

## Terms and Conditions of Purchase (Goods/Service)

### 1. Definitions

**1.1** In these conditions 'the Purchaser' means New College Durham. The 'Supplier' means the supplier named on the contract and 'the Goods/Service' means any such goods/service as are to be supplied to the Purchaser by the Supplier (or by any of the Supplier's sub-contractors) pursuant to or in connection with this 'the Order'.

**1.2** In relation to clause 9 the following definitions will apply

**"Agreement Personal Data"** the data described by the documented instructions provided by the Purchaser in documentation which is held with this contract.

**"Authorised Sub-Processor"** any third party appointed by the Supplier in accordance with this agreement, with the prior written consent of the Purchaser, to Process Agreement Personal Data

**"Data Protection Laws"** all applicable laws (including decisions) and guidance by relevant supervisory authorities relating to data protection, the processing of personal data and privacy, including:

(a) the Data Protection Act 1998;

(b) (with effect from 25 May 2018) the General Data Protection Regulation (EU) 2016/679;

(c) the Privacy and Electronic Communications (EC Directive) Regulations 2003 (as may be amended by the proposed Regulation on Privacy and Electronic Communications); and

(d) any legislation that, in respect of the United Kingdom, replaces or converts into domestic law the General Data Protection Regulation (EU) 2016/679, the proposed Regulation on Privacy and Electronic Communications or any other law relating to data protection, the processing of personal data and privacy as a consequence of the United Kingdom leaving the European Union;

and references to **"Data Subjects"**, **"Personal Data"**, **"Process"**, **"Processed"**, **"Processing"**, and **"Data Processor"** have the meanings set out in, and will be interpreted in accordance with:

(i) in respect of processing undertaken on or before 24 May 2018, the Data Protection Act 1998;

(ii) in respect of processing undertaken on or after 25 May 2018, the General Data Protection Regulation (EU) 2016/679; and

(iii) in respect of processing undertaken on or after the date on which legislation comes into force that, in respect of the United Kingdom, replaces or converts into domestic law the General Data Protection Regulation (EU) 2016/679, that legislation

**“Data Security Incident”**

the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, Agreement Personal Data transmitted, stored or otherwise Processed

**2. The Goods/Service**

- 2.1** The Goods/Service shall be to the reasonable satisfaction of the Purchaser and shall conform in all respects with any particulars specified in this Order and in any variations thereto.
- 2.2** The Goods/Service shall conform in this respect with the requirements of any statutes, orders, regulations or by-laws from time to time in force.
- 2.3** The Goods/Service shall be fit and sufficient for the purchase for which such goods/service are ordinarily used, and for any particular purpose made known to the Supplier by the Purchaser, and the Purchaser relies on the skill and judgement of the Supplier supply of the Goods/Service in the execution of the Order.

**3. The Price**

- 3.1** Unless otherwise agreed in writing by the Purchaser, the Supplier shall render a separate invoice in respect of each consignment delivered under this Order. Payment shall be due 30 days after receipt of the Goods/Service or the correct invoice therefore, whichever is the later.
- 3.2** Value Added Tax, where applicable, shall be shown separately on all invoices as a strictly net extra charge.

**4. Delivery**

- 4.1** Where any access to the premises is necessary in connection with delivery or installation the Supplier and his sub-contractor shall at all times comply with the reasonable requirements of the Director of Finance Corporate Services
- 4.2** The time of delivery shall be of the essence and failure to deliver within the time promised or specified shall enable the Purchaser (at his option) to release himself from any obligation to accept, and pay for, the Goods/Service and/or to cancel all or part of the order thereof, in either case without prejudice to his other rights and remedies.

## **5 Guarantee**

- 5.1** The guarantee period applicable to the Goods/Service shall be 12 months from putting into service or 18 months from delivery, whichever shall be the shorter (subject to any alternative guarantee arrangements agreed in writing between the Purchaser and the supplier). If the Purchaser shall within such guarantee period or within 30 days thereafter give notice in writing to the Supplier of any defect in any of the Goods/Service as may have arisen during such guarantee period under proper and normal use the Supplier shall (without prejudice to any other rights and remedies which the Purchaser may have) as quickly as possible remedy such defects whether by repair or replacement (as the Purchaser shall elect) without cost to the Purchaser

## **6 Payment**

- 6.1** Invoices relating to the purchase of equipment/services specified above should be in the name of New College Durham, quoting official order number and send to:

Finance Department  
New College Durham  
Framwellgate Moor Centre  
Durham  
DH1 5ES

## **7 Health and Safety**

- 7.1** The Supplier represents and warrants to the Purchaser that the Supplier has satisfied himself that all necessary tests and examinations have been made or will be made prior to delivery of the Goods to ensure that the Goods are designed and constructed so as to be safe and without risk to the health or safety of persons using the same, and that he has made available to the Purchaser adequate information about the use for which the Goods/Service have been designed and have been tested and about any conditions necessary to ensure that when put to use the Goods will be safe and without risk to health. The Supplier shall indemnify the Purchaser against all actions, suits, claims, demands, losses, charges, costs and expenses which the Purchaser may suffer or incur as a result of or in connection with any breach of this Condition

## **8 Freedom of Information**

- 8.1** The Purchaser will make information available to third parties as required by the Freedom of Information Act 2000 (FOIA) and the Environmental Information Regulations 2004 (EIR). The Supplier must acknowledge that the College may be obliged under the FOIA or the EIR to disclose information without informing the Supplier regardless of whether the Supplier considers the information confidential.

## **9 Data Protection**

- 9.1** The Supplier, where designated as a Data Processor in relation to services provided to the Purchaser, shall comply with this **clause 9**.
- 9.2 Compliance with Laws**

- 9.2.1 In performing the Services and its other obligations under this Agreement the Supplier will comply with the Data Protection Laws.
- 9.2.2 The Supplier will not cause the Purchaser to breach any obligation under the Data Protection Laws.
- 9.2.3 The Supplier will notify the Purchaser without undue delay if, in the performance of the Services, it identifies any areas of actual or potential non-compliance with the Data Protection Laws or this **clause 9**.

### 9.3 Authority

The Purchaser authorises the Supplier to Process the Agreement Personal Data during the term of this Agreement as a Data Processor solely for the purpose of providing the Services.

### 9.4 Sub-processing

- 9.4.1 The Supplier will not engage or use any third party for the Processing of Agreement Personal Data or permit any third party to Process Agreement Personal Data without the prior written consent of the Purchaser.
- 9.4.2 If the Supplier appoints an Authorised Sub-Processor pursuant to **clause 9.4.1**, the Supplier will ensure that there is in place a written contract between the Supplier and the Authorised Sub-Processor that specifies the Authorised Sub-Processor's Processing activities and imposes on the Authorised Sub-Processor the same terms as those imposed on the Supplier in this **clause 9**.
- 9.4.3 The Supplier will remain responsible for all acts and omissions of Authorised Sub-Processors as if they were its own.

### 9.5 Supplier obligations

- 9.5.1 The Supplier will, and will procure that any Authorised Sub-Processor will:
  - 9.5.1.1 Process the Agreement Personal Data only on documented instructions (including this Agreement) from the Purchaser;
  - 9.5.1.2 without prejudice to **clause 9.5.1.1**, ensure that Agreement Personal Data will only be used for the purpose of providing and to the extent required to provide the Services;
  - 9.5.1.3 without prejudice to **clause 9.5.1.2**, not without the express prior written consent of the Purchaser:
    - a. convert any Agreement Personal Data into anonymised, pseudonymised, depersonalised, aggregated or statistical data;
    - b. use any Agreement Personal Data for "big data" analysis or purposes; or
    - c. match or compare any Agreement Personal Data with or against any other Personal Data (whether the Supplier's or any third party's);
  - 9.5.1.4 not permit any Processing of Agreement Personal Data outside the United Kingdom and/or the European Economic Area (as it is made up from time to time) without the Purchaser's prior written consent (unless the Supplier or the relevant Authorised Sub-Processor is required to transfer the Agreement Personal Data to comply with United Kingdom, European Union (as it is made up from time to time) or European Union Member State Applicable Laws, in

which case the Supplier will notify the Purchaser of such legal requirement prior to such transfer unless such Applicable Laws prohibit notice to the Purchaser on public interest grounds);

9.5.1.5 ensure that any individual authorised to Process Agreement Personal Data accesses such Agreement Personal Data strictly on a need to know basis as necessary to perform their role in the provision of the Services, and:

- a. where an individual specifically accesses personal data of students they must have undergone mandatory pre-employment screening, to a minimum of HMG Baseline Personnel Security Standard (BPSS);
- b. is subject to appropriate contractual confidentiality obligations or is under an appropriate statutory obligation of confidentiality;
- c. will comply with this **clause 9**;
- d. is appropriately reliable, qualified and trained annually in relation to their Processing of Agreement Personal Data;

9.5.1.6 implement (and assist the Purchaser to implement) technical and organisational measures to ensure a level of security appropriate to the risk presented by Processing the Agreement Personal Data, in particular from a Data Security Incident;

9.5.1.7 notify the Purchaser immediately after becoming aware of a reasonably suspected, “near miss” or actual Data Security Incident, including the nature of the Data Security Incident, the categories and approximate number of Data Subjects and Agreement Personal Data records concerned and any measure proposed to be taken to address the Data Security Incident and to mitigate its possible adverse effects. Where, and in so far as, it is not possible to provide all the relevant information at the same time, the information may be provided in phases without undue further delay, but the Supplier (and Authorised Sub-Processors) may not delay notification under this **clause 9.5.1.7** on the basis that an investigation is incomplete or ongoing. The Supplier will not, and will procure that Authorised Sub-Processors will not, make or permit any announcement in respect of the Data Security Incident to any person without the Purchaser’s prior written consent;

9.5.1.8 assist the Purchaser in:

- a. responding to requests for exercising Data Subjects’ rights under the Data Protection Laws, including by appropriate technical and organisational measures, insofar as this is possible;
- b. documenting any Data Security Incidents and reporting any Data Security Incidents to any supervisory authority and/or Data Subjects;
- c. taking measures to address Data Security Incidents, including, where appropriate, measures to mitigate their possible adverse effects; and
- d. conducting privacy impact assessments of any Processing operations and consulting with supervisory authorities, Data Subjects and their representatives accordingly; and

9.5.1.9 at the option of the Purchaser, securely delete or return to the Purchaser or, at the Purchaser’s option, transfer to any Replacement Supplier all Agreement

Personal Data promptly after the end of the provision of Services relating to Processing, and securely delete any remaining copies and promptly certify (via a director) when this exercise has been completed.

## **9.6 Information provision**

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

9.6.1.1 make available to the Purchaser all information necessary to demonstrate compliance with the obligations set out in this **clause 9**; and

9.6.1.2 allow for and contribute to audits, including inspections, conducted by the Purchaser or another auditor mandated by the Purchaser.

9.7 The Supplier will prepare and securely maintain a record of all categories of Processing activities carried out on behalf of the Purchaser in relation to the Agreement Personal Data, including as a minimum: (i) its name and contact details and details of its Data Protection Officer; (ii) the categories of Processing it carries out on behalf of the Purchaser; (iii) any transfers of Agreement Personal Data outside the United Kingdom and/or the European Economic Area (as it is made up from time to time); (iv) a general description of the technical and organisational security measures referred to in **clause 9.5.1.6**; and (v) the same information in relation to any Authorised Sub-Processor, together with its name and contact details (together the “**Data Record**”). The Supplier will promptly upon request securely supply a copy of the Data Record to the Purchaser.

## **10 Indemnity and Insurance**

10.1 Without prejudice to any rights or remedies of the Purchaser the Supplier shall indemnify the Purchaser against all actions, suits, claims, demands, losses charges, costs and expenses which the Purchaser may suffer or incur as a result of or in connection with any damage to property or in respect of any injury (whether fatal or otherwise) to any person which may result directly or indirectly from any defect in the Goods/Service or the negligent or wrongful act or omission of the Supplier.

10.2 The Supplier shall effect with a reputable insurance company a policy or policies of insurance covering all the matters which are the subject of indemnities under these Conditions and shall at the request of the Purchaser produce the relevant policy or policies together with receipts or other evidence of payment of the latest premium due thereunder.

10.3 The Supplier will indemnify the Purchaser against all actions, suits, claims, demands, losses charges, costs and expenses, in each case arising out of or in connection with any breach by the Supplier of any of its obligations under **clause 9** (including any failure or delay in performing, or negligent performance or non-performance of, any of those obligations).

## **11 Termination or Supplier's Insolvency**

11.1 Without prejudice to any other rights or remedies of the Purchaser under this Order the Purchaser shall have the right forthwith to terminate this Order by written notice to the Supplier or his trustee in bankruptcy or receiver or (if a company) liquidator or administrator if the Supplier shall have a receiver appointed over all or a substantial part of his or its assets or (if an individual) be declared bankrupt or (if a company) shall go into liquidation or have an administrator appointed to manage its affairs.

## **12 Assignment and Sub-contracting**

12.1 The Supplier shall not without the written consent of the Purchaser assign the benefit or burden of this Order or any part thereof.

12.2 No sub-contracting by the supplier shall in any way relieve the Supplier of any of his responsibilities under this order.

## **13 Governing Law**

13.1 These conditions shall be governed by and construed in accordance with English Law and the Supplier hereby irrevocably submits to the jurisdiction of the English Law courts. The submission to such jurisdiction shall not (and shall not be construed so as to) limit the right of the Purchaser to take proceedings against the Supplier in any other court of competent jurisdiction, nor shall the taking of proceedings in any one or more jurisdiction preclude the taking of proceedings in any other jurisdiction, whether concurrently or not.

## **14 Benchmarking**

14.1 In order to help evaluation of the systems please provide reference sites with named contacts.