Institution 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.
- 34.3 The Member Institution's decision as to whether any person is to be refused access to any Premises occupied by or on behalf of the Member Institution shall be final and conclusive.
- 34.4 The Supplier shall replace any of its employees who, the Member Institution shall have reasonably decided, have failed to carry out their duties with reasonable skill and care. Following the removal of any of the Supplier's employees for any reason, the Supplier shall ensure such person is replaced promptly with another person with the necessary training and skills to meet the requirements of the Contract.
- 34.5 The Supplier shall bear the cost of or costs arising from any notice, instructions or decision of the Member Institution under this **clause 34**.
- 34.6 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.
- 34.7 Where the appointed Agreement Manager leaves the employment of the company, lead institution must be informed immediately of interim arrangements made.

35 Re-tendering and Handover

- 35.1 Within twenty one (21) days of being so requested by the Member Institution, the Supplier shall provide and thereafter keep updated, in a fully indexed and catalogued format, all the information necessary to enable the Member Institution to issue invitations to tender for the future provision of the Goods .
- 35.2 Where, in the opinion of the Member Institution, TUPE is likely to apply to the Contract on it's termination or expiration, the information to be provided by the

Supplier under **clause 35.1** 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.

35.3 The Supplier shall indemnify the Member Institution against any claim made against the Member Institution at any time by any person in respect of the liability incurred by the Member Institution arising from any deficiency or inaccuracy in information, which the Supplier is required to provide under **clause 36.1**.

35.4 The Supplier shall co-operate fully with the Member Institution 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.

36. TUPE

36.1 The Supplier shall indemnify and keep indemnified the Member Institution against any loss incurred by the Member Institution connected with or arising from any claim or proceedings by any trade union, elected employee representative or staff association made against the Member Institution in respect of any or all of the Supplier's staff or employees or any other employee of the Supplier or its sub-contractors and which arises from or is connected with any failure by the Supplier to comply with its legal obligations in relation thereto whether under Section 188 of the Trade Union and Labour Relations (Consolidation) Act 1992 or TUPE.

36.2 The Supplier shall indemnify and keep indemnified the Member Institution against any loss incurred by the Member Institution connected with or arising from the contract of employment or any policy applicable to, or any collective agreement in respect of any of the Supplier's staff or any other person at any time employed by (or engaged as a consultant by) the Supplier or its sub-contractors made against the Member Institution at any time for breach of such contract, policy or redundancy, pay, sex, race or disability discrimination, equal pay, unlawful deductions, loss of earnings, industrial or personal injury or otherwise relating to their employment by the Supplier and which results from any act, fault or omission of the Supplier or such other person was employed by the Supplier, save to the extent that the liability arises from any wrongful act by the Member Institution or its employees.

- 36.3 The Supplier shall indemnify and keep indemnified the Member Institution against any loss incurred from any change or proposed change to the terms and conditions of employment of any or all of the Supplier's staff or any other employee of the Supplier or its sub-contractors where such change is or is proposed to be effected following the transfer of any such person pursuant to the agreement and in respect of any loss incurred by the Member Institution arising from the employment or proposed employment of any such person otherwise than on terms the same as those enjoyed by any such person immediately prior to such transfer.
- 36.4 Except with the proper written consent of the Member Institution, the Supplier shall not vary any terms and conditions of employment of any employee or any policy collective agreement applicable to any employee then assigned by the Supplier or its sub-contractors to the discharge of the Contract (provided always that this provision shall not affect the right of the Supplier to give effect to any pre-existing contractual obligation to any such employee) nor remove or replace any particular employee so assigned (unless requested by such employee or upon the resignation of such employee in which case the Supplier shall replace such person with another person of similar skills, qualifications and experience) after the Member Institution has served notice of the termination of the Contract or after the Supplier shall have otherwise become aware of the proposed termination or re-tendering of this agreement, any Contract or the provision by it of the Goods.

37. General

37.1 Assignment and subcontracting.

- (a) The Member Institution 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 Member Institution's prior written consent.

37.2 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 in **clause 37.2(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.

37.3 **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.

37.4 **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.

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

37.6 **Variation.** Except as set out in the Contract, any variation to the Contract, including the introduction of any additional terms and conditions, shall only be binding when agreed in writing and signed by the Member Institution.

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

37.8 **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 Member Institution 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.

37.9 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.

Signature of acceptance:

Signature:

Name:

Occupation: Internal Sales Executive 05.08.2022

Company: WF Education Group Ltd

Schedule 1: Data Protection Particulars

DATA PROTECTION PARTICULARS

The subject matter and duration of the Processing	The parties will Process Personal Data in the context of: [●] <u>Duration of the contract only.</u>
The nature and purpose of the Processing	The Processing will be for the purposes of: [●] Contact details for the necessary parties to the works.
The type of Personal Data being Processed	The Personal Data will include: [●] Names, e-mail addresses, postal address, ip address, username and related password, student ID number, national insurance number]
The categories of Data Subjects	The Data Subjects will include: [●] contractors, students, employees etc.