

Advance HE: standard terms and conditions for the purchase of goods and services

The following are the terms and conditions on which Advance HE (“**Advance HE**”), will purchase the Services (as defined below) from you (the “**Supplier**”). These Terms and Conditions, the Order and the Specification (if any) are together the “**Contract**”.

1. Interpretation

1.1 In this Contract, the following expressions shall have following meanings unless the context otherwise requires:

Confidential Information: any information which has been designated as confidential by either party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information which relates to the business, affairs, finances, properties, assets, trading practices, Services, products, marketing, developments, trade secrets, Intellectual Property Rights, know-how, personnel, and customers of Advance HE or the Supplier (as the case may be) and all personal data and sensitive personal data within the meaning of the Data Protection Legislation, which is in each case provided or obtained by one party, to or for the other party;

Charges: the sums payable for the supply of the Services as specified in the Order;

Data Protection Legislation: the DPA, the UK GDPR, and any other laws relating to the protection of personal data and the privacy of individuals;

Deliverables: the deliverables specified in the Order;

DPA: the UK Data Protection Act 2018;

Equality Legislation: any and all legislation, applicable guidance and statutory codes of practice relating to diversity, equality, non-discrimination and human rights as may be in force from time to time in England and Wales or in any other territory in which, or in respect of which, the Supplier provides the Services;

UK GDPR: the General Data Protection Regulation (EU) 2016/679, or such replacement thereof in the UK in the form of a revised version of Regulation (EU) 2016/679;

Goods: the goods (including any instalment of the goods or any part of them) to be provided by the Supplier as specified in the Order;

Intellectual Property Rights: any copyright and related, patents, rights to inventions, registered designs, database rights, design rights, topography rights, trade marks, service marks, trade names and domain names, trade secrets, rights in unpatented know-how, rights of confidence and any other intellectual or industrial property rights of any nature including all applications (or rights to apply) for, and renewals or extensions of such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;

Order: the Advance HE's purchase order relating to the Services;

Programme/Event: a programme or event to be delivered by the Supplier on behalf of Advance HE consisting of one or more cohorts in relation to leadership development;

Quality Requirements: (including but not limited to) any Advance HE policy, procedures and quality standards whether referenced in the Order or brought to the Supplier's attention at any time;

Services: the services (including the supply of the relevant Goods) specified in the Order and, where the Supplier is delivering a Programme/Event as programme director or facilitator, the duties (as applicable to their role) found here:

https://www.heacademy.ac.uk/system/files/downloads/Programme%20directo%20and%20facilitator%20services_0.pdf;

Specification: any plans, drawings, data, technical specifications, descriptions of quality or quantity, Order activity description, or other information relating to the Services and which have been published or made available to the Supplier or agreed in writing by Advance HE.

1.2 Where the words “include(s)” or “including”, or words of a similar nature, are used in this Contract, they are deemed to have the words “without limitation” following them, and are illustrative and shall not limit the sense of the words preceding them.

1.3 Unless otherwise stated, a reference in this Contract to a statute or statutory provision is a reference to the relevant UK statute or statutory provision as it is in force during the Term, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation made under such statute or statutory provision and in force during the Term.

1.4 In the event of any conflict between these Terms and Conditions, the Order and the Specification (if any), these Terms and Conditions shall prevail provided that the Supplier has not entered into a separate contract for services, associate/service contract, consultancy agreement or any other formal written agreement (the “**Primary Contract**”) with Advance HE, in respect of the supply of the same Services to which this Contract pertains, in which case such Primary Contract will govern the Services. For the avoidance of doubt, these Terms and Conditions shall take precedence over any terms and conditions of the Supplier and shall not be varied without prior written consent of Advance HE.

2. Term and Scope of Contract

2.1 The Order shall be deemed to be accepted on the earlier of:

2.1.1 the Supplier issuing written acceptance of the Order; or

2.1.2 any act by the Supplier consistent with fulfilling the Order,

at which point and on which date the Contract shall come into existence (“**Commencement Date**”).

2.2 The Contract shall continue until the earlier of (a) the date on which the Services have been completed or (b) the date this Contract is terminated in accordance with its terms (the “**Term**”).

2.3 The Supplier is appointed as the non-exclusive supplier of the Services and this Contract does not confer any exclusivity or minimum purchase commitment by Advance HE.

2.4 These Terms and Conditions apply to the Contract to the exclusion of any other terms that the Supplier seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

3. Supply of Services

3.1 The Supplier shall from the Commencement Date and for the duration of this Contract provide the Services to Advance HE in accordance with the terms of the Contract.

3.2 Advance HE shall be entitled to alter the mode of delivery from face-to-face to online and vice versa by serving no less than 14 days' notice. If any changes in the Charges occur due to the aforementioned alteration, the Charges shall be amended accordingly. The Supplier shall ensure that it has access to suitable equipment, software and a stable internet connection to be able to deliver the Services both face-to-face and online.

3.3 The Supplier shall meet any performance dates for the Services specified in the Order or notified to the Supplier by Advance HE.

3.4 In providing the Services the Supplier shall:

3.4.1 comply with all reasonable instructions issued by Advance HE;

3.4.2 perform the Services using reasonable skill and care and in accordance with best practice in the Supplier's industry, profession or trade.

3.4.3 use personnel who are suitably skilled, qualified, trained and experienced to perform the tasks assigned to them with all due skill, care and diligence under adequate supervision;

3.4.4 ensure that the Services and Deliverables will conform with all descriptions set out in the Specification and/or the Order, and that the Deliverables shall be fit for any purpose expressly or impliedly made known to the Supplier by Advance HE;

3.4.5 provide all equipment, tools and vehicles and any other necessary items (“**Supplier Equipment**”) in order to perform the Services at no additional cost to Advance HE unless prior written agreement is obtained from Advance HE as to incurrance of such costs;

3.4.6 ensure that the Suppliers Equipment shall be of satisfactory quality and fit for the purpose of providing the Services in accordance with this Contract;

3.4.7 obtain and maintain at all times all necessary licences and consents and comply with all applicable laws and regulations;

3.4.8 observe all health and safety rules and regulations (including policies) and any other security requirements which apply at any of Advance HE's premises;

3.4.9 hold all materials, equipment and tools, drawings, specifications and data supplied by Advance HE to the Supplier (“**Advance HE Materials**”) in safe custody at its own risk, maintain the Advance HE Materials in good condition until returned to Advance HE, and not dispose or use Advance HE Materials other than in accordance with Advance HE's written instructions or authorisation;

3.4.10 act in a manner that will, on termination of this Contract, facilitate an orderly handover of the provision of Services to Advance HE and/or a new Advance HE service provider at no additional cost to Advance HE;

3.4.11 comply with Advance HE's Quality Requirements;

3.4.12 not do or omit to do anything throughout the Term which may cause Advance HE to lose any licence, authority, consent or permission upon which it relies for the purposes of conducting business and/or discharging its charitable objectives, and the Supplier acknowledges that Advance HE may rely or act on the Services; and

3.4.13 not to do or say anything throughout the Term which damages or which could reasonably be expected to damage the interests or the reputation of Advance HE or its officers, employees, agents, contractors, funders or owners.

4. Supply and Delivery of the Goods

4.1 The Supplier shall ensure that the Goods, where applicable, shall:

4.1.1 correspond with their description and any applicable Specification;

4.1.2 be of a satisfactory quality (within the meaning of the Sale of Goods Act 1979) and fit for any purpose held out by the Supplier or made known to the Supplier by Advance HE, expressly or by implication, and in this respect Advance HE relies on the Supplier's skill and judgement;

4.1.3 be supplied together with all applicable user documentation and manuals (written in English);

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

4.1.5 comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods.

4.2 Advance HE shall have the right to inspect and test the Goods at any time prior to delivery. If following such inspection or testing, Advance HE considers that the Goods do not conform or are unlikely to comply with the Supplier's undertakings set out in clause 4.1, Advance HE shall

inform the Supplier and the Supplier shall immediately take all actions necessary to ensure compliance with the provisions of clause 4.1.

- 4.3 Notwithstanding any such inspection or testing, the Supplier shall remain fully responsible for the Goods and any such inspection or testing shall not reduce or otherwise affect the Supplier's obligations under the Contract, and Advance HE shall have the right to conduct further inspections and tests after the Supplier has carried out its remedial actions.
- 4.4 The Supplier shall ensure that:
 - 4.4.1 the Goods are properly packed and secured in such a manner as to enable them to reach their destination in good condition;
 - 4.4.2 each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, the Order number (if any), the type and quantity of the Goods (including the code number of the Goods (where applicable)), special storage instructions (if any) and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and
 - 4.4.3 if the Supplier requires Advance HE to return any packaging material to the Supplier, that fact is clearly stated on the delivery note. Any such packaging material shall be returned to the Supplier at the cost of the Supplier.
- 4.5 The Supplier shall deliver the Goods:
 - 4.5.1 on the date and to the premises specified in the Order; and
 - 4.5.2 during the Advance HE's normal hours of business (being 9am to 5pm Monday to Friday but excluding bank holidays) or as instructed by Advance HE.
- 4.6 Delivery of the Goods shall be completed on the completion of unloading the Goods at the relevant delivery location specified in the Order.
- 4.7 If the Supplier:
 - 4.7.1 delivers less than 95% of the quantity of Goods ordered, Advance HE may reject the Goods; or
 - 4.7.2 delivers more than 105% of the quantity of Goods ordered, Advance HE may at its discretion reject the Goods or the excess Goods; and any rejected Goods shall be returnable at the Supplier's risk and expense. If the Supplier delivers more or less than the quantity of Goods ordered, and Advance HE accepts the delivery, a pro rate adjustment shall be made to the invoice for the Goods.
- 4.8 The Supplier shall not deliver the Goods in instalments without Advance HE's prior written consent. Failure by the Supplier to deliver any one instalment on time or at all or any defect in an instalment shall entitle Advance HE to the remedies as set out in clause 5.
- 4.9 Advance HE reserves the right to record and to request the recording of the delivery of the Services for the purposes of internal use and to share the recordings with its member institutions and customers. The Supplier shall use all reasonable endeavours to ensure the ability to record the delivery of the Services upon receiving such request from Advance HE.
- 4.10 Ownership of the Goods shall pass to Advance HE on completion of delivery, or (if earlier) upon full payment for the Goods.
- 4.11 Risk in the Goods shall pass to Advance HE on completion of delivery.

5. Remedies

- 5.1 If the Supplier fails to deliver the Goods and/or perform the Services on the relevant delivery date specified in the Order, or fails to comply with the undertakings set out in clause 3.3, then without limiting any of its other rights or remedies, Advance HE shall have the right to one or more of the following remedies:
 - 5.1.1 to terminate the Contract with immediate effect by giving written notice to the Supplier;
 - 5.1.2 to refuse to accept any subsequent performance of the Services and/or delivery of the Goods which the Supplier attempts to make;
 - 5.1.3 to require re-performance (at no additional cost to Advance HE) of any Services which are defective or which are otherwise not in accordance with the requirements of this Contract.
 - 5.1.4 to recover from the Supplier any costs incurred by Advance HE in obtaining substitute goods and/or services from a third party;
 - 5.1.5 where Advance HE has paid in advance for Services that have not been provided by the Supplier and/or Goods which have not been delivered by the Supplier, to have such sums refunded by the Supplier; and
 - 5.1.6 to claim damages for any additional costs, loss or expenses incurred by Advance HE which are in any way attributable to the Supplier's failure to meet such dates.
- 5.2 If the Supplier has delivered Goods that do not comply with the undertakings set out in clause 4.1, then, without limiting its other rights and remedies, Advance HE shall have one or more of the following rights, whether it has accepted the Goods or not:
 - 5.2.1 to terminate the Contract with immediate effect upon written notice to the Supplier;
 - 5.2.2 to reject the Goods (in whole or in part) and return them to the Supplier at the Supplier's own risk and expense;
 - 5.2.3 to require the Supplier to deliver substitute Goods (in the event of non-delivery) within the timescale specified by Advance HE (acting reasonably), or to provide a full refund of the price of the undelivered Goods (if paid);
 - 5.2.4 to require the Supplier to repair or replace the rejected Goods, or to provide a full refund of the price of the rejected Goods (if paid);
 - 5.2.5 to refuse to accept any subsequent delivery of the Goods which the Supplier attempts to make;

- 5.2.6 to recover from the Supplier any costs incurred by Advance HE in obtaining substitute goods from a third party; and
- 5.2.7 to claim damages for any other costs, loss or expenses incurred by Advance HE which are in any way attributable to the Supplier's failure to carry out its obligations under the Contract.
- 5.3 The terms and conditions of this Contract shall apply to any substituted or remedial services and/or repaired or replacement goods supplied by the Supplier.
- 5.4 Advance HE's rights and remedies under this Contract are in addition to its rights and remedies implied by statute and common law.

6. Payment

- 6.1 The Supplier shall invoice Advance HE on or at any time after (not exceeding a period of 1 month) performance of the Services (or each agreed stage thereof) is completed to Advance HE's satisfaction and/or delivery of the Goods in compliance with the undertakings set out in clause 4.1.
- 6.2 Each invoice shall quote the number of the Order, and the relevant purchase requisition/payment request.
- 6.3 Where value added tax (VAT) or any equivalent sales tax in an applicable jurisdiction is properly chargeable and identified in the Order, the Supplier shall issue a valid and accurate tax invoice (including the Supplier's VAT registration number). In the event that Advance HE is required by the laws or regulations of any applicable jurisdiction to deduct any withholding tax or similar taxes from the Charges, Advance HE shall deduct and account for such taxes before paying the remainder of the Charges to the Supplier.
- 6.4 Subject to clauses 6.5 and 6.6 below, Advance HE shall, unless agreed otherwise in writing, pay each of the Supplier's valid and accurate invoices by automated transfer into the Supplier's nominated bank account no later than 30 days after the invoice is received.
- 6.5 Provided that it notifies the Supplier in writing in advance, and works in good faith to resolve any issues or disputes within 30 days, Advance HE shall be entitled to withhold payment of any sums in respect of any Services which have not been provided by the Supplier to Advance HE's satisfaction and in accordance with the terms of this Contract.
- 6.6 Without prejudice to the other rights and remedies available to Advance HE under this Contract, Advance HE shall be entitled (but not obliged) at any time or times without notice to the Supplier to set off any liability of the Supplier to Advance HE against any liability of Advance HE to the Supplier (in any case howsoever arising and whether any such liability is present or future) and may for such purpose convert or exchange any currency.
- 6.7 The Charges, together with any applicable VAT or equivalent sales tax, shall be the full and exclusive remuneration of the Supplier in respect of the supply of the Services (and the Goods, if applicable) unless otherwise agreed in writing by Advance HE.
- 6.8 Where the Supplier is a registered Associate of Advance HE or is delivering consultancy Services, any agreed expenses must be claimed in accordance with Advance HE's Consultants Expenses Policy, a copy of which can be obtained upon request.

7. Change Control

- 7.1 If either party wishes to change the scope or provision of the Services and/or the nature or quantity of the Goods, or any delivery requirements for the Goods, it shall submit details of the requested change to the other in writing and such change shall only be implemented if agreed between the parties following a variation of this Contract in writing signed by (or on behalf of) each of the parties.

8. Confidentiality

- 8.1 For the purposes of this clause 8:
 - 8.1.1 the "**Disclosing Party**" is the party which discloses Confidential Information to, or in respect of which Confidential Information comes to the knowledge of, the other party; and
 - 8.1.2 the "**Receiving Party**" is the party which receives Confidential Information relating to the other party.
- 8.2 The Receiving Party shall take all necessary precautions, and apply the same security measures and degree of care to the Confidential Information as the Receiving Party applies to its own confidential information (which the Receiving Party warrants as providing adequate protection from unauthorised disclosure, copying or use) to ensure that all Confidential Information it receives under or in connection with this Contract:
 - 8.2.1 is given only to such of its staff, funders, owners, professional advisors or consultants engaged to advise it in connection with this Contract as is strictly necessary for the performance of this Contract and only to the extent necessary for the performance of this Contract; and
 - 8.3 is treated as confidential and not disclosed (without the prior written consent of the Disclosing Party) or used by the Receiving Party or any member of its staff or its funders, owners, professional advisors or consultants otherwise than for the purposes of this Contract.

- 8.4 The provisions of clause 8.2 shall not apply to any Confidential Information which:
- 8.4.1 is or becomes public knowledge (otherwise than by breach of this clause 8);
- 8.4.2 was in the possession of the Receiving Party, without restriction as to its disclosure, before receiving it from the Disclosing Party
- 8.4.3 is received from a third party who lawfully acquired it and who is under no obligation restricting its disclosure;
- 8.4.4 is independently developed without access to the Confidential Information; or
- 8.4.5 is required to be disclosed by any applicable law or regulation, or any court, or governmental or administrative or regulatory authority competent to require such disclosure, provided that the Receiving Party has given the Disclosing Party reasonable notice (where legally permissible to do so) in writing of such required disclosure so that the Disclosing Party has had an opportunity to defend or apply to limit or protect such Confidential Information from disclosure and the provisions of this clause 8 shall not apply to that Confidential Information to the extent only that it is so required to be produced or disclosed.
- 8.5 This clause 8 shall remain in full force and effect in the event of any termination or expiry of this Contract.
- 9. Intellectual Property Rights**
- 9.1 Where any Intellectual Property Rights owned by or licensed to Advance HE are required to be used in connection with the provision of the Services, the Supplier acknowledges that the Supplier shall have no right to use the same except to the sole extent necessary for the provision of the Services and subject to such consents and restrictions as may be specified by Advance HE.
- 9.2 The Supplier hereby assigns to Advance HE with full title guarantee by way of present and future assignment any and all Intellectual Property Rights in the Deliverables upon their creation, and any other Intellectual Property Rights the Supplier creates during its performance of the Services.
- 9.3 The Supplier shall, at Advance HE's request, execute all deeds and documents which may reasonably be required to give effect to this clause 9.
- 9.4 The Supplier warrants to Advance HE that:
- 9.4.1 the performance of the Services by the Supplier will not result in the infringement of any Intellectual Property Rights of any third party;
- 9.4.2 any documents or other materials created by the Supplier in the provision of the Services for use by Advance HE will be original and created specifically for Advance HE;
- 9.4.3 the Deliverables contain nothing libellous, obscene or unlawful and respect the privacy of any individual(s) named therein; and
- 9.4.4 all statements in the Deliverables purporting to be facts are, to the best of the Supplier's knowledge and belief, true and accurate.
- 9.5 The provisions of this clause 9 shall survive the termination or expiry of this Contract, however arising.
- 10. Data Protection**
- 10.1 In this clause:
- 10.1.1 **"Controller"** means a "data controller" for the purposes of the DPA and a "controller" for the purposes of the UK GDPR (as such legislation is applicable);
- 10.1.2 **"Data Protection Legislation"** shall mean the DPA, the UK GDPR, and any other laws relating to the protection of personal data and the privacy of individuals;
- 10.1.3 **"Data Subject"** has the same meaning as in the Data Protection Legislation;
- 10.1.4 **"DPA"** means the UK Data Protection Act 2018, as revised and superseded from time to time;
- 10.1.5 **"UK GDPR"** means General Data Protection Regulation (EU) 2016/679, or such replacement thereof in the UK in the form of a revised version of Regulation (EU) 2016/679;
- 10.1.6 **"Personal Data"** means "personal data" (as defined in the Data Protection Legislation) that are Processed under this Contract;
- 10.1.7 **"Personal Data Breach"** means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, Personal Data transmitted, stored or otherwise processed;
- 10.1.8 **"Processing"** has the same meaning as in the Data Protection Legislation and "Process" and "Processed" shall be construed accordingly; and
- 10.1.9 **"Processor"** means a "data processor" for the purposes of the DPA and a "processor" for the purposes of the UK GDPR (as such legislation is applicable).
- 10.2 The parties acknowledge that the Supplier is a Processor acting on behalf of Advance HE and that, for the purposes of this Contract:
- 10.2.1 the type of Personal Data and categories of Data Subjects include, but are not limited to, the following:
Categories of Data Subjects: Advance HE's customers, Advance HE or its customer's staff including agents, Advance HE's supplier's, and Advance HE's consultants; and
Type of Personal Data: names, job titles, identity of employer, contact details, educational qualifications, racial or ethnic origin, religious or similar beliefs, or sexual life; and
- 10.2.2 the nature/purpose of the Processing is to enable the Supplier to carry out its duties under this Contract (which form the subject matter of the Processing) and the duration of the Processing shall be the term of this Contract.
- 10.3 The Supplier shall comply with its obligations under the Data Protection Legislation and shall, in particular:
- 10.3.1 Process the Personal Data only to the extent, and in such manner, as is necessary for the purpose of carry out its duties under this Contract and in accordance with Advance HE's written instructions and this clause 10;
- 10.3.2 implement appropriate technical and organisational measures in accordance with the Data Protection Legislation to ensure a level of security appropriate to the risks that are presented by such Processing, in particular from accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to Personal Data, taking into account the state of the art, the costs of implementation, the nature, scope, context and purposes of processing and the likelihood and severity of risk in relation to the rights and freedoms of the Data Subjects;
- 10.3.3 not transfer the Personal Data outside of the European Economic Area without the prior written consent of Advance HE;
- 10.3.4 ensure that any employees or other persons authorised to process the Personal Data are subject to appropriate obligations of confidentiality;
- 10.3.5 not engage any third party to carry out its Processing obligations under this Contract without obtaining the prior written consent of Advance HE and, where such consent is given, procuring by way of a written contract that such third party will, at all times during the engagement, be subject to data Processing obligations equivalent to those set out in this clause 10;
- 10.3.6 notify Advance HE, as soon as reasonably practicable, about any request or complaint received from Data Subjects without responding to that request (unless authorised to do so by Advance HE) and assist Advance HE by technical and organisational measures, insofar as possible, for the fulfilment of Advance HE 's obligations in respect of such requests and complaints;
- 10.3.7 on request by Advance HE and taking into account the nature of the Processing and the information available to the Supplier, assist Advance HE in ensuring compliance with its obligations under the UK GDPR (where applicable) with respect to:
- (i) implementing appropriate technical and organisational measures in accordance with Article 32 of the UK GDPR;
- (ii) where relevant, notifying any Personal Data Breach to the Information Commissioner's Office (or any replacement body) and/or communicating such Personal Data Breach to the Data Subject in accordance with Articles 33 and 34 of the UK GDPR; and
- (iii) where necessary, carrying out and/or reviewing and, if applicable, consulting with the Information Commissioner's Office (or any replacement body) with respect to data protection impact assessments in accordance with Articles 35 and 36 of the UK GDPR;
- 10.3.8 on request by Advance HE, make available all information necessary to demonstrate the Supplier's compliance with this clause 10 and otherwise permit, and contribute to, audits carried out by Advance HE (or its authorised representative); and
- 10.3.9 on termination or expiry of this Contract, destroy or return to Advance HE (as Advance HE directs) all Personal Data and delete all existing copies of such Personal Data.
- 11. Prevention of fraud, corruption and bribery**
- 11.1 The Supplier undertakes and warrants that neither it nor the Supplier's staff, employees or sub-contractors have offered, given or agreed to give (and that it will not offer or give or agree to give) to any person, company or firm any gift or consideration of any kind as an inducement or reward for doing or forbearing to do anything in relation to the obtaining of this Contract or the performance of the Supplier's obligations under this Contract.
- 11.2 The Supplier warrants that it has in place, and undertakes that it will comply with, policies and procedures to avoid the risk of bribery (as set out in the Bribery Act 2010) and fraud within its organisation and in connection with its dealings with third parties.
- 11.3 The Supplier warrants that it has not colluded, and undertakes that it will not at any time collude, with any third party in any way in connection with this Contract (including in respect of pricing under this Contract). Nothing under this clause 11.3 is intended to prevent the Supplier from discussing the terms of this Contract and the Supplier's pricing with the Supplier's professional advisors.
- 12. Anti-slavery and human trafficking law**
- 12.1 The Supplier shall:
- 12.1.1 ensure that slavery and human trafficking is not taking place in any part of its business or in any part of its supply chain;
- 12.1.2 respond promptly to all slavery and human trafficking due diligence questionnaires issued to it by Advance HE from time-to-time and ensure that it's responses to all such questionnaires are complete and accurate; and

- 12.1.3 notify Advance HE as soon as it becomes aware of any actual or suspected slavery or human trafficking in any part of its business or in a supply chain which has a connection with this Contract.
- 13. Criminal Finances Act 2017 (“CFA 2017”)**
- 13.1 The Supplier shall:
- 13.1.1 not engage in any activity, practice or conduct which would constitute either:
- 13.1.1.1 a UK tax evasion facilitation offence under s45(1) of CFA 2017; or
- 13.1.1.2 a foreign tax evasion facilitation offence under s46(1) of CFA 2017;
- 13.1.2 have and shall maintain in place throughout the term of the Contract such policies and procedures as are both reasonable to prevent the facilitation of tax evasion by another person (including, without limitation, employees of the Supplier) and to ensure compliance with clause 13.1.1;
- 13.1.3 promptly report to Advance HE any request or demand from a third party to facilitate the evasion of tax within the meaning of Part 3 of the CFA 2017, in connection with the performance of this Contract;
- 13.1.4 if requested to do so by Advance HE, promptly certify to Advance HE in writing signed by an officer of the Supplier, compliance with this clause 13 by the Supplier and all persons associated with it under clause 13.2. The Supplier shall provide such supporting evidence of compliance as Advance HE may reasonably request; and
- 13.1.5 fully indemnify Advance HE in respect of any: liabilities, costs, expenses, damages and losses (including, but not limited to, any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) that it incurs as a result of the Supplier’s breach of this clause 13.
- 13.2 The Supplier shall ensure that any person associated with the Supplier who is performing service/supplying goods in connection with this Contract 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 13 (“**Relevant Terms**”). The Supplier shall be responsible for the observance and performance by such person of the Relevant Terms, and shall be directly liable to Advance HE for any breach by such persons of any of the Relevant Terms.
- 13.3 Breach of this clause 13 shall be deemed a material breach under clause 15.2.1.
- 13.4 For the purposes of clause 13, the meaning of reasonable prevention shall be determined in accordance with any guidance issued under s47 CFA 2017 and associated with the Supplier includes, but is not limited to, any sub-contractor of the Supplier.
- 14. Limitation of Liability**
- 14.1 Nothing in this Contract shall exclude or restrict the liability of either party to the other:
- 14.1.1 for death or personal injury resulting from negligence; or
- 14.1.2 for fraudulent misrepresentation; or
- 14.1.3 in any other circumstances where liability may not be limited under any applicable law.
- 14.2 Nothing in this Contract shall exclude or restrict the liability of the Supplier to Advance HE:
- 14.2.1 for any breach by the Supplier of:
- 14.2.1.1 clause 8 (Confidentiality); or
- 14.2.1.2 clause 10 (Data protection); or
- 14.2.1.3 clause 11 (Prevention of fraud, corruption and bribery).
- 14.2.1.4 clause 12 (Anti-slavery and human trafficking law); or
- 14.2.1.5 clause 13 (CFA 2017);
- 14.2.1.6 Subject to clauses 14.1 and 14.2:
- 14.2.1.6.1 neither party shall be liable to the other whether in contract, tort, negligence, breach of statutory duty or otherwise for any indirect loss or damage, costs or expenses whatsoever or howsoever arising out of or in connection with this Contract; and
- 14.2.1.6.2 the liability of the Supplier to Advance HE, whether in contract, tort, negligence, breach of statutory duty or otherwise, in respect of any one claim or series of linked claims under or in connection with this Contract shall be limited to the sum equal to 200% of the Charges properly paid and payable (plus any late payment interest properly chargeable thereon) from first occurrence of the event giving rise to the relevant claim or series of claims; and
- 14.2.1.6.3 the liability of Advance HE to the Supplier, whether in contract, tort, negligence, breach of statutory duty or otherwise, in respect of any one claim or series of linked claims under or in connection with this Contract shall be limited to the sum equal to the Charges properly paid and payable from first occurrence of the event giving rise to the relevant claim or series of claims.
- 14.3 Except where otherwise expressly stated in this Contract, all remedies available to either party for breach of this Contract are cumulative and may be exercised concurrently or separately, and the exercise of one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.
- 14.4 The provisions of this clause 14 shall survive the termination or expiry of this Contract, however arising.
- 15. Termination**
- 15.1 Without prejudice to any other rights or remedies which Advance HE may have, Advance HE may terminate this Contract without liability to the Supplier immediately on giving notice to the Supplier if:
- 15.1.1 the performance of the Services is delayed, hindered or prevented by circumstances of force majeure (as defined in clause 17) for a period in excess of 28 days; or
- 15.1.2 where the Supplier is a company, there is a change of control of the Supplier.
- 15.2 Either party may give notice to the other terminating this Contract with immediate effect if:
- 15.2.1 the other party commits any material breach of any of the terms of this Contract and that breach (if capable of remedy) is not remedied within 30 days after notice being given requiring it to be remedied (and where such breach is not capable of remedy, the terminating party shall be entitled to terminate the Contract with immediate effect). For the avoidance of doubt, any breach of clause 11 (Prevention of fraud, corruption and bribery) shall be deemed to be a material breach of this Contract which is incapable of remedy;
- 15.2.2 an order is made or a resolution is passed for the winding-up of the other party or an administrator is appointed by order of the court or by other means to manage the affairs, business and property of the other party or a receiver and/or manager or administrative receiver is validly appointed in respect of all or any of the other party’s assets or undertaking or circumstances arise which entitle the Court or a creditor to appoint a receiver and/ or manage or administrative receiver or which entitle the Court to make a winding-up or bankruptcy order or the other party takes or suffers any similar or analogous action (in any jurisdiction) in consequence of debt; or
- 15.2.3 the other party ceases, or threatens to cease, to carry on business.
- 15.3 Advance HE may at any time by notice terminate this Contract with immediate effect if the Supplier is in persistent breach of any of its obligations under this Contract, whether or not such breach is capable of remedy. For the purposes of this clause 15.3, three or more non-material breaches of the terms of this Contract may together constitute a persistent breach.
- 15.4 Notwithstanding the above Advance HE may at any time terminate this Agreement upon 30 (thirty) days’ prior written notice without incurring liability to the Supplier for such termination.
- 15.5 On termination of this Contract for any reason the Supplier shall immediately delete or return to Advance HE, at Advance HE’s request, all documents, materials, information and other resources provided by Advance HE to the Supplier for the purposes of or in connection with this Contract, including any Confidential Information and any Personal Data, except that:
- 15.5.1 where expressly agreed in writing by Advance HE, the Supplier shall be entitled to retain one copy of such documents, materials, information and other resources for audit purposes only; and
- 15.5.2 the Supplier shall not be required to return or destroy any such documents, materials, information and other resources stored in its automatically archived electronic files, provided that such files are accessible only to those persons engaged by the Supplier to be responsible for the safe and secure storage of such files,
- 15.5.3 and in each the provisions of clause 8 (Confidentiality) shall continue to apply to such retained documents, materials, information and other resources.
- 15.6 Termination of this Contract, however it arises shall not affect or prejudice the accrued rights of the parties as at termination or the continuation of any provision expressly stated to survive, or implicitly surviving, termination.
- 15.7 Upon the termination of this Contract, Advance HE shall pay the Charges (or such percentage of the Charges) properly incurred but previously unpaid up to the effective date of termination.
- 15.8 In relation to Services to be carried out by the Supplier for the delivery of a Programme/Event, Advance HE reserves the right to cancel a Programme/Event (or individual cohort in relation to that Programme/Event) at any time prior to its scheduled date (face-to-face or online). If Advance HE cancels a Programme/Event (or cohort in relation to the Programme/Event) 14 days’ or more prior to the scheduled date, Advance HE shall not be obliged to pay any Charges to the Supplier for the cancelled Programme/Event (or cohort in relation to the Programme/Event) except in respect of pre-booked expenses (upon prompt production of valid receipts). However, if Advance HE provides less than 14 days’ notice of cancellation, it will be responsible for the contracted preparation and delivery Charges for the first day of the Programme/Event. Clause 7 shall not apply in respect of this clause 15.8.
- 16. Responsible Business**
- 16.1 The Supplier shall:
- 16.1.1 demonstrate a commitment to equality and diversity, have an appropriate diversity policy approved by its board of directors and ensure that it does not, whether as employer or provider of the Services engage in any act or omission that would contravene any and all legislation, applicable guidance and statutory codes of practice relating to diversity, equality, non-discrimination and human rights as may be in force from time to time in England and Wales or in any other territory in which, or in respect of which the Supplier provides the Services and comply with all its obligations as an

- employer or provider of Services as set out in the such legislation and take all reasonable endeavours to ensure its personnel do not unlawfully discriminate within the meaning of the Equality Legislation; demonstrate environmental responsibility and comply in all material respects with applicable environmental laws and regulations in force from time to time in relation to the provision of the Services. Where the provisions of any such legislation are implemented by the use of voluntary agreements or codes of practice, the Supplier shall comply with such agreements or codes of practice as if they were incorporated into English law.
- 16.1.2 The Supplier shall meet all reasonable requests by Advance HE for information evidencing the Supplier's compliance with the provisions of clause 14.1.
- 16.2 The Supplier shall meet all reasonable requests by Advance HE for information evidencing the Supplier's compliance with the provisions of clause 14.1.
17. **Force Majeure**
- 17.1 Neither party shall be in breach of this Contract if it is prevented from or delayed in carrying on its business by acts, events, omissions or accidents beyond its reasonable control ("force majeure") including (insofar as beyond such control but without prejudice to the generality of the foregoing expression) strikes, lock-outs or other industrial disputes, pandemics and epidemics, failure of a utility service or transport network, act of God, war, riot, civil commotion, malicious damage, volcanic ash, earthquake, explosion, terrorist act, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm, rejection of a visa application (insofar neither party is at fault thereof) or default of consultants or sub-contractors (save that the Supplier shall be liable for, and shall not be excused non-performance of this Contract due to, any breach by its sub-contractors).
- 17.2 For the avoidance of doubt, no payments shall be due under this Contract in respect of any period where the Supplier is prevented from or delayed in performing the Services as a result of force majeure.
18. **General**
- 18.1 **Status:** The relationship of the Supplier to Advance HE will be that of independent contractor and nothing in this Contract shall render the Supplier or any of the Suppliers staff an employee, worker, agent or partner of Advance HE and the Supplier shall not hold itself out as such. The Supplier acknowledges that in entering into this Contract no form of exclusivity or future volume guarantee has been granted by Advance HE for Services from the Supplier and that Advance HE is at all times entitled to enter into other contracts and arrangements with other providers for the provision of any or all services which are the same as or similar to the Services.
- 18.2 **Audit:** The Supplier will fully co-operate with and assist Advance HE in meeting its audit and regulatory requirements by providing access for Advance HE, its internal auditors (which shall include for the purposes of this Contract Advance HE's internal audit, security and operational risk functions), its external auditors or any agents appointed by Advance HE to conduct appropriate reviews and inspections of the activities and records of the Supplier (and to take copies of records and documents and interview members of the Supplier's personnel involved in the provision of the Services) relating to the performance of the Services and to the accuracy of the Charges. The Supplier shall maintain all records relating to this Contract (including the provision of the Services and the payment of all Charges and expenses) for a period of six (6) years following the year in which the provision of the Services under this Contract is completed or such longer period as Advance HE may notify to the Supplier in writing from time to time.
- 18.3 **Publicity:** The Supplier shall not publicise the terms of this Contract or use the name of Advance HE or any trade name or trade mark used by Advance HE or refer to Advance HE in any other way in any press release, promotional literature, publications or advertising material, including any website, "blogs", social media or other online services, without the prior written consent of Advance HE.
- 18.4 **Assignment:** The Supplier shall not, without the prior written consent of Advance HE assign, transfer, charge, create a trust in, or deal in any other manner with all or any of its rights or obligations under this Contract. Advance HE may assign or novate this Contract to: (i) any separate entity controlled by Advance HE; or (ii) any body or department which succeeds to those functions of Advance HE to which this Contract relates. The Supplier warrants and represents that it will (at Advance HE's reasonable expense) execute all such documents and carry out all such acts, as reasonably required to give effect to this clause 16.4.
- 18.5 **Sub-Contracting:** The Supplier may not sub-contract the provision of any part of the Services without the prior written consent of Advance HE, such consent not to be unreasonably withheld or delayed. Notwithstanding any sub-contracting permitted under this clause, the Supplier shall remain wholly liable and responsible for all acts and omissions (howsoever arising) of its sub-contractors in the performance of the Services.
- 18.6 **Third Party Rights:** The Contract does not create any rights or benefits enforceable by any person not a party to it (within the meaning of The Contracts (Rights of Third Parties) Act 1999).
- 18.7 **Entire agreement:** This Contract contains all the terms agreed between the parties regarding its subject matter and supersedes any prior agreement, understanding or arrangement between the parties, whether oral or in writing, provided that nothing in this clause 18.7 shall operate to limit or exclude either party's liability for fraudulent misrepresentation.
- 18.8 **Waiver:** A waiver of any right under this Contract is only effective if it is in writing and it applies only to the party to whom the waiver is addressed and the circumstances for which it is given.
- 18.9 **Severability:** If any provision (or part of a provision) of this Contract is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force. If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.
- 18.10 **Notices:** All notices and other communications shall be in writing and shall conclusively be deemed to have been duly given when delivered to the address of the relevant party as set out in the Order.
- 18.11 **Insurance:** During the Term of the Contract, the Supplier shall maintain in force, with a reputable insurance company, professional indemnity insurance, product liability insurance, travel insurance and public liability insurance to cover the liabilities that may arise under or in connection with the Contract, and shall, upon the Advance HE's request, produce the relevant documentation to demonstrate compliance with this clause.
- 18.12 **Dispute Resolution:** Subject to the remainder of this clause 18.12, the parties agree irrevocably that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including any non-contractual dispute or claim) that arises out of or in connection with this Contract or its subject matter. If any dispute or claim arises out of or in connection with this Contract, the parties shall, following service of written notice by one party on the other, attempt to resolve amicably by way of good faith negotiations and discussions any such dispute or claim as soon as reasonably practicable (and in any event within 10 working days after such notice or by such later date as the parties may otherwise agree in writing). If the dispute or claim is not settled by mediation within 30 days of the commencement of the mediation, or such further period as the parties shall agree in writing, either party may commence proceedings in accordance with clause 18.12. Nothing in this clause 18.12 shall prevent either party from applying at any time to the court for injunctive relief on the grounds of infringement, or threatened infringement, of the other party's obligations of confidentiality contained in this Contract or infringement, or threatened infringement, of the applicant's Intellectual Property Rights.
- 18.13 **Governing law:** This Contract and any dispute or claim (including any non-contractual dispute or claim) arising out of or in connection with it or its subject matter, shall be governed by, and construed in accordance with, the laws of England and Wales.
- 18.14 **Non-solicitation:** During the period commencing on the Commencement Date and ending six (6) months following the end date of the Term, the Supplier shall not, without Advance HE's prior written consent, directly or indirectly (i) call upon, accept business from, or solicit the business of any person or company who is, or who had been at any time during the preceding twelve months, a customer or supplier of Advance HE, (ii) otherwise divert or attempt to divert any business from Advance HE, or (iii) interfere in any way with the business relationships between Advance HE and any of its customers, suppliers or others with whom it has a business relationship.