

**TERMS AND CONDITIONS
OF CONTRACT FOR
PURCHASE OF
GOODS/SERVICES**

The General Teaching Council for Scotland, established under the Public Services Reform (General Teaching Council for Scotland) Order 2011 and having its office at Clerwood House, 96 Clermiston Road, Edinburgh EH12 6UT ("GTCS"), wishes to purchase the Goods and/or Services from the Supplier and the Supplier agrees to provide such Goods and/or Services in accordance with these terms and conditions.

1. INTERPRETATION

In these terms and conditions unless the context otherwise requires:

- 'Authorised Person' means a GTCS employee authorised by GTCS to issue a Purchase Order
- 'Business Days' means any day from Monday to Friday (inclusive) excluding public holidays and days between Christmas Day and 2 January (inclusive) when GTCS offices are closed
- 'Commencement Date' means the date of commencement of the Contract as described in Condition 2.2
- 'Confidential Information' means all information of a confidential or proprietary nature (whether in oral, written or electronic form) belonging or relating to GTCS in any way that you receive in your role as a Supplier to GTCS or in the course of forming the Contract
- 'Contract' means the Purchase Order and the Supplier's acceptance of the Purchase Order together with any applicable Order Amendments
- 'Data Protection Appendix' shall mean the appendix relating to the sharing or processing of personal data

annexed to and forming part of these terms and conditions.

- 'Deliverables' means those deliverables created, developed or otherwise resulting from the provision of the Services, including, without limitation, any deliverables described in the Contract
- 'Force Majeure Event' means an event that could not reasonably have been foreseen by the parties and that is beyond their physical or legal control including but not limited to: extreme adverse weather conditions, war, terrorism, fire, civil unrest or riots and telecommunication failures
- 'Goods' means: (i) any goods agreed to be purchased by GTCS from the Supplier; and (ii) any Deliverables
- 'GTCS IPR' means any and all IPR belonging to GTCS, or which GTCS has a right to use, and which is made available to the Supplier by GTCS in order to enable it to provide the Goods and/or Services
- 'IPR' means any and all intellectual property rights including but not limited to: trademarks, patents, copyright (including software rights such as object and source code), database rights, unregistered design rights, moral rights, trade and business names, domain names, product names and logos, databases, know-how together with all applications, renewals, revisions and extensions
- 'Key Personnel and Parties List' has the meaning set out in Condition 3
- 'Order Amendment' means an amendment made in writing to the Goods or Services detailed in a Purchase Order and issued to the Supplier by GTCS. Each Order Amendment issued shall take precedence over any earlier Order Amendment
- 'Price' means the price (or fee), exclusive of value added tax ("VAT"), payable by GTCS under the Contract for the full and proper performance by the Supplier of the Contract
- 'Purchase Order' means GTCS' written request to purchase the Goods and/or Services from the Supplier and will be deemed to incorporate these terms and conditions
- 'Reports' means oral or written progress reports to be provided to GTCS by the Supplier relating to provision of the Services
- 'Resultant IPR' means all IPR created, developed or otherwise resulting directly or indirectly from the provision of the Goods and Services including, without limitation, IPR in any Deliverables
- 'Services' means the services to be provided by the Supplier to GTCS described in the Purchase Order and/or Services Specification
- 'Services Specification' means any specification/description of, or requirements for, the Services provided by GTCS to the Supplier in writing in the Purchase Order or elsewhere (and as may be amended from time to time)
- 'Supplier' means the person or legal entity supplying the Goods and/or Services to GTCS
- 'Supplier IPR' means any and all IPR belonging to the Supplier, or which the Supplier has a right to use, and which is made available to GTCS by the Supplier in order to enable GTCS to receive the Goods and/or Services or make use of the Deliverables
- 'Supplier Personnel and Parties' means the Supplier's employees as well as any of its agents, consultants and/or contractors
- Headings set out in these terms and conditions will not affect the interpretation of the conditions themselves.

- Words importing the singular include the plural and vice versa.
- Reference to any legislation or similar will be construed as a reference to such legislation as amended or replaced from time to time.
- Each party agrees to act reasonably at all times in the performance of the Contract.

2. APPLICATION AND COMMENCEMENT

- 2.1 These terms and conditions together with the Purchase Order and any Order Amendments constitute the entire agreement between GTCS and the Supplier: they will govern the Contract to the exclusion of all other terms and conditions (including the Supplier's terms and conditions or those implied by trade, custom or practice) and supersede all prior agreements and arrangements between GTCS and the Supplier.
- 2.2 A Contract is formed and commences from the time at which GTCS notifies the Supplier that it has been successful in its application to supply the Goods and/or Services.

3. GOODS AND/OR SERVICES

- 3.1 The quantity and description of the Goods will be set out in the Purchase Order.
- 3.2 The Goods will be of a quality that is satisfactory to GTCS, be without fault and conform in all respects with: (i) the Purchase Order; and (ii) any Goods Specification.
- 3.3 The description of the Services to be provided will be set out in the Services Specification.
- 3.4 The Supplier will provide the Services:
- with all reasonable skill and care and in accordance with best practice in the relevant industry/sector;
 - professionally, on time and in good faith;
 - in accordance with the Services Specification, with

general consideration for environmentally sustainable processes and procedures as well as any additional policies/guidance supplied by GTCS;

- at all times in accordance with the law; and
 - to the satisfaction of GTCS.
- 3.5 The Supplier warrants, undertakes and represents that:
- it has capacity, authority and all necessary licences, permits and consents to enter into and perform legally this Contract (including with reference to the Bribery Act 2010); and
 - the provision of the Services and/or the supply of the Goods will not, to the best of the Supplier's reasonable belief, infringe the IPR of any third party.
- 3.6 The Supplier will provide GTCS with a list of any of the Supplier's Personnel and Parties who are reasonably considered key to the provision of the Services ('Key Personnel and Parties List') and such Key Personnel and Parties List will be deemed to form part of the Services Specification. Any change to the Key Personnel List will be agreed in writing with GTCS before any such changes are made.
- 3.7 The Supplier will indemnify GTCS in full against any claims, demands, actions, costs, expenses (including but not limited to legal costs and disbursements), losses, liabilities and damages arising from or incurred by GTCS as a result of or in connection with the Supplier's direct or indirect breach of this Contract including:
- breach of any warranty given by the Supplier under the Contract;
 - any omission of the Supplier, the Supplier Personnel or the Supplier Parties in supplying and delivering the Goods and/or Services;
 - any defect in the quality of the Goods;
 - any infringement, or alleged infringement, of IPR caused

by GTCS' use of the Goods and/or Services;

- any interruption to business continuity in accordance with Condition 14 below; and
 - any negligent performance or failure or delay in performance of the terms of the Contract.
- 3.8 The Supplier will provide a warranty for the Goods (and any repairs or replacements) to the satisfaction of GTCS and/or as specified in the Purchase Order.
- 3.9 GTCS' rights under these terms and conditions are in addition to the statutory conditions implied in favour of it by the Sale of Goods Act 1979 and the Supply of Goods and Services Act 1982.

4. INSPECTION AND REPORTING

- 4.1 The Supplier will provide GTCS with the Reports, all to the reasonable satisfaction of GTCS.
- 4.2 The Supplier will provide GTCS with the right to check progress of the Supplier's provision of the Services and GTCS will have the right to inspect and to reject Goods and/or Services that do not comply with the Contract. Any inspection or approval given will not relieve the Supplier from its obligations under the Contract.

5. DELIVERY AND RISK/TITLE

- 5.1 The Goods will be delivered to the location specified in the Purchase Order. The Goods will remain at the risk of the Supplier until delivery to GTCS is complete (including off-loading and stacking as required) when ownership of, and risk in, the Goods will pass to GTCS. This will not prejudice GTCS' right of rejection.
- 5.2 The date for delivery will be specified in the Purchase Order and deliveries will be made during normal business hours on Business Days. If no date is specified in the Purchase Order, delivery will be made within 28 days of the date of the Purchase Order. Time for delivery will be of the essence of the Contract.
- 5.3 The Supplier will comply with any other reasonable delivery

requirements specified in the Purchase Order.

- 5.4 If Goods are delivered to GTCS in excess of the quantity ordered, GTCS will not pay for the excess and any excess will be (and will remain) at the Supplier's risk and will be returnable at the Supplier's expense.

6. PRICE AND PAYMENT

- 6.1 The Price for the Goods and/or Services will be stated in the Purchase Order, as will the arrangements regarding the payment of VAT. No increase in the Price may be made without the prior written consent of GTCS.
- 6.2 Subject to the Supplier performing the Services and delivering the Goods and/or Deliverables to the satisfaction of GTCS, the Supplier may invoice GTCS in arrears. The Supplier will ensure that each such invoice includes the GTCS Purchase Order number, a description of the Goods and/or Services concerned and the time period to which it relates. GTCS aims to pay properly authorised invoices promptly and within 20 Business Days of receipt.
- 6.3 All expenses that may be incurred by the Supplier (including travel costs) must be agreed with GTCS in writing in advance in order to be reimbursed and will be subject to the provision of receipts to prove such expenditure.
- 6.4 The Supplier will pay all taxes and other outgoings or expenses payable in consequence of the Contract and will indemnify GTCS in respect of any demand, costs or expense incurred by GTCS (whether during the period of the Contract or following termination) in relation to any tax or employer's National Insurance contributions or other expense payable related to: the Supplier, the Supplier's Personnel and Parties or the provision of the Goods and/or Services.
- 6.5 Without prejudice to any other right or remedy, GTCS reserves the right to set off any amount

owing at any time by the Supplier to GTCS against any amount payable by GTCS to the Supplier under the Contract.

7. INTELLECTUAL PROPERTY

- 7.1 All right, title and interest in and to any GTCS IPR will remain the property of, and vested in, GTCS.
- 7.2 All right, title and interest in and to any Supplier IPR will remain the property of, and vested in, the Supplier.
- 7.3 The Supplier grants to GTCS a perpetual, irrevocable, royalty free, worldwide non-exclusive licence to use the Supplier IPR for the purpose of exploiting the Resultant IPR and/or otherwise using the Deliverables.
- 7.4 GTCS grants to the Supplier a non-exclusive, non-transferable, royalty free and limited licence to use GTCS IPR for the sole purpose of fulfilling its obligations under the Contract.
- 7.5 The Supplier agrees that the Resultant IPR will belong to, and upon its creation vest in, GTCS. The Supplier assigns to GTCS from the date of creation (free from any encumbrances) its whole right, title and interest in the Resultant IPR (including any future rights in it). The Supplier will execute and perform all such applications, assignments, documents and acts as may be required by GTCS in order to give effect to this Condition and in order to enforce any legal protection in respect of such IPR.
- 7.6 The Supplier irrevocably waives in favour of GTCS any moral rights it may have in terms of the Copyright, Designs and Patents Act 1988, and any other similar rights in other parts of the world.

8. DATA PROTECTION

- 8.1 The Supplier and the GTCS shall comply with the terms and conditions in the Data Protection Appendix.

9. CONFIDENTIALITY

- 9.1 The Supplier will (and will procure that the Supplier Personnel and Parties) keep confidential at all times Confidential Information

before, during and following termination of the Contract.

- 9.2 The Supplier will not use, copy or disclose Confidential Information to any third party except: with the prior written consent of GTCS; where compelled by law so to do; or where the information is already in the public domain (through no fault of the Supplier).
- 9.3 The Supplier acknowledges that GTCS may publish information in relation to the Supplier and the Contract in accordance with its obligations under the: Public Services Reform (Scotland) Act 2010, Freedom of Information (Scotland) Act 2002 and the Environmental Information (Scotland) Regulations 2004.

10. INSURANCE

The Supplier will hold satisfactory public liability, employers liability and (where relevant) professional indemnity insurance to fulfil the Supplier's obligations for the duration of this Contract. Evidence of such insurance (to GTCS's satisfaction) will be shown to GTCS on request.

11. REMEDIES

- 11.1 Without prejudice to any other right or remedy which GTCS may have, if: (i) the Goods are not delivered on the due date, (ii) the Goods do not conform with the Contract, or (iii) the Supplier fails to commence the provision of, or to perform, the Services in accordance with the Contract, GTCS reserves the right to:
- rescind the Purchase Order or terminate the Contract (in whole or in part) and refuse to accept any subsequent delivery of the Goods, or performance of the Services, which the Supplier attempts to make;
 - give the Supplier a reasonable opportunity (at the Supplier's expense) either to remedy any defect in the Goods and/or the Services and carry out any other necessary work to ensure that the terms of the Contract are fulfilled;

- recover from the Supplier any expenditure reasonably incurred by GTCS in obtaining any Goods and/or Services from another Supplier; and/or
 - reject the Goods in whole or in part whether or not paid for in full or in part and be released from any obligation to pay for the Goods and/or Services and require the Supplier to collect all rejected Goods at its own expense.
- 11.2 In the event of Purchase Order cancellation in terms of the above, the Supplier will promptly repay any sums paid under the Contract without any retention or offset whatsoever. Cancellation of the Purchase Order will not affect any other rights GTCS may have.

12. LIMITATION OF LIABILITY

- 12.1 Neither party excludes or limits liability to the other for death or personal injury caused by any negligent act or omission or wilful misconduct.
- 12.2 Subject to Conditions 6.4, 6.6, 11.1 and 12.1, the liability of each party will not exceed the Price and neither party accepts liability to the other for:
- indirect, special or consequential loss or damage (including loss of business profits/revenue, salary, goodwill or anticipated savings); and/or
 - loss which could reasonably have been avoided or mitigated through reasonable conduct or precautions.

13. TERM AND TERMINATION

- 13.1 The Contract may be terminated at any time by either party giving the other one calendar months' written notice. The Contract may be terminated without such notice where either party:
- commits a material breach of the Contract which it fails to remedy within 14 days of being asked to do so by the other party; or

- is subject to: bankruptcy, insolvency or winding-up proceedings; administrator/ receiver/trustee management arrangements; or any other similar procedures.
- 13.2 The Supplier agrees to facilitate a handover of the provision of the goods/services to any new supplier that may be appointed by GTCS in the lead up to, or following, any termination of the Contract.
- 13.3 Termination of the Contract will be without prejudice to any Contract rights in existence at the date of termination.
- 13.4 On termination of the Contract, the Supplier will return to GTCS any document, materials or information (and any copies taken) supplied by or obtained from GTCS in connection with the Contract.
- 13.5 Conditions 1, 7 to 12 and 15.5 will survive termination of the Contract and will remain in full force and effect.

14. BUSINESS CONTINUITY

- 14.1 The Supplier will ensure that it has adequate business continuity policies and procedures in place.
- 14.2 If the Supplier is unable to provide the Goods and/or Services, the Supplier will inform GTCS of this as soon as reasonably practicable. In such circumstances, GTCS may require the Supplier to find a replacement supplier in order that the Goods and/or Services may be provided in accordance with the Contract: the Supplier will meet all costs associated with this.

15. GENERAL

- 15.1 Neither party will assign, charge, sub-contract or otherwise transfer any rights or obligations under the Contract without the prior written consent of the other party.
- 15.2 Nothing in the Contract is intended, or will operate, to create between the parties an employment or agency relationship or any form of co-

- operative entity (including, but not limited to, a partnership or joint venture).
- 15.3 Neither party will be in breach of the Contract, nor liable for any failure or delay in performance, arising from a Force Majeure Event. Each party agrees to take all reasonable steps to mitigate the impact of any such event on the performance of the Contract and to notify (and keep informed) the other party until the event has passed.
- 15.4 No variation of the Contract, except in an Order Amendment, will be effective unless in writing signed by an Authorised Person of each party.
- 15.5 If and in so far as any part of the Contract is or becomes void or unenforceable it will be deemed not to be and never to have formed part of the Contract: the remaining parts of the Contract will remain in full force and effect.
- 15.6 The failure of either party to exercise or enforce any right conferred by the Contract will not be deemed to be a waiver of any such right or operate to bar the exercise or enforcement of that right any time before or after that.
- 15.7 The contract is not intended, and nor will it, create any rights, entitlement, claims or benefits enforceable by any person that is not a party to it.
- 15.8 This Contract will be governed by and construed in accordance with Scots law and the parties submit to the exclusive jurisdiction of the Scottish courts.

This is the Data Protection Appendix referred to in the forgoing Terms & Conditions of Purchase of Goods/Services between the General Teaching Council for Scotland (“GTCS”) and the Supplier

DATA PROTECTION APPENDIX

1. Interpretation

In this Data Protection Appendix:-

- 1.1. “Contract” means the contract between the Supplier and GTCS to which this Data Protection Appendix is attached to and forms part of.
- 1.2. “Data Controller” has the meaning given in the Data Protection Laws.
- 1.3. “Data Processor” has the meaning given in the Data Protection Laws.
- 1.4. “Data Protection Laws” means any law, statute, subordinate legislation regulation, order, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any regulatory body which relates to the protection of individuals with regard to the processing of Personal Data to which a Party is subject including the Data Protection Act 1998 (until its repeal) or Data Protection Act 2018 (as applicable), the Privacy and Electronic Communications (EC Directive) Regulations 2003 (as may be amended by the proposed Regulation on Privacy and Electronic Communications) and the GDPR.
- 1.5. “GDPR” means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation).
- 1.6. “Goods” means the goods to be supplied to GTCS by the Supplier pursuant to the Contract
- 1.7. “Personal Data” has the meaning given in the Data Protection Laws.
- 1.8. “Processing” has the meaning given in the Data Protection Laws and cognate expressions shall be construed accordingly.
- 1.9. “Services” means the services to be supplied to GTCS by the Supplier pursuant to the Contract.
- 1.10. “Supervisory Authority” has the meaning given in Data Protection Laws.

2. Data Protection: General

- 2.1. Both Parties agree to negotiate in good faith any such amendments to this Data Protection Appendix that may be required from time to time in order to ensure that both Parties meet all their obligations under Data Protection Laws. The provisions of this Data Protection Appendix are without prejudice to any obligations and duties imposed directly on the Supplier under Data Protection Laws and the Supplier hereby agrees to comply with those obligations and duties.
- 2.2. The Supplier will, in conjunction with GTCS and in its own right and in respect of the Goods or Services, make all necessary preparations to ensure it will be and shall remain compliant with Data Protection Laws.
- 2.3. The Supplier will provide GTCS with the contact details of its data protection officer or other designated individual with responsibility for data protection and privacy to act as the point of contact for the purpose of observing its obligations under the Data Protection Laws.

3. Data Processing: Data Controller to Data Processor

- 3.1. In respect of any Personal Data to be Processed by the Supplier in connection with the Goods or Services under the Contract, the parties agree that GTCS is the Data Controller and the Supplier is the Data Processor. The Parties shall agree and record the following details relating to the Goods or Services in writing (and shall keep all such Processing activities under appropriate periodic regular review):
 - 3.1.1. the subject matter of the Processing;
 - 3.1.2. the duration of the Processing;
 - 3.1.3. the nature and purpose of the Processing;
 - 3.1.4. the types of Personal Data to be Processed;
 - 3.1.5. the categories of Data Subject; and
 - 3.1.6. any plan for the return and destruction of the Personal Data once the Processing is complete unless there is a requirement under applicable UK, EU or Member State law to preserve that type of Personal Data.
- 3.2. The Supplier must:
 - 3.2.1. process Personal Data only as necessary in accordance with its obligations under the Contract and any written instructions given by GTCS (which may be specific or of a general nature), including with regard to transfers of Personal Data outside the European Economic Area unless required to do so by any applicable European Union or Member state law or regulatory body to which the Supplier is subject; in which case the Supplier must inform GTCS of that legal requirement before processing unless prohibited by that law the Personal Data only to the extent, and in such manner as is necessary for the performance of the Supplier's obligations under the Contract or as is required by any applicable law;
 - 3.2.2. subject to Paragraph 3.2.1 only process or otherwise transfer any Personal Data in or to any country outside the European Economic Area with GTCS's prior written consent;
 - 3.2.3. take all reasonable steps to ensure the reliability and integrity of any Supplier Personnel who have access to the Personal Data and ensure that the Supplier Personnel:
 - 3.2.3.1. are aware of and comply with the Supplier's duties under this Paragraph;
 - 3.2.3.2. are subject to appropriate confidentiality undertakings with the Supplier or the relevant Sub-contractor;
 - 3.2.3.3. are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by GTCS or as otherwise permitted by the Contract; and
 - 3.2.3.4. have undergone adequate training in the use, care, protection and handling of Personal Data;
 - 3.2.4. implement appropriate technical and organisational measures in accordance with Article 32 of the GDPR to protect Personal Data against unauthorised or unlawful Processing and against accidental loss, destruction, damage, alteration or disclosure, such measures being appropriate to the harm which might result from any unauthorised or unlawful Processing accidental loss, destruction or damage to the Personal Data and having regard to the nature of the Personal Data which is to be protected.
- 3.3. The Supplier shall not engage a sub-contractor to carry out Processing in connection with the Goods or Services without prior specific or general written authorisation from GTCS. In the case of general written authorisation, the Supplier must inform GTCS of any intended changes concerning the addition or replacement of any other sub-contractor and give GTCS an opportunity to object to such changes.

- 3.4. If the Supplier engages a sub-contractor for carrying out processing activities on behalf of GTCS, the Supplier must ensure that same data protection obligations as set out in this Data Protection Appendix are imposed on the sub-contractor by way of a written and legally binding contract, in particular providing sufficient guarantees to implement appropriate technical and organisational measures. The Supplier shall remain fully liable to GTCS for the performance of the sub-contractor's performance of such obligations.
- 3.5. The Supplier must provide to GTCS reasonable assistance including by such technical and organisational measures as may be appropriate in complying with Articles 12-23 of the GDPR, including any subject access request and/or responding to any enquiry made, or investigation or assessment of processing initiated by the Information Commissioner in respect of the Personal Data as soon as is possible but in any event within 3 business days of receipt of the request or any other period as agreed in writing with the Data Controller from time to time.
- 3.6. Taking into account the nature of the Processing and the information available, the Supplier must assist GTCS in complying with GTCS's obligations concerning the security of Personal Data, reporting requirements for data breaches, data protection impact assessments and prior consultations in accordance with Articles 32 to 36 of the GDPR. These obligations include:
 - 3.6.1. ensuring an appropriate level of protection through technical and organisational measures that take into account the circumstances and purposes of the processing as well as the projected probability and severity of a possible infringement of the law as a result of security vulnerabilities and that enable an immediate detection of relevant infringement events;
 - 3.6.2. notifying a Personal Data breach to GTCS without undue delay and in any event no later than 24 hours after becoming aware of a Personal Data breach;
 - 3.6.3. assisting GTCS with communication of a personal data breach to a Data Subject;
 - 3.6.4. supporting GTCS with preparation of a data protection impact assessment; and
 - 3.6.5. supporting GTCS with regard to prior consultation of the Supervisory Authority.
- 3.7. At the end of the provision of the Goods or Services relating to processing the Supplier must, on written instruction of GTCS, delete or return to GTCS all Personal Data and delete existing copies unless applicable UK, EU or Member State law requires preservation of the Personal Data.
- 3.8. The Supplier must:
 - 3.8.1. provide such information as is necessary to enable GTCS to satisfy itself of the Supplier's compliance with this Data Protection Appendix;
 - 3.8.2. allow GTCS, its employees, auditors, authorised agents or advisers reasonable access to any relevant premises, during normal business hours, to inspect the procedures, measures and records referred to in this Data Protection Appendix and contribute as is reasonable to those audits and inspections;
 - 3.8.3. inform GTCS if in its opinion an instruction from GTCS infringes any obligation under Data Protection Laws.
- 3.9. The Supplier must maintain written records including in electronic form, of all Processing activities carried out in performance of the Goods or Services or otherwise on behalf of GTCS containing the information set out in Article 30(2) of the GDPR. If requested, the Supplier must make such records available to the Supervisory Authority on request and co-operate with the Supervisory Authority in the performance of its tasks. The Parties acknowledge that the inspecting party will use reasonable endeavours to carry out any audit or inspection under this Paragraph with minimum disruption to the Supplier's day to day business.

