

APPENDIX 4: UoW STANDARD TERMS AND CONDITIONS

GENERAL TERMS AND CONDITIONS OF PURCHASE (the General Terms)

1. Definitions and Interpretation

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

“Agreed Purposes” means the carrying out by the Supplier of its obligations under the Contract.

“Appropriate Technical and Organisational Measures” shall have the meaning set out in the Data Protection Laws in force at the time.

“Brexit” means the UK ceasing to be a member state of the European Union on 31 January 2020.

“Business Days” 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.

“Charge(s)” means the fees and reimbursable expenses payable by the University to the Supplier under the Contract in accordance with Condition 6.

“Conditions” means these terms and conditions and a reference to a Condition means a term or condition of these Conditions.

“Contract” means the Supplier's quotation and the University's subsequent acceptance of it under Condition 2.2 incorporating these Conditions, the Supplementary Conditions and the Specification and Pricing Schedule (if applicable).

“Controller” shall have the meaning set out in the Data Protection Laws in force at the time.

“Data Subject” shall have the meaning set out in the Data Protection Laws in force at the time.

“Data Protection Laws” means the UK Data Protection Laws 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) (“GDPR”) and any other directly applicable European Union regulation relating to privacy.

“UK Data Protection Laws” 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.

“Deliverables” 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).

“Document” 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.

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

“ICO” means the Information Commissioner’s Office.

“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.

“University Policies” mean the University policies specified in the Tender

“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 Data Protection Laws in force at the time.

“Processor” shall have the meaning set out in the Data Protection Laws in force at the time.

“Processing” shall have the meaning set out in the Data Protection Laws in force at the time and “Process” and “Processed” shall be construed accordingly.

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 as an inducement or reward for any improper performance of a relevant function of activity in relation to obtaining this Agreement or any other contract with the Supplier;
- 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 Agreement;
- c. committing any offence: (i) under the Bribery Act; (ii) under legislation or common law concerning fraudulent acts; or (iii) of defrauding, attempting to defraud or conspiring to defraud the University;
- d. any activity, practice or conduct which would constitute one of the offences listed under (c) above, if such activity, practice or conduct had been carried out in the UK.

“Order” means the University's written instruction to buy the Products and/or Services or any combination thereof incorporating these Conditions.

“Replacement Supplier” means any third party supplier of Replacement Services appointed by the University from time to time.

“Replacement Services” means any services that are identical or substantially similar to any of the Services and which the University receives in substitution for any of the Services following the termination or expiry of this Agreement, whether those services are provided by the university internally or by any Replacement Supplier.

“Services” 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.

“Software” means any and all computer programs and computer software contained on industry standard data transfer media and includes all relevant guides and supporting documentation.

“Supplementary Conditions” has the meaning set out in Condition 2.1(c).

“Specification” means 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.

“Supplier” means the person, firm or company who supplies the University as detailed on the Order.

“Supplier Material” means all materials, equipment, documents and other property of the Supplier.

“Tender” means, where applicable, the tender issued by the University and/or referenced in the Order.

“University” means The University of Wolverhampton, a Royal Charter corporation registered under number, an exempt charity under the Charities Act 1993(consolidated by the Charities Act 2011) and any subsidiary or any entity over which the University exercises money or financial control, even though it may own less than 50% of that entity’s shareholding.

“University Materials” means all materials, equipment and tools, drawings, specifications and data supplied by the University to the Supplier.

“Use” 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.

“VAT” 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.
- (c) are in addition to Supplementary Conditions which contain terms and conditions applicable to particular types of Products and/or Services.

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 Order at which point a contract for the supply and purchase of Products and/or Services 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 If there is a conflict between any provision of a Contract and any document incorporated by reference into such Contract, then the following order of priority will govern:

- (a) first any Supplementary Terms and Conditions incorporated by reference into the Contract;
- (b) second, the General Terms; and
- (c) third, The Specification
- (d) fourth, the provisions of the applicable Order

3. TERM

3.1 The Contract will come into effect on the Commencement Date specified in the Order forming such Contract and remain in force for the term specified in that Order.

4. SOFTWARE

4.1 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 Products comprise computer hardware and the Software and associated documentation is necessary for the satisfactory operation of the Products; 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.

4.2 For all Software supplied under any of the above 4.1 (a) to 4.1 (d), all Intellectual Property Rights belonging to a Party prior to the commencement Date of the Contract and after the Commencement Date of the Contract developed by or for a party independently of the provision of Products or Services shall remain vested in that party.

4.3 The Supplier hereby warrants that:

- (a) 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.
- (b) 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.

4.4 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).

4.5 Where, at any time, the University has not entered into a maintenance agreement of the kind referred to in Condition 4.4, 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.

5. INTELLECTUAL PROPERTY RIGHTS INDEMNITY

5.1 The Supplier shall at all times undertake to defend, the University from and against any claim or action that the possession, use, development, modification or maintenance of the Software (or any part thereof) infringes the Intellectual Property Rights of a third party (Claim) and shall fully indemnify and hold harmless the University from and against any losses, damages, costs (including all legal fees) and expenses incurred by or awarded against the University as a result of, or in connection with, any such Claim.

5.2 If any third party makes a Claim, or notifies an intention to make a Claim against the University, 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 advisers 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) subject to the Supplier providing security to the University to the University's reasonable satisfaction against any claim, liability, costs, expenses, damages or losses which may be incurred, take such action as the Supplier may reasonably request to avoid, dispute, compromise or defend the Claim.

5.3 Without prejudice to Condition 5.1, if any Claim is made, or in the Supplier's reasonable opinion is likely to be made, against the University, the Supplier may, at its sole option and expense:

- (a) procure for the University the right to continue using, developing, modifying or maintaining the Software (or any part thereof) in accordance with the terms of this licence;
- (b) modify the Software so that it ceases to be infringing;
- (c) replace the Software with non-infringing software;

provided that if the Supplier modifies or replaces the Software, the modified or replacement Software must comply with the warranties contained in Condition 5.2 and the University shall have the same rights in respect thereof as it would have had under those conditions had the references to the date of this licence been references to the date on which such modification or replacement was made.

6. CHARGE(S)

6.1 The Charges for Products shall be stated in the Order and unless otherwise agreed in writing by the University shall be exclusive of VAT but inclusive of all other charges (including delivery).

6.2 The Charges for the Services shall be set out in the 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.

6.3 In respect of Products, 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 in the 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 Order number.

6.4 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 Contract
- (b) all Charges quoted to the University shall be inclusive of VAT, (unless otherwise agreed) which the Supplier shall add to its invoices at the appropriate rate;
- (c) 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 6.4 (d); and
- (d) unless otherwise agreed, 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 6.4 (a) and 6.4 (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.

6.5 No variation in the Charges or extra charges shall be accepted by the University.

7. PAYMENT

7.1 Unless otherwise agreed, the University shall pay the Charges within 30 days of receipt of an undisputed invoice.

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

7.3 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.

7.4 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.

7.5 Where the Supplier appoints a subcontractor then the Supplier shall pay the subcontractor in accordance with the terms set out in this Condition 6.

8. INDEMNITY

8.1 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 s) 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 the Products, to the extent that the defects in the Products are attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors;

(c) any breach by the Supplier of its obligations under Condition 12: Data Protection and the costs of an investigative, corrective or compensatory action required by the ICO and/or any Member State's regulator of Data Protection Laws.

(d) any claim made against the University by a third party in relation to any breach by the Supplier of the Data Protection Laws and/or the Supplier's data processing obligations described in the Contract.

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

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

8.2 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, its employees, agents or sub-contractors.

8.3 The provisions of this Condition 8 shall survive termination of the Contract, however arising.

9. LIMITATION OF LIABILITY

9.1 Nothing in these Conditions shall limit or exclude a party'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
- (v) any liability in respect of the Supplier's indemnities in Condition 8.1.

9.2 Without prejudice to Condition 9.1 above a party shall under no circumstances whatever be liable to the other party, 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.

9.3 Notwithstanding Condition 9.2, the losses for which the Supplier assumes responsibility and which shall, (subject to Condition 9.4) be recoverable by the University include:

- (a) any sums paid by the University to the Supplier pursuant to this Contract, in respect of any Products 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 Products 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.

9.4 Subject to Condition 9.1, the maximum liability of the Supplier to the University in respect of loss or damage to tangible property of the University, whether arising in tort (including negligence), breach of contract or otherwise, shall be limited to ten million pounds (£10 million).

9.5 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 200% of the total order value of the Purchase Order.

9.6 The provisions of this Condition 9 shall survive termination of the Contract, however arising.

10. INSURANCE

10.1 Unless otherwise agreed in writing between the parties (including without limitation in tender documents where a tender has been carried out), during the term of this Contract and for a period of six years thereafter, the Supplier shall maintain in force at its own cost, with a reputable insurance company, sufficient insurance to:

- (a) comply with its statutory insurance obligations in any relevant jurisdiction;
- (b) cover all potential liabilities which the Supplier may have to the University under the Contract;
and
- (c) reflect the minimum levels of insurance cover set out in Condition 10.2.

10.2 Unless otherwise stated in the Tender, the Supplier warrants that it currently maintains and shall continue to maintain the following insurance:

- (a) public liability insurance for a minimum amount of cover of £5,000,000 (GBP) for each and every claim; and
- (b) employers' liability insurance for a minimum amount of cover of £5,000,000 (GBP) for each and every claim, or such other minimum level as may from time-to-time be required by law; and
- (c) product liability insurance for a minimum amount of cover of £5,000,000 (GBP) in the aggregate; and
- (d) where Services are provided under the Contract, also professional indemnity insurance for a minimum amount of cover of £2,000,000 (GBP) for each and every claim, and shall, on the University's request, produce both the insurance certificates giving details of cover and the receipt for the current year's premiums.

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

11. CONFIDENTIALITY AND FREEDOM OF INFORMATION

11.1 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.

11.2 The restriction in Condition 11.1 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.

11.3 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.

11.4 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.

11.5 This Condition 11 shall survive termination of the Contract.

12. DATA PROTECTION

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

12.1.1 Process it only for the purposes of complying with its obligations under this Contract, in accordance with an agreed Data Processing Agreement (DPA);

12.1.2 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;

12.1.3 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

12.1.4 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 Data Protection Laws. For the avoidance of doubt, in no event shall the Processor respond directly to any notice relating to any Controller Personal Data.

12.2 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.

12.3 use all reasonable endeavours, in accordance with Good Industry Practice, to assist the University to comply with the obligations imposed on the University by the Data Protection Laws, including:

- (a) obligations relating to notifications required by the Data Protection Laws to the ICO and/ or any relevant Data Subjects;
- (b) undertaking any Data Protection impact assessments (and, where required by the Data Protection Laws, consulting with the ICO and/or any other relevant regulator in respect of any such Data Protection impact assessments); and
- (c) without undue delay and where feasible not later than 72 hours after having become aware of it notify Personal Data breaches to the ICO and/or any other relevant Regulator unless the Personal Data breach is unlikely to result in a risk to the rights and freedoms of natural persons;

13. TERMINATION

13.1 Without limiting its other rights or remedies, the University may terminate the Contract in whole or in part at any time:

- (a) in respect of the supply of Services, by giving the Supplier six month's written notice; and
- (b) in respect of the supply of Products, 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 Products at the time of termination, but such compensation shall not include loss of anticipated profits or any consequential loss; and
- (c) where the Contract is subject to the Public Contract Regulations 2015 the University may terminate this Contract on giving 6 months' notice in writing to the Supplier if:
 - (i) the Contract has been subject to a substantial modification which would have a required a new procurement procedure in accordance with Regulation 72(9) of the Public Contract Regulations 2015;
 - (ii) the Supplier has, at the time of contract award, been in one of the situations referred to in Regulation 57(1) of the Public Contract Regulations 2015, including as a result of the application of Regulation 57(2) of the Public Contract Regulations 2015, and should therefore have been excluded from the procurement procedure; or
 - (iii) the Contract should not have been awarded to the Supplier in view of a serious infringement of the obligations under the Treaties and the Public Contracts Directive that has been declared by the Court of Justice of the European Union in a procedure under Article 258 of Treaty of the Functioning of the European Union.

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

13.3 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 11 (Confidentiality and Freedom of Information), Condition 12 (Data Protection) and Condition 17 (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) the Supplier suspends or ceases, or threatens to suspend, or cease, to carry on all or a substantial part of its business; or

(l) 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.

13.4 If this Contract is terminated by the University pursuant to Condition 13.3, such termination shall be at no loss or cost to the University and the Supplier hereby indemnifies the University against any such losses or costs which the University may suffer as a result of any such termination.

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

- 13.5.1 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 11; and
- 13.5.2 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. .
- 13.5.3 On the expiry of the Term or if this Contract is terminated in whole or in part for any reason, the Supplier shall co-operate fully with the University to ensure an orderly migration of the Services to the University or, at the University's request, a Replacement Supplier
- 13.6 If the Supplier fails to fulfil its obligations under Condition 13.5, 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.
- 13.7 The termination of the Contract, however arising, shall be without prejudice to the rights and duties of the University accrued as at termination.
- 13.8 The Conditions which expressly or impliedly have effect after termination shall continue to be enforceable notwithstanding termination.

14 PREVENTION OF BRIBERY

- 14.1 The Supplier represents and warrants that neither it, nor any Supplier personnel:
- (a) has committed a Prohibited Act;
 - (b) to the best of its knowledge has been or is subject to an investigation, inquiry or enforcement proceedings by a governmental, administrative or regulatory body regarding any Prohibited Act or alleged Prohibited Act; or
 - (c) has been listed by any government department or agency as being debarred, suspended, proposed for suspension or debarment, or otherwise ineligible for participation in government procurement programmes or contracts on the grounds of a Prohibited Act.
- 14.2 The Supplier shall promptly notify the University if, at any time during the Term, its circumstances, knowledge or awareness changes such that it would not be able to repeat the warranties set out in Condition 14.1 at the relevant time.
- 14.3 The Supplier shall (and shall procure that its Supplier Personnel shall):
- (a) not commit a Prohibited Act; and/or
 - (b) comply with the University's anti-bribery and anti-Corruption Policy as updated from time to time;
 - (c) promptly report to the University any request or demand for any undue financial or other advantage of any kind received by the Supplier in connection with performance of this Contract.
- 14.4 In the event of a breach of this Condition 14, the University shall be entitled to:
- (a) require the Supplier to remove from performance of this Contract any Supplier Personnel whose acts or omissions have caused this default; or

(b) immediately terminate this Contract.

15. 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.

16. CORPORATE AND SOCIAL RESPONSIBILITY AND EQUALITY

16.1 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.

16.2 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.

17. COMPLIANCE WITH LAWS

17.1 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) University 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 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 verifying that the Supplier has complied with the requirements set out above.

17.2 The University may terminate the Contract with immediate effect by giving writing notice to the Supplier if the Supplier commits a breach of Condition 17.1 above.

18. AUDIT

18.1 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 Products 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).

18.2 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.

19. DISPUTE RESOLUTION

19.1 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.

19.2 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.

19.3 To initiate the mediation, a party to the Contract must give notice in writing (the "ADR Notice") to the other party requesting 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.

19.4 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.

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

19.6 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.

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

20. 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 20(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.

21. TUPE

21.1 The Supplier warrants and represents to the University that the Supplier is, and shall remain throughout the duration of the Contract, the employer of all individuals who may work for the Supplier in providing the Services, and the Supplier shall be solely responsible for the remuneration, insurance and other obligations in respect of all these individuals. With effect from the date of any individual's engagement in the provision of the Services, the Supplier shall be in compliance with all applicable legislation, including any social security rules and regulations. If the University is deemed liable for any taxes, social security charges or payments for pensions or for any other payments or claims or demands whatsoever relating to individuals working for the Supplier and providing the Services, the Supplier will fully indemnify and hold the University harmless (on an after-tax basis) in respect of any and all of these claims and demands.

21.2 It is the parties' intention that neither the commencement nor the termination of any of the Services will give rise to a relevant transfer under the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) (TUPE Regulations).

21.3 In the event that an employee of the Supplier or a Sub-Contractor claims or it is determined that his/her contract of employment has been transferred from the Supplier or Sub-Contractor to the University or any person that provides services in replacement of any of the Services (Successor Supplier) pursuant to the TUPE Regulations, then:

- (a) The University or Successor Supplier (as appropriate) shall give notice in writing to the Supplier or Sub-contractor within 15 Business Days of becoming aware of that fact; and
- (b) The Supplier or the Sub-contractor (as appropriate) may offer employment to such person within 30 Business Days of the notification referred to in Condition 21.3(a).

21.4 If by the end of the 30 day period referred to in Condition 21.3 (b) no such offer of employment has been made, or such offer has been made but not accepted, or the situation has not otherwise been resolved, then the University or Successor Supplier (as appropriate) may, within 5 Business Days, give notice to terminate the employment or alleged employment of such employee.

21.5 The Supplier shall, and shall procure that any Sub-Contractor shall, indemnify the University or Successor Supplier (as appropriate) in full for and against all claims, costs, expenses or liabilities whatsoever and howsoever arising incurred or suffered by the University or Successor Supplier (including without limitation all legal expenses and other professional fees) relating to:

- (a) the termination of the employment of the employee pursuant to Condition 21.4; and
- (b) Anything done or omitted to be done in respect of any of the employee which is deemed to have been done by the University or Successor Supplier (as appropriate) by virtue of the TUPE Regulations.
- (c) provided that such costs, claims, expenses and liabilities are not payable as a result of any act or omission of the University or Successor Supplier (as appropriate).

21.6 The Supplier shall, if requested to do so by the University at any time during the period of three months before the termination of any of the Services (Rundown Period), redeploy all employees of the Supplier and/or any Sub-Contractor then engaged in providing the Services (or any of those employees as the University may specify) before the end of the Rundown Period so that those

employees are not affected by any relevant transfer under the TUPE Regulations that may occur on the cessation of any of the Services.

22. THE UNITED KINGDOM'S DECISION TO LEAVE THE EUROPEAN UNION

- 22.1 Neither Brexit, nor any fluctuations in the GBP exchange rate (whether resulting directly or indirectly from Brexit), shall affect in any way the obligations of either party under this Contract and neither party shall be entitled to rely on Brexit and/or any fluctuations in the GBP exchange rate to make any claim against the other, whether for additional time, money or otherwise, on any basis, including for the avoidance of doubt in contract, tort or equity.
- 22.2 An event of Brexit and/or any fluctuations in the GBP exchange rate (whether resulting directly or indirectly from Brexit) shall not permit either party to vary and/or to terminate this Contract (or any part of this Contract) save where that party is otherwise entitled to vary and/or terminate the Contract (or any part of this Contract).
- 22.3 Both parties acknowledge that they have assessed the potential impact of Brexit on their ability to perform their obligations under this Contract and have taken all associated risks into account when entering into this Contract.
- 22.4 Both parties acknowledge and agree that any impact of Brexit on their ability to perform their obligations under this Contract shall not be deemed to be a Force Majeure Event for the purposes of Condition 15 of this Contract.

23. GENERAL

- 23.1 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.
- 23.2 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.
- 23.3 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.
- 23.4 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.
- 23.5 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.
- 23.6 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.
- 23.7 The Contract constitutes the whole agreement between the parties and supersedes all previous agreements between the parties relating to its subject matter.
- 23.8 This Contract may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.
- 23.9 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).

- 23.10 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.
- 23.11 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.
- 23.12 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.
- 23.13 The Supplier shall not:
- (a) make any press announcements or publicise this Contract or its contents in any way; or
 - (b) use the University's name or logo in any promotion or marketing or announcement of orders, except as required by law, any government or regulatory University, any court or other University of competent jurisdiction, without the prior written consent of the University, which shall not be unreasonably withheld or delayed.
- 23.14 Except as otherwise expressly provided within this Contract, no notice or other communication from one party to the other shall have any validity under the Contract unless made in writing by or on behalf of the Party sending the communication. Any notice or other communication which is to be given by either party to the other shall be given by letter (sent by hand, post, registered post or by the recorded delivery service), or by fax or e-mail (confirmed in either case by letter). Provided the relevant communication is not returned as undelivered, the notice or communication shall be deemed to have been given two Working Days after the day on which the letter was posted, or four hours, in the case of e-mail or fax or sooner where the other Party acknowledges receipt of such letters, or fax or e-mail. The address of each Party shall be that stated in the Order.
- 23.15 The formation, existence, construction, performance, validity and all aspects of the Contract shall be governed by English law and the parties submit to the exclusive jurisdiction of the English courts for all contractual and non-contractual disputes.

SUPPLEMENTARY TERMS AND CONDITIONS IN RELATION TO PRODUCTS AND SERVICES

These Supplementary conditions are supplemental to the GENERAL TERMS AND CONDITIONS FOR THE SUPPLY OF PRODUCTS AND/OR SERVICES (the General Terms).

1. Definitions and Interpretation

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

"Change order" means a document setting out proposed changes to the Services, Charges, and Contract.

"Charges" means the charges for Products and Services specified in the Order and/or Tender

"Contract" means the Supplier's quotation and the University's subsequent acceptance of it under Condition 2.2 of the General Terms incorporating these Conditions.

"Deliverable(s)" means any outputs of the Services and any other documents, products and materials provided by the Supplier to the University in accordance with the Contract.

"Delivery" means the date of delivery of the Products and/or Services specified in the order or Contract.

“Products” means the products or equipment to be provided by the Supplier as set out in the University’s 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.

“Order” means the University's written instruction to buy the Products and/or Services and/or equipment or any combination thereof incorporating these Conditions.

“Replacement Supplier” means any third party supplier of Replacement Services appointed by the University from time to time.

“Replacement Services” means any services that are identical or substantially similar to any of the Services and which the University receives in substitution for any of the Services following the termination or expiry of this Agreement, whether those services are provided by the University internally or by any Replacement Supplier.

“Services” means the services to be provided by the Supplier as set out in the University’s Order and/or the Tender together with any other services which the University takes from the Supplier in relation thereto.

“Specification” means the description and any specification for the Products/ equipment or Services, including any related plans and drawings that are agreed in writing by the University and the Supplier.

“Supplier” means the person, firm or company who supplies the University as detailed on the Order.

“Supplier Material” means all materials, equipment, documents and other property of the Supplier.

“Tender” means, where applicable, the tender issued by the University as may be referenced in the Order.

“Term”: the term of the Contract, as determined in accordance with the Order.

“University” means The University of Wolverhampton, a Royal Charter corporation registered under number, an exempt charity under the Charities Act 1993(consolidated by the Charities Act 2011).

“University Materials” means all materials, equipment and tools, drawings, specifications and data supplied by the University to the Supplier.

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. QUALITY OF PRODUCTS

2.1 The Supplier shall warrant that the Products and equipment shall:

- (a) correspond with their description and any applicable Specification;
 - (b) be of satisfactory quality (within the meaning of the Sale of Products 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 unless a greater term is otherwise referenced in the Tender/Contract documentation; and
 - (d) The Supplier shall obtain and maintain in force for the Term all licences, permissions, authorisations, consents and permits needed to manufacture and supply the Products in accordance with the terms of this agreement.
 - (e) comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Products or equipment.
 - (f) conform in every respect with the provisions of the Contract; and
 - (g) be of sound materials and skilled and careful workmanship.
- 2.2 The provisions in Condition 2.1 shall survive any delivery, inspection, acceptance, payment or performance pursuant to the Contract and shall extend to any replacement, repaired, substitute or remedial Products or equipment provided by the Supplier.
- 2.3 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 Products.
- 2.4 The University shall have the right to inspect and test the Products at any time before delivery.
- 2.5 The Supplier shall:
- (a) carefully test and inspect the Products before delivery to ensure that they comply 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).
- 2.6 If following such inspection or testing the University considers that the equipment or Products do not conform or are unlikely to comply with the Supplier's warranties and undertakings at Condition 2.1, or the requirements of the Contract, the University shall inform the Supplier and the Supplier shall immediately take such remedial action, at its own cost, as is necessary to ensure compliance.
- 2.7 Notwithstanding any such inspection or testing, the Supplier shall remain fully responsible for the Products and any such inspection or testing shall not reduce or otherwise affect the Supplier's obligations under the Contract, and the University shall have the right to conduct further inspections and tests after the Supplier has carried out its remedial actions.
- 2.8 The University reserves the right to call for certificates or test certificates for the Products at any stage of manufacture or assembly. Such certificates shall clearly state the University's Order numbers and any item or equipment numbers. If, as a result of any inspection or test, the University finds that the Products 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.

3. DELIVERY OF PRODUCTS

- 3.1 The Products 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 Products. The Supplier shall off-load the Products at its own risk as directed by the University.
- 3.2 The date for delivery shall be specified in the Order, or if no such date is specified then delivery shall take place within 28 days of the date of the Order. Time for delivery shall be of the essence.
- 3.3 The Supplier shall ensure that each delivery is accompanied by a delivery note which shows, among other things, the Order number, date of Order, number of packages and contents and, in the case of part delivery, the outstanding balance remaining to be delivered.
- 3.4 Unless otherwise stipulated by the University in the Order, deliveries shall only be accepted by the University on Business Days during normal business hours.
- 3.5 The Supplier shall remove from the University's premises all packaging and leave the delivery area and the University's premises clear of waste.
- 3.6 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. Products may be invoiced and paid for separately. Nevertheless failure by the Supplier to deliver any one instalment shall entitle the University at its option to treat the whole Contract as repudiated. Any defect in an instalment shall entitle the University to the remedies set out in Condition 8.
- 3.7 If the Products 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.
- 3.8 If the Supplier delivers any Products at the wrong time or to the wrong place the University may deduct from the price any resulting reasonable costs of storage or transport.
- 3.9 Without affecting its other rights and remedies, the University reserves the right to reject incomplete deliveries.
- 3.10 If an Order is not delivered on the specified Delivery Date, then, without limiting any other right or remedy the University may have, the University may:
- (a) refuse to take any subsequent attempted delivery of the Order;
 - (b) terminate the Contract with immediate effect;
 - (c) obtain substitute products from another supplier and recover from the Supplier any costs and expenses reasonably incurred by the University in obtaining such substitute products; and
 - (d) subject to Condition 8 below and Condition 9 of the General Terms, claim damages for any other costs, expenses or losses resulting from the Supplier's failure to deliver the Order on the Delivery Date, provided that the Supplier shall have no liability for any failure or delay in delivering an Order to the extent that such failure or delay is caused by the University's failure to comply with its obligations under this Contract.

4. INSTALLATION OF PRODUCTS AND ACCEPTANCE

- 4.1 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 Products are to be installed, the Supplier acknowledges and agrees that the Products are 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.
- 4.2 In relation to installation and acceptance tests:

(a) except where Condition 4.2(e) applies, the Supplier shall, without further charge to the University, install the Products at the premises at which the University intends to use it and subject the Products to its standard installation and acceptance tests;

(b) if the Products pass 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 Products do 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 Products to the tests as set out in Condition 4.2(a) and Condition 4.2(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 4.2(a);

(e) if the University and the Supplier have, before or at the same time as the 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 Products and Condition 4.2(a) to Condition 4.2(d) shall not apply.

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

5. PROPERTY AND RISK

5.1 The Products 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 Order.

5.2 The Supplier shall off-load the Products at its own risk as directed by the University.

5.3 Title to the Products shall pass to the University on the earlier of:

5.3.1 payment for the Products ; or

5.3.2 delivery of the Products to the University.

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

6. SUPPLY OF SERVICES

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

6.2 The Supplier shall meet any performance dates for the Services specified in the Order, or Contract or notified to the Supplier by the University.

6.3 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 Products, materials, standards and techniques, and ensure that the Deliverables, and all Products 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, consents or visas and satisfy all relevant requirements relating to any permission to enter or remain in the UK for the purposes contemplated in the Contract; 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.

7. CHANGE CONTROL

7.1 Either party may propose changes to the scope or execution of the Services, but no proposed changes shall come into effect until a relevant variation has been signed by both parties. A variation shall be a document setting out the proposed changes and the effect those changes will have on:

- (a) the Services;
- (b) the Charges;
- (c) the timetable for the Services; and
- (d) any terms of this Contract.

7.2 If the University wishes to make a change to the Services:

- (a) it shall notify the Supplier, providing as much detail as is reasonably necessary to enable the Supplier to prepare the draft variation; and
- (b) the Supplier shall, within fourteen Business Days of receiving the University's request at Condition 7.2(a), provide a draft variation document to the University.

7.3 If the Supplier wishes to make a change to the Services, it shall provide a draft variation document to the University.

7.4 If the Supplier submits a draft variation document in order to comply with any applicable safety or regulatory requirements and such changes do not affect the nature, scope of, or charges for the Services, the University shall not unreasonably withhold or delay consent to it.

7.5 If the parties:

(a) agree to a variation agreement, they shall sign it and that variation agreement shall amend this Contract; or

(b) are unable to agree a variation agreement, either party may require the disagreement to be dealt with in accordance with Condition 19 of the General Terms.

8. UNIVERSITY REMEDIES

8.1 If the Supplier fails to deliver the Products and/or perform the Services by the applicable date, the University shall, without limiting its other rights or remedies, have one or more of the following rights:

8.1.1 to terminate the Contract with immediate effect by giving written notice to the Supplier;

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

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

8.1.4 where the University has paid in advance for Services that have not been provided by the Supplier and/or Products which have not been delivered by the Supplier, to have such sums refunded by the Supplier; and

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

8.2 If the Supplier has delivered Products and/or Services that do not comply with the warranties and undertakings set out in Conditions 2.1 and 6.2, then, without limiting its other rights or remedies, the University shall have one or more of the following rights, whether or not it has accepted the Products and/or the Deliverables:

8.2.1 to reject the Products and/or Deliverables (in whole or in part) whether or not payment has been made (in full or in part) and whether or not title has passed to the Buyer, and to return them to the Supplier at the Supplier's own risk and expense;

8.2.2 to terminate the Contract with immediate effect by giving written notice to the Supplier;

8.2.3 to require the Supplier to repair or replace the rejected Products and/or Deliverables at the Supplier's expense, or to provide a full refund of the price of the rejected Products and/or Services (if paid) without any retention, deduction or offset;

8.2.4 to refuse to accept any subsequent delivery of the Products and/or Deliverables which the Supplier attempts to make;

8.2.5 to recover from the Supplier any expenditure incurred by the University in obtaining substitute Products, services or deliverables from a third party; and

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8.2.6 to claim damages for any additional costs, loss or expenses incurred by the University arising from the Supplier's failure to supply Products and/or Services in accordance with Conditions 2.1 and 6.2.

8.3 These Conditions shall extend to any substituted or remedial services and/or repaired or replacement Products supplied by the Supplier.

8.4 The University's rights under this Contract are in addition to its rights and remedies implied by statute and common law.

9. UNIVERSITY'S OBLIGATIONS

9.1 The University shall:

- (a) pay the Charges specified in the Order in accordance with the payment terms specified in the General Terms.
- (b) provide reasonable co-operation with the Supplier in all matters relating to the Services;
- (c) 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;
- (d) 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
- (e) 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.

10 CONSEQUENCES OF TERMINATION

10.1 In addition to the provisions of Condition 13 of the General Terms, on termination or expiry of this Contract:

- (a) the Supplier shall immediately deliver to the University all Deliverables whether or not then complete, and return all of the University Materials . If the Supplier fails to do so, then the University may enter the Supplier's premises and take possession of them. Until they have been delivered or returned, the Supplier shall be solely responsible for the safe keeping of all Deliverables, University Materials in its possession and will not use them for any purpose not connected with this Contract; and
- (b) the Supplier shall, if so requested by the University, provide all assistance reasonably required by the University to facilitate the smooth transition of the Services to the University or any replacement supplier appointed by it.