

DATED

Insert Date

The Royal Academy of Engineering (1)

[insert name of Supplier] (2)

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SERVICES AGREEMENT

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THIS AGREEMENT is made on

Insert Date

## BETWEEN

- (1) **THE ROYAL ACADEMY OF ENGINEERING** a body established by Royal Charter and a registered charity with charity registration number 293074 and with its registered offices at Prince Philip House, 3 Carlton House Terrace, London SW1Y 5DG (**the Academy**); and
- (2) **[FULL COMPANY NAME]** incorporated and registered in England and Wales with company number **[NUMBER]** whose registered office is at **[REGISTERED OFFICE ADDRESS]** (**the Supplier**).

## BACKGROUND

- (A) The Supplier is in the business of providing **[insert brief description of services]**.
- (B) The Academy wishes to obtain and the Supplier wishes to provide such services on the terms set out in this Agreement.

## Agreed terms

### 1. Interpretation

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

#### 1.1 Definitions.

**Academy's Manager:** the individual identified as such in Schedule 3, being the person responsible for managing the Services on behalf of the Academy.

**Academy Materials:** all documents, information, items and materials in any form (whether owned by the Academy or a third party), which are provided by the Academy to the Supplier in connection with the Services, including the items provided pursuant to clause 4(c).

**Applicable Laws:** all applicable laws, statutes, regulations and codes from time to time in force.

**Background Intellectual Property:** Intellectual Property Rights existing prior to this Agreement or generated other than in the course of providing the Services which either party (or its licensors, as the case may be) makes available to the other party in the course of performing its obligations under this Agreement (whether as part of the Deliverables, or otherwise) including the Intellectual Property Rights in the Academy Materials and the Supplier Materials.

**Beneficiary:** A person, organization, or entity that receives a benefit or service as a result of the agreement. This can include the direct recipient of the services or a third party who benefits from the services provided under the agreement.

**Charges:** the sums payable for the Services, as set out in **Schedule 2**.

**Control:** has the meaning given in section 1124 of the Corporation Tax Act 2010, and the expression **change of control** shall be construed accordingly.

**Data Protection Legislation:** the UK General Data Protection Regulation, the Data Protection Act 2018, the Privacy and Electronic Communications Regulations 2003, and all other applicable laws, enactments, regulations, orders, standards and other similar instruments, each as may be amended or superseded from time to time.

**Deliverables:** any outputs of the Services and any other documents, products and materials provided by the Supplier to the Academy as specified in Schedule 1 and any other documents, products and materials produced by the Supplier to the Academy in relation to the Services (excluding the Supplier's Equipment).

**Intellectual Property Rights:** patents, rights to inventions, copyright and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, 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.

**Mandatory Policies:** the Academy's business policies listed in Schedule 4, as amended by notification to the Supplier from time to time.

**Milestones:** a date by which a part of the Services is to be completed, as set out in Schedule 1.

**Services:** the services set out in Schedule 1, including services which are incidental or ancillary to such services.

**Supplier's Equipment:** any equipment, including tools, systems, cabling or facilities, provided by the Supplier, its agents, subcontractors or consultants to the Academy and used directly or indirectly in the supply of the Services, including any such items specified in Schedule 1.

**Supplier's Manager:** the individual identified in Schedule 3 or any replacement individual appointed by the Supplier pursuant to clause 3.3(b) and clause 3.3(d), being the person responsible for managing the Services on behalf of the Supplier.

**VAT:** value added tax chargeable from time to time in accordance with the provisions of the Value Added Tax Act 1994.

## 1.2 Interpretation:

- (a) Clause, Schedule and paragraph headings shall not affect the interpretation of this Agreement.
- (b) A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

- (c) A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- (d) Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- (e) This Agreement shall be binding on, and ensure to the benefit of, the parties to this Agreement and their respective personal representatives, successors and permitted assigns, and references to any party shall include that party's personal representatives, successors and permitted assigns.
- (f) A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.
- (g) A reference to **writing** or **written** includes email.
- (h) Any obligation on a party not to do something includes an obligation not to allow that thing to be done.
- (i) References to clauses and Schedules are to the clauses and Schedules of this Agreement and references to paragraphs are to paragraphs of the relevant Schedule.
- (j) Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

## **2. Commencement and duration**

- 2.1 This Agreement shall commence on the date when it has been signed by all the parties and shall continue, unless terminated earlier in accordance with clause 18 (Termination), until **[insert date of completion for fixed term contract]** when it shall terminate automatically without notice.
- 2.2 The Supplier shall provide the Services to the Academy in accordance with this Agreement from **[insert date]** OR **[the date of this Agreement]**.

## **3. Supplier's responsibilities**

- 3.1 The Supplier shall:
  - (a) provide the Services and the Deliverables in accordance with Schedule 1;
  - (b) ensure that the Services and Deliverables will conform in all respects with Schedule 1 and that the Deliverables shall be fit for any purpose expressly or implicitly made known to the Supplier by the Academy;
  - (c) perform the Services with the highest level of care, skill and diligence in accordance with best practice in the Supplier's industry, profession or trade;

- (d) ensure that the Deliverables, and all goods, materials, standards and techniques used in providing the Services are of good quality and are free from defects in workmanship, installation and design;
- (e) co-operate with the Academy in all matters relating to the Services;
- (f) comply with the Academy's instructions and guidelines as issued by the Academy time to time;
- (g) obtain and at all times maintain all licences, permissions, authorisations, consents and permits which may be required for the provision of the Services;
- (h) before the date on which the Services are to start, obtain and at all times, maintain during the term of this Agreement, all necessary licences and consents and comply with all Applicable Laws in relation to:
  - (i) the Services; and
  - (ii) the installation and use of the Supplier's Equipment;
- (i) observe all health and safety rules and regulations and any other reasonable security requirements that apply at any of the Academy's premises from time to time and that have been communicated to it under the relevant Mandatory Policy;
- (j) hold all Academy Materials in safe custody at its own risk and maintain the Academy Materials in good condition until returned to the Academy, and not dispose of or use the Academy Materials other than in accordance with the Academy's written instructions or authorisations;
- (k) not do or omit to do anything which may cause the Academy to lose any licence, authority, consent or permission on which it relies for the purposes of conducting its business;
- (l) notify the Academy in writing immediately upon the occurrence of a change of Control of the Supplier; and
- (m) provide the Services and Deliverables (if applicable) promptly and in a timely manner, meeting any deadlines specified by the Academy from time to time, including any deadlines outlined in Schedule 1 and including any Milestones.

3.2 Time is of the essence in relation to Milestones for the Supplier only. If the Supplier fails to meet the relevant Milestone, then (without prejudice to the Academy's right to terminate this Agreement and any other rights it may have), the Academy may:

- (a) refuse to accept any subsequent performance of the Services which the Supplier attempts to make;
- (b) purchase substitute services from elsewhere and reclaim from the Supplier any additional costs incurred as a result of procuring such services from a third party instead of the Supplier;

- (c) hold the Supplier accountable for any loss and additional costs incurred; and
- (d) have any sums previously paid by the Academy to the Supplier in respect of the affected Services refunded by the Supplier.

3.3 In relation to the Supplier's personnel, the Supplier shall:

- (a) ensure that all personnel involved in the provision of the Services have suitable skills and experience to enable them to perform the tasks assigned to them, and that such personnel are in sufficient number to enable the Supplier to fulfil its obligations under this Agreement;
- (b) ensure that all personnel involved in the provision of the Services are subject, whether by virtue of employment by the Supplier or otherwise via contract, to legally binding obligations to the Supplier which are consistent with the Supplier's own obligations under this Agreement;
- (c) promptly inform the Academy of the absence (or the anticipated absence) of any of the personnel, and if so required by the Academy, provide a suitably qualified replacement for such individual; and
- (d) use its best endeavours not to make any changes to the personnel and Supplier Manager throughout the term of this Agreement and obtain the prior written approval of the Academy (such approval not to be unreasonably withheld or delayed) to any replacements for such individuals.

3.4 The Academy reserves the right to refuse any of the Supplier's personnel involved in the provision of the Services access to the Academy's premises, which shall only be given to the extent necessary for the performance of the Services.

**4. Academy's obligations**

The Academy shall:

- (a) co-operate with the Supplier in all matters relating to the Services;
- (b) provide access to the Academy's premises, data and other facilities as may reasonably be requested by the Supplier and agreed with the Academy in advance, for the purposes of the Services; and
- (c) provide to the Supplier all documents, information, items and materials required under Schedule 1.

**5. Default by the Academy**

A failure by the Academy to comply with the terms of this Agreement can only relieve the Supplier from complying with its obligations under this Agreement with effect from the date on which the

Supplier notifies the Academy in writing and in reasonable detail of the Academy's failure and its effect or anticipated effect on the Services.

## **6. Changes**

- 6.1 Either party may propose changes to the scope or execution of the Services, but no proposed changes shall come into effect unless made in writing and signed by the parties and in accordance with this clause 6.
- 6.2 The Supplier shall not unreasonably withhold or delay agreement of any change required by the Academy, or the implementation thereof; nor shall the Supplier impose unreasonable conditions (having regard to the other terms of this Agreement) in implementing the change.
- 6.3 All revision to the Services to be provided under this Agreement as a result of a request shall (to the extent possible) be calculated using the same or equivalent method to that which was used to calculate the Charges. No variation to the Charges shall apply without the prior written approval of the Academy. For the avoidance of doubt, the Supplier shall only be entitled to charge for the time it spends on preparing and negotiating changes where the request for change originates from the Academy.

## **7. Governance and records**

- 7.1 The Supplier shall:
- (a) attend progress meetings with the Academy at the frequency and times specified by the Academy and shall ensure that its representatives are suitably qualified to attend such meetings; and
  - (b) submit progress reports to the Academy at the times and in the format specified by the Academy.
- 7.2 The Supplier shall keep and maintain until six (6) years after the end of the Agreement, or as long a period as may be agreed between the parties, full and accurate records of the Agreement including the Services supplied under it and all payments made by the Academy to the Supplier. The Supplier shall allow the Academy (and/or the Academy's representatives) to access those records at all reasonable times on request.

## **8. Charges and payment**

- 8.1 In consideration of the provision of the Services by the Supplier, the Academy shall pay the Charges.
- 8.2 The Charges for the Services shall be set out in Schedule 2 of this Agreement, and shall be the full and exclusive remuneration of the Supplier in respect of the performance of the Services. Unless

otherwise agreed in writing by the Academy, the charges shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the performance of the Services.

- 8.3 If and only if the Charges are calculated on a time and materials basis (this to be expressly stated in Schedule 2):
- (a) the Supplier's daily fee rates for each individual person as set out in **Schedule 2** are calculated on the basis on an eight-hour day, worked during business hours;
  - (b) the Supplier shall not be entitled to charge on a pro rata basis for part days worked by the Supplier's team during business hours, unless it has the Academy's prior written consent to do so; and
  - (c) the Supplier shall ensure that every individual whom it engages on the Services completes time sheets to record time spent on the Services, and the Supplier shall indicate the time spent per individual in its invoices.
- 8.4 The Academy shall pay to the Supplier the invoiced amounts within thirty (30) days of the date of a correctly rendered invoice. Payment shall be made in GBP to the bank account nominated in writing by the Supplier.
- 8.5 **optional where Supplier based overseas** For the avoidance of doubt, if a Currency Fluctuation<sup>1</sup> occurs in relation to a payment made by the Academy to the Supplier, the Supplier shall not be entitled to vary the scope of the Services agreed between the parties under this Agreement.
- 8.6 If the Academy fails to make a payment due to the Supplier under this Agreement by the due date, then, without limiting the Supplier's remedies under clause **18** (Termination), the Academy shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause **8.6** will accrue each day at 2% a year above the Bank of England's base rate from time to time.
- 8.7 The Academy may, at any time, without notice to the Supplier, set off any liability of the Supplier to the Academy against any liability of the Academy to the Supplier, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under this Agreement. Any exercise by the Academy of its rights under this clause shall not limit or affect any other rights or remedies available to it under this Agreement or otherwise.

## **9. Intellectual Property Rights**

- 9.1 In relation to the Academy Materials:

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<sup>1</sup> **Currency fluctuation:** a change in the daily spot exchange rate of the Supplier's home country against sterling published by the Bank of England between the date of this Agreement and the date on which any invoice is received by the Academy.



- (a) the Academy and its licensors shall retain ownership of all Intellectual Property Rights in the Academy Materials; and
  - (b) the Academy grants to the Supplier a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify the Academy Materials for the term of this Agreement solely for the purposes of providing the Services to the Academy.
- 9.2 Subject to clause 9.3, in consideration of the Charges, the Supplier hereby assigns, and agrees to assign, to the Academy absolutely with full title guarantee all of the Supplier's right, title and interest in and to all Intellectual Property Rights arising in the Deliverables or otherwise produced in the course of performance of the Services.
- 9.3 Where the Supplier's Background Intellectual Property forms part of any Deliverables supplied to the Academy in the course of providing the Services, the Supplier will be deemed to have granted the Academy a non-exclusive, perpetual, irrevocable royalty-free licence to use such Background Intellectual Property as part of such Deliverables and for such purposes as are necessary to allow the use and exploitation of the Deliverables by the Academy, or its licensees, successors and assignees.
- 9.4 The Supplier:
  - (a) warrants that all works in the Deliverables shall be their own original work and shall not be copied, whether directly or indirectly, from any other work and that other than as provided under clause 9.2 the Supplier is the sole owner of the entire right, title and interest in and to all Intellectual Property Rights in the Deliverables;
  - (b) warrants that the receipt, use and onward supply of the Services and the Deliverables (excluding the Academy Materials) by the Academy and its permitted sub-licensees shall not infringe the rights, including any Intellectual Property Rights, of any third party; and
  - (c) shall indemnify the Academy in full against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the Academy arising out of, or in connection with, the receipt, use or supply of the Services and the Deliverables (excluding the Academy Materials).
    - (i) Nothing in this Agreement shall limit or exclude the Supplier's liability under this clause 9.4(c) (IPR indemnity)
- 9.5 To the extent permitted by law the Supplier hereby irrevocably waives any rights they may have pursuant to this Agreement under Sections 77 and 80 of the Copyright, Designs and Patents Act 1988. The Supplier further undertakes to procure that all personnel involved in the provision of the Services irrevocably waive any rights they may have pursuant to this Agreement under Sections 77 and 80 of the Copyright, Designs and Patents Act 1988.

- 9.6 The Supplier shall not use the name, logo and / or trade mark of the Academy without the Academy's prior written consent.

[**optional** 9.7 and 9.8 Intellectual Property Rights Licence – licence-back to the Supplier for the Supplier's non-commercial purposes

- 9.7 The Academy hereby grants the Supplier a non-exclusive, royalty-free license to use, reproduce, modify and adapt the Intellectual Property Rights in the Deliverables for the Supplier's non-commercial research purposes. **Optional:** This licence shall continue until [[**insert date of termination of licence**]] when it shall expire].

- 9.8 The rights grants in clause 9.7 are subject to the Supplier:

- (a) providing the Academy access to the research generated through the Supplier's use or the Deliverables, such access to be provided free of charge; and
- (b) acknowledging the Academy in any academic or research papers or materials that have been generated from the Supplier's use of the Deliverables.]

## **10. Insurance**

During the term of this Agreement and for a period of one year after the expiry or termination of this Agreement, the Supplier shall maintain in force, with a reputable insurance company, professional indemnity insurance at an amount not less than £1,000,000 (one million pounds) and public liability insurance at an amount not less than £5,000,000 (five million pounds) to cover the liabilities that may arise under or in connection with this Agreement and shall produce to the Academy on request both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance.

## **11. Compliance with laws and policies**

In performing its obligations under this Agreement, the Supplier shall comply with:

- (a) the Applicable Laws and the Supplier will inform the Academy as soon as it becomes aware of any changes in the Applicable Laws; and
- (b) the Mandatory Policies.

## **12. Safeguarding**

- 12.1 If the Services involve interaction with children or adults at risk, the Supplier agrees to:

12.1.1 comply with the Academy's Safeguarding Policy (as amended from time to time), as appropriate;

- 12.1.2 have in place (where necessary) appropriate systems of control, including an adequate and effectively implemented safeguarding policy and procedures, and code of conduct (if separate);
- 12.1.3 ensure individuals associated with the Supplier are subject to safe recruitment, selection and appropriate vetting and that, under no circumstances, will any individual associated with the Supplier be considered to pose a risk to children and/or adults at risk be deployed to work or volunteer with these groups when providing the Services;
- 12.1.4 ensure that any safeguarding concern or allegation which relates to an individual associated with the Supplier will be reported, without delay, in accordance with the Supplier's safeguarding policy, and will be managed in accordance with the Supplier's safeguarding policy and disciplinary procedure as and where appropriate;
- 12.1.5 in order for the Academy to ensure that it complies with its obligations to submit any necessary serious incident report to the Charity Commission, inform the Academy, without delay, in the event (i) the Supplier becomes aware of any safeguarding concern or allegation that has arisen in relation to the Services; (ii) of a safeguarding allegation relating to an individual associated with the Supplier which leads to an investigation and/or referral to the Police and/or Local Authority and/or a regulatory body (such as the Disclosure and Barring Service); or (iii) of the occurrence of a breach or failure of policy, on the part of an individual associated with the Supplier, which could have put people at risk of harm and/or resulted in a referral to the Police and/or Local Authority and/or a regulatory body;
- 12.1.6 ensure that any safeguarding concern or allegation which arises in relation to an individual associated with the Academy is reported, without delay, to the Academy's Safeguarding Lead, and in accordance with the Academy's Safeguarding Policy, who will manage the safeguarding concern or allegation in accordance with that Policy; and
- 12.1.7 promptly inform the Academy should the Supplier become aware of any fact or change in circumstances which may impact its ability to carry out the Services, and/or may put the beneficiaries of the Services at risk of harm.

### **13. Data Protection**

- 13.1 In this clause **Controller**, **Processor**, **Data Subject** and **Personal Data** shall have the meanings as defined in the Data Protection Legislation.
- 13.2 Each party agrees:

- (a) to comply with the Data Protection Legislation and not knowingly to do or omit to do anything which would result in a breach by the other party of Data Protection Legislation;
- (b) to provide reasonable assistance to the other party to enable it to comply with Data Protection Legislation.

13.3 Any breach of clause 12 by the Supplier shall be deemed a material breach of the Agreement and shall entitle the Academy to terminate the Agreement in accordance with clause 18.

#### Supplier as a Processor

13.4 To the extent that Supplier processes any Personal Data on behalf of the Academy while performing the Services, the parties agree that the Supplier shall do so as a Processor and the Academy shall be the Controller and clauses 13.5 to 13.10 below and Schedule 5 shall apply. For the avoidance of doubt, where the Supplier is a Processor, clauses 13.1 to 13.3 shall still apply.

13.5 The Supplier shall:

- (a) only carry out processing of any such Personal Data on the Academy's documented instructions from time to time;
- (b) take and/or implement all appropriate technical and organisational measures against unauthorised or unlawful processing of such Personal Data, and against accidental loss, alteration or destruction of, or damage to, such Personal Data, and ensure the security of such data at all times;
- (c) notify the Academy immediately of any security breach affecting any Personal Data;
- (d) not modify, amend or alter the contents of such Personal Data other than as strictly necessary for the purposes of performing the Services;
- (e) not disclose or permit the disclosure of any such Personal Data to a Data Subject or other third party unless authorised in writing by the Academy;
- (f) only use and process such Personal Data in accordance with the terms of this Agreement and in compliance with the provisions of Data Protection Legislation, and only then to the extent absolutely necessary for and in connection with the performance of the Services;
- (g) only transfer such personal data to countries outside the European Economic Area with the Academy's authority and subject to appropriate protections as required by Data Protection Legislation;
- (h) on termination of this Agreement or any earlier termination of the Supplier's right or obligation to process Personal Data on the Academy's behalf, and as otherwise directed by the Academy in respect of such Personal Data, the Supplier shall either:
  - (i) destroy the Personal Data and all copies thereof; or

- (ii) transfer the Personal Data to the Academy or such other third party as the Academy may direct;

unless storage or other processing of the Personal Data is required by law.

- 13.6 If the Supplier receives any complaint, notice or communication which relates directly or indirectly to the processing of Personal Data or to compliance by it or the Academy with the Data Protection Legislation (including requests from Data Subjects for the exercising of their statutory rights), the Supplier shall promptly notify the Academy and shall provide it with full co-operation and assistance in relation to any such complaint, notice or communication.
- 13.7 The Supplier shall provide reasonable assistance to the Academy, having regard to the nature of processing and the information available to the Supplier in order to assist the Academy to comply with its obligations under Data Protection Legislation (including the notification of a Personal Data breach to the relevant regulator or to the Data Subject(s) affected, the preparation of data protection impact assessments, where appropriate).
- 13.8 The Supplier shall keep and provide to the Academy on request a record of the Supplier's use of the Personal Data and processing activities and shall make available to the Academy all information necessary (and allow for and contribute to audits or inspections) to demonstrate compliance with the Supplier's data processing obligations set out in this Agreement.
- 13.9 The Supplier shall ensure that its employees or other representatives who are authorised to process the Personal Data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality.
- 13.10 The Academy hereby authorises the Supplier to engage the third parties listed at Schedule 5 as subprocessors. The Academy hereby authorises the Supplier to engage new third parties to process the Personal Data on its behalf in connection with the performance of the Services provided that the Supplier:
  - (a) gives the Academy prior notice of any new appointment of any such sub-processor before authorising any such new sub-processor to process Personal Data, such notice to be given no less than thirty (30) days before any sub-processing commences. If the Academy objects (such objection to be exercised reasonably) to the Supplier's use of a new sub-processor the Academy shall be entitled to terminate the Agreement upon written notice provided that such notice is given within fourteen (14) days of receipt of the Supplier's notification of the appointment of the sub-processor.
  - (b) enters into a written subcontract with such third party to ensure that it only processes the Personal Data in performing the specific obligations required of it under the subcontract and on data processing terms no less onerous than those which bind Supplier under clauses 13.5 to 13.10 (in particular providing sufficient guarantees to implement appropriate technical and organisational measures in such a manner that the processing will meet the requirements of the Data Protection Legislation); and

- (c) remains at all times fully liable under the terms of this Agreement for all obligations in respect of the Personal Data, including for all acts or omissions of any third party sub-processor.

#### **14. Confidentiality**

- 14.1 Each party undertakes that it shall not at any time during this Agreement, and after the termination of the Agreement for such time as the relevant material is maintained as confidential, disclose to any person any confidential information concerning the business, affairs, clients or suppliers of the other party, except as permitted by clause 14.2.
- 14.2 Each party may disclose the other party's confidential information:
  - (a) to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with this Agreement. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 14; and
  - (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 14.3 No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with this Agreement.
- 14.4 The provisions of this clause 14 shall continue in force in accordance with their terms, notwithstanding the termination of this Agreement for any reason.

#### **15. Anti-Bribery**

The Supplier shall not, in the performance of its obligations under this Agreement, act in a manner that constitutes a breach of applicable laws, regulations, codes and sanctions relating to anti-bribery and anti-corruption including the Bribery Act 2010. The Supplier shall comply with any policy or procedure governing anti-bribery imposed by the Academy and warrants that in providing the Services will not induce or improperly reward any third party, including any public official, to act improperly. For the purposes of this condition to act improperly shall be interpreted in accordance with the Bribery Act 2010. The Academy shall be entitled to terminate this Agreement immediately and to recover from the Supplier the amount of any loss resulting from a breach of this clause 15.

#### **16. Anti-Slavery and Human Trafficking**

In performing its obligations under this Agreement, the Supplier shall comply with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force including but not limited to the Modern Slavery Act 2015; and the Supplier represents, warrants

and undertakes to the Academy that it conducts its business in a manner that is consistent with Applicable Laws relating to modern slavery and human trafficking.

## **17. Limitation of liability**

### **17.1 Nothing in this Agreement:**

- (a) shall limit or exclude the Supplier's or the Academy's liability for:
  - (i) death or personal injury caused by its negligence, or the negligence of its personnel, agents or subcontractors;
  - (ii) fraud or fraudulent misrepresentation;
  - (iii) breach of the terms implied by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession) any other liability which cannot be limited or excluded by applicable law; or
- (b) shall limit or exclude the Supplier's liability under clause 20.1 (TUPE indemnity).

### **17.2 Subject to clause 17.1:**

- (a) neither party to this Agreement shall have any liability to the other party, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any indirect or consequential loss arising under or in connection with this Agreement; and
- (b) the Academy's total liability to the Supplier, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, arising under or in connection with this Agreement shall be limited to an amount equal to the Charges paid or payable in respect of that twelve month period.

17.3 Neither party may benefit from the limitations and exclusions set out in this clause in respect of any liability arising from its deliberate default.

17.4 The rights of the Academy under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by the common law.

17.5 This clause 17 shall survive termination of the Agreement.

## **18. Termination**

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

- (a) with immediate effect by giving written notice to the Supplier if:
  - (i) there is a change of Control of the Supplier; or

- (ii) the Supplier's financial position deteriorates to such an extent that in the Academy's opinion the Supplier's capability to adequately fulfil its obligations under the Agreement has been placed in jeopardy; or
    - (iii) the Supplier commits a breach of clause 11 (Compliance with laws and policies), clause 12 (Data Protection), and / or clause 15 (Anti-bribery)[, and clause 12 (Safeguarding)]; or
  - (b) at any time by notice in writing to the Supplier to take effect on any date falling at least one (1) month (or, if the Agreement is less than three (3) months in duration, at least ten (10) calendar days) after the date of service of the relevant notice.
- 18.2 Without affecting any other right or remedy available to it, either party may terminate the Agreement with immediate effect by giving written notice to the other party if:
- (a) the other party commits a material breach of any term of the Agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of thirty (30) days after being notified in writing to do so;
  - (b) the other party takes any step or action in connection with its entering administration, provisional liquidation or any composition or arrangement with its creditors (other than in relation to a solvent restructuring), being wound up (whether voluntarily or by order of the court, unless for the purpose of a solvent restructuring), having a receiver appointed to any of its assets or ceasing to carry on business or, if the step or action is taken in another jurisdiction, in connection with any analogous procedure in the relevant jurisdiction; or
  - (c) the other party suspends, or threatens to suspend, or ceases or threatens to cease to carry on all or a substantial part of its business.

## **19. Consequences of termination**

- 19.1 On termination or expiry of this Agreement:
- (a) the Supplier shall immediately deliver to the Academy all Deliverables whether or not then complete and return all of the Academy Materials;
  - (b) the Supplier shall, if so requested by the Academy, provide all assistance reasonably required by the Academy to facilitate the smooth transition of the Services to the Academy or any replacement supplier appointed by; and
  - (c) any provision of the Agreement that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Agreement shall remain in full force and effect.
- 19.2 Termination or expiry of this Agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the



right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination or expiry.

## **20. Relationship between the parties**

- 20.1 Nothing in this Agreement shall be construed as creating a partnership, a contract of employment or a relationship of principal and agent between the Academy and the Supplier. The Supplier shall have sole responsibility for the wages, taxes etc payable to the staff and hereby indemnifies the Academy against any liabilities relating to their employment (including any liabilities under the Transfer of Undertakings (Protection of Employment) Regulations 2006 TUPE).
- 20.2 For the avoidance of doubt, the Supplier shall not be entitled to hold itself out (or describe itself) as an affiliate or partner of the Academy without the Academy's prior written consent.

## **21. Publicity**

The Supplier shall not make any press announcements or publicise this Agreement in any way without the Academy's prior written consent and shall not do anything or cause anything to be done, which may damage the reputation of the Academy or bring the Academy into disrepute.

## **22. Inadequacy of damages**

Without prejudice to any other rights or remedies that the Academy may have, the Supplier acknowledges and agrees that damages alone would not be an adequate remedy for any breach of the terms of this Agreement by the Supplier. Accordingly, the Academy shall be entitled to the remedies of injunction, specific performance or other equitable relief for any threatened or actual breach of the terms of this Agreement.

## **23. Force majeure**

- 23.1 **Force Majeure Event** means any circumstance not within a party's reasonable control including, without limitation:
- (a) acts of God, flood, drought, earthquake or other natural disaster;
  - (b) epidemic or pandemic;
  - (c) 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;
  - (d) nuclear, chemical or biological contamination or sonic boom;
  - (e) any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent;
  - (f) collapse of buildings, fire, explosion or accident;

- (g) any labour or trade dispute, strikes, industrial action or lockouts (other than in each case by the party seeking to rely on this clause, or companies in the same group as that party); and
  - (h) interruption or failure of utility service.
- 23.2 Provided it has complied with clause 23.4, if a party is prevented, hindered or delayed in or from performing any of its obligations under this Agreement by a Force Majeure Event (**Affected Party**), the Affected Party shall not be in breach of this Agreement or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.
- 23.3 The corresponding obligations of the other party will be suspended, and its time for performance of such obligations extended, to the same extent as those of the Affected Party.
- 23.4 The Affected Party shall:
  - (a) as soon as reasonably practicable after the start of the Force Majeure Event notify the other party in writing of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under the Agreement; and
  - (b) use all reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.

## **24. Non-solicitation**

- 24.1 Neither party shall (except with the prior written consent of the other party) directly or indirectly solicit or entice away (or attempt to solicit or entice away) from the employment of the other party any person employed or engaged by such other party in the provision of the Services or (in the case of the Academy) in the receipt of the Services at any time during the duration of this Agreement as defined in accordance with clause 2 or for a further period of 6 months after the termination of this agreement other than by means of a national advertising campaign open to all comers and not specifically targeted at any of the staff of the other party.
- 24.2 Neither Party shall, for the term of this Agreement and for a period of 12 months after its termination or expiry, solicit or entice away from the other Party any customer, client or any person who is employed or otherwise engaged by the other Party, where any such solicitation or enticement would cause damage to the business of that Party.
- 24.3 The Service Provider shall not, for the Term of this Agreement, solicit or seek to contract their services, to any beneficiary or organisation wholly or partially owned by a beneficiary, during their award period with the Academy. If a beneficiary, or organisation wholly or partially owned by a beneficiary, solicits or seeks to contract the Service Provider on a commercial basis, the Service Provider must seek written approval from the Academy (not to be unreasonably declined) to

engage in any commercial relationship with a beneficiary during their award period with the Academy. Nothing in this clause will preclude the Service Provider from providing their services to a Beneficiary free of charge.

## **25. Assignment and other dealings**

- 25.1 Notwithstanding clause 25.2, the Supplier shall not assign, transfer, mortgage, charge, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under this Agreement.
- 25.2 The Supplier may only sub-contract its rights and obligations under this Agreement with the Academy's prior written consent and provided that:
- (a) the Supplier shall remain wholly liable to the Academy in relation to its obligations under this Agreement notwithstanding such sub-contracting;
  - (b) the Supplier shall enter into a written agreement with any sub-contractor which contains terms no less onerous than those contained in this Agreement and which shall terminate on or before any termination or expiry of this Agreement (including early-termination);
  - (c) the Supplier shall be liable to the Academy for any breach, act or omission caused by any sub-contractor;
  - (d) no sub-contractor will have any rights under this Agreement (or in law) to enforce any right or obligation under this Agreement.
- 25.3 The Academy may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights under this Agreement.

## **26. Variation**

Subject to clause 6 (Changes), no variation of this Agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

## **27. Waiver**

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

- 27.3 A party that waives a right or remedy provided under this Agreement or by law in relation to one party or takes or fails to take any action against that party, does not affect its rights in relation to any other party.

**28. Rights and remedies**

The rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

**29. Severance**

- 29.1 If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this Agreement.

- 29.2 If any provision or part-provision of this Agreement is deemed deleted under clause 29.1 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.

**30. Entire Agreement**

- 30.1 This Agreement 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.

- 30.2 Each party agrees that it shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement.

- 30.3 Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this Agreement.

**31. Conflict**

If there is an inconsistency between any of the provisions of this Agreement and the provisions of the schedules, the provisions of this Agreement shall prevail.

**32. Third party rights**

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

### **33. Notices**

- 33.1 Any notice given to a party under or in connection with this Agreement shall be in writing and shall be:
- (a) delivered by hand or by pre-paid first-class post or other next business day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
  - (b) sent by email to the authorised representative.
- 33.2 Any notice shall be deemed to have been received:
- (a) if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;
  - (b) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second business day after posting or at the time recorded by the delivery service; and
  - (c) if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause 33.2(c), business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.
- 33.3 This clause does not apply to the service of any proceedings or any documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

### **34. Counterparts**

- 34.1 This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute the one Agreement.
- 34.2 Transmission of the executed signature page of a counterpart of this Agreement by email (in PDF, JPEG or other agreed format) shall take effect as delivery of an executed counterpart of this Agreement. If either method of delivery is adopted, without prejudice to the validity of the Agreement thus made, each party shall provide the others with the original of such counterpart as soon as reasonably possible thereafter.
- 34.3 No counterpart shall be effective until each party has executed and delivered at least one counterpart.

### **35. Multi-tiered dispute resolution procedure**

- 35.1 If a dispute arises out of or in connection with this Agreement or the performance, validity or enforceability of it (**Dispute**), then the parties shall follow the procedure set out in this clause:

- (a) either party shall give to the other written notice of the Dispute, setting out its nature and full particulars (**Dispute Notice**), together with relevant supporting documents. On service of the Dispute Notice, the Academy Manager and the Supplier Manager shall attempt in good faith to resolve the Dispute;
- (b) if the above authorised representatives are for any reason unable to resolve the Dispute within thirty (30) days of service of the Dispute Notice, the Dispute shall be referred to the **[INSERT SENIOR OFFICER TITLE]** of the Academy and **[INSERT SENIOR OFFICER TITLE]** of the Supplier who shall attempt in good faith to resolve it; and
- (c) if the **[INSERT SENIOR OFFICER TITLE]** of the Academy and **[INSERT SENIOR OFFICER TITLE]** of the Supplier are for any reason unable to resolve the Dispute within thirty (30) days of it being referred to them, the parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator shall be nominated by CEDR. To initiate the mediation, a party must serve notice in writing (**ADR notice**) to the other party to the Dispute, requesting a mediation. A copy of the ADR notice should be sent to CEDR. The mediation will start not later than fourteen (14) days after the date of the ADR notice.

35.2 No party may commence any court proceedings under clause 37 (Jurisdiction) in relation to the whole or part of the Dispute until fourteen (14) days after service of the ADR notice, provided that the right to issue proceedings is not prejudiced by a delay.

35.3 If the Dispute is not resolved within fourteen (14) days after service of the ADR notice, the Dispute shall be finally resolved by the courts of England and Wales in accordance with clause 37 (Jurisdiction).

### 36. Governing law

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

### 37. Jurisdiction

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

This Agreement has been entered into on the date stated at the beginning of it.

On behalf of: [insert full name of **Supplier**]

SIGNED by: [print name]

Position: [insert position of **Supplier**]

Signature: [insert signature of **Supplier**]

On behalf of the **Royal Academy of Engineering**:

SIGNED by: [print name]

Position: [insert staff position]

Signature: [insert staff signature]

## Schedule 1 The Services

This Schedule sets out the intended scope of the Services to be provided by the Supplier and to provide a description of what each Service entails.

### 1. Services:

- [To be agreed/inserted upon contract award]

### 2. Service Levels (Quality Benchmarks):

- [To be agreed/inserted upon contract award]

| Category                               | Description   |
|--|---|
| [Service Level Metric 1 to be defined] | [Definition and measurement methodology to be agreed] |
| [Service Level Metric 2 to be defined] | [Definition and measurement methodology to be agreed] |

### 3. Academy Materials:

- [To be agreed/inserted upon contract award]

### 4. Supplier's Equipment

- [To be agreed/inserted upon contract award]

### 5. Milestones (Steps/How):

| Milestone   | Description                                 | Target Completion Date | Expected Deliverables |
|-------------|---|------------------------|-----------------------|
| Milestone 1 | [To be agreed/inserted upon contract award] | [Date]                 |                       |
| Milestone 2 | [To be agreed/inserted upon contract award] | [Date]                 |                       |

### 6. Timetable:

| Task   | Start Date | End Date | Dependencies (optional) |
|--------|------------|----------|-------------------------|
| Task 1 | [Date]     | [Date]   |                         |
| Task 2 | [Date]     | [Date]   |                         |
| ...    |            |          |                         |



**7. Deliverables:**

| Deliverable          | Description                                      | Format | Delivery Method | Acceptance Criteria |
|----------------------|--|--------|-----------------|---------------------|
| <b>Deliverable 1</b> | <i>To be agreed/inserted upon contract award</i> |        |                 |                     |
| <b>Deliverable 2</b> | <i>To be agreed/inserted upon contract award</i> |        |                 |                     |

## Schedule 2 Charges, costs and payment

**Charges:** *[To be agreed/inserted upon contract award]*

### **EITHER**

#### ***[OPTION 1: FIXED PRICE (PREFERRED OPTION IN MOST CASES)]***

##### **Fixed price:**

- The total charges for the Services are £[AMOUNT] including VAT.
- The fixed price is calculated as follows:
  - *Calculation Method Example:*
    - *Consultant daily rate: £[AMOUNT] (inclusive of VAT)*
    - *Estimated project duration: [Number] days*
    - *Additional fee for [Specific Service 1]: £[AMOUNT] (if applicable)*
    - *Additional fee for [Specific Service 2]: £[AMOUNT] (if applicable)*

##### **Payment terms:**

- [To be agreed/inserted upon contract award]

##### **Costs of third party materials and services charged in addition to the Charges:**

The following materials and services procured from third parties shall be invoiced to the Academy in addition to the Charges: [INSERT DETAILS]

Schedule 3 **Supplier's Manager and Academy's Manager**

**Supplier's Key Personnel:**

- Supplier's Manager: [NAME]

**Academy Manager:**

- Academy's Manager: [NAME]

#### Schedule 4 **Mandatory Policies**

**The Mandatory Policies are:**

- Anti-Bribery Policy.
- Anti-Bullying and Harassment Policy.
- Conflicts of Interest Policy.
- Diversity and Inclusion Policy
- General Privacy Policy.
- General Safeguarding Policy.
- Health and Safety Policy.
- Modern Slavery Policy.
- Safeguarding Children and Adults at Risk Policy.
- Whistleblowing Policy.
- National Security Risks Policy.

Copies of the policies are available here: <https://raeng.org.uk/policies>

## Schedule 5 Data processing details

### Table of data processing

The table below outlines the data being shared and processed. The section below is the guidance notes for filling out this table.

| Data Sharing Agreement                             |  |                          |
|--|--|--------------------------|
| Categories of data subjects                        |  |                          |
| <i>[To be agreed/inserted upon contract award]</i> |  |                          |
|  |  |                          |
| Nature and purpose of processing operations        |  |                          |
| <i>[To be agreed/inserted upon contract award]</i> |  |                          |
| Data processing period                             | <i>From Contract Signature</i>                     | <i>To September 2023</i> |
| Data deletion date                                 | <i>[To be agreed/inserted upon contract award]</i> |                          |
| Academy representative                             | <i>[To be agreed/inserted upon contract award]</i> |                          |
| List of subcontractors (if applicable)             |  |                          |
| <i>[To be agreed/inserted upon contract award]</i> |  |                          |
| Supplier Data Protection Officer contact details   |  |                          |
| Name   |  |                          |
| Email address                                      |  |                          |
| Telephone number                                   |  |                          |
| Data field   | Category of data                                   |                          |
| <i>Last name</i>                                   | <i>Personal Data</i>                               |                          |
| <i>Email</i>                                       | <i>Personal Data</i>                               |                          |

