

New College Durham
Terms and Conditions of Purchase of Goods and Services

1. Interpretation

1.1 Definitions:

Business Day	a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.
Business Hours	the period from 8.30 am to 4.30 pm on any Business Day.
Conditions	the terms and conditions set out in this document as amended from time to time in accordance with clause 17.3.
College	New College Durham, a further and higher education corporation whose principal offices are at Framwellgate Moor Centre, Framwellgate Moor, Durham, DH1 5ES
Contract	the contract between the College and the Supplier for the sale and purchase of the Goods and/or Services in accordance with these Conditions.
College Materials	has the meaning set out in clause 8.
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).
Delivery Date	the date specified in the Order, or, if none is specified, within 7 days of the date of the Order.
Delivery Location	the address for delivery of Goods or performance of the Services as set out in the Order.
EIR	the Environmental Information Regulations 2004.
FOIA	the Freedom of Information Act 2000.
Goods	the goods (or any part of them) set out in the Order.

Information	has the same meaning given under Section 84 FOIA.
Intellectual Property Rights	patents, utility models, rights to inventions, copyright and neighbouring and related rights, trade marks, business names and domain names, rights in get-up and trade dress, 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 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, any rights and all similar or equivalent rights or forms of protection that subsist or will subsist now or in the future in any part of the world.
Order	in the College's written acceptance of the Supplier's quotation, or the College's purchase order (if any) as the case may be.
Request for Information	a request for information or an apparent request under the FOIA or the EIRs.
Services	the services, including any Deliverables, to be provided by the Supplier under the Contract, as set out in the Order.
Specification	any specification for the Goods and/or Services, including any related plans and drawings, that is agreed in writing by the College and the Supplier.
Supplier	the person or firm from whom the College purchases the Goods and/or Services.

1.2 Interpretation:

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

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

1.2.3 A reference to **writing** or **written** includes email.

2. **Basis of contract**

2.1 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 law, trade custom, practice or course of dealing.

2.2 The Order constitutes an offer by the College to purchase the Goods and/or Services in accordance with these Conditions.

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

2.3.1 the Supplier issuing a written acceptance of the Order; and

2.3.2 the Supplier doing any act consistent with fulfilling the Order,
at which point and on which date the Contract shall come into existence.

3. **The Services**

3.1 The Supplier shall ensure that it provides the Services to the College in accordance with the dates set out in the Order and in accordance with the terms of the Contract.

3.2 Time is of the essence in relation to any performance dates for the Services set out in the Order.

3.3 In providing the Services, the Supplier shall:

3.3.1 co-operate with the College in all matters relating to the Services, and comply with all instructions of the College;

3.3.2 perform the Services with the best care, skill and diligence in accordance with best practice in the Supplier's industry, profession or trade;

3.3.3 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;

- 3.3.4 ensure that the Services will conform with all descriptions, standards and specifications set out in the Specification, and that the Deliverables shall be fit for any purpose that the College expressly or impliedly makes known to the Supplier;
- 3.3.5 provide all equipment, tools and vehicles and such other items as are required to provide the Services;
- 3.3.6 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 College, will be free from defects in workmanship, installation and design;
- 3.3.7 obtain and at all times maintain all licences and consents which may be required for the provision of the Services;
- 3.3.8 comply with all applicable laws, regulations, regulatory policies, guidelines or industry codes, together with any instructions and/or policies of the College which may apply from time to time to the provision of the Services;
- 3.3.9 observe all health and safety rules and regulations and any other security requirements that apply at any of the College's premises;
- 3.3.10 hold all College Materials in safe custody at its own risk, maintain them in good condition until returned to the College, and not dispose or use the College Materials other than in accordance with the College's written instructions or authorisation;
- 3.3.11 not do or omit to do anything which may cause the College to lose any licence, authority, consent or permission on which it relies for the purposes of conducting its business, and the Supplier acknowledges that the College may rely or act on the Services; and
- 3.3.12 comply with any additional obligations as set out in the Specification.

4. **The Goods**

- 4.1 The Supplier shall ensure that the Goods shall:
 - 4.1.1 correspond with their description and any applicable Specification;
 - 4.1.2 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 College

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

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

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

4.2 Without prejudice to the rights of the College hereunder, the College 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 (or lack thereof) shall not reduce or otherwise affect the Supplier's obligations under the Contract.

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

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

4.5 The Supplier shall ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to supply and deliver the Goods and otherwise carry out its obligations under the Contract.

5. Delivery of Goods

5.1 The Supplier shall ensure that:

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

5.1.2 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

- 5.1.3 if the Supplier requires the College 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.
- 5.2 The Supplier shall deliver the Goods:
 - 5.2.1 on the Delivery Date;
 - 5.2.2 at the Delivery Location; and
 - 5.2.3 during Business Hours, or as instructed by the College.
- 5.3 Delivery of the Goods shall be completed on the completion of unloading the Goods at the Delivery Location.
- 5.4 Title and risk in the Goods shall pass to the College on completion of delivery.
- 5.5 The Supplier shall not deliver the Goods in instalments without the College's prior written consent. Where it is agreed that the Goods are to be delivered by instalments, they may be invoiced and paid for separately. However, failure by the Supplier to deliver any one instalment on time or at all, or any defect in an instalment shall entitle the College to the remedies set out in clause 6.
- 6. **College remedies**
 - 6.1 The College's rights and remedies under these Conditions are in addition to its rights and remedies implied by statute and common law.

Goods

- 6.2 If the Goods are not delivered on the 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, the College may exercise any one or more of the following rights and remedies:
 - 6.2.1 to terminate the Contract;
 - 6.2.2 to reject the Goods (in whole or in part) and return them to the Supplier at the Supplier's own risk and expense;
 - 6.2.3 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);
 - 6.2.4 to refuse to accept any subsequent delivery of the Goods which the Supplier attempts to make;

- 6.2.5 to recover from the Supplier any costs incurred by the College in obtaining substitute goods from a third party; and
- 6.2.6 to claim damages for any other costs, loss or expenses incurred by the College which are in any way attributable to the Supplier's failure to carry out its obligations under the Contract.
- 6.3 For the avoidance of doubt, neither the acceptance of Delivery from the Supplier nor the inspection of the Goods by the College shall relieve the Supplier of any of its obligations under the Contract.
- 6.4 These Conditions shall apply to any repaired or replacement Goods supplied by the Supplier.

Services

- 6.5 If the Supplier fails to perform the Services by the applicable dates, the College shall, without limiting or affecting other rights or remedies available to it, have one or more of the following rights:
 - 6.5.1 to terminate the Contract with immediate effect by giving written notice to the Supplier;
 - 6.5.2 to refuse to accept any subsequent performance of the Services which the Supplier attempts to make;
 - 6.5.3 to recover from the Supplier any costs incurred by the College in obtaining substitute services from a third party;
 - 6.5.4 to require a refund from the Supplier of sums paid in advance for Services that the Supplier has not provided; and
 - 6.5.5 to claim damages for any additional costs, loss or expenses incurred by the College which are in any way attributable to the Supplier's failure to meet such dates.
- 6.6 If the Supplier has supplied Services that do not comply with the requirements of clause 3.3.4 then, without limiting or affecting other rights or remedies available to it, the College shall have one or more of the following rights:
 - 6.6.1 to terminate the Contract with immediate effect by giving written notice to the Supplier;
 - 6.6.2 to return the Deliverables to the Supplier at the Supplier's own risk and expense;
 - 6.6.3 to require the Supplier to provide repeat performance of the Services, or to provide a full refund of the price paid for the Services (if paid);

- 6.6.4 to refuse to accept any subsequent performance of the Services which the Supplier attempts to make;
 - 6.6.5 to recover from the Supplier any expenditure incurred by the College in obtaining substitute services or deliverables from a third party; and
 - 6.6.6 to claim damages for any additional costs, loss or expenses incurred by the College arising from the Supplier's failure to comply with clause 3.3.4.
- 6.7 These Conditions shall extend to any substituted or remedial services provided by the Supplier.
7. **Price and payment**
- 7.1 The price of the Goods and/or Services shall be the price set out in the Order, or, if no price is quoted, the price set out in the Supplier's published price list in force as at the date the Contract came into existence.
- 7.2 The price of the Goods:
- 7.2.1 excludes amounts in respect of value added tax (**VAT**), which the College shall additionally be liable to pay to the Supplier at the prevailing rate, subject to the receipt of a valid VAT invoice;
 - 7.2.2 includes the costs of packaging, insurance and carriage of the Goods; and
 - 7.2.3 includes every cost and expense of the Supplier directly or indirectly incurred in connection with the Contract.
- 7.3 No extra charges shall be effective unless agreed in writing with the College.
- 7.4 The Supplier may invoice the College on or at any time after the completion of delivery of the Goods or performance of the Services. The Supplier shall ensure that the invoice includes the date of the Order, the invoice number, the College's order number, the Supplier's VAT registration number and any supporting documents that the College may reasonably require.
- 7.5 All amounts payable by the college are exclusive of VAT which shall be payable in addition to the price subject to receipt by the College of a valid VAT invoice from the Supplier.
- 7.6 The College shall pay correctly rendered invoices within 30 days of receipt of the invoice. Payment shall be made to the bank account nominated in writing by the Supplier.
- 7.7 If a party fails to make any payment due to the other party under the Contract by the due date for payment, then the defaulting party 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

will accrue each date 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 the base rate is below 0%. Where a payment is disputed in good faith, interest is only payable after the dispute is resolved, on sums found or agreed to be due, from the day after the dispute is resolved until payment.

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

8. College materials

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

9. Intellectual Property

- 9.1 The Supplier grants to the College, or shall procure the direct grant to the College of, a fully paid-up, worldwide, non-exclusive, royalty-free perpetual and irrevocable licence to copy and modify the Deliverables (excluding College Materials) for the purpose of receiving and using the Services and the Deliverables.
- 9.2 The College grants the Supplier a fully paid-up, non-exclusive, royalty-free non-transferable licence to copy any materials provided by the College to the Supplier for the term of the Contract for the purpose of providing the Services to the College.
- 9.3 All College Materials are the exclusive property of the College.

10. Indemnity

- 10.1 The Supplier shall indemnify the College against all liabilities, costs, expenses, damages and losses (including 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 College as a result of or in connection with:

10.1.1 any claim made against the College for actual or alleged infringement of a third party's intellectual property rights arising out of or in connection with the manufacture, supply or use of the Goods, or the receipt, use or supply of the Services (excluding the College Materials) to the extent that the claim is attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors;

10.1.2 any claim made against the College 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

10.1.3 any claim made against the College by a third party arising out of or in connection with the supply of the Goods and/or the Services, 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.

10.2 This clause 9 shall survive termination of the Contract.

11. Insurance

During the term of the Contract and for a period of 6 years afterwards, the Supplier shall maintain in force, with a reputable insurance company, professional indemnity insurance, product liability insurance and public liability insurance to cover the liabilities that may arise under or in connection with the Contract, and shall produce to the College on demand both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance.

12. Compliance with relevant laws

12.1 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.

12.2 Breach of clause 12.1 shall constitute an irremediable material breach of the Contract.

13. Termination

13.1 The College may terminate the Contract in whole or in part at any time before delivery of the Goods with immediate effect by giving the Supplier written notice, whereupon the Supplier shall discontinue all work on the Contract. The College shall pay the Supplier fair and reasonable

compensation for any work in progress on the Goods at the time of termination, but such compensation shall not include loss of anticipated profits or any consequential loss.

13.2 Without limiting its other rights or remedies, the College may terminate the Contract with immediate effect by giving written notice to the Supplier if:

13.2.1 the Supplier commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 5 days of the Supplier being notified in writing to do so;

13.2.2 the Supplier 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), obtaining a moratorium, 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;

13.2.3 the Supplier takes any step or action in connection with the Supplier being made bankrupt, entering any composition or arrangement with its creditors, having a receiver appointed to any of its assets, or ceasing to carry on business;

13.2.4 the Supplier suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business; or

13.2.5 the Supplier's financial position deteriorates so far as to reasonably justify the opinion that its ability to give effect to the terms of the Contract is in jeopardy.

13.3 On termination of the Contract, the Supplier shall immediately return all College Materials. If the Supplier fails to do so, then the College 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.

13.4 Termination of the Contract, however arising, 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 the Contract which existed at or before the date of termination.

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

14. **Confidentiality**

14.1 Each party undertakes that it shall not at any time disclose to any person any confidential information relating to the other party including information concerning the business, assets, affairs, customers, staff, students, clients or suppliers of the other party, except as permitted by clause 14.2.

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

14.2.1 to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under the Contract. Each party shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 14; and

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

14.3 Neither party shall use the other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Contract.

15. **Data Protection**

15.1 The following definitions apply in this clause 15:

15.1.1 **Controller, Processor, Data Subject, Personal Data, Personal Data Breach, processing and appropriate technical and organisational measures:** as defined in the Data Protection Legislation.

15.1.2 **Data Protection Legislation:** all applicable data protection and privacy legislation in force from time to time in the UK including the UK GDPR, the Data Protection Act 2018 (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (*SI 2003/2426*) and the guidance and codes of practice issued by the Information Commissioner or other relevant regulatory authority and applicable to a party.

15.1.3 **Domestic Law:** the law of the United Kingdom or a part of the United Kingdom.

15.1.4 **UK GDPR:** has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018.

- 15.2 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 15 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.
- 15.3 The parties acknowledge that for the purposes of the Data Protection Legislation, and unless otherwise agreed, the College is the Controller, and the Supplier is the Processor.
- 15.4 Without prejudice to the generality of clause 15.2, the College will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to the Supplier and/or lawful collection of the Personal Data by the Supplier on behalf of the College for the duration and purposes of the Contract.
- 15.5 Without prejudice to the generality of clause 15.2, the Supplier shall, in relation to any Personal Data processed in connection with the performance by the Supplier of its obligations under the Contract where it is acting as a Data Processor:
- 15.5.1 process that Personal Data only on the documented written instructions of the College unless the Supplier is required by Domestic Law to otherwise process that Personal Data. Where the Supplier is relying on Domestic Law as the basis for processing Personal Data, the Supplier shall promptly notify the College of this before performing the processing required by the Domestic Law unless the Domestic Law prohibits the Supplier from so notifying the College;
- 15.5.2 ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the College, 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);

- 15.5.3 ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and
 - 15.5.4 not transfer any Personal Data outside of the UK unless the prior written consent of the College has been obtained and the following conditions are fulfilled:
 - 15.5.4.1 the College or the Supplier has provided appropriate safeguards in relation to the transfer;
 - 15.5.4.2 the Data Subject has enforceable rights and effective legal remedies;
 - 15.5.4.3 the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
 - 15.5.4.4 the Supplier complies with reasonable instructions notified to it in advance by the College with respect to the processing of the Personal Data;
 - 15.5.5 assist the College 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;
 - 15.5.6 notify the College without undue delay on becoming aware of a Personal Data Breach;
 - 15.5.7 at the written direction of the College, delete or return Personal Data and copies thereof to the College on termination of the Contract unless required by Domestic Law to store the Personal Data; and
 - 15.5.8 maintain complete and accurate records and information to demonstrate its compliance with this clause 15 and allow for audits by the College or the College's designated auditor and immediately inform the College if, in the opinion of the Supplier, an instruction infringes the Data Protection Legislation.
- 15.6 The Supplier shall not appoint any third party processor of Personal Data under the Contract without the College's prior written consent. Where the College provides such consent, the Supplier confirms that it has entered or (as the case may be) will enter with the third-party processor into a written agreement incorporating terms which are substantially similar to those set out in this clause 15 and which the Supplier undertakes reflect and will continue to reflect the requirements of the Data Protection Legislation. As between the College and the Supplier,

the Supplier shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this clause 15.6.

15.7 The College may, at any time on not less than 30 days' notice, revise this clause 15 by replacing it with any applicable controller to processor standard clauses or similar terms adopted under the Data Protection Legislation or forming part of an applicable certification scheme (which shall apply when replaced by attachment to the Contract).

15.8 The Supplier shall indemnify the College against all Losses arising out of or in connection with the breach of the Data Protection Legislation by the indemnifying party, its employees or agents, provided that the indemnified party gives to the indemnifier prompt notice of such claim, full information about the circumstances giving rise to it, reasonable assistance in dealing with the claim and sole authority to manage, defend and/or settle it.

16. **Freedom of Information**

16.1 The Supplier acknowledges that the College is subject to the requirements of the FOIA and the EIRs. The Supplier shall:

16.1.1 provide all necessary assistance to the College to enable it to comply with its obligations under the FOIA and the EIRs;

16.1.2 send all Requests for Information it receives relating to this Agreement to the College as soon as practicable and within a maximum of two (2) Business Days from receipt; and

16.1.3 provide the College with a copy of all Information belonging to the College requested in the Request for Information which is in its possession or control in the form that the College requires within five (5) Business Days (or such other period as the College may reasonably specify) of the College's request for such Information.

16.2 The Supplier must not respond directly to a Request for Information without the College's prior written approval.

16.3 The Supplier acknowledges that the College may be required under the FOIA or EIRs to disclose Information (including commercially sensitive Information) without consulting or obtaining consent from the Supplier. The College will take reasonable steps to notify the Supplier of a Request for Information (in accordance with the Cabinet Office's Freedom of Information Code of Practice issues under section 45 of the FOIA) to the extent that it is

permissible and reasonably practical for it to do so but (notwithstanding any other provision in this Agreement) the College will be responsible for determining in its absolute discretion whether any commercially sensitive Information and/or any other information are exempt from disclosure in accordance with the FOIA and/or the EIRs.

17. **General**

17.1 **Assignment and other dealings**

17.1.1 The College may at any time assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract.

17.1.2 The Supplier may not assign, transfer, mortgage, charge, delegate, declare a trust over or deal in any other manner with any or all of its rights or obligations under the Contract without the prior written consent of the College.

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

17.3 **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 College.

17.4 **Waiver.**

17.4.1 A waiver of any right or remedy is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy.

17.4.2 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, nor shall it prevent or restrict the further exercise of that or any other right or remedy.

17.5 **Notices.**

17.5.1 Any notice given to a party under or in connection with the Contract shall be in writing and shall be:

- 17.5.1.1 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
 - 17.5.1.2 sent by email to the other party's email address which it has used or designated to the other party for use in connection with the Contract.
- 17.5.2 Any notice shall be deemed to have been received:
 - 17.5.2.1 if delivered by hand, at the time the notice is left at the proper address;
 - 17.5.2.2 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; or
 - 17.5.2.3 if sent by email, at the time of transmission, or, if this time falls outside Business Hours in the place of receipt, when Business Hours resume.
- 17.5.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.
- 17.6 **Third party rights.**
 - 17.6.1 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.
 - 17.6.2 The rights of the parties to rescind or vary the Contract are not subject to the consent of any other person.
- 17.7 **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.
- 17.8 **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.