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**The University of Liverpool**  
**Terms and Conditions of Purchase**  
**(July 2019)**

**1. Definitions and Interpretation**

1.1 The definitions and rules of interpretation in this condition apply in these conditions.

<b>“Agreed Purposes”</b>	means the carrying out by the Supplier of its obligations under the Contract.
<b>“Appropriate Technical and Organisational Measures”</b>	shall have the meaning set out in the DPL in force at the time.
<b>“Business Days”</b>	means a day, excluding Saturdays and Sundays and official University closure days, on which banks are generally open in London, England, for the transaction of normal banking business.
<b>“Conditions”</b>	means these terms and conditions and a reference to a Condition means a term or condition of these Conditions.
<b>“Contract”</b>	means the Supplier's quotation and the University's subsequent acceptance of it under Condition 2.2 incorporating these Conditions.
<b>“Controller”</b>	shall have the meaning set out in the DPL in force at the time.
<b>“Data Subject”</b>	shall have the meaning set out in the DPL in force at the time.
<b>“DPL”</b>	means the UK DPL and (for so long as and to the extent that the law of the European Union has legal effect in the UK) the General Data Protection Regulation ((EU) 2016/679) (“ <b>GDPR</b> ”) and any other directly applicable European Union regulation relating to privacy.
<b>“UK DPL”</b>	means any data protection legislation from time to time in force in the UK including the Data Protection Act 1998 or 2018 or any successor legislation.
<b>“Deliverables”</b>	means any outputs of the Services, all Documents, products and materials developed by the Supplier or its agents, subcontractors and employees in relation to the Services in any form or media, including drawings, maps, plans, diagrams, designs, pictures, computer programs, data, reports and specifications and reports (including drafts).
<b>“Document”</b>	includes, in addition to any document in writing, any drawing, map, plan, diagram, design, picture or other image, tape, disk or other device or record embodying information in any form.

**“Equipment”** means the equipment to be provided by the Supplier as set out in the University’s Purchase Order and/or the Tender together with any other services which the University takes from the Supplier relating thereto and the Supplier's obligations under the Contract incorporating these Conditions.

**“Goods”** means the goods (including any part or parts of them) to be provided by the Supplier as set out in the University’s Purchase Order and/or Tender, and the Supplier’s obligations under the Contract incorporating these Conditions.

**“Intellectual Property Rights”** means all patents, rights to inventions, utility models, copyright and related rights, trademarks, service marks, trade, business and domain names, rights in trade dress or get-up, rights in goodwill or to sue for passing off, unfair competition rights, rights in designs, rights in computer software, database right, topography rights, moral rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights, in each case whether registered or unregistered and including all applications for and renewals or extensions of such rights, and all similar or equivalent rights or forms of protection which subsist now or in the future in any part of the world.

**“Law”** any applicable law, statute, bye-law, regulation, order, regulatory policy, guidance or industry code that has the equivalent of legal effect, rule of court, or directives or requirements of any Regulatory Body delegated or subordinate legislation or notice of any Regulatory Body.

**“Mandatory Policies”** Anti-Corruption and Bribery Policy Anti-Slavery Policy  
Criminal Finances  
Data Protection Policy  
Equality and Diversity Policy  
Freedom of Information Policy  
Information Security Policy  
Policy for Socially Responsible Investment; and  
Procurement Policy

**“Personnel”** means all persons employed by the Supplier to perform its obligations under this Contract together with the Supplier's servants, agents, and suppliers and approved subcontractors used in the performance of its obligations under this Contract.

**“Personal Data”** shall have the meaning set out in the DPL in force at the time.

**“Processor”** shall have the meaning set out in the DPL in force at the time.

<b>“Processing”</b>	shall have the meaning set out in the DPL in force at the time and <b>“Process”</b> and <b>“Processed”</b> shall be construed accordingly.
<b>“Purchase Order”</b>	means the University's written instruction to buy the Goods and/or Services and/or Equipment or any combination thereof incorporating these Conditions.
<b>“Services”</b>	means the services to be provided by the Supplier as set out in the University's Purchase Order and/or the Tender together with any other services which the University takes from the Supplier in relation thereto and the Supplier's obligations under the Contract incorporating these Conditions.
<b>“Software”</b>	means any and all computer programs and computer software contained on industry standard data transfer media and includes all relevant guides and supporting documentation.
<b>“Specification”</b>	the description and any specification for the Goods/ Equipment or Services, including any related plans and drawings that are agreed in writing by the University and the Supplier.
<b>“Supplier”</b>	means the person, firm or company who supplies the University as detailed on the Purchase Order.
<b>“Supplier Material”</b>	means all materials, equipment, documents and other property of the Supplier.
<b>“Tender”</b>	means, where applicable, the tender issued by the University and referenced in the Purchase Order.
<b>“University”</b>	means The University of Liverpool, a Royal Charter corporation registered under number RC000660, an exempt charity of the Foundation Building, Brownlow Hill, Liverpool, L69 7ZX.
<b>“University Materials”</b>	has the meaning set out in Condition 9.3(i).
<b>“Use”</b>	means the use of the Software in object code only (unless agreed otherwise in the Contract) in any or all of the following ways: loading, installing, executing, utilising, storing and displaying the Software (in whole or in part) to provide business systems and the processing of data in accordance with the Contract; and copying the Software to create a reasonable number of back-up copies.
<b>“VAT”</b>	means value added tax chargeable under English law for the time being and any similar additional tax.

1.2 Headings in these Conditions shall not affect their interpretation.

1.3 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors and permitted assigns.

1.4 Words in the singular shall include the plural and vice versa.

1.5 A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.

1.6 A reference to writing or written includes e-mail.

1.7 Where the words include(s), including or in particular are used in this Contract, they are deemed to have the words without limitation following them. Where the context permits, the words other and otherwise are illustrative and shall not limit the sense of the words preceding them.

1.8 Any obligation in the Contract on a person not to do something includes an obligation not to agree, allow, permit or acquiesce in that thing being done.

## **2. Application of Terms**

2.1 These Conditions shall:

(a) apply to and be incorporated into the Contract; and

(b) prevail over any terms or conditions contained, or referred to, in the Supplier's quotation, confirmation of order, or specification, or other Document supplied by the Supplier, or implied by law, trade, custom, practice or course of dealing.

2.2 The Supplier's quotation constitutes an offer by the Supplier to supply on these Conditions. No offer placed by the Supplier shall be accepted by the University other than by the University issuing a written and executed Purchase Order at which point a contract for the supply and purchase of Goods and/or Services and/or Equipment on these Conditions will be established. The Supplier's standard terms and conditions (if any) attached to, enclosed with or referred to in any quotation, specification or other Document shall not be incorporated into the Contract in any manner whatsoever.

2.3 All of these Conditions shall apply to the purchase of Goods, Equipment and Services except where the application to one or the other is specified.

## **3. Quality of Goods and Equipment**

3.1 The Supplier shall ensure that Goods and Equipment shall:

(a) correspond with their description and any applicable Specification;

(b) 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 judgment;

(c) be free from defects in design, materials and workmanship and remain so for 12 months after delivery; and

(d) comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods or Equipment.

3.2 The provisions in Condition 3.1 shall survive any delivery, inspection, acceptance, payment or performance pursuant to the Contract and shall extend to any replacement, repaired, substitute or remedial goods or equipment provided by the Supplier.

## **4. Equipment Testing Prior to Delivery**

4.1 The Supplier shall:

(a) carefully test and inspect the Equipment before delivery to ensure that it complies with the requirements of the Contract; and

(b) if so requested by the University, give the University reasonable advance notice of such tests (which the University shall be entitled to attend).

4.2 The University reserves the right to call for certificates or test certificates for the Equipment at any stage of manufacture or assembly. Such certificates shall clearly state the University's Purchase Order numbers and any item or equipment numbers. If, as a result of any inspection or test, the University finds that the Equipment or any items comprised within it do not comply with the Contract, or are unlikely to comply with it on completion of manufacture, processing or performance, the University may inform the Supplier, and the Supplier shall take such steps as are necessary to ensure compliance.

## **5. Delivery of Goods and Equipment**

5.1 The Goods and/or Equipment shall be delivered, carriage paid, to the University's place of business or to such other place of delivery as is agreed by the University in writing prior to delivery of the Goods and/or Equipment. The Supplier shall off-load the Goods and/or Equipment at its own risk as directed by the University.

5.2 The date for delivery shall be specified in the Purchase Order, or if no such date is specified then delivery shall take place within 28 days of the date of the Purchase Order. Time for delivery shall be of the essence.

5.3 The Supplier shall ensure that each delivery is accompanied by a delivery note which shows, among other things, the Purchase Order number, date of Purchase Order, number of packages and contents and, in the case of part delivery, the outstanding balance remaining to be delivered.

5.4 Unless otherwise stipulated by the University in the Purchase Order, deliveries shall only be accepted by the University on Business Days during normal business hours.

5.5 The Supplier shall remove from the University's premises all packaging and leave the delivery area and the University's premises clear of waste.

5.6 Where the University agrees in writing to accept delivery by instalments the Contract shall be construed as a single contract in respect of each instalment. Nevertheless failure by the Supplier to deliver any one instalment shall entitle the University at its option to treat the whole Contract as repudiated.

5.7 If the Goods and/or Equipment are delivered to the University in excess of the quantities ordered, the University shall not be bound to pay for the excess and any excess shall be and shall remain at the Supplier's risk and shall be returnable at the Supplier's expense.

5.8 Without affecting its other rights and remedies, the University reserves the right to reject incomplete deliveries.

## **6. Installation of Equipment and Acceptance**

6.1 Unless the University and the Supplier have, before or at the same time as the Contract, agreed in writing (signed on behalf of the University) additional conditions regarding preparation of or environmental requirements at the site at which the Equipment is to be installed, the Supplier acknowledges and agrees that the Equipment is suitable to be installed and used at the premises at

which the University intends to use it and that there are no additional conditions regarding site preparation or environmental requirements.

6.2 In relation to installation and acceptance tests:

(a) except where Condition 6.2(e) applies, the Supplier shall, without further charge to the University, install the Equipment at the premises at which the University intends to use it and subject the Equipment to its standard installation and acceptance tests;

(b) if the Equipment passes those tests, the Supplier will issue an acceptance certificate to that effect to the University, but receipt by the University of such an acceptance certificate will not constitute legal acceptance by the University;

(c) if the Equipment does not (on any attempt) pass those tests, the Supplier will (without affecting the University's other rights and remedies) promptly and at its expense carry out all necessary remedial work and re-submit the Equipment to the tests as set out in Condition 6.2(a) and Condition 6.2(b);

(d) If all the tests have not been successfully completed within 30 days after delivery, the University shall have the same rights as it would have had if the Supplier had not performed its obligations under Condition 6.2(a);

(e) if the University and the Supplier have, before or at the same time as the Purchase Order, agreed otherwise in writing (signed on behalf of the University), then the University (itself or through a third party) will be responsible for installing the Equipment and Condition 6.2(a) to Condition 6.2(d) shall not apply.

6.3 The University shall not be deemed to have accepted any Goods and/or Equipment until it has had 30 Business Days following delivery to inspect them, or, in the case of a latent defect in the Goods or Equipment, following the latent defect becoming apparent.

## **7. Property and Risk**

7.1 The Goods and/or Equipment shall be at the risk of the Supplier until delivery to the University and installation (where applicable) at the place of delivery specified in the Purchase Order.

7.2 The Supplier shall off-load the Goods and/or Equipment at its own risk as directed by the University.

7.3 Title to the Goods and/or Equipment shall pass to the University on the earlier of:

7.3.1 payment for the Goods / Equipment; or

7.3.2 delivery of the Goods / Equipment to the University.

7.4 The passing of ownership in the Goods or Equipment is without prejudice to any right of rejection to which the University may be entitled under the Contract or otherwise.

## **8. Software**

8.1 The Supplier shall be responsible for providing in accordance with the Contract, all Software and associated documentation where:

(a) The Contract is for the purchase of Software and / or

(b) The Goods and / or Equipment comprise computer hardware and the Software and associated documentation is necessary for the satisfactory operation of the Goods and / or Equipment, or

(c) The Software and associated documentation is necessary for the satisfactory use of the Services and / or

(d) Where the provision of such Software and associated documentation is specified in the Contract and / or any attachment.

8.2 For all Software supplied under any of the above 8.1 (a) to 8.1 (d):

(a) The Supplier hereby grants to the University a worldwide irrevocable licence to Use the software (whether modified as hereinafter provided or not) including that supplied on the Goods and / or Equipment or in conjunction with the Services as the case may be;

(b) The Supplier will provide the Software in object code unless otherwise agreed in the Contract. Software should be provided on industry standard software transfer / use media;

(c) Where the Software is provided in source code the University shall in perpetuity have the right to modify or add to any of the Software without reference or obligation to the Supplier and shall not be obliged to licence back to the Supplier any modifications or additions;

(d) All Intellectual Property Rights of the Supplier in the Software shall remain vested in the Supplier;

(e) Where source code has been provided the University shall have the Intellectual Property Rights in any modification or additions made to the Software, but shall in no case acquire the Intellectual Property Rights in the Software itself;

(f) The University shall not assign or sub-licence to any third party to have the use of the Software, including any translation, compilation, adaptation, enhancement or any other version of the Software without the prior written consent of the Supplier (such consent not to be unreasonably delayed or withheld) except where:

(i) the University requires to do so in undertaking activities with other organisations that it has due reason to provide access to that Software to; and

(ii) the University may grant access to its internal and external auditors, employees and Suppliers who need to have access.

Providing always that the access granted does not go beyond the terms of the licence within this Condition 8 and suitable terms are put in place to protect the confidential nature of the Software;

(g) The University shall have no right to copy, adapt, reverse engineer, decompile, disassemble or modify the Software in whole or in part except:

(i) as provided in this Condition 8;

(ii) as permitted by Law; or

(iii) to the extent that such action is legitimately required for the purposes of integrating the operation of the Software with the operation of other software or systems used by the University.

(h) The University shall only make so many copies of the Software as are reasonably necessary for operational use and security.

8.3 The Supplier shall:

(a) from time to time, provide the University with copies of the documentation containing sufficient up-to-date information for the proper use of the Software. Such documentation may be supplied in electronic form.

(b) The University may make such further copies of the documentation as are reasonably necessary for the use and maintenance of the Software and for training the University's personnel in use of the Software. The University shall ensure that all the Supplier's proprietary notices are reproduced in any such copy.

(c) The University may provide copies of the documentation to any third party who needs to know the information contained in it, provided that such third party first enters into a confidentiality obligation in accordance with Condition 17.

8.4 Where the Supplier provides third party Software in accordance with the Contract or otherwise in order to enable them to meet their obligations under the Contract, the Supplier shall either:

(a) Purchase for the University a non-exclusive, perpetual and irrevocable licence to use the Software under a separate licence agreement, or

(b) Grant to the University a sub-licence to use the third party Software under a separate licence agreement.

8.5 Where the Software is licensed directly to the University by the Supplier's licensor, the Supplier will procure for the University rights in all respects no less favourable than those it would have granted had it granted the rights directly under the express licence at Condition 8.2 (a).

8.6 The Supplier hereby warrants that it has the right to grant to the University the rights in the Software and any third party Software as set out in these Conditions.

8.7 The Supplier warrants that all computer hardware or Software supplied by the Supplier to the University is at the time of installation free from viruses, worms, time locks or anything else that would impair performance of the Software as it might reasonably be expected to operate.

8.8 The Supplier will allow the University, at any time within 12 months from the date of delivery of the Equipment, to enter with the Supplier into a maintenance agreement for the Equipment (together with any relevant Software).

8.9 Where, at any time, the University has not entered into a maintenance agreement of the kind referred to at Condition 8.8, it will be entitled to maintain the Equipment and any Software itself, or by or through any third party, and in that case Use will extend to permitting such maintenance of the Software.

## **9. Supply of Services**

9.1 The Supplier shall from the date set out in the Purchase Order and for the duration of this Contract provide the Services to the University in accordance with the terms of the Contract.

9.2 The Supplier shall meet any performance dates for the Services specified in the Purchase Order or notified to the Supplier by the University.

9.3 In providing the Services, the Supplier shall:

(a) co-operate with the University in all matters relating to the Services, and comply with all instructions of the University;



(b) perform the Services with the best care, skill and diligence in accordance with best practice in the Supplier's industry, profession or trade;

(c) 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 this Contract;

(d) ensure that the Services and Deliverables will conform with all descriptions and specifications set out in the Specification, and that the Deliverables shall be fit for any purpose expressly or impliedly made known to the Supplier by the University;

(e) provide all equipment, tools and vehicles and such other items as are required to provide the Services;

(f) 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;

(g) obtain and at all times maintain all necessary licences and consents, and comply with all applicable laws and regulations;

(h) observe all health and safety rules and regulations and any other security requirements that apply at any of the University's premises;

(i) 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; and

(j) 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.

## **10. University's Obligations**

10.1 The University shall:

(a) provide reasonable co-operation with the Supplier in all matters relating to the Services;

(b) provide such access to the University's premises and data, and such office accommodation and other facilities as may reasonably be requested by the Supplier and agreed with the University in writing in advance, for the purposes of the Services;

(c) provide such information as the Supplier may reasonably request for the provision of the Services and the University considers reasonably necessary for the purpose of providing the Services; and

(d) inform the Supplier of all health and safety rules and regulations and any other reasonable security requirements that apply at any of the University's premises.

## **11. Intellectual Property Rights**

11.1 The Supplier assigns to the University, with full title guarantee and free from all third party rights, all Intellectual Property Rights in the Deliverables.

11.2 The Supplier shall obtain waivers of all moral rights in the Deliverables to which any individual is now or may be at any future time entitled under Chapter IV of Part I of the Copyright Designs and Patents Act 1988 or any similar provisions of law in any jurisdiction.

11.3 The Supplier shall, promptly at the University's request, do (or procure to be done) all such further acts and things and the execution of all such other documents as the University may from time to time require for the purpose of securing for the University all right, title and interest in and to the Intellectual Property Rights assigned to the University in accordance with Condition 11.1.

11.4 The Supplier warrants that the Deliverables and Services are the original work of the Supplier, and have not been copied wholly or substantially from any other work or material.

11.5 All Supplier Materials are the exclusive property of the Supplier.

11.6 All Intellectual Property Rights in any modifications made to the University Materials by the Supplier either jointly between the Supplier and the University or solely by the Supplier shall belong exclusively to the University.

11.7 All Intellectual Property Rights in the Goods and Equipment developed and/or modified by the Supplier specifically for the University either jointly between the

Supplier and the University or solely by the Supplier shall belong exclusively to the University.

11.8 All University Materials and all other materials, equipment, tools, dies, moulds, copyright, design rights or any other forms of intellectual property rights in all drawings, specifications and data supplied by the University to the Supplier or not so supplied but used by the Supplier specifically under the Contract shall at all times be and remain the exclusive property of the University but shall be held by the Supplier in safe custody at its own risk and maintained and kept in good condition by the Supplier until returned to the University (or provided to the University on written request from the University) and shall not be disposed of other than in accordance with the University's written instructions, nor shall such items be used otherwise than as authorised by the University in writing.

## **12. Price**

12.1 The price for Goods and/or Equipment shall be stated in the Purchase Order and unless otherwise agreed in writing by the University shall be exclusive of VAT but inclusive of all other charges (including delivery).

12.2 The charges for the Services shall be set out in the Purchase Order, and shall be the full and exclusive remuneration of the Supplier in respect of the performance of the Services. 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 performance of the Services.

12.3 In respect of Goods and/or Equipment, the Supplier shall invoice the University on or at any time after completion of delivery. In respect of Services, the Supplier shall invoice the University on completion of the Services or in accordance with any instalments as set out on the Purchase Order. 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.

12.4 Where Services are provided on a time and materials basis:

(a) the charges payable for the Services shall be calculated in accordance with the Supplier's standard daily fee rates, as set out in the Purchase Order;

(b) the Supplier's standard daily fee rates for each individual person are calculated on the basis of an eight-hour day, worked between 8.00 am and 5.00 pm on a Business Day;

(c) all charges quoted to the University shall be exclusive of VAT, which the Supplier shall add to its invoices at the appropriate rate;

(d) the Supplier shall ensure that every individual whom it engages on the Services completes time sheets recording time spent on the Services, and the Supplier shall use such time sheets to calculate the charges covered by each monthly invoice referred to in Condition 12.4 (e); and

(e) the Supplier shall invoice the University monthly in arrears for its charges for time, expenses and materials (together with VAT where appropriate) for the month concerned, calculated as provided in Conditions 12.4 (a) and 12.4 (b). Each invoice shall set out the time spent by each individual whom it engages on the Services and provide a detailed breakdown of any expenses and materials, accompanied by the relevant receipts.

12.5 No variation in the price or extra charges shall be accepted by the University.

### **13. Payment**

13.1 The University shall pay the price within 30 days of receipt of an undisputed invoice.

13.2 The Supplier must quote the University's Purchase Order number on all invoices. Failure to do so may result in a delay in payments.

13.3 Without prejudice to any other right or remedy, the University reserves the right to set off any amount owing at any time from the Supplier to the University against any amount payable by the University to the Supplier under the Contract.

13.4 If any undisputed sum under the Contract is not paid when due then, without prejudice to the parties' other rights under the Contract, that sum shall bear interest from the due date until payment is made in full, both before and after any judgment, at 2% per annum over Barclays Bank Plc base rate from time to time. The Supplier is not entitled to suspend deliveries and/or service as a result of any sums being outstanding.

13.5 Subject to Condition 26.11, where the Supplier appoints a subcontractor then the Supplier shall pay the subcontractor in accordance with the terms set out in this Condition 13 as if it were the University.

### **14. Indemnity**

14.1 The Supplier shall indemnify the University and keep the University indemnified in full against all direct, losses, damages, injury, costs and expenses (including legal and other professional fees and expenses) awarded against or incurred or paid by the University as a result of or in connection with:

(a) any alleged or actual infringement, whether or not under English law, of any third party's Intellectual Property Rights or other rights arising out of the use or supply of the products of the Services (including the Deliverables) and/or the use, manufacture or supply of the Goods or Equipment;

(b) any claim made against the University by a third party for death, personal injury or damage to property arising out of, or in connection with, defects in Goods and/or Equipment, to the extent that the defects in the Goods and/or Equipment are attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors;

(c) any claim made against the University by a third party arising out of or in connection with the supply of the Goods or Equipment to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the terms of the Contract by the Supplier, its employees, agents or subcontractors;

(d) any breach by the Supplier of its obligations under Condition 18: Data Protection;

(e) any breach of the Modern Slavery Act 2015; and

(f) any breach of the Criminal Finances Act 2017.

14.2 The Supplier shall indemnify the University and keep the University indemnified in full against all direct, losses, damages, injury, costs and expenses (including legal and other professional fees and expenses) awarded against or incurred or paid by the University as a result of or in connection with any claim made against the University in respect of any liability, loss, damage, injury, cost or expense sustained by the University's employees or agents or by any customer or third party to the extent that such liability, loss, damage, injury, cost or expense was caused by, relates to or arises from the provision of the Services or the Deliverables as a consequence of a breach or negligent performance or failure or delay in performance of this Contract by the Supplier.

14.3 Liabilities under the indemnities at Condition 14.1 and 14.2 are conditional upon the University discharging the following obligations. If any third party makes a claim, or notifies an intention to make a claim, against the University which may reasonably be considered likely to give rise to a liability under this indemnity (a Claim), the University shall:

(a) as soon as reasonably practicable, give written notice of the Claim to the Supplier, specifying the nature of the Claim in reasonable detail;

(b) not make any admission of liability, agreement or compromise in relation to the Claim without the prior written consent of the Supplier (such consent not to be unreasonably conditioned, withheld or delayed);

(c) give the Supplier and its professional adviser access at reasonable times (on reasonable prior notice) to its premises and its officers, directors, employees, agents, representatives or advisers, and to any relevant assets, accounts, documents and records within the power or control of the University, so as to enable the Supplier and its professional advisers to examine them and to take copies (at the Supplier's expense) for the purpose of assessing the Claim; and

(d) in the case of alleged or actual infringement, the University allows the Supplier at the Supplier's discretion and expense to alter, replace or withdraw any product of the Services so that any offending element is removed.

14.4 The provisions of this Condition 14 shall survive termination of the Contract, however arising.

## **15. Limitation of Liability**

15.1 Nothing in these Conditions:

(a) shall limit or exclude the Supplier's liability for:

(i) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors;

(ii) fraud or fraudulent misrepresentation;

(iii) breach of the terms implied in the Sale of Goods Act 1979 or by section 2 of the Supply of Goods and Services Act 1982 (title and quiet possession);

(iv) any liability to the extent that it cannot be otherwise excluded or limited by Law; or

(b) shall limit or exclude any liability in respect of the Supplier's indemnities in Condition 14.1.

15.2 Without prejudice to Condition 15.1 above the Supplier shall under no circumstances whatever be liable to the University, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any:

(a) loss of profit; or

(b) loss of goodwill; or

(c) loss of business; or

(d) loss of business opportunity; or

(e) loss of anticipated saving; or

(f) any special, indirect or consequential damage arising under or in connection with the Contract.

15.3 Notwithstanding Condition 15.2, the losses for which the Supplier assumes responsibility and which shall, (subject to Condition 15.4) be recoverable by the University include:

(a) any sums paid by the University to the Supplier pursuant to this Contract, in respect of any Goods and / or Equipment and / or Services not provided in accordance with the terms of this Contract;

(b) additional costs or procuring and implementing replacements for, or alternatives to the Goods and / or Equipment and / or Services, including consultancy costs, additional costs of management time and other personnel costs and costs of equipment and materials; and

(c) losses incurred by the University arising out of or in connection with any claim, demand, fine, penalty, action, investigation or proceeding by any third party (including any subcontractor, Personnel, regulator or customer of the University) against the University caused by the act or omission of the Supplier.

15.4 The Supplier's total liability to the University in respect of all other losses arising under or in connection with the Contract, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, shall in no circumstances exceed 150% of the total order value of the Purchase Order.

15.5 The provisions of this Condition 15 shall survive termination of the Contract, however arising.

## **16. Insurance**

The Supplier shall maintain in force, with a reputable insurance company, professional indemnity insurance, product liability insurance and public liability insurance to cover the liabilities that may arise under or in connection with the Contract, and shall, on the University's request, produce evidence of the insurance policies and of the payment of the premiums.

## **17. Confidentiality and Freedom of Information**

17.1 A party ("the Receiving Party") shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature ("the

Confidential Information”) and have been disclosed to the Receiving Party by the other party (“the Disclosing Party”), its employees, agents or subcontractors, and any other confidential information concerning the Disclosing Party's business or its products or its services which the Receiving Party may obtain.

17.2 The restriction in Condition 17.1 above does not apply to:

- (a) any use or disclosure authorised by the Disclosing Party or required by law or regulation;
- (b) any information which is already in, or comes into, the public domain otherwise than through the Receiving Party's unauthorised disclosure;
- (c) information which is known by the Receiving Party before the Confidential Information is disclosed (as can be demonstrated by the Receiving Party's written records) and is not under any obligation of confidence;
- (d) lawfully becomes available to the Receiving Party other than from a source which is connected with the Disclosing Party (as can be demonstrated by the Receiving Party's written records); or
- (e) information which the Disclosing Party agrees with the Receiving Party is not Confidential Information.

17.3 The Receiving Party shall restrict disclosure of such confidential information to such of its employees, agents or subcontractors as need to know it for the purpose of discharging the Receiving Party's obligations under the Contract, and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Receiving Party.

17.4 The Supplier acknowledges that the University is subject to the provisions of the Freedom of Information Act 2000 (as amended from time to time) and that the University is therefore subject to legal duties which may require the disclosure of information in relation to the Contract. If the University holds information relating to the Contract on behalf of the Supplier, the Supplier agrees to assist and cooperate with the University to enable it to comply with the Freedom of Information Act 2000.

17.5 This Condition 17 shall survive termination of the Contract.

## **18. Data Protection**

18.1 Each Party shall comply with the DPL. In particular where a Party is a Processor and is Processing Personal Data on behalf of the other Party as Controller, it shall:

18.1.1 Process it only for the purposes of complying with its obligations under this Contract, in accordance with the Controller's documented instructions from time to time and good industry practice;

18.1.2 ensure that Appropriate Technical and Organisational Measures shall be taken to ensure a level of security of Controller Personal Data appropriate to the risk (including measures taken against unauthorised or unlawful Processing of Controller Personal Data and the accidental loss or destruction of, or damage to, such data) and promptly provide to the Controller details of those measures from time to time on receipt of Controller's written request;

18.1.3 not transfer, or otherwise directly or indirectly disclose, any Controller Personal Data to a third party or to a country or territory outside the European Economic Area without the prior written

consent of the Controller which may be refused or granted subject to such conditions as Controller deems necessary; and

18.1.4 immediately and fully notify the Controller on receipt of any notices received by the Supplier relating to the Processing of Controller Personal Data including (but not limited to) Data Subject requests, complaints and/or correspondence or if any Controller Personal Data has been disclosed in breach of this Condition or if it is lost, becomes corrupted, is damaged or is deleted in error and provide the Controller with such information and assistance as the Controller may require in relation to such notice or breach (at no cost to the Controller). The Processor shall provide and implement Appropriate Technical and Organisational Measures to help the Controller fulfil its obligations in relation to such notices from or on behalf of Data Subjects in connection with the rights conferred on them by DPL. For the avoidance of doubt, in no event shall the Processor respond directly to any notice relating to any Controller Personal Data.

18.2 The Processor shall comply with the provisions set out in Article 28 of the GDPR (together with any provisions referenced therein) which shall have effect as obligations on the Processor as if set out in full in this Condition and the expressions “controller” and “processor” used in those provisions and incorporated in this Contract pursuant to this Condition shall be deemed references to the Controller and the Processor respectively.

## **19. Termination**

19.1 Without limiting its other rights or remedies, the University may terminate the Contract:

(a) in respect of the supply of Services, by giving the Supplier written notice; and

(b) in respect of the supply of Goods or Equipment, in whole or in part at any time before delivery with immediate effect by giving written notice to the Supplier, whereupon the Supplier shall discontinue all work on the Contract. The University shall pay the Supplier fair and reasonable compensation for any work in progress on the Goods or Equipment at the time of termination, but such compensation shall not include loss of anticipated profits or any consequential loss; and

19.2 In any of the circumstances in these Conditions in which the University may terminate the Contract, where both Goods / Equipment and Services are supplied, the University may terminate the Contract in respect of the Goods / Equipment, or in respect of the Services, and the Contract shall continue in respect of the remaining supply.

19.3 Without prejudice to any other right or remedies which the University may have, the University shall have the right at any time to terminate the Contract with immediate effect by giving written notice to the Supplier if:

(a) the Supplier commits a material breach of any of the terms and conditions of the Contract and (if such a breach is remediable) fails to remedy that breach within 30 days of receipt of notice in writing to do so, and for the avoidance of doubt the parties acknowledge and agree that a breach of Condition 17 (Confidentiality and Freedom of Information), Condition 18 (Data Protection) and Condition 22 (Compliance with Laws) shall be considered material; or

(b) the Supplier repeatedly breaches any of the terms of the Contract in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of the Contract; or

(c) the Supplier 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 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 Insolvency Act 1986 or (being a partnership) has any partner to whom any of the foregoing apply;

(d) the Supplier 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 its creditors other than (where a company) for the sole purpose of a scheme for a solvent amalgamation of the Supplier with one or more other companies or the solvent reconstruction of the Supplier;

(e) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Supplier (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the Supplier with one or more other companies or the solvent reconstruction of the Supplier;

(f) the Supplier (being an individual) is the subject of a bankruptcy petition or order;

(g) a creditor or encumbrancer of the Supplier 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 14 days;

(h) an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Supplier (being a company);

(i) the holder of a floating charge over the assets of the Supplier (being a company) has become entitled to appoint or has appointed an administrative receiver;

(j) a person becomes entitled to appoint a receiver over the assets of the Supplier or a receiver is appointed over the assets of the Supplier;

(k) any event occurs, or proceeding is taken, with respect to the Supplier in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in Condition 19.3(c) to Condition 19.3(j) (inclusive);

(l) the Supplier suspends or ceases, or threatens to suspend, or cease, to carry on all or a substantial part of its business; or

(m) the Supplier (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.

19.4 On termination of the Contract for any reason, the Supplier shall immediately deliver to the University:

19.4.1 all University Materials and all copies of information and data provided by the University to the Supplier for the purposes of the Contract. The Supplier shall certify to the University that it has not retained any copies of University Materials or other information or data, except for one copy which the Supplier may use for audit purposes only and subject to the confidentiality obligations in Condition 17; and

19.4.2 all specifications, programs (including source codes) and other documentation comprised in the Deliverables and existing at the date of such termination, whether or not then complete. All



Intellectual Property Rights in such materials shall automatically be licensed to the University pursuant to Condition 11.1 (providing always that termination is not as a result of non-payment by the University).

19.5 If the Supplier fails to fulfil its obligations under Condition 19.4, then the University may enter the Supplier's premises and take possession of any items which should have been returned under it. Until they have been returned or repossessed, the Supplier shall be solely responsible for their safe keeping.

19.6 The termination of the Contract, however arising, shall be without prejudice to the rights and duties of the University accrued as at termination.

19.7 The Conditions which expressly or impliedly have effect after termination shall continue to be enforceable notwithstanding termination.

## **20. Force Majeure**

(a) For the purposes of this Contract, "Force Majeure Event" means an event beyond the reasonable control of either party including but not limited to strikes, lock-outs or other industrial disputes (whether or not involving the workforce of either party), act of God, war or national emergency, riot, civil commotion, fire, explosion, flood, epidemic or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials.

(b) Neither party shall be liable to the other as a result of any delay or failure to perform its obligations under this Contract as a result of a Force Majeure Event.

(c) If the Force Majeure Event prevents either party from performing any of its obligations under the Contract for more than 12 weeks, either party shall, without limiting its other rights or remedies, have the right to terminate this Contract immediately by giving written notice to the other party.

## **21. Corporate and Social Responsibility and Equality**

21.1 Whilst performing the Contract the Supplier shall use (and shall ensure any third party supplier to the Supplier uses) its reasonable endeavours to conserve energy, reduce waste and phase out the use of ozone depleting substances and minimise the release of greenhouse gases (including carbon dioxide emissions), volatile organic compounds and other substances damaging to health and the environment.

21.2 The Supplier acknowledges that the University is subject to equal opportunities legislation and undertakes that it shall not (and shall ensure any third party supplier to the Supplier shall not) unlawfully discriminate for any reason and shall take all reasonable steps to secure the Personnel (or that of any third party supplier) likewise do not unlawfully discriminate.

## **22. Compliance with Laws**

22.1 In performing its obligations under the Contract, the Supplier shall and shall ensure that each of its subcontractors shall comply with:

(a) all applicable laws, statutes, regulations and codes from time to time in force;

(b) the Mandatory Policies; and

(c) UK immigration legislation and to ensure full compliance with the UK Border Agency's guidance for employers on the prevention of illegal working, in accordance with the Immigration, Asylum and Nationality Act 2006 in respect to all staff engaged by the Supplier and working at the University (the

UK Border Agency's guidance is available at (<https://www.gov.uk/government/collections/employers-illegal-working-penalties#guidance-and-codes-of-practice>). The University expects that proper 'right to work checks', including repeat checks for individuals with limited right to work in the UK, will have been carried out for staff engaged by the Supplier and working at the University, and that the Supplier complies fully with its record-keeping and reporting responsibilities for any migrant workers sponsored by the Supplier under Tier 2 or Tier 5 of the UK Border Agency's points-based immigration system. The Supplier will, on request, provide the University with such documentation as it may require to verify that the Supplier has complied with the requirements set out above.

22.2 The University may terminate the Contract with immediate effect by giving writing notice to the Supplier if the Supplier commits a breach of Condition 22.1 above.

### **23. Audit**

23.1 The Supplier shall keep and maintain until six years after the Contract has been completed, or as long a period as may be agreed between the parties, full and accurate records of the Contract including:

- (a) the Goods and/or Equipment and /or Services provided under it;
- (b) all expenditure reimbursed by the University;
- (c) all payments made by the University; and
- (d) records to evidence compliance with Condition 22 (Compliance with Laws).

23.2 The Supplier shall on request afford the University or the University's representatives such access to those records as may be required in connection with the Contract.

### **24. Dispute Resolution**

24.1 The parties shall attempt in good faith to negotiate a settlement to any dispute arising between them out of or in connection with this Contract within 30 Business Days of the dispute arising.

24.2 If the dispute cannot be resolved, then the parties shall attempt to settle it by mediation in accordance with the Centre for Dispute Resolution ("CEDR") Model Mediation Procedure from time-to-time in force.

24.3 To initiate the mediation, a party to the Contract must give notice in writing (the "ADR Notice") to the other party requesting a mediation in accordance with this Condition 24. The mediation is to take place not later than 30 Business Days after the ADR Notice. If there is any issue on the conduct of the mediation upon which the parties cannot agree within 14 Business Days of the ADR Notice, then CEDR shall, at the request of either party, decide the issue for the parties, having consulted with them. Unless otherwise agreed by the parties, the place of mediation shall be nominated by the mediator.

24.4 Unless otherwise agreed, all negotiations connected with the dispute and any settlement shall be conducted in confidence and without prejudice to the rights of the parties in any future proceedings.

24.5 If the parties reach agreement on the resolution of the dispute, the agreement shall be reduced to writing and shall be binding on the parties once it is signed by both the University and Supplier.

24.6 If the parties fail to reach agreement within 60 Business Days of the initiation of the mediation, or such longer period as may be agreed by the parties, then any dispute or difference between them may be referred to the courts.

24.7 The commencement of a mediation shall not prevent the parties commencing or continuing court proceedings

## **25. Notices**

(a) Any notice or other communication given to a party under or in connection with the Contract shall be in writing, addressed to that party at its registered office (if it is a company) or its principal place of business (in any other case) or such other address as that party may have specified to the other party in writing in accordance with this Condition, and shall be delivered personally, or sent by pre-paid first class post or other next working day delivery service or commercial courier.

(b) A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address referred to in Condition 24(a); if sent by pre-paid first class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed.

(c) The provisions of this Condition shall not apply to the service of any proceedings or other documents in any legal action.

## **26. General**

26.1 Each right or remedy of the University under the Contract is without prejudice to any other right or remedy of the University whether under the Contract or not.

26.2 If any provision or part provision of the Contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall, to the extent of such illegality, invalidity, voidness, voidability, unenforceability or unreasonableness, be deemed severable and the remaining provisions of the Contract and the remainder of such provision shall continue in full force and effect.

26.3 Failure or delay by the University in enforcing or partially enforcing any provision of the Contract shall not be construed as a waiver of any of its rights under the Contract.

26.4 Any waiver by the University of any breach of, or any default under, any provision of the Contract by the Supplier shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the Contract.

26.5 The parties to the Contract do not intend that any term of the Contract shall be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person that is not a party to it.

26.6 No variation of the Contract shall be valid unless it is agreed in writing and signed by, or on behalf of, each of the parties.

26.7 The Contract constitutes the whole agreement between the parties and supersedes all previous agreements between the parties relating to its subject matter.

26.8 Each party acknowledges that, in entering into the Contract, it has not relied on, and shall have no right or remedy in respect of, any statement, representation, assurance or warranty (whether made negligently or innocently) (other than for breach of contract).

26.9 Nothing in the Contract shall limit or exclude any liability for fraud.

26.10 Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.

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

26.12 The University may assign, transfer, mortgage, charge, declare a trust over or deal in any other manner with any of its rights and obligations under this Contract.

26.13 The Supplier shall not exploit publicity in any form in connection with the Contract or the University without obtaining the prior written consent of the University.