



BIRMINGHAM CITY
University

Birmingham City University

Standard Terms & Conditions

for the Purchase of Goods & Services

Below Find a Tender

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THE CONDITIONS

1 Interpretation

1.1 Definitions

“**Agreed Purposes**” means the permitted purpose set out in the Data Protection Particulars in the Order Form or as otherwise agreed between the parties in writing.

“**CDM Regulations**” means the Construction (Design and Management) Regulations 2015 (SI 2015/51) as amended from time to time.

“**Changes**” means any change to the Goods and/or Services or this Contract.

“**Charges**” means the charges payable by the University for the supply of the Goods and/or the Services in accordance with Clause 8 (Charges and payment).

“**Commencement Date**” has the meaning given in the Order Form.

“**Comparable Supply**” means the supply of goods and/or services to another customer of the Supplier that are the same or similar to any of the Goods and/or Services.

“**Conditions**” means these terms and conditions as amended from time to time in accordance with Clause 51.7.

“**Contract**” means the contract between the University and the Supplier for the supply of Goods and/or Services incorporating these Conditions.

“**Control**” has the meaning given in section 1124 of the Corporation Tax Act 2010, and the expression “Change of Control” shall be construed accordingly.

“**Data Controller**” means as set out in the Data Protection Legislation.

“**Data Protection Legislation**” means the Data Protection Act 2018; the UK General Data Protection Regulations and all applicable data protection and privacy legislation in force from time to time in the UK which apply to a party relating to the use of personal data (including, without limitation, in relation to the privacy of electronic communications) as amended and the guidance and codes of practice issued by the Information Commissioners Office applicable to a party as

amended or replaced from time to time.

“Data Subject” means as set out in the Data Protection Legislation.

“Deliverables” means unless otherwise specified otherwise in the Order Form and/or Schedule 1 (Specification) all documents, products and materials developed by the Supplier or its agents, contractors and employees as part of or in relation to the Goods and/or the Services in any form or media, including drawings, maps, plans, diagrams, designs, pictures, computer programs, data, specifications and reports (including drafts).

“EIR” means the Environmental Information Regulations 2004 (SI 2004/3391) together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations.

“FOIA” means the Freedom of Information Act 2000 and any subordinate legislation made under that 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.

“Force Majeure” means any circumstance not within a party’s reasonable control including, without limitation:

- (a) acts of God, flood, drought, earthquake or other natural disaster;
- (b) epidemic or pandemic;
- (c) terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;
- (d) nuclear, chemical or biological contamination or sonic boom;
- (e) any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition, curfew, or failing to grant a necessary licence or consent;
- (f) collapse of buildings, fire, explosion or accident; and
- (g) any labour or trade dispute, strikes, industrial action or lockouts (other than in each case by the party seeking to rely on this clause, or companies in the same group as that party);

- (h) interruption or failure of utility service: and
- (i) malicious damage, breakdown of plant or machinery, storm or default of suppliers or subcontractors.

“GDPR” means the UK General Data Protection Regulation.

“Goods” means the goods (or any part of them) set out in the Order and detailed in the Specification.

“Information Security Plan” means the Supplier’s documented approach, controls and processes for ensuring the security of its services.

“Insolvency Event” means a Party is subject to an insolvency event if:

- (a) it suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986 (IA 1986) as if the words "it is proved to the satisfaction of the court" did not appear in sections 123(1)(e) or 123(2) of the IA 1986 OR (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the IA 1986, or (being a partnership) has any partner to whom any of the foregoing apply;
- (b) it commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with any of its creditors other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of that Party with one or more other companies or the solvent reconstruction of that Party;
- (c) it applies to court for, or obtains, a moratorium under Part A1 of the IA 1986;
- (d) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with its winding up (being a company, limited liability partnership or partnership) other than for the sole purpose of a scheme for its solvent amalgamation with one or more other companies or its solvent reconstruction;
- (e) an application is made to court, or an order is made, for the appointment of an

administrator, or a notice of intention to appoint an administrator is given or an administrator is appointed over it (being a company, partnership or limited liability partnership);

- (f) the holder of a qualifying floating charge over its assets (being a company or limited liability partnership) has become entitled to appoint or has appointed an administrative receiver;
- (g) a person becomes entitled to appoint a receiver over all or any of its assets or a receiver is appointed over all or any of its assets; or
- (h) being an individual, it is the subject of a bankruptcy petition, application or order;
- (i) a creditor or encumbrancer of it attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within ten (10) Working Days;
- (j) any event occurs, or proceeding is taken, with respect to it in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in paragraphs (a) to (i) above (inclusive); or
- (k) it suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

“Intellectual Property Rights” means patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or 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.

“Mandatory Policies” means the University’s policies listed in Schedule 3 (Mandatory Policies).

“Order” means the University’s order for the supply of Goods and/or Services, as set out in the

Order Form.

“**Order Form**” means the University’s completed form setting out the details of its Order.

“**Permitted Recipients**” means the parties to this agreement, the employees of each party, any third parties engaged to perform obligations in connection with this agreement.

“**Personal Data**” means as set out in the Data Protection Legislation.

“**Prohibited Act**” the following constitute Prohibited Acts:

- (a) to directly or indirectly offer, promise or give any person working for or engaged by the University a financial or other advantage to:
 - (i) induce that person to perform improperly a relevant function or activity; or
 - (ii) reward that person for improper performance of a relevant function or activity;
- (b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Contract;
- (c) committing any offence:
 - (i) under the Bribery Act 2010;
 - (ii) under legislation creating offences concerning fraudulent acts;
 - (iii) at common law concerning fraudulent acts relating to this Contract or any other contract with the University; or
- (d) defrauding, attempting to defraud or conspiring to defraud the University.

“**Public Contracts Regulations**” means the Public Contracts Regulations 2015 (SI 2015/102).

“**Services**” means the services, including any Deliverables, to be provided by the Supplier under the Contract as set out in the Order Form and detailed in the Specification.

“**Shared Personal Data**” means the personal data to be shared between the parties under this

agreement as set out in the Data Protection Particulars in the Order Form or as otherwise agreed between the parties in writing.

“Specification” means the description or specification for Goods and/or Services agreed in writing by the University and the Supplier as set out in Schedule 1 (Specification).

“Staffing Information” means full and accurate details of the identity, number, job title, gender, job description, salary or wages, bonus or commission, length of service, notice period, contracted hours of work, overtime worked (over at least a twelve (12) month period), redundancy entitlement, retirement age, entitlement to holiday, sick leave/sick pay, maternity, paternity, adoption, special leave, any loan or leasing schemes, collective agreements, benefits in kind or matters relating to terms and conditions of employment, including but not limited to the information that must be provided pursuant to regulation 11 of TUPE.

“Standards” means as set out in the Order Form or the Specification.

“Supplier” means the person or entity from whom the University purchases the Goods and/or Services.

“Supplier Personnel” means those members of the Supplier’s staff, including agents, consultants and advisers engaged by the Supplier to perform its obligations under this Contract.

“Supplier Representative” means the person set out in each Order Form as responsible for each individual Order.

“Supplier Tender Response” means the tender response submitted by the Supplier in respect of this Contract set out in Schedule 4 (Supplier Tender Response).

“Term” means as specified in the Order Form.

“TUPE” means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (2006/246) and/or any other regulations enacted for the purpose of implementing the Acquired Rights Directive (77/187/EEC, as amended by Directive 98/50 EC and consolidated in 2001/23/EC) into English law.

“University” means Birmingham City University of University House, 15 Bartholomew Row, Birmingham, B5 5JU.

“University Materials” has the meaning set out in Clause 7.3.10.

“University Property” means premises owned, controlled or occupied by the University in the UK which are made available for use by the Supplier or its sub-contractors for provision of the Goods and/or Services (or any of them) on the terms set out in this Contract or any separate agreement or licence.

“Working Day” means a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

1.2 Interpretation:

1.2.1 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

1.2.2 A reference to a party includes its personal representatives, successors and permitted assigns.

1.2.3 A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.

1.2.4 Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

1.2.5 A reference to writing or written includes email.

1.2.6 The schedules form part of these Conditions and shall have effect as if set out in full in the body of these Conditions. Any reference to these Conditions includes the schedules.

1.2.7 Generally, if there is an inconsistency between any of the provisions in the main body of these Conditions and the schedules, the provisions in the main body of these Conditions shall prevail, subject always to the express provisions of these Conditions.

2 **Due Diligence**

2.1 The Supplier acknowledges that:

2.1.1 the University has delivered or made available to the Supplier all of the information and documents that the Supplier considers necessary or relevant for the performance or its obligations under this Contract (“the **Due Diligence Information**”);

2.1.2 it has made its own enquiries to satisfy itself as to the accuracy of the Due Diligence Information;

2.1.3 it has raised all relevant due diligence questions with the University before the Commencement Date, has undertaken all necessary due diligence and has entered into this Contract in reliance on its own due diligence alone;

2.1.4 it shall not be excused from the performance of any of its obligations under this Contract on the grounds of, nor shall the Supplier be entitled to recover any additional costs or charges, arising as a result of any:

(i) failure by the Supplier to satisfy itself as to the accuracy and adequacy of the Due Diligence Information; and

(ii) failure by the Supplier to undertake its own due diligence.

3 Basis of Contract

3.1 The Order constitutes an offer by the University to purchase Goods and/or Services from the Supplier in accordance with these Conditions.

3.2 The Commencement Date is as specified in the Order Form. In the absence of it being specified in the Order Form or in the absence of signature of the Order Form by both of the Parties the Commencement Date will be the earlier of Clauses 3.2.1 and 3.2.2 below. The Order shall be deemed to be accepted by the Supplier on the earlier of:

3.2.1 the Supplier issuing written acceptance of the Order; or

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

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

- 3.3 These Conditions apply to the Contract to the exclusion of any other terms that the Supplier seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.
- 3.4 All of these Conditions shall apply to the supply of both Goods and Services except where the application to one or the other is specified.
- 3.5 Nothing in this Contract shall imply any exclusive relationship between the parties nor shall there be any guarantee of volume of Orders or value.
- 3.6 Nothing in the Supplier's tender or any other Supplier documentation (as applicable) shall operate to exclude or limit the Supplier's liability for its performance under this Contract.
- 3.7 All of these Conditions shall apply to the Supplier of the Goods and/or the Services except where the application to one or the other is specified.
- 3.8 Time shall be of the essence regarding any date agreed to by the Supplier in relation to any of the Goods and/or the Services specified in this Contract.

4 Supply of Goods

- 4.1 The Supplier shall ensure that the Goods shall:
- 4.1.1 correspond with their description and any applicable Specification;
 - 4.1.2 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979) and fit for any purpose held out by the Supplier or made known to the Supplier by the University, expressly or by implication, and in this respect the University relies on the Supplier's skill and judgement;
 - 4.1.3 where they are manufactured products, be free from defects in design, materials and workmanship and remain so for a minimum of twelve (12) months after delivery; and
 - 4.1.4 comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods.
- 4.2 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 Contract in respect of the Goods.

- 4.3 The University may inspect and test the Goods at any time before delivery. The Supplier shall remain fully responsible for the Goods despite any such inspection or testing and any such inspection or testing shall not reduce or otherwise affect the Supplier's obligations under the Contract.
- 4.4 If following such inspection or testing the University considers that the Goods do not comply 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.
- 4.5 The University may conduct further inspections and tests after the Supplier has carried out its remedial actions.

5 Delivery of Goods

5.1 The Supplier shall ensure that:

- 5.1.1 the Goods are properly packed and secured in such manner as to enable them to reach the destination specified on the Order Form in good condition;
- 5.1.2 each delivery of the Goods is accompanied by a delivery note which shows the date of the Order, the Order number (if any), the type and quantity of the Goods (including the code number of the Goods (where applicable)), special storage instructions (if any) and, if the Goods are being delivered by instalments, the outstanding balance of Goods remaining to be delivered; and
- 5.1.3 it states clearly on the delivery note any requirement for 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.

5.2 The Supplier shall deliver the Goods:

- 5.2.1 on the date specified in the Order or, if no such date is specified, then within ten (10) Working Days of the date of the Order;
- 5.2.2 to the University's premises or such other location as is set out in the Order or as instructed by the University before delivery (**Delivery Location**); and

- 5.2.3 during the University's normal hours of business on a Working Day, or as instructed by the University.
- 5.3 Delivery of the Goods shall be completed on the completion of unloading of the Goods at the Delivery Location.
- 5.4 If the Supplier:
- 5.4.1 delivers less than ninety five percent (95)% of the quantity of Goods ordered, the University may reject the Goods; or
 - 5.4.2 delivers more than one hundred and five percent (105)% of the quantity of Goods ordered, the University may at its sole discretion reject the Goods or the excess Goods,
- 5.5 Any Goods rejected pursuant to Clause 5.4 shall be subject to collection by or on behalf of the Supplier (at the Supplier's risk and expense) within five (5) Working Days of being notified of the rejection by the University. If the Supplier fails to collect the rejected Goods, within five (5) Working Days of being notified of the rejection, the Supplier will be deemed not to require the return of the rejected Goods and the University may keep the rejected Goods without incurring any charge in respect of them.
- 5.6 If the Supplier delivers more or less than the quantity of Goods ordered, and the University accepts the delivery, pursuant to Clause 5.4, the Supplier shall make a pro rata adjustment to the invoice for the Goods and any rejected goods shall be returnable at the Supplier's risk and expense.
- 5.7 The Supplier shall not deliver the Goods in instalments without the University's prior written consent. Where it is agreed that the Goods are delivered by instalments, they may be invoiced and paid for separately. However, failure by the Supplier to deliver any one instalment on time or at all or any defect in an instalment shall entitle the University to the remedies set out in Clause 11.1.
- 5.8 Title and risk in the Goods shall pass to the University on completion of delivery.

6 Packaging, identification, end of use and coding requirements

- 6.1 The Supplier shall comply with all obligations imposed on it by law relevant to the Goods in relation to packaging, identification, and obligations following end of use by the

University.

- 6.2 Unless otherwise specified in the Specification or otherwise agreed with the University in writing, the Goods shall be securely packed in trade packages of a type normally used by the Supplier for commercial deliveries of the same or similar goods either in retail or in bulk quantities within the United Kingdom.
- 6.3 Unless otherwise (a) specified in the Specification; (b) agreed with the University in writing; or (c) required to comply with any regulatory requirements, the following details shall be shown on the outside of every package:
- 6.3.1 a description of the Goods which shall include, without limitation, the weight of the Goods where available and any order number allocated to the Goods by the University and/or the Supplier;
 - 6.3.2 the quantity in the package where available;
 - 6.3.3 any special directions for storage;
 - 6.3.4 the expiry date of the contents where applicable;
 - 6.3.5 the batch number; and
 - 6.3.6 the name and address of the manufacturer of the Goods and the Supplier.
- 6.4 All Goods that customarily bear any mark, tab, brand, label, serial numbers or other device indicating place of origin, inspection by any government or other body or standard of quality must be delivered with all the said marks, tabs, brands, labels, serial numbers or other devices intact. Without prejudice to the generality of the foregoing, the Supplier shall label all Goods supplied to the University, and the packaging of such Goods, to highlight environmental and safety information as required by applicable law.
- 6.5 Unless otherwise set out in the Specification or agreed with the University in writing, the Supplier shall collect without charge any returnable containers (including pallets) within twenty one (21) days of the date of the relevant delivery. Empty containers not so removed may be returned by the University at the Supplier's expense or otherwise disposed of at the University's discretion. The Supplier shall credit the University in full for any containers for which the University has been charged upon their collection or return.

- 6.6 Unless otherwise confirmed and/or agreed by the University in writing and subject to Clause 6.7, the Supplier shall ensure comprehensive product information relating to each category of the Goods shall be provided by the Supplier within the following timescales:
- 6.6.1 prior to or on the Commencement Date, in relation to all categories of Goods to be provided as part of the Contract as at the Commencement Date; or
- 6.6.2 where further categories of Goods are to be supplied as agreed by the University in writing prior to or on the date of implementation of any such variation.
- 6.7 Where it is not practical for whatever reason for the Supplier to comply with its obligations under Clause 6.6 within the timescales stated and the University requires compliance with such coding requirements, the Supplier shall provide an implementation plan and timetable that sets out how the Supplier shall achieve such compliance by an alternative timescale. This implementation plan and timetable must be submitted by the Supplier for agreement by the University prior to the first delivery of the relevant Goods under the Contract (such agreement not to be unreasonably withheld or delayed). Once a timetable and plan have been agreed by the University, the Supplier shall comply with such timetable and plan as a condition of this Contract.
- 6.8 Once product information relating to Goods is provided by the Supplier, the Supplier shall, during the Term, keep such information updated with any changes to the product data relating to the Goods.

7 Supply of Services

- 7.1 The Supplier shall from the Commencement Date and for the duration of the Contract supply the Services to the University in accordance with the terms of the Contract.
- 7.2 The Supplier shall meet any performance dates for the Services specified in the Order or that the University notifies to the Supplier and time is of the essence in relation to any of those performance dates.
- 7.3 In providing the Services, the Supplier shall:
- 7.3.1 co-operate with the University in all matters relating to the Services, and comply with all instructions of the University;

- 7.3.2 perform the Services with the best skill, care and diligence in accordance with best practice in the Supplier's industry, profession or trade;
- 7.3.3 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 Contract;
- 7.3.4 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 that the University expressly or impliedly makes known to the Supplier;
- 7.3.5 provide all equipment, tools and vehicles and such other items as are required to provide the Services;
- 7.3.6 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;
- 7.3.7 obtain and at all times maintain all licences and consents which may be required for the provision of the Services;
- 7.3.8 comply with all applicable laws, regulations, regulatory policies, guidelines or industry codes from time to time enforce, including any cybersecurity requirements directed by good industry practice, which may apply to the provision of the Goods and/or the Services and the Supplier will inform the University as soon as it becomes aware of any changes to the same; and the Mandatory Policies;
- 7.3.9 observe all health and safety rules and regulations and any other security requirements that apply at any of the University's Property;
- 7.3.10 hold all materials, equipment and tools, drawings, specifications and data supplied by the University to the Supplier (University Materials) in safe custody at its own risk, maintain the University Materials in good condition until returned to the University, and not dispose or use the University Materials other than in accordance with the University's written instructions or authorisation;

- 7.3.11 not do or omit to do anything which may cause the University to lose any licence, authority, consent or permission upon which it relies for the purposes of conducting its business, and the Supplier acknowledges that the University may rely or act on the Services;
- 7.3.12 notify the University in writing immediately upon the occurrence of a Change of Control of the Supplier or upon discovering that the Supplier is subject to any investigation, order or direction by the Competition and Markets Authority; and
- 7.3.13 comply with any additional obligations as set out in the Specification.

8 Charges and Payment

8.1 The price for the Goods:

8.1.1 shall be the price set out in the Order, or if no price is quoted, the price set out in the Supplier's published price list in force at the Commencement Date; and

8.1.2 shall be inclusive of the costs of packaging, insurance and carriage of the Goods. No extra charges shall be effective unless agreed in writing and signed by the University.

8.2 The charges for the Services shall be set out in the Order, or if no price is quoted, the price set out in the Supplier's published price list in force at the Commencement Date, and shall be the full and exclusive remuneration of the Supplier in respect of the performance of the Services.

8.3 Unless otherwise agreed in writing by the University, the charges shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the provision of the Goods and/or the performance of the Services.

8.4 Except as expressly provided in this agreement, no variations or increases shall be made to the price for the Goods and/or the charges for the Services during the Term.

8.5 In the absence of anything contrary specified in Schedule 2(Charges):

8.5.1 In respect of the Goods, the Supplier shall invoice the University on or at any time after completion of delivery; and

- 8.5.2 in respect of Services, the Supplier shall invoice the University on completion of the Services.
- 8.5.3 Each invoice shall include such supporting information required by the University to verify the accuracy of the invoice, including but not limited to the relevant purchase order number.
- 8.6 In consideration of the supply of Goods and/or Services by the Supplier, the University shall pay the invoiced amounts within thirty (30) days of the date of a correctly rendered invoice to a bank account nominated in writing by the Supplier.
- 8.7 All amounts payable by the University under the Contract are inclusive of amounts in respect of value added tax chargeable from time to time (VAT). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the University, the University shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such 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.
- 8.8 If the University fails to make a payment due to the Supplier under the Contract by the due date, then the University shall pay interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this Clause 8.8 will accrue each day at two percent (2%) a year above the Bank of England's base rate from time to time, but at two percent (2%) a year for any period when that base rate is below zero percent (0%).
- 8.9 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.
- 8.10 The University may at any time, without notice to the Supplier, set off any liability of the Supplier to the University against any liability of the University to the Supplier, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under the Contract. If the liabilities to be set off are expressed in different currencies, the University may convert either liability at a market rate of exchange for the purpose of set-off. Any exercise by the University of its rights under this clause shall not limit or affect any other rights or remedies available to it under the Contract or otherwise.
- 8.11 All invoices issued by the Supplier under or in connection with this Contract shall be

accompanied by a sufficiently detailed breakdown of the matters being invoiced, including details of the time taken to perform services per individual and any additional costs authorised.

- 8.12 The University may withhold payment against any invoice not submitted in accordance with this Contract and shall notify the Supplier in writing of its reason for so doing. If the invoice is disputed in part only, the Supplier shall issue a credit note in respect of the original invoice and issue an invoice for the part not in dispute. On receipt of such an invoice the University shall pay that part of the original invoice which it accepts, while any query concerning a disputed sum is resolved.

9 Warranties and Representations

9.1 The Supplier warrants and represents to the University that:

- 9.1.1 it has full capacity and authority and all necessary consents (including, where its procedures so require, the consent of its Parent Company) to enter into and to perform its obligations under this Contract;
- 9.1.2 this Contract is executed by a duly authorised representative of the Supplier;
- 9.1.3 in entering into this or any Contract it has not committed any Prohibited Act;
- 9.1.4 as at the Commencement Date, all information provided (including if it is specified in the Order Form that this Contract is a call-off contract under a framework agreement the information provided by the Supplier in the Suppliers Tender Response) is or remains true, accurate and not misleading save as may have been specifically disclosed in writing to the University before the execution of this Contract and it will promptly advise the University of any fact, matter or circumstance of which it may become aware during the Term that would render any such information, statement or representation to be false or misleading;
- 9.1.5 the University will receive good and valid title to all Goods and Deliverables, free and clear of all encumbrances and liens of any kind;
- 9.1.6 no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress or, to the best of its knowledge and belief, pending or threatened against it or any of its assets that will or might affect its

ability to perform its obligations under this and any Contract which may be entered into with the University;

9.1.7 it is not subject to any contractual obligation, compliance with which is likely to have an effect on its ability to perform its obligations under this and any Contract; and

9.1.8 no proceedings or other steps have been taken and not discharged (nor, to the best of its knowledge, are threatened) for the winding up of the Supplier or for its dissolution or for the appointment of a receiver, administrative receiver, liquidator, manager, administrator or similar officer in relation to any of the Supplier's assets or revenue.

9.2 The Supplier shall indemnify the University against any losses, damages, costs (including legal fees) and expenses incurred by, or awarded against, the University as a result of the Supplier's breach of Clause 9.1 of this Contract howsoever arising or any negligent or wrongful act of the Supplier, the Supplier's Personnel, its officers, employees, contractors or agents.

10 Standards

10.1 The Supplier shall comply with the Standards at all times during the performance by the Supplier of this and any Contract, including any Standards set out in Schedule 1 (Specification).

10.2 Throughout the Term, the Parties shall notify each other of any new or emergent standards which could affect the Supplier's provision, or the receipt by the University under this Contract, of the Goods and/or Services.

11 University Remedies

11.1 If the Supplier has delivered Goods that do not comply with the undertakings set out in Clauses 4 (Supply of Goods), 5 (Delivery of Goods) and 6 (Packaging, identification, end of use and coding requirements), then, without limiting or affecting other rights or remedies available to it, the University shall have one or more of the following rights, whether or not it has accepted the Goods:

11.1.1 to terminate the Contract with immediate effect by giving written notice to the

Supplier;

- 11.1.2 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;
 - 11.1.3 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);
 - 11.1.4 to refuse to accept any subsequent delivery of the Goods which the Supplier attempts to make;
 - 11.1.5 to recover from the Supplier any expenditure incurred by the University in obtaining substitute goods from a third party; and
 - 11.1.6 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.
- 11.2 These Conditions shall extend to any substituted or remedial services and/or repaired or replacement goods supplied by the Supplier.
- 11.3 The University's rights under the Contract are in addition to its rights and remedies implied by statute and common law.

12 University's Obligations

- 12.1 The University shall:
- 12.1.1 provide the Supplier with reasonable access at reasonable times to the University's Property for the purpose of delivering the Goods and/or providing the Services; and
 - 12.1.2 provide such necessary information for the provision of the Services as the Supplier may reasonably request.
- 12.2 A failure by the University to comply with the terms of the Contract can only relieve the Supplier from complying with its obligations under the Contract with effect from the date on which the Supplier notifies the University in writing and in reasonable details of the University's failure and its effect or anticipated effect on the Goods and/or the Services.

13 Non-Discrimination

- 13.1 The Supplier shall not, and shall procure that the Supplier Personnel do not, unlawfully discriminate either directly or indirectly when performing their obligations under this Contract within the meaning and scope of the Equality Act 2010 and any subsequent law relating to discrimination on grounds of any of the following protected characteristics: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief (including lack of belief), sex and sexual orientation, and any subsequent law relating to them.
- 13.2 The Supplier shall take all reasonable steps to secure the observance of Clause 13.1 (Non-Discrimination) by all Supplier Personnel and shall comply with any University policy on the matters set out in Clause 13.1 (Non-Discrimination), as reasonably directed by the University.

14 Supplier Personnel

- 14.1 The University may refuse admission to the University Property and/or direct the Supplier to end the involvement in the provision of the Goods and/or the Services of any of the Supplier Personnel whom the University believes represents a security risk or does not have the required levels of training and expertise or where the University has other grounds for doing so. The decision of the University shall be final and it shall not be obliged to provide any reasons.
- 14.2 To the extent legally permissible, the Supplier shall not employ as Supplier Personnel individuals whose previous background would reflect adversely upon the University (including those individuals convicted of serious criminal offences) and the Supplier shall ensure that in the recruitment of Supplier Personnel the Supplier shall ensure that its recruitment procedures include: (i) certification of eligibility to work in the UK; (ii) proof of address and photographic identification; (iii) declarations from individuals at the application stage of any unspent criminal convictions; and (iv) background reference checks. The Supplier shall, on request, provide the University with up to date CVs for Supplier Personnel.
- 14.3 The Supplier undertakes that its employees and contractors, while on University premises, will comply with all relevant rules and regulations laid down by the University from time to time (including without limitation the Mandatory Policies) for the behaviour of its own employees and contractors, and any other reasonable requirements of the University. The

Supplier shall remove any employee or contractor whom the University can demonstrate has failed to comply with such rules, regulations and requirements.

- 14.4 The Supplier shall indemnify the University for all loss and damage howsoever arising to the University's employees, contractors or property caused by the Supplier's personnel while they are on the University' Premises.
- 14.5 The Supplier alone shall be responsible for the supervision, direction, control, wages, taxes, national insurance and benefits of its managers and support staff. The Supplier assumes full responsibility for their acts and omissions and acknowledges that they are not employees or agents of the University.

15 Supplier Personnel Security

- 15.1 The Supplier shall ensure that all Supplier Personnel are vetted to a level commensurate with their responsibilities, with particular regard to access to vulnerable persons, Personal Data and the University's Confidential Information.
- 15.2 The Supplier shall provide training on a continuing basis for all Supplier Personnel employed or engaged in the provision of the Goods and/or the Services in compliance with its security policies and Information Security Plan.

16 Supplier Personnel information and the application of TUPE at the end of the Contract

- 16.1 Upon the day which is no greater than nine (9) months before the expiry of this Contract or as soon as the Supplier is aware of the proposed termination or retendering of the Contract, the Supplier shall, within twenty eight (28) days of receiving a written request from the University and to the extent permitted by law, supply to the University and keep updated all information required by the University as to the terms and conditions of employment and employment history of any Supplier Personnel (including the Staffing Information and all employee liability information identified in regulation 11 of TUPE) and the Supplier shall warrant such information is full, complete and accurate.
- 16.2 No later than twenty eight (28) days prior to the Subsequent Transfer Date, the Supplier shall or shall procure that any sub-contractor shall provide a final list to the Successor and/or the University, as appropriate, containing the names of all the Subsequent Transferring Employees whom the Supplier or sub-contractor expects will transfer to the

Successor or the University and all Staffing Information and/or all employee liability information identified in regulation 11 of TUPE in relation to the Subsequent Transferring Employees.

16.3 The Supplier shall be liable to the University for, and shall indemnify and keep the University indemnified against, any loss, damages, costs, expenses (including without limitation legal costs and expenses), claims or proceedings that arise or result from any deficiency or inaccuracy in the information which the Supplier is required to provide under Clauses 16.1 and 16.2.

16.4 Subject to Clauses 16.5 and 16.6, during the period of nine (9) months preceding the expiry of this Contract or after notice of termination or retendering of this Contract has been served by either Party, the Supplier shall not, and shall procure that any sub-contractor shall not, without the prior written consent of the University, such consent not to be unreasonably withheld or delayed:

16.4.1 make, propose or permit any material changes to the terms and conditions of employment or other arrangements of any of the Supplier Personnel;

16.4.2 increase or seek to increase the emoluments (excluding cost of living increases awarded in the ordinary course of business) payable to any of the Supplier Personnel;

16.4.3 replace any of the Supplier Personnel or increase the total number of employees providing the Services;

16.4.4 deploy any person other than the Supplier Personnel to perform the Services;

16.4.5 terminate or give notice to terminate the employment or arrangements of any of the Supplier Personnel;

16.4.6 increase the proportion of working time spent on the Services by any of the Supplier Personnel; or

16.4.7 introduce any new contractual term or customary practice concerning the making of any lump sum payment on the termination of employment of any of the Supplier Personnel.

16.5 Clause 16.4 shall not prevent the Supplier or any sub-contractor from taking any of the

steps prohibited in that Clause in circumstances where the Supplier or sub-contractor is required to take such a step pursuant to any changes in legislation or pursuant to a collective agreement in force at that time.

- 16.6 Where the obligations on the Supplier under Clause 16 are subject to the Data Protection Legislation, the Supplier will, and shall procure that any sub-contractor will, use its best endeavours to seek the consent of the Supplier Personnel to disclose any information covered under the Data Protection Legislation and utilise any other exemption or provision within the Data Protection Legislation which would allow such disclosure.
- 16.7 Having as appropriate gained permission from any sub-contractor, the Supplier hereby permits the University to disclose information about the Supplier Personnel to any Interested Party provided that the University informs the Interested Party in writing of the confidential nature of the information.
- 16.8 The Parties agree that where a Successor or the University provides the Services or services which are fundamentally the same as the Services in the immediate or subsequent succession to the Supplier or sub-contractor (in whole or in part) on expiry or early termination of this Contract (howsoever arising) TUPE may apply in respect of the subsequent provision of the Services or services which are fundamentally the same as the Services. If TUPE applies then Clause 16.10 to Clause 16.13 applies.
- 16.9 If on the termination or at the end of the Contract TUPE does not apply, then all Employment Liabilities and any other liabilities in relation to the Supplier Personnel shall remain with the Supplier or sub-contractor as appropriate. The Supplier will, and shall procure that any sub-contractor shall, indemnify and keep indemnified the University in relation to any Employment Liabilities arising out of or in connection with any allegation or claim raised by any Supplier Personnel.
- 16.10 In accordance with TUPE, and any other policy or arrangement applicable, the Supplier shall, and will procure that any sub-contractor shall, comply with its obligations to inform and consult with the appropriate representatives of any of its employees affected by the subsequent transfer of the Services or services which are fundamentally the same as the Services.
- 16.11 The Supplier will and shall procure that any sub-contractor will on or before any Subsequent Transfer Date:

- 16.11.1 pay all wages, salaries and other benefits of the Subsequent Transferring Employees and discharge all other financial obligations (including reimbursement of any expenses and any contributions to retirement benefit schemes) in respect of the period between the Transfer Date and the Subsequent Transfer Date;
 - 16.11.2 account to the proper authority for all PAYE, tax deductions and national insurance contributions payable in respect of the Subsequent Transferring Employees in the period between the Transfer Date and the Subsequent Transfer Date;
 - 16.11.3 pay any Successor or the University, as appropriate, the amount which would be payable to each of the Subsequent Transferring Employees in lieu of accrued but untaken holiday entitlement as at the Subsequent Transfer Date;
 - 16.11.4 pay any Successor or the University, as appropriate, the amount which fairly reflects the progress of each of the Subsequent Transferring Employees towards achieving any commission, bonus, profit share or other incentive payment payable after the Subsequent Transfer Date wholly or partly in respect of a period prior to the Subsequent Transfer Date; and
 - 16.11.5 subject to any legal requirement, provide to the Successor or the University, as appropriate, all personnel records relating to the Subsequent Transferring Employees including, without prejudice to the generality of the foregoing, all records relating to national insurance, PAYE and income tax. The Supplier shall for itself and any sub-contractor warrant that such records are accurate and up to date.
- 16.12 The Supplier will and shall procure that any sub-contractor will indemnify and keep indemnified the University and/or a Successor in relation to any Employment Liabilities arising out of or in connection with any claim arising from:
- 16.12.1 the Supplier's or sub-contractor's failure to perform and discharge its obligations under Clause 16.11;
 - 16.12.2 any act or omission by the Supplier or sub-contractor in respect of the Subsequent Transferring Employees occurring on or before the Subsequent Transfer Date;

- 16.12.3 any allegation or claim by any person who is not a Subsequent Transferring Employee but who alleges that their employment should transfer or has transferred to the Successor or the University, as appropriate;
- 16.12.4 any emoluments payable to a person employed or engaged by the Supplier or sub-contractor (including without limitation all wages, accrued holiday pay, bonuses, commissions, PAYE, national insurance contributions, pension contributions and other contributions) payable in respect of any period on or before the Subsequent Transfer Date;
- 16.12.5 any allegation or claim by any of the Subsequent Transferring Employees on the grounds that the Successor or University, as appropriate, has failed to continue a benefit provided by the Supplier or sub-contractor as a term of such Subsequent Transferring Employee's contract as at the Subsequent Transfer Date where it was not reasonably practicable for the Successor or University, as appropriate, to provide an identical benefit but where the Successor or University, as appropriate, has provided (or offered to provide where such benefit is not accepted by the Subsequent Transferring Employee) an alternative benefit which, taken as a whole, is no less favourable to such Subsequent Transferring Employee; and
- 16.12.6 any act or omission of the Supplier or any sub-contractor in relation to its obligations under regulation 13 of TUPE, or in respect of an award of compensation under regulation 15 of TUPE except to the extent that the liability arises from the Successor's or University's failure to comply with regulation 13(4) of TUPE.
- 16.13 The Supplier will, or shall procure that any sub-contractor will, on request by the University provide a written and legally binding indemnity in the same terms as set out in Clause 16.12 to any Successor in relation to any Employment Liabilities arising up to and including the Subsequent Transfer Date.
- 16.14 The Supplier will indemnify and keep indemnified the University and/or any Successor in respect of any Employment Liabilities arising from any act or omission of the Supplier or sub-contractor in relation to any other Supplier Personnel who is not a Subsequent Transferring Employee arising during any period whether before, on or after the Subsequent Transfer Date.

16.15 If any person who is not a Subsequent Transferring Employee claims or it is determined that their contract of employment has been transferred from the Supplier or any sub-contractor to the University or Successor pursuant to TUPE or claims that their employment would have so transferred had they not resigned, then:

16.15.1 the University will, or shall procure that the Successor will, within seven (7) days of becoming aware of that fact, give notice in writing to the Supplier;

16.15.2 the Supplier may offer (or may procure that a sub-contractor may offer) employment to such person within twenty eight (28) days of the notification by the University or Successor;

16.15.3 if such offer of employment is accepted, the University will, or shall procure that the Successor will, immediately release the person from their employment; and

16.15.4 if after the period in Clause 16.15.2 has elapsed, no such offer of employment has been made or such offer has been made but not accepted, the University will, or shall procure that the Successor will (whichever is the provider of the Services or services of the same or similar nature to the Services), employ that person in accordance with its obligations and duties under TUPE and shall be responsible for all liabilities arising in respect of any such person after the Subsequent Transfer Date.

17 Necessary Consents

17.1 The Supplier shall be responsible for obtaining all licences, authorisations, consents or permits required in relation to the performance of this Contract.

18 Export

18.1 Neither Party shall export, directly or indirectly, any technical data acquired from the other Party under this Contract (or any products, including software, incorporating any such data) in breach of any applicable laws or regulations ("**Export Control Laws**"), including United States export laws and regulations, to any country for which the government or any agency thereof at the time of export requires an export licence or other governmental approval without first obtaining such licence or approval.

18.2 Each Party undertakes:

18.2.1 contractually to oblige any third party to whom it discloses or transfers any such data or products to make an undertaking to it in similar terms to the one set out above; and

18.2.2 if requested, to provide the other Party with any reasonable assistance, at the reasonable cost of the other Party, to enable it to perform any activity required by any competent government or agency in any relevant jurisdiction for the purpose of compliance with any Export Control Laws.

19 Records

19.1 The Supplier shall keep and maintain until seven (7) years after the date of termination or expiry (whichever is the earlier) of this Contract (or as long a period as may be agreed between the Parties), full and accurate records and accounts of the operation of this Contract including the Goods and/or Services provided under it, the Contracts entered into with the University and the amounts paid by the University.

20 Anti-facilitation of tax evasion

20.1 The Supplier shall:

20.1.1 have and shall maintain in place throughout the Term of this Agreement such policies and procedures as are both reasonable to prevent the facilitation of tax evasion by another person (including without limitation Supplier Personnel) and to ensure compliance with the provisions of this Clause 20;

20.1.2 notify the University in writing if it becomes aware of any breach of Clause 20.1.1 or has reason to believe that it or any person associated with it has received a request or demand from a third party to facilitate the evasion of tax within the meaning of Part 3 of the Criminal Finances Act 2017, in connection with the performance of this Agreement;

20.1.3 within three (3) months of the Effective Date of this Agreement, and annually thereafter, certify to the University in writing signed by an officer, compliance with this Clause 20.1.1 to Clause by the Supplier party and all persons associated with it and the Supplier shall provide such supporting evidence of compliance as the University may reasonably request.

- 20.2 The Supplier shall ensure that any person associated with it who is performing Services in connection with this 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 20. 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.
- 20.3 Breach of Clauses 20.1 and 20.2 shall be deemed a material breach under Clause 29.2.1.
- 20.4 For the purposes of Clause 20.1, the meaning of reasonable prevention procedure shall be determined in accordance with any guidance issued under section 47 of the Criminal Finances Act 2017 and a person associated with the Supplier includes but is not limited to any subcontractor of the Supplier.

21 Transparency

- 21.1 The Parties acknowledge and agree that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Contract and any Transparency Reports under it is not Confidential Information and shall be made available in accordance with the procurement policy note 13/15 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/458554/Procurement_Policy_Note_13_15.pdf and the Transparency Principles referred to therein.
- 21.2 The University shall determine whether any of the content of this Contract is exempt from disclosure in accordance with the provisions of the FOIA. The University may consult with the Supplier to inform its decision regarding any redactions but shall have the final decision in its absolute discretion.
- 21.3 Notwithstanding any other provision of this Contract, the Supplier hereby gives its consent for the University to publish this Contract in its entirety (but with any information which is exempt from disclosure in accordance with the provisions of the FOIA redacted), including any changes to this Contract agreed from time to time.
- 21.4 The Supplier acknowledges and agrees that publication of this Contract will include the publication of the name and contact details of the Supplier Representative (including its successors). Such details will not be redacted.
- 21.5 By executing this Contract, the Supplier confirms that it has obtained the Supplier

Representative's consent and shall, prior to the appointment of any successor Supplier Representative obtain the successor's consent, permitting the publication of their name and contact details under this Clause 21 (Transparency) or otherwise, the Supplier shall take all necessary steps to ensure that publication will not cause the University or the Supplier to breach any Data Protection Legislation.

21.6 The Supplier shall assist and cooperate with the University to enable the University to publish this Contract.

22 Compliance with Applicable Law

22.1 The Supplier shall comply with all applicable law in connection with the performance of this Contract.

22.2 In the event that the Supplier or the Supplier Personnel fail to comply with this Clause 22 (Compliance with Applicable Law), the University reserves the right to terminate this Contract by giving notice in writing to the Supplier.

23 Data Protection

23.1 Both Parties will comply with all applicable requirements of the Data Protection Legislation. This Clause 23 (Data Protection) is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation. Each party shall comply with all the obligations imposed on it as a data controller and/or data processor under the Data Protection Legislation, and any material breach of the Data Protection Legislation by one party shall, if not remedied within thirty (30) days of written notice from the other party, give grounds to the other party to terminate this contract with immediate effect.

Data Controller and Data Processor

23.2 The Parties acknowledge that for the purposes of the Data Protection Legislation, the Party specified in the Order Form is the Data Controller and the Party specified in the Order Form is the Data Processor. The Order Form sets out the scope, nature and purpose of processing by the Data Processor, the duration of the processing and the types of Personal Data and categories of Data Subject.

23.3 Without prejudice to the generality of Clause 23.1, the Data Processor shall, in relation to any Personal Data processed in connection with the performance by the Supplier of its

obligations under this Contract:

- 23.3.1 process that Personal Data only on the written instructions of the Data Controller. Where the Data Processor is so required, it shall promptly notify the Data Controller before processing the Personal Data, unless prohibited by the Law;
- 23.3.2 ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Data Controller, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
- 23.3.3 not transfer any Personal Data outside of the United Kingdom unless the prior written consent of the Data Controller has been obtained and the following conditions are fulfilled:
- (i) the University or the Supplier has provided appropriate safeguards in relation to the transfer;
 - (ii) the Data Subject has enforceable rights and effective remedies;
 - (iii) the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
 - (iv) the Supplier complies with the reasonable instructions notified to it in advance by the University with respect to the processing of the Personal Data;
- 23.3.4 notify the Data Controller immediately if it receives:

- (i) a request from a Data Subject to have access to that person's Personal Data;
 - (ii) a request to rectify, block or erase any Personal Data;
 - (iii) any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation (including any communication from the Information Commissioner);
- 23.3.5 assist the Data Controller in responding to any request from a Data Subject and in ensuring compliance with the Data Controller's obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- 23.3.6 notify the Data Controller immediately and in any event within 24 (twenty four) hours on becoming aware of a Personal Data breach including without limitation any event that results, or may result, in unauthorised access, loss, destruction, or alteration of Personal Data in breach of this Contract;
- 23.3.7 at the written direction of the Data Controller, delete or return Personal Data and copies thereof to the Data Controller on termination or expiry of this Contract unless required by the Law to store the Personal Data;
- 23.3.8 maintain complete and accurate records and information to demonstrate its compliance with this Clause 23 and allow for audits by the Data Controller or the Data Controller's designated auditor pursuant to Clause 19;
- 23.4 Where the Supplier intends to engage a sub-contractor and intends for that sub-contractor to process any Personal Data relating to this Contract, it shall:
- 23.4.1 notify the University in writing of the intended processing by the sub-contractor;
 - 23.4.2 obtain prior written consent to the processing;
 - 23.4.3 ensure that any sub-contract imposes obligations on the sub-contractor to give effect to the terms set out in this Clause 23.

Data Controller to Data Controller – Shared Personal Data

- 23.5 If specified as such in the Order Form the Parties acknowledge that for the purposes of the Data Protection Legislation, they are both Data Controllers. The Order Form sets out the scope, nature and purpose of data sharing between the parties as Data Controllers, the duration of the sharing and the types of Personal Data and categories of Data Subject.
- 23.6 Clauses 23.7 to 23.11 below set out the framework for the sharing of personal data between the parties as Data Controllers. Each party acknowledges that one party (referred to in this clause as the “Data Discloser”) will regularly disclose to the other party Shared Personal Data collected by the Data Discloser for the Agreed Purposes.
- 23.7 Each party shall:
- 23.7.1 ensure that it has all necessary notices and consents in place to enable lawful transfer of the Shared Personal Data to the Permitted Recipients for the Agreed Purposes;
 - 23.7.2 give full information to any data subject whose personal data may be processed under this agreement of the nature such processing. This includes giving notice that, on the termination of this agreement, personal data relating to them may be retained by or, as the case may be, transferred to one or more of the Permitted Recipients, their successors and assignees;
 - 23.7.3 process the Shared Personal Data only for the Agreed Purposes;
 - 23.7.4 not disclose or allow access to the Shared Personal Data to anyone other than the Permitted Recipients;
 - 23.7.5 ensure that all Permitted Recipients are subject to written contractual obligations concerning the Shared Personal Data (including obligations of confidentiality) which are no less onerous than those imposed by this agreement;
 - 23.7.6 ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the other party, to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data.
 - 23.7.7 not transfer any personal data received from the Data Discloser outside the United

Kingdom unless the transferor:

- (i) complies with the provisions of Articles 26 of the GDPR (in the event the third party is a joint controller); and
- (ii) ensures that (i) the transfer is to a country approved by the Information Commission as providing adequate protection pursuant to Article 45 of the GDPR; or (ii) there are appropriate safeguards in place pursuant to Article 46 GDPR; or (iii) Binding corporate rules are in place or (iv) one of the derogations for specific situations in Article 49 GDPR applies to the transfer.

23.8 Each party shall assist the other in complying with all applicable requirements of the Data Protection Legislation. In particular, each party shall:

- 23.8.1 consult with the other party about any notices given to data subjects in relation to the Shared Personal Data;
- 23.8.2 promptly inform the other party about the receipt of any data subject access request;
- 23.8.3 provide the other party with reasonable assistance in complying with any data subject access request;
- 23.8.4 not disclose or release any Shared Personal Data in response to a data subject access request without first consulting the other party wherever possible;
- 23.8.5 assist the other party, at the cost of the other party, in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, personal data breach notifications, data protection impact assessments and consultations with supervisory authorities or regulators;
- 23.8.6 notify the other party without undue delay on becoming aware of any breach of the UK Data Protection Legislation;
- 23.8.7 at the written direction of the Data Discloser, delete or return Shared Personal Data and copies thereof to the Data Discloser on termination of this agreement unless required by law to store the personal data;

- 23.8.8 use compatible technology for the processing of Shared Personal Data to ensure that there is no lack of accuracy resulting from personal data transfers;
 - 23.8.9 maintain complete and accurate records and information to demonstrate its compliance with this Clause 23 and allow for audits by the other party or the other party's designated auditor; and
 - 23.8.10 provide the other party with contact details of at least one employee as point of contact and responsible manager for all issues arising out of the Data Protection Legislation, including the joint training of relevant staff, the procedures to be followed in the event of a data security breach, and the regular review of the parties' compliance with the Data Protection Legislation.
- 23.9 Either party may, at any time on not less than thirty (30) days' written notice to the other party, revise this Clause 23 by replacing it with any applicable controller to processor or controller to controller standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Contract).
- 23.10 The Supplier will indemnify the University against any loss or damage suffered by the University including any fines payable or settlements agreed, from or in connection with any breach by the Supplier of its obligations under this Clause 23.
- 23.11 The provisions of this clause shall apply during the continuance of this Contract and indefinitely after its expiry or termination.

24 Freedom of Information

- 24.1 The Supplier acknowledges that the University is subject to the requirements of the FOIA and the EIRs. The Supplier shall:
- 24.1.1 provide all necessary assistance and cooperation as reasonably requested by the University to enable the University to comply with its obligations under the FOIA and EIRs;
 - 24.1.2 transfer to the University all Requests for Information relating to this Contract that it receives as soon as practicable and in any event within two (2) Working Days of receipt;
 - 24.1.3 provide the University with a copy of all Information belonging to the University

requested in the Request For Information which is in its possession or control in the form that the University requires within five (5) Working Days (or such other period as the University may reasonably specify) of the University's request for such Information; and

24.1.4 not respond directly to a Request For Information unless authorised in writing to do so by the University.

24.2 The Supplier acknowledges that the University may be required under the FOIA and EIRs (together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations) to disclose Information (including Confidential Information) without consulting or obtaining consent from the Supplier. The University shall take reasonable steps to notify the Supplier of a Request For Information (in accordance with the Secretary of State's section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this Contract) the University shall be responsible for determining in its absolute discretion whether any Confidential Information and/or any other information is exempt from disclosure in accordance with the FOIA and/or the EIRs.

25 Publicity and Branding

25.1 Unless otherwise directed by the University, the Supplier shall not make any press announcements or publicise this Contract in any way without the University's prior written consent.

25.2 The University shall be entitled to publicise this Contract in accordance with any legal obligation on the University.

25.3 The Supplier shall not do anything that may damage the reputation of the University or bring the University into disrepute.

26 Intellectual Property

26.1 Save as granted under this Contract, neither Party shall acquire any right, title or interest in or to the Intellectual Property Rights of the other Party.

26.2 Where the Supplier acquires, by operation of law, title to Intellectual Property Rights that

is inconsistent with Clause 26.6 or with Clause 26.7 (as applicable), it shall (in respect of Services) assign in writing such Intellectual Property Rights as it has acquired to the University or (in respect of Goods) grant or arrange for the grant of the licence or licences in Clause 26.7 to the University, on the request of the University (whenever made).

26.3 Neither Party shall have any right to use any of the other Party's names, logos or trademarks on any of its products or services without the other Party's prior written consent.

26.4 The Supplier shall not use any of the University's Intellectual Property Rights other than in accordance with the provisions of this Contract and/or the University's written instructions.

26.5 **Deliverables**

26.6 In respect of Goods the University shall own all Deliverables produced and/or supplied by the Supplier (unless stated otherwise in the Order Form) and in respect of any Intellectual Property Rights therein the Supplier hereby grants to the University, or shall procure the grant to the University of, an irrevocable, worldwide, royalty free, perpetual licence to use the Intellectual Property Rights in the Deliverables for the purpose for which the Deliverables are supplied, including for commercial purposes.

26.7 In respect of Services, the Supplier hereby irrevocably, unconditionally and absolutely assigns to the University, with full title guarantee, and without restriction, all right, title and interest in and to all existing and future Intellectual Property Rights (including future copyright and design right) subsisting in or relating to all Deliverables whether created, developed or produced before, on or after the Commencement Date, in all countries and with the right to sue for damages and other relief for past infringement of any of those Intellectual Property Rights. For the avoidance of doubt, the assignment under this Clause 26 (Intellectual Property) shall take effect from the date on which the relevant Deliverable was or is created, developed or produced.

26.8 To the extent that Clause 26.7 (Intellectual Property) is not effective to assign legal title to the Intellectual Property Rights in or to the Deliverables, then the Supplier shall assign to the University such Intellectual Property Rights as and when requested by the University by executing any assignment documents reasonably requested by the University. Until such time as those Intellectual Property Rights are assigned to the University, the Supplier shall hold all such Intellectual Property Rights on trust for the University and the University shall have an exclusive worldwide, royalty-free licence under those Intellectual Property

Rights and to use the Deliverables for any purpose.

- 26.9 The Supplier warrants that it has obtained or shall obtain from all sub-contractors an unconditional assignment without restriction of the legal and beneficial ownership of all existing and future Intellectual Property Rights subsisting in or relating to any Deliverables created or developed by such sub-contractors, in all countries, and that the assignment under Clause 26.7 (Intellectual Property) includes the assignment of all of those Intellectual Property Rights.
- 26.10 The Supplier shall procure that all Supplier Personnel, sub-contractors and its sub-contractors' personnel used by the Supplier in connection with the provision of the Goods and/or Services shall unconditionally and irrevocably waive all of their moral rights described in Chapter 4 of Part 1 of the Copyright Designs and Patents Act 1988 (or any similar or equivalent legislation anywhere in the world) in respect of the Deliverables. Any such waivers shall be made in favour of the Supplier, the University and the University's licensees, sub-licensees, assignees and successors in title to the Deliverables. The Supplier shall promptly provide copies of any waivers to the University, on request.
- 26.11 Subject to Clause 26.12 (Intellectual Property) below the University grants the Supplier a non-exclusive, non-transferable, royalty-free licence to use the University's Intellectual Property Rights and the Deliverables solely to the extent necessary to enable the Supplier to provide the Goods and/or Services during the Term.

Ownership and Custody

- 26.12 Title to all Goods and physical Deliverables prepared for or delivered to the University by the Supplier shall pass to the University on delivery and/or creation of the relevant Deliverable. The Supplier warrants that, at the date of the transfer of title, it will have full and unrestricted rights to transfer all such items to the University. Risk in such Deliverables shall pass on their delivery to the University. Any Goods and/or physical deliverables owned by the University but in the possession of the Supplier (or its Affiliates) shall be held by the Supplier on trust for the University. The Supplier shall be responsible for the safe keeping and maintenance of these Goods and/or physical deliverables while in the Supplier's possession, and shall accept liability for all loss or damage to them.
- 26.13 This Clause 26 (Intellectual Property) shall survive termination or expiry of the Contract.

27 IPR Indemnity

- 27.1 The Supplier shall ensure and procure that the availability, provision and use of the Goods and/or Services and the performance of the Suppliers responsibilities and obligations hereunder shall not infringe any Intellectual Property Rights of any third party.
- 27.2 The Supplier shall during and after the Term, on written demand, indemnify the University against all liabilities, costs, expenses, damages and losses, however arising, (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered by or incurred by or awarded against, or agreed to be paid by, the University arising out of or in connection with:
- 27.2.1 any claim brought against the University for actual or alleged infringement of a third party's intellectual property rights arising out of, or in connection with, the receipt, use or supply of the Goods and/or the Services (excluding the University Materials); and
- 27.2.2 any claim made against the University by a third party arising out of, or in connection with, the supply of the Goods and/or the Services ("**an IPR Claim**").
- 27.3 If an IPR Claim is made, or the Supplier anticipates that an IPR Claim might be made, the Supplier may, at its own expense and sole option, either:
- 27.3.1 procure for the University the right to continue using the relevant Goods and/or Services or item which is subject to the IPR Claim; or
- 27.3.2 replace or modify the relevant Goods and/or Services or item with non-infringing substitutes provided that:
- (i) the performance and functionality of the replaced or modified Goods and/or Services or item is at least equivalent to the performance and functionality of the original item;
 - (ii) the replaced or modified Goods and/or Services or item does not have an adverse effect on any other Goods and/or Services;
 - (iii) there is no additional cost to the University; and
 - (iv) the terms and conditions of this Contract shall apply to the replaced or

modified Goods and/or Services.

27.4 If the Supplier elects to procure a licence in accordance with Clause 27.3.1 (IPR Indemnity), or to modify or replace an item pursuant to Clause 27.3.2 (IPR Indemnity), but this has not avoided or resolved the IPR Claim, then:

27.4.1 the University may terminate this Contract by written notice with immediate effect; and

27.4.2 without prejudice to the indemnity set out in Clause 27.2 (IPR Indemnity), the Supplier shall be liable for all reasonable and unavoidable costs of the substitute Goods and/or Services including the additional costs of procuring, implementing and maintaining the substitute Goods and/or Services.

27.5 This Clause 27 (IPR Indemnity) shall survive termination or expiry of the Contract.

28 Limitation of Liability

28.1 Nothing in the Contract limits any liability which cannot legally be limited, including but not limited to liability for:

28.1.1 death or personal injury caused by negligence;

28.1.2 fraud or fraudulent misrepresentation; and

28.1.3 breach of the terms implied by the Sale and Supply of Goods and Services Act 1982 (title and quiet possession).

28.2 Subject to Clause 28.1 and Clause 28.4:

28.2.1 the Supplier's total liability to the University shall not exceed the amount set out in the Order Form; and

28.2.2 the University's total liability to the Supplier shall not exceed the value of the Charges payable by the University under this Contract in the twelve (12) months preceding the date of the event giving rise to the claim by the Supplier against the University.

28.3 Each Party's total liability includes liability in contract, tort (including negligence), breach

of statutory duty, or otherwise, arising under or in connection with the Contract.

28.4 No amounts awarded or agreed to be paid by the Supplier in respect of the indemnities in Clause 9.2 (Warranties and Representations), Clause 14.4 (Supplier Personnel), Clause 16.3, Clause 16.9, Clause 16.12, Clause 16.13, Clause 16.14 (Supplier Personnel information and the application of TUPE at the end of the Contract), Clause 23.10 (Data Protection), Clause 2727.2 (IPR Indemnity) and Clause 36.1 (Taxation, National Insurance and Employment Liability) shall count towards the cap on the Supplier's liability under Clause 28.2.

28.5 These Clauses 28.5 and 28.6 set out specific heads of excluded loss and exceptions from them:

28.5.1 Subject to Clause 28.1 and Clause 28.4, the types of loss listed in Clause 28.6 are wholly excluded by the Parties, but the types of loss and specific losses listed in Clause 28.7.1 are not excluded.

28.5.2 If any loss falls into one or more of the categories in Clause 28.6 and also falls into a category, or is specified, in Clause 28.7.1 then it is not excluded.

28.6 The following types of loss are wholly excluded:

28.6.1 loss of profits;

28.6.2 loss of sales or business;

28.6.3 loss of agreements or contracts;

28.6.4 loss of use or corruption of software, data or information;

28.6.5 loss of or damage to goodwill; and

28.6.6 indirect or consequential loss.

28.7 The following types of loss and specific losses are not excluded:

28.7.1 sums paid by the University to the Supplier pursuant to the Contract, in respect of Goods not provided in accordance with the Contract;

- 28.7.2 University wasted expenditure;
- 28.7.3 additional costs incurred by the University in procuring and implementing replacements for, or alternatives to, Goods not provided in accordance with the Contract. These include but are not limited to consultancy costs, additional costs of management time and other personnel costs, and costs of equipment and materials;
- 28.7.4 losses incurred by the University arising out of or in connection with any third party claim against the University which has been caused by the act or omission of the Supplier. For these purposes, third party claims shall include but not be limited to demands, fines, penalties, actions, investigations or proceedings, including but not limited to those made or commenced by subcontractors, the Supplier's personnel, regulators and customers of the University; and
- 28.7.5 University Anticipated savings.
- 28.8 Neither Party may benefit from the limitations and exclusions set out in this clause in respect of any liability arising from its deliberate default.
- 28.9 The rights of the University under the Contract are in addition to, and not exclusive of, any rights or remedies provided by common law.

29 Confidentiality

- 29.1 Each party undertakes that it shall not at any time during the Contract and subject to anything to the contrary in the Order Form, for a period of six (6) years after termination of the Contract, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by Clause 29.2.
- 29.2 Each party may disclose the other party's confidential information:
- 29.2.1 to its employees, officers, representatives, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, subcontractors or advisers to whom it discloses the other party's confidential information must comply with this Clause 29; and

29.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

29.3 Neither party shall use the other party's confidential information for any purpose other than to perform its obligations under the Contract.

30 Termination

30.1 Without affecting any other right or remedy available to it, the University may terminate the Contract:

30.1.1 with immediate effect by giving written notice to the Supplier if:

- (i) there is a Change of Control of the Supplier; or
- (ii) the Supplier's financial position deteriorates to such an extent that in the University's opinion the Supplier's capability to adequately fulfil its obligations under the Contract has been placed in jeopardy; or
- (iii) the Supplier commits a breach of Clause 7.3.8, for convenience by giving the Supplier three (3) months' written notice.

30.2 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:

30.2.1 the other party commits a material breach of any term of the Contract which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of ten (10) Working Days after being notified to do so;

30.2.2 if the other party has been in persistent breach of its obligations under this Contract and has failed to rectify such breaches within ten (10) Working Days after being notified to do so. Persistent breach means a breach of this Contract which has continued for more than fourteen (14) days or has recurred in three (3) or more months within the previous six (6) month period after the date on which it was notified about the breach;

30.2.3 the other party is subject to an Insolvency Event; or

30.2.4 the other party suspends, or threatens to suspend, or ceases or threatens to

cease to carry on all or a substantial part of its business for any reason.

31 Consequences of Termination

- 31.1 On termination of the Contract for any reason, or upon expiry, the Supplier shall immediately deliver to the University all Deliverables whether or not then complete, and return all University Materials. If the Supplier fails to comply with this Clause 31.1, then the University may enter the Supplier's premises and take possession of anything which the University owns or is entitled to under this Contract. Until they have been returned or delivered, the Supplier shall be solely responsible for their safe keeping and will not use them for any purpose not connected with the Contract
- 31.2 Termination or expiry of the Contract shall not affect the rights, remedies, obligations or liabilities of the Parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.
- 31.3 The Supplier shall, if so requested by the University:
- 31.3.1 provide all information and assistance reasonably required by the University to facilitate the smooth transition and orderly handover of the provision of the Goods and/or the Services under this Contract to the University or any replacement supplier appointed by it including the assistance set out in the Specification;
 - 31.3.2 use reasonable endeavours to ensure that the transition and/or handover is carried out with the minimum inconvenience and disruption to the University and its business; and
 - 31.3.3 prepare an exit plan, to be implemented six (6) months prior to the date of termination of the Contract, which shall set out the arrangements which will apply in the event that this Contract is terminated or the scope of the Services to be performed and/or the Goods to be provided under it is significantly changed for any reason.
- 31.4 Without limiting the above, the exit plan referred to above shall contain proposals in relation to the following matters:
- 31.4.1 the correction of defects in any services carried out, or Goods provided, by the

Supplier under this Contract;

- 31.4.2 the return to the University of all documents recording the Information and the permanent deletion of all electronic copies of the Information from any electronic files on which they are stored;
 - 31.4.3 the transfer to the University of any health and safety plans, health and safety files and assessments held by the Supplier relating to this Contract;
 - 31.4.4 the assignment or novation of any sub-contract warranties, equipment leases, service agreements and the like from the Supplier to the University relating to this Contract;
 - 31.4.5 the provision of information pursuant to TUPE and as referred to in the Contract (including but not limited to the Staffing Information);
 - 31.4.6 the ongoing management and resourcing of any remaining obligations of the Supplier under this Agreement;
 - 31.4.7 the demobilisation of resources and any closure of offices servicing the performance of the Supplier's obligations under this Contract;
 - 31.4.8 the delivery or return to the University of any plant, equipment and unused materials provided by the University for the purposes of this Contract or already paid for by the University under this Contract; and
 - 31.4.9 any other matters as instructed by the University in relation to this Contract.
- 31.5 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.

32 Force Majeure

- 32.1 Provided it has complied with Clause 32.3, if a party is prevented, hindered or delayed in or from performing any of its obligations under this agreement by a Force Majeure event (**Affected Party**), the Affected Party shall not be in breach of this Contract or otherwise liable for any such failure or delay in the performance of such obligations. The time for performance of such obligations shall be extended accordingly.

- 32.2 The corresponding obligations of the other party will be suspended, and its time for performance of such obligations extended, to the same extent as those of the Affected Party.
- 32.3 The Affected Party shall:
- 32.3.1 as soon as reasonably practicable after the start of the Force Majeure event, notify the other party of the Force Majeure event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure event on its ability to perform any of its obligations under the agreement; and
 - 32.3.2 use all reasonable endeavours to mitigate the effect of the Force Majeure event on the performance of its obligations.
- 32.4 If the Force Majeure event prevents, hinders or delays the Affected Party's performance of its obligations for a continuous period of more than thirty (30) days, the party not affected by the Force Majeure event may terminate this Contract by giving thirty (30) days' written notice to the Affected Party.
- 32.5 In cases where the Affected Party is the Supplier, the Supplier agrees to immediately refund to the University any payments it has made for Goods not delivered and/or Services not completed.

33 BREXIT

- 33.1 If a Brexit Trigger Event occurs, the University may, within its discretion:
- 33.1.1 require the Supplier to negotiate an amendment to this agreement to alleviate the Brexit Trigger Event by giving the Supplier written notice of the same.; and
 - 33.1.2 Within fourteen (14) days of the Supplier receiving such notice, the parties shall discuss in good faith whether any amendments to the agreement can be made as a result of the Brexit Trigger Event. Where the parties are unable to reach an agreement on any required amendments within 30 days, The University shall terminate this agreement by giving the Supplier one month's notice. On termination under this clause, Clause 31 (Consequences of termination) shall apply.
- 33.2 Brexit Trigger Event under this Clause means any of the following events occurring at any

time after the UK ceases to be subject to the transition or implementation arrangements provided for by Part 4 of the Withdrawal Agreement between the UK and the European Union negotiated under Article 50(2) of the Treaty of the European Union which sets out the arrangements for the UK's withdrawal from the European Union (as such arrangements are extended from time to time):

33.2.1 an adverse impact on a party's ability to perform the Contract in accordance with its terms and the law;

33.2.2 an increase in the costs incurred by a party in performing this Contract;

33.3 Overlap with other rights and obligations. Save as expressly provided in this Clause 33, a Brexit Trigger Event shall not terminate or alter (or give any party a right to terminate or alter) this Contract, or invalidate any of its terms or discharge or excuse performance under it. If there is an inconsistency between the provisions of this clause and any other provision of this Contract, the provisions of this clause shall prevail.

34 Complaints Handling

34.1 The Supplier will notify the University as soon as reasonably practicable of any complaint received by it from any source (including University staff and students) relating to this Contract. The Supplier shall provide full details of a Complaint to the University, including details of steps taken to its resolution.

34.2 Without prejudice to any rights and remedies that a complainant may have at Law, including under this Contract, and without prejudice to any obligation of the Supplier to take remedial action under the provisions of this Contract, the Supplier shall use its best endeavours to resolve the Complaint within ten (10) Working Days and in so doing, shall deal with the Complaint fully, expeditiously and fairly and will notify the University without undue delay of any action taken or resolution agreed in respect of such complaint.

34.3 Where any complaint has the potential to adversely impact upon the University's reputation as well as complying with Clauses 34.1 and 34.2 above the Supplier shall provide the University with an opportunity to input into the resolution of the complaint.

35 Dispute Resolution

35.1 If a dispute arises out of or in connection with this Contract or the performance, validity or

enforceability of it (Dispute) then except as expressly provided in this Contract, the Parties shall follow the procedure set out in this clause:

- 35.1.1 either Party shall give to the other written notice of the Dispute, setting out its nature and full particulars (Dispute Notice), together with relevant supporting documents. On service of the Dispute Notice, the Level 1 point of contacts for the University and for the Supplier as specified in the Order Form shall attempt in good faith to resolve the Dispute;
 - 35.1.2 if the Level 1 point of contacts for the University and for the Supplier as specified in the Order Form are for any reason unable to resolve the Dispute within thirty (30) days of service of the Dispute Notice, the Dispute shall be referred to the Level 2 point of contacts for the University and for the Supplier as specified in the Order Form who shall attempt in good faith to resolve it; and
 - 35.1.3 if the Level 2 point of contacts for the University and for the Supplier as specified in the Order Form are for any reason unable to resolve the Dispute within thirty (30) days of it being referred to them, the Parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the Parties, the mediator shall be nominated by CEDR Solve. To initiate the mediation, a Party must serve notice in writing (ADR notice) to the other Party to the Dispute, requesting a mediation. A copy of the ADR notice should be sent to CEDR Solve. The mediation will start not later than thirty (30) days after the date of the ADR notice.
- 35.2 If the Dispute is not resolved within forty (40) days after service of the ADR notice, or either party fails to participate or to continue to participate in the mediation before the expiration of the said period of thirty (30) days, or the mediation terminates before the expiration of the said period of thirty (30) days, the Dispute shall be finally resolved by the courts of England and Wales.
- 35.3 No party may commence any court proceedings under Clause 35.235.3 (Dispute Resolution) in relation to the whole or part of the Dispute until thirty (30) days after service of the ADR notice, provided that the right to issue proceedings is not prejudiced by a delay.

36 Taxation, National Insurance and Employment Liability

- 36.1 The Parties acknowledge and agree that this Contract constitutes a contract for the

provision of goods and/or services and not a contract of employment. The Supplier shall at all times indemnify the University and keep the University indemnified in full from and against all claims, proceedings, actions, damages, costs, expenses, liabilities and demands whatsoever and howsoever arising by reason of any circumstances whereby the University is alleged or determined to have been assumed or imposed with the liability or responsibility for the Supplier Personnel (or any of them) as an employer of the Supplier Personnel and/or any liability or responsibility to HM Revenue or Customs as an employer of the Supplier Personnel whether during the Term or arising from termination or expiry of this Contract.

36.2 The Supplier warrants, represents and undertakes to the University that any of its employees working on this Contract shall not be assigned solely to this Contract.

37 Licence to Occupy University Property

37.1 Any land or University Property made available from time to time to the Supplier by the University in connection with this Contract shall be made available to the Supplier on a non-exclusive licence basis free of charge and shall be used by the Supplier solely for the purpose of performing its obligations under this Contract. The Supplier shall have the use of such University Property as licensee and shall vacate the same on completion, termination or abandonment of this Contract or if requested to do so by the University.

37.2 The Supplier shall limit access to the University Property to such Supplier Personnel as is necessary to enable it to perform its obligations under this Contract and the Supplier shall co-operate (and ensure that its Supplier Personnel co-operate) with such other persons working concurrently on University Property as the University may reasonably request.

37.3 Should the Supplier require modifications to the University Property, such modifications shall be subject to prior written approval of the University and shall be carried out by the University at the Supplier's expense. Ownership of such modifications shall rest with the University. Before the end of the Term, the Supplier shall, at the request of the University remove any modifications made to the University Property and reinstate or rebuild the University Property in a manner equivalent in size, quality, layout and facilities to the University Property prior to the modifications.

37.4 Without prejudice to Clause 14 (Supplier's Personnel), the Supplier shall (and shall ensure that its Supplier Personnel shall) observe and comply with such rules and regulations as may be in force at any time for the use of the University Property notified to it by the

University, including the Mandatory Policies, and the Supplier shall pay for the cost of making good any damage caused by the Supplier or its Supplier Personnel other than fair wear and tear. For the avoidance of doubt, damage includes damage to the fabric of the buildings, plant, fixed equipment or fittings therein.

37.5 The Parties agree that there is no intention on the part of the University to create a tenancy of any nature whatsoever in favour of the Supplier or its Supplier Personnel and that no such tenancy has or shall come into being and, notwithstanding any rights granted under this Contract, the University retains the right at any time to use any premises owned or occupied by it in any manner it sees fit.

38 Property

38.1 Where the University issues property to the Supplier, such property shall be and remain the property of the University and the Supplier irrevocably licences the University and its agents to enter upon any premises of the Supplier during normal business hours on reasonable notice to recover any such property. The Supplier shall not in any circumstances have a lien or any other interest on the property and at all times the Supplier shall possess the property as fiduciary agent and bailee of the University. The Supplier shall take all reasonable steps to ensure that the title of the University to the property and the exclusion of any such lien or other interest are brought to the notice of all sub-contractors and other appropriate persons and shall, at the University's request, store the property separately and ensure that it is clearly identifiable as belonging to the University.

38.2 The property shall be deemed to be in good condition when received by or on behalf of the Supplier unless the Supplier notifies the University otherwise within five (5) Working Days of receipt.

38.3 The Supplier shall maintain the property in good order and condition (excluding fair wear and tear), and shall use the property solely in connection with this Contract and for no other purpose without prior approval of the University.

38.4 The Supplier shall ensure the security of all the property while in its possession, either on its premises or elsewhere during the supply of the Services, in accordance with the University's reasonable security requirements as required from time to time.

38.5 The Supplier shall be liable for all loss of, or damage to, the property (excluding fair wear and tear), unless such loss or damage was caused by the University acts or omissions.

The Supplier shall inform the University within two (2) Working Days of becoming aware of any defects appearing in, or losses or damage occurring to, the property.

39 Environmental Requirements

39.1 The Supplier shall, when working on any University Property, perform its obligations under this Contract in accordance with the University's environmental policy, which is available on the University website.

40 Health and Safety

40.1 The Supplier shall promptly notify the University of any health and safety hazards which may arise in connection with the performance of its obligations under this Contract.

40.2 While on any University Property, the Supplier shall comply with any health and safety measures applicable to such University Property in respect of Supplier Personnel and other persons working there.

40.3 The Supplier shall notify the University immediately in the event of any incident occurring in the performance of its obligations under this Contract where that incident causes any personal injury or damage to property which could give rise to personal injury.

40.4 The Supplier shall comply with the requirements of the Health and Safety at Work Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to Supplier Personnel and other persons working in relation to this Contract.

40.5 The Supplier shall ensure that its health and safety policy statement (as required by the Health and Safety at Work Act 1974) is made available to the University on request.

40.6 If the CDM Regulations apply the Supplier shall carry out and fulfil in all respects the duties of a designer, principal designer, contractor and principal contractor under the CDM Regulations.

41 Modern Slavery Act 2015

41.1 The Supplier undertakes, warrants and represents that it shall comply with the Modern Slavery Act 2015 and that neither the Supplier nor any of its officers, employees, agents or sub-contractors has:

- 41.1.1 committed an offence under the Modern Slavery Act 2015 (a “**MSA Offence**”); or
- 41.1.2 been notified that it is subject to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015; or is aware if any circumstances within its supply chain that could give rise to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015.
- 41.2 The Supplier shall notify the University immediately in writing if the Supplier become aware or have reason to believe that its, or any of its officers, employees, agents or sub-contractors have breached or potentially breached any of its obligations under Clause 41.1 (Modern Slavery Act 2015). Such notice to set out full details of the circumstances concerning the breach or potential breach of its obligations.
- 41.3 Any breach of Clause 41.1 or 41.2 (Modern Slavery Act 2015) by the Supplier shall be deemed a material breach of this Contract and shall entitle the University to terminate this Contract.
- 41.4 Where the Supplier delegates or sub-contracts any of its duties or obligations under this Contract it shall at all times remain liable to the University for the performance of all of its duties and obligations under this Contract. The contract that the Supplier has with a sub-contractor must contain substantially the same provisions as those provisions in this Contract, including an obligation to comply with the Modern Slavery Act 2015; and prohibit the sub-contractor from sub-contracting the services it has agreed with the Supplier to provide.
- 41.5 The Supplier shall during the term of this Contract and for the period of six (6) years thereafter maintain such records relating to the Services provided under this Contract as may be necessary to enable the University to determine the Supplier’s compliance with the Modern Slavery Act 2015.
- 41.6 The Supplier shall prepare and deliver to the University no later than 1st August each year, an annual slavery and human trafficking report setting out the steps the Supplier has taken to ensure slavery and human trafficking is not taking place in any of its supply chains or in any part of its business.

42 Diversity and Ethical Trading

- 42.1 Subject to Clause 42.3 (Diversity and Ethical Trading), the Supplier shall, and shall procure that the Supplier Personnel, comply with any and all applicable anti-discrimination legislation, including:
- 42.1.1 the Equality Act 2010;
 - 42.1.2 the University's Policy Statement on Equality and Diversity as may be amended from time to time (the current version can be found on the University's website);
 - 42.1.3 all other applicable equality and diversity policies of the University as may be amended from time to time, copies of which will be provided by the University to the Supplier; and
 - 42.1.4 take all necessary steps, and inform the University of the 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).
- 42.2 Subject to Clause 42.3 (Diversity and Ethical Trading), the Supplier will provide evidence to the University, on written request, of the Supplier's and the Supplier's Personnel's compliance with any and all applicable anti-discrimination legislation in provision of the Goods and/or the Services (including in the Supplier's employment practices), in order to satisfy the University that the Supplier takes all reasonable steps to promote equality and diversity in provision of the Goods and/or the Services to the University and in the Supplier's work environment.
- 42.3 For clarity, this Clause 42 (Diversity and Ethical Trading) only applies if and to the extent the Supplier employs (either directly or via a sub-contractor) individuals residing and working in the United Kingdom and then only with respect to such individuals and no others.
- 42.4 The Supplier shall monitor its, and its supply chain's compliance with such legislation and policies and if the Supplier becomes aware of any breach in its own operations or those of its suppliers, it shall:
- 42.4.1 immediately notify the University in writing with reasonable details, and
 - 42.4.2 immediately identify and take such steps to rectify the breach.

43 Costs and Expenses

43.1 Each Party shall bear its own costs and expenses (including legal fees) in relation to the preparation and execution of this Contract.

44 Insurance

44.1 The Supplier shall at its own cost effect and maintain with a reputable insurance company a policy or policies of insurance providing the Required Insurances as specified in the Order Form (or if not specified in the Order Form, an adequate level of cover). The cover shall be in respect of all risks which may be incurred by the Supplier, arising out of the Supplier's performance of this Contract, including death or personal injury, loss of or damage to property or any other loss. Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Supplier.

44.2 The Supplier shall give the University, on request, a broker's verification of insurance to demonstrate that the Required Insurances are in place.

44.3 If, for whatever reason, the Supplier fails to give effect to and maintain the Required Insurances, the University may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Supplier.

44.4 The terms of any insurance or the amount of cover shall not relieve the Supplier of any liabilities under this Contract.

44.5 The Supplier shall hold and maintain the Required Insurances for a minimum of seven (7) years following the expiry or earlier termination of this Contract.

45 Waiver and Cumulative Remedies

45.1 The rights and remedies under this Contract may be waived only by notice in accordance with Clauses 51.2.1 to 51.2.3 (Notices) and in a manner that expressly states that a waiver is intended. A failure or delay by a Party in ascertaining or exercising a right or remedy provided under this Contract or by law shall not constitute a waiver of that right or remedy, nor shall it prevent or restrict the further exercise thereof.

45.2 Unless otherwise provided in this Contract, rights and remedies under this Contract are cumulative and do not exclude any rights or remedies provided by law, in equity or otherwise.

46 Conflicts of Interest

- 46.1 The Supplier shall take appropriate steps to ensure that neither the Supplier nor the Supplier Personnel are placed in a position where (in the reasonable opinion of the University) there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier or the Supplier Personnel and the duties owed to the University under the provisions of this Contract or any contract.
- 46.2 The Supplier shall promptly notify and provide full particulars to the University if such conflict referred to in Clause 46.1 (Conflicts of Interest) arises or may reasonably be foreseen as arising.
- 46.3 The University reserves the right to terminate this Contract immediately by giving notice in writing to the Supplier and/or to take such other steps it deems necessary where, in the reasonable opinion of the University, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier and the duties owed to the University under the provisions of this Contract or any contract. The action of the University pursuant to this Clause 46.3 (Conflicts of Interest) shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to the University.

47 Further Assurances

- 47.1 Each Party undertakes at the request of the other, and at the cost of the requesting Party to do all acts and execute all documents which may be necessary to give effect to the meaning of this Contract.

48 Prevention of Bribery and Corruption

- 48.1 The Supplier:
- 48.1.1 shall not, and shall procure that the Supplier Personnel and all sub-contractor personnel shall not, in connection with this Contract made under it commit a Prohibited Act; and
- 48.1.2 warrants, represents and undertakes that it is not aware of any financial or other advantage being given to any person working for or engaged by the University, or that an agreement has been reached to that effect, in connection with the execution of this Contract, excluding any arrangement of which full details have been disclosed in writing to the University before execution of this Contract.

48.2 The Supplier shall:

48.2.1 if requested, provide the University with any reasonable assistance, at the University's reasonable cost, to enable the University to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act 2010; and

48.2.2 within twenty (20) Working Days of the Commencement Date, and annually thereafter, certify to the University in writing (such certification to be signed by an officer of the Supplier) compliance with this Clause 48 (Prevention of Bribery and Corruption) by the Supplier and all persons associated with it or other persons who are supplying goods or services in connection with this Contract. The Supplier shall provide such supporting evidence of compliance as the University may reasonably request.

48.3 The Supplier shall have an anti-bribery policy (which shall be disclosed to the University) to prevent any Supplier Personnel and all sub-contractor personnel from committing a Prohibited Act and shall enforce it where appropriate.

48.4 If any breach of Clause 48.1 is suspected or known, the Supplier must notify the University immediately.

48.5 If the Supplier notifies the University that it suspects or knows that there may be a breach of Clause 48.5 (Prevention of Bribery and Corruption), the Supplier must respond promptly to the University's enquiries, co-operate with any investigation, and allow the University to audit books, records and any other relevant documents. This obligation shall continue for three (3) years following the expiry or termination of this Contract.

48.6 The University may terminate this Contract by written notice with immediate effect if the Supplier, the Supplier Personnel and any sub-contractor personnel (in all cases whether or not acting with the Supplier's knowledge) breaches Clause 48.1. In determining whether to exercise the right of termination under this Clause 48.6, the University shall give all due consideration, where appropriate, to action other than termination of this Contract unless the Prohibited Act is committed by the Supplier or a senior officer of the Supplier or by an employee, sub-contractor or supplier not acting independently of the Supplier. The expression "not acting independently of" (when used in relation to the Supplier or a sub-contractor) means and shall be construed as acting:

- 48.6.1 with the authority or with the actual knowledge of any one or more of the directors of the Supplier or the sub-contractor (as the case may be); or
 - 48.6.2 in circumstances where any one or more of the directors of the Supplier ought reasonably to have had such knowledge.
- 48.7 Any notice of termination under Clause 48.6 must specify:
- 48.7.1 the nature of the Prohibited Act;
 - 48.7.2 the identity of the party whom the University believes has committed the Prohibited Act; and
 - 48.7.3 the date on which this Contract will terminate.
- 48.8 Notwithstanding anything to the contrary in this Contract, any dispute relating to:
- 48.8.1 the interpretation of this Clause 48; or
 - 48.8.2 the amount or value of any gift, consideration or commission,
- shall be determined by the University and its decision shall be final and conclusive.
- 48.9 Any termination under this Clause 48 will be without prejudice to any right or remedy which has already accrued or subsequently accrues to the University.

49 Prevent Duty

- 49.1 The University has a statutory duty under section 26(1) of the Counter-Terrorism and Security Act 2015, when exercising its functions, to have due regard to the need to prevent people from being drawn into terrorism. The Supplier shall assist the University with this duty when carrying out its obligations under this Contract.

50 Counterparts

- 50.1 This Contract may be executed in any number of counterparts each of which when executed and delivered shall be original, but all counterparts together shall constitute one and the same instrument.

51 General

51.1 Assignment and other dealings

51.1.1 The University may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract.

51.1.2 The Supplier shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract without the prior written consent of the University.

51.2 Notices

51.2.1 Any notice or other communication given to a party under or in connection with the Contract shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case) or sent by email to the address specified in the Order Form.

51.2.2 A notice or other communication shall be deemed to have been received: if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address; if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second (2nd) Working Day after posting; if sent by email, at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this Clause 51.2.2, business hours means 9.00am to 5.00pm on a WorkingDay.

51.2.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.

51.3 Severance

If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of

the Contract.

51.4 No partnership or agency

Nothing in this Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the Parties, constitute either Party the agent of the other, or authorise either Party to make or enter into any commitments for or on behalf of the other Party.

51.5 Entire agreement

This Contract constitutes the entire agreement between the Parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.

51.6 Third party rights

Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.

51.7 Contract Variations

No variations to this Contract will be effective unless agreed in writing by the authorised representatives of both Parties.

51.8 Governing law and Jurisdiction

51.8.1 This Contract, and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

51.8.2 Each Party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter or formation.