



HIGH
SPEED
RAIL

National College for High Speed Rail

**Terms and Conditions for the
Purchase of Services and/or Goods**

September 2017 edition

1. Definitions and interpretations

1.1 Unless the context requires otherwise, the following words and phrases shall have the following meanings:

"Applicable Laws"	any: <ul style="list-style-type: none">i. statute, statutory instrument, bye-law, order, directive, treaty, decree or law (including any common law, judgment, demand, order or decision of any court, regulator or tribunal);ii. rule, policy, guidance or recommendation issued by any governmental, statutory or regulatory body; and/oriii. industry code of conduct or guideline which relates to the Contract and/or the Goods and/or their manufacture, packaging, packing and/or delivery and/or the Services and/or the activities which are comprised in all or some of the Services or the use or application of the output from the Services.
"ASBO"	an anti-social behaviour order as defined in the Crime and Disorder Act 1998.
"Authorised Sub-Processor"	any third party appointed by the Supplier in accordance with this Contract, with the prior written consent of the College, to Process Contract Personal Data.
"Barred Lists"	the barred lists provided for under the Safeguarding Vulnerable Groups Act 2006 as amended by the Protection of Freedoms Act 2012.
"Bribery Act"	means the Bribery Act 2010.
"Business Day"	a day that is not a Saturday, Sunday or public or bank holiday in England.
"Business Hours"	9:00 am to 5:00 pm on a Business Day
"Change in Control"	occurs where: <ul style="list-style-type: none">i. Control of the relevant entity is obtained (whether directly or as a result of obtaining Control of one or more other persons) by any person (either alone or together with persons acting in concert with it, as such expression is defined in the Takeover Code) who did not, at the date of the Contract, hold Control (whether directly or as a result of having Control of one or more other persons) of the relevant entity; or

	<ul style="list-style-type: none"> ii. a person who has Control (whether directly or as a result of having Control of one or more other persons) of the relevant entity at any time during the term of the Contract ceases to have Control (whether directly or as a result of having Control of one or more other persons) of the relevant entity.
"CMA Guidance"	guidance issued by CMA in respect of consumer protection of learners in higher education in England and Wales.
"CMA"	the UK Competition and Markets Authority or any successor thereto.
"College"	the National College of High Speed Rail (NCHSR)
"Commencement Date"	the date upon which the Contract is formed in accordance with Clause 2.1 or, if different, the date specified as the "Commencement Date" in the Order.
"Confidential Information"	all information (whether written, oral, in electronic form or in any other media) of a confidential or proprietary nature that is disclosed by or on behalf of the College obtained by or made available to the Supplier or its representatives.
"Consumer Laws"	<ul style="list-style-type: none"> i. the UK Consumer Protection Act 2015 and any subordinate legislation made under that Act from time to time; ii. the UK Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013; and iii. the UK Consumer Protection from Unfair Trading Regulations 2008.
"Contract End Date"	the date, if any, specified in the Order as the contract end date or expiry date.
"Contract Manager"	such official of the College or other person, as the College shall from time to time appoint to act on its behalf, as the College may notify to the Supplier for this purpose from time to time.
"Contract Personal Data"	has the meaning given to it in the Order.
"Contract"	the contract between the College and the Supplier consisting of the Order, these terms and conditions and any other documents specified by the College.
"Control"	the power (whether direct or indirect) to direct or cause the direction of the affairs of an entity, whether by means of holding shares, possessing voting power, exercising contractual powers or otherwise.

"Convictions"	other than in relation to any minor road traffic offences, any previous or pending prosecutions, convictions, cautions and binding overs (including any spent convictions as contemplated by section 1(1) of the Rehabilitation of Offenders Act 1974 by virtue of the exemptions specified in Part II of Schedule 1 of the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975 (SI 1975/1023) or any replacement or amendment to that Order).
"CTSA"	the UK Counter Terrorism and Security Act 2015 and any subordinate legislation made under that Act from time to time.
"Data Protection Laws"	<p>all Applicable Laws relating to data protection, the processing of personal data and privacy, including:</p> <ul style="list-style-type: none"> (i) the Data Protection Act 1998; (ii) (with effect from 25 May 2018) the General Data Protection Regulation (EU) 2016/679; (iii) the Privacy and Electronic Communications (EC Directive) Regulations 2003 (as may be amended by the proposed Regulation on Privacy and Electronic Communications); and (iv) any legislation that, in respect of the United Kingdom, replaces or converts into domestic law the General Data Protection Regulation (EU) 2016/679, the proposed Regulation on Privacy and Electronic Communications or any other law relating to data protection, the processing of personal data and privacy as a consequence of the United Kingdom leaving the European Union <p>and references to "Data Subjects", "Personal Data", "Process", "Processed", "Processing" and "Data Processor" have the meanings set out in, and will be interpreted in accordance with:</p> <ul style="list-style-type: none"> (v) in respect of processing undertaken on or before 24 May 2018, the Data Protection Act 1998; (vi) in respect of processing undertaken on or after 25 May 2018, the General Data Protection Regulation (EU) 2016/679; and (vii) in respect of processing undertaken on or after the date on which legislation comes into force that, in respect of the United Kingdom, replaces or converts into domestic law the General Data Protection Regulation (EU) 2016/679, that legislation.
"Data Security Incident"	the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, Contract Personal Data transmitted, stored or otherwise Processed.

"Delivery"	the time at which delivery of the Goods occurs in accordance with Clause 5.
"Disclosure and Barring Service"	the non-departmental public body established pursuant to the Protection of Freedoms Act 2012.
"Disputed Sum"	that part of an amount invoiced by the Supplier which is the subject of a bona fide dispute, as notified by the College to the Supplier under Clause 6.9.
"EIR"	the Environmental Information Regulations 2004
"FOIA"	the Freedom of Information Act 2000 and any subordinate legislation (as defined in section 84 of the Freedom of Information Act 2000) made under the Freedom of Information Act 2000 from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or the Secretary of State or relevant Government Department in relation to such Act.
"Goods"	the Goods to be supplied by the Supplier (if any) under the Contract, and more particularly described in the Order.
"Indemnified Costs"	all costs (on a full indemnity basis) including legal and other professional costs and costs of enforcement.
"Information"	has the meaning given under section 84 of FOIA and/or under regulation 2(1) of the EIR.
"Insolvent"	<p>where the Supplier:</p> <ul style="list-style-type: none"> (i) gives notice under section 84 of the Insolvency Act 1986 of, or proposes or passes a resolution for, its winding-up or in the case of a limited liability partnership proposes or determines that it will be wound up; (ii) has a winding-up petition presented against it; (iii) has a winding-up order or a notice of striking-off made in respect of it; (iv) has an administration order or an application for an administration order made in respect of it or has a notice of appointment of an administrator or a notice of intention to appoint an administrator filed in respect of it at any court; (v) proposes, makes or is subject to <ul style="list-style-type: none"> i. a company voluntary arrangement; ii. a composition with its creditors generally; iii. an application to a court of competent jurisdiction for protection from its creditors generally; iv. a scheme of arrangement under Part 26 of the Companies Act 2006;

	<p>(vi) has a receiver or a provisional liquidator appointed over any of its assets, undertakings or income;</p> <p>(vii) ceases to trade or appears, in the reasonable opinion of the College, to be likely to cease to trade;</p> <p>(viii) is unable to pay its debts as they fall due; or the value of its assets is less than its liabilities, including its contingent and prospective liabilities;</p> <p>(ix) is the subject of anything analogous to the foregoing under the laws of any applicable jurisdiction.</p>
"Intellectual Property Rights"	means all intellectual and industrial property rights of any nature whatsoever, including all of the following: patents, copyrights, database rights, design rights; all rights in or arising out of discoveries, inventions, improvements, know-how, confidential information, trademarks, designs and works; the right to apply for any form of protection for any of these, applications for and registrations of any of these and all resulting registrations. In each case, it includes these rights and interests in every part of the world for their full terms, including any renewals and extensions, and the right to receive any income from them and any compensation in respect of their infringement.
"Key Personnel"	any person specified in the Order as such and any other person who has been notified to the Supplier as being, in the opinion of the College, fundamental to the performance of the Contract.
"Learners"	means all students enrolled with the College, part time and full time, including Apprentices
"Order"	the Procurement Agreement (if any) and/or the College's Purchase Order.
"Premises"	any premises owned or occupied by the College from time to time.
"Price"	the charges payable to the Supplier by the College under the Contract for the Goods and/or Services as provided for in the Order.
"the Procurement Agreement"	an agreement so named between the College and the Supplier (if any) for the provision of the Goods and/or Services signed by the duly authorised representatives of the College and the Supplier.
"Prohibited Act"	<p>means any of the following:</p> <p>(i) to directly or indirectly offer, promise or give any person working for or engaged by the College a financial or other advantage to (i) induce that person to perform improperly a relevant function</p>

	<p>or activity, or (ii) reward that person for improper performance of a relevant function or activity; or</p> <p>(ii) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with the Contract; or</p> <p>(iii) committing any offence (i) under the Bribery Act; (ii) under legislation creating offences concerning fraudulent acts; (iii) at common law concerning fraudulent acts relating to the Contract or any other contract with the College; or (iv) defrauding, attempting to defraud or conspiring to defraud the College.</p>
"Purchase Order"	the College's purchase order for the provision of Goods and/or Services.
"Recoverable Liabilities"	all losses (including all direct, indirect and consequential losses), liabilities, Indemnified Costs, damages and expenses that the indemnified person does or will incur or suffer, all claims or proceedings made, brought or threatened against the indemnified person by any person and all losses (including all direct, indirect and consequential losses), liabilities, Indemnified Costs, damages and expenses the indemnified person does or will incur or suffer as a result of defending or settling any such actual or threatened claim or proceeding.
"Request for Information"	a request for information or an apparent request under any relevant guidance on accessing Government Information, FOIA or the EIR.
"Service Levels"	the minimum standards of performance to which the Services are to be performed at all times as required by the Order.
"Services"	means the services that the Supplier is required to carry out under the Contract, as more particularly described in the Order (and including all services as are ancillary to and reasonably to be expected to be performed by the Supplier in connection with those described in the Order and/or with the supply of Goods).
"Slavery And Human Trafficking"	has the meaning defined under s.54 of the Modern Slavery Act.
"Sub-contractor"	shall, as the context may require, include any adviser, consultant, supplier or agent engaged by the Supplier to assist in the performance of the Contract.

"Supplier"	the person, firm or company with whom the Procurement Agreement is entered into or to whom the Purchase Order is addressed (as applicable).
"Supplier's Representative"	such competent person as the Supplier shall from time to time appoint to be its representative in relation to the performance of the Contract, who will receive and act on any directions given by the Contract Manager and whose appointment and contact details shall be notified in writing by the Supplier to the Contract Manager.
"Term"	the period starting on the Commencement Date and ending on the expiry or termination of the Contract.
"Terms"	these terms and conditions.
"TUPE"	the Transfer of Undertakings (Protection of Employment) Regulations 2006.

1.2 In these Terms:

- 1.2.1 unless the context requires otherwise, the singular shall include the plural and vice versa, and words expressed in any gender shall include any other gender;
- 1.2.2 the headings are inserted for convenience only and shall not affect the interpretation of these Terms;
- 1.2.3 save where express provision is made to the contrary, any reference to a statute, statutory provision or subordinate legislation shall be construed as a reference to that legislation, as amended and in force from time to time, including any re-enactment, consolidation or replacement (with or without modification). In the case of a statute or statutory provision, the reference shall also be construed as a reference to all subordinate legislation made under such statute or statutory provision;
- 1.2.4 any words following the words "include", "includes", "including", "in particular" or any similar words or expressions will be construed without limitation and accordingly will not limit the meaning of the words preceding them;
- 1.2.5 the rule known as the 'ejusdem generis' rule will not apply and accordingly the meaning of general words introduced by the word "other" or a similar word or expression will not be restricted by reason of the fact that they are preceded by words indicating a particular class of acts, matters or things;
- 1.2.6 any reference to:
 - 1.2.6.1 'time' of day is to London time;
 - 1.2.6.2 a 'day' is to a period of 24 hours running from midnight to midnight;

- 1.2.6.3 a 'month' is to a calendar month, unless otherwise stated;
 - 1.2.6.4 a 'person' shall, as the context may require, include any individual, firm, company, corporation, Government Department, Agency or any association or partnership (whether or not having a separate legal personality);
 - 1.2.7 an obligation on a Party to procure or ensure the performance or standing of another person will be construed as a primary obligation of that Party; and
 - 1.2.8 any obligation on a Party not to do or omit to do anything includes an obligation not to allow (whether expressly or by a failure to take reasonable steps to prevent) that thing to be done or omitted to be done by any other person.
- 2. Contract formation and duration**
- 2.1 A contract for the supply of Goods and/or Services between the Supplier and the College on the terms of the Contract will be formed when:-
 - 2.1.1 if the College so requires, the College and the Supplier have signed the Procurement Agreement in the form issued by the College; or
 - 2.1.2 if Clause 2.1.1 does not apply, the College has issued its Purchase Order; or
 - 2.1.3 if earlier, on commencement of the performance of the Services or delivery of the Goods.
 - 2.2 The Contract comprises the only terms and conditions on which the College will purchase goods and/or services from the Supplier and will apply to the exclusion of all other terms and conditions, including any terms and conditions which the Supplier purports to apply under any quotation, acknowledgement, acceptance or confirmation of order, delivery note, invoice or similar document (whether subsequent or not and/or whether or not such document is referred to in the Contract) and any terms and conditions which may otherwise be implied by trade, custom, practice or course of dealing.
 - 2.3 To the extent only of any conflict or inconsistency between the provisions and requirements of the clauses of these Terms and the provisions of the Order, then unless otherwise specified in the Order, the order of precedence will be as follows
 - 2.3.1 the provisions of the Order; and
 - 2.3.2 the provisions of these Terms;
 - 2.4 Subject to any other rights of the College to terminate the Contract (howsoever arising), the Contract shall be in force from the Commencement Date until the Contract End Date or, where no Contract End Date is specified, until the Supplier has completed the Services and/or delivered the Goods in accordance with the Contract.
 - 2.5 The Supplier will comply with all Applicable Laws in performing its obligations under the Contract.

3. **Variation**

Save as otherwise expressly provided in the Contract, no variation to the Contract will be effective unless it is in writing and signed by a duly authorised representative on behalf of each of the Parties.

4. **Performance of the Services**

4.1 The Supplier shall properly perform the Services in accordance with all requirements set out in the Contract and shall ensure that it:

- 4.1.1 uses the degree of skill, care, prudence, supervision, diligence, foresight, quality control and quality management which would be adopted by a competent professional provider of the Services;
- 4.1.2 uses appropriately qualified, trained and experienced personnel;
- 4.1.3 conducts itself in a safe manner which is free from any unreasonable or avoidable risk to any person's health and well-being;
- 4.1.4 performs the Contract in an economic and efficient manner;
- 4.1.5 fully co-operates with the College's agents, representatives and contractors;
- 4.1.6 has and maintains all licences, permissions and consents required from time to time;
- 4.1.7 maintains and complies with the business continuity plan and/or disaster recovery plan (if any) it submitted as part of its tender or other proposal for the Services;
- 4.1.8 complies with all reasonable instructions from the Contract Manager as such relate to the performance of the Services;
- 4.1.9 complies with the College's health and safety policy and with all other policies of the College referred to in the Order, copies of which are available on request;
- 4.1.10 at any Premises, complies with all lawful and reasonable directions of the College.

4.2 The Supplier shall perform the Services in accordance with the provisions in the Contract relating to performance of the Services, including performance dates. Time for performance of the Services will be of the essence of the Contract.

4.3 The Supplier shall inform the Contract Manager as soon as reasonably practicable if any of the requirements of the Contract are not being or cannot be performed in accordance with the Contract.

4.4 Unless otherwise agreed with the College, the Supplier shall provide all the necessary facilities, materials and any other equipment, and personnel of appropriate qualifications and experience to undertake the Services.

- 4.5 All Key Personnel and other personnel deployed on work relating to the Contract shall be appropriately qualified and competent and shall be acceptable to the College. The Supplier shall supervise and manage all such personnel properly.
- 4.6 The Supplier shall take all reasonable steps to avoid changes to the Key Personnel. The Supplier shall give at least one month's notice to the Contract Manager of any proposal to remove or replace Key Personnel and the Contract Manager must agree any replacement in writing, save that the Supplier shall be required to give such notice as is reasonable in the circumstances in the event that Key Personnel are changed as a result of illness, resignation or unusual personal circumstances.
- 4.7 If the College gives the Supplier notice that any person is to be removed from involvement in the Services, the Supplier shall take immediate steps to comply with that notice and to find a suitable alternative replacement. The decision of the College regarding the Supplier's personnel shall be final and conclusive.
- 4.8 The Supplier shall:
- 4.8.1 to the extent that it is able to do so in accordance with Applicable Law, give the College, if so requested, the name, role and details of relevant work experience of all persons who are or may be at any time employed on the Contract;
 - 4.8.2 comply with any rules, regulations and any safety and security instructions notified by the College to the Supplier in writing, including completion of any additional security clearance procedures required by the College, and return of any passes required.
- 4.9 Unless otherwise agreed by the College, the Supplier shall not carry out any business or trading activity within or on the Premises and no advertisement, sign or notice of any description shall be exhibited without prior written approval from the College.
- 4.10 The Supplier shall exercise due care and propriety when dealing with third parties in connection with the Contract and ensure that no commitments that might impose any obligations on the College are entered into (unless expressly authorised by the College) without the College's prior written consent.
- 4.11 Where, in the opinion of the College, the Supplier has failed to perform the whole or any part of the Services in accordance with the Contract, the College may:
- 4.11.1 give the Supplier a notice specifying that its performance falls short of the requirements of the Contract, or is otherwise unsatisfactory; and
 - 4.11.2 suspend payments to the Supplier, in such amount as the College deems appropriate, until the Supplier has rectified the defective performance of the Services to the College's satisfaction.
- 4.12 Any notice served by the College pursuant to Clause 4.11.1 may require that the Supplier re-schedules and re-performs the Services to the College's satisfaction at its own expense, including where necessary, the correction or re-execution of any Services already carried out, and the Supplier shall comply with the requirements of such notice within such period as shall be specified by the College in the notice (or where no such period is specified, as soon as reasonably practicable).

- 4.13 Any notice served by the College pursuant to Clauses 4.11.1 shall be without prejudice to the College's rights under these Terms or otherwise.

5. **The Goods**

5.1 Standard of the Goods

5.1.1 The Supplier will ensure that the Goods will:

- 5.1.1.1 be of satisfactory quality within the meaning of the Sale of Goods Act 1979;
- 5.1.1.2 be fit for any purpose held out by the Supplier or made known to the Supplier expressly or by implication, and in this respect the College relies on the Supplier's skill and judgement;
- 5.1.1.3 be free from defects in design, materials and workmanship;
- 5.1.1.4 comply with all relevant Applicable Laws; and
- 5.1.1.5 be so formulated, designed, constructed, finished and packaged as to be safe and without risk to health.

5.1.2 The Supplier will maintain and observe quality control and supplier quality assurance standards in respect of the Goods in accordance with the requirements of the College, relevant British Standards and the requirements of any relevant statutory and regulatory bodies.

5.1.3 Without prejudice to any other rights or remedies of the College (whether express or implied), if any Goods do not conform with any of the terms of Clause 5.1.1 or 5.1.2, the College may (whether or not the Goods have been accepted):

- 5.1.3.1 terminate the Contract in accordance with Clause 27; or
- 5.1.3.2 require the Supplier, at the College's option, to promptly repair or replace the relevant Goods free of charge or to refund the Price for the relevant Goods,

and, in either case, the College will be entitled to recover from the Supplier any and all liabilities, losses, damages, costs and expenses incurred by the College as a result of the non-conformity of the Goods, including in obtaining substitute goods from another supplier.

5.1.4 The requirements of this Clause 5.1.1 will apply to any repaired or replacement Goods supplied under Clause 5.1.3.2.

5.2 Delivery

5.2.1 The Supplier will deliver the Goods to the address specified in the Order during Business Hours on the date specified in the Order or, if no date is specified in the Order, within such reasonable time as the College may request or agree. Unless otherwise specified in the Order:-

- 5.2.1.1 the Supplier will be responsible for off-loading the Goods from the delivery vehicle.
- 5.2.1.2 delivery of the Goods will occur when they have been off-loaded at the delivery address.
- 5.2.2 If the Supplier fails to deliver the Goods on the date specified in Clause 5.2.1, without prejudice to any other rights or remedies of the College (whether express or implied), the College may terminate the Contract immediately by giving written notice to that effect to the Supplier, in which case:
 - 5.2.2.1 the Supplier will refund any monies already paid by the College under the Contract in relation to the Goods that have not delivered; and
 - 5.2.2.2 the College will be entitled to recover from the Supplier any and all liabilities, losses, damages, costs and expenses incurred by the College as a result of the Supplier's failure to supply Goods, including in obtaining substitute goods from another supplier.
- 5.2.3 Risk in and ownership of the Goods will pass to the College on Delivery.

6. **Invoices and payment**

- 6.1 Subject to the Supplier performing its obligations in accordance with the terms of the Contract, the College will pay the Price to the Supplier in accordance with the terms of the Contract.
- 6.2 The Price will be inclusive of all costs and expenses incurred by the Supplier, including all packaging, insurance, carriage and delivery costs, and costs relating to staff, facilities, equipment and materials. To the extent that any additional expenses are permitted to be claimed by the Supplier, these shall only be reimbursed by the College where they are in line with the College's "Contract Expense Policy", a copy of which is available on request.
- 6.3 Any sum payable under the Contract is exclusive of value added tax (and any other similar or equivalent taxes, duties, fees and levies imposed from time to time by any government or other authority) which will be payable in addition to that sum in the manner and at the rate prescribed by law from time to time, subject to receipt by the paying Party of a valid value added tax invoice.
- 6.4 Subject to the terms of the Order, the Supplier shall be entitled to submit an invoice to the College following delivery of the Goods or within 28 days of the completion of the Services. The Supplier shall not be entitled to submit interim invoices for the Services prior to completion unless stated in the Order or otherwise agreed by the College. The College shall not be required to pay any amount due to the Supplier under this Contract until the Supplier has submitted a valid invoice in accordance with Clause 6.5 below.
- 6.5 Each invoice will be a valid value added tax invoice which shall quote the purchase order number and will be accompanied by such records as the College may reasonably require including, but not limited to, time sheets, details of expenses incurred, invoices paid and any other documents which would enable the College to verify the information and the amounts referred to in that invoice. Invoices

will be submitted electronically to finance@nchsr.ac.uk. The Supplier shall at first instance raise any issues or queries related to payment under the Contract with the Contract Manager.

- 6.6 The College is committed to prompt payment and shall, subject to the terms of the Order, pay the Supplier within 30 days of receipt of a valid invoice, provided that the Goods have been delivered and/or the Services to which the invoice relates have been performed fully in accordance with the Contract. The Supplier shall provide to the College the name and address of its bank, the account name and number, the bank sort code and any other details requested by the College.
- 6.7 Notwithstanding any purported contrary appropriation by the Supplier, the College will be entitled, by giving written notice to the Supplier, to appropriate any payment by the College to any invoice issued by the Supplier.
- 6.8 No payment made by the College will constitute acceptance or approval by the College of the Goods or Services or otherwise prejudice any rights or remedies which the College may have against the Supplier, including the right to recover any amount overpaid or wrongfully paid to the Supplier.
- 6.9 If the College, on bona fide grounds, disputes any part of an amount invoiced by the Supplier, the College may notify the Supplier in writing of such dispute giving details of the nature of the dispute and the amount that it claims should have been invoiced and:
 - 6.9.1 the College will pay that part of the invoice which is not the Disputed Sum in accordance with Clause 6.6;
 - 6.9.2 the College will be entitled to withhold payment of the Disputed Sum; and
 - 6.9.3 following resolution of the dispute the College will, within 30 days, pay to the Supplier that part of the Disputed Sum (if any) as it is resolved is payable by the College.
- 6.10 For the avoidance of doubt, if the College fails to notify any dispute about the amount of an invoice to the Supplier in accordance with Clause 6.9, this will not constitute a waiver of the College's right to dispute the amount of that invoice.
- 6.11 If any sum payable under the Contract is not paid on or before the due date for payment, the Supplier will be entitled to charge the College interest on that sum at 2% per annum above the base lending rate from time to time of the Bank of England from the due date until the date of payment (whether before or after judgment), such interest to accrue on a daily basis. Such interest will not be chargeable on any Disputed Sum, provided that if it is agreed or determined that part or all of the Disputed Sum is payable, interest will be chargeable on the relevant part of the Disputed Sum in accordance with this Clause 6.11 but from the date on which payment of that sum is due in accordance with Clause 6.9.3, rather than from the date on which payment of the original invoice which included that sum was originally due. The Parties agree that this Clause 6.11 is a substantial remedy for late payment of any sum payable under the Contract, for the purposes of the Late Payment of Commercial Debts (Interest) Act 1998.
- 6.12 The College will be entitled to offset any liability which the Supplier has to it against any liability which it has to the Supplier, whether such liability is present

or future, liquidated or unliquidated, under the Contract or any other contract between the Parties or other cause of action.

7. Performance Review

- 7.1 The Supplier will ensure that the Goods are provided and/or the Services are performed so as to meet or exceed all Service Levels.
- 7.2 The Supplier will provide to the College the reports and other management information in the formats and at the frequencies and times specified in the Order.

8. Drawings, specifications, software, designs and other data

- 8.1 The final 'deliverable' version of anything which the Supplier produces in its performance of the Services, including written reports, data, calculations, software, designs, drawings, specifications, maps and photographs completed or provided in connection with the Contract (each a "**Deliverable**"), shall be delivered up to the College via the Contract Manager on completion (or, if sooner, termination) of the Services, subject to the retention of proper professional records. Where the Order does not specify the format for any Deliverable, it shall be supplied by the Supplier in such format as the College may reasonably require.
- 8.2 If the Contract is terminated by the College, the provisions of Clause 8.1 shall apply to the working version of each Deliverable (a "**Working Deliverable**") that has not been completed as at the date of termination of the Contract. The College acknowledges that Working Deliverables may contain information that is incomplete, and agrees that should it choose to rely upon any Working Deliverable, that reliance shall be at its own risk.

9. Meetings and reports

- 9.1 The Supplier shall, upon receipt of reasonable notice, on Business Days attend all meetings arranged by the College for the discussion of matters connected with the Contract.
- 9.2 Without prejudice to any other requirement in the Contract, the Supplier shall provide such reports on the performance of the Contract as the College may reasonably require.

10. Conflict of interest

- 10.1 It shall be the Supplier's responsibility to ensure that no conflict of interest arises in connection with the performance of its obligations under the Contract.
- 10.2 The Supplier will immediately notify and consult with the College in the event that any circumstances arise which give rise, or may give rise, to a conflict of interest. The College shall be entitled to direct the Supplier to take reasonable steps to avoid such conflict of interest and the Supplier shall comply with such directions.
- 10.3 A breach of this Clause 10 shall be deemed to be a material breach which cannot be remedied, entitling the College to terminate the Contract under Clause 27.

11. Anti-corruption

- 11.1 The Supplier:

- 11.1.1 shall not and shall procure that any of its employees, consultants, agents, or sub-contractors shall not commit a Prohibited Act in connection with the Contract;
 - 11.1.2 warrants, represents and undertakes (each as a continuing obligation) to the College that it is not aware of any financial or other advantage being given to any person working for or engaged by the College, or that an agreement has been reached to that effect, in connection with the execution of the Contract, excluding any arrangement of which full details have been disclosed in writing to the College before formation of the Contract.
- 11.2 The Supplier shall:
- 11.2.1 if requested, provide the College with any reasonable assistance to enable the College to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act; and
 - 11.2.2 if so required by the College within 20 Business Days of the Commencement Date, and annually thereafter, certify to the College in writing compliance with this Clause 11 by the Supplier and all persons associated with it or other persons who are supplying goods or services in connection with the Contract. The Supplier shall provide such supporting evidence of compliance as the College may reasonably request.
 - 11.2.3 The Supplier shall have and maintain an anti-bribery policy (which shall be disclosed to the College on request) to prevent it and any of its employees, consultants, agents or sub-contractors from committing a Prohibited Act, and shall enforce it where appropriate.
 - 11.2.4 If any breach of Clause 11 is suspected or known, the Supplier must notify the College immediately.
 - 11.2.5 If the Supplier notifies the College that it suspects or knows that there may be a breach of Clause 11, the Supplier must respond promptly to the College's enquiries, co-operate with any investigation, and allow the College to audit books, records and any other relevant documentation. This obligation shall continue for 3 (three) years following the expiry or termination of this Contract.
 - 11.2.6 A breach of Clause 11 shall be deemed to be a material breach which is incapable of remedy.
12. **Freedom of information**
- 12.1 The Supplier acknowledges that:
- 12.1.1 the College is a public authority for the purposes of FOIA and EIR; and
 - 12.1.2 public authorities have certain information disclosure requirements under the Act and Environmental Information Regulations
- 12.2 The Supplier shall assist and co-operate with the College (at the Supplier's own expense) to enable the College to comply with any relevant Requests for

Information with which the College is obliged by FOIA or EIR to comply, within the time limits set out in Clause 12.3.

- 12.3 The Supplier shall and shall procure that its sub-contractors shall:
- 12.3.1 transfer any Request for Information to the Contract Manager as soon as practicable after receipt and in any event within two Business Days of receiving it;
 - 12.3.2 provide the Contract Manager with a copy of all Information in its possession or power in the form that the College requires within five Business Days (or such other period as the College may specify) of the College requesting that Information; and
 - 12.3.3 provide all necessary assistance as reasonably requested by the College to enable the College to respond to a Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the EIR.
- 12.4 The College shall be responsible for determining at its absolute discretion and notwithstanding any other provision in the Contract or any other agreement whether any Information is exempt from disclosure in accordance with the provisions of the FOIA or the EIR.
- 12.5 In no event shall the Supplier respond directly to a Request for Information unless expressly authorised to do so by the College.
13. **Confidentiality**
- 13.1 Subject to Clauses 13.2 and 13.3 below, the Supplier shall not disclose to any third party, nor shall it publish, disseminate, or use, other than for the purposes of the Contract any Confidential Information without the prior written consent of the College.
- 13.2 Clause 13.1 shall not apply to any Confidential Information which:
- 13.2.1 is or becomes public knowledge (otherwise than by breach of the Contract);
 - 13.2.2 is lawfully in the possession of the Supplier, without restriction as to its disclosure, before the Supplier receives it from the College; or
 - 13.2.3 is received by the Supplier from a third party who lawfully acquired it and who is under no obligation restricting its disclosure.
- 13.3 Clause 13.1 shall not prevent the Supplier from disclosing, without the College's consent, any Confidential Information to the extent that it is required to be disclosed by law or by any professional or regulatory obligation, provided that prior to disclosure the Supplier consults the College and takes full account of the College's views about whether (and, if so, the extent to which) the Confidential Information should be disclosed.
- 13.4 The Supplier shall take all reasonable steps to ensure the observance of the provisions of this Clause 13 by all of its employees, office holders, workers and Sub-contractors.

- 13.5 If deemed necessary by the College, the Supplier shall, upon the College's request, promptly sign any reasonable confidentiality agreement provided to it.

14. **Publicity**

- 14.1 The Supplier shall not, except with the prior written consent of the College, make any press announcement, statement or any other form of communication (i) publicising the Contract or (ii) its appointment by the College, or (iii) detailing its involvement in the Project.
- 14.2 The Supplier shall promptly notify the College of any press or other similar enquiries it receives concerning the Contract and/or the Project.

15. **Discrimination**

- 15.1 The Supplier shall, in its performance of the Contract:
- 15.1.1 not unlawfully discriminate either directly or indirectly or by way of victimisation or harassment within the meaning and scope of any law, enactment, order or regulation relating to discrimination (whether in age, disability, gender reassignment, marriage and civil partnerships, pregnancy, paternity and maternity, race, religion or belief, sex or sexual orientation, or otherwise) and shall take all reasonable steps to ensure that its employees similarly do not unlawfully discriminate;
 - 15.1.2 without prejudice to the generality of Clause 15.1.1, not unlawfully discriminate within the meaning and scope of the Equality Act 2010 and all other relevant legislation and any statutory modification or re-enactment of such legislation; and
 - 15.1.3 where in connection with the Contract, the Supplier, its agents or Sub - contractors, or its staff are required to carry out work on Premises or alongside the College's employees on any other premises, comply with the College's own employment policy and codes of practice relating to equality and diversity in the workplace.
- 15.2 Should the Supplier or any of its employees, consultants, agents or sub-contractors breach any part of Clause 15.1, the College shall be entitled to terminate the Contract with immediate effect by notice in writing to the Supplier.

16. **Disclosure and Barring Service**

- 16.1 The Supplier shall use its best endeavours to ensure that all persons performing any of the Services (each a "**Named Employee**") are accompanied at all times while at the Premises by a member of the College's staff who has an up-to-date Disclosure and Barring Service certificate.
- 16.2 In the event that a Named Employee will not be accompanied while at the Premises in accordance with Clause 16.1 for any reason whatsoever, the Supplier shall procure that, before a Named Employee begins to attend the Premises to perform any of the Services:
- 16.2.1 each Named Employee is questioned as to whether he or she has any Convictions or ASBOs;

- 16.2.2 the results are obtained of a check of the most extensive available kind made with the Disclosure and Barring Service in respect of each Named Employee;
- 16.2.3 to the extent permitted by Applicable Laws a copy of the results of such checks as are referred to in Clause 16.2.1 and 16.2.2 are notified to the College;
- 16.3 The Supplier shall procure that no person who appears on a Barred List following the results of an Disclosure and Barring Service check shall be employed or engaged in the performance of the Services.
- 16.4 The Supplier shall procure that no person who discloses any Convictions or ASBOs, or who is found to have any Convictions following the results of a Disclosure and Barring Service check, is employed or engaged in the performance of the Contract without the College's prior written consent (such consent not to be unreasonably withheld or delayed).
- 16.5 In so far as permitted by law, the Supplier shall procure that the College is kept advised at all times of any member of staff who, subsequent to his/her commencement of employment as a member of staff:
 - 16.5.1 receives a Conviction or ASBO which become known to the Supplier or whose previous Convictions or ASBOs become known to the Supplier; or
 - 16.5.2 in respect of whom information is referred by the Supplier to the Disclosure and Barring Service pursuant to the Disclosure and Barring Scheme; or
 - 16.5.3 who is placed on a barred list pursuant to the Disclosure and Barring Scheme.
- 16.6 In the event that any member of the Supplier's staff is added to a Barred List, the Supplier shall procure that such member of staff is immediately removed from the Premises and shall cease to be engaged in the performance of the Contract.
- 17. **Competition and Markets Authority**
- 17.1 At all times during the Term:
 - 17.1.1 the Parties shall in their dealings with the Learners make every effort to comply with the Consumer Laws, taking particular account of the CMA Guidance;
 - 17.1.2 neither Party shall engage in any activity, practice or conduct which would constitute an offence under the Consumer Laws (whether such act was committed in the UK or not);
 - 17.1.3 each Party shall on request provide the other Party with all assistance and information as the other Party may reasonably request to enable it to comply with its obligations under the Consumer Laws or to satisfy the CMA or other regulatory body that it has done so; and
 - 17.1.4 each Party shall use reasonable endeavours to ensure that all its employees, contractors and agents who are performing services in

connection with this Agreement shall comply with its obligations in clauses 17.1.1 to 17.1.3.

17.2 If any breach by the Parties (or by anyone employed by it or acting on its behalf) of clause 17.1 is suspected or known the Party in breach must:

17.2.1 notify the Party not in breach immediately; and

17.2.2 respond promptly to the Party not in breach's enquiries; and

17.2.3 co-operate with any investigation reasonably required by the Party not in breach; and

17.2.4 take any remedial action reasonably required by the Party not in breach.

17.3 Any breach of this clause 17 by a Party or by anyone employed by it or acting on its behalf shall entitle the other Party (not in breach) to terminate this Agreement forthwith.

18. **Anti-Slavery and Human Trafficking**

18.1 The Parties shall:

18.1.1 ensure that Slavery And Human Trafficking is not taking place in any part of their businesses or in any part of their supply chains;

18.1.2 implement appropriate due diligence procedures for their own suppliers, sub-contractors and other participants in their supply chains, to ensure that there is no slavery or human trafficking in their supply chains;

18.1.3 ensure that they and each of their suppliers and sub-contractors comply with the College's Anti-slavery policy;

18.1.4 respond promptly to all Slavery And Human Trafficking due diligence questionnaires issued to them by the other Party from time to time and ensure that their responses to all such questionnaires are complete and accurate; and

18.1.5 notify the other Party as soon as they become aware of any actual or suspected slavery or human trafficking in any part of their business or in a supply chain which has a connection with the Contract.

18.2 If any breach by a Party (or by anyone employed by it or acting on its behalf) of any part of this clause is suspected or known, that Party must notify the other Party immediately and must respond promptly to the other Party's enquiries and co-operate with any investigation.

18.3 In complying with this Clause 18, the Parties shall take appropriate account of any guidance or codes of practice issued by the relevant government department concerning the Modern Slavery Act 2015.

19. **Counter Terrorism and Security Act 2015**

19.1 The Supplier acknowledges that the College is subject to certain duties under sections 26 and 38 of the CTSA.

- 19.2 The Supplier shall act in a manner that is consistent with the College's policies on counter terrorism, freedom of speech and academic freedom from time to time.
- 19.3 The Supplier will, upon request, provide the College with copies of its policies and procedures, particularly those relating to counter terrorism, freedom of speech and academic freedom and will act upon any guidance given or request made by the College arising out of the duties in clause 19.1 on amendments to any policy.
- 19.4 If the Supplier fails to act upon any guidance given or request made by the College in connection with the policies referred to in clause 19.2 within 3 months of the date of such guidance or request the College may terminate this Agreement by notice in writing with immediate effect.
- 19.5 The Supplier shall on request provide the College with all assistance and information as the College may reasonably request to enable it to comply with its obligations under the CTSA.
- 20. Assignment and sub-contractors**
- 20.1 The Supplier shall not sub-contract or transfer, assign, charge, or otherwise dispose of the Contract or any part of it without the prior written consent of the College.
- 20.2 The Supplier shall ensure that any Sub-contractor complies with the provisions of the Contract, so far as they are applicable. Any sub-contract shall not relieve the Supplier of its obligations under the Contract.
- 20.3 Where the Supplier enters into a contract with a Sub-contractor for the purpose of performing the Contract or any part of it, it shall cause a term to be included in such contract which requires payment to be made by the Supplier to the Sub-contractor within a specified period not exceeding 30 days from receipt of an invoice properly issued in accordance with that contract.
- 21. Insurance**
- 21.1 The Supplier shall effect and maintain such insurance cover as may be specified in the Order.
- 21.2 When requested by the College, the Supplier shall produce documentary evidence showing that the insurance required by this Clause 21 has been effected and is being maintained.
- 21.3 If, for whatever reason, the Supplier fails to effect and maintain the insurance required by this Clause 21, and/or fails to provide evidence requested under Clause 21.2 within the timescales stipulated by the College, the College may make alternative arrangements necessary to protect its interests and recover the costs thereof from the Supplier.
- 21.4 The terms of any insurance or the amount of cover shall not relieve the Supplier of any liabilities under the Contract.
- 21.5 The Supplier shall impose obligations on its Sub-contractors in terms substantially similar to those set out in this Clause 21, but this shall not relieve the Supplier of any of its obligations and liabilities under the Contract.

22. Data protection

Authority

- 22.1 The College authorises the Supplier to Process the Contract Personal Data during the Term as a Data Processor solely for the purpose of providing the Goods and/or Services.

Sub-processing

- 22.2 The Supplier will not engage or use any third party for the Processing of Contract Personal Data or permit any third party to Process Contract Personal Data without the prior written consent of the College.
- 22.3 If the Supplier appoints an Authorised Sub-Processor pursuant to Clause 22.2 the Supplier will ensure that there is in place a written contract between the Supplier and the Authorised Sub-Processor that specifies the Authorised Sub-Processor's Processing activities and imposes on the Authorised Sub-Processor the same terms as those imposed on the Supplier in this Clause 22.
- 22.4 The Supplier will remain responsible and liable to the College for all acts and omissions of Authorised Sub-Processors as if they were its own.

Supplier Obligations

- 22.5 The Supplier will, and will procure that any Authorised Sub-Processor will:
- 22.5.1 process the Contract Personal Data only on documented instructions (including this Contract) from the College;
 - 22.5.2 without prejudice to Clause 22.5.1, ensure that Contract Personal Data will only be used for the purpose of providing and to the extent required to provide the Goods and/or Services;
 - 22.5.3 not permit any Processing of Contract Personal Data outside the United Kingdom and/or the European Economic Area (as it is made up from time to time) without the College's prior written consent (unless the Supplier or the relevant Authorised Sub-Processor is required to transfer the Contract Personal Data to comply with United Kingdom, European Union (as it is made up from time to time) or European Union Member State Applicable Laws in which case the Supplier will notify the College of such legal requirement prior to such transfer unless such Applicable Laws prohibit notice to the College on public interest grounds);
 - 22.5.4 ensure that any individual authorised to Process Contract Personal Data:-
 - 22.5.4.1 accesses such Contract Personal Data strictly on a need to know basis as necessary to perform their role in the provision of the Services, and;
 - 22.5.4.2 is subject to confidentiality obligations equivalent to those set out in Clause 13 or is under an appropriate statutory obligation of confidentiality; and
 - 22.5.4.3 will comply with this Clause 22; and

- 22.5.4.4 is appropriately reliable, qualified and trained in relation to their Processing of Contract Personal Data;
- 22.5.5 implement (and assist the College to implement) technical and organisational measures to ensure a level of security appropriate to the risk presented by Processing the Contract Personal Data, in particular from a Data Security Incident;
- 22.5.6 notify the College without undue delay (and in any event no later than 24 hours) after becoming aware of a reasonably suspected, "near miss" or actual Data Security Incident, including the nature of the Data Security Incident, the categories and approximate number of Data Subjects and Contract Personal Data records concerned and any measure proposed to be taken to address the Data Security Incident and to mitigate its possible adverse effects. Where, and in so far as, it is not possible to provide all the relevant information at the same time, the information may be provided in phases without undue further delay, but the Supplier (and Authorised Sub-Processors) may not delay notification under this Clause 22.5.6 on the basis that an investigation is incomplete or ongoing. The Supplier will not, and will procure that Authorised Sub-Processors will not, make or permit any announcement in respect of the Data Security Incident to any person without the College's prior written consent;
- 22.5.7 assist the College and the other Service Recipients in:
 - 22.5.7.1 responding to requests for exercising Data Subjects' rights under the Data Protection Laws, including by appropriate technical and organisational measures, insofar as this is possible;
 - 22.5.7.2 documenting any Data Security Incidents and reporting any Data Security Incidents to any supervisory authority and/or Data Subjects;
 - 22.5.7.3 taking measures to address Data Security Incidents, including, where appropriate, measures to mitigate their possible adverse effects; and
 - 22.5.7.4 conducting privacy impact assessments of any Processing operations and consulting with supervisory authorities, Data Subjects and their representatives accordingly; and
- 22.5.8 at the option of the College, securely delete or return to the College or, at the College's option, transfer to any replacement supplier, all Contract Personal Data promptly after the end of the provision of the Goods and/or Services relating to Processing, and securely delete any remaining copies and promptly certify (via a director) when this exercise has been completed.

Information Provision

- 22.6 The Supplier will, and will procure that Authorised Sub-Processors will:

- 22.6.1 make available to the College and the other Service Recipients all information necessary to demonstrate compliance with the obligations set out in this Clause 22; and
 - 22.6.2 allow for and contribute to audits, including inspections, conducted by the College or another auditor mandated by the College.
- 22.7 the Supplier will prepare and securely maintain a record of all categories of Processing activities carried out on behalf of the College in relation to the Contract Personal Data, including as a minimum: (i) its name and contact details and details of its Data Protection officer; (ii) the categories of Processing it carries out on behalf of the College; (iii) any transfers of Contract Personal Data outside the United Kingdom and/or the European Economic Area (as it is made up from time to time); (iv) a general description of the technical and organisational security measures referred to in Clause 22.5.5; and (v) the same information in relation to any Authorised Sub-Processor, together with its name and contact details (together the "Data Record"). The Supplier will promptly upon request securely supply a copy of the Data Record to the College.

Indemnity

- 22.8 The Supplier will indemnify the College and each other Service Recipient against the Recoverable Liabilities, in each case arising out of or in connection with any breach by the Supplier of any of its obligations under this Clause 22 (including any failure or delay in performing, or negligent performance or non-performance of, any of those obligations).

Breach

- 22.9 A breach of this Clause 22 by the Supplier or any Authorised Sub-Processor will be a material breach of the Contract.

23. Transfer of the Services and TUPE

- 23.1 Where following the performance or termination of the Contract the College intends to acquire services similar to the Services, either by performing them itself or by the appointment of a replacement contractor, the Supplier (assuming it does not successfully tender for the work) shall use all reasonable endeavours to ensure that the transition is undertaken with the minimum of disruption to the College.
- 23.2 The Supplier shall co-operate fully during the transition period and provide full access to all non-confidential data, documents, manuals, working instructions, reports or other information which the College considers it necessary to see.
- 23.3 In addition to the legal obligation to provide "employee liability information" under regulation 11 of TUPE or otherwise, the Supplier will, in respect of any person at that time employed by it and assigned to the economic grouping of employees working on the Contract, provide the College with information equivalent to employee liability information whenever requested to do so in writing by the College (provided that the College shall not make such a request more than once in any 6 (six)-month period).

24. **Occupation of premises**

- 24.1 Where the Supplier requires access to Premises, it shall be granted such access on a non-exclusive basis and only to the extent reasonably required for the purpose of performing its obligations under the Contract. Any utilities or IT required by the Supplier shall be subject to recharge by the College.

25. **Intellectual Property Rights**

- 25.1 All Intellectual Property Rights in any materials provided by the College to the Supplier for the purposes of this Contract shall remain the property of the College but the College hereby grants the Supplier a royalty-free, non-exclusive and non-transferable licence to use such materials as required until termination or expiry of the Contract for the sole purpose of enabling the Supplier to perform its obligations under the Contract.

- 25.2 Subject to Clause 25.1, all Intellectual Property Rights in any materials created or developed by the Supplier pursuant to the Contract or arising as a result of the provision of the Services shall vest in the Supplier. If, and to the extent that, any Intellectual Property Rights in such materials vest in the College by operation of law, the College hereby assigns to the Supplier, by way of a present assignment of future rights that shall take place immediately on the coming into existence of any such Intellectual Property Rights, all its Intellectual Property Rights in such materials (with full title guarantee and free from all third-party rights).

- 25.3 The Supplier hereby grants the College:

25.3.1 a perpetual, royalty-free, irrevocable, non-exclusive licence (with a right to sub-license) to use, modify and develop all Intellectual Property Rights in the materials (including any Deliverable(s)) created or developed pursuant to the Contract and any Intellectual Property Rights arising as a result of the provision of the Services; and

25.3.2 a perpetual, royalty-free, irrevocable and non-exclusive licence (with a right to sub-license) to use:

25.3.2.1 any Intellectual Property Rights vested in or licensed to the Supplier on the Commencement Date; and

25.3.2.2 any Intellectual Property Rights created during the performance of the Services but which are neither created or developed pursuant to the Contract nor arise as a result of the provision of the Services, including any modifications to or derivative versions of any such Intellectual Property Rights,

which the College reasonably requires in order to exercise its rights and take the benefit of the Contract including the Goods and/or Services provided.

- 25.4 The Supplier shall ensure that all royalties, licence fees and similar expenses in respect of all intellectual property or Intellectual Property Rights used in connection with the Contract have been paid and are included in the Price.

- 25.5 The Supplier:

- 25.5.1 warrants that the use of any Intellectual Property Rights which derive from or arise as a result of the performance of the Contract by the Supplier or are otherwise licensed to the College under the Contract will not infringe any Intellectual Property Rights owned by third parties; and
- 25.5.2 will indemnify, keep indemnified and hold harmless the College in full and on demand from and against all liabilities (including any tax liability), direct, indirect and consequential losses, damages, claims, proceedings and legal costs (on an indemnity basis), judgments and costs (including costs of enforcement) and expenses which the College incurs or suffers directly or indirectly in any way whatsoever as a result of any claim that such intellectual property rights infringe any Intellectual Property Rights owned by third parties.

26. Merger, takeover or Change of Control

- 26.1 The Supplier shall obtain the College's written consent (which shall not be unreasonably withheld, but may be given subject to conditions) prior to any Change of Control of the Supplier, provided that where a Change of Control arises from any change in the beneficial or legal ownership of shares that are listed on the stock exchange, such approval shall be obtained promptly, as soon as the Supplier becomes aware of the same. If such consent is not obtained when required by this Clause 26 the College has the right to terminate the Contract at its election as set out in Clause 27 (Termination of the Contract).
- 26.2 The Supplier shall inform the College of any change, or proposed change in the name of or status of the Supplier.

27. Termination of the Contract

- 27.1 The College may terminate the Contract by giving not less than 30 days' written notice to that effect to the Supplier at any time. If the College exercises its right of cancellation under this Clause 27, then the College's sole liability will be to pay to the Supplier fair and reasonable compensation for work-in-progress at the time of cancellation but such compensation will not include loss of profits (whether direct or indirect and whether actual or anticipated) or any indirect or consequential loss regardless of whether or not the College engages another supplier to provide the Services and/or Goods.
- 27.2 Without prejudice to any other power of termination, howsoever arising, either Party may by notice in writing terminate the Contract with immediate effect (or at such other time as it may specify in the notice) and without liability where:
 - 27.2.1 the other Party is in material breach of the Contract which is incapable of remedy;
 - 27.2.2 the other Party is in material breach of the Contract which can be remedied but fails to remedy that breach within the timescale stipulated by the notifying Party (acting reasonably) in a written notice served by it on the breaching Party setting out the breach and requiring it to be remedied; or
 - 27.2.3 the other Party is Insolvent.
- 27.3 Without prejudice to any other power of termination, howsoever arising, the College may by notice in writing terminate the Contract with immediate effect and

without liability where a Change of Control of the Supplier occurs without the prior approval of the College.

27.4 For the avoidance of doubt and without prejudice to the generality of this Clause 27, breach by the Supplier of any of Clauses 5.2 (Delivery) 10 (Conflict of Interests), 11 (Anti-Corruption), 12 (Freedom of Information), 17 (Competition and Markets Authority), and Clause 22 (Data Protection) of these Terms shall be deemed to be material breaches of the Contract which are incapable of remedy.

27.5 The Supplier will give written notice to the College immediately upon becoming Insolvent.

27.6 In the event that, during the period of the Contract, the College is dissolved or wound up, then the Contract shall terminate with immediate effect.

28. **Consequences of termination and expiry**

28.1 Upon the expiry of any notice period, or immediately upon termination without notice, the Contract shall be terminated without prejudice to any right of action or remedy which shall have accrued or shall thereupon accrue to the Parties. Termination shall not affect the continued operation of Clauses 1, 3, 6, 8, 10, 11, 12, 13, 14, 17, 18, 21, 22, 25.5, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36 and 37 together with any other provision which expressly or impliedly will survive termination.

28.2 Where the Contract is terminated under Clause 27.2 the following provisions shall apply:

28.2.1 pending final ascertainment of such sums as are payable under the Contract any sum due or accruing from the College to the Supplier may be withheld or reduced by such amount as the College in either case considers reasonable and appropriate;

28.2.2 the College may make all arrangements which are in its view necessary to procure the orderly completion of the College's requirements under the Contract, including the letting of another contract or contracts. In the event that a different organisation is required to provide the Goods and/or Services, the Supplier shall co-operate in the transfer and with any arrangements notified to it by the College. The transfer shall be arranged between the College and the Supplier so as to reduce to a minimum any interruption in the provision of the Goods or performance of the Services;

28.2.3 where the total costs reasonably and properly incurred by the College by reason of any arrangements made under Clause 28.2.2. exceed the amount that would have been payable to the Supplier for the completion of the Services, the excess shall be recoverable from the Supplier and the College reserves the right to recover such excess under Clause 30.

28.3 In addition to its obligations under Clause 28.2, the Supplier shall upon termination or earlier expiry of the Contract:

28.3.1 give all reasonable assistance to the College and any incoming supplier of the Goods and/or Services; and

- 28.3.2 return and/or deliver up all requested documents, information and data within the Supplier's possession, custody or power to the College as soon as reasonably practicable.

29. **Liability and indemnity**

- 29.1 The Supplier will indemnify, keep indemnified and hold harmless the College in full and on demand from and against:

- 29.1.1 death and/or personal injury;
- 29.1.2 damage or loss to property;
- 29.1.3 breach of statutory duty; or
- 29.1.4 third party claims;

arising from any breach of the Contract or negligent performance of the Contract by the Supplier.

- 29.2 Subject to Clause 29.3, the Supplier's total liability to the College for each and every claim arising under or in connection with the Contract (including but not limited to negligence), is limited to the amount (if any) specified in the Order and applies in contract, tort and otherwise to the extent permitted under English law.

- 29.3 Nothing in the Contract limits or excludes the Supplier's liability for:

- 29.3.1 losses against which the Supplier is entitled to an indemnity under any policy of insurance required to be maintained under this Contract (or would have been entitled but for any breach or failure to maintain such insurance);
- 29.3.2 breach of Clause 10;
- 29.3.3 acts of a criminal nature;
- 29.3.4 death or bodily injury; or
- 29.3.5 any amounts payable by the Supplier under any of the indemnities referred to in Clauses 22 (Data Protection), 25 (Intellectual Property Rights) and 29.1 (Liability and Indemnity).

30. **Recovery of sums due**

- 30.1 Whenever under the Contract any sums of money shall be recoverable from or payable by the Supplier to the College, that amount may be deducted from any sum then due, or which at any later time may become due, to the Supplier under the Contract or under any other contract with the College.

31. **Service of notices**

- 31.1 Any formal notice required to be given or served under the Contract shall be in writing and shall be served by:

- 31.1.1 delivery in person to the Supplier's Representative, when it shall be deemed served at the time the notice is delivered to the Supplier's Representative, or
- 31.1.2 sending it to the Supplier's Representative by first-class post, when it shall be deemed served on the second working day after posting; or
- 31.1.3 delivery in person to the Contract Manager, when it shall be deemed served at the time the notice is delivered to the Contract Manager, or
- 31.1.4 sending it to the Contract Manager by first-class post, when it shall be deemed served on the second working day after posting.

32. **Severability**

- 32.1 If any provision of the Contract is held invalid, illegal or unenforceable for any reason by any court, such provision shall be severed and the remainder of the provisions of the Contract shall continue in full force and effect. In the event that an invalid, illegal or unenforceable condition is fundamental to the performance of the Contract, the College and the Supplier shall immediately commence negotiations in good faith to remedy the invalidity.

33. **Waiver**

- 33.1 Any failure by the College or the Supplier to exercise any right or remedy shall not constitute a waiver of that right or remedy.
- 33.2 No waiver shall be effective unless it is communicated to the other Party in writing.
- 33.3 A waiver of any right or remedy arising from a breach of contract shall not constitute a waiver of any right or remedy arising from any other breach of the Contract.

34. **Entire Agreement**

- 34.1 The Contract constitutes the entire agreement between the Parties and supersedes any prior agreement or arrangement in respect of its subject matter and neither Party has entered into the Contract in reliance upon, and it will have no remedy in respect of, any misrepresentation, representation or statement which is not expressly set out in the Contract. Nothing in this clause will be interpreted or construed as limiting or excluding the liability of any person for fraud or fraudulent misrepresentation.

35. **Counterparts**

- 35.1 This Contract may be executed in any number of counterparts, each of which shall constitute an original.

36. **Rights of third parties**

- 36.1 The Parties do not intend that any term of this Contract will be enforceable under the Contracts (Rights of Third Parties) Act 1999 by any person who is not a party to it.

37. **Law**

- 37.1 The Contract shall be governed by and interpreted in accordance with English law and any dispute arising out of or in connection with it shall be subject to the exclusive jurisdiction of the Courts of England and Wales.