
GENERAL CONDITIONS OF PURCHASE OF GOODS AND/OR SERVICES



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OF SUSSEX

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University of Sussex
General Conditions of Purchase of Goods and/or Services

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1. **INTERPRETATION**

1.1 **Definitions:**

In these Conditions, the following definitions apply:

"Acceptance"	means the acceptance or deemed acceptance of the Goods by the University in accordance with the provisions of paragraph 7 and 8 of Schedule 2. 'Accepted' shall be interpreted accordingly;
"Acceptance Test"	means any relevant tests, procedures and/or inspections to be undertaken in relation to the Goods in order for the University to establish whether the Goods comply with/are in accordance with the Specification or otherwise meets the University's requirements as contemplated by the Contract;
"Business Day"	means a day other than a Saturday, Sunday or public holiday in England when the University is open for business;
"Charges"	means the charges for the Goods and/or Services set out in the Form of Contract or otherwise as agreed in writing between the Parties;
"Commencement Date"	means the date on which the Form of Contract is signed by both Parties;
"Conditions"	means the terms and conditions set out in this document;
"Confidential Information"	means any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information the disclosure of which would, or would be likely to, prejudice the commercial interests of any person, trade secrets, Intellectual Property Rights and know-how of either Party and all Personal Data and Sensitive Personal Data. Confidential Information shall not include information which: <ul style="list-style-type: none"> (a) was public knowledge at the time of disclosure (otherwise than by breach of Clause 13); (b) was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party; (c) is received from a third party (who lawfully acquired it) without restriction as to its disclosure, or (d) is independently developed without access to the Confidential Information;
"Contract"	means the these Conditions, the Form of Contract, the Specification (if any) and the Schedules to these Conditions together with any documents referred to in any of them;
"Controller"	has the meaning set out in the Data Protection Legislation;
"Data Protection Legislation"	means (a) any law, statute, declaration, decree, directive, legislative enactment, order, ordinance, regulation, rule or other binding restriction (as amended, consolidated or re-enacted from time to time) which relates to the protection of personal data to which a Party

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	is subject, including the Data Protection Act 2018, the UK General Data Protection Regulation ('UK GDPR') as implemented by the Data Protection Act 2018, and the General Data Protection Regulation (EU) 2016/679; and (b) any code of practice or guidance published by the ICO or other relevant supervisory authority from time to time;
"Data Subject"	has the meaning set out in the Data Protection Legislation;
"Data Subject Request"	means an actual or purported request, notice or complaint from (or on behalf of) a Data Subject exercising their rights under the Data Protection Legislation;
"Data Transfer"	means transferring the University Data to, and/ or accessing the University Data from and/ or Processing the University Data within, a jurisdiction or territory that is a Restricted Country;
"Deliverables"	means all documents, products and materials to be developed by the Supplier as part of or in relation to the Services in any form or media, including without limitation drawings, maps, plans, diagrams, designs, pictures, computer programs, data, specifications and reports (including drafts);
"Delivery Date"	means the date specified by the University for delivery of the Goods, as set out in the Form of Contract;
"Delivery Location"	means the location as instructed by the University, to the Supplier, before delivery, as set out in the Form of Contract;
"Designated Area"	means the area at the Delivery Location for the Installation of the Goods, as set out in the Installation Plan;
"Environmental Policy"	means the University's environmental policy as updated by the University from time to time and made available to the Supplier upon request;
"Ethics and Anti-bribery Policy"	means the University's ethics and anti-bribery policy as updated by the University from time to time and made available to the Supplier upon request;
"Form of Contract"	means the 'form of contract' attached to these Conditions;
"Freedom of Information Legislation"	means the Freedom of Information Act 2000 and the Environmental Information Regulations 2004, together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to the same;
"Good Industry Practice"	means, at any time, the exercise of that degree of care, skill, diligence, prudence, efficiency, foresight and timeliness which would be reasonably expected at such time from a leading and expert supplier of similar services to the Services to a customer like the University, such supplier seeking to comply with its contractual obligations in full and complying with all applicable laws (including the Data Protection Legislation);

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"Goods"	means any goods to be supplied by the Supplier as specified in the Form of Contract;
"Health and Safety Policies"	means the University's overarching health and safety policy and all applicable supporting policies and guidance notes as updated from time to time by the University and in each case as can be located at http://www.sussex.ac.uk/hso/healthandsafety ;
"Installation"	means the installation of the Goods by the Supplier, in the Designated Area and/or into the operating environment specified by the University in writing and 'Install' and 'Installed' shall be interpreted accordingly;
"ICO"	means the UK Information Commissioner's Office, or any successor or replacement body from time to time;
"ICO Correspondence"	means any correspondence or communication (whether written or verbal) from the ICO in relation to the Processing of the University Data;
"Installation Plan"	means the plan appended to the Contract which sets out the details, method and processes for Installation;
"Installation Report"	shall have the meaning as set out at paragraph 8.2.1 of Schedule 1;
"Intellectual Property Rights"	means all patents, rights to inventions, copyright and related rights, trade marks and trade names, rights to goodwill or to sue for passing off, rights in designs, database rights, rights in confidential information (including without limitation know-how) and any other intellectual property rights, in each case whether registered or unregistered and including all applications (or rights to apply) for, and renewals or extensions of, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;
"ITT"	means the invitation to tender or request for quotes issued by the University for the Goods and/or Services (if any and as applicable);
"Long Stop Completion Date"	means the date expiring 3 months after the Delivery Date or such other date as the parties shall agreed in writing;
"Losses"	means losses, liabilities, damages, compensation, awards, payments made under settlement arrangements, claims, proceedings, costs and other expenses including fines, interest and penalties, whether arising in contract, tort (including negligence), breach of statutory duty or otherwise, legal and other professional fees and expenses;
"Modern Slavery Policy"	means the University's anti-slavery and human trafficking policy in force and notified to the Supplier from time to time;
"New Supplier"	means another party chosen by the University to take over the provision of all or part of the Services on expiry or termination of the Contract;

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"Outgoing Service Provider"	means any supplier(s) engaged to perform all or part of the Services prior to the date on which the Supplier takes over the provision of the Services;
"Personal Data"	has the meaning set out in the Data Protection Legislation and for the purposes of the Contract, includes Sensitive Personal Data;
"Personal Data Breach"	has the meaning set out in the Data Protection Legislation;
"Personnel"	means all persons engaged or employed from time to time by the Supplier in connection with the Contract, including employees, consultants, contractors and permitted agents;
"Premises"	means any premises owned, operated or used by the University at which Services are to be performed or at which the Goods shall be Delivered and/or Installed;
"Processing"	has the meaning set out in the Data Protection Legislation (and "Process" and "Processed" shall be construed accordingly);
"Processor"	has the meaning set out in the Data Protection Legislation;
"Restricted Country"	means a country, territory or jurisdiction outside of the United Kingdom which the United Kingdom has not deemed to provide adequate protection in accordance with Article 45(1) of the UK GDPR;
"Returning Employees"	means those persons listed in a schedule to be agreed by the parties prior to the Subsequent Transfer Date who it is agreed were employed by the Supplier wholly and/or mainly in the Services immediately before the Subsequent Transfer Date;
"Sensitive Personal Data"	means Personal Data that reveals such special categories of Personal Data as are listed in Article 9(1) of the UK GDPR;
"Services"	means the services to be performed by the Supplier as specified in the Form of Contract;
"Spares"	means any spare, replacement or component parts of the Goods;
"Specification"	means the description and specification for the Goods (including any related plans and drawings) and/or for the Services as may be set out in the ITT or Tender (if any) or as otherwise is provided by the Supplier to the University;
"Subsequent Transfer Date"	means the date or dates on which there is a transfer of responsibility for the provision of the Services or part of the Services from the Supplier to the University and/or to a New Supplier (as the case may be);
"Supplier"	means the supplier of any Goods and/or Services under the Contract and whose details are set out in the Form of Contract;
"Supplier's Team"	means all employees, consultants, agents and subcontractors of the Supplier or of any subcontractors which are engaged in relation to the performance of the Services and/or the delivery of the Goods

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	(including Installation);
"Tender"	means the Supplier's quotation or written response to the ITT including all supporting documentation and representations;
"Term"	means the duration of the Contract, from the Commencement Date until both Parties' obligations under the Contract have been performed (unless the Contract is otherwise terminated in accordance with these Conditions or it is otherwise lawfully terminated);
"Third Party Request"	means a written request from any third party for disclosure of University Data where compliance with such request is required or purported to be required by law or regulation.
"TUPE"	means the Transfer of Undertakings (Protection of Employment) Regulations 2006;
"University"	means the University of Sussex or any wholly owned or associated subsidiary thereof named on the Form of Contract;
"University Data"	means the Personal Data Processed by (or on behalf of) either Party under, or in connection with, the Contract;
"University Materials"	has the meaning given to it in paragraph 2.3.9 of Schedule 3; and
"Warranty"	has the meaning given in paragraph 3.1 of Schedule 2.

1.2 Interpretation:

In these Conditions:

- 1.2.1 use of the singular includes the plural (and *vice versa*) and use of any gender includes the other genders;
- 1.2.2 a reference to a Party is to a party to the Contract and shall include that party's personal representatives, successors or permitted assignees;
- 1.2.3 a reference to persons includes natural persons, firms, partnerships, bodies corporate and corporations, and associations, organisations, governments, states, foundations, trusts and other unincorporated bodies (in each case whether or not having separate legal personality and irrespective of their jurisdiction of origin, incorporation or residence);
- 1.2.4 any phrase introduced by the terms "including", "include", "in particular" or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms;
- 1.2.5 a reference to writing or written includes emails but not fax;
- 1.2.6 a reference to a statute or statutory provision is a reference to it as amended, extended, re-enacted or substituted from time to time and shall include any subsidiary legislation including any modification or re-enactment thereof;
- 1.2.7 the table of contents and headings are included for convenience only and will not affect the construction or interpretation of the Contract;

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1.2.8 a reference to a Clause or Schedule is to the relevant Clause of or Schedule to these Conditions; a reference to a paragraph is to the relevant paragraph of the Schedule in which it appears; and

1.2.9 the Schedules form an integral part of these Conditions and have effect as if set out in full in the body of these Conditions.

2. BASIS OF CONTRACT

2.1 These Conditions apply to the Contract to the exclusion of any other terms that the Supplier seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.2 The Supplier acknowledges and agrees that the University is entering into the Contract on the basis of the Tender, the Tender is accurate and complete in all material respects, and is not misleading.

2.3 The Contract commences on the Commencement Date and will continue in full force and effect for the Term.

2.4 In case of a conflict between these Conditions, the Form of Contract, the Specification (if any) and any Schedules, the following order of precedence shall apply:

2.4.1 the Form of Contract;

2.4.2 these Conditions;

2.4.3 the Specification (if any);

2.4.4 the Schedules; and

2.4.5 any other document incorporated into these Conditions.

3. SUPPLIER'S REPRESENTATIONS AND WARRANTIES

3.1 The Supplier represents and warrants to the University that:

3.1.1 all information, statements and representations contained in the Tender, if applicable, are in all material respects, true, accurate, and not misleading; and

3.1.2 it is not (and will not at any time be) subject to any contractual obligation, compliance with which is likely to have an effect on its ability to perform its obligations under the Contract.

3.2 The Supplier shall promptly notify the University if it becomes aware of any fact, matter or circumstance after the Commencement Date which would render the representations and warranties set out in Clause 3.1 false or misleading.

3.3 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.

4. PAYMENT AND INVOICES

4.1 In consideration of the full and proper provision of the Goods and/or the Services, the University shall, subject to the Supplier complying with the remaining provisions of this Clause 4, pay the agreed Charges.

4.2 The Supplier shall invoice the University for the Goods and/or the Services following delivery of the Goods or, where applicable, in accordance with paragraph 5 of Schedule 2, Acceptance of

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Installation, and/or for the Services following performance of the Services, in accordance with Schedule 3. The Supplier shall comply with the remaining provisions of this Clause 4.

4.3 The Charges shall be inclusive of all costs, overheads and expenses of any kind (including all delivery costs) and all other charges, duties, expenses and taxes but shall be exclusive of VAT, which the Supplier shall add to its invoices at the appropriate rate.

4.4 In order to facilitate the payment process within the University's accounts payable team, the Supplier shall ensure that each invoice contains the following information:

4.4.1 a valid purchase order number;

4.4.2 the period to which the invoice relates;

4.4.3 details of the Goods provided and/or Services performed;

4.4.4 a breakdown of the Charges; and

4.4.5 details of the Supplier's nominated bank account.

4.5 Failure to provide the required information may result in either returned invoices or payment delays.

4.6 All invoices without exception are to be sent by email to the University's Accounts Payable Team at:

Email: invoices@sussex.ac.uk

4.7 If the University:

4.7.1 requires any information in order to verify the accuracy of any invoiced amount it shall, within 10 Business Days of receiving the relevant invoice, give written notice (an "**Information Request**") to the Supplier specifying the information it requires. The Supplier shall provide all information specified in or required by an Information Request within 5 Business Days of receipt of that Information Request. If the Supplier fails to respond or, if following the Supplier's response the University considers that it is still unable to verify the relevant invoiced amount or disagrees with such amount, the matters in dispute shall be referred to a chartered accountant of not less than ten years standing (the "**Charges Expert**"). If following the Supplier's response the University can verify the relevant invoiced amount and agrees with it, payment of that relevant invoiced amount shall be deemed to be due on the later of: (a) the invoice payment date in respect of the relevant invoice; and (b) the date which is 10 days following the date upon which the University received all of the information specified in the relevant Information Request; or

4.7.2 disagrees with any invoiced amount, it shall, within 10 Business Days of receiving the relevant invoice, give written notice (an "**Invoice Query**") to the Supplier specifying the amounts it disputes. If the Parties have not reached agreement in relation to any disputed amounts within 21 days following the date of the Invoice Query the matters in dispute shall be referred to the Charges Expert,

and pending the resolution of any matter or the provision of any necessary information, the University shall be entitled to withhold payment of such part of the invoice as it relates to the matters which are the subject of the relevant Information Request or Invoice Query (as appropriate). Any failure or delay by the University in notifying the Supplier of any disputed amount shall not prejudice the University's right to dispute (and, where appropriate, recover) any sums that should be, or should not have been, paid by the University.

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- 4.8 All undisputed sums due to the Supplier under the terms of the Contract shall be paid against a valid invoice. Payment of any undisputed sum shall be made within 30 days following receipt of a valid invoice.
- 4.9 If either Party fails to make payment in accordance with the Contract the other Party shall be entitled, in addition to any unpaid amount that should properly have been paid, to simple interest on that amount from the final date for payment until the date of actual payment such interest to be calculated at a daily rate of 2% above the Bank of England base rate which is current at the date the payment became overdue. It is agreed that the provisions of this Clause constitute a substantial remedy for the purposes of section 9(1) of the Late Payment of Commercial Debts (Interest) Act 1998. Payment by the University of all or any part of any invoice is without prejudice to any rights or remedies that the University may otherwise have against the Supplier and does not constitute any acceptance by the University as to the performance by the Supplier of all, or any part of its obligations.
- 4.10 The University shall be entitled at any time to set off any liability of the Supplier to the University against any liability of the University to the Supplier (whether that liability is present or future, liquidated or unliquidated and irrespective of currency) under:
- 4.10.1 the Contract; or
- 4.10.2 any other contract between the University and the Supplier.
- 4.11 The Supplier shall make any payments due to the University without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise, unless the Supplier has a valid court order requiring an amount equal to such deduction to be paid by the University to the Supplier.
5. **TERMINATION**
- 5.1 Without limiting its other rights or remedies, the University may terminate the Contract:
- 5.1.1 in respect of the supply of Services, by giving the Supplier no less than thirty (30) days' written notice (or such other notice period as may be agreed between the Parties in writing). The University shall pay the Supplier's reasonable costs incurred relating to the performance of the Services at the time of termination subject to such costs being evidenced to the reasonable satisfaction of the University and mitigated; and
- 5.1.2 in respect of the supply of Goods, 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's reasonable costs incurred relating to any work in progress on the Goods at the time of termination subject to such costs being evidenced to the reasonable satisfaction of the University and mitigated.
- 5.2 In any of the circumstances in these Conditions in which a Party may terminate the Contract, where both Goods and Services are supplied, that Party may terminate the Contract in respect of the Goods, or in respect of the Services, and the Contract shall continue in respect of the remaining supply.
- 5.3 Without limiting its other rights or remedies, the University may terminate the Contract with immediate effect by giving written notice to the Supplier if:
- 5.3.1 the Supplier commits a material breach of the terms of the Contract and (if such a breach is remediable) fails to remedy that breach within thirty (30) days of receipt of notice in writing to do so;
- 5.3.2 the Supplier persistently breaches any of the terms of the Contract in such a manner that if taken together they amount to a material breach;

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- 5.3.3 any encumbrancer takes possession of or a receiver, administrative receiver or similar officer is appointed over any of the property or assets of the Supplier or if the Supplier makes any voluntary arrangement with its creditors or becomes subject to an administration order or has an administrator appointed or goes into liquidation or has a resolution for its winding up passed or anything analogous to any of these events under the law of any jurisdiction occurs in relation to the Supplier or if the Supplier ceases or threatens to cease to carry on business;
- 5.3.4 the Supplier's financial position deteriorates to such an extent that in the University's opinion the Supplier is unable to adequately fulfil its obligations under the Contract; or
- 5.3.5 there is a change of control of the Supplier (within the meaning of section 1124 of the Corporation Tax Act 2010).

5.4 Termination of the Contract, however arising, shall not affect either Parties' rights and remedies that have accrued as at termination.

5.5 Clauses which expressly or by implication survive termination of the Contract shall continue in full force and effect.

6. CONSEQUENCES OF TERMINATION

6.1 On termination of the Contract for any reason, the Supplier shall immediately deliver to the University all Deliverables whether or not then complete, and return all University Materials. If the Supplier fails to do so, then, without prejudice to any other rights and remedies, the University may:

6.1.1 enter the Supplier's premises and take possession of them; and/or

6.1.2 withhold payment of any amounts due under the Contract until any such Deliverable and University Materials have been returned or delivered.

6.2 Until the Deliverables and any University Materials have been returned or delivered, the Supplier shall be solely responsible for their safe keeping (including, but not limited to, insuring such items) and will not use them for any purpose not connected with the Contract.

6.3 The Supplier shall be liable for and agrees to pay the costs of repairing any damage caused to the University's property as result of decommissioning by the Supplier of any Goods.

6.4 Termination of the Contract shall be without prejudice to any licence granted under Clause 7.2.

7. INTELLECTUAL PROPERTY RIGHTS

7.1 The Supplier assigns to the University, with full title guarantee and free from all third party rights, the Intellectual Property Rights and all other rights in the products of the Services (including the Deliverables).

7.2 The Supplier grants to the University a royalty free, non-exclusive, irrevocable, perpetual licence to use the Supplier's Intellectual Property Rights so far as it is required for the University to derive the full benefit of the Contract (including any of the Deliverables and receipt of the Services).

7.3 At its own expense, the Supplier shall, and shall use all reasonable endeavours to procure that any necessary third party shall, promptly execute and deliver such documents and perform such acts as may be required for the purpose of giving full effect to the Contract, including securing for the University all right, title and interest in and to the Intellectual Property Rights and all other rights assigned to the University in accordance with Clause 7.1.

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7.4 The Supplier shall obtain waivers of any moral rights in the products of the Services (including 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.

8. OWNERSHIP OF RESULTS

8.1 If the Contract involves design and/or development work:

8.1.1 all rights in the results of work arising out of or deriving from the Contract, including inventions, designs, copyright and knowledge, shall be the University's property and the University shall have the sole right to determine whether any Intellectual Property Rights and other protection shall be sought;

8.1.2 the Supplier shall promptly communicate to the University all such results and shall if requested and at the University's expense do all acts and things necessary to enable the University or its nominee to obtain Intellectual Property Rights for such results in all territories and to assign the same to the University or its nominee to obtain Intellectual Property Rights for such results in all territories and to assign the same to the University or its nominee; and/or

8.1.3 the Supplier shall ensure that all technical information (including computer programmes and programming information) arising out of or deriving from the Contract is held in strict confidence except for any such information which becomes public knowledge other than by breach of the Contract.

9. INDEMNITY

9.1 The Supplier shall keep the University indemnified against all Losses (including but not limited to any direct loss of profit and loss of reputation (calculated on a full indemnity basis)) incurred by the University as a result of or in connection with:

9.1.1 any claim made against the University for actual or alleged infringement of a third party's intellectual property rights arising out of, or in connection with, the manufacture, supply or use of the Goods, or receipt, use or performance of the Services (an "**IPR Claim**");

9.1.2 any claim or proceedings arising from any breach of the Supplier's obligations under Clause 14 (*Protection of Personal Data*);

9.1.3 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 the Services (as applicable), to the extent that the defects in the Goods and/or the Services (as applicable) are attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors; and

9.1.4 any claim made against the University by a third party arising out of or in connection with the supply of the Goods and/or performance of the Services, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Contract by the Supplier, its employees, agents or subcontractors.

9.2 If an IPR Claim is made or is reasonably likely to be made, the Supplier shall, at the University's option:

9.2.1 procure for the University the right to continue using and possessing the relevant Goods and/or receiving the Services; and/or

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9.2.2 modify or replace the infringing part of any Goods and/or Deliverables so as to avoid the infringement or alleged infringement, provided the Goods remain in material conformance to their Specification and provided that the modified or replaced deliverables are substantially similar (in all material respects) to the Deliverables.

9.3 This Clause 9 shall survive termination of the Contract.

10. LIABILITY

10.1 Nothing in the Contract shall limit or exclude the liability of the Supplier under Clause 9.1 or the liability of either Party for death or personal injury resulting from negligence, fraud or fraudulent misrepresentation or for any other matters which cannot be excluded or limited by law.

10.2 Without prejudice to Clause 10.1, the University shall not be liable to the Supplier, whether in contract, tort (including negligence) or restitution, or for breach of statutory duty or misrepresentation, or otherwise, for loss of anticipated profits, loss of revenue, loss of data, loss of goodwill, or for any special, indirect or consequential damage or any special indirect or consequential loss suffered by the Supplier that arises under or in connection with the Contract.

10.3 Without prejudice to Clause 10.1 or Clause 10.2:

10.3.1 the University's total liability arising under or in connection with the Contract, whether arising in contract, tort (including negligence) or restitution, or for breach of statutory duty or misrepresentation, or otherwise, shall be limited to twenty five percent (25%) of the total Charges (but for the avoidance of doubt this limitation shall not affect the University's obligation to pay properly invoiced sums in accordance with Clause 4); and

10.3.2 the Supplier's total liability arising under or in connection with the Contract, whether arising in contract, tort (including negligence) or restitution, or for breach of statutory duty or misrepresentation, or otherwise, shall be limited to the higher of the total Charges and the level of insurance that the Supplier is required to obtain for such loss in accordance with the provisions of Clause 11.1.

11. INSURANCE

11.1 During the term of the Contract and for a period of six (6) years thereafter, the Supplier shall:

11.1.1 maintain in force, with a reputable insurance company, professional indemnity insurance, product liability insurance and public liability insurance in the following amounts:

- (a) public liability insurance – £10,000,000;
- (b) professional indemnity insurance - £5,000,000; and
- (c) product liability insurance - £5,000,000; and

11.1.2 on the University's request, produce both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance.

11.2 The Supplier shall:

11.2.1 do nothing to invalidate any insurance policy or to prejudice the University's entitlement under it; and

11.2.2 notify the University if any policy is (or will be) cancelled or its terms are (or will be) subject to any material change.

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- 11.3 The Supplier's liabilities under any term of the Contract or otherwise shall not be deemed to be released or limited by the Supplier taking out the insurance policies referred to in Clause 11.1.
12. **INADEQUACY OF DAMAGES**
- 12.1 Without prejudice to any other rights or remedies that the University may have, the Supplier acknowledges and agrees that damages alone would not be an adequate remedy for any breach of the terms of the Contract by the Supplier. Accordingly, the University shall be entitled to the remedies of injunction, specific performance or other equitable relief for any threatened or actual breach of the terms of the Contract.
- 12.2 The University's rights under the Contract are in addition to its rights and remedies implied by statute and common law.
13. **CONFIDENTIALITY**
- 13.1 Except to the extent set out in this clause or where disclosure is expressly permitted elsewhere in this Contract, each Party shall:
- 13.1.1 treat the other Party's Confidential Information as confidential and safeguard it accordingly; and
- 13.1.2 not disclose the other Party's Confidential Information to any other person without the owner's prior written consent.
- 13.2 Clause 13.1 shall not apply to the extent that such disclosure is a requirement of law placed upon the Party making the disclosure, including any requirements for disclosure under the Freedom of Information Legislation pursuant to Clause 15.
- 13.3 Notwithstanding clause 13.1, each Party shall be entitled to disclose Confidential Information of the other Party;
- 13.3.1 to those of its employees, agents and subcontractors who need to know it for the purpose of discharging the receiving Party's obligations under the Contract, and shall ensure that such employees, agents and subcontractors comply with the obligations set out in this Clause as though they were a Party to the Contract;
- 13.3.2 to their respective insurers or legal advisers (in the case of legal advisers for the purposes of any actual or threatened dispute between the Parties); and/or
- 13.3.3 to a third party to the extent that this is required, by any court of competent jurisdiction, or by a governmental or regulatory authority or a professional body of which the Party wishing to make the disclosure or its personnel are members and which is relevant to the Goods and/or Services, or where there is a legal right, duty or requirement to disclose, provided that (and without breaching any legal or regulatory requirement) where reasonably practicable not less than two (2) Business Days' notice in writing is first given to the other Party.
- 13.4 The Supplier shall procure that the Supplier's Team:
- 13.4.1 do not use or disclose any Confidential Information other than as provided in Clause 13.3; and
- 13.4.2 are contractually bound to it by obligations of confidentiality no less onerous than in this Clause 13. The Supplier shall be primarily liable for any breach of confidentiality by any such members of the Supplier's Team.

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14. PROTECTION OF PERSONAL DATA

- 14.1 The Parties shall each Process the University Data. The Parties acknowledge that the factual arrangement between them dictates the classification of each Party in respect of the Data Protection Legislation and anticipate that each Party shall act as a Controller. To the extent that either Party shall Process Personal Data, the Parties shall comply with their respective obligations under the Data Protection Legislation and nothing within this Agreement shall be deemed to release the Parties of their responsibilities or liabilities under the Data Protection Legislation.
- 14.2 The Parties each acknowledge and agree that they may need to Process Personal Data relating to each Party's representatives (in their respective capacities as Controllers) in order to (as appropriate): (a) administer and provide the Goods or Services; (b) request and receive the Goods or Services; (c) compile, dispatch and manage the payment of invoices relating to the Goods or Services; (d) manage the Agreement and resolve any disputes relating to it; (e) respond and/or raise general queries relating to the Goods or Services; and (f) comply with their respective regulatory obligations.
- 14.3 Each Party shall Process such Personal Data relating to each Party's representatives for the purposes set out in Clause 14.2 in accordance with their respective privacy policies. The Parties acknowledge that they may be required to share Personal Data with their affiliates, group companies and other relevant parties, within or outside of the country of origin, in order to carry out the activities listed in Clause 14.2, and in doing so each Party will ensure that the sharing and use of this Personal Data complies with applicable Data Protection Legislation.
- 14.4 The Supplier shall not make (nor instruct or permit a third party to make) a Data Transfer without the prior written consent of the University.
- 14.5 The Supplier shall be permitted to appoint a Processor to Process University Data, provided always that:
- (a) the Supplier undertakes thorough due diligence on the proposed Processor, including a risk assessment of the information governance-related practices and processes;
 - (b) the contract with any Processor shall meet all requirements of Data Protection Legislation and shall include all matters stipulated in Article 28 of the UK GDPR; and
 - (c) the Supplier shall remain primarily liable to the University for the acts, errors and omissions of any Processor to whom it discloses University Data, and shall be responsible to the University for the acts, errors and omissions of such Processor as if they were Supplier's own acts, errors and omissions to the extent that Supplier would be liable to the University under the Contract for those acts, errors and omissions.
- 14.6 The Supplier shall notify the University promptly (and in any event within forty-eight (48) hours) following its receipt of any Data Subject Request or ICO Correspondence relating to University Data and shall provide the University with all reasonable co-operation and assistance required by the University in relation to any such Data Subject Request or ICO Correspondence.
- 14.7 The Supplier shall notify the University promptly (and in any event within twenty-four (24) hours) upon becoming aware of any actual or suspected, threatened or 'near miss' Personal Data Breach, and shall implement any measures necessary to restore the security of compromised University Data and assist the University to make any notifications to the ICO and affected Data Subjects.

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15. FREEDOM OF INFORMATION

- 15.1 The Supplier acknowledges that the University may be required under the Freedom of Information Legislation to disclose information (including commercially sensitive information) without consulting or obtaining consent from the Supplier. The University shall take reasonable steps to notify the Supplier of a request for information to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in the Contract) the University shall be responsible for determining in its absolute discretion whether any commercially sensitive information and/or any other information is exempt from disclosure in accordance with the Freedom of Information Legislation.
- 15.2 The Supplier acknowledges that the University is subject to the Freedom of Information Legislation and shall assist and co-operate with the University (at the Supplier's expense) to enable the University to comply with its obligations under the Freedom of Information Legislation.
- 15.3 The Supplier shall and shall procure that its sub-contractors shall:
- 15.3.1 transfer a request for information to the University as soon as practicable after receipt and in any event within three (3) days of receiving such request for information;
 - 15.3.2 provide the University with a copy of all information requested which is in its possession or power in the form that the University requires within seven days (or such other period as the University may specify) of the University requesting that information; and
 - 15.3.3 provide all necessary assistance as reasonably requested by the University to enable the University to respond to a request for information within the time for compliance set out in the Freedom of Information Legislation.
- 15.4 The Supplier shall ensure that all information produced in the course of the Contract or relating to the Contract is retained for disclosure and shall permit the University to inspect such records as requested from time to time.
- 15.5 This Clause 15 shall survive termination of the Contract.

16. ENVIRONMENTAL REQUIREMENTS

- 16.1 The Supplier shall not use any materials which contain CFCs (chlorofluorocarbons), halons and any other environmentally damaging substances.
- 16.2 The Supplier shall, when working on the Premises, perform its obligations under the Contract in accordance with the Environmental Policy.
- 16.3 The Supplier shall comply with all other "Green Housekeeping" and energy conservation requirements in the Environmental Policy and other further related documents provided by the University.
- 16.4 The Supplier shall take measures to ensure compliance with the Environmental Protection Act 1990, Duty of Care Regulations associated with waste arising and any other acts, orders or regulations relating to the environment.
- 16.5 The Supplier shall take all reasonable steps to ensure that the Supplier's Team do not unlawfully discriminate within the meaning and scope of the above mentioned enactments.

17. EQUALITY

- 17.1 The Supplier shall, and shall procure that the Supplier's Team shall:

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- 17.1.1 perform its obligations under the Contract (including those in relation to the Services) in accordance with:
- (a) all applicable equality law (whether in relation to race, sex, gender reassignment, age, disability, sexual orientation, religion or belief, pregnancy, maternity or otherwise);
 - (b) the University's equality and diversity policy as updated by the University from time to time; and
 - (c) any other requirements and instructions which the University reasonably imposes in connection with any equality obligations imposed on the University at any time under applicable equality law; and
- 17.1.2 take all necessary steps, and inform the University of the steps taken, to prevent unlawful discrimination designated as such by any court or tribunal, or the Equality and Human Rights Commission or (any successor organisation).

17.2 Without prejudice to any other rights and remedies accruing to the University under the Contract, in the event that the Supplier and/or any member of the Supplier's Team, fails to comply with its obligations pursuant to Clause 17.1, the University shall have the right to:

- 17.2.1 terminate the Contract forthwith on written notice to the Supplier, without liability of any kind whatsoever;
- 17.2.2 proceed with the fulfilment of the Contract, in which case the Supplier and the Supplier's Team must comply with any measures specified by the University which the University deems, at the University's sole and absolute discretion, to be appropriate and necessary to ensure compliance with Clause 17.1. Such measures to be undertaken to achieve compliance shall be undertaken at the Supplier's risk and expense, and, unless otherwise agreed in writing by the University before the measures are taken, without charge to the University; and/or
- 17.2.3 require that the relevant members of the Supplier's Team is replaced (at no cost to the University) with another member acceptable to the University.

18. GIFTS, INDUCEMENTS AND REWARDS

18.1 The Supplier shall:

- 18.1.1 comply with all applicable laws, statutes, regulations and codes relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 ("**Relevant Requirements**");
- 18.1.2 not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;
- 18.1.3 comply with the Ethics and Anti-bribery Policy;
- 18.1.4 have and shall maintain in place throughout the term of the Contract its own policies and procedures, including adequate procedures under the Bribery Act 2010, to ensure compliance with the Relevant Requirements, the Ethics and Anti-bribery Policy and will enforce them where appropriate;

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- 18.1.5 promptly report to the University any request or demand for any undue financial or other advantage of any kind received by the Supplier in connection with the performance of the Contract;
- 18.1.6 immediately notify the University (in writing) if a foreign public official becomes an officer or employee of the Supplier, or acquires a direct or indirect interest in the Supplier, and the Supplier warrants that it has no foreign public officials as direct or indirect owners, officers or employees at the Commencement Date; and
- 18.1.7 on request, certify to the University in writing signed by an officer of the Supplier, compliance with this Clause 18 by the Supplier. The Supplier shall provide such supporting evidence of compliance as the University may reasonably request.
- 18.2 The Supplier shall ensure that any person associated with the Supplier who is performing services in connection with the Contract does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on the Supplier in this Clause 18 ("**Relevant Terms**"). The Supplier shall be responsible for the observance and performance by such persons of the Relevant Terms, and shall be directly liable to the University for any breach by such persons of any of the Relevant Terms.
- 18.3 The Supplier shall not offer, give or agree to give to any person employed by the University any gift, consideration or reward, other than items of small intrinsic value for advertisement, on the attainment or execution of the Contract.
19. **ANTI-SLAVERY**
- 19.1 The Supplier undertakes, warrants and represents that:
- 19.1.1 neither the Supplier nor any of its officers, employees, agents or subcontractors has:
- (a) committed an offence under the Modern Slavery Act 2015 (a "**MSA Offence**"); or
 - (b) been notified that it is subject to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015; or
 - (c) is aware of any circumstances within its supply chain that could give rise to an investigation relating to an alleged MSA Offence or prosecution under the Modern Slavery Act 2015;
- 19.1.2 it shall comply with the Modern Slavery Act 2015 and the Modern Slavery Policy;
- 19.1.3 it shall notify the University immediately in writing if it becomes aware or has reason to believe that it, or any of its officers, employees, agents or subcontractors have breached or potentially breached any of the Supplier's obligations under Clause 19.1. Such notice to set out full details of the circumstances concerning the breach or potential breach of the Supplier's obligations.
- 19.2 Any breach of Clause 19.1 by the Supplier shall be deemed a material breach of the Contract incapable of remedy and shall entitle the University to terminate the Contract with immediate effect.
20. **ANTI-FACILITATION OF TAXATION**
- 20.1 The Supplier shall:
- 20.1.1 not engage in any activity, practice or conduct which would constitute either:

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- (a) a UK tax evasion facilitation offence under section 45(5) of the Criminal Finances Act 2017; or
 - (b) a foreign tax evasion facilitation offence under section 46(6) of the Criminal Finances Act 2017;
 - 20.1.2 have and shall maintain in place throughout the term of the Contract such policies and procedures as are both reasonable to prevent the facilitation of tax evasion by another person (including without limitation employees of the Supplier.) and to ensure compliance with Clause 20.1.1;
 - 20.1.3 promptly report to the University any request or demand from a third party to facilitate the evasion of tax within the meaning of Part 3 of the Criminal Finances Act 2017;
 - 20.1.4 within three months of the date of the Contract, and annually thereafter, certify to the University in writing signed by an officer of the Supplier, compliance with this Clause 20 by the Supplier and all persons associated with it under Clause 20.2. The Supplier shall provide such supporting evidence of compliance as the University may reasonably request.
- 20.2 The Supplier shall ensure that any person associated with the Supplier who is performing services and/or providing goods in connection with the Contract does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on the Supplier in this Clause 20 ("**Relevant Terms**"). The Supplier shall be responsible for the observance and performance by such persons of the Relevant Terms, and shall be directly liable to the University for any breach by such persons of any of the Relevant Terms.
- 20.3 Any breach of this Clause 20 shall be deemed a material breach of the Contract incapable of remedy and shall entitle the University to terminate the Contract with immediate effect.
- 20.4 For the purposes of this Clause 20, the meaning of reasonable prevention procedure shall be determined in accordance with any guidance issued under section 47 of the Criminal Finances Act 2017 and a person associated with the Supplier includes but is not limited to any subcontractor of the Supplier.
21. **DISPUTE RESOLUTION**
- 21.1 Without prejudice to Clause 4.7, the Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Contract and such efforts shall involve the escalation of the dispute to an appropriately senior representative of each Party.
- 21.2 If the Parties are unable to resolve the dispute within 28 days of being escalated in accordance with Clause 21.1, the parties will attempt to settle the dispute by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, within 14 days of notice of the dispute, the mediator will be nominated by CEDR. To initiate the mediation a Party must give notice in writing ("**ADR Notice**") to the other Party to the dispute requesting a mediation. A copy of the request should be sent to CEDR. Unless otherwise agreed, the mediation will start not later than 28 days after the date of the ADR Notice.
- 21.3 The commencement of mediation shall not prevent the parties seeking an injunction in relation to the dispute.
- 21.4 If the dispute is not resolved within 60 days after service of the ADR Notice, or either Party fails to participate or to continue to participate in the mediation before the expiration of the said period of 60 days, or the mediation terminates before the expiration of the said period of 60 days, either Party shall be entitled to issue proceedings.

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22. ANNOUNCEMENTS

22.1 Notwithstanding any other provision of these Conditions, the Supplier shall not make any announcement relating to the Contract or its subject matter or its appointment hereunder except to the extent required by law or by any governmental or regulatory authority (and then subject to the notification obligations in Clause 13.3.3) without the prior written agreement of the University.

23. GENERAL

23.1 Entire Agreement

23.1.1 The Contract constitutes the entire agreement and understanding between the Parties in respect of the matters dealt with in it and supersedes any previous agreement between the Parties relating to such matters notwithstanding the terms of any previous agreement or arrangement expressed to survive termination.

23.1.2 Each of the Parties represents and agrees that in entering the Contract it does not rely on, and will have no remedy in respect of, any statement, representation, warranty or understanding (whether negligently or innocently made) of any person (whether Party to the Contract or not) other than as expressly set out in the Contract.

23.2 Force Majeure

The University reserves the right to defer the date for performance of, or payment for, the Services, or to terminate the Contract, if it is prevented from, or delayed in, carrying on its business by act of God including but not limited to fire, flood, earthquake, windstorm or other natural disaster; epidemic, pandemic or other civil emergency; act of any sovereign including but not limited to war, invasion, act of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power or confiscation, nationalisation, requisition, destruction or damage to property by or under the order of any government or public or local authority or imposition of government sanction embargo or similar action; law, judgment, order, decree, embargo, blockade, labour dispute including but not limited to strike, lockout or boycott; interruption or failure of utility service including but not limited to electric power, gas, water or telephone service; failure of the transportation of any personnel equipment, machinery supply or material required by the University for performance of the Contract; breach of Contract by any essential personnel; any other matter or cause beyond the control of the University.

23.3 Assignment and other Dealings

23.3.1 The University may at any time assign, transfer, mortgage, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract, provided that the University gives prior written notice to the Supplier.

23.3.2 The Supplier may not assign, transfer, mortgage, charge, declare a trust over or deal in any other manner with all or any of its rights or obligations under the Contract without the prior written consent of the University. The Supplier may only subcontract its obligations in accordance with Clause 14.5.

23.3.3 The Supplier will be responsible for all acts and omissions of its sub-contractors (including without limitation any sub-sub-contractors) as though they were its own.

23.3.4 Notwithstanding Clause 13, if the University is assigning any or all of its rights under the Contract it may disclose to a proposed assignee any information in its possession that relates to the Contract or its subject matter, the negotiations relating to it and the Supplier which it is reasonably necessary to disclose for the purposes of the proposed assignment,

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provided that no disclosure pursuant to this Clause 23.3 shall be made until notice of the identity of the proposed assignee has been given to the Supplier.

23.4 Notices

23.4.1 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 Clause, and shall be delivered personally, or sent by pre-paid first class post or other next Business Day delivery service, commercial courier, or e-mail.

23.4.2 A notice or other communication shall be deemed to have been received: if delivered personally, when left at the address set out in the Form of Contract for the respective Party; if sent by pre-paid first class post or other next Business 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; or, if sent by e-mail, one business day after transmission.

23.4.3 The provisions of this Clause shall not apply to the service of any proceedings or other documents in any legal action.

23.5 Severance

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

23.6 Waiver

A waiver of any right or remedy under the Contract or law is only effective if given in writing and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a Party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

23.7 Third Parties

A person who is not a Party to the Contract will have no right under the Contract (Rights of Third Parties) Act 1999 to enforce any of its terms.

23.8 No Partnership or Agency

Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between the Parties, nor constitute either Party the agent of the other for any purpose. Neither Party shall have authority to act as agent for, or to bind, the other Party in any way.

23.9 Further Assurance

Each Party to the Contract shall at the request and expense of the other or any of them execute and do any deeds and other things reasonably necessary to carry out the provisions of the Contract or to make it easier to enforce.

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23.10 Variations to the Contract

Except as set out in these Conditions, no variation of the Contract, including the introduction of any additional terms and conditions, shall be effective unless it is agreed in writing and signed by both Parties.

23.11 Time of the Essence

Except as regards to payment of sums due, time is of the essence for the performance of the Supplier's obligations under the Contract, both as regards times, dates and periods specified in the Contract and as to any times, dates or periods that may by agreement in writing between the Parties be substituted for any of them.

23.12 Governing Law and Jurisdiction

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

23.12.2 Each Party irrevocably agrees, for the sole benefit of the University that, subject as provided below, the courts of England and Wales shall have exclusive jurisdiction over any dispute or claim arising out of or in connection with the Contract or its subject matter or formation (including non-contractual disputes or claims). Nothing in this Clause shall limit the right of the University to take proceedings against the Supplier in any other court of competent jurisdiction, nor shall the taking of proceedings in any one or more jurisdictions preclude the taking of proceedings in any other jurisdictions, whether concurrently or not, to the extent permitted by the law of such other jurisdiction.

SCHEDULE 1

DATA PROTECTION PARTICULARS – Not used

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SCHEDULE 2

TERMS APPLYING TO THE SUPPLY OF GOODS

1. INCORPORATION

The provisions set out in this Schedule shall apply to the supply of the Goods, in addition to those set out in main body of these Conditions.

2. SUPPLY OF GOODS

2.1 The Supplier shall supply the Goods to the University in accordance with the Specification and the terms of the Contract.

2.2 The Supplier shall ensure (and it shall be a condition of the Contract that) the Goods (and any delivery, Installation or connected services so far as applicable) shall:

2.2.1 correspond with their description and any applicable Specification including the requirements of the ITT and Tender (as applicable);

2.2.2 comply with the express terms of the Contract and any implied conditions, warranties and terms contained in the Sale of Goods Act 1979, and/or the Supply of Goods and Services Act 1982;

2.2.3 be new (unless otherwise specified by the University), 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;

2.2.4 not infringe the Intellectual Property Rights or other rights of any third party;

2.2.5 comply with all applicable statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods (including any specific requirements as may be set out in the Specification) and provide all such reasonable assistance to the University to ensure that the University is not in breach of any such requirements and laws in relation to the Goods (including, without limitation, the Environmental Protection Act 1990 and the Waste Electrical Equipment Directive); and

2.2.6 subject to paragraph 7.2.5, be Installed and ready for the University to use as it anticipated as soon as possible following the Delivery Date.

3. WARRANTY

3.1 Without prejudice to the University's other rights and remedies in the Contract, the Supplier warrants that the Goods shall be free from defects in design, materials and workmanship and remain so for 12 months after the Delivery Date or 12 months after Acceptance (whichever shall be the later) ("**Warranty**"). If the Goods are unavailable to the University due to any breach of this Warranty (or any other terms of the Contract) the period of the Warranty shall be extended by the period of such unavailability.

3.2 The Supplier shall, without limiting the University's other rights or remedies, pay the University and/or be responsible for (as applicable) all costs arising from any breach of the Warranty, including any additional parts, labour and/or transportation costs arising as a result.

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3.3 The Supplier shall comply with any response times for repairs to the Goods as notified in writing by the University and in the event of any failure by the Supplier to do so the University shall (without prejudice to its other rights and remedies) be entitled to the remedies set out paragraph 7.1.2.

3.4 For the avoidance of doubt, any alterations to, or attachments made to, the Goods by the University shall not invalidate the Warranty provided that the Supplier gives its prior consent.

4. SPARE PARTS AND CONSUMABLE SUPPLIES

4.1 Where specified in the Specification, the Supplier shall continue to make available to the University for a period of at least seven years after the date of expiry or termination of the Contract the Goods and any Spares.

4.2 The University shall be free to negotiate the price of Spares following the expiry or termination of the Contract except that if the Parties cannot agree on a suitable price within 10 Business Days of commencing negotiations, the prices of the Spares shall not exceed the prices applicable to the Spares at the date of expiry or termination of the Contract subject to an increase or decrease of such price to reflect the fluctuation in the consumer prices index for the previous 12 months as at the date of subsequent supply. These Conditions shall apply to any Spares supplied to the University under this paragraph 4.

4.3 The University reserves the right to procure consumables to be used on or with the Goods from the Supplier or such other source as the University may deem appropriate. The Parties agree that the procurement of consumables from a third party shall not invalidate the University's rights and remedies under the Contract, provided that the consumables meet the minimum standards published by the Supplier or the manufacturer of the Goods (or where no such standards have been published, the standards generally accepted as being applicable to the consumables).

5. DELIVERY OF GOODS

5.1 The Supplier shall ensure that:

5.1.1 the Goods are properly packed and secured in such manner as to enable them to reach their destination in good condition; and

5.1.2 if the Goods are being delivered by instalments, the Supplier shall clearly indicate the outstanding balance of Goods remaining to be delivered. The Supplier shall not deliver the Goods in instalments without the University's prior written consent. Where it is agreed that the Goods are delivered by instalments, they may be invoiced and paid for separately. However, failure by the Supplier to deliver any one instalment on time or at all or any defect in an instalment shall entitle the University to the remedies set out paragraph 7.1.2 and 7.1.3.

5.2 The Supplier shall deliver the Goods on the Delivery Date and to the Delivery Location.

5.3 Delivery of the Goods shall be completed:

5.3.1 if the Goods are to be Installed, on the completion of Installation of the Goods at the Designated Area; or

5.3.2 if otherwise, on completion of unloading of the Goods at the Delivery Location.

6. TITLE AND RISK

6.1 Without prejudice to any right of rejection to which the University may be entitled, title to the Goods shall pass to the University upon completion of delivery in accordance with paragraph 5.3.

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- 6.2 Risk in the Goods shall pass to the University upon Acceptance of the Goods in accordance with paragraph 7.
- 6.3 Risk shall revert to the Supplier whenever the Goods are within its custody and control.
- 6.4 In the event of rejection of the Goods by the University, risk of loss of or damage to the Goods shall revert to the Supplier upon notification by the University to the Supplier of such rejection.

7. ACCEPTANCE AND DEFECTIVE GOODS

7.1 Non-Installed Goods

- 7.1.1 Subject to paragraph 7.2, the University shall not be deemed to have accepted any Goods until it has had a reasonable time to inspect them following delivery, or, in the case of a latent defect in the Goods, until a reasonable time after the latent defect has become apparent.
- 7.1.2 If any Goods delivered to the University do not comply with paragraph 2, or are otherwise not in conformity with the terms of the Contract, then, without limiting any other right or remedy that the University may have, the University may reject those Goods and:
- (a) require the Supplier to repair or replace the rejected Goods at the Supplier's risk and expense within five Business Days of being requested to do so; or
 - (b) require the Supplier to repay the price of the rejected Goods in full (whether or not the University has previously required the Supplier to repair or replace the rejected Goods); and
 - (c) claim damages for any other costs, expenses or losses resulting from the Supplier's delivery of Goods that are not in conformity with the terms of the Contract.
- 7.1.3 If the Supplier has delivered Goods that the University subsequently finds do not comply with the Contract (including, without limitation, the undertakings set out in paragraph 2.2), 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 Goods:
- (a) to reject the Goods (in whole or in part) whether or not title has passed and to return them to the Supplier at the Supplier's own risk and expense (if practically capable of doing so);
 - (b) to terminate the Contract with immediate effect by giving written notice to the Supplier;
 - (c) to require the Supplier to repair or replace the rejected Goods in reasonable timescales directed by the University or, upon the University's request, to provide a full refund of the price of the rejected Goods;
 - (d) to refuse to accept any subsequent delivery of the Goods which the Supplier attempts to make;
 - (e) to claim damages for any additional costs, loss or expenses incurred by the University arising from the Supplier's delivery of Goods that are not in conformity with the Contract.

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- 7.1.4 The Universities rights and remedies under paragraph 7.1.2 are in addition to the rights and remedies available to it in respect of the statutory conditions relating to description, quality, fitness for purpose and correspondence with sample implied into the Contract by the Sale of Goods Act 1979.
- 7.1.5 These Conditions shall apply to any repaired or replacement Goods supplied by the Supplier.
- 7.1.6 If the Supplier fails to promptly repair or replace rejected Goods in accordance with paragraph 7.1.2(a) or 7.1.3(c), the University may, without affecting its rights under paragraph 7.1.2(c) or 7.1.3(e) respectively, obtain substitute goods from a third party supplier, or have the rejected Goods repaired by a third party, and the Supplier shall reimburse the University for the costs it incurs in doing so.

7.2 Installed Goods

- 7.2.1 For Goods that are to be Installed, Acceptance Tests shall take place after Installation of the Goods. The objective of the Acceptance Tests is to test compliance of the Goods with the Specification (and such other requirements as may be agreed between the Parties).
- 7.2.2 Within 10 Business Days of signing the Contract, the Supplier shall provide all such support and information which may be required by the University to enable the University to conduct Acceptance Tests.
- 7.2.3 Acceptance of the Goods shall occur when the Goods have passed the Acceptance Tests to the satisfaction of the University. As soon as reasonably practicable after the Goods have passed the Acceptance Tests, the University shall confirm Acceptance in writing to the Supplier.
- 7.2.4 In the event that any Acceptance Tests are not passed, the defects that cause the relevant tests to be failed shall be documented by the University and presented to the Supplier for discussion as to how the Supplier will rectify such defects.
- 7.2.5 The Supplier shall remedy all defects promptly in order to ensure that the Goods pass the Acceptance Tests on a retest and so that the Goods are Accepted as soon as possible after the Delivery Date but in any event no later than the Long Stop Completion Date.
- 7.2.6 If such retest(s) demonstrates that the Goods are still not in accordance with the Specification (or such other requirements as may have been agreed between the Parties in writing), the University may, by written notice to the Supplier, elect at its sole option:
- (a) to fix (without prejudice to its other rights and remedies) a new date for carrying out further tests on the Goods on the same terms and conditions as the retest (except that all reasonable costs which the University may incur as a result of carrying out such tests shall be reimbursed by the Supplier) which shall not exceed the Long Stop Completion Date. If the Goods fail such further tests, the University may elect to proceed under either paragraph 7.2.6(b) or paragraph 7.2.6(c); or
 - (b) to accept the Goods subject to a reduction of the price of the Goods, such reduction to be a mutually agreed reasonable amount, taking into account the circumstances. In the absence of written agreement as to such reduction within 14 days of the date of the notice given by the University in accordance with this paragraph 7.2.6, the University shall be entitled to reject the Goods in accordance with paragraph 7.2.6(c); or

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- (c) to reject the Goods as not being in conformity with the Contract, in which event the Contract shall (without prejudice to the University's other rights and remedies) automatically terminate.

7.2.7 For the avoidance of doubt, any or all of paragraph 7.2.6(a), 7.2.6(b) and 7.2.6(c) may be used at the University's sole discretion and do not demonstrate an escalation process to which the University must adhere. Further, such provisions are not the sole and exclusive remedy of the University in such instances.

8. INSTALLATION OF GOODS

8.1 This paragraph applies if the Supplier is carrying out Installation.

8.2 Unless otherwise agreed by the parties in writing, the Supplier shall be required to undertake a visit to the Premises and shall:

8.2.1 issue an Installation Report detailing work to be carried out to prepare the Premises for delivery and/or Installation of the Goods. Such work shall not affect the Long Stop Completion Date. If the Supplier does not notify the University of any such work or requirements, the Supplier shall be deemed to have accepted that the Premises are suitable and shall proceed with delivery and Installation of the Goods; or

8.2.2 issue a certificate, stating that the Premises (including, without limitation, the conditions, layout, design and any other factors) are suitable and acceptable for the delivery and/or Installation or use of the Goods and proceed with the delivery and Installation.

8.3 The Supplier shall ensure that the Installation Report contains adequate information in sufficient time to enable the University and/or the Supplier (as applicable) to prepare the Premises for Installation, and enable the University and/or the Supplier (as applicable) to provide:

8.3.1 a suitable supply of electric current and such other mains services as may reasonably be required;

8.3.2 all other required electrical and mechanical items and fittings, as specified by the Supplier in the Installation Report and as may agreed by the University;

8.3.3 such facilities and environmental conditions as specified by the Supplier in the Installation Report and as may agreed by the University; and

8.3.4 access to and from, the Premises and/or the Designated Area for delivery and Installation of the Goods to enable delivery, off-loading and placing in position of the Goods (including, without limitation, appropriate access and egress that enables the Supplier to deliver and remove any equipment, tooling or other facilities required for the purposes of undertaking and completing delivery and Installation of the Goods) which complies with any specific requirements set out in the Installation Report.

8.4 Where the Supplier has issued an Installation Report, the Supplier shall be required to re-examine the Premises upon the notification by the University that any work specified in the Installation Report has been completed (or upon the Supplier completing such work as applicable) and issue a certificate in accordance with paragraph 8.2.2, or apply the provisions of paragraph 8.2.1 as appropriate.

8.5 Both Parties shall work together and cooperate in good faith to ensure that the tasks identified in the Installation Report are undertaken efficiently and effectively to ensure that the Supplier is able to deliver the Goods on the Delivery Date and to ensure that Installation and testing is undertaken to ensure the Goods are Installed and ready to operate as soon as possible following the Delivery Date but, in any event, by no later than the Long Stop Completion Date. If any such work is unsuitable for

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the purpose of the Installation as the result of an act, omission or default of one Party, then any costs which the other Party can demonstrate as being reasonably and necessarily incurred as a direct result of that act, omission or default shall be recoverable from the defaulting Party.

- 8.6 The University shall provide the authorised members of the Supplier's Team at all reasonable times and with prior agreement, such access to the Premises, (but not necessarily sole access) as may be necessary for the inspection of the Premises and for the execution of delivery and Installation. Provided that the University shall always have the right to refuse to admit, or order the removal from, the Premises of any members of the Supplier's Team or any other individual or acting on behalf of the Supplier who, in the opinion of the University (which shall be final), is not a fit and proper person to be on the Premises. Action under this Clause shall not relieve the Supplier of any of its obligations under the Agreement.
- 8.7 The Supplier must take reasonable care to ensure that, in the execution of the delivery and Installation, they do not interfere with the operations of the University, its employees or any other contractor employed on the Premises.
- 8.8 The Supplier shall (and shall ensure that all members of the Supplier's Team shall), without prejudice to any other obligations to the University with regard to access to the Premises: -
- 8.8.1 comply at all times with its statutory obligations in respect of health and safety at work and the University's policies, procedures and/or reasonable instructions in respect of health and safety (or otherwise);
 - 8.8.2 comply with any policies, procedures and/or reasonable instructions of the University at all times when working on, the Premises (including, but not limited to matters, in relation to security, working in relation to others on Premises, access and egress);
 - 8.8.3 ensure that any Installation and/or other Services which require the attendance of the Supplier on the Premises be undertaken during the University's standard operational hours unless otherwise agreed by the University; and
 - 8.8.4 leave the Goods and the Premises in a clean and tidy condition at the end of each visit and upon completion of the Installation.
- 8.9 The work required of the Supplier to complete Installation shall be as set out in the Installation Plan. In the absence of any Installation Plan, the Supplier shall ensure that Installation shall be completed in accordance with any dates as may have been agreed by the parties and in any event so that the Long Stop Completion Date is achieved.
- 8.10 Without reducing the scope of any obligations imposed on the Supplier by the terms of the Agreement with regard to the standard of the Installation, the Supplier shall use good quality materials, techniques and standards to execute the Installation with the care, skill and diligence required in accordance with the best industry practice.

9. UNIVERSITY REMEDIES

- 9.1 If the Supplier fails to Install the Goods so that they are not accepted by the Long Stop Completion Date, the University shall, without limiting its other rights or remedies, have one or more of the following rights:
- 9.1.1 to terminate the Contract with immediate effect by giving written notice to the Supplier;
 - 9.1.2 to refuse to accept any subsequent delivery/Installation of the Goods which the Supplier attempts to make;

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- 9.1.3 to recover from the Supplier any additional costs incurred by the University in obtaining substitute Goods from a third party;
 - 9.1.4 where the University has paid in advance for Services that have not been provided by the Supplier and/or Goods which have not been delivered and Installed by the Supplier, to have such sums refunded by the Supplier; and
 - 9.1.5 to claim damages for any additional costs, loss or expenses incurred by the University which are directly attributable to the Supplier's failure to meet such dates.
- 9.2 The Contract shall extend to any substituted or remedial services and/or repaired or replacement goods supplied by the Supplier.

SCHEDULE 3

TERMS APPLYING TO THE SUPPLY OF SERVICES

1. INCORPORATION

The provisions set out in this Schedule shall apply to the supply of the Services, in addition to those set out in main body of these Conditions.

2. SERVICES

2.1 The Supplier shall provide the Services to the University in accordance with the Specification, and in accordance with the terms of the Contract.

2.2 The Supplier shall meet any performance dates for the Services set out in the Form of Contract or as otherwise notified to the Supplier by the University in writing.

2.3 In providing the Services, the Supplier shall (and it shall be a condition of the Agreement that the Supplier shall):

2.3.1 co-operate with the University in all matters relating to the Services, including the requirements of the ITT and Tender, and comply with all instructions of the University;

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

2.3.3 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;

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

2.3.5 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;

2.3.6 observe, and ensure that the Supplier's Team observe, all applicable law regarding health and safety, all health and safety rules and regulations and any other security requirements that apply at the Premises. The University reserves the right to refuse the Supplier's Team access to the Premises, which shall only be given to the extent necessary for the performance of the Services;

2.3.7 observe, and ensure that the Supplier's Team observe, the Health and Safety Policies whilst at the Premises;

2.3.8 notify the University as soon as it becomes aware of any health and safety hazards or issues which arise in relation to the Services. The Supplier shall instruct the Supplier's Team to adopt any necessary associated safety measures in order to manage any such material health and safety hazards;

2.3.9 hold all materials, goods, 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

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dispose or use the University Materials other than in accordance with the University's written instructions or authorisation;

2.3.10 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; and

2.3.11 ensure that, so far as is reasonably practicable, the performance of the Services does not hinder or interrupt the use or occupation of any room or place in the Premises by the University.

2.4 The Supplier shall be responsible for and bear all costs incurred in the performance of the Services including the costs of contracts which are entered into by the Supplier to enable it to perform the Services.

2.5 The Supplier will comply (and will procure that the Supplier's Team complies) with:

2.5.1 the Premises security policy;

2.5.2 the Premises health and safety policy; and

2.5.3 all other policies of the University which apply to persons permitted access to the Premises, in each case as the same are in force from time to time. Such policies will be made available to the Supplier upon request.

3. VARIATION OF SERVICES

3.1 The University may on giving not less than 14 days' notice to the Supplier, instruct the Supplier:

3.1.1 not to carry out the Services at all or on some of the areas in the Premises; and/or

3.1.2 to carry out the Services in additional areas in the Premises.

3.2 Where a direction is given in accordance with paragraph 3.1, both Parties will consider, agree and implement, as necessary, any variations to the Charges arising from the change and any other impact of the change on the Contract both Parties at all times acting reasonably and in good faith..

4. REMEDIES

4.1 If any Services are not supplied in accordance with, or the Supplier fails to comply with, any terms of the Contract, the University shall be entitled (without prejudice to any other right or remedy) to exercise any one or more of the following rights or remedies:

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

4.1.2 to refuse to accept the provision of any further Services by the Supplier and to require the immediate repayment by the Supplier of all sums previously paid by the University to the Supplier under the Contract; or

4.1.3 to require the Supplier, without charge to the University, to carry out such additional work as is necessary to correct the Supplier's failure; and

4.1.4 in any case, to claim such damages as it may have sustained in connection with the Supplier's breach (or breaches) of the Contract not otherwise covered by the provisions of this paragraph 5.

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5. SUPPLIER'S TEAM

5.1 At all times, the Supplier shall ensure that:

5.1.1 each of the Supplier's Team is suitably qualified, adequately trained and capable of providing the applicable Services in respect of which they are engaged;

5.1.2 there is the required number of the Supplier's Team to provide the Services properly;

5.1.3 only those people who are authorised by the Supplier are involved in providing the Services; and

5.1.4 all of the Supplier's Team comply with all of the University's policies including those that apply to persons who are allowed access to the Premises.

5.2 The University may refuse to grant access to, and remove, any of the Supplier's Team who do not comply with any such policies, or if they otherwise present a security threat.

5.3 The Supplier shall maintain up-to-date personnel records on the Supplier's Team engaged in the provision of the Services and, on request, provide reasonable information to the University on the Supplier's Team.

5.4 The Supplier shall use its best endeavours to ensure continuity of members of the Supplier's Team and to ensure that the turnover rate of its staff engaged in the provision or management of the Services is at least as good as the prevailing industry norm for similar services, locations and environments.

5.5 The Supplier shall take the steps reasonably required by the University to prevent unauthorised persons being admitted to the Premises. If the University gives the Supplier notice that any person is not entitled to be admitted to the Premises, the Supplier shall take all reasonable steps to prevent that person being admitted.

5.6 If and when instructed by the University, the Supplier shall give to persons who are or maybe at any time concerned with the Services or any part of them specifying the capacities in which they are so concerned and giving such other particulars as the University may reasonably require.

5.7 The decision of the University as to whether any person is to be admitted to the Premises and as to whether the Supplier has furnished the information or taken the steps required of him by this Condition shall be final and conclusive.

5.8 The Supplier shall bear the cost of any notice, instruction or decision of the University under this paragraph.

5.9 The Supplier shall ensure that all members of the Supplier's Team whilst performing the Services wear:

5.9.1 a uniform of a kind or design approved by the University; and

5.9.2 an appropriate form of identification.

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6. UNIVERSITY PREMISES

6.1 Inspection of Premises

Save as the University may otherwise direct, the Supplier is deemed to have inspected the Premises before submitting the Tender and to have made appropriate enquiries so as to be satisfied in relation to all matters connected with the performance of its obligations under the Contract.

6.2 Fire Precautions

6.2.1 The Supplier must comply with any directions given by the University in relation to fire safety at the Premises.

6.2.2 The Supplier must ensure that all flammable agents and equipment are kept away from naked flames and exposed electrical elements, are stored safely and are safely disposed of when no longer required or use.

7. UNIVERSITY'S OBLIGATIONS

7.1 The University shall:

7.1.1 provide the Supplier with reasonable access at reasonable times to the Premises for the purpose of providing the Services; and

7.1.2 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.

8. TRANSFER OF UNDERTAKINGS (TUPE)

8.1 The Parties acknowledge and agree that the Services are not currently carried out by the University or an Outgoing Service Provider and no employees are therefore currently engaged wholly or partly to provide the Services. It is therefore agreed that no past or present employees of the University or an Outgoing Service Provider shall be employed by the Supplier following the Commencement Date for the purposes of TUPE or otherwise.

8.2 The parties acknowledge and agree that where all or part of the Services cease to be provided by the Supplier for any reason and where all or part of the Services continue to be provided by the University and/or a New Supplier, there may be a relevant transfer of the Returning Employees to the University and/or the New Supplier for the purposes of TUPE. If there is such a transfer, the employment of the Returning Employees shall transfer to the University and/or the New Supplier in accordance with TUPE with effect from the Subsequent Transfer Date.

8.3 Save where the parties reasonably believe that there will be no relevant transfer for the purposes of TUPE, the parties shall co-operate in agreeing a list of Returning Employees prior to the Subsequent Transfer Date, and shall co-operate in seeking to ensure the orderly transfer of the Returning Employees to the University and/or the New Supplier.

8.4 The Supplier shall not later than six months prior to the expiry of the Contract (or, if earlier, within 30 days of notice being given of termination of the Contract) to the extent lawfully permitted provide the University with the following details:

8.4.1 a list of those personnel engaged in the Services (the "**Potential Returning Employees**");

8.4.2 job title, age, length of continuous services, current remuneration, benefits, and notice periods of the Potential Returning Employees;

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- 8.4.3 terms and conditions of employment of the Potential Returning Employees, including any particulars that the Supplier is obliged to give under section 1 of the Employment Rights Act 1996;
 - 8.4.4 any current disciplinary or grievance proceedings ongoing in respect of the Potential Returning Employees and any such proceedings in the preceding two years;
 - 8.4.5 any claims, current or which the Supplier has reasonable grounds to believe will be brought by the Potential Returning Employees or their representatives or which have been brought in the preceding two years;
 - 8.4.6 all benefit schemes or arrangements (whether contractual or not) applicable in respect of the Potential Returning Employees;
 - 8.4.7 information on any collective agreements which will have effect in relation to the Potential Returning Employees after the Subsequent Transfer Date pursuant to TUPE.
- 8.5 The Supplier shall provide updates of the details listed above at regular intervals to be specified by the University.
- 8.6 Within six months prior to the expiry of the Contract (or, if earlier, within 30 days of notice being given of termination of the Contract) the Supplier shall not make, propose or permit any changes to the terms and conditions of employment of any employees listed as Potential Returning Employees pursuant to paragraph 8.4.1.
- 8.7 The Supplier shall indemnify the University (both for itself and a New Supplier) against all Losses (including reasonable legal expenses) incurred by the University and/or a New Supplier in connection with or as a result of:
- 8.7.1 any claim or demand by any Returning Employee or a trade union or other body or person representing a Returning Employee (whether in contract, tort, under statute, pursuant to European law or otherwise) arising from any act, fault or omission of the Supplier on or before the Subsequent Transfer Date;
 - 8.7.2 any failure by the Supplier to comply with its obligations under regulations 13 and 14 of TUPE, or any award of compensation under regulation 15 of TUPE, save where such failure arises from the failure of the University and/or New Supplier to comply with its or their duties under regulation 13 of TUPE; and/or
 - 8.7.3 a claim by any person who transfers or alleges that they have transferred to the University or the New Supplier but whose name is not included in the list of Returning Employees.
- 8.8 If TUPE applies to transfer the employment of any person employed by the Supplier to the University or any New Supplier then if the University or such New Supplier shall serve a notice terminating the employment of such person within six months after the date of such transfer, the Supplier shall indemnify the University (for itself and a New Supplier) in respect of any statutory or contractual redundancy payment payable in respect of such person, and any compensation or damages which the University is obliged to pay to such person for unfair and/or wrongful dismissal or as a reasonable settlement of a claim for such compensation or damages.