**Dated \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**Swansea University**

**and**

**Party Name**

**Contract for the Supply of Matter**

**CONTRACT DETAILS**

**DATE:**

|  |  |
| --- | --- |
| **[Contract No:]** | [CONTRACT NUMBER] |
| **Customer:** | Swansea University (Charity Registration No. 1138342) |
| **Customer's address:** | [REGISTERED ADDRESS] |
| **[Customer's representative:]** | Name: [NAME]  Title: [TITLE]  Email: [EMAIL]  Telephone: [Telephone]  Postal Address: [POSTAL ADDRESS] |
| **Supplier:** | [COMPANY NAME] LIMITED (No. [NUMBER]) |
| **Supplier's address:** | [ADDRESS] |
| **Supplier's VAT number:** | [NUMBER] |
| **[Supplier's representative:]** | Name: [NAME]  Title: [TITLE]  Email: [EMAIL]  Telephone: [Telephone]  Postal Address: [POSTAL ADDRESS] |
| **Commencement Date:** | [[DATE] **OR** The date the Contract has been signed by both parties.] |
| **Expiry Date** | [[DATE] **OR** the [first] anniversary of the Commencement Date] |
| **Delivery Location:** | [DELIVERY ADDRESS] |
| **Goods:** | Schedule 2 |
| **Price/Charges:** | The price for Goods and charges for Services set out in Schedule 1. |
| **Services:** | Schedule 2 |
| **Key Deliverables:** | Schedule 2 |
| **Specification:** | Schedule 2 |
| **Termination date/Contract Period:** | [[NUMBER] years from the Commencement Date **OR** [DATE]] |
| **Schedules:** | Schedule 1: Price of the Goods and charges for Services  Schedule 2: Specification  Schedule 4: Mandatory Policies |

1. This Contract is made up of the following:

(a) The Contract Details.

(b) The Conditions.

(c) Schedule 1: Prices of goods and charges for Services

(d) Schedule 2: Specification

(e) Schedule 4: Mandatory Policies

2. If there is any conflict or ambiguity between the terms of the documents listed in paragraph 1, a term contained in a document higher in the list shall have priority over one contained in a document lower in the list.

|  |  |
| --- | --- |
| This Contract has been entered into on the date stated at the beginning of it.  Signed on behalf of the Customer  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Print Name  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Dated  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Signed on behalf of the Supplier  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Print Name  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Dated  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |  |
|  |  |

CONDITIONS

# **INTERPRETATION**

## Definitions:

ADR Notice: has the meaning given to it in clause 16.3.

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

Commencement Date**:** the date the Contract commences, as set out in the Contract Details.

Conditions**:** these terms and conditions set out in clause 1 to clause 24 (inclusive).

Contract**:** the contract between the Customer and the Supplier for the sale and purchase of the Goods in accordance with the Contract Details, the additional Schedules and these Conditions.

Customer Materials: has the meaning given to it in clause 11.

Data Protection Legislation: means the Data Protection Act 1998 (until repealed) (“**DPA**”), the Data Protection Directive (*95/46/EC*) (until repealed) and, from 25 May 2018, the GDPR or any equivalent provision which may replace the GDPR following the formal political separation of the United Kingdom from the European Union; the Regulation of Investigatory Powers Act 2000; the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (*SI 2000/2699*); the Electronic Communications Data Protection Directive (*2002/58/EC*); the Privacy and Electronic Communications (EC Directive) Regulations 2003 (*SI 2426/2003*); and all applicable laws and regulations which may be in force from time to time relating to the processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner or any other supervisory authority, and the equivalent of any of the foregoing in any relevant jurisdiction.

Deliverables**:** all documents, products and materials developed by the Supplier or its agents, subcontractors and personnel as part of or in relation to the Services in any form, including without limitation computer programs, data, reports and specifications (including drafts), and the Key Deliverables set out in the Contract Details.

Delivery Date**:** the date specified for delivery of a Purchase Order, in accordance with clause 3.2.

Delivery Location**:** the address for delivery of the Goods, as set out in the Contract Details.

EIRs: the Environmental Information Regulations 2004 (*SI 2004/3391*) together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations.

Expiry Date: the date the Contract expires, as set out in the Contract Details.

FOIA: the Freedom of Information Act 2000, and any subordinate legislation made under the Act from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.

Force Majeure Event: an event affecting the performance by a party of its obligations under this Contract arising from acts, omissions or non-events beyond its reasonable control, including acts of God, riots, war, acts of terrorism, fire, flood, storm or earthquake and any disaster, but excluding any industrial dispute relating to the Supplier, the Supplier’s Personnel or any other failure in the Supplier’s supply chain.

GDPR: General Data Protection Regulation (*(EU 2016/679*).

Goods**:** the goods (or any part of them) as set out in the Contract Details.

Information: has the meaning given under section 84 of the FOIA.

Price**:** the price for the Goods and/or Services, as set out in the Contract Details.

Prohibited Act: the following constitute Prohibited Acts:

1. To directly or indirectly offer, promise or give any person working for or engaged by the Customer a financial or other advantage:
2. To induce that person to perform improperly a relevant function or activity;
3. To reward that person for improper performance of a relevant function or activity;
4. Under the Bribery Act 2010;
5. Under legislation or common law concerning fraudulent acts;
6. Defrauding, attempting to defraud or conspiring to defraud the Customer.

Purchase Order**:** the Customer's order for the Goods and/or Services submitted by the Customer in accordance with clause 3.

Regulations: has the meaning given to it in clause 17.2(a).

Request for Information: a request for information or an apparent request under the FOIA or the EIRs.

Services: the services (or any part of them) as set out in the Contact Details.

Services Start Date**:** the day on which the Supplier is to start provision of the Services, as set out in the Contract Details.

Supplier IPRs**:** all Intellectual Property Rights either subsisting in the Deliverables (excluding any Customer Materials incorporated in them) or otherwise necessary or desirable to enable a Customer to receive and use the Services.

Specification**:** the specification for the Goods, including any related plans and drawings that are agreed in writing by the Customer and the Supplier as set out in the Contract Details.

Supplier’s Personnel: all employees, staff, other workers, agents and consultants of the Supplier and of any Subcontractors who are engaged in the supply of Goods from time to time.

Supplier’s Representative: means the representative appointed by the Supplier and identified in the Contract Details;

Supplier’s Tender: the Supplier’s tender annexed to this Contract.

## Interpretation:

### Clause, schedule and paragraph headings are for ease of reference only and shall not affect the interpretation of this agreement;

### The Schedules form part of this agreement and shall have effect as if set out in full in the body of this agreement and any reference to this agreement includes the Schedules;

### 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;

### 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;

### a reference to writing or written includes emails;

### unless the context otherwise requires:

#### words in the singular shall include the plural and vice versa; and

#### a reference to one gender shall include reference to the other genders;

### a reference to a party includes that party’s successors and permitted assigns; and

### reference to a person shall include any individual, firm, unincorporated association or body corporate.

# **COMMENCEMENT AND TERM**

This Contract shall commence on the Commencement Date and shall continue, unless terminated earlier in accordance with its terms, until the Expiry Date, when it shall terminate automatically without notice.

# **PURCHASE ORDERS**

## The Customer may submit Purchase Orders for Goods and/or Services in the form set out in Schedule 3 at any time.

## The Supplier shall use its best endeavours to supply Goods and/or Services in accordance with the Customer's Purchase Orders, by the delivery date specified in the Purchase Order, or, if none is specified, within seven (7) Business Days of submitting the Purchase Order (the “Delivery Date”).

## The Customer may amend or cancel a Purchase Order in whole or in part at any time before delivery by giving the Supplier written notice. If the Customer amends or cancels a Purchase Order, its liability to the Supplier shall be limited to payment to the Supplier of all costs reasonably incurred by the Supplier in fulfilling the Purchase Order up until the date of receipt of the notice of amendment or cancellation, except that where the amendment or cancellation results from the Supplier’s failure to comply with its obligations under this agreement the Customer shall have no liability to the Supplier in respect of it.

# **THE GOODS**

## The Supplier shall ensure that the Goods:

### correspond with their description and any applicable Specification;

### 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 Customer expressly or by implication, and in this respect the Customer relies on the Supplier's skill and judgement;

### where they are manufactured products, be free from defects in design, material and workmanship and remain so for 12 months after delivery;

### comply as a minimum with samples or patterns, if any, provided by the Supplier to the Customer in relation to this Contract;

### comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods; and

### be free from any defect in title.

## 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.

## The Customer has the right to inspect and test the Goods at any time before delivery.

## If following such inspection or testing the Customer considers that the Goods do not conform or are unlikely to comply with the Supplier's undertakings at clause 4.1, the Customer shall inform the Supplier and the Supplier shall immediately take such remedial action as is necessary to ensure compliance.

## Notwithstanding any such inspection or testing, the Supplier shall remain fully responsible for the Goods and any such inspection or testing shall not reduce or otherwise affect the Supplier's obligations under the Contract, and the Customer shall have the right to conduct further inspections and tests after the Supplier has carried out its remedial actions.

# **DELIVERY OF GOODS**

## The Supplier shall ensure that:

### the Goods are properly packed and secured in such manner as to enable them to reach their destination in good condition;

### each delivery of Goods is accompanied by a delivery note which shows the Purchase Order number, the type and quantity of Goods (including the code number of the Goods, where applicable), special storage instructions (if any) and, if the relevant Purchase Order is being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and

### if the Supplier requires the Customer 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.

## The Supplier shall deliver the Goods specified in each Purchase Order:

### On its relevant Delivery Date;

### at the Delivery Location; and

### during the Customer's normal business hours, or as instructed by the Customer.

## Delivery of Goods is completed on the completion of unloading of those Goods at the Delivery Location.

* 1. Where Goods are delivered from outside the United Kingdom, the Supplier shall deliver the Goods under the Incoterm “Delivered Duty Paid (DDP)”. The Supplier shall have the sole responsibility of managing any import formalities, including payment of any applicable tax or customs duties for the Goods.

## If the Supplier delivers more or less than the quantity of Goods ordered, and the Customer accepts the delivery, a pro rata adjustment shall be made to the invoice for the Goods. If the Supplier:

### delivers less than 95% of the quantity of Goods ordered, the Customer may reject the Goods;

### delivers more than 105% of the quantity of Goods ordered, the Customer may at its discretion reject the Goods or the excess Goods.

## If the Customer rejects any Goods they are returnable at the Supplier's risk and expense. If the Supplier fails to collect rejected Goods within a reasonable period after notification of the rejection, the Customer may charge the Supplier storage costs and sell or dispose of the rejected Goods. The Customer will account to the Supplier for the proceeds of sale (if any) after deducting the purchase price paid for the Goods, storage costs and its reasonable costs and expenses in connection with the sale.

## The Supplier shall not deliver Goods in instalments without the Customer's prior written consent. Where it is agreed that Goods may be delivered by instalments, such instalments shall be invoiced 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 Customer to the remedies set out in clause 6.

# **CUSTOMER REMEDIES**

## If the Goods are not delivered on the relevant Delivery Date, or do not comply with the undertakings set out in clause 4.1, then, without limiting any of its other rights or remedies, and whether or not it has accepted the Goods, and the Customer may exercise any one or more of the following remedies:

### to terminate the Contract;

### to reject the Goods (in whole or in part) and return them to the Supplier at the Supplier's own risk and expense;

### 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);

### to refuse to accept any subsequent delivery of the Goods which the Supplier attempts to make;

### to recover from the Supplier any costs incurred by the Customer in obtaining substitute goods from a third party; and

### to claim damages for any other costs, loss or expenses incurred by the Customer which are in any way attributable to the Supplier's failure to carry out its obligations under the Contract.

## If the Goods are not delivered on the Delivery Date, the Customer may at its option claim or deduct *[INSERT]* per cent of the price of the Goods for each week's delay in delivery by way of liquidated damages, up to a maximum of *[INSERT]* per cent of the total price of the Goods. If the Customer exercises its rights under this clause 6.2, it may not exercise any of the remedies set out in clause 6.1 in respect of the Goods' late delivery (but such remedies shall be available in respect of the Goods' condition).

## These Conditions shall apply to any repaired or replacement Goods supplied by the Supplier.

## If the Supplier fails to promptly repair or replace the rejected Goods in accordance with clause 6.1(c), the Customer may, without affecting its rights under Clause 6.1(f), obtain substitute goods from a substitute supplier, or have the rejected Goods repaired by a third party, and the Supplier shall reimburse the Customer for the costs it incurs in doing so.

## The Customer's rights and remedies under these Conditions are in addition to its rights and remedies implied by statute and common law.

# **ACCEPTANCE, TITLE AND RISK**

## The Customer shall not be deemed to have accepted any Goods until it has had a reasonable time to inspect them following delivery, or, in the case of a latent defect in the Goods, until a reasonable time after the latent defect has become apparent.

## Title and risk in the Goods shall pass to the Customer on completion of delivery.

# **PRICE AND PAYMENT**

**Goods**

## The Customer shall pay for Goods in accordance with this clause 8.

## The Price:

### excludes amounts in respect of value added tax (VAT), which the Customer shall additionally be liable to pay to the Supplier at the prevailing rate, subject to the receipt of a valid VAT invoice; and

### includes the costs of packaging, insurance and carriage of the Goods.

## No extra charges shall be effective unless agreed in writing and signed by the Customer.

## The Supplier may invoice the Customer for the price of the Goods plus VAT at the prevailing rate (if applicable) on or at any time after the completion of delivery. The Supplier shall ensure that the invoice includes the date of the Purchase Order, the invoice number, the Contract Number, the Purchase Order number, the Supplier's VAT registration number, and any supporting documentation that the Customer may reasonably require.

## The Customer 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.

## If a party fails to make any payment due to the other under the Contract by the due date for payment, then the defaulting party shall pay interest on the overdue amount at the rate of 4% per annum above the Bank of England's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The defaulting party shall pay the interest together with the overdue amount. This clause shall not apply to payments the defaulting party disputes in good faith.

## The Customer may at any time, without limiting any of its other rights or remedies, set off any liability of the Supplier to the Customer against any liability of the Customer to the Supplier.

## If the Customer disputes any invoice received from the Supplier, the Customer shall immediately notify the Supplier in writing. The parties shall negotiate in good faith to attempt to resolve the dispute promptly. The Supplier shall provide all such evidence as may be reasonably necessary to verify the disputed invoice or request for payment. If the parties have not resolved the dispute within 30 days of the Customer giving notice to the Supplier, the dispute shall be resolved in accordance with clause 16. Where only part of an invoice is disputed, the undisputed amount shall be paid on the due date as set out in clause 8.5.

**SERVICES**

## In consideration for the provision of the Services, the Customer shall pay the Supplier the Charges in accordance with this clause 8

## All amounts payable by the Customer exclude amounts in respect of VAT which the Customer shall additionally be liable to pay to the Supplier at the prevailing rate (if applicable), subject to receipt of a valid VAT invoice.

## The Supplier shall submit invoices for the Charges plus VAT if applicable to the Customer [monthly in arrears, on or after the [NUMBER] day of each month OR at the intervals specified in Schedule 2]. Each invoice shall include all reasonable supporting information required by the Customer.

## The Customer shall pay each invoice which is properly due and submitted to it by the Supplier, within 30 days of receipt, to a bank account nominated in writing by the Supplier.

## If the Customer fails to make any payment due to the Supplier under this Contract by the due date for payment, then, without limiting the Supplier's remedies under clause 16, the Customer shall pay interest on the overdue amount at the rate of 4% per annum above the Bank of England's base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.

## In relation to payments disputed in good faith, interest under clause 8.12 is payable only after the dispute is resolved, on sums found or agreed to be due, from the date the dispute is resolved until payment.

## The Customer may at any time, without notice to the Supplier, set off any liability of the Supplier to the Customer against any liability of the Customer to the Supplier, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under this Contract. If the liabilities to be set off are expressed in different currencies, the Customer may convert either liability at a market rate of exchange for the purpose of set-off. Any exercise by the Customer of its rights under this clause shall not limit or affect any other rights or remedies available to it under this Contract or otherwise.

## The Supplier shall not be entitled to retain or set off any amount due to the Customer under the Contract.

# **SUPPLY OF SERVICES**

### The Supplier shall supply the Services to the Customer in accordance with this Contract.

* 1. In performing the Services the Supplier shall meet any performance dates specified in Schedule 2.
  2. In supplying the Services, the Supplier shall:
     1. perform the Services with the highest level of care, skill and diligence in accordance with best practice in the Supplier's industry, profession or trade;
     2. co-operate with the Customer in all matters relating to the Services, and comply with all reasonable instructions of the Customer;
     3. appoint the Supplier’s Representative who shall have authority to contractually bind the Supplier on all matters relating to the Services;
     4. only use personnel who are suitably skilled and experienced to perform the tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled;
     5. ensure that it obtains, and maintains all consents, licences and permissions (statutory, regulatory, contractual or otherwise) it may require and which are necessary to enable it to comply with its obligations in this Contract;
     6. ensure that the Services and Deliverables will conform in all respects with the service description set out in Schedule 2 and that the Deliverables shall be fit for any purpose expressly or implicitly made known to the Supplier by the Customer;
     7. provide all equipment, tools, vehicles and other items required to provide the Services;
     8. ensure that the Deliverables, and all goods, materials, standards and techniques used in providing the Services are of the best quality and are free from defects in workmanship, installation and design;
     9. comply with:
        1. all applicable laws, statutes, regulations and codes from time to time in force; and
        2. the Mandatory Policies.
     10. observe all health and safety rules and regulations and any other reasonable security requirements that apply at any of the Customer's premises from time to time and are notified to the Supplier;
     11. hold all Customer Materials in safe custody at its own risk, maintain the Customer Materials in good condition until returned to the Customer, and not dispose of or use the Customer Materials other than in accordance with the Customer's written instructions or authorisation;
     12. not do or omit to do anything which may cause the Customer to lose any licence, authority, consent or permission on which it relies for the purposes of conducting its business; and
     13. notify the Customer in writing immediately upon the occurrence of a change of control of the Supplier.

1. **CUSTOMER'S OBLIGATIONS**
   1. The Customer shall:
      1. co-operate with the Supplier in all matters relating to the Services;
      2. provide such access to the Customer's premises and data, and such office accommodation and other facilities as may reasonably be requested by the Supplier and agreed with the Customer in writing in advance, for the purposes of the Services; and
      3. provide such information as the Supplier may reasonably request and the Customer considers necessary, in order to carry out the Services in a timely manner.
   2. A failure by the Customer to comply with the terms of this agreement can only relieve the Supplier from complying with its obligations under this agreement with effect from the date on which the Supplier notifies the Customer in writing and in reasonable detail of the Customer's failure and its effect or anticipated effect on the Services.

# **CUSTOMER MATERIALS**

The Supplier acknowledges that all materials, equipment and tools, drawings, Specifications, and data supplied by the Customer to the Supplier (Customer Materials) and all rights in the Customer Materials are and shall remain the exclusive property of the Customer. The Supplier shall keep the Customer Materials in safe custody at its own risk, maintain them in good condition until returned to the Customer, and not dispose or use the same other than in accordance with the Customer's written instructions or authorisation.

# **INDEMNITY**

## The Supplier shall indemnify and keep indemnified the Customer against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by the Customer as a result of or in connection with:

### any claim made against the Customer for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the supply or use of the Goods, to the extent that the claim is attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors;

### any claim made against the Customer 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 defects in the Goods are attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors; and

### any claim made against the Customer 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.

## This clause 12 shall survive termination of the Contract.

# **INSURANCE**

During the term of the Contract and for a period of 1 year thereafter, the Supplier shall maintain in force, with a reputable insurance company product liability insurance and public liability insurance to cover the liabilities that may arise under or in connection with the Contract, and shall, on the Customer's request, produce both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance.

# **LIMITATION OF LIABILITY**

## This clause sets out the entire financial liability of the parties (including any liability for the acts or omissions of their respective employees, agents and subcontractors) to each other in respect of:

### Any breach of this Contract;

### Any use made or resale of the Goods by the Customer, or of any goods incorporating any of the Goods; and

### Any representation, statement or tortious act or omission (including negligence) arising under or in connection with this agreement.

## Nothing in this Contract shall limit or exclude the liability of either party for:

### Death or personal injury resulting from negligence; or

### Fraud or fraudulent misrepresentation; or

### Breach of terms implied by section 12 of the Sale of Goods Act 1979; or

### Breach of section 2 of the Consumer Protection Act 1987; or

### The indemnities contained within clause 10; or

### The deliberate default or wilful misconduct of that party, its employees, agent or subcontractors.

## Without prejudice to Clause 14.2, neither party shall be liable to the other, whether in contract, tort (including negligence) or restitution, or for breach of statutory duty or misrepresentation, or otherwise, for any:

### loss of profits; or

### loss of goodwill; or

### loss of business; or

### Loss of business opportunity; or

### loss of anticipated savings; or

### loss or corruptions of data or information; or

### Special, indirect or consequential damage or loss.

## Without prejudice to clause 14.2 or 14.3, the Supplier’s total liability arising under or in connection with this Contract, whether arising in contract, tort (including negligence) or restitution, or for breach of statutory duty or misrepresentation, or otherwise, shall be limited to 125% of the total value of the Contract.

## Without prejudice to clause 14.2 or clause 14.3, the Customer’s total liability arising under or in connection with this Contract, whether arising in contract, tort (including negligence) or restitution, or for breach of statutory duty or misrepresentation, or otherwise, shall be limited as follows:

### For non-payment of invoices for Goods purchased, to the amount unpaid, and any interest due on such amount pursuant to clause 8.6; or

### For any other type of liability, to 125% of the total value of the Contract.

# **COMPLIANCE WITH RELEVANT LAWS AND POLICIES**

## In performing its obligations under the Contract, the Supplier shall comply with all applicable laws, statutes, regulations and codes from time to time in force.

## The Customer may immediately terminate the Contract for any breach of clause 15 by the Supplier.

# **DISPUTE RESOLUTION PROCEDURE**

## If any dispute arises in connection with this Contract, senior representatives of the parties with authority to settle the dispute shall, within seven (7) days of a written request from either Party to the other, meet in a good faith effort to resolve the dispute.

## If the dispute is not resolved at that meeting, the parties may, but shall not be obliged to, attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure.

## Unless otherwise agreed between the parties, the mediator shall be nominated by CEDR. To initiate the mediation a Party must give notice in writing (“ADR Notice”) to the other requesting a mediation. A copy of the request shall be sent to CEDR. The mediation shall start no later than seven (7) days after the date of the ADR Notice.

## If mediation is not utilised or the dispute is not resolved by mediation, or either party fails to participate or continue to participate in the mediation, or the mediation terminates, the dispute shall be resolved by the courts of England and Wales in accordance with clause 24.13 (Governing Law).

# **TERMINATION**

## Without limiting its other rights or remedies, either party may terminate the Contract with immediate effect by giving written notice to the other party if:

### the other party commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing to do so;

### the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business;

### the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or

### the other party's financial position deteriorates to such an extent that in the terminating party's opinion the other party's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy.

## The Customer shall be entitled to terminate the Contract where:

### The Contract has been subject to a substantial modification which would have required a new procurement procedure in accordance with clause 31.5 of the Procurement Act 2023 (“Regulations”);

### The Contractor has, at the time the Contract was awarded by the Customer, been an excluded supplier as defined in clause 57(1)(a) or 57(2)(a) of the Procurement Act 2023 and the Contractor should therefore have been excluded from the procurement process;

### clauses 21.10 or 21.11 (Ethical Employment) apply.

## Termination of the Contract shall not affect any of the parties' rights and remedies that have accrued as at termination, including the right to claim damages in respect of any breach of this Contract which existed at or before the date of termination.

## Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination shall remain in full force and effect.

# **EXIT ARRANGEMENTS**

## On termination of this Contract for whatever reason:

### the Supplier shall immediately deliver to the Customer all Deliverables whether or not then complete, and return all Customer Materials. If the Supplier fails to do so, then the Customer may enter the Supplier's premises and take possession of them. Until they have been delivered or returned, the Supplier shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract; and

### the Supplier shall, if so requested by the Customer, provide all assistance reasonably required by the Customer to facilitate the smooth transition of the Services to the Customer or any replacement supplier appointed by it including the assistance set out in the Services Specification at Schedule 2.

# **FREEDOM OF INFORMATION**

## The Supplier acknowledges the Customer is subject to the requirements of the FOIA and the EIRs. The Supplier shall:

### Provide all necessary assistance and cooperation as reasonably requested by the Customer to enable the Customer to comply with its obligations under the FOIA and EIRs;

### Transfer to the Customer all Requests for Information relating to this Contract that it receives as soon as practicable and in any event within 2 Business Days of receipt;

### Provide the Customer with a copy of all Information belonging to the Customer requested within the Request for Information which is in its possession or control in the form that the Customer requires within 5 Business Days (or such other time period as the Customer may reasonably specify) of the Customer’s request for such Information; and

### Not respond directly to a Request for Information unless authorised in writing to do so by the Customer.

## The Supplier acknowledges that the Customer may be required under the FOIA and EIRs to disclose Information without consulting or obtaining consent from the Supplier. The Customer shall take reasonable steps to notify the Supplier of a Request for Information (in accordance with the Secretary of State’s section 45 Code of Practice on the Discharge of Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision within this Contract) the Customer shall be responsible for determining in its absolute discretion whether any Information and/or any other information is exempt from disclosure in accordance with the FOIA and/or the EIRs.

# **DATA PROTECTION**

## The Customer and the Supplier shall ensure it complies in all respect with the provisions of the Data Protection Act 2018 and any changes or amendments to Data Protection legislation including the General Data Protection Regulation (GDPR). In particular where the Supplier receives any personal data (as defined by the Data Protection Act 2018 and Article 4 of the General Data Protection Regulation), the supplier shall:

### Process Personal Data only in accordance with instructions from the Customer which may be specific instructions or instructions of a general nature as set out in this contract or as otherwise notified by the Customer to the Supplier during the Term of the Contract;

### Process personal Data only to the extent, and in such manner, as is necessary for the provision of the Ordered Services or as is required by law or any other regulatory body;

### Implement appropriate technological measures to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to Personal Data;

### Ensure that each of its employees, agents and subcontractors are made aware of and are trained in, its obligations under this agreement, and are reliable and suitably trained with regard to the security and protection of the Personal Data;

### Not divulge any Personal Data whether directly or indirectly, to any person, firm or company without the express prior written consent of the Customer except to those of its employees, agents and subcontractors who are engaged in the Processing of the Data and are subject to the binding obligations as set out in under this contract or except as may be required by any law or regulation;

### Comply with any request from the Customer to amend, transfer or delete Personal Data;

### Promptly inform the Customer if any Personal Data is lost or destroyed or becomes damaged, corrupted or unusable;

### Not transfer the Personal Data outside the European Economic Area except with the express prior written consent of the Customer;

### Notify the Customer (within five working days) if it receives:

#### a request from a Data Subject or to have access to a person’s Personal Data; or

#### a complaint or request relating to the Customer’s obligations under current Data Protection Legislation;

### Provide the Customer with full co-operation and assistance in relation to any complaint or request made, including by:

#### providing the Customer with full details of the complaint or request;

#### complying with a data access request within the relevant timescales set out in the Data Protection Terms of this contract and in accordance with the Customer’s instructions;

#### providing the Customer with any Personal Data it holds in relation to a Data Subject (within the timescales required by the Customer); and

#### providing the Customer with any information requested by the Customer;

### Provide a written description of the technical and organisational methods employed by the Supplier for processing Personal Data (within the timescales required by the Customer);

### Permit the Customer or its representatives (subject to reasonable and appropriate confidentiality undertakings), to inspect and audit the Supplier’s Data Processing activities (and/or those of its agents, subsidiaries and subcontractors) and comply with all reasonable requests or directions by the Customer to enable the Customer to verify and/or procure that the Supplier is in full compliance with its obligations under this Contract;

### Authorise a third party (sub-contractor) to process the Personal Data provided:

#### full details of the subcontractor have been provided to the Customer and the Customer has expressly consented to the subcontractor being appointed; and

#### the subcontractor’s contract is on terms no less onerous regard to processing of Personal Data as set out in the Data Protection Terms of this contract; and

#### the subcontractor’s contract will terminate automatically on the expiry or termination of this agreement for any reason;

### Comply at all times with the Data Protection Terms set out within this contract and shall not perform its obligations under this contract in such a way as to cause the Customer to breach any of its applicable obligations under the Data Protection Terms;

### On expiry or termination of this Agreement, the Supplier shall forthwith deliver to the Customer, or destroy, at the Customer’s sole option, all of the Customer’s data in its possession or under its control as part of a subcontracting agreement.

## In consideration of the data protection obligations undertaken by the Supplier, the Customer agrees:

### That it shall ensure that it complies at all times with Data Protection legislation, and, in particular, it shall ensure that any disclosure of Personal Data made by it to the Supplier is made with the data subject’s consent or is otherwise lawful.

# **PREVENTION OF BRIBERY**

## The Supplier represents and warrants that neither it, nor to the best of its knowledge any Supplier’s Personnel, have at any time prior to the Commencement Date:

### Committed a Prohibited Act or been formally notified that it is subject to an investigation or prosecution which relates to an alleged Prohibited Act; and/or

### Been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.

## The Supplier shall not during the term of this Contract:

### Commit a Prohibited Act; and/or

### Do or suffer anything to be done which would cause the Customer or any of the Customer’s employees, consultants, sub-contractors or agents to contravene any of the Bribery Act 2010 or otherwise incur any liability in relation to the Bribery Act 2010.

## The Supplier shall during the term of the Contract:

### Establish, maintain and enforce, and require that its subcontractors establish, maintain and enforce, policies and procedures which are adequate to ensure compliance with the Bribery Act 2010 and prevent the occurrence of a Prohibited Act; and

### Keep appropriate records of its compliance with its obligations under clause 20.3(a) and make such records available to the Customer on request.

## The Supplier shall immediately notify the Customer in writing if it becomes aware of any breach of clause 20.1 and/or 20.2, or has reason to believe that it has or any of the Supplier’s Personnel have:

### Been subject to an investigation or prosecution which relates to an alleged Prohibited Act;

### Been listed by any government department or agency as being debarred, suspected, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act; and/or

### Received a request or demand for any undue financial or other advantage of any kind in connection with the performance of this Contract or otherwise suspects that any person or party directly or indirectly connection with this Contract has committed or attempted to commit a Prohibited Act.

## If the Supplier makes a notification to the Customer pursuant to clause 20.4, the Supplier shall respond promptly to the Customer’s enquiries.

## If the Supplier fails to comply with clause 20.1 and/or 20.2, the University may by notice:

### Require the Supplier to remove from performance of the Contract any Supplier’s Personnel whose acts or omissions have caused the default; or

### Immediately terminate the Contract.

## Any notice served by the Customer under clause 20.6 shall specify the nature of the Prohibited Act and the action the Customer has elected to take (including, where relevant, the date on which the Contract shall terminate).

# **ETHICAL EMPLOYMENT**

## In performing the Contract the Supplier shall comply with all applicable statutory obligations for the time being in force including (without limitation) those relating to health, safety and welfare, environment, modern slavery, employment rights and relations, working rights, human rights, data protection and equality.

## The Supplier warrants and represents that all the information contained in its tender remains true, accurate and not misleading except as may have been specifically disclosed in writing to and accepted by the Customer prior to the commencement date.

## The Supplier shall not operate its business in a manner which may in the opinion of the Customer bring the Customer into disrepute.

## The Supplier shall supply the goods in accordance with the Welsh Government Code of Practice for Ethical Employment is Supply Chains.

## The Supplier shall not subcontract the performance of all or part of its obligations under this Agreement without the prior written consent of the Customer. The Customer shall provide such information on its subcontractors as the Customer may from time to time request.

## The Supplier shall provide such information as the Customer may from time to time request on the Supplier’s supply chain for the goods provided.

## The Supplier shall provide such information as the Customer may from time to time request in respect of any recruitment/ employment agencies used by the Supplier in order to provide the services including (without limitation) information on the recruitment/employment practices and procedures used by those agencies.

## The Customer shall be entitled to inspect and examine the Supplier’s premises from which the goods are supplied/ stored/provided on request and to speak directly to the Supplier’s employees.

## The Supplier shall ensure that its subcontractors and suppliers have accepted obligations equivalent to those set out in clause 21 of these terms and conditions.

## The Customer may terminate the Contract by notice with immediate effect if the Supplier is the subject of a claim for breach of the Human Rights Act.

## The Customer may terminate the Contract by notice with immediate effect if the Supplier is the subject of formal investigation, or the subject of a claim arising, in connection with its statutory obligations relating to employment rights, employment relations, working rights or equality.

# **MODERN SLAVERY**

## In performing its obligations under the Contract, the Supplier shall:

### comply with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force including but not limited to the Modern Slavery Act 2015; and

### not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 4 of the Modern Slavery Act 2015 if such activity, practice or conduct were carried out in the United Kingdom.

# **STATUS**

## The relationship of the Supplier (and the Supplier’s Personnel) to the Customer will be that of independent contractor and nothing in this agreement shall render it (nor any of the Supplier’s Personnel) an employee, worker, agent or partner of the Customer and the Supplier shall not hold itself out as such and shall procure that the Supplier’s Personnel shall not hold themselves out as such.

## This agreement constitutes a contract for the provision of goods and/or services and not a contract of employment and accordingly the Supplier shall be fully responsible for and shall indemnify the Customer and any Group company for and in respect of:

### any income tax, National Insurance and social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made in connection with the provision of Goods or any payment or benefit received by the Supplier’s Personnel in connection with the supply of Goods, where such recovery is not prohibited by law. The Supplier shall further indemnify the Customer against all reasonable costs, expenses and any penalty, fine or interest incurred or payable by the Customer in connection with or in consequence of any such liability, deduction, contribution, assessment or claim;

### any liability arising from any employment-related claim or any claim based on worker status (including reasonable costs and expenses) brought by any of the Supplier’s Personnel against the Customer arising out of or in connection with the supply of Goods, except where such claim is as a result of any act or omission of the Customer.

## The Customer may at its option satisfy such indemnity (in whole or in part) by way of deduction from payments due to the Supplier.

## The Supplier warrants that it is not nor will it prior to the cessation of this agreement, become a managed service company, within the meaning of section 61B of the Income Tax (Earnings and Pensions) Act 2003.

# **GENERAL**

## Force majeure. Neither party shall be in breach of this Contract nor liable for delay in performing, or failure to perform, any of its obligations under this Contract if such delay or failure result from a Force Majeure Event. If the Force Majeure Event endures for 90 days, the party not affected may terminate this Contract by giving 30 days' written notice to the affected party.

## Subcontracting. The Supplier may not subcontract any or all of its rights or obligations under this Contract without the prior written consent of the Customer. If the Customer consents to any subcontracting by the Supplier, the Supplier shall remain responsible for all acts and omissions of its subcontractors as if they were its own.

## Confidentiality.

### Each party undertakes that it shall not at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party or of any member of the group to which the other party belongs, except as permitted by clause 24.3(b). For the purposes of this clause, group means, in relation to a party, that party, any subsidiary or holding company from time to time of that party, and any subsidiary from time to time of a holding company of that party.

### Each party may disclose the other party's confidential information:

#### to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with this agreement. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 24.3; and

#### as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

### No party shall use any other party's confidential information for any purpose other than to perform its obligations under this Contract.

## Assignment: The Supplier shall not assign transfer or novate any or all of its rights and obligations under this Contract without the prior written consent of the Customer (such consent not to be unreasonably withheld or delayed).

## Welsh Language Policy: The Supplier shall comply with the Customer’s Welsh Language Policy (available on request).

## Criminal Finances Act 2007

### The Customer and its subsidiaries, conduct their activities with integrity, transparency and fairness. They are committed to the prevention of the facilitation of tax evasion as they recognise the importance of fostering a positive culture of tax compliance and maintaining the confidence of students, staff, partner organisations, other customers and the tax authorities.

### The Customer and its subsidiaries do not and will not work with others who do not share their commitment to preventing the facilitation of tax evasion.

## Entire agreement. This Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

## Variation. No variation of this Contract shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

## Waiver. A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. A delay or failure to exercise, or the single or partial exercise of, any right or remedy shall not:

### waive that or any other right or remedy; or

### prevent or restrict the further exercise of that or any other right or remedy.

## Severance. If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of the Contract.

## Notices.

### 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 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 or other next working day delivery service, commercial courier, email.

### A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in clause 24.11(a); if sent by pre-paid first class post or other next working day delivery service, 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 email, one Business Day after transmission.

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

## Third party rights. No one other than a party to this agreement shall have any right to enforce any of its terms pursuant to the Contracts (Rights of Third Parties) Act 1999.

## Governing law. The Contract, and 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 governed by, and construed in accordance with the law of England and Wales, as applied in Wales.

## Jurisdiction. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes or claims).

**Schedule 1: Price of the Goods and charges for Services**

**Schedule 2: Goods and/or Services (and any Key Deliverables)**

**Schedule 3: Purchase Order**

**Schedule 4: Mandatory Policies**