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## **STANDARD CONDITIONS OF PURCHASE**

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## 1. DEFINITIONS AND INTERPRETATION

1.1 The following expressions, when used in these conditions of purchase (the “**Conditions**”), shall have the meanings given to them in this Clause 1.1:

“**Adequate Procedures**” has the meaning set out in section 7(2) of the Bribery Act 2010 and any guidance issued under section 9 of that Act;

“**Agreement**” means the agreement formed between the Supplier and the Purchaser upon the Supplier’s acceptance of the Order and governed by these Conditions;

“**Associated Person**” has the meaning set out in section 8 of the Bribery Act 2010;

“**Background Intellectual Property**” means Intellectual Property Rights existing prior to the date of the Agreement or generated other than in the course of providing the Services which: (a) the Supplier (or its licensors, as the case may be) makes available to the Purchaser in the course of providing the Services (whether as part of the Deliverables, or otherwise); or (b) which the Purchaser (or its licensors, as the case may be) makes available to the Supplier for the purposes of performing the Services;

“**Business Day**” means a day (other than a Saturday, Sunday or public holiday) when the University is open for business;

“**Commencement Date**” means the date on which the Order is accepted by the Supplier in accordance with these Conditions;

“**Confidential Information**” means any and all confidential information (however recorded, preserved or disclosed) disclosed in connection with the Order or the Agreement, where the information is: (a) clearly identified as “confidential” at the time of disclosure; or (b) ought reasonably to be considered confidential given the nature of the information or the circumstances of disclosure;

“**Deliverables**” means the products of the Services including (as applicable) all works of authorship, documents, reports, data, databases, software, programs, methods, methodologies, technical and commercial information, results, designs, illustrations, artwork, diagrams, graphics, music, audio visual recordings, sound recordings and any other subject matter or materials, in whatever form or medium, due to be delivered to the Purchaser under the Agreement, including those described and/or identified in the Service Specification;

“**Delivery Date**” means the date(s) for delivery of the Goods, as may be set out in the Order or the Order Requirements (if any);

“**Disclosing Party**” means a Party which discloses or makes available to the Receiving Party, directly or indirectly, Confidential Information;

“**EIR**” means the Environmental Information Regulations 2004;

“**FOI Legislation**” means the FOIA and the EIR;

**“FOIA”** means the Freedom of Information Act 2000;

**“Foreign Public Official”** has the meaning set out in section 6(5) and section 6(6) of the Bribery Act 2010;

**"Goods"** means any goods to be supplied by the Supplier pursuant to and in accordance with the terms of the Agreement;

**“Goods Specification”** means the specification for the Goods as may be set out in the Order or the Order Requirements (if any);

**“Indemnified Person”** has the meaning set out in Clause 14.1;

**"Information"** has the meaning set out in the FOIA and includes “environmental information” (as that term is defined in the EIR);

**"Intellectual Property Rights"** means any patents, rights to inventions, copyright and related rights, rights in designs, database rights, and all other intellectual property rights and know-how, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;

**"ITT"** means the Purchaser’s written invitation to tender for the Goods and Services (if any and as applicable);

**"Milestone(s)"** means the milestone event(s) specified, identified or referred to in the Order or the Order Requirements (if any), the satisfactory and successful completion of which (determined in the Purchaser’s reasonable discretion) will trigger payment of part or all (as the case may be) of the Price;

**"Order"** means the Purchaser's order for the supply of the Goods and/or the Services;

**“Order Representative”** means, as the case may be, the Supplier Order Representative and/or the Purchaser’s Order Representative;

**"Order Requirements"** means any additional requirements the Purchaser may have for an Order (beyond those contained in the Purchase Order, the ITT or these Conditions) as may be agreed in writing between the Parties and as will form part of the Agreement;

**“Party”** means a party to the Agreement, being the Supplier or the Purchaser and together the **“Parties”**;

**"Price"** means the price payable for the Goods and/or the Services to be supplied under the Agreement, as set out in the Purchase Order;

**“Purchaser”** means:

- (a) in the case of an Order placed by the University or any of its departments, the University; and
- (b) in the case of an Order placed by a University Subsidiary, such University Subsidiary;

**"Purchaser Information"** means information stored in any form, including digital form (e.g. data files stored on electronic or optical media), material form (e.g. on paper), as well as intangible information in the form of employee knowledge which is provided by the Purchaser to the Supplier in connection with the Agreement;

**"Purchase Order"** means an order in writing which: (a) states the Goods and/or the Services ordered; (b) states the price payable; and (c) incorporates these Conditions (to the extent applicable);

**"Purchaser's Order Representative"** means the person who shall take responsibility for the management of a particular Order on behalf of the Purchaser, as may be notified in writing to the Supplier;

**"Receiving Party"** means a Party which receives or obtains from the Disclosing Party, directly or indirectly, Confidential Information;

**"Relevant Requirements"** has the meaning set out in Clause 10.1.1;

**"Representatives"** means a Party's officers, employees, agents, subcontractors, advisers and (in the case of the Purchaser) students;

**"Request for Information"** has the meaning set out in Clause 6.2.1;

**"Service Level Agreement"** means the service level agreement as may be agreed between the Parties in writing and forming part of the Order Requirements (if any);

**"Service Specification"** means the specification for the Services as may be agreed between the Parties in writing and forming part of the Order Requirements (if any);

**"Services"** means any services to be supplied by the Supplier pursuant to and in accordance with the Agreement;

**"Supplier"** means the person who accepts the Order;

**"Supplier's Order Representative"** means the person who shall take responsibility for the management of a particular Order on behalf of the Supplier, as may be notified in writing to the Purchaser;

**"Tender"** means the Supplier's written response to the Purchaser's ITT;

**"Term"** means the duration of the Agreement, from the Commencement Date until both Parties' obligations under the Agreement have been performed (unless the Agreement is otherwise terminated in accordance with these Conditions or it is otherwise lawfully terminated);

**"Third Party Material"** has the meaning set out in Paragraph 8.6.3 of Schedule 1;

"**Timetable**" means the timetable for delivery of the Goods and/or Services, as may be agreed between the Parties in writing and forming part of the Order Requirements (if any);

"**TUPE**" means the Transfer of Undertakings (Protection of Employment) Regulations 2006;

"**University**" means The Chancellor Masters and Scholars of the University of Oxford, whose administrative offices are at Wellington Square, Oxford OX1 2JD;

"**University Premises**" means premises owned or controlled by the University or any University Subsidiary; and

"**University Subsidiary**" means any wholly owned subsidiary of the University.

1.2 In these Conditions:

1.2.1 the headings are used for convenience only and shall not affect their interpretation;

1.2.2 a reference to these "**Conditions**" shall include the Schedules and any other document incorporated by reference;

1.2.3 unless the context requires otherwise: (a) a reference to a "**Clause**" or "**Schedule**" is to a clause or schedule of these Conditions and a reference to a "**Paragraph**" is to a paragraph of a Schedule; (b) a reference to one gender shall include a reference to the other genders; (c) words imparting the singular shall include the plural and vice versa; and (d) words imparting the whole shall be treated as including a reference to any part of the same;

1.2.4 a reference to a "**person**" includes a natural person, corporate or unincorporated body (whether or not having separate legal personality and wherever incorporated or established) and that person's legal and personal representatives, successors and permitted assigns;

1.2.5 the words "**include**", "**including**" or "**in particular**" are deemed to have the words "**without limitation**" following them;

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

1.2.7 any obligation in these Conditions on a person not to do something includes an obligation not to agree to, allow, permit or acquiesce in that thing being done.

## **2. ORDERS**

- 2.1 The Order constitutes an offer by the Purchaser to purchase the Goods and/or the Services subject to these Conditions, which shall (subject to Clause 2.2) apply to the Agreement to the exclusion of all other terms and conditions (whether previously issued by the Supplier or appearing on any other documentation issued by the Supplier).
- 2.2 These Conditions do not apply to any Order accepted by the Supplier where that Order is placed by the Purchaser and accepted by the Supplier under a separate written and signed agreement.
- 2.3 An Order shall be accepted when the Supplier either expressly gives notice of acceptance or by implication when the Supplier fulfils the Order in whole or in part.
- 2.4 If the Goods and/or the Services are to be provided in instalments, the Agreement shall be treated as single and not severable; provided that failure to deliver any one instalment in accordance with the Agreement shall entitle the Purchaser to exercise the rights under Paragraph 12 of Schedule 1 for Services and/or Paragraph 7 of Schedule 2 for Goods (as applicable).
- 2.5 For the avoidance of doubt:
- 2.5.1 the terms of Schedule 1 shall apply to any Order for the supply of Services; and
  - 2.5.2 the terms of Schedule 2 shall apply to any Order for the supply of Goods.
- 2.6 In the event of, and only to the extent of, any conflict between these Conditions and any Schedule or other document stated to form part of the Agreement then:
- 2.6.1 except where expressly stated otherwise, these Conditions shall prevail over the provisions of any other document referred to in it (including, the Schedules, the ITT, the Tender and the Order Requirements);
  - 2.6.2 except where expressly stated otherwise, the Schedules shall prevail over the ITT, the Tender and the Order Requirements;
  - 2.6.3 the Order Requirements shall prevail over the ITT and the Tender (if any and as applicable); and
  - 2.6.4 the ITT shall prevail over the Tender (if any and as applicable).

## **3. PRICE AND PAYMENT – GENERAL**

- 3.1 The Price contained in the Order shall be fixed for the duration of the Term unless otherwise agreed in writing by the Purchaser or as may be revised in accordance with Clause 20.
- 3.2 Unless otherwise stated, the Price is stated exclusive of VAT.



- 3.3 The Purchaser shall pay each undisputed invoice which is properly due and submitted to it by the Supplier, within thirty (30) days of receipt of a correct tax invoice detailing the Goods and/or the Services and the applicable rate of VAT payable, to a bank account nominated in writing by the Supplier.
- 3.4 Time for payment shall not be of the essence of the Agreement, but if the Purchaser fails to pay any amount payable by it under the Agreement, the Supplier may charge the Purchaser interest on the overdue amount from the due date up to the date of actual payment, after as well as before judgment, at the rate of two per cent (2%) per annum above the base rate for the time being of Barclay's Bank plc. Such interest shall accrue on a daily basis and be compounded annually as at 31 December until payment is made, whether before or after any judgment. The Supplier shall be entitled to include any such interest payment on any subsequent invoice provided to the Purchaser in accordance with the Agreement.
- 3.5 Without prejudice to any other right or remedy, the Purchaser will be entitled to set off against the Price any sums owed to it by the Supplier.
- 3.6 If the Supplier enters into a permitted sub-contract in relation to any of the Supplier's obligations under this Agreement, the Supplier shall include a provision in such sub-contract which requires the Supplier to pay any undisputed invoice issued by the sub-contractor to the Supplier within a specified period not exceeding thirty (30) days of receipt of the invoice.

#### **4. CONFIDENTIALITY**

- 4.1 The Receiving Party shall use its reasonable endeavours to keep the Disclosing Party's Confidential Information confidential and, except with the prior written consent of the Disclosing Party, shall not use or disclose such Confidential Information unless permitted under this Clause 4.
- 4.2 The Receiving Party shall not use the Disclosing Party's Confidential Information except to the extent necessary to exercise its rights and perform its obligations under the Agreement.
- 4.3 The Receiving Party may disclose the Disclosing Party's Confidential Information only to those of its Representatives who have a need to know that Confidential Information for the purposes set out in Clause 4.2, provided that it informs those Representatives of the confidential nature of the Confidential Information and the obligations of these Conditions before disclosure. The Receiving Party shall at all times be responsible for those Representatives' compliance with the obligations set out in these Conditions.
- 4.4 These Conditions do not impose any obligation upon a Receiving Party with respect to Confidential Information that:
- 4.4.1 is known, or made available, to the Receiving Party on a non-confidential basis prior to its disclosure by the Disclosing Party under the Agreement;

- 4.4.2 is, or becomes, publicly known other than as a result of its disclosure by the Receiving Party in breach of these Conditions;
  - 4.4.3 is obtained by the Receiving Party from a third party in circumstances where the Receiving Party has no reason to believe that third party is bound by a duty of confidentiality to the Disclosing Party;
  - 4.4.4 was substantially and independently developed by the Receiving Party without knowledge of the Disclosing Party's Confidential Information; or
  - 4.4.5 is approved for release in writing by an authorised representative of the Disclosing Party.
- 4.5 The Receiving Party may disclose the Disclosing Party's Confidential Information to the extent such Confidential Information is specifically required to be disclosed by law, by any governmental or regulatory authority, or pursuant to the order of a court or other authority of competent jurisdiction; provided that (to the extent it is legally permitted to do so) it promptly notifies the Disclosing Party of this disclosure and, where possible, takes into account the reasonable requests of the Disclosing Party in relation to the content of such disclosure.
- 4.6 The Parties' obligations under this Clause 4 shall continue for a period of three (3) years from the date of termination or expiry of the Agreement.

## 5. DATA PROTECTION – GENERAL

Each Party agrees to comply with its obligations as set out in Schedule 3 (Data Protection) of this Agreement.

## 6. FREEDOM OF INFORMATION

- 6.1 The Supplier acknowledges that the Purchaser is subject to the requirements of the FOI Legislation and shall assist and cooperate with the Purchaser to enable the Purchaser to comply with its information disclosure obligations under the same.
- 6.2 The Supplier shall (and shall ensure that its Representatives shall):
- 6.2.1 transfer to the Purchaser any request for Information (a "**Request for Information**") as soon as practicable after receipt and in any event within two (2) Business Days of receiving a Request for Information;
  - 6.2.2 provide the Purchaser with a copy of all Information in its possession or power in the form that the Purchaser requires within five (5) Business Days (or such other period as the Purchaser may specify) of the Purchaser requesting that Information; and
  - 6.2.3 provide all necessary assistance as reasonably requested by the Purchaser to respond to a Request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the EIR.
- 6.3 The Purchaser shall be responsible for determining whether any Information:

6.3.1 is exempt from disclosure in accordance with the provisions of the FOIA or the EIR; and/or

6.3.2 is to be disclosed in response to a Request for Information.

6.4 If the Purchaser receives a Request for Information to disclose any of the Supplier's Confidential Information, it will notify and consult with the Supplier. The Supplier will respond within five (5) days of receiving such notice if the notice requests assistance in determining whether or not an exemption applies to the disclosure of the Confidential Information requested under the FOI Legislation.

## **7. INFORMATION SECURITY**

7.1 The Supplier shall preserve the confidentiality, integrity and availability of Purchaser Information and prevent the corruption or loss of Purchaser Information wherever Purchaser Information is accessed, stored or processed by the Supplier or any sub-contractor.

7.2 If the Supplier becomes, or is made, aware of any breach of data privacy or information security requirements, or of unauthorised access to Purchaser Information or associated systems, the Supplier shall immediately report the incident to the Purchaser's Order Representative and OxCERT ([oxcert@it.ox.ac.uk](mailto:oxcert@it.ox.ac.uk)).

## **8. ANTI-DISCRIMINATION**

8.1 The Supplier shall not unlawfully discriminate within the meaning and scope of any law, enactment, order, or regulation relating to discrimination (whether in age, race, gender, religion, disability, sexual orientation or otherwise) in employment.

8.2 The Supplier shall take all reasonable steps to secure the observance of Clause 8.1 by all its Representatives employed in the performance of the Agreement.

## **9. ANTI-FACILITATION OF TAX EVASION**

9.1 The Supplier shall:

9.1.1 not engage in any activity, practice or conduct which would constitute either:

- 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;

9.1.2 comply with the University's Anti-Facilitation of Tax Evasion Policy as the University may update them from time to time;

9.1.3 have and shall maintain in place throughout the term of this Agreement such policies and procedures as are both reasonable to prevent the facilitation of

tax evasion by another person (including without limitation employees of the Supplier) and to ensure compliance with clause 9.1.1;

9.1.4 notify the University in writing if it becomes aware of any breach of clause 9.1.1 or has reason to believe that it or any person associated with it has received a request or demand from a third party to facilitate the evasion of tax within the meaning of Part 3 of the Criminal Finances Act 2017, in connection with the performance of this Agreement;

9.1.5 within three (3) months of the date of this Agreement, and annually thereafter, certify to the University in writing signed by an officer of the Supplier, compliance with this clause 9 by the Supplier and all persons associated with it under clause 9.2. The Supplier shall provide such supporting evidence of compliance as the University may reasonably request.

9.2 The Supplier shall ensure that any person associated with the Supplier who is performing Services and providing Goods in connection with this Agreement does so only on the basis of a written contract which imposes on and secures from such person terms equivalent to those imposed on the Supplier in this clause 9 (**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.

9.3 Breach of this clause 9 shall be deemed a material breach under clause 12.111.1.

9.4 For the purposes of clause 9, 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.

## 10. ANTI-BRIBERY

10.1 The Supplier shall:

10.1.1 comply with all applicable laws relating to anti-bribery and anti-corruption (the "**Relevant Requirements**"), including the Bribery Act 2010, in connection with its conduct under the Agreement;

10.1.2 have and shall maintain in place throughout the Term its own policies and procedures, including Adequate Procedures under the Relevant Requirements, to ensure compliance with the Relevant Requirements and will enforce them where appropriate;

10.1.3 promptly report to the Purchaser any request or demand for any undue financial or other advantage of any kind received by it in connection with the Agreement; and

10.1.4 immediately notify the Purchaser 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. The Supplier warrants that it has no Foreign Public Officials as officers, employees or direct or indirect owners at the Commencement Date.

- 10.2 The Supplier shall ensure that any Associated Person who is involved in the performance of any obligations under the Agreement and/or the provision of support services does so only on the basis of a written agreement which imposes on and secures from such Associated Person terms equivalent to those imposed on the Supplier under this Clause 10. The Supplier shall be responsible for the observance and performance by such Associated Persons of such terms, and shall be liable to the Purchaser for any breach by such Associated Persons of any such terms.
- 10.3 The Parties acknowledge and agree that any breach of this Clause 10 (however trivial) shall be deemed to be an irremediable material breach of the Agreement for the purposes of Clause 12.1.

## **11. SUPPLIER'S REPRESENTATIONS AND WARRANTIES**

- 11.1 The Supplier represents and warrants to the Purchaser that:
- 11.1.1 (unless the Supplier is acting as a sole trader) it is a corporation or other entity duly organised, validly existing and in good standing under the laws of the jurisdiction in which it is incorporated or organised;
  - 11.1.2 it has full capacity and authority and all necessary consents to enter into and to perform its obligations under the Agreement;
  - 11.1.3 all information, statements and representations contained in any Tender are true, accurate, and not misleading; and
  - 11.1.4 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 Agreement.
- 11.2 The Supplier shall promptly notify the Purchaser 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 11.1 false or misleading.
- 11.3 The Supplier shall be responsible for obtaining all licences, authorisations, consents or permits required in relation to the performance of the Agreement.

## **12. TERMINATION**

- 12.1 The Purchaser may terminate the Agreement with immediate effect (or on such reasonable notice as it shall determine) upon giving written notice to the Supplier, if the Supplier commits a material or persistent breach of the Agreement and (in the case of a material breach which is capable of remedy) fails to remedy that breach within thirty (30) days of being notified in writing of the breach.
- 12.2 The Purchaser may terminate the Agreement if:

- 12.2.1 the Supplier suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts; or (being a company or limited liability partnership) is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986; or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of doing so, in either case within the meaning of section 268 of the Insolvency Act 1986; or (being a partnership) has any partner to whom any of the foregoing apply;
  - 12.2.2 the Supplier commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of the Supplier with one or more companies or the solvent reconstruction of the Supplier;
  - 12.2.3 a petition is filed, a notice is given, a resolution is passed, or an order is made (being a company, limited liability partnership or partnership) for or in connection with the winding up of the Supplier, other than (being a company) for the sole purpose of a scheme for the solvent amalgamation of the Supplier with one or more companies or the solvent reconstruction of the Supplier; or the Supplier (being an individual) is the subject of a bankruptcy petition or order;
  - 12.2.4 an application is made to court, or an order is made, for the appointment of an administrator, or if notice to appoint an administrator is given or if an administrator has been appointed, over the Supplier (being a company, limited liability partnership or partnership); or a person becomes entitled to appoint an administrative receiver (being a company) or a receiver over the assets of the Supplier, or an administrative receiver or a receiver is appointed over the assets of the Supplier;
  - 12.2.5 any event occurs, or proceeding is taken, with respect to the Supplier in any jurisdiction to which it is subject that has an effect equivalent to any of the events referred to in Clause 12.2.1 to Clause 12.2.4 (inclusive);
  - 12.2.6 the Supplier suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business; or (being an individual) dies, or by reason of illness or incapacity (whether mental or physical) is incapable of managing his or her own affairs or becomes a patient under any mental health legislation; or
  - 12.2.7 there is a change of control of the Supplier within the meaning of section 1124 of the Corporation Tax Act 2010.
- 12.3 The Purchaser may terminate the Agreement (in whole or in part) at any time and for any reason, on giving written notice to the Supplier.

### 13. CONSEQUENCES OF TERMINATION

13.1 On the termination or expiry of the Agreement for any reason, the Supplier shall as soon as is reasonably practicable, if and as the Purchaser may in its discretion elect:

13.1.1 destroy, delete or deliver to the Purchaser copies of all information, materials and data provided by the Purchaser to the Supplier for the purposes of performing the Agreement; and

13.1.2 destroy, delete or deliver to the Purchaser any or all Deliverables (if applicable) existing at the date of termination or expiry (whether or not completed). Title to such materials shall automatically pass to the Purchaser upon termination of the Agreement, who shall be entitled to enter the premises of the Supplier to take possession of them if the Purchaser deems it necessary.

13.2 In the event of termination of the Agreement by the Purchaser under Clause 12.3, either (as the case may be):

13.2.1 where payment has been made by the Purchaser for Services not yet performed and/or Goods not yet received, the Supplier shall repay to the Purchaser any unexpended balance from the sums paid to it after it has deducted all outstanding and unavoidable commitments which it has reasonably and properly incurred in respect of the provision of Goods and/or Services up to the date of such termination; or

13.2.2 where payment remains due, the Purchaser shall pay to the Supplier a sum to cover any Goods and/or Services provided, expenditure incurred and unavoidable commitments entered into by the Supplier in respect of the Goods and/or Services up to the date of such termination, provided that the total amount payable to the Supplier (in aggregate, including any prior instalments made prior to the point of termination) shall not exceed the total amount of the Price due for the relevant parts of those Goods and/or Services.

13.3 Any provision of these Conditions which either expressly or by implication is intended to come into, or continue in, effect on or after the termination or expiry of the Agreement shall continue in effect.

13.4 Termination or expiry of the Agreement, for any reason, shall not affect the accrued rights, obligations, liabilities or remedies of the Parties existing at the date of termination or expiry under the Agreement.

### 14. LIABILITY

14.1 The Supplier shall indemnify the Purchaser and its Representatives (each an “**Indemnified Person**”) from and against any and all direct claims, actions or demands, and any damages, costs, expenses and other liabilities (including court

costs and reasonable legal fees) awarded against, incurred or paid by such Indemnified Person in connection with:

- 14.1.1 any claim made against an Indemnified Person, to the extent that such claim arises out of or in connection with the provision of the Goods and/or the Services by the Supplier (or its Representatives); or
  - 14.1.2 a breach or negligent performance or failure or delay in performance of the Agreement by the Supplier (or its Representatives).
- 14.2 The provisions of this Clause 14 are intended to be enforceable by the persons referred to in it.

## **15. INSURANCE**

- 15.1 The Supplier shall have and maintain (at its own cost) such type and amounts of liability insurance with a reputable insurance company as may be sufficient to meet its liabilities in full under the Agreement.
- 15.2 The Supplier shall, upon the request of the Purchaser, provide the Purchaser with a copy of the foregoing policies of insurance, along with any amendments and revisions of the same.

## **16. DISPUTE RESOLUTION**

- 16.1 If a dispute arises out of or in connection with the Agreement (including non-contractual disputes) the Parties will, following a written request from one Party to the other, attempt in good faith to resolve the dispute:
  - 16.1.1 through discussions between the Parties' respective Order Representatives; failing which
  - 16.1.2 through discussions between the University's Director of Purchasing and the Supplier's Managing Director or equivalent (or their respective nominees).
- 16.2 In the event that any dispute arising out of or in connection with the Agreement (including non-contractual disputes) cannot be settled between the Parties at the meetings described in Clause 16.1 or within thirty (30) calendar days of receipt of the initial request, the Parties agree to attempt to settle it either (at the Purchaser's election):
  - 16.2.1 by mediation in accordance with the CEDR Model Mediation Procedure. Unless otherwise agreed between the parties, the mediator and place of mediation shall be nominated by CEDR Solve; or
  - 16.2.2 by arbitration under the Arbitration Rules of the International Chamber of Commerce, save that the Parties, notwithstanding anything in the rules of that forum, preserve their right to appeal or refer to the English Courts on questions of law. The Parties agree that:



- (a) the tribunal is to consist of one (1) arbitrator, who is to be a practising barrister appointed by the Parties jointly or, in the absence of agreement, the then Chairman of the General Council of the Bar;
- (b) the seat and place of arbitration shall be London, England; and
- (c) the arbitration proceedings shall be conducted in the English language and the arbitration award shall be in English.

- 16.3 Neither Party may commence any court proceedings in relation to any dispute arising out of the Agreement until it has attempted to settle the dispute in accordance with Clause 16.1 and Clause 16.2, and either the dispute resolution has terminated or the other Party has failed to participate, and provided in any event that the right to issue proceedings is not prejudiced by a delay.
- 16.4 Nothing in this Clause 16 shall prevent either Party from seeking from any court of competent jurisdiction an interim order restraining the other from doing any act, or compelling the other to do any act.
- 16.5 With the exception of any rights of the Purchaser to withhold payment of the Price where it has *bona fide* grounds for doing so, the obligations of the Parties shall not cease, or be suspended or delayed by the reference of any dispute to dispute resolution in accordance with this Clause 16.

## **17. NOTICES**

Any notice or other communication to be given by one Party to the other under the Agreement shall be in writing in the English language and shall be sent by pre-paid first class post or recorded delivery to (in the case of the Supplier) the relevant address as shown in the Purchase Order or (in the case of the Purchaser) to the University department or University Subsidiary placing the Order, copied to the University's Purchasing Office (or to such other address as may from time to time be notified to the other Party in writing as the address for service of notices and communications under the Agreement). Any such notice shall be deemed to have been given on the third Business Day from and including the date of posting.

## **18. PUBLICITY**

- 18.1 No Party shall use the name nor any trade mark or logo of the other Party, nor the name of any Representative of the other Party, in connection with any publicity or promotional material, without the prior written approval of the other Party.
- 18.2 The Supplier shall not make, or allow any person to make, any public announcement about the Agreement without the Purchaser's prior written consent, unless required by law or any governmental or regulatory authority or by any court or other authority of competent jurisdiction.

## **19. ENTIRE AGREEMENT**

- 19.1 These Conditions constitute the entire agreement between the Parties in relation to its subject matter, and supersede all previous drafts, agreements, arrangements and understandings between the Parties, whether oral or written.
- 19.2 Each Party agrees that in entering into the Agreement it does not rely on any statement, representation, warranty or understanding other than those expressly set out in these Conditions.
- 19.3 Nothing in this Clause 19 shall operate to: (a) exclude any provision implied into the Agreement by law and which may not be excluded by law; or (b) limit or exclude any liability, right or remedy to a greater extent than is permitted by law.

## **20. VARIATION**

- 20.1 No variation to these Conditions shall be effective unless it is in writing in the English language and signed by the Parties' authorised representatives.
- 20.2 The Supplier shall not unreasonably withhold or delay agreement to any variation to these Conditions required by the Purchaser, or the implementation of the same; nor shall the Supplier impose unreasonable conditions (having regard to the other terms of these Conditions) in implementing a variation. Any revision of the Price to be paid under these Conditions as a result of such a request shall (to the extent possible) be calculated using the same or an equivalent method to that which was used to calculate the Price at the Commencement Date.

## **21. WAIVER**

- 21.1 No failure or delay by a Party to exercise any right or remedy provided under these Conditions or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy.
- 21.2 No single or partial waiver of any right or remedy provided under these Conditions or by law shall preclude or restrict the further exercise of that or any other right or remedy.

## **22. SEVERABILITY**

- 22.1 If any court of competent authority finds that any provision of these Conditions is invalid, illegal or unenforceable, that provision shall, to the extent required, be deemed to be deleted, and the validity and enforceability of the other provisions of these Conditions shall not be affected.
- 22.2 If any invalid, illegal or unenforceable provision of these Conditions would be valid, legal and enforceable if some part of it were modified or amended, the Parties shall negotiate in good faith to amend such provision such that, as amended, it is valid,

legal and enforceable, and, to the greatest extent possible, achieves the Parties' original commercial intention.

**23. NO PARTNERSHIP OR AGENCY**

Nothing in these Conditions is intended to, or shall be deemed to, establish any partnership or joint venture between the Parties, constitute either Party the agent of the other Party, nor authorise either Party to make or (unless expressly provided otherwise in these Conditions) enter into any commitments for or on behalf of the other Party.

**24. THIRD PARTIES**

No person except a Party has any right to prevent the amendment of these Conditions or termination of the Agreement; and no person except a Party may enforce any benefit conferred by these Conditions, unless these Conditions expressly provide otherwise.

**25. ASSIGNMENT AND SUBCONTRACTING**

- 25.1 The Agreement is personal to the Parties and no Party shall assign, transfer, mortgage, charge, declare a trust of or deal in any other manner with any of its rights and obligations under the Agreement or these Conditions without the prior written consent of the other Party, such consent not to be unreasonably withheld or delayed.
- 25.2 The Supplier confirms that it is acting on its own behalf and not for the benefit of any other person.

**26. GOVERNING LAW**

The Agreement 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 and construed in accordance with the law of England.

**27. JURISDICTION**

- 27.1 Subject to Clause 16, each Party irrevocably agrees, for the sole benefit of the Purchaser and subject to Clause 27.2, that the courts of England shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with the Agreement or its subject matter or formation (including non-contractual disputes or claims).
- 27.2 Nothing in this Clause 27 shall limit the right of the Purchaser 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 jurisdiction, whether concurrently or not, to the extent permitted by law or such other jurisdiction.

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## **SCHEDULE 1 – Terms applying to the supply of Services**

### **1. INCORPORATION**

- 1.1 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 the Conditions.
- 1.2 If there is any inconsistency or conflict between the provisions set out in this Schedule and the main body of the Conditions, or any other Schedule or document stated to form part of the Agreement, then Clause 2.6 applies.

### **2. DEFINITIONS AND INTERPRETATION**

- 2.1 Unless the context otherwise states or requires, the expressions defined in Clause 1.1 shall have the same meaning when used in this Schedule.
- 2.2 The rules of interpretation and construction set out in Clause 1.2 shall apply to this Schedule, except that a reference to a “**Paragraph**” is a reference to a paragraph in this Schedule unless the context otherwise requires.

### **3. SERVICES**

- 3.1 The Supplier shall perform the Services during the Term in accordance with these Conditions.
- 3.2 The Supplier warrants and represents that it is entitled to enter into the Agreement and shall ensure that the Services are performed at all times:
  - 3.2.1 in accordance with the Timetable and Service Level Agreement (if any and as applicable) and at times and places reasonably agreed by the Supplier with the Purchaser;
  - 3.2.2 in compliance with: (a) any requirements contained or otherwise specified in the relevant ITT; (b) the Order Requirements; and (c) the Purchaser’s reasonable instructions from time to time;
  - 3.2.3 in accordance with the Supplier's Tender;
  - 3.2.4 truthfully, accurately, loyally and in good faith towards the Purchaser;
  - 3.2.5 with due diligence, skill and care, in a professional, timely and workmanlike manner;
  - 3.2.6 such that the Deliverables are of a good quality, conform with the descriptions and specifications set out in the Service Specification, and are fit for any purpose expressly or impliedly made known to the Supplier by the Purchaser;
  - 3.2.7 using suitably skilled and experienced personnel, in sufficient number to ensure that the Supplier’s obligations are fulfilled;

- 3.2.8 in accordance with all applicable laws, rules and regulations, and having obtained all necessary licenses and consents;
  - 3.2.9 without infringing the Intellectual Property Rights or other rights of any third party; and
  - 3.2.10 without doing (or omitting to do) any act or thing which would or might (in the reasonable opinion of the Purchaser) be expected to damage the reputation of the Purchaser.
- 3.3 The Supplier shall obtain the prior written approval of the Purchaser before undertaking any work for a third party of an identical or similar nature to the Services, which may, because of the nature of the work involved, cause a conflict between such work and the Services to be provided under the Agreement. If the Purchaser requests the Supplier to undertake work which does or may, because of the nature of the work involved, cause a conflict with the work it is doing or has agreed to do for a third party, the Supplier shall promptly disclose the conflict to the Purchaser and all other information reasonably requested by the Purchaser.
- 3.4 If the Supplier (being an individual, rather than a body corporate) is unable to perform the Services personally for whatever reason, the Supplier may arrange at his or her own expense for another suitable person to perform the Services, subject to the Purchaser's express prior written approval to such arrangement and the Supplier warranting that such other person is suitable (including experienced and qualified) to perform the Services. If so required, the Supplier shall provide evidence to the Purchaser to demonstrate to the Purchaser's reasonable satisfaction the other person's suitability to perform the Services.

#### **4. SUPPLIER'S PERSONNEL**

- 4.1 If instructed by the Purchaser, the Supplier shall provide to the Purchaser the names and addresses of any and all persons involved with the performance of the Agreement, specifying the capacities in which they are so involved and giving such other information as the Purchaser may reasonably require.
- 4.2 If the Purchaser gives the Supplier notice that any person (including, if applicable, any key personnel) is not to be involved in the Agreement, the Supplier shall comply with such notice and shall replace such person removed with another suitably qualified person.
- 4.3 The Supplier shall keep for a period of not less than six (6) years after the Agreement has been completed or terminated, full and accurate records of all employees and other persons involved in the Agreement and all expenses claimed, hours worked and costs incurred by such employees or other persons in relation to the Agreement. The Supplier shall allow the Purchaser or its Representatives access to the same at all reasonable times.

## **5. RIGHT TO WORK CHECKS**

- 5.1 The Supplier shall comply with UK immigration legislation and shall ensure full compliance with the UK Border Agency's guidance for employers on the prevention of illegal working, in accordance with the Immigration, Asylum and Nationality Act 2006 in respect of all Representatives engaged by the Supplier and working at University Premises.
- 5.2 The Purchaser expects and requires that proper "right to work checks", including repeat checks for individuals with limited right to work in the United Kingdom, will have been carried out for Representatives engaged by the Supplier and working at University Premises, and that the Supplier complies fully with its record-keeping and reporting responsibilities for any migrant workers sponsored by the Supplier under Tier 2 or Tier 5 of the UK Border Agency's points based immigration system.
- 5.3 The Supplier will, on request, provide the Purchaser with such documentation as it may require to establish that the Supplier has complied with the requirements set out in this Paragraph 5.

## **6. TAX LIABILITIES**

- 6.1 The Supplier (being an individual) meets the basic definition of self-employment in that:
- 6.1.1 the Supplier is in business on his or her own account and accepts full responsibility for its success and failure;
  - 6.1.2 the Supplier does not work exclusively for the Purchaser;
  - 6.1.3 the Supplier provides his or her own tools to provide and/or perform the Services;
  - 6.1.4 the Supplier's provision of the Services is on an *ad hoc basis*, and not necessarily recurring by nature; and
  - 6.1.5 the Supplier has control over how and when he or she performs the Services, within overall deadlines and quality standards set by these Conditions.
- 6.2 The Supplier agrees that the Supplier is responsible for all income tax, national insurance contributions or other payments and liabilities in connection with the provision and/or performance of the Services.
- 6.3 The Supplier shall fully and promptly indemnify the Purchaser at all times against any income tax, national insurance contributions, penalties, interest or other payments payable by the Purchaser to HM Revenue & Customs, the Department for Work and Pensions or any other governmental body or agency as a result of or in connection with the Purchaser's engagement of the Supplier pursuant to the Agreement. This indemnity shall survive the termination or expiry of the Agreement.

## **7. UNIVERSITY PREMISES AND OTHER PROPERTY**

7.1 Where the Services are due to be carried out at University Premises:

7.1.1 the Supplier is deemed to have inspected the premises at which the Services are to be carried out;

7.1.2 the Supplier shall only be licensed to occupy such premises and does so by an office or appointment from the Purchaser (the purpose of which is to provide and/or perform the Services, in whole or in part);

7.1.3 the Supplier shall comply with all applicable policies and procedures relating to the premises, including those relating to security, fire, and health and safety;

7.1.4 on completion of the Services, the Supplier shall remove all plant, equipment, unused materials and rubbish and shall leave the premises in a neat and tidy condition;

7.1.5 the Purchaser may at any time during the provision of the Services order in writing the removal from the premises of any materials which, in the opinion of the Purchaser, are either hazardous or not in accordance with the Agreement and the Supplier shall immediately remove and replace the same to the Purchaser's satisfaction; and

7.1.6 the Supplier shall take all steps required by the Purchaser to prevent unauthorised persons being admitted to the University Premises.

7.2 The Supplier shall use and store any equipment belonging to the Purchaser that the Purchaser permits the Supplier to use for the provision of the Services with all reasonable skill and care and in accordance with best practice; and the Supplier hereby indemnifies the Purchaser against any and all damage to such equipment caused by persons using the same with the Supplier's authorisation.

## **8. INTELLECTUAL PROPERTY**

8.1 Nothing in these Conditions shall affect the ownership of any Background Intellectual Property.

8.2 Where the Supplier's Background Intellectual Property forms part of any Deliverables supplied to the Purchaser in the course of providing the Services, the Supplier grants to the Purchaser a non-exclusive, perpetual, irrevocable and royalty-free licence (with the right to grant sub-licences) to use such Background Intellectual Property as part of such Deliverables and for such purposes as are necessary to allow the use and exploitation of the Deliverables by the Purchaser, its licensees, successors and assigns.

8.3 Subject to Paragraph 8.1, the Deliverables, the Intellectual Property Rights in the Deliverables, and any other Intellectual Property Rights created, generated or developed by or on behalf of the Supplier in the provision of the Services or otherwise in the performance of the Agreement shall be owned by the Purchaser



and, accordingly, the Supplier hereby assigns to the Purchaser absolutely and with full title guarantee (by way of present and future assignment) any and all such Intellectual Property Rights.

- 8.4 The Supplier shall (and shall 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 assignment of rights under Paragraph 8.3 and to ensure that the rights licensed or assigned to the Purchaser under this Paragraph 9 can be exercised, sub-licensed and otherwise used freely and unconditionally by the Purchaser.
- 8.5 The Supplier irrevocably and unconditionally waives any and all moral rights (or any rights of a similar nature) as it may have or acquire in the Deliverables in perpetuity; and warrants and undertakes to procure that all persons engaged in the creation or production or other use of the Deliverables have waived any and all moral rights on the same terms.
- 8.6 The Supplier represents and warrants to the Purchaser that:
  - 8.6.1 it has not, and shall not, grant or assign any rights of any nature in any Deliverable produced as part of the Services to any third party whatsoever in any part of the world;
  - 8.6.2 subject to the provisions of Paragraph 8.1, all Deliverables will be original to the Supplier and that the Purchaser is or shall be the sole and unencumbered owner of all Intellectual Property Rights in the Deliverables and that nothing in the Deliverables (or any exploitation of the same by the Purchaser) will infringe any right whatsoever of any third party; and
  - 8.6.3 the Supplier has all the applicable permissions and licenses and has fulfilled any other relevant requirements required to copy and provide to the Purchaser any third party material in whatever format ("**Third Party Material**") provided as part of the Deliverables and that any Third Party Material shall be appropriately identified to the Purchaser in sufficient detail where not immediately identifiable. For the avoidance of doubt, the Supplier shall be responsible for any costs or fees incurred in the course of using any Third Party Material, unless otherwise agreed in these Conditions.

## **9. PURCHASER'S OBLIGATIONS**

- 9.1 The Purchaser shall provide the Supplier:
  - 9.1.1 where necessary, with reasonable access at reasonable times to the University Premises, for the purpose of providing the Services;
  - 9.1.2 where applicable, with the equipment detailed in the Order Requirements; and

- 9.1.3 such information and cooperation as the Supplier may reasonably request and the Purchaser considers reasonably necessary to enable the Supplier to perform the Services.

## **10. PRICE**

- 10.1 The Purchaser shall pay to the Supplier the Price, subject to the satisfactory performance of the Supplier's obligations under these Conditions.
- 10.2 The Supplier shall submit invoices to the Purchaser in accordance with the Milestones or (in the absence of any such Milestones) in arrears on a monthly basis to the Purchaser's Order Representative at the address of the department or University Subsidiary placing the Order.

## **11. ADDITIONAL CONSEQUENCES OF TERMINATION**

- 11.1 On the termination or expiry of the Agreement (whether in whole or in part and for any reason), the Supplier shall:
- 11.1.1 cooperate fully with the Purchaser to ensure an orderly migration of the Services to the Purchaser or, at the Purchaser's request, a new supplier; and
- 11.1.2 (at the Purchaser's request) continue to provide the Services for a period (or consecutive periods) of up to three (3) months after termination or expiry of the Agreement upon the same terms.
- 11.2 Subject to the Purchaser and/or a new supplier's compliance with Paragraph 11.3, the Supplier shall indemnify the Purchaser (both for itself and any new supplier) against all costs, claims, liabilities and expenses (including reasonable legal expenses) incurred by the Purchaser and/or a new supplier in connection with the employment and termination of employment of any staff who transfer or allege they have transferred to the Purchaser and/or a new supplier under TUPE as a result of the Supplier providing the Services under the Agreement and/or the termination or expiry of the same.
- 11.3 If the Purchaser and/or a new supplier become aware of any staff claiming that their employment has transferred to the Purchaser and/or a new supplier under TUPE as a result of the Supplier providing the Services under the Agreement and/or the termination or expiry of the same, the Purchaser and/or a new supplier shall inform the Supplier of this in writing. The Supplier may then, within fourteen (14) days of receiving notice from the Purchaser and/or a new supplier, offer to re-employ the staff.
- 11.4 If the staff do not accept the offer of re-employment made by the Supplier pursuant to Paragraph 11.3 (or if no such offer is made), the Purchaser and/or a new supplier shall, if they are to rely on the indemnity under Paragraph 11.2, within two (2) months of becoming aware of the staff, terminate their employment.

11.5 The benefits conferred by Paragraph 11.2 to Paragraph 11.4 (inclusive) are intended to be enforceable by the persons referred to in it.

## **12. REMEDIES**

12.1 Without prejudice to any other right or remedy which the Purchaser may have, if any of the Services are not supplied in accordance with any of the terms of these Conditions, the Purchaser shall be entitled to any one or more of the following remedies (as applicable) at its discretion, whether or not any part of the Services have been accepted by the Purchaser:

12.1.1 to rescind the Agreement (that is, to treat the Agreement as if it is not and has never been in force);

12.1.2 to reject the Services (in whole or in part) on the basis that a full refund for the rejected Services shall be paid immediately by the Supplier;

12.1.3 to give the Supplier the opportunity (at the Supplier's expense) either: (a) to remedy any defect in the Services; or (b) to carry out any other necessary work to ensure that the terms of these Conditions are fulfilled;

12.1.4 to refuse to accept any further supply of the Services but without any liability to the Supplier; and/or

12.1.5 to carry out (at the Supplier's expense) any work necessary to make the Services comply with these Conditions.

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## SCHEDULE 2 – Terms applying to the supply of the Goods

### 1. INCORPORATION

- 1.1 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 the Agreement.
- 1.2 If there is any inconsistency or conflict between the provisions set out in this Schedule and the main body of these Conditions, or any other Schedule or document stated to form part of the Agreement, then Clause 2.4 applies.

### 2. DEFINITIONS AND INTERPRETATION

- 2.1 Unless the context otherwise states or requires, the expressions defined in Clause 1.1 shall have the same meaning when used in this Schedule.
- 2.2 The rules of interpretation and construction set out in Clause 1.2 shall apply to this Schedule, except that a reference to a “**Paragraph**” is a reference to a paragraph in this Schedule unless the context otherwise requires.

### 3. QUALITY OF GOODS

- 3.1 The Supplier shall ensure that the Goods shall:
  - 3.1.1 be of the quantity, quality and description as specified in the Goods Specification;
  - 3.1.2 comply with the requirements of the ITT and the Tender (if applicable);
  - 3.1.3 be free from defect, be of satisfactory quality (within the meaning of the Sale of Goods Act 1979) and fit for their intended purpose and remain so for a reasonable period of time (to be determined with reference to the type of Goods supplied);
  - 3.1.4 be in compliance with all applicable laws that apply to such Goods and to such matters that concern the safety, health and welfare of all persons into whose hands the Goods may come;
  - 3.1.5 not infringe the Intellectual Property Rights or other rights of any third party; and
  - 3.1.6 be supplied in accordance with the University's *Environmental Policy*, as amended from time to time, a copy of which will be provided to the Supplier by the Purchaser on request.
- 3.2 Without prejudice to Paragraph 3.1, the Supplier warrants that it has satisfied itself that all necessary tests and examinations have been made or will be made prior to delivery of the Goods to ensure that the Goods are designed and constructed so as to be safe and without risk to the health and safety of persons using the same and that it has made available to the Purchaser, prior to delivery, adequate information

about the use for which the Goods have been designed and any conditions necessary to ensure that when the Goods are stored or used they will be safe and without risk to health.

- 3.3 At any time prior to delivery of the Goods to the Purchaser, the Purchaser shall have the right (but not the obligation) at all times to inspect and test the Goods.
- 3.4 If the results of any inspection or testing pursuant to Paragraph 3.3 cause the Purchaser to be of the opinion that the Goods do not conform or are unlikely to conform with the description of the Goods set out in the Goods Specification or the Tender, the Purchaser shall inform the Supplier and the Supplier shall immediately take such action as is necessary to ensure conformity. The Purchaser shall have the right to require and witness further testing and inspection.
- 3.5 Notwithstanding any inspection or testing pursuant to Paragraph 3.3 and Paragraph 3.4, the Supplier shall remain fully responsible for the Goods and any such inspection or testing shall not diminish or otherwise affect the Supplier's obligations under the Agreement.

#### **4. DELIVERY**

- 4.1 The Supplier shall be responsible for obtaining, at its own cost, such import licences and other consents in relation to the Goods as are required from time to time and, if required by the Purchaser, the Supplier shall make those licences and consents available to the Purchaser prior to the delivery of the relevant shipment.
- 4.2 The Goods shall be delivered, carriage paid, to the Purchaser's address (if any) stated in the Goods Specification, or if an address is not stated then at the address of the University department or University Subsidiary that ordered the Goods, or such other place of delivery as notified to the Supplier by the Purchaser in writing prior to delivery of the Goods. Unless delivered through the post or otherwise agreed in writing by the Purchaser, the Supplier shall unload the Goods at its own risk as directed by the Purchaser.
- 4.3 The Goods shall be delivered on the Delivery Date. If no Delivery Date is specified then delivery shall take place when requested by the Purchaser or within twenty eight (28) calendar days from the date of the Agreement (whichever is earlier).
- 4.4 The Supplier shall ensure that:
  - 4.4.1 each delivery is accompanied by a delivery note which shows the number and date of the purchase order, the number of packages and their contents and, in the case of part delivery, the outstanding balance of the Goods remaining to be delivered;
  - 4.4.2 each package is marked with the number and date of the purchase order and a description of its contents and appropriate warnings where those contents are hazardous; and
  - 4.4.3 wherever possible, it uses recycled or recyclable packaging materials.

- 4.5 The Supplier must ensure a signature acknowledging receipt of the Goods by an authorised member of the Purchaser's staff is obtained on delivery.
- 4.6 Time for delivery shall be of the essence.
- 4.7 The Purchaser shall only accept deliveries during normal business hours, unless otherwise agreed in writing in advance. Delivery shall take place in accordance with Paragraph 4.2 above when the Goods have been safely unloaded at the specific point of delivery at the University's Premises as is required by the Purchaser (and as notified to the Supplier).
- 4.8 Notwithstanding the provisions of Paragraph 4.5, the Purchaser shall not be deemed to have accepted any of the Goods until it has had a reasonable time to inspect them following delivery or, if later, within a reasonable time after any latent defect in the Goods has become apparent.
- 4.9 If the Goods are delivered to the Purchaser in excess of the quantities set out in the Goods Specification, the Purchaser shall not be bound to pay for the excess and any excess shall be and shall (if applicable) remain at the Supplier's risk and shall be returnable at the Supplier's expense.
- 4.10 The Supplier shall be responsible for collecting any rejected Goods or any Goods delivered which are in excess of the quantity set out in the Goods Specification and shall reimburse any costs incurred by the Purchaser in respect of storage or otherwise.
- 4.11 The Purchaser shall not be obliged to safeguard or return to the Supplier any packaging or packing materials for the Goods, whether or not any of the Goods are accepted by the Purchaser.
- 4.12 The Supplier shall not deliver the Goods by instalments except with the prior written consent of the Purchaser.

## **5. RISK AND TITLE**

- 5.1 Risk in the Goods shall remain with the Supplier until delivery to the Purchaser is complete at which point the Goods shall be held at the Purchaser's risk.
- 5.2 Title in the Goods shall remain with the Supplier until delivery to the Purchaser is complete at which point title in the Goods shall pass to the Purchaser.
- 5.3 If the Purchaser notifies the Supplier that the Goods are being rejected in accordance with Paragraph 7 the risk in and title to the Goods shall immediately revert back to the Supplier.
- 5.4 The Supplier shall collect the Goods from the Purchaser within fourteen (14) calendar days of being notified of the rejection. Failure to do so shall entitle the Purchaser to have the Goods returned to the Supplier at the Supplier's cost.
- 5.5 The Purchaser shall not be responsible for any damage to the Goods if risk and title to the Goods have reverted to the Supplier.

**6. PRICE**

- 6.1 The Purchaser shall pay to the Supplier the Price, subject to the Purchaser's acceptance of the Goods in accordance with these Conditions.
- 6.2 The Supplier shall submit an invoice in respect of (and along with each consignment of) delivered Goods.

**7. REMEDIES**

- 7.1 Without prejudice to any other right or remedy which the Purchaser may have, if any of the Goods are not supplied in accordance with any of the terms of these Conditions, the Purchaser shall be entitled to any one or more of the following remedies (as applicable) at its discretion, whether or not any part of the Goods have been accepted by the Purchaser:
    - 7.1.1 to rescind the Agreement (that is, to treat the Agreement as if it is not and has never been in force);
    - 7.1.2 to reject the Goods (in whole or in part) and return them to the Supplier at the risk and cost of the Supplier on the basis that a full refund for the rejected Goods so returned shall be paid immediately by the Supplier;
    - 7.1.3 to give the Supplier the opportunity (at the Supplier's expense) either:
      - (a) to remedy any defect in the Goods; or
      - (b) to supply replacement Goods and carry out any other necessary work to ensure that the terms of these Conditions are fulfilled;
    - 7.1.4 to refuse to accept any further deliveries of the Goods but without any liability to the Supplier; and/or
    - 7.1.5 to carry out at the Supplier's expense any work necessary to make the Goods comply with these Conditions.
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## SCHEDULE 3– Data protection

### 1. DEFINITIONS

The following expressions, when used in this Schedule, shall have the following meanings:

**Data Protection Legislation** means any law, statute, declaration, decree, directive, legislative enactment, order, ordinance, regulation, rule or other binding restriction (as amended, consolidated or re-enacted from time to time) which relates to the protection of individuals with regards to the processing of Personal Data to which a Party to this Agreement is subject, including the Data Protection Act 2018 and retained EU law version of the General Data Protection Regulation ((EU) 2016/679) (“**GDPR**”) and any successor legislation to the Data Protection Act 2018 and the GDPR.

**Controller, data controller, processor, data processor, data subject, processing and appropriate technical and organisational measures** have the meanings set out in the Data Protection Legislation in force at the time.

**Permitted Region** has the meaning given in Paragraph 2.3.13 of this Schedule.

**Personal Data** means any personal data (as defined in the Data Protection Legislation) processed by either Party in connection with this Agreement.

### 2. DATA PROTECTION

2.1 Both Parties will comply with all applicable requirements of the Data Protection Legislation. This Paragraph (Data Protection) is in addition to, and does not relieve, remove or replace, a Party's obligations under the Data Protection Legislation.

2.2 The Parties acknowledge that for the purposes of the Data Protection Legislation, the University is the controller and the Supplier is the processor. Schedule 4 sets out the scope, nature and purposes of processing by the Supplier, the duration of the processing and the types of Personal Data and categories of data subject.

2.3 To the extent that the Supplier processes any Personal Data as a processor for and on behalf of the University (as the controller) it shall:

2.3.1 only process Personal Data for and on behalf of the University for the purposes of performing its obligations under this Agreement and only in accordance with the University's written instructions from time to time, unless the Supplier is required by the laws of the UK applicable to the Supplier (“**Applicable Data Processing Law**”) to process Personal Data. In such a case, the Supplier shall inform the University of that legal requirement before processing, unless the law prohibits such information on important grounds of public interest;

2.3.2 inform the University immediately if it considers any of the University's instructions infringes Data Protection Legislation;



- 2.3.3 ensure that it has in place appropriate technical and organisational measures to ensure a level of security appropriate to the risk and to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
- 2.3.4 ensure the reliability of any of its personnel who have access to the Personal Data and ensure that such personnel have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality;
- 2.3.5 taking into account the nature of the processing, at the University's request, assist the University to comply with the obligations imposed on the University by the Data Protection Legislation, and in the relevant timescales, in relation to: (i) security, breach notifications, data protection impact assessments, and consultations with supervisory authorities or regulators; and (ii) responding to any requests from data subjects;
- 2.3.6 notify the University promptly following its receipt of any request from a data subject to exercise their rights under the Data Protection Legislation or any correspondence from a supervisory authority or regulator and shall:
  - (a) not disclose any Personal Data without first consulting with and obtaining the University's prior written consent; and
  - (b) provide the University with all reasonable co-operation and assistance required by the University in relation to any such request or correspondence;
- 2.3.7 notify the University without undue delay (and in any event within twenty-four (24) hours) upon becoming aware of any breach of the Data Protection Legislation in relation to the Personal Data and provide assistance to the University as is necessary upon reasonable request to facilitate the handling of any data security breach relating to the Personal Data in an expeditious and compliant manner;
- 2.3.8 keep a record of any processing of the Personal Data it carries out on behalf of the University and hold the Personal Data in such a manner that it is capable of being distinguished from other data or information processed by the Supplier;
- 2.3.9 promptly comply with any request from the University to amend, transfer or delete any Personal Data;

- 2.3.10 at the written direction of the University, delete or return Personal Data and copies thereof to the University on termination of the Agreement unless required by Applicable Data Processing Law to store the Personal Data;
- 2.3.11 at the University's reasonable request: (i) make available to the University evidence to demonstrate the Supplier's compliance with the requirements of this Paragraph (Data Protection); and (ii) allow for and contribute to audits, including inspections, conducted by or on behalf of the University, on reasonable notice and subject to appropriate confidentiality obligations;
- 2.3.12 not engage a third party processor of Personal Data under this Agreement (a sub-processor) unless they are included in the List of Sub-Processors in Schedule 4 or the University in its absolute discretion otherwise gives its specific written authorisation; and where such authorisation is given, the Supplier:
  - (a) shall put in place a written agreement that imposes data protection obligations that are the same to those set out in this Agreement;
  - (b) acknowledges that the Supplier remains fully liable to the University for the performance of any sub-contracted processing obligations;
- 2.3.13 not transfer any Personal Data outside of the UK or the European Economic Area (the "**Permitted Region**") or to an international organisation<sup>1</sup> except:
  - (a) with the prior written consent of the University and in accordance with any written instructions and terms the University may impose on such transfer to ensure that transfers of Personal Data outside of the Permitted Region have adequate protections in place as set out in the Data Protection Legislation; or
  - (b) if required by Applicable Data Processing Law, in which case the Supplier shall inform the University of that legal requirement before transferring, unless the law prohibits such information on important grounds of public interest.

2.4 The Supplier shall indemnify on demand and keep indemnified the University from and against:

- 2.4.1 any monetary penalties or fines levied by supervisory authorities or regulators on the University; and
- 2.4.2 any losses, liabilities, damages, costs, and expenses howsoever arising (including reasonable professional costs and expenses) suffered or incurred by the University arising out of or in connection with any claim, action or challenge made by a third party against the University (including by a data subject);

in each case to the extent arising as a result of a breach by the Supplier (or its permitted sub-contractors) of this Agreement and/ or their respective obligations under the Data Protection Legislation.

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<sup>1</sup> Defined as an organisation and its subordinate bodies governed by public international law, or any other body which is set up by, or on the basis of, an agreement between two or more countries (GDPR Article 4(26))

- 2.5 Nothing in this Agreement will exclude, limit or restrict the Supplier's liability under the indemnity set out in Paragraph 2.4 of this Schedule.
- 2.6 Notwithstanding anything in the Agreement to the contrary, this Schedule (Data Protection) shall continue in full force and effect for so long as the Supplier processes any Personal Data.

***Insert the following additional paragraph and the Relevant Transfer Details in Schedule 4 if personal data is to be transferred outside the UK or the EEA by the University to a jurisdiction which is not subject to a UK adequacy finding:***

2.7 [Notwithstanding the generality of Paragraph 2.3.13, the Parties acknowledge and agree that to the extent the University transfers Personal Data to the Supplier, it shall be transferring Personal Data outside the Permitted Region. The Parties agree that such transfer shall be governed by Version B1.0 of the International Data Transfer Addendum to the EU SCCs issued by the UK Information Commissioner under s119A(1) of the Data Protection Act 2018, in force 21 March 2022 (the "IDTA"). In the event of a conflict between the IDTA and the rest of this Agreement, the IDTA shall take precedence.

2.7.1 For the purpose of Table 1 of the IDTA:

- (a) The start date shall be the effective date of this Agreement;
- (b) The University shall be the Exporter and the Supplier shall be the Importer;
- (c) The Parties' details are as set out at the beginning of this Agreement, and their key contacts are as set out in Schedule 4.

2.7.2 For the purpose of Table 2 of the IDTA:

- (a) Module 2 of the Approved SCCs shall apply;
- (b) Clause 7 and the option in clause 11 shall not apply;
- (c) The Prior Authorisation option is selected in clause 9a, and the time period is set as 30 days.

2.7.3 The information required for Table 3 is set out in Schedule 4.

2.7.4 For Table 4 the Parties select the option that neither party may end the IDTA when a revised version is issued by the ICO.]

**SCHEDULE 4 – Data Protection Particulars**

<b>The subject matter and duration of the processing</b>	
<b>The nature and purpose of the processing</b>	
<b>The type of Personal Data being processed</b>	
<b>The categories of Data Subjects</b>	

**Drafting note:** Use this table where the sub-processor is located in the UK. If sub-processors are only used once personal data has been transferred outside the UK and the EEA by the University to a jurisdiction which is not subject to a UK adequacy finding, then this table can be deleted, and the sub-processors described in the next section.

The controller has authorised the use of the following sub-processors:

<b>Name and address of Sub-Processor</b>	<b>Name, position and contact details of Sub-Processor’s contact person</b>	<b>Description of processing (incl. delimitation of responsibility if several Sub-Processors authorised)</b>

## Relevant Transfer Details

**Complete this section if personal data is to be transferred outside the UK and the EEA by the University to a jurisdiction which is not subject to a UK adequacy finding.**

### CONTACT DETAILS OF PARTIES

Data Exporter (the University):

Contact person's name, position and contact details: ... *[this should be the contact person for data queries for this processing]*

Data Importer (the Supplier):

Contact person's name, position and contact details: ... *[this should be the contact person for data queries for this processing]*

### DESCRIPTION OF TRANSFER

<b>Categories of data subjects whose personal data is transferred</b>	<i>[This may be the same as in the data protection particulars section]</i>
<b>Categories of personal data transferred</b>	<i>[this is a description of the data actually transferred, e.g. names, contact details, information about individuals' health, photographs, recordings, medical scans, dates of birth, etc. It may be the same as the description in the data protection particulars section]</i>
<b>Sensitive data transferred (if applicable) and applied restrictions or safeguards that fully take into consideration the nature of the data and the risks involved, such as for instance strict purpose limitation, access restrictions (including access only for staff having followed specialised training), keeping a record of access to the data, restrictions for onward transfers or additional security measures.</b>	<i>[identify if any of the following categories of data will be transferred, and, if so, any additional security measures in place: racial or ethnic origin, political opinions, religious or philosophical beliefs, trade union membership, genetic data, biometric data for the purpose of uniquely identified a natural person, data concerning health or a person's sex life or sexual orientation]</i>
<b>Frequency of the data transfer</b>	<i>[e.g. one-off, monthly, continuous]</i>
<b>Purpose of the transfer and further processing</b>	<i>[how will the data recipient be processing the data?]</i>

Period for which the personal data will be retained, or, if that is not possible, the criteria used to determine that period	
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## TECHNICAL AND ORGANISATIONAL MEASURES TO ENSURE THE SECURITY OF THE DATA

***[This should be completed in accordance with the explanatory note below]***

### EXPLANATORY NOTE:

The technical and organisational measures must be described in specific (and not generic) terms and must clearly indicate which measures apply to each transfer/set of transfers.

*Description of the technical and organisational measures implemented by the data importer(s) (including any relevant certifications) to ensure an appropriate level of security, taking into account the nature, scope, context and purpose of the processing, and the risks for the rights and freedoms of natural persons.*

*[Examples of possible measures:]*

*Measures of pseudonymisation and encryption of personal data*

*Measures for ensuring ongoing confidentiality, integrity, availability and resilience of processing systems and services*

*Measures for ensuring the ability to restore the availability and access to personal data in a timely manner in the event of a physical or technical incident*

*Processes for regularly testing, assessing and evaluating the effectiveness of technical and organisational measures in order to ensure the security of the processing*

*Measures for user identification and authorisation Measures for the protection of data during transmission Measures for the protection of data during storage*

*Measures for ensuring physical security of locations at which personal data are processed*

*Measures for ensuring events logging*

*Measures for ensuring system configuration, including default configuration Measures for internal IT and IT security governance and management Measures for certification/assurance of processes and products*

*Measures for ensuring data minimisation Measures for ensuring data quality Measures for ensuring limited data retention Measures for ensuring accountability*

*Measures for allowing data portability and ensuring erasure]*

## LIST OF SUB-PROCESSORS

EXPLANATORY NOTE: **[To give prior authorisation to a Supplier's sub-processors, fill out this list with those sub-processors.]**

This Annex must be completed in case of the specific authorisation of sub-processors (Clause 9(a), Option 1).

The controller has authorised the use of the following sub-processors:

<b>Name and address of Sub-Processor</b>	<b>Name, position and contact details of Sub-Processor's contact person</b>	<b>Description of processing (incl. delimitation of responsibility if several Sub-Processors authorised)</b>