

## TERMS AND CONDITIONS FOR PROVISION OF GOODS AND SERVICES

### 1. DEFINITIONS AND INTERPRETATION

1.1 In these Conditions, the following expressions shall, unless the context requires otherwise, have the following meanings:

<b>Agreement</b>	(a) the Agreement Details (if any); (b) the Conditions; (c) the Order(s); and (d) the appendices specified in the Agreement Details (if any).
<b>Agreement Details</b>	the document signed by the parties setting out certain particulars of the Agreement.
<b>Approval Period</b>	shall be as defined in Clause 26.7.
<b>Business Day</b>	a day (other than a Saturday, Sunday or a public holiday) when banks in London are open for business.
<b>Change Notice</b>	has the meaning given in clause 3.7.2;
<b>Commercially Sensitive Information</b>	the information of a commercially sensitive nature relating to the Supplier, its intellectual property rights or its business or which the Supplier has indicated to the University that, if disclosed by the University, would cause the Supplier significant commercial disadvantage or material financial loss.
<b>Conditions</b>	these terms and conditions as amended from time to time.
<b>Confidential Information</b>	any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel and suppliers, including intellectual property rights, together with all information derived from the above, and any other information clearly designated as being confidential (whether or not it is marked as "confidential") or which ought reasonably to be considered to be confidential, including, in respect of the Supplier, the Commercially Sensitive Information.
<b>Data Protection Laws</b>	means (a) any law, statute, declaration, decree, directive, legislative enactment, order, ordinance, regulation, rule or other binding restriction (as amended, consolidated or re-enacted from time to time) which relates to the protection of individuals with regards to the Processing of Personal Data to which a party is subject, including the Data Protection Act 2018, Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and repealing Directive 95/46/EC (General Data Protection Regulation) OJ L 119/1, 4.5.2016 (the "GDPR") and all legislation enacted in the UK in respect of the protection of personal data as well as the Privacy and Electronic Communications (EC Directive) Regulations 2003; and (b) any code of

practice or guidance published by the ICO (or equivalent regulatory body) from time to time.

<b>Deliverables</b>	all documents, products and materials developed by the Supplier or its personnel, agents and contractors as part of or in relation to the Services in any form or media, including without limitation drawings, maps, plans, diagrams, designs, pictures, computer programs, data, specifications and reports (including drafts).
<b>Dispute</b>	shall be as defined in Clause 23.1.
<b>Dispute Notice</b>	shall be as defined in Clause 23.2.
<b>Disputed Amount</b>	shall be as defined in Clause 10.10.
<b>Effective Date</b>	(a) the date stated in the Agreement Details; or (b) if no such date is stated, the date on which the parties enter into the Agreement.
<b>Environmental Information Regulations</b>	the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government department in relation to such regulations.
<b>FOIA</b>	the Freedom of Information Act 2000, and any subordinate legislation made under the Act from time to time, together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such legislation.
<b>FOIA Information</b>	information within the meaning given under section 84 of FOIA.
<b>Force Majeure Event</b>	the occurrence of any event beyond the reasonable control of either party (excluding any strike, lockout or industrial action involving that party's employees) which directly causes that party to be unable to comply with all or a material part of its obligations under the Agreement where that event does not arise from the act, omission or negligence of that party.
<b>Good(s)</b>	the good(s), or (where the context requires) any part of the goods, to be supplied to the University by the Supplier under the Agreement as set out in the Agreement Details or in the Order.
<b>Information</b>	all information whether written or oral or in any other form, including documentation, specifications, reports, data, notes, drawings, models, patterns, samples, software, computer outputs, designs, circuit diagrams, inventions whether patentable or not and know-how.
<b>Intellectual Property Rights</b>	any patent, petty patent, registered design, copyright, design right, semi-conductor topography right, know-how, trade mark and service marks, rights to inventions, business names and domain names, goodwill and the right to sue for passing off or unfair competition, rights in designs, database rights, rights to use, and protect the confidentiality of, confidential

information (including know-how and trade secrets) and all other similar rights exercisable in any part of the world in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals and extensions of, and rights to claim priority from , 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.

<b>Location(s)</b>	the addresses identified in the Agreement Details or in the Order at which the Goods are to be delivered and/or the Services provided which may or may not be on the University Premises.
<b>Order</b>	the University's purchase order form for the supply of Goods and/or Services and <b>Order Number</b> shall be construed accordingly.
<b>Permitted Subcontractor(s)</b>	the approved subcontractor(s) set out in the Agreement Details.
<b>Records</b>	shall be as defined in Clause 20.1.
<b>Relevant Supplier Employees</b>	shall be as defined in Clause 26.7.1.
<b>Relevant Terms</b>	shall be as defined in Clause 12.2.
<b>Request for Information</b>	a request for information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the Environmental Information Regulations.
<b>Revised Invoice</b>	shall be as defined in Clause 10.10.2.
<b>Service(s)</b>	the service(s) (or, where the context requires) any part of the services, to be provided to the University by the Supplier under the Agreement as set out in the Agreement Details or in the Order, including any Deliverables.
<b>Service Information</b>	any Information supplied by the University concerning the purpose, function or design of the Goods and/or Services.
<b>Service Levels</b>	the service levels (if any) set out in the Agreement Details.
<b>Service Transfer</b>	shall be as defined in Clause 26.6.
<b>Specification</b>	the description or specification for Goods and/or Services as set out in the Agreement.
<b>Supplier</b>	the supplier named and identified in the Agreement Details or Order from whom the University is purchasing the Goods and/or Services.
<b>Supplier's Background Information</b>	the Information owned or controlled by the Supplier.
<b>Supplier Manager</b>	the designated Supplier personnel responsible for the Agreement as set out in the Agreement Details or as otherwise designated by the Supplier.

<b>Term</b>	any duration period for the Agreement stated in the Agreement Details or an Order.
<b>TUPE</b>	the Transfer of Undertakings (Protection of Employment) Regulations 2006 as updated, amended or replaced from time to time.
<b>University</b>	University of Plymouth, Drake Circus, Plymouth PL4 8AA.
<b>University Background Information</b>	all Information supplied by the University in connection with the performance of the Agreement, and all Information in relation to the University's affairs, the business or the University's business practices, which is provided to the Supplier by the University or comes to the Supplier's knowledge during the Term including the existence of the Agreement and any provisions of the Agreement.
<b>University Manager</b>	the designated University officer responsible for the Agreement as set out in the Agreement Details or as otherwise designated by the University.
<b>University Premises</b>	any premises owned or occupied by the University.
<b>University Supplied Items</b>	all items supplied to the Supplier by or on behalf of the University in connection with the Agreement including all tools, materials, drawings, specifications and other equipment and data to be used by the Supplier in the performance of the Agreement.
<b>VAT</b>	shall be as defined in Clause 10.3.

- 1.2 In these Conditions, unless the contrary intention appears:
- 1.2.1 words denoting any gender include every gender;
  - 1.2.2 words denoting the singular include the plural and vice versa;
  - 1.2.3 references to Clauses are references to the Clauses of these Conditions;
  - 1.2.4 the headings in these Conditions or any other document do not affect interpretation;
  - 1.2.5 references to these Conditions or any other document are to these Conditions or that document as amended from time to time;
  - 1.2.6 references to a **person** include any corporate or unincorporated body;
  - 1.2.7 **writing** or **written** includes emails but not faxes or any other form of electronic communication;
  - 1.2.8 the terms **including, include, in particular, for example** or any similar expression will be construed as illustrative and will not limit the sense of the related words;
  - 1.2.9 unless otherwise specified, a reference to a statutory provision is a reference to that provision as amended, consolidated, extended or re-enacted from time to time (whether before or after the date of these Conditions) and to any subordinate legislation made under it; and
  - 1.2.10 if and to the extent that there is any ambiguity or inconsistency in or between the documents comprising the Agreement, the priority of the documents is in accordance with the following sequence:

- (a) the Agreement Details (if any);
- (b) the Conditions;
- (c) the Order(s); and
- (d) the appendices specified in the Agreement Details (if any).

## **2. BASIS OF CONTRACT**

- 2.1 The Agreement shall commence on the Effective Date and shall continue, unless terminated earlier in accordance with its terms, for the Term.
- 2.2 An Order is an offer by the University to purchase Goods and/or Services from the Supplier in accordance with these Conditions.
- 2.3 An Order will be deemed accepted on the earlier of:
  - 2.3.1 the Supplier issuing written acceptance of the Order; or
  - 2.3.2 any act by the Supplier consistent with fulfilling the Order.
- 2.4 The Supplier acknowledges that any Order that may be placed by the University forms part of the Agreement.
- 2.5 These Conditions apply 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.
- 2.6 The Supplier waives any right it might otherwise have to rely on any term or condition endorsed upon, delivered with or contained in the Supplier's documentation, delivery note, quotation, specification, acknowledgement or acceptance of an Order.
- 2.7 These Conditions shall apply to the supply of both the Goods and/or Services by the Supplier except where the application to one or the other is specified.

## **3. DELIVERY OF GOODS & PROVISION OF SERVICES**

- 3.1 The delivery of Goods and the provision of Services must be made at the Location(s) on the date(s) and time(s) specified in the Agreement (and if none is specified within a reasonable time) during the University's normal operating hours, or as instructed by the University. Time shall be of the essence in respect of delivery of the Goods and/or the provision of the Services.
- 3.2 Unless otherwise specified in the Agreement, the Supplier will supply all labour, materials, services, tools, equipment and other resources necessary to perform each Order.
- 3.3 Title in the Goods shall pass to the University upon delivery at the Location.
- 3.4 Risk in the Goods shall pass to the University on completion of delivery at the Location (which shall include installation of the Goods at the University Premises if relevant).
- 3.5 The Supplier shall ensure that:
  - 3.5.1 it and its personnel will comply with all lawful directions of the University;
  - 3.5.2 it and its personnel will comply with all applicable laws (and the Supplier will carry out self-audits at no additional cost to the University to check that it is compliant with all applicable laws);
  - 3.5.3 it and its personnel are fully qualified to perform the whole or any part of any Order, including having the appropriate experience and training;

- 3.5.4 it and its personnel will use its best efforts to conduct itself in the University's best interests;
- 3.5.5 it and its personnel will co-operate with the University Manager and the University's agents, students, representatives, employees and other suppliers; and
- 3.5.6 its personnel will be properly and adequately supervised.
- 3.6 The Supplier shall ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Agreement in respect of the Goods and/or Services.
- 3.7 Prior to commencement of performance of the Services or delivery of the Goods forming the subject of an Order, the University:
  - 3.7.1 may cancel the Order without charge; or
  - 3.7.2 request a change to an Order by notice to the Supplier in writing (a **Change Notice**).
- 3.8 Upon receipt of a Change Notice, the Supplier may:
  - 3.8.1 confirm in writing that the change requested is accepted (with no change to the price or timetable for implementation); or
  - 3.8.2 notify the University in writing of any price of the change (calculated on the same basis as the original price under the Agreement) and/or any effect on the timetable for implementation.
- 3.9 Variations to the Agreement will only have effect when agreed in writing by both parties and, in particular, if:
  - 3.9.1 the Supplier issues a confirmation under Clause 3.8.1; or
  - 3.9.2 the University Manager confirms in writing to the Supplier that the particulars notified to the University under Clause 3.8.2 are acceptable.
- 3.10 For the avoidance of doubt, a proposed variation shall not bind the University if the Supplier does not issue a written confirmation under Clause 3.8.1 or if the University Manager has not confirmed in writing to the Supplier that the particulars notified to the University under Clause 3.8.2 are acceptable, as applicable.

#### **4. SUPPLY OF GOODS**

- 4.1 The Supplier shall ensure, and undertakes and warrants, that the Goods shall:
  - 4.1.1 be properly packed and secured in such manner as to enable them to reach the Location in good and satisfactory condition;
  - 4.1.2 conform in every respect with the relevant Specification including their description and be capable of all standards of performance specified;
  - 4.1.3 be sold with full title guarantee (subject to the provisions of Clause 7 (Intellectual Property));
  - 4.1.4 be fit for any purpose made known to the Supplier expressly or by implication and in this respect the University relies on the skill and judgement of the Supplier;
  - 4.1.5 be new (unless otherwise specified in the Agreement) and be made of sound materials and by skilled and careful workmanship;
  - 4.1.6 correspond with the description or any samples, patterns, drawings, plans, Service Levels, and specifications, including the Specification, referred to in the Agreement;

- 4.1.7 be of satisfactory quality, as defined by the Consumer Rights Act 2015;
  - 4.1.8 where applicable, be free from defects in design, materials and workmanship and remain so for twelve (12) months after delivery;
  - 4.1.9 be accompanied by a delivery note, which shall be signed on behalf of the University, and which shows the date of the Order, the Order Number, the type and quantity of the Goods (including the code number of the Goods (where applicable)), special storage instructions (if any), if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered and clearly stating whether the Supplier requires the University to return any packaging material for the Goods to the Supplier. Any such packaging material shall only be returned to the Supplier at the cost of the Supplier;
  - 4.1.10 not be delivered in instalments without the prior written consent of the University; and
  - 4.1.11 comply with all applicable laws.
- 4.2 The University shall have the right to inspect and test the Goods at any time before delivery. If following such inspection or testing the University considers that the Goods do not conform or are unlikely to comply with the Supplier's undertakings at Clause 4.1, the University shall inform the Supplier and the Supplier shall immediately take such remedial action as is necessary to ensure compliance. 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 Agreement, and the University shall have the right to conduct further inspections and tests after the Supplier has carried out its remedial actions.
- 4.3 The University shall have the right to reject the Goods in whole or in part whether or not paid for in full or in part within a reasonable time of delivery if they do not conform with the requirements of the Specification.
- 4.4 The Supplier must collect any rejected Goods within 5 Business Days after notification of the rejection, failing which the University may charge the Supplier storage costs and sell or dispose of the rejected Goods. The University will account to the Supplier for the proceeds of sale after deducting the price paid for the Goods (if any), storage costs and its reasonable costs and expenses in connection with the sale.
- 4.5 The Supplier will pass on to the University the benefit of all manufacturer's warranties and guarantees relating to the Goods.
- 4.6 The Supplier shall, after installation of any Goods, reinstate free of charge the Location to its condition prior to installation (including removal of all packing cases and materials in which the Goods were delivered).
- 4.7 The Supplier will ensure that compatible spares are available to facilitate repairs (where applicable) for a period of at least two (2) years from the date of delivery of the Goods.

## **5. SUPPLY OF SERVICES**

- 5.1 The Supplier shall from the Effective Date or the date set out in the Order (as applicable) and for the Term provide the Services to the University in accordance with the Agreement and in accordance with the Specification.
- 5.2 The Supplier shall meet any performance dates for the Services specified in the Agreement or notified to the Supplier by the University.
- 5.3 In providing the Services, the Supplier shall:
- 5.3.1 co-operate with the University in all matters relating to the Services, and comply with all instructions of the University;
  - 5.3.2 perform the Services with the best care, skill and diligence in accordance with best practice in the Supplier's industry, profession or trade;

- 5.3.3 use personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled in accordance with the Agreement;
  - 5.3.4 ensure that the Services and Deliverables will conform with all descriptions and specifications set out in the Specification, and that the Deliverables shall be fit for any purpose expressly or impliedly made known to the Supplier by the University;
  - 5.3.5 provide all equipment, tools and vehicles and such other items as are required to provide the Services;
  - 5.3.6 use the best quality goods, materials, standards and techniques, and ensure that the Deliverables, and all goods and materials supplied and used in the Services or transferred to the University, will be free from defects in workmanship, installation and design;
  - 5.3.7 observe all health and safety rules and regulations and any other security requirements that apply at any of the University Premises or Location(s);
  - 5.3.8 hold all University Background Information and University Supplied Items in safe custody at its own risk, maintain the University Background Information and University Supplied Items in good condition until returned to the University, and not dispose or use the University Background Information or University Supplied Items other than in accordance with the University's written instructions or authorisation;
  - 5.3.9 not do or omit to do anything which may cause the University to lose any licence, authority, consent or permission upon which it relies or to be in breach of any applicable laws or contracts with third parties; and
  - 5.3.10 be deemed to have satisfied itself of the conditions and circumstances affecting the Location and the carrying out of the Services so that the Supplier may not claim additional payment or extension of time on the grounds of any matter relating to the Location or University Premises or as to the circumstances or conditions under which the Services are to be provided.
- 5.4 Upon receipt of the University Supplied Items, the Supplier shall satisfy itself that they are not defective or deficient for the purpose for which they are being provided, and within ten Business Days of receipt shall notify the University of any defects or deficiencies.
- 5.5 In the event of any threatened seizure of any of the University Supplied Items or Goods that have become the property of the University or in the event of the Supplier (or any third party in possession of such University Supplied Items or Goods) going into receivership, administration or liquidation (or the equivalent of any of those) the Supplier shall:
- 5.5.1 notify the University immediately; and
  - 5.5.2 draw to the attention of the receiver, administrator, liquidator or other appointed official, that the University Supplied Items and any Goods that have become the University's property, are the property of the University and do not form part of the Supplier's (or relevant third party's) assets; and
  - 5.5.3 allow the University to enter the Supplier's premises or those of any third party where the University Supplied Items or Goods are stored and take possession of the University Supplied Items and any Goods that are at that time the property of the University.
- 5.6 No copy of the University Supplied Items will be made without the consent in writing of the University Manager. Until the University Supplied Items are returned to the University, they shall be at the Supplier's risk and insured by the Supplier at its own expense against the risk of loss, theft or damage. Any loss of or damage to such University Supplied Items shall be made good by the Supplier. All scrap arising from the supply of such University Supplied Items must be disposed of at the University's discretion and all proceeds of sale of such as scrap must promptly be paid to the University in full.



- 5.7 The University shall have the right to inspect and test the progress of the Services at any time and to reject any work which is not in accordance with the Agreement. The Supplier shall forthwith replace or re-execute any work so rejected. Any such inspection or testing shall not relieve the Supplier of any of its obligations under the Agreement.
- 5.8 The University may at any time, upon notice to the Supplier, suspend, postpone or reduce all or part of the Services. Such notice will specify the commencement of the suspension, postponement or reduction and the estimated duration of the suspension or postponement. Upon receiving the notice of suspension, postponement or reduction, the Supplier must implement the same. The University may withdraw any suspension, postponement or reduction by notice to the Supplier, in which case the Supplier must resume its provision of the Services.

## **6. SERVICE LEVELS**

In providing the Services, the Supplier shall meet or exceed the Service Levels.

## **7. INTELLECTUAL PROPERTY**

- 7.1 In respect of the Goods and any goods that are transferred to the University as part of the Services under the Agreement, including without limitation the Deliverables or any part of them, the Supplier warrants that it has full, clear and unencumbered title to all such items, and that at the date of delivery of such items to the University, it will have full and unrestricted rights to sell and transfer all such items to the University.
- 7.2 The Supplier assigns to the University, with full title guarantee and free from all third party rights, all Intellectual Property Rights in the products of the Services, including for the avoidance of doubt the Deliverables, and in the Goods.
- 7.3 The Supplier shall obtain waivers of all moral rights in the products, including for the avoidance of doubt the Deliverables, of the Services to which any individual is now or may be at any future time entitled under Chapter IV of Part I of the Copyright Designs and Patents Act 1988 or any similar provisions of law in any jurisdiction.
- 7.4 The Supplier shall, promptly at the University's request, do (or procure to be done) all such further acts and things and the execution of all such other documents as the University may from time to time require for the purpose of securing for the University the full benefit of the Agreement, including all right, title and interest in and to the Intellectual Property Rights assigned to the University in accordance with Clause 7.2.
- 7.5 All the University Background Information and any copies thereof and all University Supplied Items and all Intellectual Property Rights therein shall remain the property of the University. The Supplier shall keep the University Background Information and the University Supplied Items clearly marked as the property of the University and shall return them to the University upon completion or termination of the Agreement, or earlier upon reasonable request by the University.
- 7.6 Except as expressly set out in the Agreement no assignment of or license under any Intellectual Property Right or trade mark or service mark owned or controlled by the University, whether registered or not, is granted by the Agreement.
- 7.7 The provisions of this Clause 7 shall survive the expiry or termination of the Agreement.
- ## **8. QUALITY ASSURANCE AND REPORTS**
- 8.1 The Supplier shall at all times perform an Order in the most cost-efficient manner.
- 8.2 The Supplier shall, as part of its total quality management process in its performance of an Order, provide continuous quality assurance through the identification and application of proven techniques and tools used within the Supplier's operations where the Supplier considers the same would be of benefit to the University operationally and/or financially.
- 8.3 The Supplier shall render reports to the University on the performance of the Agreement as set out in the Specification or otherwise requested by the University from time to time.

## **9. GOVERNANCE**

- 9.1 The University shall appoint a University Manager and the Supplier shall appoint a Supplier Manager for the purpose of liaison between the parties and the University Manager and the Supplier Manager shall be responsible for the ongoing overall management of the Agreement. Any instructions given to the Supplier by the University Manager shall be deemed to be given by the University.
- 9.2 The Supplier, by way of the Supplier Manager, shall attend such meetings as may reasonably be required by the University. The Supplier must ensure that the Supplier Manager is fully conversant at all times with the performance of the Agreement.
- 9.3 Appointment and/or removal of:
- 9.3.1 the University Manager, is at the sole discretion of the University; and
- 9.3.2 the Supplier Manager, is at the sole discretion of the Supplier subject to the approval of the University, such approval not being unreasonably withheld,
- and a notice of any such changes must be sent to the other party.
- 9.4 The responsibilities of the University Manager may be delegated as the University sees fit. The responsibilities of a Supplier Manager may be delegated as the Supplier sees fit. Notice of any such delegation must be sent to the other party.
- 9.5 The University Manager and the Supplier Manager shall meet on a regular basis to maintain an effective working relationship in the provision of the Services to ensure that:
- 9.5.1 the Services are provided in accordance with the Agreement;
- 9.5.2 the provision of Services is regularly monitored to ensure compliance with the Agreement, and that appropriate timely action is taken to deal with any problems or issues;
- 9.5.3 the Services are carried out in accordance with Clause 11 (Compliance with Laws and Policies) and Clause 25 (Data Protection);
- 9.5.4 both parties undertake their responsibilities in a timely and professional manner; and
- 9.5.5 problems and issues are pro-actively managed and are resolved in accordance with agreed timescales, in a co-operative manner.

## **10. PRICE AND PAYMENT**

- 10.1 The price for the Goods shall be as set out in the Agreement and, unless otherwise agreed in writing by the University, is inclusive of the costs of packaging, insurance and carriage of the Goods, to the Location(s) specified in the Agreement but exclusive of any VAT (as referred to in Clause 10.3).
- 10.2 The price for the Services shall be as set out in the Agreement and, unless otherwise agreed in writing by the University, is inclusive of every cost and expense of the Supplier directly or indirectly incurred in connection with the performance of the Services but exclusive of any VAT (as referred to in Clause 10.3).
- 10.3 Where any taxable supply for value added tax (**VAT**) purposes is made under the Agreement by the Supplier to the University, the University shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Goods and/or Services at the same time as payment is due for the supply of the Goods and/or Services.
- 10.4 In respect of the Goods, unless stated otherwise in the Agreement, the Supplier shall invoice the University on completion of delivery of such Goods. In respect of the Services, unless stated

otherwise in the Agreement, the Supplier shall invoice the University for the price on completion of provision of the Services.

- 10.5 The Supplier's invoice must be:
- 10.5.1 submitted within three (3) months of the relevant date of completion;
  - 10.5.2 addressed to the department indicated on the Order;
  - 10.5.3 quote the full Order Number; and
  - 10.5.4 otherwise comply with the University's invoicing instructions.
- 10.6 Where the Supplier submits an invoice to the University in accordance with Clause 10.5, the University will consider and verify that invoice in a timely fashion.
- 10.7 Where the University fails to comply with Clause 10.6 and there is an undue delay in considering and verifying the invoice, the invoice shall be regarded as valid and undisputed for the purposes of Clause 10.8 after a reasonable time has passed.
- 10.8 The University shall pay any sums due under such an invoice no later than a period of 30 days from the date on which the University has determined that the invoice is valid and undisputed.
- 10.9 If the University does not pay an undisputed, valid and properly due invoice within such period, the Supplier may, in addition to the invoice amount, charge the University late payment annual interest of one per cent (1%) above the base rate from time to time of the Bank of England on the invoice amount. Late payment interest shall accrue on a daily basis. Where any invoice is disputed by the University, interest shall only start to accrue from the date upon which the University confirms that such invoice is valid and properly due in accordance with Clause 10.10.
- 10.10 If the University, in its sole discretion, disputes any charges payable under the Agreement (**Disputed Amount**) then the University will be entitled to withhold payment of the Disputed Amount until the matter is resolved or, if the Disputed Amount has already been paid, the University may withhold an equal amount from a later payment. If the University withholds any such amount:
- 10.10.1 the University will promptly notify the Supplier that it is disputing the charge, specify the Disputed Amount and provide brief reasons as to its decision to withhold payment;
  - 10.10.2 unpaid invoices that the University disputes will be rendered null and void and the Supplier will issue a new invoice for the charges that are not the Disputed Amount within five (5) Business Days of notification by the University of the dispute (**Revised Invoice**). The issue of a Revised Invoice shall not prejudice the Supplier's claim for any Disputed Amount that is not invoiced. The University will pay all such Revised Invoices in accordance with Clause 10.8. Where the dispute is in respect of amounts already paid, the Supplier will make a deduction for the amount in dispute on the next available relevant invoice pending resolution of the dispute;
  - 10.10.3 the parties will promptly and diligently seek to resolve such dispute in accordance the dispute resolution procedure set out in Clause 23 (Dispute Escalation and Mediation);
  - 10.10.4 following final resolution of the dispute, the Supplier will issue a further invoice for the amount that is resolved as due and owing by the University to the Supplier (if any) or, in the event that the amount that is resolved is an amount that the Supplier must pay to the University, the Supplier shall credit such amount on the next available relevant invoice following the resolution of the dispute (or, in the event that such dispute is at or near the expiry of the term of an Order, pay such sums directly to the University within 10 Business Days); and
  - 10.10.5 for the avoidance of doubt, in the event that a disputed amount is resolved as due and owing to the Supplier, the University shall pay late payment interest on the disputed amount pursuant to Clause 10.9 from the date the University confirms that such invoice is valid and properly due.

- 10.11 If either party identifies (including through an audit) an error in any invoice or any charges paid by the University, then such party will promptly notify the other party, and:
- 10.11.1 if the error is in an invoice, the Supplier will issue a new invoice correcting such overpayment within five (5) Business Days of the date of notice and the University will pay such revised invoice in accordance with Clause 10.8; and
  - 10.11.2 if the University has overpaid any charges due under an Order, the Supplier will, at the University's request, make an appropriate adjustment on the next available invoice for the amount of such overpayment or make a correcting payment to the University within thirty (30) days of receipt of the notice by the relevant party of the error.
- 10.12 The Supplier shall submit all invoices promptly. Any claim by the Supplier for payment for any charges not made within three (3) months after the first date on which the Supplier was entitled to have sent an invoice for such charges shall be deemed to have been waived by the Supplier.
- 10.13 Where the Supplier enters into a sub-contract, the Supplier shall include in that sub-contract:
- 10.13.1 provisions having the same effect as Clause 10.6 to 10.8 of these Conditions; and
  - 10.13.2 a provision requiring the counterparty to that sub-contract to include in any sub-contract which it awards provisions having the same effect as Clause 10.6 to 10.8 of these Conditions.

For the purposes of this Clause 10.13, "sub-contract" means a contract between two (2) or more suppliers, at any stage of remoteness from the University in a subcontracting chain, made wholly or substantially for the purpose of performing (or contributing to the performance of) the whole or any part of the Agreement.

- 10.14 The Supplier shall maintain complete and accurate records of the time spent and materials used by the Supplier in providing the Services and the Supplier shall allow the University to inspect such records at all reasonable times on request.
- 10.15 The University may, without limiting its other rights or remedies, set off any amount owing to it by the Supplier against any amount payable by the University to the Supplier under the Agreement.

## **11. COMPLIANCE WITH LAWS AND POLICIES**

- 11.1 In the performance of the Agreement, the Supplier shall comply with all laws, rules, regulations, decrees, ordinances, licenses and consents relating to the subject matter of the Agreement and to the performance by the Supplier of its obligations under the Agreement, including all applicable statutory enactments and regulations, by-laws or other regulations of local authorities, the rules of any University Premises, the University's site rules, the University's policies and any instructions from the University's safety officer and any reasonable instructions of the University.
- 11.2 The Supplier will provide such information as required by the University in relation to compliance with anti-discrimination legislation and will co-operate with any investigation by the University or a body empowered to carry out such investigations under the relevant legislation.

## **12. ANTI-BRIBERY**

- 12.1 Without prejudice to the generality of Clause 11.1, the Supplier shall:
- 12.1.1 comply with all applicable laws, statutes, regulations relating to anti-bribery and anti-corruption including the Bribery Act 2010;
  - 12.1.2 not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010;
  - 12.1.3 promptly report to the University any request or demand for any undue financial or other advantage of any kind received by the Supplier in connection with the performance of the Agreement; and

12.1.4 promptly notify the University if the Supplier or any person engaged by it is prosecuted, charged or convicted of any offence under the applicable laws, statutes, regulations relating to anti-bribery and anti-corruption including the Bribery Act 2010.

12.2 The Supplier shall ensure that any person associated with the Supplier who is performing services or providing goods in connection with the Agreement does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on the Supplier in this Clause 12 (**Relevant Terms**). The Supplier shall be responsible for the observance and performance by such persons of the Relevant Terms, and shall be directly liable to the University for any breach by such persons of any of the Relevant Terms.

### **13. ANTI-SLAVERY AND HUMAN TRAFFICKING**

13.1 Without prejudice to the generality of Clause 11.1, in performing its obligations under the Agreement, the Supplier shall and shall ensure that each of its subcontractors shall comply with all applicable laws, statutes, regulations and codes from time to time in force in relation to anti-slavery and human trafficking including the Modern Slavery Act 2015.

13.2 The Supplier represents and warrants that at the Effective Date neither the Supplier nor any of its officers, personnel or other persons associated with it:

13.2.1 has been convicted of any offence involving slavery and human trafficking; and

13.2.2 to the best of its knowledge, has been or is the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence of or in connection with slavery and human trafficking.

13.3 The Supplier shall implement due diligence procedures for its own suppliers, subcontractors and other participants in its supply chains, to ensure that there is no slavery or human trafficking in its supply chains.

### **14. EQUALITY LAW**

14.1 Without prejudice to the generality of Clause 11.1, the Supplier shall:

14.1.1 perform its obligations under the Agreement (including those in relation to Services) in accordance with:

(a) all applicable equality law (whether in relation to race, sex, gender reassignment, age, disability, sexual orientation, religion or belief, pregnancy, maternity or otherwise);

(b) the University's equality and diversity policy and harassment and bullying policy as available on the University's website and updated from time to time; and

(c) any other requirements and instructions which the University reasonably imposes in connection with any equality obligations imposed on the University at any time under applicable equality law; and

14.1.2 take all necessary steps, and inform the University of steps taken, to prevent unlawful discrimination designated as such by any court or tribunal or the Equality and Human Rights Commission (or any successor organisation).

14.2 Without prejudice to the generality of Clause 14.1, for the avoidance of doubt, in performing Services or providing Goods in connection with the Agreement, the Supplier shall not commit an act of discrimination rendered unlawful by the Equality Act 2010.

### **15. FREEDOM OF INFORMATION ACT**

15.1 The Supplier acknowledges that the University is subject to the requirements of FOIA and the Environmental Information Regulations and shall assist and co-operate with the University (at the

Supplier's expense) to enable the University to comply with these Information disclosure requirements.

- 15.2 The Supplier shall and shall procure that any subcontractors shall:
- 15.2.1 transfer a Request for Information to the University as soon as practicable after receipt and in any event within three (3) days of receiving a Request for Information;
  - 15.2.2 provide the University with a copy of all FOIA Information in its possession or power in the form that the University requires within seven (7) days (or such other period as the University may specify) of the University requesting that Information; and
  - 15.2.3 provide all necessary assistance as reasonably requested by the University to enable the University to respond to a Request for Information within the time for compliance set out in section 10 of FOIA or regulation 5 of the Environmental Information Regulations.
- 15.3 The University shall be responsible for determining at its absolute discretion whether the Commercially Sensitive Information and/or any other Information:
- 15.3.1 is exempt from disclosure in accordance with the provisions of FOIA or the Environmental Information Regulations;
  - 15.3.2 is to be disclosed in response to a Request for Information.
- 15.4 In no event shall the Supplier respond directly to a Request for Information unless expressly authorised to do so by the University.
- 15.5 The Supplier acknowledges that the University may, acting in accordance with the Secretary of State for Constitutional Affairs' Code of Practice on the discharge of public authorities' functions under Part 1 of FOIA (issued under section 45 of FOIA, July 2018) (**Code**), be obliged under FOIA or the Environmental Information Regulations to disclose Information:
- 15.5.1 without consulting with the Supplier; or
  - 15.5.2 following consultation with the Supplier and having taken its views into account,
- provided always that where Clause 15.5.2 applies the University shall, in accordance with any recommendations of the Code, take reasonable steps, where appropriate, to give the Supplier advanced notice, or failing that, to draw the disclosure to the Supplier's attention after any such disclosure.
- 15.6 The Supplier shall ensure that all Information produced in the course of the Agreement or relating to the Agreement is retained for disclosure and shall permit the University to inspect such records as requested from time to time.
- 15.7 The Supplier acknowledges that any lists or schedules provided by it outlining Confidential Information of the Supplier are of indicative value only and that the University may nevertheless be obliged to disclose Confidential Information of the Supplier in accordance with Clause 15.5.

## **16. USE OF THE UNIVERSITY PREMISES**

- 16.1 The University shall give to the Supplier reasonable access to the Location for the purpose of carrying out the Services at such times as may be specified in the Agreement, or if not so specified, as may reasonably be required by the Supplier to carry out the Services in accordance with the Agreement.
- 16.2 The University may require the Supplier to remove immediately from University Premises, or refuse access to University Premises to, any employee or Permitted Subcontractor or other approved subcontractor, agent or representative who has failed to comply with any of the requirements of the University or who in the sole opinion of the University has been negligent or incompetent or otherwise acted in breach of the Agreement. The University shall not be

responsible for or liable to the Supplier for any additional costs or time incurred by the Supplier in complying with this.

16.3 The Supplier shall ensure that its personnel shall keep any storage space provided clean, tidy and properly secured.

16.4 If the Agreement requires any Services to be performed on University Premises then the following conditions shall apply:

16.4.1 the Supplier shall ensure that it and its personnel, and any subcontractors and their employees will adhere in every respect to the obligations imposed by current safety legislation and with any regulations that the University may notify to the Supplier in writing;

16.4.2 the Supplier shall ensure that there is the minimum amount of disruption to the University's business; and

16.4.3 the Supplier shall ensure that if any damage is sustained to University Premises as a result of performance of the Agreement then the Supplier will forthwith reinstate the damaged part or parts of the University Premises to their previous condition or offer reasonable compensation at the choice of the University. Such reinstatement or compensation is to be subject to the University's final approval and agreement.

## **17. UNIVERSITY'S REMEDIES**

17.1 If the Supplier fails to deliver the Goods and/or perform the Services by the date specified in the Agreement, the University shall, without limiting its other rights or remedies, have one or more of the following rights:

17.1.1 to terminate the Agreement with immediate effect by giving written notice to the Supplier;

17.1.2 to refuse to accept any subsequent performance of the Services and/or delivery of the Goods which the Supplier attempts to make;

17.1.3 to appoint its own internal team or engage a third party to step in and manage the Services or any part of the Services at the Supplier's cost;

17.1.4 to recover from the Supplier any costs incurred by the University in obtaining substitute goods and/or services from a third party;

17.1.5 where the University 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

17.1.6 to claim damages for any additional costs, loss or expenses incurred by the University which are in any way attributable to the Supplier's failure to meet such dates.

17.2 If the Supplier has delivered Goods that do not comply with the undertakings set out in Clause 4.1, then, without limiting its rights or remedies, the University shall have one or more of the following rights, whether or not it has accepted the Goods:

17.2.1 to reject the Goods (in whole or in part) whether or not title has passed and to return them to the Supplier at the Supplier's own risk and expense;

17.2.2 to terminate the Agreement with immediate effect by giving written notice to the Supplier;

17.2.3 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);

17.2.4 to refuse to accept any subsequent delivery of the Goods which the Supplier attempts to make;

- 17.2.5 to recover from the Supplier any expenditure incurred by the University in obtaining substitute goods from a third party; and
- 17.2.6 to claim damages for any additional costs, loss or expenses incurred by the University arising from the Supplier's failure to supply Goods in accordance with Clause 4.1.
- 17.3 The University's rights under the Agreement are in addition to its rights and remedies implied by statute and common law.

## **18. INDEMNITY AND INSURANCE**

- 18.1 The Supplier shall indemnify the University and keep the University indemnified against all costs, claims, demands, liabilities, expenses, damages or losses (including any direct or indirect consequential losses, loss of profit and loss of reputation, and all interest, penalties and legal and other professional costs and expenses) arising out of or in connection with:
- 18.1.1 any claim made against the University for actual or alleged infringement of a third party's Intellectual Property Rights arising out of or in connection with the provision of the Services or the supply or use of the Goods;
- 18.1.2 any breach by the Supplier of Clause 11 (Compliance with laws and Policies) and Clause 21 (Confidentiality);
- 18.1.3 any breach by the Supplier of Clause 25 (Data Protection) including:
- (a) any monetary penalties or fines levied by the any relevant regulator(s) on the University;
  - (b) the costs of an investigative, corrective or compensatory action required by a relevant regulator(s), or of defending proposed or actual enforcement taken by a relevant regulator(s); and
  - (c) a claim, action or challenge made by a third party against the University (including by a Data Subject);
- 18.1.4 any claim made against the University by a third party arising out of or in connection with defective Goods, to the extent that the defect in the Goods is attributable to the acts or omissions of the Supplier, its personnel, agents or subcontractors; and/or
- 18.1.5 any claim made against the University by a third party arising out of or in connection with the provision of the Services or the supply of the Goods, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Agreement by the Supplier, its personnel, agents or subcontractors.
- 18.2 For the Term and for six (6) years after termination of the Agreement, the Supplier shall maintain in force with a reputable insurance company professional indemnity insurance, product liability insurance and public liability insurance to cover the liabilities that may arise under or in connection with the Agreement and shall, if requested by the University, provide proof of such insurance. If the Supplier fails to provide satisfactory proof of insurance, the University may arrange appropriate insurance cover and any premiums paid by the University to effect such insurance shall be recoverable from the Supplier by the University.
- 18.3 The Supplier shall notify the University as soon as it knows or becomes aware of any event arising in connection with the Agreement which the Supplier believes may give rise to an obligation to indemnify the University in accordance with the Agreement, or to a claim under any insurance policy falling within the terms of the Agreement.
- 18.4 This Clause 18 shall survive termination of the Agreement.

## **19. LIMITS ON LIABILITY**

- 19.1 Neither party limits its liability for:



- 19.1.1 death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors; or
  - 19.1.2 fraud or fraudulent misrepresentation; or
  - 19.1.3 breach of any obligation as to title implied by statute; or
  - 19.1.4 any other act or omission, liability for which may not be limited under any laws or regulations which apply to the Agreement.
- 19.2 Subject to Clause 19.1, the University's total liability to the Supplier arising under or in connection with the Agreement shall in no circumstances exceed the amount of the charges for the Goods and/or Services under the Agreement.
- 19.3 Subject to Clause 19.1, the Supplier's total liability to the University arising under or in connection with the Agreement shall not exceed any amount noted in the Agreement Details, save that in respect of liability under the indemnities in Clause 18 (Indemnity and Insurance), and in respect of liability under Clause 25 (Data Protection), the Supplier's liability shall not be limited.

## **20. AUDIT**

- 20.1 The Supplier shall (and shall cause each subcontractor to) prepare and maintain until seven (7) years after the expiry or termination of the Agreement full and proper accounts, books records, data and information which present and reflect in all material respects all transactions, matters and things (including information relating to payments made by the Supplier to its subcontractors) relating to the Goods and/or Services (**Records**). Upon request by the University, the Supplier shall provide to the University copies of all or any part of the Records in order to enable the University to verify that the Supplier is complying with or has complied with its obligations under the Agreement.
- 20.2 The University and/or its authorised representative and any regulatory authority shall have the right from time to time upon reasonable notice to the Supplier to:
- 20.2.1 inspect the Records and any relevant facilities of the Supplier in order to verify performance of the Services by the Supplier in accordance with the Agreement and the charges incurred by the Supplier, and take copies of any Records or other books or records for this purpose;
  - 20.2.2 inspect the data processing facilities, procedures and documentation of the Supplier in order to ascertain compliance with the terms of clause 25 of the Agreement; and/or
  - 20.2.3 to enter any other premises from which the Services or part of the Services are provided in order to verify that the Supplier is complying with its obligations under the Agreement.
- 20.3 The Supplier shall provide all other reasonable assistance at all times during the Term for the purposes of carrying out an audit of all confidentiality, activities, performance, security and integrity in connection with the Agreement.
- 20.4 The University shall be entitled to exercise its rights pursuant to Clauses 20.1, 20.2 and 20.3 after the termination of the Agreement in respect of any statutory or regulatory requirements.
- 20.5 Without limitation to Clause 3 and at the University's request, the Supplier shall make all reasonable changes required by, and take any other action necessitated by, any audit or inspection within the time period specified by the University. If the action comprises the correction of a defect in the Services or in the manner in which the Services are provided (including, for the avoidance of doubt, remedying incomplete and inaccurate records) the Supplier shall implement the action at no additional charge to the University.
- 20.6 Any inspection or audit, or failure to inspect or audit, shall not in any way relieve the Supplier from its obligations under the Agreement.

## 21. CONFIDENTIALITY

- 21.1 The University possesses a valuable body of Confidential Information and the disclosure of any Confidential Information to any third party including any Information owned, controlled or licensed by the University, the University Background Information and the University Supplied Items would place the University at a serious competitive disadvantage and would cause financial and other damage to the University's business. The Supplier shall at all times act in the best interests of the University under a duty of trust and confidence.
- 21.2 Subject to Clause 21.4, the Supplier shall keep confidential all the University Background Information and any other Confidential Information relating to the University's operations, and shall not without the prior written consent of the University:
- 21.2.1 use any of the University Background Information, University Supplied Items or other University Confidential Information for any purpose other than is necessary for the performance of its obligations under the Agreement; and
- 21.2.2 disclose any of the University Background Information, University Supplied Items or other University Confidential Information to any person other than a person directly employed or engaged by the Supplier in the performance of the Agreement. Disclosure to all persons shall be made in confidence, shall be subject to the same or similar terms as are set out in these Conditions and shall be made only to the extent necessary for the performance of the Supplier's obligations under the Agreement.
- 21.3 Subject to Clause 21.4, the University shall keep confidential all Supplier's Commercially Sensitive Information supplied to the University under the Agreement and shall not disclose the same to any third party without the prior written consent of the Supplier, provided always that the University may disclose or use, without consent, Supplier's Commercially Sensitive Information to the extent necessary for the exercise of the University's rights under the Agreement including any licenses granted.
- 21.4 The obligations of confidentiality under this Clause 21 shall not apply to any information or material that the recipient party can prove:
- 21.4.1 was already known to it before it received it from the disclosing party and was not subject to obligations of confidentiality;
- 21.4.2 was subsequently disclosed to it lawfully by a third party who did not obtain it (whether directly or indirectly) from the disclosing party;
- 21.4.3 was in the public domain at the time of receiving it or has subsequently entered into the public domain other than by reason of breach of the Agreement or of any obligation of confidence owed by the recipient party or by any of its subcontractors or licensees to the disclosing party; or
- 21.4.4 was required to be disclosed in accordance with Clause 13 (Anti-slavery and Human Trafficking) or any law, order of a court of competent jurisdiction or any government body or recognised regulatory authority, including any recognised stock exchange.
- 21.5 The Supplier shall ensure that each subcontractor engaged in relation to the Agreement is bound by similar confidentiality terms to those set out in this Clause 21.
- 21.6 In addition to the requirements of Clause 25.2.19, if a party loses any material or item containing Confidential Information of another party, it must promptly notify the other party of the loss and all the circumstances surrounding it.
- 21.7 The Supplier will not make any announcement or publicity statement relating to the University, the Agreement or its subject matter without the prior written approval of the University except as required by law or by any legal or regulatory authority (including any recognised stock exchange).
- 21.8 The provisions of this Clause 21 shall survive the expiry or termination of the Agreement.

## 22. TERMINATION

- 22.1 Without affecting any other right or remedy available to it, the University may terminate the Agreement with immediate effect by giving written notice to the Supplier if:
- 22.1.1 the Supplier commits a breach of the Agreement (or any other contract with the University related to the Agreement, the Goods or the Services) which is irremediable or in the case of a breach which is capable of remedy, fails to remedy the breach within seven (7) days (or such longer period as the University may agree in writing) of written notice from the University to do so;
  - 22.1.2 there is a change of control of the Supplier;
  - 22.1.3 the Supplier's financial position deteriorates to such an extent that in the University's reasonable opinion the Supplier's capability to adequately fulfil its obligations under the Agreement has been placed in jeopardy;
  - 22.1.4 there is a change of control of the Supplier (within the meaning of section 1124 of the Corporation Tax Act 2010);
  - 22.1.5 the Supplier is in breach of Clause 11 (Compliance with laws and Policies) or Clause 21 (Confidentiality) or Clause 25 (Data Protection);
  - 22.1.6 any of the provisions of Regulation 73(1) of the Public Contracts Regulations 2015 apply;
  - 22.1.7 a resolution is passed, a petition is presented or an order is made for the winding up of the Supplier (otherwise than for the purpose of solvent amalgamation or reconstruction upon terms approved in writing by the University where the resulting entity assumes all of the obligations under the Agreement of the Supplier) or an administrator, receiver or administrative receiver is appointed over all or part of the Supplier's undertaking and assets;
  - 22.1.8 the Supplier ceases or threatens to cease to carry on its business or is unable to pay its debts or becomes insolvent (within the meaning of section 123 Insolvency Act 1986) or makes or proposes to make any arrangement or composition with its creditors;
- or
- 22.1.9 the Supplier (being an individual) is the subject of a bankruptcy order, dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his or her own affairs or becomes a patient under any mental health legislation.
- 22.2 Without affecting any other right or remedy available to it, the University may terminate the Agreement for convenience at any time, in whole or in part, on giving 10 Business Days' written notice to the Supplier.
- 22.3 If the University exercises its right to terminate under Clause 22.2 or cancels any Order under Clause 3.7, its sole liability to the Supplier shall be to pay the Supplier any third party costs incurred by the Supplier prior to the date of any notice from the University under Clause 22.2 or Clause 3.7 (as relevant) to the extent that such costs cannot be avoided, or cancelled or any unused Goods otherwise reused or resold by the Supplier and subject always to:
- 22.3.1 the Supplier's duty to mitigate any losses which it may incur in respect of such termination; and
  - 22.3.2 the Supplier providing all evidence of such third party costs incurred by the Supplier in connection with a termination in accordance with Clause 22.2 or cancellation in accordance with Clause 3.7 (as relevant) as reasonably required by the University,
- and the University's total liability under this Clause 22.3 shall not in any circumstances exceed the price that would have been payable by the University for the Goods and/or Services if the Agreement had not been terminated.

- 22.4 In any of the circumstances in these Conditions in which the University may terminate the Agreement, where both Goods and Services are supplied, the University may instead terminate part of the Agreement in respect of the Goods, or in respect of the Services, and the Agreement shall continue in respect of the remaining supply.
- 22.5 On termination of the Agreement or any part of it for any reason:
- 22.5.1 the Supplier shall comply with Clause 25.2.9;
- 22.5.2 where the Services are terminated, the Supplier shall immediately deliver to the University all Deliverables, whether or not then complete, and return all University Background Information and University Supplied Items and if the Supplier fails to do so, then the University may without limiting its other rights or remedies enter the Supplier's premises and take possession of them; and
- 22.5.3 the accrued rights and remedies of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Agreement which existed at or before the date of termination; and
- 22.5.4 Clauses which expressly or by implication have effect after termination shall continue in full force and effect.

### **23. DISPUTE ESCALATION AND MEDIATION**

- 23.1 Without prejudice to either party's right to seek interim or interlocutory relief in the courts, the parties shall attempt, in good faith, to resolve any dispute that may arise out of or relate to this the Agreement (or its construction, validity or termination) (a **Dispute**) promptly by negotiation.
- 23.2 If a Dispute cannot be settled through negotiations by appropriate representatives of each of the parties, either party may give to the other a notice in writing (a **Dispute Notice**). Within seven (7) days of the Dispute Notice being served, the parties will each refer the Dispute to the senior representatives nominated by a Deputy Vice-Chancellor of the University and the managing director (or equivalent) of the Supplier who will meet in order to attempt to resolve the Dispute. If the Dispute is not settled by agreement in writing between the parties within fourteen (14) days of the Dispute Notice, it will be resolved in accordance with the remainder of this Clause 23 and Clause 39 (Law and Jurisdiction).
- 23.3 Any Dispute must be referred to mediation in accordance with the Centre for Dispute Resolution (CEDR) Model Mediation Procedure. The mediation will be conducted by a single mediator appointed by mutual agreement, or (failing mutual agreement within seven (7) days of a notice from either party to the other calling upon the other so to agree) by the Centre for Dispute Resolution. Each party agrees to co-operate fully with such mediator, provide such assistance as is necessary to enable the mediator to discharge their duties, and to bear equally between them the fees and expenses of the mediator. The mediation must take place within three (3) months of the service of the Dispute Notice.
- 23.4 Any mediation will be conducted in London in English. Any mediation will be conducted without prejudice to the rights of either of the parties in future proceedings.

### **24. FORCE MAJEURE**

- 24.1 If either party is prevented, hindered or delayed from or in performing any of its obligations under the Agreement by a Force Majeure Event, then:
- 24.1.1 that party's obligations under the Agreement will be suspended for so long as the Force Majeure Event continues and to the extent that it is so prevented, hindered or delayed;
- 24.1.2 as soon as possible after the start of the Force Majeure Event, that party will give notice to the other party of the nature of the Force Majeure Event, the date and time at which it started, its anticipated duration and the likely effects of the Force Majeure Event on its ability to perform its obligations;

- 24.1.3 the affected party will use all reasonable endeavours to mitigate the effects of the Force Majeure Event on the performance of its obligations under the Agreement; and
- 24.1.4 as soon as practicable after the end of the Force Majeure Event, that party will notify the other party and resume performance of its obligations under the Agreement.
- 24.2 If the Supplier is prevented, hindered or delayed from or in performing any of its obligations under the Agreement by a Force Majeure Event for a continuous period in excess of 10 (ten) Business Days, the University may terminate the Agreement immediately by notice in writing.

## **25. DATA PROTECTION**

- 25.1 In this clause 25, the terms “Personal Data”, “Personal Data Breach”, “Data Protection Impact Assessment”, “Data Subject Request” “Special Category Data”, “Controller”, “Process”, “Processing” and “Processor”, and “Data Subject” shall have the meaning given to those terms in the applicable Data Protection Laws.
- 25.2 If the Supplier Processes Personal Data on behalf of the University, the Supplier shall:
- 25.2.1 only act on the University's written instructions in relation to the Processing of such Personal Data;
- 25.2.2 only Process the Personal Data for and on behalf of the University for the purposes of performing its obligations under the Agreement, and only in accordance with the terms of the Agreement;
- 25.2.3 keep a record of any Processing of Personal Data it carries out on behalf of the University;
- 25.2.4 take, operate and maintain sufficient and appropriate technical and organisational measures to protect against unauthorised or unlawful Processing of such Personal Data and against accidental loss or destruction of, or damage to, such Personal Data;
- 25.2.5 comply with all obligations imposed on the Supplier as a data Processor under the Data Protection Laws;
- 25.2.6 assist the University in complying with its obligations as a data Controller under the Data Protection Laws including:
- (i) obligations relating to notifications required by the Data Protection Laws to the relevant regulator and/ or any relevant Data Subjects;
  - (ii) undertaking any Data Protection Impact Assessments (and, where required by the Data Protection Laws, consulting with the relevant regulator(s) in respect of any such Data Protection Impact Assessments); and
- 25.2.7 unless prohibited by law, notify the University immediately (and in any event within twenty-four (24) hours of becoming aware of the same) if it considers, in its opinion (acting reasonably) that it is required by any applicable law to act other than in accordance with the instructions of the University, including where it believes that any of the University's instructions under infringe any of the Data Protection Laws;
- 25.2.8 provide evidence to the University on request of the technical and organisational measures the Supplier has taken to comply with the Supplier's obligations under this Clause 25;
- 25.2.9 on the University's request and in accordance with the University's instructions, and unless required by law to do otherwise, on the expiry or termination of the Agreement, or the date upon which the Processing of the Personal Data is no longer relevant or necessary (whichever is earlier) return such Personal Data to the University and/or permanently and securely destroy any copies of such Personal Data that the Supplier

holds and, where requested by the University, certify that such destruction has taken place;

- 25.2.10 ensure the reliability and integrity of the Supplier's personnel having access to such Personal Data and will ensure that such Supplier personnel are fully aware of the measures to be taken when processing such data, have undertaken reasonable levels of training in Data Protection Laws and in the care and handling of Personal Data, are aware of the obligations of the Supplier under the Agreement and that the same are bound by a duty of confidentiality at least as onerous as the terms contained in the Agreement;
- 25.2.11 only disclose Personal Data to its personnel that are required by the Supplier to assist it in meeting its obligations under the Agreement and shall ensure that no other personnel shall have access to such Personal Data;
- 25.2.12 not disclose Personal Data to a third party (including a sub-contractor other than Permitted Subcontractor(s)) in any circumstances without the University's prior written consent;
- 25.2.13 not sub-contract the performance of any of its obligations under the Agreement without the prior written consent of the University and ensure that, in relation to any sub-contractor (including Permitted subcontractor(s)), the Supplier:
  - (a) undertakes thorough due diligence on the proposed sub-contractor including a risk assessment of the information governance-related practices and processes of the proposed sub-contractor, which shall be used by Supplier to inform any decision on appointing the proposed sub-contractor;
  - (b) provides the University with full details of the proposed sub-contractor including the results of the due diligence undertaken in accordance with clause 25.2.13(a) before its appointment and the University has consented to such appointment in writing;
  - (c) shall ensure the sub-contractor contract (as it relates to the Processing of Personal Data) is on terms which are substantially the same as, and in any case no less onerous than, the terms set out in the Agreement, and the University is a named third party beneficiary to the contract; and
  - (d) shall ensure the sub-contractor's right to Process Personal Data terminates automatically on expiry or termination of the Agreement for whatever reason;
- 25.2.14 notwithstanding any consent or approval given by the University under this clause 25.2, the Supplier shall remain primarily liable to University for the acts, errors and omissions of any sub-contractor to whom it discloses Personal Data, and shall be responsible to the University for the acts, errors and omissions of such sub-contractor as if they were Supplier's own acts, errors and omissions to the extent that the Supplier would be liable to the University under the Agreement for those acts, errors and omissions;
- 25.2.15 if the Supplier receives any complaint, notice or communication (including from any relevant regulator(s)) or request from a third party for disclosure of Personal Data where compliance with such a request is required or purported to be required by law or regulation, which relates directly or indirectly to the processing of the Personal Data under the Agreement or to either party's compliance with Data Protection Laws, it will immediately notify the University and it will provide the University with full co-operation and assistance in relation to any such complaint, notice or communication;
- 25.2.16 notify the University promptly (and in any event within twenty-four (24) hours) following its receipt of any Data Subject Request shall:
  - (i) not disclose any Personal Data in response to any Data Subject Request without first consulting with and obtaining the University's prior written consent; and

- (ii) provide the University with all reasonable co-operation and assistance required by the University in relation to any such Data Subject Request;
- 25.2.17 ensure that such personal data is kept separate from the Supplier's personal data and from personal data belonging to other customers of the Supplier;
- 25.2.18 in accordance with clause 20, allow its data processing facilities, procedures and documentation to be submitted for scrutiny, inspection or audit by the University (and/ or its representatives, including its appointed auditors) in order to ascertain compliance with the terms of the Agreement and provide reasonable information, assistance and co-operation to the University, including access to relevant personnel and/ or, on the request of the University provide the University with written evidence of its compliance with the requirements of this clause 25;
- 25.2.19 notify the University promptly (and in any event within twenty-four (24) hours) upon becoming aware of any actual or suspected, threatened or 'near miss' Personal Data Breach in relation to the Personal Data (and follow-up in writing) and shall:
  - (i) conduct or support the University in conducting such investigations and analysis that the University reasonably requires in respect of such Personal Data Breach;
  - (ii) implement any actions or remedial measures necessary to restore the security of compromised Personal Data; and
  - (iii) assist the University to make any notifications to the relevant regulator and affected Data Subjects; and
- 25.2.20 not export such personal data to any country outside the European Economic Area, without the University's prior written consent.
- 25.3 Nothing within the Agreement relieves the Supplier of its own direct responsibilities and liabilities under the Data Protection Laws.
- 25.4 The Supplier acknowledges and agrees that Data Processing Particulars in the Agreement Details are an accurate description of the Processing of Personal Data to take place under the Agreement.
- 26. SUPPLIER PERSONNEL ISSUES**
- 26.1 The Supplier shall be solely responsible for the supervision, and ensuring on-going adequate supervision, daily direction, management, control and acts and omissions of the Supplier's personnel unless otherwise agreed in writing between the parties.
- 26.2 The Supplier shall remain responsible for obligations which are performed by the Supplier's personnel and for the acts or omissions of the Supplier's personnel as if they were acts or omissions of the Supplier. The Supplier procures that the Supplier's personnel shall comply with the obligations of the Supplier as set out in the Order or the Agreement.
- 26.3 The parties do not anticipate that the implementation of the Agreement will give rise to a relevant transfer for the purposes of TUPE.
- 26.4 The parties agree and acknowledge that it is their commercial intention that the termination of the Order or the Agreement (whether in whole or in part) shall not give rise to a Service Transfer (as defined in Clause 26.6).
- 26.5 The Supplier shall not at any time during the Term permanently assign any Supplier personnel to the Service for the majority of their time under the Agreement without the prior written consent of the University (such consent not to be unreasonably withheld or delayed).
- 26.6 If contrary to the intention of the parties TUPE operates to, or is alleged to operate to, transfer the employment of any person to the University or a successor supplier, on expiry or termination, whether in whole or in part (such event being a **Service Transfer**), the University or a successor

supplier may terminate the employment of such person and the Supplier shall indemnify and keep indemnified the University and/or a successor supplier in respect of any losses, claims, expenses, employee liabilities and redundancy payments transferred to, imposed upon, incurred or suffered by the University or a successor supplier as a result of any allegation or finding that TUPE applies to transfer the employment of any person to the University or a successor supplier. For the avoidance of doubt, this indemnity shall include any claims of unfair dismissal or discrimination.

26.7 The Supplier undertakes that during any notice period to terminate the Agreement (the **Approval Period**) it shall not, except with the prior written consent of the University:

26.7.1 withdraw or permit the withdrawal of any of the Supplier personnel engaged at that time in the provision of the Services (the **Relevant Supplier Employees**) from the provision of the Services;

26.7.2 alter in any material respect the terms and conditions or employment of any of the Relevant Supplier Employees (including any increase in salary, wages or other emoluments (whether pursuant to a general review or otherwise)) where the effect of such alteration would be to increase the annual salary, wages or other emoluments of any Relevant Supplier Employee to an annual level above the market rate paid to such personnel across the relevant industry;

26.7.3 assign any member of the Supplier's personnel (not already engaged in the provision of the Services) to the provision of the Services; or

26.7.4 engage new employees who would become Relevant Supplier Employees except to replace Relevant Supplier Employees who have left the Supplier's employment.

26.8 The Supplier undertakes that during any Approval Period or otherwise upon request by the University it shall, subject to any applicable Data Protection Laws and any other applicable laws, provide to the University (within three (3) weeks from the date such request is made) full written details of the identity and terms and conditions of employment (together with such other employee liability information as the University may reasonably request) of the Relevant Supplier Employees (and any other person, who with the consent of the University, is subsequently assigned to or engaged in the provision of the Services).

26.9 Nothing in the Agreement shall be construed as:

26.9.1 entitling the Supplier or the Supplier personnel to receive any benefits (including medical, life, accident or disability insurance, pensions, unemployment or worker's compensation, profit sharing plans or redundancy payments) received by employees of the University; or

26.9.2 requiring the University to pay, in respect of the Supplier personnel, any income taxes or social security or related contributions.

## **27. ASSIGNMENT AND SUB-CONTRACTING**

27.1 Subject to any Permitted Subcontractors noted in the Agreement Details, the Supplier shall not assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Agreement without the prior written consent of the University. For the avoidance of doubt, any sub-contracting by the Supplier under this Clause 27, including shall in addition comply with the terms of Clause 25 (Data Protection).

27.2 The University may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights under the Agreement and may sub-contract or delegate in any manner any or all of its obligations under the Agreement to any third party or agent.

## **28. NON-SOLICITATION**

28.1 During the Term and for six (6) months after the termination of the Agreement the Supplier shall not:



- 28.1.1 initiate, accept or engage in any discussions or contracts of any kind with an employee or agent of the University; or
- 28.1.2 solicit any person who is employed by the University to terminate such employment.
- 28.2 If the Supplier is in breach of Clause 28.1 above and such employee leaves the employment of the University within twelve (12) months of the end of the Agreement, the Supplier will pay to the University an amount being equivalent to six (6) months of the relevant employee's net annual salary (excluding non-cash or discretionary benefits) as such employee received immediately prior to the solicitation in recognition of the disruption that such inducement would cause to the efficient conduct of its business and such sum will be regarded as full payment for any damages or loss suffered. For the avoidance of doubt the fact that the Supplier has external advertisements on posters or on its extranet, web sites or intranets will not be a breach of this Clause 28.

## **29. NO PARTNERSHIP OR AGENCY**

Nothing in the Agreement is intended to, or shall be deemed to, create a partnership, joint venture, a contract of employment or a relationship of principal and agent between the University and the Supplier or between the University and any of the Supplier's personnel or Permitted Subcontractors or to authorise either party to make or enter into any commitments for or on behalf of the other party.

## **30. LANGUAGE**

The Agreement is made only in the English language. If there is any conflict or ambiguity in meaning between the English language version of the Agreement and any version or translation of it in any other language, the English language version shall prevail.

## **31. NOTICES**

- 31.1 Any notice or other communication required to be given to a party under or in connection with the Agreement shall be in writing and shall be delivered to the other party personally or sent by prepaid first-class post, recorded delivery, prepaid airmail or by commercial courier, at its registered office (if a company) or (in any other case) its principal place of business, or sent by email to the email address identified in the Agreement Details. Any notices to the University shall be addressed to the University Manager at the address identified in the Agreement Details.
- 31.2 Any notice or communication shall be deemed to have been duly received if delivered personally, when left at the address referred to above or, if sent by prepaid first-class post or recorded delivery, at 9.00 am on the second (2<sup>nd</sup>) Business Day after posting or, if sent by prepaid airmail at 9.00 am on the fifth (5<sup>th</sup>) Business Day after posting or, if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed by University personnel, or if sent by email, on the next Business Day after transmission.
- 31.3 This Clause 31 shall not apply to the service of any proceedings or other documents in any legal action.

## **32. WAIVER**

- 32.1 No delay, neglect or forbearance by the University in exercising any right or remedy against the Supplier shall operate as a waiver of it or of any other right or remedy.
- 32.2 A waiver of a right or remedy must be in writing.

## **33. ENTIRE AGREEMENT**

The Agreement, and the documents referred to therein, constitutes the entire agreement between the University and the Supplier in respect of its subject matter and no prior negotiations, representations or agreements in relation to such subject matter shall have effect.

#### **34. THIRD PARTIES**

A person who is not a party to the Agreement shall not have any rights under or in connection with it and the Agreement does not give rise to any rights under the Contracts (Rights of Third Parties Act) 1999.

#### **35. SEVERANCE**

35.1 If a court or any other competent authority finds that any provision (or part of any provision) of the Agreement is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed deleted, and the validity and enforceability of the other provisions of the Agreement shall not be affected.

35.2 If any invalid, unenforceable or illegal provision of the Agreement would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

#### **36. VARIATION**

Any variation of the Agreement, including the introduction of any additional terms and conditions, shall only be binding when agreed in writing and signed by the University.

#### **37. FURTHER ASSURANCE**

The Supplier shall at its own expense (and shall use all reasonable endeavours to procure that any necessary third party (including the Supplier's personnel) shall), execute such documents and perform such acts as the University may reasonably require to give full effect to the Agreement.

#### **38. SURVIVAL**

The termination or expiry of the Agreement for any reason will not affect the coming into force or the continuation in force of any of its provisions which expressly or by implication are intended to come into force or continue in force on or after termination or expiry of the Agreement.

#### **39. LAW AND JURISDICTION**

39.1 The Agreement and any claim or dispute (contractual or non-contractual) arising out of the Agreement or in connection with it or its subject matter or its formation shall be governed by and construed in accordance with the laws of England and Wales.

39.2 The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any claim or dispute (contractual or non-contractual) arising out of the Agreement or in connection with it or its subject matter or its formation.