



## SOUTH DEVON COLLEGE STANDARD TERMS AND CONDITIONS FOR PURCHASE OF SERVICES

**PLEASE NOTE: If the Supplier has entered into a written and signed agreement with South Devon College in respect of the subject matter covered by a Purchase Order, that written agreement shall prevail over these terms and conditions set out below.**

### 1 DEFINITIONS AND INTERPRETATION

1.1 In this Agreement:

**"Agreement"** the agreement entered into between South Devon College and the Supplier to which these terms and conditions apply and incorporating the Purchase Order and any other documents specified as being part of the Agreement in the Purchase Order or these terms and conditions;

**"Commencement Date"** has the meaning set out in condition 2.3;

**"Confidential Information"** has the meaning set out in condition 11.1;

**"Dispute"** has the meaning set out in condition 17.1;

**"Dispute Notice"** has the meaning set out in condition 17.1;

**"Environmental Information Regulations"** the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issues by the Information Commissioner or relevant government department in relation to such regulations;

**"Fee"** means the fee to be paid for the Services as set out in the Purchase Order, or, if no fee is quoted, the fee set out in the Supplier's published fee list as at the Commencement Date;

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

**"Force Majeure"** any cause preventing either party from performing any or all of its obligations under this Agreement which arises from or is attributable to circumstances beyond the reasonable control of the party so prevented (including, without limitation, to the extent that these are beyond such control, acts of God, nuclear accident, war or terrorist activity, riot, civil commotion, fire, flood or storm, but excluding shortage of Personnel or equipment or industrial action);

**"Good Industry Practice"** means: (a) using standards, practices, methods and procedures in the performance of the obligations and responsibilities of the Supplier under this Agreement, which are of a quality which could reasonably be expected of a highly skilled and experienced leading provider of services similar to the Services; and (b) discharging the obligations and responsibilities of the Supplier under this Agreement with the degree of skill, care, diligence, prudence and foresight which would reasonably be expected of a highly skilled and experienced leading provider of services similar to the Services;

**"Information"** has the meaning given under section 84 of FOIA or the meaning given in Regulation 5 of the Environmental Information Regulations as the context requires;

**"Intellectual Property Rights"** all intellectual property rights (whether or not any of these rights are registered, and including applications and the right to apply for registration of any such rights), including patents, supplementary protection certificates, petty patents, utility models, trade marks, database rights, rights in designs, copyrights (including rights in computer software) and topography rights and all rights and forms of protection of a similar nature or having equivalent or similar effect to any of these which may subsist anywhere in the world, for the full term of such rights, and any renewals or extensions of them;



"**Personnel**" means any employee, agent, adviser or permitted sub-contractor of the Supplier;

"**Project Materials**" means any and all works of authorship, artistic, literary and other works, inventions and materials designed, created, developed, written or prepared by the Supplier (or Personnel) in the course of providing the Services, whether individually, collectively or jointly with South Devon College and on whatever media;

"**Purchase Order**" means South Devon College's authorised purchase order;

"**Relevant Requirements**" has the meaning set out in condition 19.1.1;

"**Replacement Supplier**" means any replacement supplier nominated by South Devon College to provide the services performed by the Supplier following the expiry or termination of this Agreement (whether in whole or in part);

"**Request for Information**" shall have the meaning set out in the FOIA or the Environmental Information Regulations, as relevant;

"**Services**" the services to be provided to South Devon College by the Supplier as specified in a Purchase Order;

"**South Devon College**" means South Devon College of Vantage Point, Long Road, Paignton, Devon, TQ4 7EJ: The corporation was established under the Further and Higher Education Act 1992 for the purposes of conducting the business of South Devon College. The college is an exempt charity for the purposes of the Charities Act 1993 as amended by the Charities Act 2006 and 2011;

"**Supplier**" means the person, firm or company set out in the Purchase Order from whom South Devon College purchases the Services;

"**Term**" has the meaning set out in condition 15.1;

"**VAT**" means value added tax and any similar sales, consumption or turnover tax; and

"**Working Days**" any day other than a Saturday, Sunday or a public holiday in England and Wales.

1.2 In this Agreement references to any statute, statutory provision, subordinate legislation, code or guideline ("**legislation**") shall, unless the context otherwise requires, be construed as a reference to such legislation as the same may from time to time be amended, consolidated, modified, extended, re-enacted, replaced, superseded or substituted.

1.3 A reference to "**writing**" or "**written**" does not include email.

1.4 Where the words "**including**", "**include**", "**in particular**" or any similar expression are used in this Agreement, they shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

## **2 BASIS OF AGREEMENT**

2.1 If there is a conflict or inconsistency between these terms and conditions and the Purchase Order, the Purchase Order shall prevail.

2.2 The terms and conditions of the Agreement are the only conditions upon which South Devon College is prepared to deal with the Supplier and they shall govern all orders and supply of Services (as the case may be) to the entire exclusion of all other terms or conditions. No terms or conditions endorsed upon, delivered with or contained in the Supplier's quotation, acknowledgement or confirmation of order, specification or similar document will form part of this Agreement and the Supplier hereby waives irrevocably any right which it otherwise might have to rely on such terms and conditions.



- 2.3 The Agreement shall come into existence on the earlier of:
- 2.3.1 the date South Devon College send a Purchase Order to the Supplier; or
  - 2.3.2 the date on which the Supplier commences the provision of the Services, the "**Commencement Date**".

### **3 SUPPLIER'S OBLIGATIONS**

- 3.1 The Services shall be provided by the Supplier in accordance with the terms of this Agreement and in consideration for the Fee.
- 3.2 In providing the Services the Supplier shall:
- 3.2.1 co-operate with South Devon College in all matters relating to the Services, and comply with all instructions of South Devon College;
  - 3.2.2 perform the Services with the best care, skill and diligence in accordance with best practice in the Supplier's industry, profession or trade, and in accordance with all laws and regulations that relate to the Services including obtaining all relevant permits and licences;
  - 3.2.3 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 this Agreement;
  - 3.2.4 ensure that the Services conform with the description in the Purchase Order;
  - 3.2.5 use the best quality, tools, vehicles, goods, materials, standards and techniques and ensure that all the goods and materials supplied and used in the Services or transferred to South Devon College, will be free from defects in workmanship, installation and design;
  - 3.2.6 devote such time as shall be necessary for the full and proper provision of the Services to the satisfaction of South Devon College;
  - 3.2.7 give priority to the provision of the Services to South Devon College over all other business activities undertaken by the Supplier; and
  - 3.2.8 not attempt to access, use or interfere with the communications systems, information technology systems or data used by South Devon College unless expressly authorised to do so under this Agreement.

- 3.3 The Supplier agrees that time is of the essence for the Supplier's performance of the Agreement.

### **4 DELAY**

- 4.1 The Supplier shall meet, and time is of the essence as to, any performance dates specified in the Purchase Order or as agreed in writing between the parties. If the Supplier fails to do so, South Devon College may (without prejudice to its other rights and remedies):
- 4.1.1 terminate the Agreement;
  - 4.1.2 refuse to accept any subsequent performance of the Services which the Supplier attempts to make;



- 4.1.3 purchase substitute services from elsewhere;
- 4.1.4 hold the Supplier accountable for any loss and additional costs incurred; and
- 4.1.5 have all sums previously paid by South Devon College to the Supplier under the Agreement refunded by the Supplier.

## **5 SOUTH DEVON COLLEGE'S PREMISES**

- 5.1 The Supplier shall not deliver any materials, plant or other items nor commence any work at South Devon College's premises without obtaining South Devon College's prior written consent.
- 5.2 If any of the Services are to be carried out on South Devon College's premises then the Supplier shall ensure:
  - 5.2.1 that the Supplier and the Supplier's Personnel and any other person associated with the Supplier adhere in every respect to the obligations imposed on the Supplier by health and safety legislation;
  - 5.2.2 that the Supplier and the Supplier's Personnel and any other person associated with the Supplier will comply with any policies and regulations that South Devon College may notify to the Supplier in writing from time to time;
  - 5.2.3 that there is the minimum amount of disruption to South Devon College's business; and
  - 5.2.4 that if any damage is sustained to South Devon College's premises as a result of the Supplier's performance of its obligations under the Agreement, the Supplier will forthwith reinstate the damaged part or parts of the premises to their previous condition or offer reasonable compensation as South Devon College shall reasonably determine. Any reinstatement is to be subject to South Devon College's final approval.
- 5.3 The Supplier agrees and acknowledges that:
  - 5.3.1 South Devon College has not given it any warranty or assurance as to the condition, safety or suitability for any purpose of any of South Devon College premises and that, to the extent permitted by law, access to and use of such premises is at the Supplier's risk, and the Supplier shall be responsible for the health and safety of all Personnel at such premises;
  - 5.3.2 neither it nor any of its Personnel shall at any time ever be entitled to exclusive possession of any South Devon College premises or any part of such premises nor to any other property from time to time owned or occupied by South Devon College; and
  - 5.3.3 South Devon College may restrict the access of the Supplier and its Personnel to and use of facilities at any South Devon College premises which South Devon College, in its sole discretion, considers sensitive to the business or operations of South Devon College.
- 5.3.4 All of the Supplier's property located on South Devon College's premises shall remain at the sole risk and responsibility of the Supplier, except that South Devon College shall be liable for the loss of or damage to any of Supplier's property located on any South Devon College premises which is due to the negligent act or omission of South Devon College.

## **6 PAYMENT**

- 6.1 The Supplier shall invoice South Devon College for payment of the Fee upon completion of such of the Services to which the Fee relates, to South Devon College's reasonable satisfaction and in accordance with this Agreement. All invoices shall contain details of the Services, along with any other data which South Devon College shall reasonably require and notify to the Supplier. The invoice must be addressed to the header address indicated on the Purchase Order and must quote the full Purchase Order number. South Devon College shall not be held responsible for delays in payment caused by the Supplier's failure to comply with South Devon College's invoicing instructions.
- 6.2 Subject to condition 6.1, payment shall be made by South Devon College within thirty (30) days of the end of the month in which any undisputed invoice was received by South Devon College provided that, if in the opinion of South Devon College any invoice is incorrect, South Devon College shall notify the Supplier and payment shall not be due to the Supplier for the price set out in such invoice unless and until a correct invoice has been submitted to South Devon College and then payment shall be due within thirty (30) days (or such other period as agreed in writing between the parties) of the end of the month in which such corrected invoice was received.
- 6.3 South Devon College shall not be required to make any payment to the Supplier until the Services have been provided to the reasonable satisfaction of South Devon College and in accordance with this Agreement. Any dispute in relation to an invoice for the Fee shall be dealt with by the parties in accordance with condition 17.
- 6.4 If South Devon College is required, pursuant to any applicable present or future law, rule or regulation of any competent governmental or other administrative body, to make any withholding in respect of tax or otherwise from any amount or amounts payable to the Supplier pursuant to this Agreement, South Devon College shall pay any amounts net of such withholding.
- 6.5 If any undisputed sum is not paid by its due date, then the receiving party may charge interest on such undisputed sum on a day to day basis from the date payment fell due (or such other date as may be agreed in writing between the parties) to the actual date of payment (both dates inclusive) at the rate of two (2) per cent per annum over the base lending rate of Barclays Bank PLC. The parties acknowledge and agree that this condition provides them with a substantial remedy in respect of any late payment of sums due under this Agreement.
- 6.6 The amounts and/or daily rates comprised in the Fee are fixed and are not subject to any increase unless otherwise expressly stated in the Agreement.
- 6.7 Unless otherwise expressed in the Agreement, the Fee includes the cost of hotel, subsistence, travelling and any other ancillary expenses reasonably incurred by the individuals whom the Supplier engages in connection with the Services, the cost of any materials and the cost of services reasonably and properly provided by third parties and required by the Supplier for the supply of the Services and no separate or additional amount may be charged for these items. Except as otherwise expressly provided in the Agreement, the parties shall each bear their own costs and expenses incurred in respect of fulfilling its obligations under this Agreement.
- 6.8 South Devon College may retain or set off any sums owed to it by the Supplier which have fallen due and payable against any sums due to the Supplier under this Agreement or any other agreement pursuant to which the Supplier provides services to South Devon College. Any exercise by South Devon College of its rights under this condition shall be without prejudice to any other rights or remedies available to it under this Agreement or otherwise.
- 6.9 If the Supplier fails to issue an invoice for any Fees which have been incurred within ninety (90) days of the end of the month in which such Fees were incurred, then such Fees shall cease to be payable.



- 6.10 The Supplier warrants, represents and undertakes to South Devon College that South Devon College will not be liable for any income tax or national insurance contributions in respect of the Supplier or the Supplier's Personnel.
- 6.11 The Supplier shall be fully responsible for and shall indemnify and hold harmless and keep South Devon College indemnified in full on demand against any claim by HM Revenue & Customs or any other authority in respect of any income tax or national insurance contributions arising from or payable in connection with the performance of this Agreement.
- 6.12 Unless expressed otherwise in the Agreement, all Fees are stated exclusive of VAT.

## **7 AUDIT AND MONITORING**

- 7.1 The Supplier shall, on request at any time during the Term and for seven (7) years thereafter, provide South Devon College and South Devon College's professional advisers with all reasonable assistance and with access to all relevant Personnel, the Supplier premises, systems, data and records relating to this Agreement as may be reasonably required in order to verify the Supplier's compliance with its obligations under this Agreement or to fulfil any legally enforceable request by any court or regulatory body. South Devon College and South Devon College's professional advisers shall have the right to take copies of any invoices (including information used to prepare the invoices), purchase orders and other records relating to the provision of the Services or required in connection with this condition 7.1 and the Supplier shall provide the information free of charge.
- 7.2 South Devon College shall provide at least five (5) Working Days' notice of its intention to conduct an audit unless such audit is conducted in respect of a suspected fraud or breach of applicable laws, in which event no notice shall be required.
- 7.3 The parties shall bear their own costs and expenses incurred in respect of compliance with their obligations under condition 7.1, unless the audit identifies a breach of this Agreement, in which case the Supplier shall reimburse South Devon College for all its reasonable costs incurred in the course of the audit.

## **8 WARRANTIES**

- 8.1 Each party warrants, represents and undertakes that it has full capacity and authority to enter into and to perform this Agreement.
- 8.2 The Supplier warrants, represents and undertakes that, throughout the Term:
- 8.2.1 it shall perform, and procure the performance by Personnel, of its obligations under this Agreement in compliance with all applicable laws;
  - 8.2.2 Services will conform with all descriptions and specifications, including in the Purchase Order, provided to South Devon College by the Supplier;
  - 8.2.3 without prejudice to the generality of condition 8.2.1, it shall not, and shall procure that Personnel do not, unlawfully discriminate within the meaning and scope of any applicable laws relating to discrimination (whether in race, gender, religion, disability, sexual orientation or otherwise) in employment;
  - 8.2.4 the provision of the Services and the use of them by South Devon College, shall not infringe the Intellectual Property Rights or other proprietary rights of any third party;
  - 8.2.5 it shall at all times comply with the provisions of the Human Rights Act 1998 in the performance of this Agreement, and shall undertake, or refrain from undertaking, such acts as South Devon College requests so as to enable South Devon College





to comply with its obligations under the Human Rights Act 1998;

- 8.2.6 it has, and will continue to hold, all approvals, consents, licences, concessions, certificates and statutory agreements required from any competent authority or third party necessary to perform its obligations under this Agreement;
  - 8.2.7 there are no actions, suits or proceedings or regulatory investigations pending or, to the Supplier's knowledge, threatened against or affecting that party before any court or administrative body or arbitration tribunal that might affect the ability of that party to meet and carry out its obligations under this Agreement;
  - 8.2.8 it shall discharge its obligations under this Agreement using Personnel of required skill, experience and qualifications;
  - 8.2.9 it shall, and shall procure that Personnel, discharge the obligations under this Agreement with all due skill, care and diligence including in accordance with Good Industry Practice; and
  - 8.2.10 it will use its best endeavours to promote the interests and protect and improve the reputation of South Devon College.
- 8.3 South Devon College's rights under this Agreement are in addition to the statutory conditions implied in favour of South Devon College by the Sale of Goods Act 1979, the Supply of Goods and Services Act 1982 and any other applicable statute in force from time to time.
- 8.4 Save as provided in this Agreement, no representations, warranties or conditions are given or assumed by South Devon College in respect of any information which is provided to the Supplier by South Devon College and all such representations, warranties or conditions are excluded, save to the extent that such exclusion is prohibited by law.

## **9 INTELLECTUAL PROPERTY**

- 9.1 Save as otherwise expressly provided in this Agreement, neither the Supplier nor South Devon College shall receive any right, title or interest in or to the Intellectual Property Rights of the other party.
- 9.2 Subject to condition 9.5 all Intellectual Property Rights in the Project Materials shall be vested in South Devon College.
- 9.3 The Supplier hereby irrevocably assigns to South Devon College (including by way of present assignment of present and future rights) with full title guarantee, absolutely and free from all encumbrances, all the Supplier's right, title and interest in and to any and all present and future Intellectual Property Rights throughout the world for the full unexpired period of such rights and all renewals, reversions and extensions of such period as may be provided under any applicable law throughout the world in or relating to all Project Materials together with all accrued rights of action in respect of any infringement of such rights for the full term of such rights.
- 9.4 The Supplier agrees to waive any claim to moral rights conferred on the Supplier by the Copyright, Designs and Patents Act 1988 or any rights of a similar nature under laws now or in the future in force in any jurisdiction which the Supplier may have in and to any and all Project Materials.
- 9.5 To the extent that any of the Project Materials contain any materials owned or controlled by a third party, the Supplier shall:
  - 9.5.1 disclose the existence of such materials to South Devon College; and



- 9.5.2 in consultation with South Devon College obtain such licences, assignments or other consents as are required to permit the use of such third party materials by South Devon College.
- 9.6 To the extent that third parties' Intellectual Property Rights are used in the provision of the Services, the Supplier shall procure the grant, for the Term, of a royalty-free, irrevocable, non-transferable, non-exclusive licence to use such third parties' Intellectual Property Rights solely for the purpose of and to the extent necessary for:
- 9.6.1 in respect of South Devon College, the receipt and use of the Services; and
- 9.6.2 in respect of South Devon College and any Replacement Suppliers, the transition to and the provision and use of, services replacing the Services, provided that the Supplier shall only be required to obtain licences on reasonable terms from such third parties so that South Devon College and any Replacement Supplier exercise its rights set out here after the Term.
- 9.7 The Supplier shall on request by South Devon College and at its expense, promptly deliver to South Devon College all copies of the Project Materials in its control or possession.
- 9.8 Where South Devon College or any Replacement Supplier requires a further licence, assignment or other consent (of the types referred to in conditions 9.5 and 9.6) after the Term, the Supplier shall grant (or procure the grant of) a licence, assignment or other consent (as the case may be) to each such person on reasonable commercial terms to be agreed.

## 10 DATA PROTECTION

- 10.1 Each party warrants, represents and undertakes to the other party that it shall comply with its respective obligations under the Data Protection Act 1998.
- 10.2 To the extent that the provision of the Services will involve the processing of any personal data in respect of which South Devon College is the data controller, the Supplier shall:
- 10.2.1 process such personal data only in accordance with South Devon College's written instructions and only as required to perform its obligations under this Agreement;
- 10.2.2 take technical and organisational measures which are consistent with best industry practice against unauthorised or unlawful processing of such personal data and against accidental loss or destruction of, or damage to, such personal data; and
- 10.2.3 at all times take reasonable steps to ensure the reliability of those of its employees who have access to the personal data held on behalf of South Devon College and shall use its best endeavours to ensure their compliance with the obligations set out in this condition.
- 10.3 In this condition 10 "**personal data**", "**data controller**" and "**data processor**" have the meanings given in the Data Protection Act 1998.

## 11 CONFIDENTIALITY AND FREEDOM OF INFORMATION

- 11.1 Subject to conditions 11.2, 11.4 and 11.5 both parties shall procure that all information disclosed by one to the other in accordance with the terms of this Agreement ("**Confidential Information**") shall be kept secret and confidential and shall not be used for any purposes other than those required or permitted by this Agreement and shall not be disclosed to any third party except insofar as this may be required for the proper operation of this Agreement.
- 11.2 Either party shall promptly notify the other if any Confidential Information is required by law (including but without limitation pursuant to the FOIA and/or the Environmental Information





Regulations) to be disclosed by it or any other person receiving it under or pursuant to this Agreement and shall co-operate with the other party regarding the manner of such disclosure (but without prejudice to any obligation to comply with any law). Any request received by either party under the FOIA or the Environmental Information Regulations will be complied with promptly and in a timely manner.

- 11.3 The obligations of confidentiality shall not apply to any information which:
- 11.3.1 is or becomes publicly known through no act or omission of the receiving party;
  - 11.3.2 was in the other party's lawful possession prior to the disclosure;
  - 11.3.3 is lawfully disclosed to the receiving party by a third party without restriction on disclosure;
  - 11.3.4 is independently developed by the receiving party, which independent development can be shown by written evidence; and/or
  - 11.3.5 is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body (including but without limitation pursuant to the FOIA and/or the Environmental Information Regulations) provided that the party subject to such requirement to disclose gives the other prompt written notice of the requirement, to the extent it is permitted to do so by law.
- 11.4 The parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Agreement is not Confidential Information. South Devon College shall be responsible for determining in its absolute discretion whether any of the content of the Agreement is exempt from disclosure in accordance with the provisions of the FOIA.
- 11.5 Notwithstanding any other term of this Agreement, the Supplier hereby gives its consent for South Devon College to publish the Agreement in its entirety, including from time to time agreed changes to the Agreement, to the general public.
- 11.6 The Supplier shall not refer to South Devon College or the Purchase Order in any advertisement without South Devon College's prior written agreement.

## **12 EMPLOYEES**

- 12.1 The Supplier shall indemnify, keep indemnified, defend (subject to South Devon College's or any Replacement Supplier's (as applicable) approval rights over any settlement and right to assume control of such defence at any time) and hold South Devon College, any Replacement Supplier, their employees and agents harmless against all claims, liabilities, demands, actions, fees, losses, damages, costs and expenses (including, but not limited to, consequential losses and loss of profit, court costs and documented attorney's fees and expenses, together with any applicable taxes thereon) arising from or in connection with any act, omission, obligation or liability of the Supplier, South Devon College, any Replacement Supplier or any of their agents or subcontractors or any other event occurring before, during or after the expiry or termination of this Agreement for which South Devon College or the Replacement Supplier is (or is alleged to be) liable by reason of the operation of the Transfer of Undertakings (Protection of Employment) Regulations 2006 in connection with the termination of this Agreement (whether in whole or in part) or otherwise by operation of law.

## **13 INDEMNITIES AND INSURANCE**

- 13.1 The Supplier shall maintain in force, with a reputable insurance company, professional indemnity insurance, product liability insurance and public liability insurance to cover such heads of liability as may arise under or in connection with the Agreement (and whether a claim is made in respect of such liability during or after termination of the Agreement), and



shall, on South Devon College'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.

- 13.2 The Supplier shall keep South Devon College indemnified in full against all costs, expenses, damages and losses (whether direct or indirect), including any interest, fines, legal and other professional fees and expenses awarded against or incurred or paid by South Devon College as a result of or in connection with:
- 13.2.1 any claim made against South Devon College by a third party arising out of, or in connection with, the supply of the Services, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Agreement by the Supplier, its employees, agents, or subcontractors;
  - 13.2.2 damage to real or personal property, including to any South Devon College premises (including where necessary all costs of replacement or reinstatement) and any loss of use of any property caused by an act or omission of the Supplier or its Personnel;
  - 13.2.3 death of or personal injury to any person caused by an act or omission of the Supplier or its Personnel;
  - 13.2.4 the fraud or dishonesty, wilful default or wilful abandonment of its obligations by the Supplier or its Personnel;
  - 13.2.5 any breach by the Supplier of its obligations pursuant to conditions 10 and 11;
  - 13.2.6 any damage to or loss, corruption or unlawful or unauthorised disclosure of data arising from any negligent act or omission of the Supplier or its Personnel;
  - 13.2.7 any fine or penalty imposed on South Devon College by a regulatory body as a result of an act or omission of the Supplier or its Personnel; and
  - 13.2.8 any claim of alleged or actual infringement of a third party's Intellectual Property Rights.
- 13.3 If South Devon College wishes to assert its right to be indemnified in respect of any indemnity given under this Agreement, it shall:
- 13.3.1 allow the Supplier (at its request) to use its chosen advisors and to have the exclusive conduct of the proceedings, provided always that the Supplier shall not cause any unreasonable delay with regard to, and shall keep South Devon College notified of, the conduct of the same;
  - 13.3.2 make no admission of liability or any other statement in respect of or settle the matter without first obtaining the Supplier's prior written consent (not to be unreasonably withheld or delayed); and
  - 13.3.3 at the cost of the Supplier, promptly provide any assistance as the Supplier may reasonably request to dispute, resist, appeal, compromise, defend, remedy or mitigate the matter or enforce against a third party South Devon College's rights in relation to the matter.
- 13.4 South Devon College shall have the right but not the obligation to join in any proceedings conducted by the Supplier pursuant to condition 13.3.1 and be represented by its own legal advisors.

## 14 LIMITS OF LIABILITY

- 14.1 Nothing in this condition 14 shall limit:
- 14.1.1 either party's liability for death or personal injury resulting from their negligence or for fraud;
  - 14.1.2 either party's liability under any indemnity given under this Agreement; or
  - 14.1.3 the Supplier's liability under clauses 10 and 11.
- 14.2 The aggregate liability of South Devon College in respect of any loss or damage suffered by the Supplier and arising out of or in connection with this Agreement, whether in contract, tort (including negligence) or for breach of statutory duty or in any other way, shall not exceed the Fees paid by South Devon College to the Supplier pursuant to this Agreement.
- 14.3 Subject to condition 14.1 neither party shall be liable, in contract, tort (including negligence) or for breach of statutory duty or in any other way for:
- 14.3.1 any loss arising from or in connection with loss of revenues, profits, contracts or business or failure to realise anticipated savings;
  - 14.3.2 any loss of goodwill or reputation; or
  - 14.3.3 any indirect or consequential losses,
- suffered or incurred by the other arising out of or in connection with any matter under this Agreement.
- 14.4 The Supplier acknowledges and agrees that the limitations contained in this condition 14 are reasonable in all the circumstances and that it has taken independent legal advice.

## 15 TERMINATION

- 15.1 This Agreement shall commence on the Commencement Date and will continue thereafter until all of the parts to this Agreement have been terminated or expire in accordance with the relevant terms, subject to earlier termination pursuant to the remainder of this condition 15 (the "**Term**").
- 15.2 South Devon College may terminate the whole or any part of this Agreement (without prejudice to its other rights and remedies) at any time on giving no less than two months' written notice to the Supplier.
- 15.3 South Devon College may terminate the whole or any part of this Agreement (without prejudice to its other rights and remedies) with immediate effect by written notice to the Supplier if the Supplier:
- 15.3.1 commits a material breach or persistently breaches any of its obligations under this Agreement and in the case of a remediable breach, fails to remedy it within thirty (30) days of the date of receipt of notice from the other specifying the breach and requiring it to be remedied;
  - 15.3.2 becomes insolvent or unable to pay its debts (as defined in Section 123 of the Insolvency Act 1986), proposes a voluntary arrangement, has a receiver, administrator or manager appointed over the whole or any part of its business or assets, if any petition shall be presented, order shall be made or resolution passed for its winding up (except for the purposes of a bona fide amalgamation or reconstruction), bankruptcy or dissolution; and/or



- 15.3.3 if it shall otherwise propose or enter into any composition or arrangement with its creditors or any class of them, if it ceases to carry on business or if it claims the benefit of any statutory moratorium.
- 15.4 The following breaches shall be deemed to be irremediable material breaches for the purposes of condition 15.2.1:
- 15.4.1 the Supplier or any of its Personnel is guilty of any gross misconduct affecting the business of South Devon College;
- 15.4.2 the Supplier or any of its Personnel is convicted of any criminal offence (other than an offence under any road traffic legislation for which a fine or non-custodial penalty is imposed); or
- 15.4.3 the Supplier or any of its Personnel is guilty of any fraud or dishonesty or acts in any manner which, in the opinion of South Devon College brings, or is likely to bring, the Supplier or South Devon College into disrepute or is materially adverse to the interests of South Devon College.
- 15.5 In the event that South Devon College fails to pay the Supplier by the due date for payment of an undisputed invoice:
- 15.5.1 the Supplier shall notify South Devon College of such failure; and
- 15.5.2 if within sixty (60) days of service of notice under condition 15.4.1, South Devon College has failed to pay such invoice, the Supplier may, terminate that part of the Agreement in respect of which the invoice was due, with immediate effect by written notice.

## **16 CONSEQUENCES OF TERMINATION**

- 16.1 On expiry or termination of this Agreement in its entirety:
- 16.1.1 each party shall deliver to the other party all documents and materials containing the other party's Confidential Information or Intellectual Property Rights or any other data or information disclosed or supplied by the other party under or in connection with this Agreement or, at the other party's written request and option, destroy them and provide evidence of their destruction to the other party; and
- 16.1.2 the parties shall have no further obligations or rights under this Agreement, without prejudice to those which have accrued to either party prior to termination or expiry save that conditions 1, 2, 4, 6 to 14 (inclusive), 16 to 20 (inclusive) of these terms and conditions together with those other conditions the survival of which is necessary for the interpretation or enforcement of this Agreement or which by their nature can be reasonably interpreted as surviving the expiry or termination of this Agreement, shall continue to have effect after such expiry or termination.
- 16.2 No less than three (3) months prior to the expiry of the whole or any part (as appropriate) of this Agreement or immediately following the service of any notice to terminate the Agreement in whole or in part (as appropriate and for whatever reason), the parties shall discuss in good faith and agree the specific requirements and obligations necessary to manage a smooth and efficient transition of the provision of the Services from the Supplier to a Replacement Supplier.
- 16.3 Prior to and following the expiry or termination (for whatever reason) of this Agreement in whole or in part (as appropriate), the Supplier shall, and shall procure that Personnel shall cooperate in any tender process conducted by South Devon College for the purposes of selecting any Replacement Supplier and provide any advice, assistance, information or documentation reasonably required by South Devon College to effect a full and orderly



handover of the Services to South Devon College and/or its Replacement Supplier.

## **17 DISPUTE RESOLUTION**

- 17.1 If any dispute arises out of or in connection with this Agreement (or its validity, construction, performance or enforceability) ("**Dispute**"), the senior representatives of the parties with authority to settle the Dispute shall, within five (5) Working Days of a written request from one party to the other ("**Dispute Notice**"), meet in good faith with a view to resolving the Dispute.
- 17.2 If the Dispute is not resolved at that meeting, the Procurement Officer (in the case of South Devon College) and the Chief Executive Officer or Managing Director (in the case of the Supplier) shall, within twenty (20) Working Days of the meeting of the senior representatives of the parties pursuant to condition 17.1, meet in good faith with a view to resolving the Dispute.
- 17.3 If the parties are unable to resolve a Dispute within thirty (30) Working Days of it first arising, the provisions of condition 20.14 shall apply.
- 17.4 For the avoidance of doubt, all negotiations will be undertaken without prejudice to the rights of the parties in future proceedings.

## **18 FORCE MAJEURE**

- 18.1 Notwithstanding anything else contained in this Agreement neither party shall be liable to the other for any loss arising from any failure or delay in performing its obligations hereunder if such failure or delay is caused by Force Majeure.
- 18.2 Notwithstanding the foregoing in condition 18.1, this Agreement will remain in full force and effect for the duration of the Force Majeure subject to condition 18.5 and the parties shall use all reasonable endeavours to perform or resume performance of such obligations hereunder for the duration of the Force Majeure.
- 18.3 If either party becomes aware of circumstances of Force Majeure which give rise to or which are likely to give rise to any such failure or delay on its part it shall promptly notify the other party of the reasons for the delay and the likely duration of the delay. The affected party shall use all reasonable efforts to mitigate the effects of the Force Majeure on the performance of its obligations hereunder.
- 18.4 Immediately after the end of the Force Majeure the affected party shall notify the other party in writing that the Force Majeure has ended and shall resume performance of its obligations under this Agreement.
- 18.5 If either party is prevented from performance of substantially all of its obligations by Force Majeure for a continuous period of more than three (3) months in total, the other party may terminate this Agreement immediately on service of written notice upon the party so prevented, in which case neither party shall have any liability to the other except that rights and liabilities which accrued prior to such termination shall continue to subsist.

## **19 THE BRIBERY ACT**

- 19.1 The Supplier shall, and shall procure that any person associated with the Supplier shall:
- 19.1.1 comply with all applicable laws, regulations, codes and sanctions relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 ("**Relevant Requirements**") and South Devon College's policies and procedures relating thereto as may be updated from time to time;
- 19.1.2 have and shall maintain in place throughout the term of this Agreement its own



policies and procedures, including but not limited to adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements, and will enforce them where appropriate; and

- 19.1.3 promptly report to South Devon College any request or demand for any undue financial or other advantage of any kind received or given by the Supplier and/or any persons associated with the Supplier in connection with the performance of this Agreement.

19.2





- 20.11 A person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to rely upon or enforce any term of this Agreement but this does not affect any right or remedy of a third party which exists or is available apart from that Act.
- 20.12 Any failure or delay by South Devon College in enforcing or partially enforcing any provision of the Agreement shall not be construed as a waiver of any rights under this Agreement.
- 20.13 This Agreement constitutes the entire agreement and understanding of the parties relating to the subject matter of this Agreement and supersedes any previous agreement or understanding between the parties in relation to such subject matter. In entering into the Agreement, the parties have not relied on any statement, representation, warranty, understanding, undertaking, promise or assurance (whether negligently or innocently made) of any person (whether party to the Agreement or not) other than as expressly set out in the Agreement. Each party irrevocably and unconditionally waives all claims, rights and remedies which but for this condition it might otherwise have had in relation to any of the foregoing.
- 20.14 The formation, existence, construction, performance, validity and all aspect of the Agreement shall be governed by English law and the parties submit to the exclusive jurisdiction of the English courts.