

AQA's standard terms and conditions of purchase for the supply of goods and services - February 2023 v19.0

1. Agreement

1.1 These standard terms and conditions form part of the Purchase Order and together with any special conditions agreed between the parties ("Special Conditions") shall comprise the agreement between the Parties ("the Agreement"). In the event of any conflict between the documents comprising this Agreement, the Purchase Order shall take precedence over the Special Conditions, which in turn shall take precedence over these standard terms and conditions.

1.2 These terms of the Agreement are the only terms on which AQA is prepared to deal with the Supplier and they shall govern the Agreement to the entire exclusion of all other terms or conditions subject to any variation under clause 23. No terms and/or conditions endorsed upon, delivered with or contained in the Supplier's quotation, acknowledgement or acceptance of order, specification or similar document whether delivered orally or in writing will form part of the Agreement and the Supplier waives any right which it otherwise might have to rely on such terms and/or conditions.

1.3 Each Purchase Order by AQA shall be deemed to be an offer by AQA to purchase Goods and/or Services subject to the Agreement and no Purchase Order shall be accepted until the Supplier either expressly by giving notice of acceptance or implied by fulfilling the Purchase Order, in whole or in part, accepts the offer.

1.4 The Supplier shall supply AQA with the Goods/ Services described in the Purchase Order at the price set out in the Purchase Order, to the timings and to the terms and conditions set out in this Agreement.

1.5 An AQA Affiliate may execute a Purchase Order under this Agreement provided that, such Purchase Order clearly states that it is an attachment to and is subject to the terms and conditions of this Agreement, and further, that by executing such Purchase Order, the AQA Affiliate is deemed to be bound by the terms and conditions of this Agreement. Where a Purchase Order referencing this Agreement is executed between the Supplier or any AQA Affiliate, all references within this Agreement to AQA shall apply to such

AQA Affiliate as if such AQA Affiliate had entered into this Agreement. Furthermore, each Purchase Order shall create a separate and binding contract between the two contracting parties thereto, and AQA shall not be a party nor be liable for the AQA Affiliate's separate and binding commitments under the applicable Purchase Order.

Goods

2. Conformity quality and fitness for purpose

2.1 All Goods supplied must be new and unused and of satisfactory quality and free from defects, patent or latent, in design, material or workmanship. The Goods shall conform to the quantity, quality and specification stated in the Purchase Order and any variations thereto and/or any drawings, specifications, descriptions or samples submitted. The approval by AQA of any designs supplied by the Supplier shall not relieve the Supplier of its obligations under any provision of this Agreement.

2.2 The Goods shall be fit and sufficient for the purpose for which such goods are ordinarily used and for any particular purpose made known to the Supplier by AQA or held out by the Supplier and AQA relies on the skill and judgement of the Supplier in the supply of the Goods and the execution of the Purchase Order.

2.3 The Goods shall conform in all respects with the requirements of any statutes, Purchase Orders, regulations, voluntary codes of conduct, standards or bye-laws from time to time in force.

3. Delivery carriage and packing

3.1 The Supplier shall use reasonable endeavours to meet AQA's request to change delivery timings at no extra cost to AQA and will inform AQA at once of any difficulty. AQA may refuse early delivery.

A delivery or advice note must accompany every delivery of Goods, detailing the Purchase Order number, quantities and description of the Goods included in the consignment, and in the case of Goods supplied by instalment, the outstanding balance of Goods to be delivered. The Supplier must obtain a legible authorised signature on a separate copy of the Delivery

Note, as proof of delivery. Delivery will be complete on receipt of such signed Delivery Note.

3.2 All Goods must be delivered at the delivery point and by the delivery date as specified in the Purchase Order, between 0830 and 1630 hours Monday to Friday, unless otherwise agreed by AQA in writing. The Supplier shall off-load Goods at its own risk as directed by AQA.

3.3 The cost of carriage to be paid by Supplier to AQA's delivery address, unless otherwise agreed and stated on the Purchase Order.

3.4 The Goods shall be securely packed in such manner as to enable them to reach their destination in good condition and in accordance with best commercial practices and marked in a proper manner and in accordance with AQA's instructions and any statutory requirements.

3.5 All packaging shall be considered as non- returnable and the cost as having been included in Supplier's price, unless otherwise agreed and stated on the Purchase Order.

3.6 Where more than one item of Goods is involved in the Agreement and AQA agrees to accept delivery by instalments, the Agreement shall be construed as a separate contract in respect of each instalment.

3.7 If any Goods, or an instalment of Goods, is/are not delivered on the date specified in the Purchase Order then, without limiting any other right or remedy AQA might have, AQA may:

3.7.1 refuse to take any subsequent attempted delivery of the order and require a refund of any monies paid;

3.7.2 terminate this agreement with immediate effect;

3.7.3 obtain substitute products from another supplier and recover from the Supplier any costs and expenses reasonably incurred by AQA in obtaining such substitute goods;

3.7.4 claim damages for any other costs, expenses or losses resulting from the Supplier's failure to deliver the order on the delivery date; and

3.7.5 AQA may, at its sole discretion, destroy or sell at a public or private sale any rejected Goods for which AQA does not receive shipping instructions within a reasonable time, and apply the proceeds if any first toward any storage charges.

3.8 Save that the Supplier shall have no liability for any failure or delay in delivering an order to the extent that such failure or delay is caused by AQA's failure to comply with its obligations under this Agreement.

4. Inspection and rejection

4.1 The Supplier shall permit AQA or its authorised representatives to make any inspections or tests he may reasonably require and the Supplier shall afford all reasonable facilities and assistance free of charge at his premises. No failure to make complaint at the time of such inspection or tests and no approval given during or after such tests or inspections shall constitute a waiver by AQA of any rights or remedies in respect of the Goods.

4.2 If following an inspection AQA reasonably considers that the Goods are not or are not likely to be as warranted under clause 2 AQA shall inform the Supplier and the supplier shall immediately take such action as is necessary to ensure that the Goods are or will be as warranted under clause 2. AQA shall have the right to re-conduct inspections and take further samples after the Supplier has carried out the remedial actions.

4.3 AQA shall not be deemed to have accepted any Goods until it has had a reasonable time to inspect them following delivery, or, in the case of a latent defect in the Goods, until a reasonable time after the latent defect has become apparent.

4.4 If any Goods do not comply with clause 2 or are otherwise not in conformity with this Agreement then, without limiting any other right or remedy AQA may have, AQA may reject those Goods and:

4.4.1 require the Supplier to repair or replace the rejected Goods at the Supplier's risk and expense within five Working Days of being requested to do so; or

4.4.2 require the Supplier to repay the price of the rejected Goods in full; and claim damages for any other costs, expenses or losses resulting from the Supplier's delivery of Goods that are not in conformance with the terms of this Agreement.

4.5 AQA's rights under clause 4.4 are in addition to the rights and remedies available to it in respect of the statutory conditions implied into this Agreement by the Sale of Goods Act 1979.

4.6 If a Supplier fails promptly to repair or replace the Goods in accordance with clause 4.4.1 then AQA may, without affecting its rights under clause 4.4.2, obtain substitute goods from a third party supplier, or have the rejected Goods repaired by a third party, and the Supplier shall reimburse AQA for the costs it incurs in doing so.

5. Property and risk

5.1 Property and risk in the Goods shall without prejudice to any of the rights or remedies of AQA pass to AQA at the time of acceptance.

Services

6. Supplying services

- 6.1 In supplying the Services, the Supplier shall:
- 6.1.1 perform the Services with the highest level of care, skill, diligence, prudence, foresight and judgment and in accordance with the best practice in the Supplier's industry, profession or trade;
- 6.1.2 ensure that the Services conform with all descriptions and specifications provided to the Supplier by AQA and shall be fit for any purpose expressly or impliedly made known to the Supplier by AQA; and
- 6.1.3 ensure that the Services and any deliverables will conform in all respects with the requirements of any statutes, Purchase Orders, regulations, voluntary codes of conduct, standards or bye-laws from time to time in force.
- 6.2 AQA's rights under this Agreement are in addition to the statutory terms implied by the Supply of Goods and Services Act 1982 and any other statute.
- 6.3 The provisions of this clause 6 shall survive any performance, acceptance or payment pursuant to this Agreement and shall extend to any substituted or remedial services provided by the Supplier.
- 6.4 If the Supplier breaches clauses 6.1 or 7 of this Agreement, then AQA may (without prejudice to any other rights in may have):
- 6.4.1 terminate this Agreement in whole or in part without liability to the AQA;
- 6.4.2 refuse to accept any subsequent performance of the Services which the Supplier attempts to make;
- 6.4.3 purchase substitute services from elsewhere; and
- 6.4.4 claim from the Supplier any loss or additional costs incurred.
- 6.5 The Supplier shall have no liability to AQA to the extent that it is prevented from performing its obligations under this Agreement to the extent that such failure is caused by AQA's failure to perform its obligations under this Agreement.

General

7. Timing

- 7.1 Time shall be of the essence in the Supplier's performance of its obligations under this Agreement and failure to deliver Goods on or Services by any dates agreed gives AQA the rights under clauses 3.7 and 6.4.

8. Supplier's Personnel

- 8.1 The Supplier is responsible for all acts and omissions of the Supplier's Personnel to ensure compliance with all relevant health, safety and environmental legislation and the security of such persons and their property.
- 8.2 All members of the Supplier's Personnel shall be appropriately qualified, competent and experienced so as to ensure that the Supplier complies with all the Supplier's obligations under this Agreement.
- 8.3 With respect to the supply of Services, no changes or substitutions may be made to Key Personnel engaged in the provision of the Services without AQA's prior written consent.
- 8.4 If AQA considers any member of the Supplier's Personnel engaged in the provision of Services to be unsuitable, the Supplier may be asked to substitute such member as quickly as reasonably possible with a replacement acceptable to AQA, with no direct or indirect charge to AQA.
- 8.5 The Supplier will immediately notify AQA's Duly Authorised Representative if any of its Key Personnel or any of their Close Relatives are taking an AQA examination.
- 8.6 The Supplier shall procure that the Supplier's Personnel take all reasonable steps to safeguard their own safety and the safety of any other person who might be affected by their actions.

9. Supplier's Obligations

- 9.1 The Supplier agrees and hereby warrants that it:
- 9.1.1 has obtained all necessary licences and consents from the appropriate licensors in respect of the Goods and/or Services or any part of it to enable AQA to use the Goods and/or Services;
- 9.1.2 has the full power to enter into the Agreement and to perform its obligations under the Agreement;
- 9.1.3 does not and will not in the provision of the Goods and/or Services infringe upon any third party's Intellectual Property Rights, trade secrets, rights in proprietary information, rights of publicity or privacy, employment rights, duties of non-disclosure or any other proprietary rights, whether contractual, statutory or common law;
- 9.1.4 has checked and ensured that all the Supplier's Personnel are eligible to work in the UK under the relevant legislation from time to time in force;
- 9.1.5 shall comply with AQA's child and vulnerable adult safeguarding policy (available upon request) in the event that the Service brings the Supplier or the Supplier's Personnel into contact with children or

vulnerable adults;

- 9.1.6 shall on completion of the Service, remove all plant, equipment, unused materials and waste and leave the site in an acceptable condition as agreed with AQA;
- 9.1.7 shall ensure all equipment used in performance of the Agreement is appropriately risk assessed, free from defect, and shall be fit for purpose;
- 9.1.8 shall promptly notify AQA of any health and safety hazards which may arise in connection with the provision of the Services. In turn AQA shall notify the Supplier of any health and safety hazards of which it is aware which may arise in connection with the performance of the Agreement;
- 9.1.9 shall where the Service is performed on AQA premises supply relevant risk assessments and method statements as may be requested by AQA;
- 9.1.10 shall ensure that the Supplier's Personnel adhere to all the documents comprising this Agreement
- 9.1.11 shall comply with the AQA supplier code of conduct (available upon request).

9.2 The Supplier agrees that under no circumstances shall it or any of its sub-suppliers or sub-contractors acquire title to or any interest in or lien over any goods belonging to AQA or its suppliers, or in respect of which AQA or its suppliers have a right to possession and which are held, stored or transported in providing the Services, nor shall it or any of its sub-suppliers or sub-contractors acquire any title to or any interest in or lien over AQA data or any AQA property. The Supplier shall use any AQA property solely in the provision of the Services and not for any other purpose unless otherwise agreed in writing by the Parties.

10. Sub-Contracting, Assignment and Transfer

10.1 The Supplier shall not sub-contract, assign, transfer or cause to be assigned or transferred, or otherwise dispose of or create any trust in relation to any or all of its obligations or any part, share or interest therein under this Agreement, whether actually or as the result of takeover, merger or other change of identity or character of the Supplier, without the prior written consent of AQA.

10.2 If, having obtained AQA's consent, the Supplier sub-contracts any of its obligations, the sub-contract shall include rights for the Supplier and obligations on the sub-contractor to ensure that AQA's rights and the Supplier's obligations as set out in this Agreement can be enforced directly against the sub-contractor. The Supplier shall nonetheless remain primarily liable for the acts of its sub-contractors as if they were the acts of the Supplier itself.

10.3 The Supplier shall require any sub-contractors

engaged by it to sign a confidentiality undertaking on the same terms as that entered into between AQA and the Supplier in accordance with clause 13.

10.4 Where the Supplier is an individual, they may send a replacement supplier to perform the Services, at no extra charge, provided a minimum lead time of five days is agreed with AQA and provided always such alternative supplier has equivalent qualification and expertise to the Supplier performing the services and can comply with the same qualifying criteria set by AQA in the selection of the Supplier.

11. Price

11.1 The price specified on the Purchase Order shall remain fixed and no increase will be accepted by AQA unless otherwise agreed in writing before the execution of the Purchase Order. All indirect charges such as but not limited to packaging, freight, insurance, import duties, foreign taxes and other like charges shall be included in the price.

11.2 All prices exclude VAT, which shall be added at the prevailing rate at the time of invoicing where applicable.

12. Payment

12.1 In consideration for the provision of the Goods and/or Services, AQA shall pay to the Supplier the amounts specified in the Purchase Order. Unless otherwise stated on the Purchase Order, invoices for Goods and/or Services should be emailed to:

12.1.1 AP@aqa.org.uk where the Purchase Order is on behalf of AQA Education; or

12.1.2 AccountsPayableMK@aqa.org.uk where the Purchase Order is on behalf of AQA Milton Keynes Limited,

12.2 In all cases the invoice must quote the relevant Purchase Order number and provide the Supplier's banking details in order to enable payment through the Banks Automated Clearing System (BACS). All valid invoices will be paid within 30 days of receipt of the invoice.

12.3 Any invoice not presented in accordance with clause 12.1 may be rejected and in any event shall be liable to query and delay in payment. **ANY INVOICE PRESENTED WITHOUT A VALID PURCHASE ORDER NUMBER AS REQUIRED IN CLAUSE 12.1 WILL BE REJECTED.** No interest shall accrue in respect of any amount due and so delayed.

12.4 The Supplier shall invoice AQA monthly in arrears for Goods or Services delivered in the previous month unless provided otherwise in the Purchase Order.

12.5 Without prejudice to any other right or remedy, AQA reserves the right to set off any amount owing at any time from the Supplier or associated company of the Supplier to the AQA against any sums payable by AQA to the Supplier

or associated company of the Supplier under the Contract where associated company has the same meaning as ascribed to it by section 416 Income and Corporation Taxes Act 1988.

12.6 Subject to clause 12.3, in the event of late payment by AQA the Supplier shall be entitled to charge AQA interest on the outstanding sum at the rate of 1% per annum above the base rate of the Bank of England, from the date when payment becomes due from day to day until the date of payment.

13. Disclosure of information

13.1 Each of the Parties shall not at any time while this Agreement is in force and after it has terminated or expired, disclose to any third party and shall keep confidential all Confidential Information and only use any Confidential Information for the proper exercise of its rights and the performance of its obligations under this Agreement. This clause shall not apply to Confidential Information which:

13.1.1 was already lawfully known, or became lawfully known to either of the parties by means other than pursuant to this Agreement;

13.1.2 becomes or which became generally known to the public by publication or other lawful means otherwise than due to a breach of this Agreement;

13.1.3 is required to be disclosed by law, order or by the lawful intervention of a regulatory body.

13.2 Each of the parties shall ensure that their respective employees, agents, sub-contractors or nominees shall comply with the requirements of this clause and, if requested, shall ensure that contractors sign a confidentiality undertaking. The parties shall use the same standard of care in sorting and handling Confidential Information as it if were proprietary information of their own.

13.3 Neither party shall publicise, make any public announcement, press release or other statement in respect of this Agreement without the prior written consent of the other party (not to be unreasonably withheld or delayed).

14. Data Protection

14.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 14 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.

14.2 The parties acknowledge that for the purposes of the Data Protection Legislation, AQA is the data controller and the Supplier is the data processor (where Data Controller and Data Processor have the meanings as defined in the Data Protection Legislation). Where the Supplier is required to process personal data on behalf of AQA, an appendix to these standard terms and conditions will be completed setting out

the scope, nature and purpose of processing by the Supplier, the duration of the processing and the types of Personal Data and categories of Data Subject (as defined in the Data Protection Legislation).

14.3 Without prejudice to the generality of clause 14.2, AQA will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to the Supplier for the duration and purposes of this agreement.

14.4 Without prejudice to the generality of clause 14.2, the Supplier shall, in relation to any Personal Data processed in connection with the performance by the Supplier of its obligations under this agreement:

14.4.1 process that Personal Data only on the written instructions of AQA unless the Supplier is required by Data Protection Legislation to otherwise process that Personal Data;

14.4.2 ensure that it has in place appropriate technical and organisational measures, reviewed and approved by AQA, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing, testing and evaluating the effectiveness of the technical and organisational measures adopted by it);

14.4.3 ensure that all personnel who have access to and/or process Personal Data undergo regular training in relation to their obligations on compliance with Data Protection Legislation and are obliged to keep the Personal Data confidential; and

14.4.4 not transfer any Personal Data outside of the United Kingdom unless the prior written consent of AQA has been obtained and the following conditions are fulfilled:

14.4.4.1 AQA or the Supplier has provided appropriate safeguards in relation to the transfer;

14.4.4.2 the data subject has enforceable rights and

- effective legal remedies;
- 14.4.4.3 the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
- 14.4.4.4 the Supplier complies with reasonable instructions notified to it in advance by AQA with respect to the processing of the Personal Data;
- 14.4.5 notify AQA immediately if it receives any complaint, notice or communication that relates directly or indirectly to the processing of the Personal Data or to either party's compliance with the Data Protection Legislation;
- 14.4.6 notify AQA within two Working Days if it receives a request from a Data Subject for access to their Personal Data or to exercise any of their related rights under the Data Protection Legislation;
- 14.4.7 assist AQA, at AQA's cost, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- 14.4.8 notify AQA without undue delay, and in all circumstances no later than 24 hours, on becoming aware of a Personal Data breach whereby the Personal Data is lost, destroyed, damaged, compromised or unusable;
- 14.4.9 in relation to any Personal Data breach assist AQA by providing all relevant information, measures taken to address the Personal Data breach and minimise any damage, and provide access to any facilities, records, logs, files, interviews and other materials which may be reasonably required by AQA;
- 14.4.10 at the written direction of AQA, delete or return Personal Data and copies thereof to AQA on termination of the agreement and certify in writing that it has done so unless required by Data Protection Legislation to store the Personal Data;
- 14.4.11 maintain complete and accurate records and information, as per Article 30 of the UK GDPR, to demonstrate its compliance with this clause 14 and allow for audits by AQA or AQA's designated auditor once per contract year in relation to the Supplier's Data Protection Legislation compliance; and
- 14.4.12 must not disclose the Personal Data to any Data Subject or to a third party other than at AQA's request or instruction, as provided for in this

agreement or as required by law.

14.5 The Supplier agrees that AQA has the sole right to determine whether a Personal Data breach is notified to any Data Subjects, supervisory authorities, regulators, law enforcement agencies or others.

14.6 AQA does not consent to the Supplier appointing any third party processor of Personal Data under this agreement unless with prior written agreement. Any current sub-processors must be declared to and approved by AQA prior to commencement of this agreement.

14.7 Either party may, at any time on not less than 30 days' prior notice, revise this clause 14 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to this agreement).

14.8 AQA is committed to protecting and respecting the privacy of your personal data. The AQA privacy notice (available upon request) explains how your data is collected, used, transferred and disclosed by us. It applies to data collected when you participate in our examinations, training or events; use our website, products or services; interact with us through social media, email, post, text or phone; apply for employment with us; or are employed by us.

15. Business Continuity

15.1 Unless otherwise agreed in writing by AQA the Supplier shall implement and maintain a Business Continuity Management System (BCMS) broadly in line with the international standard ISO22301 for business continuity management best practice.

16. Intellectual Property Rights

16.1 All rights (including ownership and copyright) in any specifications, instructions, plans, drawings, patterns, models, designs, data or other material furnished to or made available to the Supplier by AQA pursuant to this Agreement shall at all times be and remain vested solely in AQA and the Supplier shall not (except to the extent necessary for the implementation of this Agreement) without prior written consent of AQA use or disclose any such specifications, plans, drawings, patterns, models or designs or any information (whether or not relevant to this Agreement) and in particular (but without prejudice to the generality of the foregoing) the Supplier shall not refer to AQA or the Agreement in any advertisement without AQA's prior written agreement. Such materials shall be held by the Supplier in safe custody at its own risk and maintained and kept in good condition by the Supplier until returned to AQA and shall not be disposed of other than in accordance with AQA's written instructions.

16.2 Subject to clause 16.3, all new intellectual property

rights arising from the supply of Goods or Services under this Agreement shall be vested in and become the absolute property of AQA, with full title guarantee and free from all third party rights, and the Supplier shall do all that is reasonably necessary to ensure that such rights vest in AQA by the execution of appropriate instruments or the making of agreements with third parties, and shall obtain waivers of any moral rights in the Goods or Services, or related deliverables, to which any individual is now or may be at any future time entitled.

16.3 Nothing in clause 16.2 shall be construed as affecting the ownership of intellectual property rights in the Goods or Service in existence prior to the performance of this Agreement. The Supplier grants AQA, or shall procure the direct grant to AQA of, a fully paid-up, worldwide, non-exclusive, royalty-free perpetual and irrevocable licence to copy and modify any Supplier intellectual property rights existing prior to performance of this Agreement in the Goods or Services for the purpose of receiving and using the Services and the Deliverables.

16.4 All and any intellectual property rights arising from the supply of Services under this Agreement shall be deemed to be Confidential Information.

17. Anti-Bribery

17.1 The Supplier shall:

- 17.1.1 comply with all applicable laws, statutes, regulations and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 (Relevant Requirements);
- 17.1.2 not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;
- 17.1.3 promptly report to AQA any request or demand for any undue financial or other advantage of any kind received by the Supplier in connection with the performance of this Agreement;
- 17.1.4 within one month of the date of this Agreement, and annually thereafter, certify to AQA in writing signed by an officer of the Supplier, compliance with this clause 17 by the Supplier and all persons associated with it. The Supplier shall provide such supporting evidence of compliance as AQA may reasonably request.
- 17.1.5 The Supplier shall ensure that any person associated with the Supplier who is performing services in connection with this Agreement does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on the Supplier in this clause 17 (Relevant

Terms). The Supplier shall be responsible for the observance and performance by such persons of the Relevant Terms, and shall be directly liable to AQA for any breach by such persons of any of the Relevant Terms.

- 17.1.6 For the purpose of this clause 17, the meaning of adequate procedures and foreign public official and whether a person is associated with another person shall be determined in accordance with section 7(2) of the Bribery Act 2010 (and any guidance issued under section 9 of that Act), sections 6(5) and 6(6) of that Act and section 8 of that Act respectively. A person associated with the Supplier includes but is not limited to any subcontractor of the Supplier.

18. Conflict of interest

18.1 The Supplier and the Supplier's Personnel shall notify AQA immediately of any actual or potential conflict of interest relating to the obligations under this Agreement, including (without limitation) details of any Close Relatives of any Supplier who works for or is in any way connected with AQA.

18.2 The Supplier will propose recommendations as to how any conflict might be avoided and shall comply with any reasonable instructions from AQA to avoid or minimise the actual or potential conflict.

19. Indemnity and liability

19.1 The Supplier shall keep AQA fully indemnified against all claims and all direct, indirect or consequential liability, loss, damages, injury, costs and expenses (including legal expenses) awarded against or incurred or paid by AQA as a result of or in connection with:

- 19.1.1 any claim that the Goods and/or Services infringe, or their use, resale or importation infringes the British or foreign patent, copyright, registered design, design right, trade mark, trade name or other intellectual property right of any other third party except to the extent that the claim arises from any specifications, drawings, samples or descriptions provided AQA;
- 19.1.2 any claim made against AQA in respect of any liability, loss, damage, cost or expense sustained by AQA's employees or agents by any customer or third party to the extent that such liability, loss, damage, cost or expense was caused by, relates to or arises from the Goods and/or Services;
- 19.1.3 any injury (whether fatal or otherwise) to any person which might result directly or indirectly from any fault in the Goods or the negligent or wrongful act or omission of the Supplier;
- 19.1.4 Any breach of clauses 14 (Data Protection) or

clause 17 (Anti-Bribery).

19.2 Where the Supplier is an individual the Supplier agrees to indemnify AQA forthwith on demand, against any claims, demands, penalties and interest charges, brought or levelled against the Supplier by HM Revenue and Customs, arising out of or in connection with the fees paid by AQA to the Supplier under this Agreement, other than claims or demands in respect of employer national insurance contributions.

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

19.4 SUBJECT TO CLAUSE 19.6, AQA WILL NOT BE LIABLE TO THE SUPPLIER WITH RESPECT TO THE SUBJECT MATTER OF THIS AGREEMENT UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE FOR ANY AMOUNTS IN EXCESS OF THE AMOUNT AQA PAID TO THE SUPPLIER IN THE THREE MONTHS PRECEDING THE EVENT OR CIRCUMSTANCE GIVING RISE TO THE LIABILITY.

19.5 SUBJECT TO CLAUSE 19.6, IN NO EVENT WILL AQA BE LIABLE TO THE SUPPLIER FOR ANY INCIDENTAL, INDIRECT, SPECIAL, CONSEQUENTIAL DAMAGES OR LOSS OF PROFITS ARISING OUT OF, OR IN CONNECTION WITH, THE AGREEMENT, WHETHER OR NOT AQA WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.

19.6 NOTHING IN THIS AGREEMENT LIMITS EITHER PARTY'S LIABILITY FOR PERSONAL INJURY, DEATH OR PHYSICAL DAMAGE TO PROPERTY, FOR FRAUDULENT MISREPRESENTATION OR FOR ANY OTHER LIABILITY WHICH CANNOT BE EXCLUDED BY LAW OR UNDER THE INDEMNITIES IN CLAUSES 19.1.

20. Force Majeure

20.1 Where the performance by the Supplier of its obligations under this Agreement is delayed, hindered or prevented by an event or events beyond the reasonable control of the Supplier and against which a Supplier could not reasonably have been expected to take precautions, including but not limited to Acts of Nature, labour disputes not including the work-force of the Supplier, war, fire, flood, accident, governmental actions, the Supplier shall promptly notify AQA, in writing, specifying the nature of the force majeure event and stating the anticipated delay in the performance of this Agreement.

20.2 From the date of receipt of notice given in accordance with clause 20.1, AQA may, at its sole discretion,

extend the time for delivery, suspend this Agreement for up to a period of six months ("the Suspension Period") or terminate this Agreement forthwith.

20.3 If by the end of the Suspension Period the parties have not agreed a further period of suspension or reinstatement of the Agreement, this Agreement shall terminate automatically.

21. Termination

21.1 This Agreement shall automatically terminate at the end of the Purchase Order Term or once all Goods and/or Services detailed on the Purchase Order have been accepted, whichever is the later.

21.2 AQA shall be entitled to cancel any Purchase Order in whole or in part by giving notice to the Supplier at any time prior to delivery of the Goods or completion of the Services in which event AQA's sole liability shall be to pay to the Supplier fair and reasonable compensation for work-in-progress at the time of cancellation subject to clause 19.5.

21.3 AQA shall have the right at any time by giving notice in writing to the Supplier to terminate forthwith the Agreement if:

21.3.1 the Supplier commits a breach of any of the terms and conditions of the Agreement;

21.3.2 any distress, execution or other legal process is levied upon any of the assets of the Supplier;

21.3.3 the Supplier enters into any arrangement or composition with its creditors, commits any act of bankruptcy or (being a corporation) if any order is made or an effective resolution is passed for its winding up (except for the purpose of amalgamation or reconstruction) or if a petition is presented to court, or if a receiver and manager, receiver, administrative receiver or administrator is appointed in respect of the whole or any part of the Supplier's undertaking or assets;

21.3.4 the Supplier ceases or threatens to cease to carry on its business;

21.3.5 the financial position of the Supplier deteriorates to such an extent that in the opinion of AQA the capability of the Supplier adequately to fulfil its obligations under the Agreements has been placed in jeopardy;

21.3.6 where there is a change of control of the other party (within the meaning of section 1124 of the Corporation Tax Act 2010);

21.3.7 AQA reasonably apprehends that any of the above events is about to occur in relation to the Supplier;

21.3.8 the Supplier does not pay any money due from it to

AQA; or

21.3.9 a legal or regulatory authority directs, instructs or gives guidance that AQA should terminate all or part of this Agreement and/or continuation of this Agreement would cause AQA to be in breach of any laws or regulatory requirements or guidance to which it is subject.

21.4 In the event that a conflict of interest cannot be resolved to AQA's satisfaction, AQA reserves the right to immediately terminate this Agreement on giving written notice to the Supplier, in which event AQA's sole liability shall be to pay to the Supplier fair and reasonable compensation for work-in-progress at the time of termination subject to clause 19.5.

22. Actions on Termination

22.1 On termination of this Agreement, upon request by AQA, the Supplier shall:

22.1.1 fully co-operate with and assist AQA in order to ensure that such termination and its consequences cause the minimum disruption to AQA's business and affairs and the performance of its responsibilities;

22.1.2 take all reasonable steps to mitigate any costs which AQA may incur as a result of termination of this Agreement;

22.1.3 use all reasonable endeavours to procure the assignment or novation of any third party contracts and other contracts entered into by the Supplier for the purposes of this Agreement.

22.2 Each party undertakes within 14 days of receipt of a written request from the other party and at the option of the other party to:

22.2.1 return all property in its possession or under its control that belongs to the other;

22.2.2 return all Confidential Information of the other party in its possession together with all copies thereof or, if required to do so, destroy all Confidential Information in its possession, custody or control by shredding or incinerating the same and/or irretrievably deleting the same if stored on electronic or magnetic media and certify to the party who owned the destroyed Confidential Information that this has been done.

22.3 Termination or expiry of this Agreement, howsoever arising, shall not affect any of the parties' accrued rights or liabilities (including, but not limited to payment for any work carried out prior to termination for which a party is liable under the terms of this Agreement) or affect the coming into force or the continuance in force of any provision which is

intended to come into or continue in force on or after termination or expiry.

23. Variations

23.1 This Agreement may not be altered or modified, except by written agreement of both parties. No addition to or modification of any provision of this Agreement shall be binding upon the parties unless made in writing and signed by a Duly Authorised Representative of each of the parties.

24. Waiver

24.1 The failure or delay of either party to exercise or enforce any right or remedy available to that party shall not be construed as a waiver of that party's right or remedy under this Agreement.

25. Notices

25.1 All notices which are required to be given under this Agreement shall be in writing and shall be delivered personally, or sent by first class post or by electronic transfer to the party concerned at the address of the party on the Purchase Order, marked for the attention of the Duly Authorised Representative of that party. Notices delivered personally shall be deemed to have been served when delivered, and notice sent by first class post, and confirmed by electronic transfer, or sent by electronic transfer, shall be deemed to have been served on the business day following the date of despatch.

26. Governing law

26.1 This Agreement shall be governed by and construed in accordance with English law and the parties submit to the exclusive jurisdiction of the English courts.

27. Legal status

27.1 Nothing in this Agreement shall or shall be deemed to constitute or imply a partnership, joint venture, agency, fiduciary relationship, any employment or other relationship between the parties that would impose liability upon one party for the act or failure to act of the other party other than the contractual relationship expressly provided in this Agreement.

27.2 Nothing in this Agreement shall be deemed to constitute either party the agent of the other party, and neither party shall have, nor represent that it has authority to make representations, act in the name of, or on behalf of, or to otherwise bind the other party.

27.3 Where the Supplier is an individual, the Supplier is not the agent of AQA and has no authority to represent and shall not purport to represent or enter into any commitments on behalf of AQA in any respect. The Supplier is a self-employed independent contractor, in business on his/her own account. Nothing in this Agreement shall constitute the Supplier an employee of AQA. The Supplier shall be responsible for the payment of any national insurance

contributions, income tax and any VAT arising in relation to their fees under this agreement. The Supplier shall not be eligible for any AQA benefits, including holiday or sick pay and shall not be subject to AQA's grievance and disciplinary policies.

28. Severability

28.1 If any provision or part-provision of this Agreement 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 or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this Agreement.

29. Third party rights

29.1 The rights of any third party under this Agreement, whether pursuant to the Contracts (Rights of Third Parties) Act 1999 or otherwise, are hereby excluded.

30. Dispute Resolution

30.1 If any dispute arises between the parties out of this Agreement, the parties shall attempt to settle it by referring it to a director of each party and a member of the AQA Procurement team (AQAProcurement@aqa.org.uk).

30.2 If the dispute is not resolved by such directors within one month of such referral then the parties shall refer it to mediation in accordance with the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure.

30.3 If the parties fail to agree terms of settlement within 90 days of the initiation of the procedure the parties may commence court proceedings.

30.4 Nothing in this clause shall prevent a party from applying to the Court for emergency or injunctive relief.

31. Entire Agreement

31.1 This Agreement, and any documents referred to in the Purchase Order, constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes and extinguishes all prior oral or written communications, agreements, promises, understandings, representations or warranties relating to the subject matter hereof.

32. Definitions and interpretation

32.1 Unless the contrary intention appears, the following definitions apply to this agreement:

AQA Affiliate means any entity that directly or indirectly controls, is controlled by, or is under common control with AQA, with "control" meaning ownership of fifty percent (50%) or more of the voting equity interests, or the power to otherwise direct the affairs of the applicable entity.

Close Relative means parent, sibling, child, grandchild, grandparent, nephew niece, cousin, step-child, partner, spouse or civil partner, or any person with a **familiar relationship** with whom there is **regular contact**;

Confidential Information means all confidential and proprietary technical and non-technical, business and other information which may be disclosed by one party to the other and includes without limitation, in any form, oral or written, in the course of the relationship between the Parties, written documents, drawings, plans, software in source code or object code form, specifications, business secrets, financial and pricing information, lists of members, suppliers or customers, intentions, product information, methods, formulas, know-how, or other business of that party, which is marked as confidential or might reasonably be considered to be confidential in nature and which is supplied before, on or after the date of this Agreement;

Data Protection Legislation means all applicable data protection and privacy legislation in force from time to time in the UK, including the UK GDPR; the Data Protection Act 2018 (and any regulations made thereunder) (DPA 2018); the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended; and the guidance and codes of practice issued by the Commissioner from time to time and applicable to a party;

Duly Authorised Representative means:

For AQA, the person holding the position of Head of Sourcing and Supply Management or his assignees or successors; or

For the Supplier, a natural or legal person who has been granted the express authority to act on behalf of the Supplier in commercial and contractual matters and specifically in relation to this contract;

Goods means any such goods, including hardware, software, equipment or other articles or things (or any of them or any part or parts of them), which shall be provided by the Supplier (or by any of the Supplier's sub-contracts) pursuant to or in connection with this Agreement;

Key Personnel means members of the Supplier's Personnel closely and directly involved in the delivery of Goods and/or Services in respect of the Purchase Order;

Purchase Order means a purchase for Goods and/or Services placed by AQA;

Purchase Order Term means the period of time over which the Supplier is to provide Goods and/or Services, in the Purchase Order (if any) or, if relevant, as otherwise agreed between the Supplier and AQA in writing;

Services means the services to be provided by the Supplier (or any of the Supplier's sub-contractors)

pursuant to or in connection with this Agreement;

Supplier means the organisation, company or person to whom the Purchase Order is issued;

Supplier's Personnel means any person instructed to undertake any of the Supplier's obligations under this Agreement, including the Supplier's employees, agents and sub-contractors.

Working Days means days when the Bank of England is trading.

32.2 Clause headings are for ease of reference only and are not intended to be part of or to affect the meaning, interpretation or construction of any of the terms of this Agreement.

32.3 References to any gender includes any other gender, the plural shall include the singular and bodies corporate shall include unincorporated bodies and (in each case) vice versa.

32.4 Reference to any statute, enactment, ordinance, Purchase Order, regulation or other similar instrument shall be construed to include a reference to the statute, enactment, ordinance, Purchase Order, regulation or instrument as from time to time amended, extended, re-enacted or consolidated and all statutory instruments, Purchase Orders, regulations or instruments made pursuant to it.

32.5 A reference to a "third party" is a reference to a person who is not a party to this Agreement.

32.6 The words "other", "includes", "including" and "in particular" do not limit the generality of any preceding words and any words which follow them shall not be construed as being limited in scope to the same class as the preceding words where a wider construction is possible.