

AGREEMENT

- (1) **INSTITUTE OF EDUCATION, UNIVERSITY OF LONDON**, 20 Bedford Way, London WC1H 0AL (the “**Institute**” or “**IoE**”), and
- (2) **FoundationCampus London Limited** (Company Number: 06861252), whose registered office is at Kett House, Station Road, Cambridge CB1 2JH (“**FoC**”)

subject to the following terms and conditions and schedules, wish to enter into an agreement for the appointment of FoC (located at Birkbeck, University of London) to deliver Programmes to meet the needs of international (non-EU) students (“Students”) wishing to progress to, study at, and obtain a Postgraduate degree from IoE, but who are unable to satisfy their entry requirements without first completing additional studies, or for those students who would prefer to take additional programmes prior to gaining direct access to study at the IoE.

“ Commencement Date ”	1 Feb 2014
“ Duration ”	This Agreement shall commence on 1 Feb 2014 and shall continue for 3 (three) years. It may be terminated subject to clauses 20.2 and/or 22 of the Terms and Conditions;
“ Payment for services ”	as specified in Schedule 2;
“ Territory ”	Worldwide

Schedules

Schedule 1	Terms and Conditions
Schedule 2	Payment terms

Contact Details

<u>The Institute</u>	<u>FoC</u>
Office: International Office Address: 20 Bedford Way, London WC1H 0AL	Office: Head Office Address: 4 th Floor, Kett House, Station Road, Cambridge CB1 2JH
Telephone: 020 7612 6124 Fax: 020 7612 6178	Telephone: 01223 346180 Fax: 01223 346181
Email: internationaloffice@ioe.ac.uk Website: www.ioe.ac.uk	Email: sharvey@ceg-uk.com Website: www.ceg-uk.com
Contact Name: Mike Winter Director of International Affairs	Contact Name: Steve Harvey Managing Director, FoundationCampus

This Agreement, including all schedules listed above, contains the entire agreement between the parties with respect to the subject matter hereof, supersedes all previous agreements and understandings between the parties and may not be modified except by an instrument in writing signed by duly authorised representatives of the parties.

AGREED and SIGNED
for and on behalf of
**INSTITUTE OF EDUCATION,
UNIVERSITY OF LONDON**

)
)
Name: Lucy Green.....
Title: Head of International Recruitment....
Date:

COUNTERSIGNED
for and on behalf of
**INSTITUTE OF EDUCATION,
UNIVERSITY OF LONDON**

)
)
Name: Mike Winter.....
Title: Director of International Affairs.....
Date:

AGREED and SIGNED
For and on behalf of
FOUNDATIONCAMPUS LIMITED

)
)
Name:
Title:
Date:

Schedule 1
Terms and Conditions

1 Definitions

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

“Academic Year” means the twelve monthly period from 1 September to 31 August in each year of this Agreement;

“Award” means post-graduate awards (including but not limited to Diplomas, Masters, and Doctorates) of the Institute;

“Department” means an academic school, service area or department or centre of the Institute;

“Disability Equality Duty” means the general duty on public authorities requiring them to have due regard to those factors listed in Section 49A(1) Disability Discrimination Act 1995 (as amended) when carrying out their functions;

“Equality Duties” means the Disability Equality Duty, the Race Equality Duty and the Gender Equality Duty
means:

“Equality Legislation” (a) The Race Relations Act 1976 (as amended);The Sex Discrimination Act 1975 (as amended);The Disability Discrimination Act 1995 (as amended);The Employment Equality (Religion or Belief) Regulations 2003;The Employment Equality (Sexual Orientation) Regulations 2003;The Employment Equality (Age) Regulations 2006;The Equality Act (Sexual Orientation) Regulations 2007; The Human Rights Act 1998;

reference to which in each case includes reference to that statute as from time to time amended, extended, re-enacted or consolidated, (whether before or after the date of the Agreement) and all statutory

instruments or orders made pursuant to it;

(b) any enforceable community right within the meaning of Section 2(1) European Communities Act 1972;

(c) any enforceable right under any convention, treaty to which the United Kingdom is party;

(d) any applicable guidance and statutory codes of practice issued under the Equality Legislation to the extent that the same are published and publicly available;

in each case in force in England and Wales or in England;

“FOIA”

means the Freedom of Information Act 2000 and any subordinate legislation made under that Act from time to time;

“Fees Policy”

means the fees policy of the Institute as amended from time to time as it relates to international full fee paying student fees;

“Force Majeure”

means, in relation to either Party, any circumstance beyond the reasonable control of that Party including (without prejudice to the generality of the foregoing and without limitation) any strike, lock-out or other form of industrial action, war, riot, civil commotion, terrorism, malicious damage, compliance with law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or Act of God;

“Gender Equality Duty”

means the general duty on public authorities requiring them to have due regard to the need to eliminate unlawful sex discrimination and to promote equality of opportunity between men and women as set out in the Sex Discrimination Act 1975 (as amended) when carrying out their functions;

“Director of International Affairs”

means the Institute staff member so designated or his/her nominee;

“Intellectual Property Rights”

shall mean all intellectual property rights relating to this Agreement throughout the world for the full term of the rights concerned, whether or not registered and whether or not registrable including, without limitation, copyright, database rights, patents, rights in inventions, know-how and technical information, design rights, design patents, registered designs, trade marks (including business and brand names, domain names, devices and logos) and the right to apply for any of the foregoing anywhere in the world;

“Party”

means any one of the parties to this Agreement and “Parties” means both of the parties to this Agreement;

“Personal Data”

means data which relates to a living individual who can be identified from such data or from such data and other information which is in the possession of, or is likely to come into the possession of, the Institute and/or FoC, and includes any expression of opinion about the individual and any indication of the intentions of the Institute or any other person in respect of the individual;

“Processing”

in relation to Personal Data means obtaining, recording or holding the information or data or carrying out any operation or set of operations on the information or data, including:

(a) organisation, adaptation or alteration of the information or data

(b) retrieval, consultation or use of the information or data

(c) disclosure of the information or data by transmission, dissemination or otherwise making it available

(d) alignment, combination, blocking, erasure or destruction of the information or data

and “Process” and “Processed” shall be construed accordingly;

“Race Equality Duty”

means the general duty on public authorities requiring them to have due regard to the factors listed in section 19B and/or section 71 Race Relations Act 1976 (as amended) when carrying out their functions;

“Recruitment”

means identifying potential students to the Institute (but excluding the admission and/or enrolment onto an IoE Programme which, for the avoidance of doubt, is at the sole discretion of the Institute);

“Regulations”

means the Institute’s regulations, policies and procedures, as amended;

“Autumn Term”

means the term of study at the Institute which starts in September or October and generally ends in December, on such dates as determined from time to time by the Institute, for each applicable Academic Year;

“Spring Term”

means the term of study at the Institute which starts in January and generally ends in March, on such dates as determined from time to time by the Institute, for each

applicable Academic Year;

“Summer Term”

means the term of study at the Institute which starts in April and generally ends in July, on such dates as determined from time to time by the Institute, for each applicable Academic Year;

“Student”

means a student enrolled on an IoE Programme from time to time and **“Potential Student”** shall mean a Student who has not yet been enrolled on an IoE Programme;

“IoE Programme Fee”

means the actual fee payable by a Student who pays the full fee payable by an international student, to the Institute from time to time for a Programme after deduction of any discounts (e.g. scholarships and other payment discounts) afforded to such Student by the Institute;

“IoE Programme Materials”

means any documentation (whether in written or electronic form) including any software, teaching materials, manuals, handbooks, and other documents made available by the Institute to FoC which relates to the IoE Programmes;

“IoE Programmes”

means all of the full-time higher education IoE programmes of the Institute, successful completion of which leads to the appropriate Award being conferred by the Institute and “IoE Programme” shall be construed accordingly;

2 Interpretation

2.1 In this Agreement:

- 2.1.1 unless the context otherwise requires reference to the singular includes the plural and vice versa, any reference to a person includes a body corporate and words importing one gender include both genders;
- 2.1.2 the headings are for ease of reference only but do not form part of the Agreement and will not be taken into account when construing it;
- 2.1.3 references to Schedules or clauses are reference to schedules or clauses of this Agreement;

- 2.1.4 reference to any statute or statutory provision includes a reference to that statute or statutory provision as from time to time amended, extended, re-enacted or consolidated (whether before or after the date of the Agreement), and all statutory instruments or orders made pursuant to it; and reference to a policy, procedure or protocol of the Institute is a reference to the version of the policy, procedure or protocol from time to time in force.

3 Appointment

- 3.1 The Institute hereby appoints and FoC accepts appointment as a non-exclusive provider of preparatory Programmes designed to meet the needs of international non-EU students (“**Students**”) wishing to progress to, study at and obtain a postgraduate degree from the IoE, but who are unable to satisfy the IoE’s entry requirements without first completing additional studies, or for those students who would prefer to take additional programmes prior to gaining direct access to study at the IoE.
- 3.2 FoC shall not assign, transfer or charge its rights and responsibilities under this Agreement.
- 3.3 For the avoidance of doubt, the provisions of clause 3.1 shall not prevent the Institute from enrolling international Students who have not been introduced to the IoE by FoC.
- 3.4 In the event that FoC changes its legal or branding name only (for the avoidance of doubt not including a change in legal status), the provisions of this Agreement shall be unaffected.
- 3.5 FoC is located at Birkbeck, University of London.

4 Programmes

- 4.1 FoC shall run the following categories of programmes of study for Students (together the “**Programmes**”) from sites belonging to Birkbeck, University of London:
- 4.1.1 English for academic purposes programmes;
- 4.1.2 Foundation programmes designed to prepare International Students for an undergraduate course;
- 4.1.3 Pre-Master’s programmes designed to prepare International Students for a Master’s or Doctoral degree; and
- 4.1.4 such other programmes as the parties may agree from time to time.

5 Progression Arrangements

- 5.1 Each of the parties has agreed a set of entry requirements for Foundationcampus students wishing to progress to postgraduate degrees at IoE

- the initial list for highlighting in publicity is contained in Schedule 3 to this Agreement and may be amended by IoE from time to time. However it is understood that as long as IoE entry criteria are met and an offer is made by the IoE, FoundationCampus students may progress to any IoE postgraduate programme.
- 5.2 The parties will endeavour to maximise progression rates of students from the Programmes to postgraduate programmes at IoE where those students have expressed an interest in studying at the Institute.
- 5.3 FoC students wishing to progress to postgraduate degrees at the IoE will apply through the normal channels.

6 Parties' responsibilities

- 6.1 Foundationcampus will be solely responsible for marketing Foundationcampus Programmes, recruiting students to the Programmes, and providing teaching and programme materials.
- 6.2 It is planned that Foundationcampus and IoE will explore ways of working in collaboration in order to increase the number of well-qualified Students recruited to both FoC and directly to IoE programmes.
- 6.3 As of the date of this Agreement, IoE shall welcome applications made by students who have successfully completed a Programme for admission to postgraduate programmes at IoE.
- 6.4 FoC will produce a brochure and associated printed and electronic marketing collateral (all to be approved in advance by IoE) which will set out the following points:
- 6.4.1 minimum entry criteria for students to be admitted to FoC Programmes; and
- 6.4.2 indicative success criteria for students to successfully complete the Programmes and to progress to IoE (no guaranteed progression for students from FoC to the IoE will be implied – although the parties to this Agreement may work towards this in the future for specified programmes).

7 Management of FoC

- 7.1 FoC will be responsible for teaching the Programmes on the campus of Birkbeck and for administering FoC. FoC shall be responsible for hiring and paying for all staff reasonably required to teach the Programmes.
- 7.2 Foundationcampus will appoint a centre head (the “**Centre Head**”) who will be responsible for the day to day operation of FoC. IoE will nominate (and replace as appropriate) a co-ordinator who will be IoE’s principal day to day point of contact for the Centre Head (the “**Co-ordinator**”) and any other co-ordinators of

other university of London Colleges who have entered into similar arrangements with Foundationcampus to those described in this Agreement.

- 7.3 FoC shall be responsible for obtaining all licences, permits and approvals and all reasonable insurance cover that may be required for FoC's activities, including for the avoidance of doubt any costs associated with obtaining such documents which are necessary or advisable for the performance of its duties under this Agreement and shall indemnify and keep indemnified the Institute from and against all claims, losses, damages and expenses in respect of any breach of this obligation.
- 7.4 Unless authorised in writing by the Institute to send to Potential Students the Institute's international acceptance letter(s), FoC shall not be entitled to provide any offers of admission of any kind, to any Potential Student in relation to admission to the Institute and/or any IoE Programme.

8 Duration

- 8.1 This Agreement shall come into force on the Commencement Date and subject to the provisions for earlier termination in clauses 20.2 and/or 22 shall continue for a period of three (3) years, which period may be extended for a further specified period if so agreed in writing by the Parties.
- 8.2 To minimise disruption to payment schedules, the Institute shall at its discretion make payments to FoC beyond the end date of the Agreement, subject to Director of International Affairs' satisfaction that a renewal of the Agreement has been agreed in writing.

9 Financial Terms

- 9.1 FoC shall (subject to and in consideration of it performing its obligations under this Agreement) be remunerated by the Institute for the services performed in accordance with the provisions of this Agreement solely by the provision of payment for services in accordance with the provisions of this clause 9 and Schedule 2. In all cases, FoC shall invoice the Institute for the amount due and owing following the dates indicated in clauses 9.9 or 9.10 as applicable to the Student for which FoC is seeking payment for services under this Agreement.
- 9.2 Subject to clauses 9.7 to 9.12 (inclusive), the Institute will provide payment to FoC, calculated in accordance with clauses 9.4 and either of 9.9 or 9.10 (as applicable) below, to FoC for each Student from the Territory who:
- 9.2.1 has been introduced to the Institute by FoC; and
 - 9.2.2 who is enrolled on an IoE Programme as of any of:
 - (i) 10 November (in relation to Autumn Term entrants at the Institute), or;
 - (ii) 31 January (in relation to Spring Term entrants at the Institute), or;

- (iii) 10 May (in relation to Summer Term entrants at the Institute), and;
 - (iv) in each case above in the applicable Academic Year; and
 - 9.2.3 has paid (and cleared) the full IoE Programme Fee due for the Academic Year.
- 9.3 Subject to clauses 9.2, and 9.7 to 9.12 (inclusive), payment for services, calculated in accordance with clause 9.4, shall be paid by the Institute, to FoC for each Student from the Territory as follows:
 - 9.3.1 for each Student who is enrolled on an IoE Programme as of the dates indicated in clause 9.2.2 (as applicable to the Student) and has paid (and cleared) the full IoE Programme Fee due for the Academic Year by the date in the first term relevant to such entrant, the payment for services shall be paid in one payment by the Institute in accordance with clause 9.9; and/or
 - 9.3.2 for each Student who is enrolled on an IoE Programme as of the dates indicated in clause 9.2.2 (as applicable to the Student) and in the event such Student pays the IoE Programme Fee by instalments, clauses 9.2.2 and 9.9 shall not apply, and the payment for services shall become due and payable upon the Institute receiving (and clearing) the full amount of the IoE Programme Fee. Payment shall be made by the Institute in accordance with clause 9.10.
- 9.4 The rate for payment for services shall be determined by reference to Schedule 2.
- 9.5 Payment by the Institute for services under this Agreement shall be exclusive of UK VAT only but shall be inclusive of any other form of tax which may be payable thereon either in the UK or in the Territory. FoC agrees to be fully responsible for the payment of any non UK VAT or any other tax that may be payable in relation to the payments made under this Agreement.
- 9.6 Provision of payment for services due FoC shall be paid in sterling, and all local bank charges shall be borne by FoC.
- 9.7 In the event that a Student withdraws from a IoE Programme prior to 10 November (in relation to Autumn Term entrants) or 31 January (in relation to Spring Term entrants), or 10 May (in relation to Summer Term entrants) or fails to attend and complete their enrolment with the Institute then the payment for services shall be pro-rated in accordance with the amount actually received and retained by the Institute (if any) in relation to the full IoE Programme Fees payable for the relevant Programme.
- 9.8 In the event that a Student withdraws from a IoE Programme after 10 November (in relation to Autumn Term entrants) or after 31 January (in relation to Spring Term entrants) or 10 May (in relation to Summer Term entrants) then the payment for services payable to FoC shall be due and payable at the rate

specified in Schedule 2 for the amount of the IoE Programme Fee that has been retained by the Institute.

- 9.9 Subject to the provisions of this clause 9, where the Student has paid and cleared the full IoE Programme Fee in one payment, FoC shall render a typed (not handwritten) invoice to the Institute as soon as possible and no later than 15 November following the commencement of the Autumn Term, and as soon as possible and no later than 15 February following commencement of the Spring Term, and as soon as possible and no later than 15 May following commencement of the Summer Term (as applicable) in each Academic Year of this Agreement and the payment for services shall (subject to clauses 9.7 and 9.8), be due and payable by the Institute to FoC by 20 December for Autumn Term Students and by 20 March for Spring Term Students and by 20 June for Summer Term Students provided always that such Student has paid (and cleared) the full IoE Programme Fee due for the Academic Year.
- 9.10 Subject to the provisions of this clause 9, where the Student has paid and cleared the IoE Programme Fee by instalments, the Institute will advise FoC of this financial arrangement, and FoC shall only render a typed (not handwritten) invoice in relation to such Student to the Institute upon written notice being provided by the Institute that the Student has paid and cleared the full IoE Programme Fee for the Academic Year. Upon receipt of FoC's invoice, the Institute shall provide payment within thirty (30) calendar days.
- 9.11 All invoices must be submitted by FoC in accordance with clause 9.9 or 9.10 (as applicable). The Institute reserves the right not to pay any invoice from FoC received after the date set out in clause 9.9 or otherwise in accordance with clause 9.10 (as applicable).
- 9.12 The Institute will not make any payment in respect of Students whose application forms do not include full details of FoC (including FoC's address, and other official contact details).
- 9.13 Save as provided in clause 11.2.8, the Institute shall not reimburse FoC for any expenses incurred by FoC in connection with the performance of his/her services under the terms of this Agreement. For the avoidance of doubt, FoC shall bear his/her own travelling, administrative, establishment and advertising costs (unless otherwise agreed between the Parties in writing).
- 9.14 If either Party defaults in the payment of any sum due to the other under this clause 9, such sum shall bear interest at the rate of four per cent (4%) per annum over the base rate of Barclays Bank PLC in force from time to time, from the due date until payment is made to the other Party (irrespective of whether the date of payment is before or after any judgement or award in respect of the same).
- 9.15 FoC shall be responsible for all local taxes, duties and bank charges arising in connection with this Agreement in the Territory and shall indemnify and keep indemnified the Institute in relation to any such taxes, charges or duties.

10 Liaison and Authority

- 10.1 The Director of International Affairs has overall responsibility for the management of the relationship between the IoE and FoC and the Director of International Affairs or his/her nominee will deal with any issues arising which affect the relationship as a whole.
- 10.2 This Agreement and any document made under it shall be binding on the Institute only if signed on behalf of the Institute by the IOE Director. Any notice of termination of this Agreement shall be given in writing by the IOE Director.

11 Obligations of FoC

- 11.1 FoC shall at all times act towards the Institute dutifully and in good faith, in the interests of the Institute and not allow its interests to conflict with the duties that it owes to the Institute.
- 11.2 FoC shall throughout the term of this Agreement:
 - 11.2.1 use its best endeavours to recruit Students for the IoE Programmes, and to meet such recruitment targets as may be agreed in writing from time to time between the Parties;
 - 11.2.2 use its best endeavours to provide such advice and assistance as may be required by Potential Students to enable them to apply for admission to IoE Programmes;
 - 11.2.3 provide guidance to Potential Students on all aspects of living in the United Kingdom and studying at the IoE. This guidance should include but not necessarily be limited to: advice on how to obtain, extend or renew the Potential Student's United Kingdom visa (including advice on all the documentation required); compliance with all relevant legislation in the United Kingdom in connection with the application process for obtaining, extending or renewing a United Kingdom visa; advice relating to the means by which the Potential Student will finance his/her studies and living expenses while in the United Kingdom; advice on how to complete the application process to the Institute (but for the avoidance of doubt no advisor shall complete any part of the application form on behalf of the Potential Student);
 - 11.2.4 comply at all times with the terms of the Regulations (including without limitation the Fees Policy) and any requirements notified to it by the Institute;
 - 11.2.5 make itself available to the Institute for the purpose of consultation or so as to enable the Institute to assure itself that FoC is complying with the provisions of this Agreement at any time during FoC's normal working hours, including visits from Institute staff or any other persons authorised by the Institute;

- 11.2.6 attend such conferences, seminars and/or recruitment events as required by the Institute at the expense of the Institute provided such expenses have been agreed in advance and in writing by the Institute and complies with the Institute's Regulations current at the time;
- 11.2.7 subject to the provisions of clause 17, keep such records relating to Students and Potential Students as required by the Institute from time to time including, without limitation, up-to-date records of such persons' addresses and contact information and make such records available to the Institute on demand;
- 11.2.8 ensure that its employees receive such training as is required by the Institute on the Regulations and other Institute procedures;
- 11.2.9 fully and promptly inform the Institute of:
- (i) any matters generally likely to be relevant in relation to recruitment to IoE Programmes;
 - (ii) all enquiries concerning the IoE Programme which it receives from Potential Students; and
 - (iii) all enquiries concerning the IoE Programme which it receives from Potential Students who decline for any reason to deal through FoC or to whom FoC is unable or unwilling to respond.
- 11.3 As part of the recruitment activities of FoC, in promoting the Programmes FoC shall:
- 11.3.1 comply with all current instructions of the Institute concerning the promotion of the IoE Programmes;
- 11.3.2 conduct the promotion of the IoE Programmes with all due care and diligence and shall cultivate and maintain a clear customer focus and good relations with Potential Students. In particular FoC shall ensure that the IoE Programmes are promoted specifically as programmes set up and offered by the Institute and no other institution;
- 11.3.3 is hereby granted for the term of this Agreement a non-exclusive, non-transferable, revocable, royalty free licence to use the Institute's name and/or logo for use in promoting the IoE Programmes which are the subject of this Agreement. All materials using the Institute's name and/or logo must be approved by the Institute in writing prior to use. Requests by FoC for the approval of publicity materials shall be considered by the Institute within a reasonable time. The Institute retains the right to require changes to be made to any such materials within a reasonable time period to be agreed by both Parties. Failure by FoC to make the changes required by the Institute will be held to be a material breach of this Agreement by FoC. All advertising using

the Institute's name and/or logo shall identify the Institute directly with the IoE Programmes; and

- 11.3.4 shall comply with the Institute's requirements for promotional materials as set out in the Regulations or as otherwise notified to it by the Institute.

11.4 In recruiting Potential Students to the IoE Programmes, FoC shall:

- 11.4.1 not make or give any promises, warranties, guarantees or representations on behalf of the Institute other than those contained in the Regulations or as otherwise authorised in writing by the Institute;
- 11.4.2 not be entitled to enter into any negotiations or contracts in relation to the Institute and/or the IoE Programmes, nor to bind the Institute in any way;
- 11.4.3 ensure that all Potential Students are made aware of the terms of the Institute's admissions procedures, arrangements and Fees Policy as amended by the Institute from time to time;
- 11.4.4 advise all Potential Students that payments for IoE Programme Fees shall be made by the such Potential Student directly to the Institute and not through any third party. For the avoidance of doubt, FoC warrants and agrees it shall not accept any payments for IoE Programme Fees from any Potential Student;
- 11.4.5 use reasonable endeavours to ensure the suitability of Potential Students for the IoE Programmes, for which they are applying by carrying out such screening processes (including tests of competency) as the Institute may require;
- 11.4.6 comply with the terms of the Institute's admissions policy as set out in the Regulations and/or as notified to it for each IoE Programme and as amended by the Institute from time to time, and;
- 11.4.7 promptly forward to the Institute all application forms (including without limitation on-line forms) legibly and accurately completed by Potential Students together with all of the necessary supporting documentation.

11.5 FoC shall not during the lifetime of this Agreement:

- 11.5.1 hold itself out, or permit any person to hold it out, as being authorised to bind the Institute in any way nor do any act which might reasonably create the impression that it is so authorised nor enter into any contract whatsoever on behalf of the Institute;
- 11.5.2 pledge the credit of the Institute in any way; and

- 11.5.3 engage in any conduct which in the reasonable opinion of the Institute is prejudicial to the Institute's business and/or reputation and/or the promotion of the IoE Programmes generally.

12 Discrimination and equality

- 12.1 FoC shall not whether as employer or provider of services under this Agreement discriminate within the meaning of the Equality Legislation against any person on the grounds of their race, disability, gender, sexual orientation, religion or belief, or age.
- 12.2 The IoE shall provide FoC with a copy of the Institute's Disability Equality Scheme, Race Equality Scheme and Gender Equality Scheme as amended from time to time, (together referred to as "the Institute's Policy and Schemes") and FoC agrees that it shall (to the extent possible) substantially comply with the requirements of the Institute's Policy and Schemes as if it were a body required to produce and comply with such policy and schemes.
- 12.3 In the management of its affairs and the evolution of its policies of equality and diversity, FoC shall co-operate with the Institute in light of the Institute's Equality Duties and Specific Duties and FoC shall take such steps as the Institute considers appropriate to promote race equality, equality of opportunity for disabled people and gender equality.
- 12.4 Where it appears to the Institute in relation to the provision of the services described in this Agreement that those making use of such services include no members of a particular race or sex or do not include disabled people or that a particular gender or race or disabled persons are under represented among those taking advantage of such services compared to their representation in those who could use the services, FoC shall take such actions as may be appropriate and reasonably practicable including the placing and using of advertisements to reach members of such racial or gender groups or disabled persons to encourage their use of such services.
- 12.5 The Institute shall be entitled to monitor FoC's compliance with the Institute's Policy and Schemes.
- 12.6 In order to enable the Institute to undertake the monitoring and to assist FoC in such monitoring, FoC shall within a reasonable time following a written request by the Institute, provide the Institute with all information requested which is necessary or required by the Institute in order to allow the Institute effectively to monitor FoC's compliance with the Institute's Policy and Schemes.
- 12.7 FoC shall notify the Institute immediately of any investigation of or proceedings against FoC under the Equality Legislation and shall co-operate fully and promptly with any requests of the person or body conducting such investigation or proceedings, including allowing access to any documents or data received, attending any meetings and providing any information requested. FoC shall indemnify the Institute against all costs, claims, charges, demands, liabilities, damages, losses and expenses incurred or suffered by the Institute arising out of or in connection with any investigation conducted or any proceedings brought

under the Equality Legislation due directly or indirectly to any act or omission of FoC, its agents, employees or sub-contractors.

12.8 If the Institute considers that FoC has failed to comply with or may fail to comply with any one or combination of the Institute's Policy and Schemes then:

12.8.1 it will raise any concerns it has with FoC in the first instance and seek an explanation for the actual or potential failures;

12.8.2 if the Institute is not satisfied with FoC's explanation it will require, in writing, FoC to remedy the fault and FoC undertakes and agrees to do so as soon as it is reasonably practicable; and

12.8.3 if for any reason FoC fails to remedy or fails within a reasonable time to remedy the fault it will be in breach of this Agreement and the Institute shall be entitled to terminate the Agreement forthwith.

13 Anti-Bribery

13.1 FoC in signing this contract hereby agrees to adhere to the provisions of the Bribery Act 2010. The Act, which repeals existing corruption legislation, has introduced the offences of offering and or receiving a bribe. It also places specific responsibility on institutes to have in place sufficient and adequate procedures to prevent bribery and corruption taking place. Under the Act, bribery is defined as "Inducement for an action which is illegal unethical or a breach of trust". Inducements can take the form of gifts loans, fees, rewards or other privileges. Corruption is broadly defined as "the offering or the acceptance of inducements, gifts or favours payments or benefit in kind which may influence the improper action of any person". Corruption does not always result in a loss. The corrupt person may not benefit directly from their deeds; however, they may be unreasonably using their position to give some advantage to another.

13.2 To demonstrate that the Institute has in place sufficient and adequate procedures and to show openness and transparency, FoC agrees to comply with the requirements of the Institute's Standards of Business Policy.

13.3 FoC will be required as part of this agreement to comply with the Anti-Bribery Policy, and in signing the agreement confirms this.

13.4 Should FoC wish to report any concerns or allegations they should contact the Institute's Director of Finance and Estates.

14 Obligations of the Institute

14.1 The Institute shall throughout the term of this Agreement:

14.1.1 make available to FoC at its own expense:

(i) such promotional literature and information relating to the Institute and IoE Programmes as the Institute may consider appropriate;

- (ii) copies of the Regulations (including the Fees Policy) as varied from time to time;
 - (iii) copies of all relevant policies including Discrimination and Equality, Anti-Bribery and Standards of Business.
- 14.1.2 guide and support FoC as the Institute deems appropriate in its efforts to promote the IoE Programmes and to recruit Students;
- 14.1.3 attend such promotional events with FoC as may be agreed in writing between the Parties;
- 14.1.4 send Institute staff to the premises of FoC for meetings, interviews and discussions, as determined by the Institute in its sole discretion, and;
- 14.1.5 be responsible for the proper and efficient conduct of any admission and enrolment procedures and the maintenance of accurate records of all Students.
- 14.2 All offers for places on IoE Programmes shall be made by the Institute in its sole discretion and in accordance with the Regulations. The Institute shall not be obliged to accept any application by a Potential Student submitted by FoC.
- 14.3 The Institute shall determine the IoE Programme Fee for each IoE Programme and may alter any IoE Programme Fee at any time during this Agreement. The Institute will notify FoC of the current IoE Programme Fee for each IoE Programme and inform FoC of any annual change thereto.
- 14.4 The Institute shall determine and shall inform FoC of the entry requirements for the IoE Programmes, including without limitation English language requirements, and inform FoC of any changes which it may make to entry requirements from time to time.
- 14.5 The Institute shall in its sole and absolute discretion be entitled to discontinue any particular IoE Programmes and to make such alterations to the content or delivery of a IoE Programmes as it may think fit including, without limitation, making changes to the name of the IoE Programmes. The Institute will notify FoC forthwith of any such changes which affect the obligations of FoC under the terms of this Agreement.
- 14.6 The IoE shall not reimburse FoC for any expenses incurred by FoC in connection with the performance of his/her services under the terms of this Agreement. For the avoidance of doubt, FoC shall bear his/her own travelling, administrative, establishment and advertising costs (unless otherwise agreed between the Parties in writing).

15 Intellectual Property

- 15.1 FoC acknowledges that the Intellectual Property Rights in any promotional materials relating to the Institute or an IoE Programme is, as between FoC and

- the Institute, the absolute property of the Institute. FoC acknowledges that the Intellectual Property Rights in all IoE Programmes and in the materials that have been produced by the Institute relating to the IoE Programme is, as between it and the Institute, the absolute property of the Institute.
- 15.2 FoC shall not cause or permit anything to occur which may damage or endanger the Institute's Intellectual Property Rights and shall use any materials provided to it by the Institute in the form as so provided and shall not translate or alter them in any way (unless it receives prior written permission to do so from the IoE).
- 15.3 Any IoE Programme Materials or other materials provided to FoC by the Institute under the terms of this Agreement are and remain the absolute property of the Institute and FoC must not use, copy or reproduce them except in order to comply with its obligations under this Agreement. Such materials must not be disclosed to any third party (except Students) without the prior written consent of the Institute.
- 15.4 FoC shall promptly and fully notify the Institute of any actual threatened or suspected infringement of any of the Institute's Intellectual Property Rights or any other intellectual property which comes to FoC's notice and of any claim by any third party coming to its notice that the performance of the obligations hereunder infringes any rights of any other person and FoC shall at the request and expense of the Institute do all such things as may be reasonably required to assist the Institute in taking or resisting any proceedings in relation to any such infringement or claim.
- 15.5 Nothing in this Agreement shall give FoC any rights in respect of any names or trademarks used by the Institute in relation to the IoE Programmes or of the goodwill (insofar as it exists) associated with it and FoC acknowledges that except as expressly provided in this Agreement it shall not acquire any rights in respect of any such names or trademarks and that all such rights and goodwill are the Institute's and shall remain vested in the Institute.
- 15.6 FoC shall at the expense of the Institute (in the event of there being any third party costs directly incurred) take all such steps as the Institute may reasonably require to assist the Institute in maintaining the validity and enforceability of its intellectual property during the continuance of this Agreement.
- 15.7 FoC shall indemnify and keep indemnified the Institute from and against any liability incurred to third parties for any use or misuse of the Institute's Intellectual Property Rights in the Territory otherwise than in accordance with this Agreement. FoC warrants that it is capable of and will perform all of its duties under this Agreement without infringing Intellectual Property Rights belonging to any third parties, and hereby agrees to indemnify the Institute in full and on demand and keep the Institute so indemnified from and against all damages, losses, costs and expenses incurred or suffered by the Institute in the event of any such infringement by FoC.

16 Confidentiality and FOIA

- 16.1 All data and other documents marked as confidential and information (other than promotional material and such material which the Institute agrees in writing may be provided to Students) supplied in writing by the Institute to FoC under this Agreement and any other confidential information belonging to the Institute and disclosed to FoC in connection with the entering into and performance of this Agreement (including without limitation the terms of this Agreement) ("Confidential Information") shall remain the property of the Institute and shall be treated as confidential.
- 16.2 FoC shall not during the term of this Agreement or thereafter use any Confidential Information or disclose any Confidential Information to any third party save to the extent as may be reasonably necessary for the fulfilment of FoC's duties and obligations under this Agreement.
- 16.3 FoC's obligations shall cease to apply to:
- 16.3.1 any Confidential Information which becomes available to the public generally other than through a breach of this clause;
 - 16.3.2 any Confidential Information which FoC can prove was lawfully known to FoC at the time of receipt from the Institute and not subject to any existing obligations of confidentiality;
 - 16.3.3 Confidential Information that was lawfully received from a third party without restriction or breach of any obligation of confidentiality; and
 - 16.3.4 any disclosure of Confidential Information pursuant to a judicial or other lawful government order.
- 16.4 The obligations of confidentiality in this clause shall continue after the termination of this Agreement.
- 16.5 FoC acknowledges that the Institute is subject to the requirements of the FOIA and FoC agrees it shall (at its own expense) co-operate and provide all necessary assistance as may be reasonably requested by the Institute to enable the Institute to comply with its obligations under the FOIA.
- 16.6 Notwithstanding the generality of clause 16.5, FoC shall provide the Institute within five (5) working days of receipt of a request for assistance from the Institute with such information in its possession or power as may be reasonably requested in order to assist the Institute to comply with its obligations under the FOIA.

17 Data Protection

- 17.1 Both Parties confirm that they shall comply with their obligations and duties under the Data Protection Act 1998, ("the 1998 Act"). In particular:

- 17.1.1 where necessary, the Parties shall obtain and maintain appropriate data protection notification entries on the UK Information Commissioner's Register of Data Controllers;
- 17.1.2 in the event a Party is acting as a data processor (hereafter the "Processing Party") (as defined by the 1998 Act) for the other Party (hereafter the "Controller Party"), the Processing Party undertakes in respect of personal data and sensitive personal data (as defined by the 1998 Act) processed by it ("Personal Data" and "Sensitive Personal Data" respectively):
 - 17.1.3 to process the Personal Data strictly in accordance with the terms of this Agreement and the Controller Party's instructions from time to time; if the Processing Party cannot provide such compliance for any reason, the Processing Party agrees to inform the Controller Party promptly. In this situation the Controller Party is entitled to suspend the transfer of Personal Data and/or terminate this Agreement;
 - 17.1.4 take appropriate technical and organisational measures against the unauthorised or unlawful processing of the Personal Data and against the accidental loss or destruction of, or damage to, the Personal Data (including adequate back up procedures and disaster recovery systems). Such measures shall (taking into account the state of technological development and the cost of implementing such measures) be appropriate to the nature of the Personal Data processed by the Processing Party;
 - 17.1.5 process the Personal Data in accordance with the laws of the United Kingdom;
 - 17.1.6 notify the Controller Party about any request which may be received from individuals who are the subject of the Personal Data ("Data Subjects") without responding to that request, unless the Processing Party has been authorised to do so by the Controller Party;
 - 17.1.7 assist the Controller Party promptly with all requests which may be received from Data Subjects. The Controller Party shall reimburse the Processing Party for any reasonable costs which the Processing Party may incur in complying with this requirement;
 - 17.1.8 not use the Personal Data for any purposes which may be inconsistent with those notified to the Data Subject on or before collection provided that the Controller Party has previously supplied copies of all such notices to the Processing Party;
 - 17.1.9 not disclose the Personal Data to a third party in any circumstances other than at the specific request of the Controller Party or as otherwise specified in this Agreement;
 - 17.1.10 notify the Controller Party immediately upon receiving any notice or communication from any supervisory or government body which

relates directly or indirectly to the processing of the Personal Data;
and

17.1.11 not assign, transfer or sub-contract any right or obligation under this clause 17 without the Controller Party's prior written consent.

17.2 The Processing Party and Controller Party shall discuss and agree appropriate security measures to be implemented in respect of the exchange of student data and other data including Personal Data, between the Parties.

17.3 The Processing Party will allow its data processing facilities, procedures and documentation which relate to the processing of the Personal Data to be scrutinised by the employees or agents of the Controller Party, in order to ascertain compliance with the terms of this Agreement.

17.4 The rights and obligations set out in this Agreement shall automatically terminate upon the expiry of the provision of services. On termination of this Agreement the Processing Party will cease processing the Personal Data and return the Personal Data to the Controller Party, or destroy the Personal Data as the Controller Party requests.

18 Insurance

18.1 FoC shall effect and maintain with a reputable insurance company a professional indemnity policy or policies of insurance providing full and reasonable cover in respect of all risks which may be incurred by FoC arising out of its performance of this Agreement and/or any negligence of FoC.

18.2 FoC shall produce for the Institute, on request, copies of all insurance policies referred to in clause 18.1 or other evidence confirming the existence or extent of the cover given by these policies together with receipts or other evidence of payment of the premium due under these policies.

19 Liabilities

19.1 The Institute shall not be liable to FoC in contract, tort, negligence, breach of statutory duty or otherwise for loss of profit, use, anticipated savings, goodwill, reputation or opportunity, other economic loss (in each case whether direct or indirect) damage, costs or expenses incurred or suffered by FoC as a result of any breach by the Institute of the terms of this Agreement.

19.2 Subject to clause 19.1 (except in the case of death or personal injury caused by negligence, fraudulent misrepresentation or in other circumstances where liability may not be so limited under any applicable law), the total aggregate liability of the Institute to FoC whether in contract, tort, negligence, breach of statutory duty or otherwise for any loss or damage, costs or expenses arising under or in connection with this Agreement shall not exceed the amount of the payment for services paid to FoC by the Institute in the twelve month period immediately preceding the claim. If this limitation is adjudged to be unreasonable in the circumstances the limit of the Institute's liability shall be increased to the amount the Institute can recover from its insurer for direct loss.

- 19.3 For the purposes of clauses 19.1 and 19.2 any number of acts or omissions whether successive or concurrent which together result in or contribute to substantially the same loss or damage shall be treated as one act or omission.
- 19.4 The payments due under this Agreement have been negotiated and agreed on the basis that the Institute may limit its liability to FoC as set out in this Agreement and FoC confirms that it will itself bear or insure against any loss or type of loss in respect of which the Institute has excluded or limited its liability under this Agreement.
- 19.5 Except as set out in this Agreement, all warranties, conditions, terms and undertakings, express or implied, whether by statute, common law, custom, trade or usage, course of dealings or otherwise (including, without limitation, as to quality, performance or fitness or suitability for purpose) in respect of any service to be provided by the Institute under this Agreement are hereby excluded to the fullest extent permitted by law.
- 19.6 FoC and the Institute agree to co-operate in defending any legal claim by a Student, Potential Student or third party arising out of the operation of this Agreement.

20 Force Majeure

- 20.1 If either Party is affected by Force Majeure it shall forthwith inform the other Party in writing of the matters constituting the Force Majeure and shall keep that Party fully informed of the continuance and of any change of circumstances whilst such Force Majeure continues.
- 20.2 If the Force Majeure continues for longer than six (6) months either Party may at any time whilst such Force Majeure continues by notice in writing to the other terminate this Agreement forthwith.
- 20.3 Save as provided in this clause Force Majeure shall not entitle either Party to terminate this Agreement and neither Party shall be in breach of this Agreement, nor otherwise liable to the other, by reason of any delay in performance or non-performance of any of its obligations due to Force Majeure.
- 20.4 In the event of notification of Force Majeure by either Party in accordance with clause 20.1, any bankers drafts held by FoC shall be sent forthwith by courier to the Institute.

21 Dispute Resolution

- 21.1 If any dispute arises out of, or in connection with this Agreement, the Parties will attempt in good faith to settle it by negotiation between the designated representatives of each Party. The Institute's representative shall be the Director of Administration or his nominee.
- 21.2 If the Parties are unable to settle any dispute by negotiation within thirty (30) days the Parties will attempt to settle it by mediation in accordance with the

Centre for Dispute Resolution (CEDR) Model Mediation Procedure in the United Kingdom.

- 21.3 To initiate mediation a Party must give notice in writing to the other Party requesting mediation in accordance with clause 21.2.
- 21.4 For the avoidance of doubt nothing in this clause 21 shall operate to prevent or delay either Party from initiating court proceedings in the jurisdiction described in clause 26.1.

22 Termination

- 22.1 This Agreement may be terminated at any time by either Party giving to the other 12 months' written notice.
- 22.2 The Institute may terminate this Agreement forthwith by giving notice in writing to FoC if:
 - 22.2.1 FoC commits any material breach (which may, without limitation, consist of a series of minor breaches) of the terms of this Agreement which (if capable of remedy) it fails to remedy within thirty (30) days of a notice in writing from the Institute specifying the breach and requiring such breach to be remedied.
 - 22.2.2 FoC is deemed to be unable to pay its debts within the meaning of the Insolvency Act 1986 or calls a meeting or presents or has granted a petition for bankruptcy or to wind-up (save for a solvent reconstruction) or to appoint an administrator or has an administration receiver, receiver and manager, or receiver appointed over any part of its business, undertaking, property or assets.
- 22.3 The Institute may terminate the inclusion of any IoE Programme under this Agreement at its sole discretion.
- 22.4 FoC may terminate this Agreement forthwith by giving notice in writing to the Institute if:
 - 22.4.1 the Institute commits a material breach of the terms of this Agreement which (if capable of remedy) it fails to remedy within thirty (30) days of receipt of a notice in writing from FoC specifying the breach and requiring such breach to be remedied; or
 - 22.4.2 the Institute becomes or is deemed to be insolvent or unable to pay its debts (within the meaning of the Insolvency Act 1986) when they fall due.

23 Consequences of Termination

- 23.1 Upon termination of this Agreement or inclusion of any individual IoE Programme under this Agreement for any reason:

- 23.1.1 FoC shall cease forthwith to promote the IoE Programmes and to recruit Students;
- 23.1.2 FoC shall within 30 days of the date of termination destroy all promotional materials (including without limitation internet related and website information) relating to the IoE then in its possession or control;
- 23.1.3 FoC shall return all Personal Data provided to it by the Institute and/or otherwise acquired by FoC in connection with this Agreement;
- 23.1.4 FoC shall co-operate with the Institute so as to ensure that any Student who has accepted an offer of a place or enrolled on a IoE Programme is enabled to complete that Programme;
- 23.1.5 all licences provided under this Agreement shall terminate.
- 23.2 Upon termination of this Agreement for any reason:
 - 23.2.1 all licences given under the terms of this Agreement shall automatically terminate; and
 - 23.2.2 termination shall be without prejudice to the rights of either Party against the other which have accrued prior to termination of this Agreement.

24 General

- 24.1 Nothing in this Agreement shall create, or be deemed to create a partnership or relationship of employer and employee between the Parties.
- 24.2 This Agreement contains the entire agreement between the Parties with respect to the subject matter hereof save and except for the Fees Policy, marketing guidelines and admissions materials provided by the Institute, and the Regulations, and supersedes all previous agreements and understandings between the Parties with respect thereto.
- 24.3 This Agreement may not be modified except by an instrument in writing signed by the duly authorised representatives of the Parties.
- 24.4 Each and every obligation contained in this Agreement shall be treated as a separate obligation and shall be severally enforceable as such notwithstanding the non-enforceability of any other such obligation.
- 24.5 Each Party acknowledges that in entering into this Agreement, it does not do so on the basis of, and does not rely on, any representation or warranty or other provision except as expressly provided herein. However, nothing in this Agreement purports to exclude liability for any fraudulent statement or act.
- 24.6 No person who is not party to this Agreement shall have any right under the Contracts (Rights of Third Parties) Act 1999 to enforce any terms of this

Agreement but this does not affect any right or remedy of a third party which exists or is available apart from that Act.

- 24.7 Each Party warrants to the other Party that it has full power and authority to enter into this Agreement.
- 24.8 The failure to exercise or delay in exercising a right or remedy provided by this Agreement or by law does not constitute a waiver of the right or remedy or a waiver of other rights or remedies. A waiver of a breach of any of the terms of this Agreement or of a default under this Agreement does not constitute a waiver of any other breach or default and shall not affect the other terms of this Agreement. A waiver of a breach of any of the terms of this Agreement or of a default under this Agreement will not prevent a Party from subsequently requiring compliance with the waived obligation.
- 24.9 If any provision of this Agreement shall be held to be unlawful, invalid or unenforceable, in whole or in part, under any enactment or rule of law, such provision or part shall to that extent be severed from this Agreement and rendered ineffective as far as possible without modifying or affecting the legality, validity or enforceability of the remaining provisions of this Agreement which will remain in full force and effect.
- 24.10 This Agreement may be entered into by the Parties on separate counterparts, each of which so executed and delivered shall be an original, but all the counterparts shall together constitute one and the same instrument.

25 Notices

- 25.1 Any notice or other communication given under this Agreement shall be in writing and signed by or on behalf of the Party giving it and shall be served by delivering it personally or sending it by courier or fax to the address and for the attention of the relevant Party set out in clause 25.3 (or as otherwise notified by that Party for the purposes of this Agreement).
- 25.2 Any such notice shall be deemed to have been received:
 - 25.2.1 if delivered personally or by courier, at the time of delivery;
 - 25.2.2 in the case of fax, at the time of transmission provided that a transmission report is generated by the sender's fax machine recording a message on the recipient's fax machine, confirming that the fax was sent to the number indicated below and that all pages were successfully transmitted.
- 25.3 The addresses and fax numbers of the Parties for the purposes of clause 25.2 are as set out in the Contact Details or such other address or fax number as may be notified in writing from time to time by the relevant Party to the other Party.
- 25.4 In proving such service it shall be sufficient to prove that the envelope containing such notice was addressed to the address of the relevant Party set out in clause

- 25.3 (or as otherwise notified by that Party for the purposes of this Agreement) and delivered to that address.
- 25.5 For the avoidance of doubt, notice given under this Agreement shall not be validly served if sent by e-mail.

26 Law and Jurisdiction

- 26.1 This Agreement shall be governed by and construed in accordance with the laws of England. The Parties hereby submit to the non-exclusive jurisdiction of the English courts.

CONFIDENTIAL

Schedule 2

Schedule 2:

- 1 The Parties agree that, unless otherwise agreed in writing, the rates for payment for FoC's services payable by the Institute in relation to Students shall be as follows:
 - 1.1 Subject to paragraph 1.2 herein, the following payments shall be due to FoC for Students during the first year only of the relevant IoE Programme:
 - 1.1.1 IoE shall pay to FoC for every FoC student recruited through a third party agent who progresses from a FoC Programme and enrolls on a postgraduate programme of the IoE, 10% of the net amount received by IoE in first-year non-EU overseas tuition fees - plus any amount of UK VAT payable on such an amount. If FoC recruits a student without the involvement of a third party agent then no amount is payable by IoE on progression.
 - 1.1.2 for all other IoE programmes the applicable fee percentage shall be as agreed in advance and in writing between the Parties provided always that where the Parties have not agreed in writing and in advance the fee payable to FoC, no fee shall be payable by the Institute.
 - 1.2 The payment schedule contained in this Schedule 2 shall only be applied after deduction from the IoE Programme Fee of any scholarship or other payment discounts awarded by the Institute to the Student.
- 2 The Parties acknowledge that all payments of payment for services shall be subject to the terms provided in clause 9 herein.