TERMS AND CONDITIONS FOR PURCHASE OF GOODS AND SERVICES ("Terms")

1. DEFINITIONS
   1.1 In these Terms, the following definitions apply:
   (a) Business Day: a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.
   (b) Deliverables: all documents, products and materials developed by the Supplier or its agents, contractors and employees for Pearson as part of or in relation to the Services in any form or media.
   (c) Disputed Entity: any entity of the Pearson Group that ceases to be part of the Pearson Group for any reason ("discontinued").
   (d) Goods: the goods (if any) set out in the Order.
   (e) Intellectual Property Rights (IPR): patents, copyright and related rights, trade marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for renewals of such rights and all similar rights which subsist or will subsist in any country.
   (f) Pearson: means the Pearson entity identified in the Order.
   (g) Pearson Group: all entities in which Pearson PLC directly or indirectly holds or is beneficially entitled to more than 50% of the equity or possesses more than 50% of the voting power.
   (h) Pearson Materials: materials, equipment and tools, drawings, specifications, contracts, software, and data supplied by or on behalf of Pearson to the Supplier.
   (i) Order: Pearson's order for the supply of Goods and/or Services governed by and incorporating these Terms.
   (j) Services: the services (if any), including without limitation any Deliverables, as set out in the Order.
   (k) Supplier: the person or firm from whom Pearson purchases the Goods and/or Services, as set out in the Order.
   (l) Supplier IPR: Supplier materials which were not developed for Pearson as part of the Services.

2. BASIS OF CONTRACT
   2.1 The Order constitutes an offer by Pearson. Any conduct by the Supplier consistent with acceptance of the Order will constitute acceptance by the Supplier of these Terms.
   2.2 Except as provided in clause 2.3 below, these Terms apply to the exclusion of any and all other terms or conditions, including such that the Supplier seeks to impose or incorporate relating to the provision of the Goods and/or Services.
   2.3 To the extent that Pearson and the Supplier have expressly agreed and executed an agreement for the provision of the Goods, Deliverables and/or Services set out in the Order, such agreement shall prevail over these Terms.
   2.4 The Order and the provision of Goods, Deliverables and/or Services are for the benefit of Pearson and for the Pearson Group.

3. SUPPLY OF GOODS
   3.1 Pearson may reject the Goods. If Pearson considers (acting reasonably) that the Goods do not conform or are unlikely to conform or comply with the Supplier’s warranties in clause 6.1(h), and any rejected Goods shall be returned at the Supplier’s risk and expense.
   3.2 Title and risk in the Goods will pass to Pearson on completion of delivery, unless payment for the Goods has already been made in which case title (but not risk) will pass upon payment.
   3.3 Pearson agrees that Pearson may sell the Goods to third parties.

4. OUTSOURCING
   4.1 In so far as any other provision contained in the Order, Pearson and the Pearson Group may permit any third party service providers to use the Goods, Deliverables and/or Services for the purpose of such third party service provider providing services to the Pearson Group. Pearson acknowledges and agrees that such use may only be on behalf of Pearson and/or the Pearson Group.

5. SUPPLY OF SERVICES
   5.1 The Supplier shall provide the Services to Pearson in accordance with the terms of the Order. The Supplier shall, at no additional cost other than as expressly set out in the Order:
   (a) meet any performance dates for the Services specified in the Order, included within the Supplier's proposal or notified to the Supplier by Pearson;
   (b) co-operate with Pearson in all matters relating to the Services, and comply with all instructions of Pearson;
   (c) provide all equipment, tools, materials and such other items as are required to provide the Services; and
   (d) hold all Materials in safe custody at its own risk, maintain the Pearson Materials in good condition until returned to Pearson, and not dispose of or use the Pearson Materials other than in accordance with Pearson's written instructions or authorisation.

6. WARRANTIES
   6.1 The Supplier warrants and represents to Pearson that:
   (a) it will perform the Services and carry out its obligations under the Order with the best care, skill and diligence in accordance with good practice in the Supplier’s industry, profession or trade;
   (b) it will use personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Supplier’s obligations are fulfilled in accordance with the Order;
the overdue amount at the rate of 4% per annum above HSBC’s base rate from time to time. Such interest shall accrue on a daily basis from the due date until the date of actual payment of the overdue amount, whether before or after judgment. The defaulting party shall pay interest at the overdue amount together with the overdue amount. This clause shall not apply to payments that the defaulting party disputes in good faith.

10. INTELLECTUAL PROPERTY RIGHTS

10.1 Subject to clause 10.2, the Supplier assigns to Pearson, with full title guarantee and free from all third party rights, and Intellectual Property Rights in the Deliverables, and shall obtain waivers of all moral rights in the Deliverables to which any individual is now or may be at any future time entitled.

10.2 The Supplier shall not assign to Pearson any Intellectual Property Rights in any Supplier IPR. The Supplier grants Pearson and the Pearson Group (which includes its agents, subcontractors and outsourcers) a non-exclusive, perpetual, irrevocable, worldwide, transferable, royalty-free licence to use the Supplier IPR.

10.3 In the event that Pearson procures the Services and Deliverables for use as part of a product or service that Pearson sells or otherwise makes available to its customers or end users in the course of its business, and except as otherwise expressly set out in the Order, the Supplier shall grant Pearson and the Pearson group a non-exclusive, perpetual irrevocable worldwide, transferable, royalty-free licence to any Supplier IPR that is combined with the Deliverables: to publish, reproduce, modify, adapt, decompile, translate, customise, register any rights in Pearson’s name, sell, sub-licence, in all languages and in all formats and media now known or to be created in the future, combine or use with other Pearson or third-party materials and otherwise use and exploit the Supplier IPR throughout the world.

10.4 The Supplier shall, promptly at Pearson’s request, do (or procure to be done) all such further acts and things and the execution of all such other documents as Pearson may from time to time require for the purpose of securing for Pearson the full benefit of the Order, including all right, title and interest in and to the Intellectual Property Rights granted to Pearson in accordance with this clause 10.1.

10.5 All Pearson Materials are the exclusive property of Pearson. Nothing in these Terms shall be construed as conferring upon the Supplier any licence, right, title, ownership or other interest in any Intellectual Property Rights owned by Pearson.

11. LIMITATION AND INDEMNITY

11.1 Nothing in these Terms restricts or excludes either party’s liability for: (a) death or personal injury caused by that party’s negligence; (b) fraud or fraudulent misrepresentation; or (c) any other liability which cannot be excluded or restricted by law.

11.2 Save for the indemnities in clause 11.5, and subject to clauses 11.1, and 11.6 and the remainder of this clause 11.2, neither party shall be liable to the other or to any third party, whether in contract, tort (including negligence), under statute or otherwise, for any indirect or consequential loss howsoever arising. Nothing in this clause 11.2 shall prejudice Pearson from recovering: (i) wasted management time and expenses and re-acquisition costs incurred; (ii) its costs and losses in relation to any data loss or corruption; (iii) any sums related to any penalties or fines imposed by any regulator and any associated investigations or remedial actions required; (iv) any claims, damages, losses and expenses (including legal costs) awarded against, or incurred or paid by, Pearson as a result of or in connection with a matter indemnified under clause 11.5.

11.3 Subject to clauses 11.1 and 11.2, and to the maximum extent permitted by law, the total aggregate liability of Pearson and the Pearson Group, whether in contract, tort (including negligence), under statute or otherwise under or in connection with the Order or the receipt of the Goods or Services is limited to an amount equal to the Charges paid or payable by Pearson under the Order.

11.4 Save for the indemnities in clause 11.5, and breaches of clauses 13 confidentiality and/or 14 (Pearson Policies) for which the Supplier’s liability remains uncapped, and subject to clauses 11.1, 11.2, 11.6 and to the maximum extent permitted by law, the liability of the Supplier per claim, whether in contract, tort (including negligence), under statute or otherwise under or in connection with the Order or the provision of Goods or Services is limited to an amount equal to 100% of the Charges paid or payable by Pearson under the Order.

11.5 The Supplier shall keep Pearson and the Pearson Group indemnified against all liabilities, costs, expenses, damages incurred by Pearson or the Pearson Group as a result of or in connection with:
(a) any claim made against Pearson or the Pearson Group for actual or alleged infringement of a third party Intellectual Property Rights arising out of, or in connection with, the manufacture, supply or use of the Goods, or receipt, use or supply of the Services and Deliverables;
(b) any claim made against Pearson or the Pearson Group by a third party for damage to property arising out of, or in connection with, the Goods or Services; or, the extent that the defects in the Goods or Services are attributable to acts or omissions of the Supplier, its employees, agents or subcontractors;
(c) a breach by the Supplier of any applicable law; and
(d) any claim made against Pearson or the Pearson Group by a third party arising out of or in connection with the supply of the Goods, or Services, to the extent that such claim arises out of the negligent performance of the Order by the Supplier, its employees, agents or subcontractors.

11.6 This clause 11 shall survive termination of the Order.

12. INSURANCE

12.1 Supplier agrees to provide and maintain, at Supplier’s own cost and at all times during the term of the Order such insurance cover as set out below. The Supplier shall maintain (or procure with a reputable and solvent insurance company, sufficient to cover all the liabilities to which it may be subject in relation to the Order (including those arising under or in relation to acts or omissions of its subcontractors or others acting on the Supplier’s behalf), and shall, at Pearson’s request, produce evidence of the insurance contains the third party rights information to allow Pearson to determine compliance. Any claims-made insurance policies shall remain in place for at least two years following the end of the term of the Order. Supplier shall maintain the following policies and amounts of cover:
(a) Employer’s liability £1,000,000 (one million pounds);
(b) Public and product liability £1,000,000 (one million pounds) for each cover type per occurrence. Such insurance shall include an indemnity to others provision in favour of Pearson; and
(c) Professional Indemnity – £1,000,000 (one million pounds) per claim.

13. CONFIDENTIALITY

13.1 A receiving party shall keep in strict confidence all technical or commercial know-how, specifications, inventions, operations, strategies, methods, know-how, developments, designs, trade secrets, technology, software, deliverables, the output of any Services; Pearson’s data, processes or initiatives which are of a confidential nature and have been disclosed to it by or on behalf of Pearson. The receiving party shall not disclose any such confidential information concerning the disclosing party’s business, its products and services which the receiving party may obtain. The receiving party shall only disclose such confidential information to those of its (or the Pearson Group’s) employees, agents and subcontractors who need to know it for the purpose of discharging its obligations under the Order and the receiving party shall cause such employees, agents and subcontractors to comply with the obligations set out in this clause 13.1 as though they were a party to the Order.

13.2 The disclosures in clause 13.1 shall not apply to any information which:
(a) is or becomes part of the public domain through no act or omission of the receiving party;
(b) was in the receiving party’s lawful possession prior to initial disclosure by the disclosing party;
(c) is lawfully disclosed to the receiving party by a third party without any restriction on disclosure;
(d) is independently developed by the receiving party without reference to any information of a confidential nature belonging to the disclosing party; or
(e) is properly disclosed pursuant to a statutory obligation, the order of a court of competent jurisdiction or that of a competent regulated body (provided that reasonable prior notice of such disclosure has been given where permitted by law).

This clause 13 shall survive termination of the Order.

14. PEARSON POLICIES

14.1 Associated with the Goods, Services and Deliverables shall comply with:
(i) Pearson Business Partner Code of Conduct; and
(ii) Pearson’s Anti-Bribery and Corruption Policy; and
(iii) Pearson’s commitment to the UN Global Compact all of which are set out at https://www pearson.com/social-impact/policies—downloads.html and any other policies, standards or guidelines that Pearson may bring to the Supplier’s notice and as may be amended and/or updated by Pearson from time to time.

14.2 The Supplier warrants that its business, and that of its sub-contractors and suppliers, is free from slavery, servitude, forced or compulsory labour and human trafficking as defined by the Modern Slavery Act 2015.

14.3 Pearson (or their designated auditors) will be entitled to audit the Supplier during the term of the Order for compliance with these Terms. Pearson shall only do so providing they have given reasonable prior notice and will endeavour to limit the disruption to the Supplier. The Supplier shall provide all reasonable assistance that Pearson (or their designated auditors) require to conduct such an audit.

15. TERMINATION

15.1 Either party may terminate the Order by giving written notice to the other if the other party commits a material breach of the terms of the Order and (if such a breach is remediable) fails to remedy that breach within 30 days of receipt of notice in writing to do so.

15.2 Pearson may terminate the Order without any further liability (other than to pay undisputed amounts due for Goods or Services delivered prior to termination taking effect), in whole or in part at any time by giving the Supplier no less than 30 days written notice.

15.3 Either party may terminate the Order by giving written notice to the other party if that other party: (a) becomes unable to pay its debts; (b) enters into liquidation (except for the purposes of a solvent amalgamation or reconstruction); (c) makes an arrangement with its creditors; (d) has a receiver, administrator or administrative receiver appointed over any or all of its assets; (e) ceases or threatens to cease trading or is dissolved; (f) makes or suffers to be taken any similar action in consequence of a debt; or (g) is subject to any procedure equivalent to any of the preceding matters in any other jurisdiction.

15.4 Where a party terminates the Order in respect of the supply of one or more (but not all) of the Goods or Services, the Order shall continue in respect of any remaining supply of Goods, Deliverables or Services.
15.5 Termination of the Order shall not affect any of the parties' rights and remedies that have accrued as at termination.
15.6 Clauses which expressly or by implication survive termination of the Order shall continue in full force and effect.

16. CONSEQUENCES OF TERMINATION
16.1 On termination of the Order for any reason, the Supplier shall promptly deliver to Pearson all Deliverables whether or not then complete, and return in industry standard format, or at Pearson's option, destroy all Pearson Materials, Pearson Confidential Information and all Pearson data. If the Supplier fails to do so, then Pearson may enter the Supplier's premises and take possession of them. Until they have been returned or delivered, the Supplier shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Order.

17. FORCE MAJEURE
17.1 Neither party shall be in breach of the Order nor liable for delay in performing, or failure to perform, any of its obligations under it if such a delay or failure results from an event, circumstances or cause beyond its reasonable control, including governmental regulations, fire, flood, or any disaster or an industrial dispute affecting a third party for which a substitute third party is not reasonably available and which event could not have been prevented or mitigated by industry standard disaster recovery or business continuity plans (“Force Majeure Event”). If either party becomes aware of circumstances of Force Majeure which are likely to give rise to any such delay or failure on its part it shall notify the other party and inform the other party of the period which it is estimated that such failure or delay shall continue.

17.2 If a Force Majeure Event prevents, hinders or delays the Supplier's performance of its obligations for a continuous period of more than 30 Business Days, Pearson may terminate the Order immediately by giving written notice to the Supplier. The Supplier shall use all reasonable endeavours to mitigate the effect of a Force Majeure Event on the performance of its obligations.

18. GENERAL
18.1 Assignment
(a) Pearson may at any time novate, and in whole or in part, assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Order.
(b) The Supplier may not novate, assign, transfer, mortgage, charge, subcontract, declare a trust over or deal in any other manner with all or any of its rights or obligations under the Order without the prior written consent of Pearson.

18.2 Subcontracting. Where Pearson consents to a subcontract under clause 18.1(b), such consent will not relieve the Supplier of its obligations to Pearson and the Supplier shall be fully responsible to Pearson for the acts or omissions of its subcontractors.

18.3 Notices. Any notice or other communications required or permitted to be given under the Order shall be in writing and shall be delivered or transmitted to the intended recipient's address as specified in the Order or such other address as either party may notify to the other from time to time in accordance with this clause. Any notice shall be treated as having been served: (a) on delivery, if delivered by hand; (b) at 9.00am on the second Business Day after posting, if sent by pre-paid first class post or other next working day delivery service; (c) at the date and time that the courier's delivery receipt is signed, if delivered by commercial courier; or (d) at 9.00am on the next Business Day after transmission, if sent by e-mail. The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.

18.4 Publicity. Supplier agrees that it will not directly or indirectly, without the prior written consent of Pearson, issue a press release related to Pearson or any of the Pearson Group or use for the purposes of advertising, promotion, or publicity, or otherwise, the name of Pearson or any of its divisions, or those of any part of the Pearson Group, or any trade marks, trade names, service marks, symbols or any abbreviation thereof, of Pearson or of any of its divisions, of those of any part of the Pearson Group, or any other manner with all or any of its rights or obligations under the Order without the prior written consent of Pearson.

18.5 Severance. If any provision or part-provision of the Order 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 or deletion under this clause shall not affect the validity and enforceability of the rest of the Order.

18.6 Rights and remedies. The rights and remedies provided under the Order are in addition to, and not exclusive of, any rights or remedies provided by law.

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

18.8 No partnership or agency. Nothing in the Order is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, nor constitute a relationship of employment, or either party the agent of the other for any purpose. Neither party shall have authority to act as agent for, or to bind, the other party in any way.

18.9 Third parties. A person who is not a party to the Order shall not have any rights to enforce its terms.