**CONTRACT FOR THE SUPPLY OF GOODS AND SERVICES**

**ORDER FORM**

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Supplier details** | | | | | | |
| Name: | [INSERT NAME OF INDIVIDUAL AND/OR LIMITED COMPANY] | | | | | |
| Address: | [INSERT ADDRESS /COMPANY REGISTRATION NUMBER/DETAILS] | | | | | |
| Supplier Contact Details: | [INSERT CONTACT DETAILS AND NAME OF REPRESENTATIVE IF DIFFERENT] | | | | | |
| Key Personnel: | [INSERT INDIVIDUAL NAME, WHERE PROCURED THROUGH A LIMITED COMPANY] | | | | | |
| Contact and Address for Notices (clause 16.7) |  | | | | | |
| **LJMU details** | | | | | | |
| Name: | Liverpool John Moores University (LJMU) | | | | | |
| Address: | Liverpool John Moores University, a Higher Education Corporation established under the Education Reform Act 1988 whose administrative offices are at Egerton Court, 2 Rodney Street, Liverpool L1 2UA | | | | | |
| LJMU Contact Details: | [insert appropriate LJMU contact] | | | | | |
| Contact and Address for Notices (clause 16.7) | FAO: University Secretary and General Counsel  Exchange Station, Tithebarn Street, Liverpool L2 2QP | | | | | |
| **Key Terms** | | | | | | |
| Commencement Date: | [insert] If no date is specified the signature of this Order Form. | Term: | [insert]. If no date specified the completion of the Services as more particularly described in Appendix 1. | | | |
| Services (if applicable) | [insert description] or  [As described in the Specification document set out at Appendix 1] or  [not applicable] | | | | | |
| Key Dates for Services | [insert date] or  [As set out in the Specification] | | | | | |
| Goods (if applicable) | [insert description] or  [As described in the Specification document set out at Appendix 1] or  [not applicable] | | | | | |
| Delivery Location of the Goods (if applicable) | [insert Delivery Location of the Goods] or  [not applicable] | | | | | |
| Special Terms in respect of the Goods or Services | In the event that the Goods (or any part of the Goods) are hazardous, dangerous or require any specific handling, storage, segregation, labelling, transporting or similar requirements to be adhered to in order to guarantee the safety and integrity of the Goods, such instructions shall be clearly stated below or set out in the Specification. | | | | | |
| Delivery Dates | [Insert delivery dates of Goods and or Services or refer to Specification.] | | | | | |
| Data Processing: | |  |  | | --- | --- | | The subject matter and duration of Processing | The subject matter of the Processing is personal data of employees, staff, key personnel and any sub-contractors of the respective parties in relation to the performance of the Contract. The Processor will Process the personal data for the duration of this Contract. | | The nature and purpose of the Processing | The nature of the Processing is the Processing of contact data of each of the respective parties for the purposes of delivering the Services and complying with each of the parties respective obligations under the Contract. | | The type of personal data being Processed | The type of personal data being Processed concerns the following categories:  Name  Other contact information – email, telephone number;  Work address | | The categories of data subjects | Employees, key personnel, sub-contractor or sub-consultants of each of the respective parties. |   *[Further data protection particulars are to be added if there is any other Processing of personal data]* | | | | | |
| Insurance: | If different from the limits referenced in clause 9 specify the limits of insurance available per claim or series of related claims   |  |  | | --- | --- | | **Insurance Type** | **Limit per claim or series of related claims £** | | Public Liability | [insert] | | Employer Liability | [insert] | | Professional Indemnity | [insert] | | | | | | |
| Charges (including charge rate and expenses) exclusive of VAT: | [insert or refer to a Charges Schedule at Appendix 2] | | | Payment Terms: | | In accordance with clause 4. |
| This Order Form and the attached Conditions which are expressly incorporated (together the **"Contract"**) set out the basis on which LJMU appoints the Supplier to provide the Services and the Conditions apply to the exclusion of any other terms that the Supplier seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing. By signing below, the parties agree and accept the terms of this Contract. | | | | | | |
| Authorised signature for **Liverpool John Moores University** | | | | | Authorised signature for the **Supplier** | |
| Signed …………………………………….…………. | | | | | Signed …………………………………….…………. | |
| Name …………………………………….…………. | | | | | Name …………………………………….…………. | |
| Dated …………………………………….…………. | | | | | Dated …………………………………….…………. | |

# THE CONDITIONS

# Basis of Contract

## The Order Form constitutes an offer by LJMU to purchase the Services and or Goods (as applicable) in accordance with these Conditions.

## The Order Form shall be deemed to be accepted on the earlier of the Supplier issuing a written acceptance of the Order Form and the Supplier doing any act consistent with fulfilling the Order Form, at which point the Contract shall come into existence.

## The Services or the provison of the Goods (as applicable) shall begin on the Commencement Date and shall continue for the Term unless or until terminated as set out in the Order Form or in accordance with clause 13 of these Conditions.

## The appointment of the Supplier for the provison of the Services and or Goods (as applicable) is on a non-exclusive basis and nothing in this Contract binds LJMU to any minimum volume of orders or commitments.

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

# Supply of the Goods and or Services

# Supply of Goods (if applicable)

## The Supplier shall ensure that the Goods shall:

2.1.1 correspond with their description and any applicable Specification;

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

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

2.1.4 comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods. In the event that the Goods (or any part of the Goods) are hazardous, dangerous or require any specific handling, storage, segregation, labelling, transporting or similar requirements to be adhered to in order to guarantee the safety and integrity of the Goods (and other goods or property to be stored in close proximity to the goods) such instructions shall be clearly communicated to LJMU as set out in the Order Form, the Specification or any other document provided to LJMU.

## The Supplier shall ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Contract in respect of the Goods.

## LJMU may inspect and test the Goods at any time before delivery. The Supplier shall remain fully responsible for the Goods despite any such inspection or testing and any such inspection or testing shall not reduce or otherwise affect the Supplier's obligations under the Contract.

## If following such inspection or testing LJMU considers that the Goods do not comply or are unlikely to comply with the Supplier's obligations herein, LJMU shall inform the Supplier and the Supplier shall immediately take such remedial action as is necessary to ensure compliance.

## LJMU may conduct further inspections and tests after the Supplier has carried out its remedial actions.

## The Supplier shall ensure that:

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

2.6.2 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 or other instructions as referred to at clause 2.1.4 (if any) and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and

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

* + 1. The Supplier shall deliver the Goods:

2.6.4.1 on the date specified in the Order or, if no such date is specified;

* + - 1. to LJMU's premises at as is set out in the Order or as instructed by LJMU before delivery (Delivery Location); and
      2. during LJMU's normal hours of business on a Business Day, or as instructed by LJMU.
  1. Delivery of the Goods shall be completed on the completion of unloading of the Goods at the Delivery Location.
  2. The Supplier shall not deliver the Goods in instalments without LJMU's prior written consent. Where it is agreed that the Goods are delivered by instalments, they may be invoiced and paid for separately. However, failure by the Supplier to deliver any one instalment on time or at all or any defect in an instalment shall entitle LJMU to the remedies set out in clause 14.
  3. Title and risk in the Goods shall pass to LJMU on completion of delivery.

## **Provision of the Services (if applicable)**

## The Supplier warrants that it shall (and shall procure any Key Personnel shall), in providing the Services:

### 2.10.1 co-operate with LJMU in all matters relating to the Services and comply with LJMU's reasonable instructions and provide all equipment, tools, vehicles, information and such other items as are required to provide the Services;

### 2.10.2 perform the Services with reasonable care, skill and diligence in accordance with Good Industry Practice and in accordance with all Applicable Laws (including but not limited to the Equality Act 2010 and the Modern Slavery Act 2015);

### 2.10.3 ensure that any Key Personnel are suitably skilled, experienced and qualified to perform tasks assigned to them, and of sufficient number to ensure that the Supplier performs its obligations in accordance with the Contract;

### 2.10.4 ensure that the Services and Deliverables correspond with their description and the Specification and that the Deliverables are of satisfactory quality (within the meaning of the Supply of Goods and Services Act 1982) free from defects in design, material and workmanship and fit for any purpose held out by the Supplier or expressly or impliedly made known to the Supplier by LJMU;

### 2.10.5 be responsible, at its own cost and expense, to correct any errors made in the performance of the Services;

### 2.10.6 obtain and at all times maintain all necessary licences, permissions, authorisations, consents and permits that it needs to carry out the Services and its obligations under the Contract, including but not limited to any work permits or visas demonstrating that the Supplier or if applicable any Key Personnel are legally entitled to work in the United Kingdom.

### 2.10.7 observe and procure that the Key Personnel observe all health and safety rules and regulations and any other security requirements that apply at any of LJMU's premises (including being responsible for all personal belongings or other property (including vehicles) which the Supplier may bring on to LJMU's Premises);

### 2.10.8 keep and maintain all LJMU Materials in safe custody at its own risk, maintain the LJMU Materials in good condition until returned to LJMU and not dispose of or use the LJMU Materials other than in accordance with LJMU's written instructions or authorisation;

### 2.10.9 accommodate any reasonable requests for changes to the Services; and

### 2.10.10 not do or omit to do anything which may bring the name or reputation of LJMU into disrepute or prejudice the interests of the business of LJMU, or cause LJMU to lose any licence, authority, consent or permission on which it relies for the purposes of conducting its business;

### The Supplier shall:

### 2.11.1 ensure that the Services and Deliverables comply in all respects with all applicable LJMU Policies provide all necessary assistance, cooperation and information as reasonably requested by LJMU to enable LJMU to comply with its obligations under the FOIA and EIRs and in particular:

### 2.11.1.1 transfer to LJMU all Requests for Information relating to the Contract that it receives as soon as practicable and in any event within 2 (two) Business Days of receipt; and

### 2.11.1.2 not respond directly to a Request for Information unless authorised in writing to do so by LJMU.

## 2.12 If the Supplier is unable to provide the Services by the dates and times agreed between the parties, the Supplier shall inform LJMU as soon as reasonably practicable. For the avoidance of doubt, no Charges shall be payable in accordance with clause 4 (Charges and payment) in respect of any period during which the Services are not provided.

# LJMU obligations

# LJMU shall provide the Supplier with reasonable access at reasonable times to LJMU's premises for the purpose of providing the Goods and or Services and shall provide such information to the Supplier as the Supplier may reasonably request which is necessary for the purpose of providing the Goods and or Services.

# Charges and payment

## The Charges for the Goods shall be:

## those set out in the Order Form, or if no price is quoted the price set out in the Suppliers published price list in force at the Commencement Date;

## shall be inclusive of the costs of pakcaging, insruance and carriage of the Goods. No extra charges shall be effective unless agreed in writing by the parties and signed by LJMU.

## The Charges for the Services shall be the charges as set out in the Order Form and shall be the Supplier's full and exclusive remuneration for the performance of the Services (including the supply of the Deliverables).

## Unless specified in the Order Form,, in respect of the Goods, the Supplier shall invoice LJMU on or at any time after completion of delivery. In respect of Services, the Supplier may invoice LJMU for the Charges after completion of the Services (to LJMU's satisfaction). LJMU shall pay correctly rendered and undisputed invoices (with all queries resolved) within 30 (thirty) days of receipt of the invoice .

## If LJMU disputes the whole or any part of an invoice, it may withhold payment in respect of the disputed amount provided that it gives notice in writing to the Supplier of any intention to withhold payment, specifying the amount to be withheld and the grounds for withholding payment.

## Except where LJMU withholds an amount due to a bona fide dispute pursuant to clause 4.3, the Supplier may charge interest on overdue amounts at the rate of 2% per annum above Bank of England's base rate from time to time, from the due date until actual payment of the overdue amount, whether before or after judgment. The Supplier agrees that the right to claim interest under this clause 4.4 is a substantial remedy for late payment of undisputed invoices.

## LJMU may at any time, without limiting any of its other rights or remedies, set off any liability (including but not limited to any liability for payment of tax and/or National Insurance contributions where LJMU determines that such deductions should be made) of the Supplier (whether under the Contract or not) to LJMU against any liability of LJMU to the Supplier.

# Status

This Contract constitutes a contract for the provision of goods and or services and not a contract of employment and accordingly the Supplier shall be responsible for and shall fully indemnify and hold LJMU harmless for and in respect of:

## any and all income tax, national insurance and social security deductions and contributions and any other liability, deduction, contribution, assessment or claim arising from or made in connection with the provision of Goods or performance of the Services, where such recovery is not prohibited by law;

## all reasonable costs and expenses and any penalty, fine or interest incurred or payable by LJMU in connection with or in consequence of any such contribution, liability, deduction, other contribution, assessment or claim; and

## any and all liability for any employment-status or worker-status claim (including reasonable costs and expenses) brought by the Supplier (or any of its sub-contractors, employees and/or Key Personnel) against LJMU arising out of or in connection with the provision of the Goods or the provison of the Services.

## This clause 5 shall survive termination of the Contract.

# Intellectual Property Rights

## The Supplier assigns absolutely and with full title guarantee to LJMU all Intellectual Property Rights arising in the performance of the Services (including the Deliverables) such that such rights shall forthwith on creation vest in LJMU (**"Assigned Rights"**). Insofar as they do not so vest automatically by operation of law or under this Contract, the Supplier shall hold legal title in the Assigned Rights on trust for LJMU and shall take whatever steps as may be necessary to legally assign those rights to LJMU.

## The Supplier shall and shall procure that all persons employed or engaged by the Supplier (including the Key Personnel) waive any moral rights in the Assigned Rights to which he or she is now or may at any future time be entitled under Chapter IV of the Copyright Designs and Patents Act 1988 or any similar provisions of Applicable Law.

## The Supplier shall promptly at LJMU's request do (or procure) all such further acts and the execution of all such other documents as LJMU may from time to time require for the purpose of securing for LJMU the full benefit of the Contract, including all right, title and interest in and to the Intellectual Property Rights assigned to LJMU pursuant to clause 6.1.

## The Supplier acknowledges that all rights in the LJMU Materials are and shall remain the exclusive property of LJMU.

# Liability and Indemnity (SUPPLIER'S ATTENTION IS DRAWN TO THIS CLAUSE)

## In addition to any other right or remedy available to LJMU, the Supplier shall indemnify, keep indemnified and hold harmless LJMU from and against all liabilities, costs, expenses, (including legal and other professional adviser's fees), damages, fines, penalties and losses suffered or incurred by LJMU as a result of or in connection with any claim made against LJMU:

### 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 or receipt of the Goods and or the Services and the Deliverables (except to the extent that the claim is attributable to compliance with any LJMU Materials or specifications supplied by LJMU);

### for death, personal injury or damage to property arising out of or in connection with the supply of the Goods and or the Services including: (i) any defect in any Goods as delivered or the Deliverables; or (ii) any act or omission of the Supplier (including Key Personnel) or its employees, agents or subcontractors;

### any claim made against LJMU by a third party arising out of or in connection with the supply of the Goods as delivered or the Services;

### any breach or alleged breach of clause 6 (Intellectual Property), clause 10 (Confidentiality), clause 11 (Data Protection) and clause 12 (Ethics);

## Subject to clause 7.3 the maximum aggregate liability of LJMU in any year (from the anniversary date of entering into this Contract) in relation to this Contract, howsoever arising and including as a result of breach of contract, tort (including negligence) or statutory duty shall not exceed 100% of the Charges paid to the Supplier in respect of that year.

## Nothing in the Contract shall limit either party's liability for: (i) death or personal injury arising from its negligence; (ii) fraudulent misrepresentation; or (iii) any other liability that cannot be excluded by law.

## This clause 7 shall survive termination of the Contract.

# Right of Substitution

# The Supplier reserves the right to substitute any personnel (including Key Personnel) for the provision of the Services, provided LJMU is given advance notice of the Supplier exercising the right of substitution and LJMU is reasonably satisfied that any proposed substitute possesses the necessary skills, experience and qualifications for the satisfactory completion of the Services. The Supplier will remain liable for the Service completed by the substitute personnel and bear any costs.

# Insurance

During the term of the Contract (and for a period of six years after the termination or expiry of the Contract), the Supplier shall maintain in force with a reputable insurance company appropriate insurance policies, including without limitation professional indemnity insurance, product liability insurance and public liability insurance to cover the liabilities that may arise under or in connection with the Contract to cover in respect of each policy a minimum of £5 million (five million pounds) per claim or series of related claims (or such other amounts required by LJMU and specified in the Order Form), and shall, on LJMU's reasonable request, produce both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance policy.

# Confidentiality

## Subject to clause 10.2, the Supplier shall and shall procure that the Key Personnel, employees, agents, subcontractors shall:

### use LJMU's Confidential Information solely for the performance of the Contract; and

### keep LJMU's Confidential Information strictly confidential and not, without LJMU's prior written consent, disclose it to any other person.

## The Supplier may disclose LJMU's Confidential Information:

### to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the Supplier's rights or carrying out its obligations under or in connection with the Contract and the Supplier shall ensure that such persons comply with this clause 10.2;

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

### if such information is public knowledge or already known to the Supplier at the time of disclosure or subsequently becomes public knowledge in each instance other than by breach of any duty of confidentiality (contractual or otherwise).

## This obligation shall not extend to information:

### which is or comes into the public domain at the time of its disclosure or observation or subsequently enters the public domain other than by breach of this Contract; or

### disclosure of which is required by law, provided that each party shall seek to limit such disclosure as far as possible; or

### which comes into a party's possession prior to disclosure by the other party or is acquired lawfully and in good faith from an independent third party free from obligations of confidence.

## This clause 10 shall survive termination of the Contract.

# Data Protection

## For the purpose of this clause 11, reference to articles numbers are article numbers of the GDPR and unless defined in these Conditions, the terms shall have the same meaning and effect as defined under the Privacy Laws.

## If either party receives or processes any Personal Data for which the other party is data controller (the **“Processing Party”**), the Processing Party will (and shall procure its Key Personnel in accordance with Article 28(3) will): (i) only act on the documented instructions of the party who is the data controller of such Personal Data (the “**Controlling Party**”) in relation to the processing and storage of Personal Data; (ii) only use it for the purpose of fulfilling its obligations under this Contract; (iii) only process Personal Data in accordance with and shall comply with the Privacy Laws; and (iv) ensure such processing (whether by the Processing Party, Key Personnel or its employees, agents or subcontractors) is subject to obligations of confidentiality.

## The parties will document in the Order Form: (i) the subject matter and duration of the processing; (ii) the nature and purpose of the processing; (iii) the type of personal data and categories of data subjects; and (iv) the obligations and rights of the party processing the information.

## The Processing Party shall:

### not transfer any Personal Data of the Controlling Party to any Non-Adequate Country without the prior written consent and instructions of the Controlling Party;

### ensure that all technical and organisational measures are in place pursuant to Article 32 (and in conformance with Article 28 (3)(f)) to ensure the security of Personal Data of the Controlling Party including: (i) appropriate encryption and pseudonymisation of the Personal Data; (ii) measures which ensure the confidentiality, integrity, availability and resilience of such systems that process the Personal Data; (iii) ensuring appropriate technical and organisational measures are taken against unauthorised or unlawful processing of the Personal Data and against accidental loss, destruction or damage to the Personal Data (having regard to the state of technological development and the cost of implementing such measures); and (iv) ensuring that a process is in place to regularly test the effectiveness of such measures referred to above;

### notify the Controlling Party immediately if it becomes aware of any actual or suspected data security breach involving the Personal Data of the Controlling Party (which shall include, without limitation, any breach of this clause 11 or other unauthorised or unlawful processing or loss of, or destruction or damage to, the Personal Data) (such notice to include a description of such breach or suspected breach and the category of approximate number of Data Subjects concerned);

### provide reasonable assistance to the Controlling Party to demonstrate compliance with this clause 11 and allow for and contribute to audits conducted by the Controlling Party upon its reasonable request, including providing any information to enable the Controlling Party to ensure both parties are meeting their obligations under Privacy Laws;

### notify the Controlling Party without delay if, in its opinion, an instruction given by the Controlling Party breaches Privacy Laws;

### not transfer or permit the processing of the Personal Data of the Controlling Party by any third party without the prior written consent of the Controlling Party. Where such consent is given, the Processing Party shall ensure that such third party is under similar or equivalent obligations (ie. a written contract) to those set out in this clause 11. The Processing Party shall remain liable to the Controlling Party for the acts of any such sub-contractor(s) in relation to the processing of such Personal Data; and

### within 5 (five) Business Days of a request from the Controlling Party, comply with any request in relation to one or more identified data subjects and provide all such assistance requested by the Controlling Party so that it can comply with its obligations under the Privacy Laws.

## Upon request of the Controlling Party, and in the event of termination or expiry of the Contract (unless the Controlling Party agrees otherwise), the Processing Party shall deliver up all relevant Personal Data of the Controlling Party and promptly (or in accordance with any reasonable timescales stipulated by the Controlling Party at the time) and securely delete or destroy all such Personal Data (except such Personal Data which is required to be stored in accordance with the Privacy Laws). The Processing Party will provide reasonable evidence to demonstrate compliance with this clause on request.

# Ethics

## The Supplier shall:

### comply with all Applicable Laws in the provision of the Goods and or Services including but not limited those relating to anti-bribery, anti-slavery, equality and prevention of facilitation of tax evasion including but not limited to the Bribery Act 2010, the Equality Act 2010, the Modern Slavery Act 2015 and the Criminal Finances Act 2017 (**"Relevant Requirements"**);

### not engage in any activity, practice or conduct which would constitute an offence under the Relevant Requirements if such activity, practice or conduct had been carried out in England or Wales and shall provide the Goods and or Services without any breach of the Relevant Requirements and in a manner reflecting a commitment to the prevention of facilitation of tax evasion, safety and human rights in the workplace;

### comply with the Policies relating to equality and diversity, anti-bribery, prevention of facilitation of tax evasion, and anti-slavery and enforce them where appropriate (Relevant Policies);

### promptly report to LJMU:

#### any breach, or potential breach, of the Relevant Requirements and/or Relevant Policies;

#### any actual or suspected slavery or human trafficking in a supply chain which has any connection with the Contract and/or LJMU; and

#### any request or demand for any undue financial or other advantage (including the facilitation of tax evasion) of any kind received by the Supplier in connection with the performance of its obligations under the Contract.

## The Supplier warrants and represents that at the date of the Contract coming into force neither the Supplier, any Key Personnel nor any of its officers, employees, agents:

### has been convicted of any offence under the Relevant Requirements; and

### to the best of its knowledge, has been or is the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence in connection with the Relevant Requirements.

## Breach of this clause 12 shall be deemed a material breach of the Contract.

# Termination

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

### 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 14 (fourteen) days of being notified in writing to do so;

### the Supplier repeatedly breaches any term of the Contract in such manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of the Contract;

### performance of the Contract would in LJMU's reasonable opinion, or LJMU reasonably believes, would adversly affect its reputation and/or cause LJMU to be in breach of any Applicable Law;

### LJMU reasonably believes that a Force Majeure Event has impacted or may materially impact on the Supplier's ability to perform its obligations under the Contract;

### the Supplier (being a body corporate) is declared or becomes insolvent, has a moratorium declared in respect of any of its indebtedness, enters into administration, receivership, administrative receivership or liquidation or threatens to do any of these things (an **"Insolvency Event"**);

### the Supplier (being an individual) is declared bankrupt, enters into any composition or arrangement with his creditors, has a receiver appointed to any of his assets, or ceases to carry on business (also an **Insolvency Event**)) (or, the Supplier being a partnership, has a partner to whom any Insolvency Event applies);

### the Supplier (being an individual) (or any Key Personnel) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation;

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

### the Supplier's financial position deteriorates to such an extent that in LJMU's opinion the Supplier's capability to fulfil its obligations under the Contract adequately has been jeopardised; or

### the individual providing the Services on behalf of the Supplier is deemed to have employment status with LJMU for tax purposes under Chapter 10 of Part 2 of ITEPA 2003.

## LJMU may terminate the Contract for convenience on the provision of 3 months written notice to the Supplier.

## The Supplier may terminate in the event that LJMU has failed to pay an undisputed invoice, following the expiry of 60 days from receipt by LJMU of a notice from the Supplier notifying LJMU of such delayed payment, or if LJMU undergoes an Insolvency Event as referenced above.

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

## Termination of the Contract, however arising, shall not affect any of the parties' rights, remedies, obligations or liabilities that have accrued as at termination.

## Conditions that expressly or by implication survive termination of the Contract shall continue in full force and effect.

# Remedies

14.1 If the Supplier has delivered Goods that do not comply with the undertakings set out in clause 2 or has failed to deliver the Goods by the Delivery Date, then, without limiting or affecting other rights or remedies available to it, LJMU shall have one or more of the following rights and remedies, whether or not it has accepted the Goods:

* + 1. to terminate the Contract with immediate effect by giving written notice to the Supplier;
    2. to reject the Goods (in whole or in part) whether or not title has passed and to return them to the Supplier at the Supplier's own risk and expense;
    3. in the case of rejected Goods, 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);
    4. to refuse to accept any subsequent delivery of the Goods which the Supplier attempts to make;
    5. to recover from the Supplier any expenditure incurred by LJMU in obtaining substitute goods from a third party;
    6. to claim damages for any additional costs, loss or expenses incurred by LJMU arising from the Supplier's failure to supply Goods in accordance with clause 2 or to meet such dates;
    7. to require a refund from the Supplier in respect of any sums paid in advance for Goods that it has not delivered by the Delivery Dates.
  1. If the Supplier has supplied Services that do not comply with the requirements of clause 2 or has failed to deliver the Services by any Key Date (as defined in the Commercial Terms) then, without limiting or affecting other rights or remedies available to it, LJMU shall have one or more of the following rights and remedies:
     1. to terminate the Contract with immediate effect by giving written notice to the Supplier;
     2. to return the Deliverables to the Supplier at the Supplier's own risk and expense;
     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);
     4. to refuse to accept any subsequent performance of the Services which the Supplier attempts to make;
     5. to recover from the Supplier any expenditure incurred by LJMU in obtaining substitute services or deliverables from a third party; and
     6. to claim damages for any additional costs, loss or expenses incurred by LJMU arising from the Supplier's failure to comply with clause 2 or to meet a Key Date; and
     7. to require a refund form the Supplier of sums paid in advance for the Services that the Supplier has not provided.
  2. These Conditions shall extend to any substituted or remedial services and/or repaired or replacement goods supplied by the Supplier.
  3. LJMU’s rights and remedies under the Contract are in addition to, and not exclusive of, any rights and remedies implied by statute and common law.

# Force majeure

Neither party shall be in breach of the Contract or liable for delay in performing, or failure to perform, any of its obligations under it if such breach, delay or failure results from a Force Majeure Event, provided that the party affected promptly notifies the other of the cause and likely duration of the breach, delay or failure, uses all reasonable endeavours to remove or avoid the effects of the Force Majeure Event and resumes performance of its obligations under the Contract without delay when the Force Majeure Event ceases to have effect.

# General

## **Assignment and other dealings**

### LJMU may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with any or all of its rights or obligations under the Contract.

### The Supplier may not assign, transfer, mortgage, charge, 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 LJMU.

## **Subcontracting**

The Supplier may not subcontract any or all of its rights or obligations under the Contract without LJMU's prior written consent save in the exercise of its right to substitute in accordance with clause 8. The Supplier shall remain liable for all the acts and omissions of any subcontractor/substitute / subprocessor as if they were its own acts and omissions.

## **Entire** **agreement**

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

## **Variation**

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 LJMU.

## **Waiver**

No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of or prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

## **Severance**

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

## **Notice**

Any notice given to a party under or in connection with the Contract shall be in writing and shall be delivered by hand or by pre-paid first-class post or by a signed-for next working day delivery service to the address for Notices as set out in the Order Form.

## **Third party rights**

No one other than a party to the Contract and their permitted assignees shall have any right to enforce any of its terms.

## **Relationship**

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

## **Governing** **law and jurisdiction**

The Contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by, and construed in accordance with, the laws of England, and the courts of England shall have exclusive jurisdiction to settle any such dispute or claim.

## **Announcements**

The Supplier shall not refer to the Contract or LJMU in any customer list, presentation, article or other promotional material without LJMU's prior written consent.

# Definitions and Interpretation

## The following definitions shall apply to the Conditions and the Order Form:

**Applicable Law:** any and all laws, regulations and industry standards or guidance (including any applicable British Standard) and any binding judgment of a relevant court of law which is or are relevant to the Contract;

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

**Charges:** the charges payable by LJMU for the provision of the Goods and or supply of the Services as set out in the Order Form;

**Commencement Date:** the date set out in the Order Form;

**Conditions:** the terms and conditions set out in this document as amended from time to time in accordance with clause 15.4;

**Confidential Information:** any and all know-how, documentation and information, whether commercial, financial, technical, research, personal data, operational or otherwise, relating to the business, affairs, customers, suppliers, employees, affiliates, products, methods, research and/or processes of LJMU and disclosed to or otherwise obtained by the Supplier in connection with the Contract;

**Contract:** the contract between LJMU and the Supplier for the supply of Goods and or Services which incorporates these Conditions and the Order Form, and any other additional documents referred to in the Order Form;

**Deliverables:** all documents, products and materials developed by the Supplier or the Key Personnel as part of or in relation to the Goods and or the Services in any form or media, including drawings, maps, plans, diagrams, designs, pictures, computer programs, data, specifications and reports (including drafts);

**EIRs:** the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations (as up dated from time to time);

**FOIA:** the Freedom of Information Act 2000 ("**Act**"), 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 (as updated from time to time);

**Force Majeure Event:** an event that is beyond the reasonable control of a party, which that party is unable reasonably to prevent or avoid and which hinders, delays or prevents performance by that party, provided that such event or circumstance is limited to the following (i) Acts of God, flood, drought, earthquake or other natural disaster; (ii) terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations; (iii) nuclear, chemical or biological contamination or sonic boom; (iv) any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition, and (v) collapse of buildings, fire, explosion or accident.

**GDPR:** Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data;

**Good Industry Practice:** the use of standards, practices, methods and procedures conforming to Applicable Law and the exercise of that degree of skill, care, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced person engaged in the provision of goods or services similar to the Goods or Services (as applicable) to an entity of a similar size and nature as LJMU under the same or similar circumstances;

**Intellectual Property Rights:** patents, rights to inventions, copyright and related rights, moral rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;

**Key Personnel:** the personnel engaged by the Supplier in the performance of the Contract including those names in the Order Form;

**LJMU:** Liverpool John Moores University, a Higher Education Corporation established under the Education Reform Act 1988 whose administrative offices are Egerton Court, 2 Rodney Street, Liverpool L1 2UA or any of its affiliated or related companies ;

**LJMU Materials:** all materials, equipment and tools, drawings, specifications and data supplied or made available by LJMU to the Supplier;

**Non Adequate Country:** means a country or territory which is outside the European Economic Area and in respect of which there has not been an adequate decision (being a finding under Article 25(2) of the Data Protection Directive or Article 25 of the GDPR that a country or territory ensures an adequate level of protection);

**Order Form:** LJMU's order for the supply of the Goods and Services, as attached to these Conditions;

**Policies:** LJMU's policies and procedures provided or made available to the Supplier from time to time;

**Privacy Laws:** means the GDPR, Data Protection Act 2018 and any other applicable or related legislation;

**Request for Information:** a request for information under the Code of Practice on Access to Government Information, FOIA or the EIRs;

**Services:** the services, including without limitation any Deliverables, to be provided by the Supplier under the Contract;

**Specification:** the specification for the Goods and or the Services that is referred to in the Order agreed in writing by LJMU and the Supplier; and

**Supplier:** the person or firm from whom LJMU purchases the Goods and or Services.

## **Interpretation** In these Conditions, the following rules apply:

### a reference to a statute or statutory provision is a reference to such statute or provision as amended, re-enacted or superseded and includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;

### any phrase introduced by the terms **including**, **include**, **in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms;

### headings are used in these Conditions for convenience only and shall not alter its construction or interpretation. The Order Form shall have the effect as is set out in these Conditions;

### Unless expressly stated otherwise, in the case of any conflict or inconsistency in relation to any of the following elements of the Contract, they shall prevail in the following order:

#### the Order Form; and

#### the Conditions.

#### **Appendix 1**

#### **Specification**

#### Insert document which describes the Goods and or Services (proposal / quotation/ specification)