



UNITY

SCHOOLS PARTNERSHIP

**TERMS AND CONDITIONS FOR THE SUPPLY OF GOODS
AND SERVICES**

JANUARY 2020

1 Interpretation

The following definitions and rules of interpretation apply in this Contract.

Definitions:

Applicable Laws	all applicable laws, statutes, regulations from time to time in force.
Business Day	a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.
Commencement Date	has the meaning given in clause 2.2.
Conditions	these terms and conditions as amended from time to time in accordance with clause 27.
Confidential Information	means all information which has been designated as confidential by either party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including but not limited to information which relates to the business, affairs, properties, assets, trading practices, services, developments, trade secrets, Intellectual Property Rights, know-how, personnel, authorities and contractors of either party and commercially sensitive information which may be regarded as the confidential information of the disclosing party.
Contract	the contract between the Trust and the Supplier for the supply of Goods and/or Services in accordance with these Conditions.
Contract Managers	means the individuals appointed by each party from time to time to manage the performance of this Contract on their behalf.
Control	has the meaning given in section 1124 of the Corporation Tax Act 2010, and the expression change of control shall be construed accordingly.
Data Protection Legislation	all applicable data protection and privacy legislation in force from time to time in the UK including the General Data Protection Regulation ((EU) 2016/679); the Data Protection Act 2018; the Privacy and Electronic Communications Directive 2002/58/EC (as updated by Directive 2009/136/EC) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended.
Data Controller, Data Processor, Data Subject, Personal Data, Personal Data Breach, Processing and Appropriate Technical Measures	as defined in the Data Protection Legislation.
Trust	Unity Schools Partnership is a charitable company limited by guarantee and registered in England and Wales with company number 07400386.
Trust Materials	has the meaning set out in clause 5.4.10.

Deliverables	all documents, products and materials developed by the Supplier or its agents, contractors and employees as part of or in relation to the Services in any form or media, including drawings, maps, plans, diagrams, designs, pictures, computer programs, data, specifications and reports (including drafts).
Goods	the goods (or any part of them) set out in the Order.
Goods Specification	any specification for the Goods, including any related plans and drawings, that is agreed in writing by the Trust and the Supplier.
Intellectual Property Rights	patents, rights to inventions, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, Confidential Information (including know-how) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.
Mandatory Policies	the Trust's business policies including: <ul style="list-style-type: none"> ● Safeguarding Policy ● ICT, eSafety and Data Security Acceptable Use Policy ● Finance Policy (including Procurement) ● Health & Safety Policy ● Staff Code of Conduct
Order	the Trust's order for the supply of Goods and/or Services, as set out in the Trust's purchase order form, or in the Trust's written acceptance of the Supplier's quotation, or overleaf, as the case may be.
Regulated Activity	in relation to children shall have the same meaning as set out in Part 1 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006 and in relation to vulnerable adults shall have the same meaning as set out in Part 2 of Schedule 4 to the Safeguarding Vulnerable Groups Act 2006.
Services	the services, including any Deliverables, to be provided by the Supplier under the Contract as set out in the Service Specification.
Service Specification	the description or specification for Services set out in the Order or otherwise agreed in writing by the Trust and the Supplier.
Supplier	the person or firm from whom the Trust purchases the Goods and/or Services.

Supplier's Personnel

all employees, staff, other workers, agents and consultants of the Supplier and of any Sub-Contractors who are engaged in the provision of the Services from time to time.

Interpretation:

A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

A reference to a party includes its successors and permitted assigns.

A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.

Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

A reference to **writing** or **written** includes fax and email.

2 Basis of contract

21 The Order constitutes an offer by the Trust to purchase Goods and/or Services from the Supplier in accordance with these Conditions.

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

2.2.1 the Supplier issuing written acceptance of the Order; or

2.2.2 any act by the Supplier consistent with fulfilling the Order,

at which point and on which date the Contract shall come into existence (**Commencement Date**).

23 These Conditions apply to the Contract to the exclusion of any other terms that the Supplier seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

24 All of these Conditions shall apply to the supply of both Goods and Services except where the application to one or the other is specified.

3 Supply of Goods

3.1 The Supplier shall ensure that the Goods shall:

3.1.1 correspond with their description and any applicable Goods Specification;

3.1.2 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979) and fit for any purpose held out by the Supplier or made known to the Supplier by the Trust, expressly or by implication, and in this respect the Trust relies on the Supplier's skill and judgement;

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

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

3.2 The Supplier shall comply with any additional obligations as set out in the Order.

3.3 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 in respect of the Goods.

3.4 The Trust may inspect and test the Goods at any time before delivery. The Supplier shall remain fully responsible for the Goods despite any such inspection or testing and any such

inspection or testing shall not reduce or otherwise affect the Supplier's obligations under the Contract.

3.5 If following such inspection or testing the Trust considers that the Goods do not comply or are unlikely to comply with the Supplier's undertakings at clause 3.1, the Trust shall inform the Supplier and the Supplier shall immediately take such remedial action as is necessary to ensure compliance.

3.6 The Trust may conduct further inspections and tests after the Supplier has carried out its remedial actions.

4 Delivery of Goods

4.1 The Supplier shall ensure that:

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

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

4.1.3 it states clearly on the delivery note any requirement for the Trust to return any packaging material for the Goods to the Supplier. Any such packaging material shall only be returned to the Supplier at the cost of the Supplier.

4.2 The Supplier shall deliver the Goods:

4.2.1 on the date specified in the Order or, if no such date is specified, then within 15 days of the date of the Order;

4.2.2 to the Trust at Unity SP Offices, Park Road, Haverhill, Suffolk, CB9 7YD. or such other location as is set out in the Order or as instructed by the Trust before delivery (**Delivery Location**); and

4.2.3 during the Trust's normal hours of business on a Business Day, or as instructed by the Trust.

4.3 Delivery of the Goods shall be completed on the completion of unloading of the Goods at the Delivery Location.

4.4 The Supplier acknowledges that time is of the essence for the delivery of the Goods.

4.5 If the Supplier:

4.5.1 delivers less than 95% of the quantity of Goods ordered, the Trust may reject the Goods; or

4.5.2 delivers more than 105% of the quantity of Goods ordered, the Trust may at its sole discretion reject the Goods or the excess Goods,

and any rejected Goods shall be returnable at the Supplier's risk and expense. If the Supplier delivers more or less than the quantity of Goods ordered, and the Trust accepts the delivery, the Supplier shall make a pro rata adjustment to the invoice for the Goods.

4.6 The Supplier shall not deliver the Goods in instalments without the Trust's prior written consent. Where it is agreed that the Goods are delivered by instalments, they may be invoiced and paid for separately. However, failure by the Supplier to deliver any one instalment on time or at all or any defect in an instalment shall entitle the Trust to the remedies set out in clause 9.1.

4.7 Title and risk in the Goods shall pass to the Trust on completion of delivery.

5 Supply of Services

- 5.1 The Supplier shall from the Commencement Date and for the duration of the Contract supply the Services to the Trust in accordance with the terms of the Contract.
- 5.2 The Supplier acknowledges that time is of the essence for the performance of the Services.
- 5.3 The Supplier shall meet any performance dates for the Services specified in the Order or that the Trust notifies to the Supplier and time is of the essence in relation to any of those performance dates.
- 5.4 In providing the Services, the Supplier shall:
 - 54.1 co-operate with the Trust in all matters relating to the Services, and comply with all instructions of the Trust;
 - 54.2 perform the Services with the best care, skill and diligence in accordance with best practice in the Supplier's industry, profession or trade;
 - 54.3 use personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled in accordance with the Contract;
 - 54.4 ensure that the Services and Deliverables will conform with all descriptions and specifications set out in the Service Specification, and that the Deliverables shall be fit for any purpose that the Trust expressly or impliedly makes known to the Supplier;
 - 54.5 provide all equipment, tools and vehicles and such other items as are required to provide the Services;
 - 54.6 use the best quality goods, materials, standards and techniques, and ensure that the Deliverables, and all goods and materials supplied and used in the Services or transferred to the Trust, will be free from defects in workmanship, installation and design;
 - 54.7 obtain and at all times maintain all licences and consents which may be required for the provision of the Services;
 - 54.8 comply with all Applicable Laws, regulations, regulatory policies, guidelines or industry codes which may apply to the provision of the Services, and with the Mandatory Policies;
 - 54.9 observe all health and safety rules and regulations and any other security requirements that apply at any of the Trust's premises;
 - 54.10 hold all materials, equipment and tools, drawings, specifications and data supplied by the Trust to the Supplier (**Trust Materials**) in safe custody at its own risk, maintain the Trust Materials in good condition until returned to the Trust, and not dispose or use the Trust Materials other than in accordance with the Trust's written instructions or authorisation;
 - 54.11 not do or omit to do anything which may cause the Trust to lose any licence, authority, consent or permission upon which it relies for the purposes of conducting its business, and the Supplier acknowledges that the Trust may rely or act on the Services; and
 - 54.12 comply with any additional obligations as set out in the Service Specification;

6 Audit

- 61 The Supplier shall, for a period of 6 years following termination or expiry of this Contract, maintain complete and accurate accounts (the "Accounts") and records (the "Records") of the time spent and materials used by the Supplier in providing the Services, and the Supplier shall allow the Trust to inspect such records at all reasonable times on request.
- 62 The Supplier shall record Input and output VAT as separate items in the Accounts.

6.3 The Supplier shall provide oral or written explanations of the Accounts if required. The Trust reserves the right to have its staff or agents carry out examinations into the economy, efficiency and effectiveness with which the Supplier has used the Trust's resources in the performance of this Contract.

7 Safeguarding children

7.1 The Supplier shall:

7.1.1 ensure that all individuals engaged in Regulated Activity are subject to a valid enhanced disclosure check for regulated activity undertaken through the Disclosure and Barring Service (DBS);

7.1.2 ensure that all individuals disclose information about members of their household for the purposes of the Childcare (Disqualification) Regulations 2009 (and the Childcare Act 2006) and this information is updated during the term of this Contract;

7.1.3 comply with the safer recruitment checks set out in the Department for Education's publication "Keeping Children Safe in Education" as updated from time to time.

7.1.4 monitor the level and validity of the checks under this clause 7.1 for each member of staff;

7.1.5 not employ or use the services of any person who is barred from (or who lives in the same household as someone who is barred or receives a conviction covered by the Childcare (Disqualification) Regulations 2009), or whose previous conduct or records indicate that he or she would not be suitable to carry out Regulated Activity or who may otherwise present a risk to service users.

7.2 The Supplier warrants that at all times for the purposes of this Contract it has no reason to believe that any person who is or will be employed or engaged by the Supplier in the provision of the Services is barred from the activity in accordance with the provisions of the Safeguarding Vulnerable Groups Act 2006 and any regulations made thereunder, as amended from time to time, nor lives in the same household as someone who is barred or has any convictions covered by the Childcare (Disqualification) Regulations 2009.

7.3 The Supplier shall immediately notify the Trust of any information that it reasonably requests to enable it to be satisfied that the obligations of this clause 7 have been met.

7.4 The Supplier shall refer information about any person carrying out the Services to the DBS where it removes permission for such person to carry out the Services (or would have, if such person had not otherwise ceased to carry out the Services) because, in its opinion, such person has harmed or poses a risk of harm to children.

7.5 The Supplier shall ensure that the Trust is kept advised at all times of any member of the Supplier's Personnel who, subsequent to his/her commencement of employment, receives a conviction (or lives in the same household as someone who receives a conviction or is barred for the purposes of the Childcare (Disqualification) Regulations 2009) or whose previous convictions and/or criminal investigations of allegations (or those of someone who lived in the same household as the individual concerned) become known to the Supplier.

8 Anti-Slavery and human trafficking

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

8.1.1 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;

8.1.2 have and maintain throughout the term of this agreement its own policies and procedures to ensure its compliance; and

8.1.3 not engage in any activity, practice or conduct that 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 UK.

9 Trust remedies

- 9.1 If the Supplier fails to deliver the Goods and/or perform the Services by the applicable date, the Trust shall, without limiting or affecting other rights or remedies available to it, have one or more of the following rights:
- 9.1.1 to terminate the Contract with immediate effect by giving written notice to the Supplier;
 - 9.1.2 to refuse to accept any subsequent performance of the Services and/or delivery of the Goods which the Supplier attempts to make;
 - 9.1.3 to recover from the Supplier any costs incurred by the Trust in obtaining substitute goods and/or services from a third party;
 - 9.1.4 to require a refund from the Supplier of sums paid in advance for Services that the Supplier has not provided and/or Goods that it has not delivered; and
 - 9.1.5 to claim damages for any additional costs, loss or expenses incurred by the Trust which are in any way attributable to the Supplier's failure to meet such dates.
- 9.2 If the Goods are not delivered by the applicable date, the Trust may, at its option, claim or deduct 10% of the price of the Goods for each week's delay in delivery by way of liquidated damages, up to a maximum of 50% of the total price of the Goods. If the Trust exercises its rights under this clause 9.2 it shall not be entitled to any of the remedies set out in clause 9.1 in respect of the Goods' late delivery.
- 9.3 If the Supplier has delivered Goods that do not comply with the undertakings set out in clause 3.1, then, without limiting or affecting other rights or remedies available to it, the Trust shall have one or more of the following rights, whether or not it has accepted the Goods:
- 9.3.1 to terminate the Contract with immediate effect by giving written notice to the Supplier;
 - 9.3.2 to reject the Goods (in whole or in part) whether or not title has passed and to return them to the Supplier at the Supplier's own risk and expense;
 - 9.3.3 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);
 - 9.3.4 to refuse to accept any subsequent delivery of the Goods which the Supplier attempts to make;
 - 9.3.5 to recover from the Supplier any expenditure incurred by the Trust in obtaining substitute goods from a third party; and
 - 9.3.6 to claim damages for any additional costs, loss or expenses incurred by the Trust arising from the Supplier's failure to supply Goods in accordance with clause 3.1.
- 9.4 These Conditions shall extend to any substituted or remedial services and/or repaired or replacement goods supplied by the Supplier.
- 9.5 The Trust's rights under the Contract are in addition to its rights and remedies implied by statute and common law.

10 Trust's obligations

The Trust shall:

- 10.1.1 provide the Supplier with reasonable access at reasonable times to the Trust's premises for the purpose of providing the Services;
- 10.1.2 provide such necessary information for the provision of the Services as the Supplier may reasonably request; and
- 10.1.3 comply with each of the Trust's obligations set out in the Order.

11 Charges and payment

- 11.1 The price for the Goods:
- 11.1.1 shall be the price set out in the Order, or if no price is quoted, the price set out in the Supplier's published price list in force at the Commencement Date; and
 - 11.1.2 shall be inclusive of the costs of packaging, insurance and carriage of the Goods. No extra charges shall be effective unless agreed in writing and signed by the Trust.
- 11.2 The charges for the Services shall be set out in the Order, and shall be the full and exclusive remuneration of the Supplier in respect of the performance of the Services. Unless otherwise agreed in writing by the Trust, the charges shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the performance of the Services.
- 11.3 In respect of the Goods, the Supplier shall invoice the Trust on or at any time after completion of delivery. In respect of Services, the Supplier shall invoice the Trust on completion of the Services.
- 11.4 In consideration of the supply of Goods and/or Services by the Supplier, the Trust shall pay the invoiced amounts to a bank account nominated in writing by the Supplier, within 30 days of receipt of an invoice that:
- 11.4.1 is delivered to Unity Schools Partnership Offices, Park Road, Haverhill, Suffolk, CB9 7YD. or such other address as notified to the Supplier from time to time.
 - 11.4.2 includes such supporting information required by the Trust to verify the accuracy of the invoice;
 - 11.4.3 is for the correct sum;
 - 11.4.4 is in respect of Goods or Services supplied or delivered; and
 - 11.4.5 states the correct order number of contract reference.
- 11.5 All amounts payable by the Trust under the Contract are exclusive of amounts in respect of valued added tax chargeable from time to time (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Trust, the Trust shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Goods and/or Services at the same time as payment is due for the supply of the Goods and/or Services.
- 11.6 If the Trust fails to make a payment due to the Supplier under the Contract by the due date, then the Trust shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 11.6 will accrue each day at 4% a year above the Bank of England's base rate from time to time, but at 4% a year for any period when that base rate is below 0%.
- 11.7 The Trust may at any time, without notice to the Supplier, set off any liability of the Supplier to the Trust against any liability of the Trust to the Supplier, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under the Contract. Any exercise by the Trust of its rights under this clause shall not limit or affect any other rights or remedies available to it under the Contract or otherwise.

12 Data Protection

- 121 Both parties will comply with all applicable requirements of the Data Protection Legislation. This Clause 12 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.
- 122 The Order sets out the scope, nature and purpose of Processing by the Data Processor, the duration of the Processing and the types of Personal Data and categories of Data Subject.

- 123 Without prejudice to the generality of clause 12.1, the Data Controller will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to the Data Processor for the duration and purposes of this agreement.
- 124 Without prejudice to the generality of clause 12.1, the Data Processor shall, in relation to any Personal Data processed in connection with the performance by the Data Processor of its obligations under this agreement:
- 124.1 process that Personal Data only on the documented written instructions of the Data Controller unless the Data Processor is required by Applicable Laws to otherwise process that Personal Data. Where the Data Processor is relying on the laws of a member of the European Union or European Union Law as the basis for Processing Personal Data, the Data Processor shall promptly notify the Data Controller of this before performing the Processing required by the Applicable Laws unless those Applicable Laws prohibit the Data Processor from so notifying the Data Controller;
- 124.2 ensure that it has in place Appropriate Technical Measures, reviewed and approved by the Data Controller, to protect against unauthorised or unlawful Processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful Processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
- 124.3 ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and
- 124.4 not transfer any Personal Data outside of the European Economic Area unless the prior written consent of the Data Controller has been obtained and the following conditions are fulfilled:
- (a) the Data Controller or the Data Processor has provided appropriate safeguards in relation to the transfer;
 - (b) the Data Subject has enforceable rights and effective legal remedies;
 - (c) the Data Processor complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
 - (d) the Data Processor complies with reasonable instructions notified to it in advance by the Data Controller with respect to the Processing of the Personal Data;
- 124.5 assist the Data Controller, at the Data Controller' cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- 124.6 notify the Data Controller without undue delay on becoming aware of a Personal Data Breach;
- 124.7 at the written direction of the Data Controller, delete or return Personal Data and copies thereof to the Data Controller on termination of the agreement unless required by Applicable Law to store the Personal Data; and
- 124.8 maintain complete and accurate records and information to demonstrate its compliance with this Clause 12 and allow for audits by the Data Controller or the Data

Controller 's designated auditor and immediately inform the Data Controller if, in the opinion of the Data Processor, an instruction infringes the Data Protection Legislation.

125 The Data Controller does not consent to the Data Processor appointing any third party processor of Personal Data under this agreement.

126 Either party may, at any time on not less than 30 days' notice, revise this Clause 12 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to this agreement).

13 Intellectual property rights

13.1 All Intellectual Property Rights in or arising out of or in connection with the Services (other than Intellectual Property Rights in any Trust Materials) shall be owned by the Supplier.

13.2 The Supplier grants to the Trust, or shall procure the direct grant to the Trust of, a fully paid-up, worldwide, non-exclusive, royalty-free perpetual and irrevocable licence to copy and modify the Deliverables (excluding Trust Materials) for the purpose of receiving and using the Services and the Deliverables.

13.3 The Trust shall not sub-license, assign or otherwise transfer the rights granted by clause 13.2.

13.4 The Trust grants the Supplier a fully paid-up, non-exclusive, royalty-free non-transferable licence to copy and modify any materials provided by the Trust to the Supplier for the term of the Contract for the purpose of providing the Services to the Trust.

13.5 All Trust Materials are the exclusive property of the Trust.

14 Indemnity

14.1 The Supplier shall indemnify the Trust 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 reasonable professional costs and expenses) suffered or incurred by the Trust arising out of or in connection with:

14.1.1 any claim made against the Trust for actual or alleged infringement of a third party's intellectual property rights arising out of, or in connection with, the manufacture, supply or use of the Goods, or receipt, use or supply of the Services (excluding the Trust Materials);

14.1.2 any claim made against the Trust by a third party for death, personal injury or damage to property arising out of, or in connection with, defects in the Goods, as delivered, or the Deliverables; and

14.1.3 any claim made against the Trust by a third party arising out of or in connection with the supply of the Goods, as delivered, or the Services.

14.2 This clause 14 shall survive termination of the Contract.

15 Limitation of Liability

15.1 Nothing in this Contract limits liability for:

15.1.1 death or personal injury caused by negligence;

15.1.2 fraud or fraudulent misrepresentation; and

15.1.3 breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession).

15.2 The Trust's total liability to the Supplier shall not exceed £45,000. The Trust's total liability includes liability in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with this agreement.

16 Insurance

During the term of the Contract and for a period of two years thereafter, the Supplier shall maintain in force, with a reputable insurance company, professional indemnity insurance insured to the value of at least **£5,000,000**, 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 Trust'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.

17 Confidentiality

17.1 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, except as permitted by clause 16.2.

17.2 Each party may disclose the other party's Confidential Information:

1721 to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's Confidential Information must comply with this clause 16; and

1722 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

17.3 Neither party shall use the other party's Confidential Information for any purpose other than to perform its obligations under the Contract.

18 Termination

18.1 Without affecting any other right or remedy available to it, the Trust may terminate the Contract:

18.1.1 with immediate effect by giving written notice to the Supplier if:

(e) there is a change of control of the Supplier; or

(f) the Supplier's financial position deteriorates to such an extent that in the Trust's opinion the Supplier's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; or

(g) the Supplier commits a breach of clause 3.1, 5.4.8, 5.4.2, 7 and 8,

18.1.2 for convenience by giving the Supplier three months' written notice.

18.2 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:

18.2.1 the other party commits a material breach of any term of the Contract which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;

18.2.2 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 or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction; or

18.2.3 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.

19 Consequences of termination

- 19.1 On termination of the Contract by the Trust, the Trust shall only be required to make payments to the Supplier in respect of Goods delivered or Services supplied before the date of termination.
- 19.2 On termination of the Contract, the Supplier shall immediately deliver to the Trust all Deliverables whether or not then complete, and return all Trust Materials. If the Supplier fails to do so, then the Trust may enter the Supplier's premises and take possession of them. Until they have been returned or delivered, the Supplier shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Contract.
- 19.3 Termination or expiry of the Contract shall not affect the parties' rights and remedies that have accrued as at termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.
- 19.4 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.

20 Force majeure

Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under it if such delay or failure results from events, circumstances or causes beyond its reasonable control. If the period of delay or non-performance continues for 30 days, the party not affected may terminate this Contract by giving 30 days' written notice to the affected party.

21 Assignment and other dealings

- 21.1 The Trust may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with all or any of its rights and obligations under the Contract.
- 21.2 The Supplier shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract without the prior written consent of the Trust.

22 Notices

- 22.1 Any notice or other communication given to a party under or in connection with the Contract shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or sent by fax to its main fax number or sent by email to the address specified in the Order.
- 22.2 A notice or other communication shall be deemed to have been received: if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; 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 sent by fax or email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause 21.2, business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.
- 22.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.

23 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.

24 Waiver

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

25 No partnership or agency

Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute either party the agent of the other, or authorise either party to make or enter into any commitments for or on behalf of the other party.

26 Entire agreement

The 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.

27 Third party rights

27.1 Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

27.2 The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.

28 Variation

Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is agreed in writing and signed by the parties or their authorised representatives.

29 Multi-tiered dispute resolution procedure

29.1 If a dispute arises out of or in connection with this Contract or the performance, validity or enforceability of it (**Dispute**) then except as expressly provided in this Contract, the parties shall follow the procedure set out in this clause:

29.1.1 either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (**Dispute Notice**), together with relevant supporting documents. On service of the Dispute Notice, the Contract Managers shall attempt in good faith to resolve the Dispute;

29.1.2 if the Contract Managers are for any reason unable to resolve the Dispute within 30 days of service of the Dispute Notice, the Dispute shall be referred to the CEO of the Trust and a senior manager of the Supplier who shall attempt in good faith to resolve it; and

29.1.3 if the CEO of the Trust and a senior manager of the Supplier are for any reason unable to resolve the Dispute within 30 days of it being referred to them, the parties will 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 serve notice in writing (**ADR notice**) to the other party to the Dispute, requesting a mediation. A copy of the ADR notice should be sent to CEDR. The mediation will start not later than 30 days after the date of the ADR notice.

29.2 The commencement of mediation shall not prevent the parties commencing or continuing court proceedings in relation to the Dispute under clause 30 (Jurisdiction) which clause shall apply at all times.

293 If the Dispute is not resolved within 30 days after service of the ADR notice, or either party fails to participate or to continue to participate in the mediation before the expiration of the said period of 30 days, or the mediation terminates before the expiration of the said period of **30** days, the Dispute shall be finally resolved by the courts of England and Wales in accordance with clause 30 (Jurisdiction).

30 Governing law

The Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

31 Jurisdiction

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