

## Terms and Conditions for the Supply of Goods and/or Services to the University of Durham.

### 1. INTERPRETATION

1.1. In this Agreement the following expressions shall have the following meanings:

<b>"Agreement"</b>	means the Purchase Order and these terms and conditions;	<b>"Intellectual Property Rights"</b>	means all patents, copyright, design rights, registered designs, trademarks, know-how, database rights, confidential formulae and any other intellectual property rights and the rights to apply for patents and trademarks and registered designs;
<b>"Agreement Price"</b>	means the price/payments, which shall be considered as exclusive of any applicable VAT, that shall be payable to the Supplier by the University under the Agreement for the full and proper performance by the Supplier of its obligations under the Agreement;	<b>"Losses"</b>	all damage, loss, liabilities, claims, actions, costs, expenses (including the cost of legal and/or professional services) proceedings, demands and charges whether arising under statute, Agreement or at common law;
<b>"Background Intellectual Property"</b>	means any Intellectual Property Rights owned or controlled by either party to this Agreement prior to the Commencement Date or developed by a party outside of this Contract at any time;	<b>"Party"</b>	means the University or the Supplier as appropriate and Parties means both the University and the Supplier;
<b>"Business Day"</b>	means any day other than Saturday, Sunday, Christmas Day, Good Friday or another statutory bank holiday in England and Wales;	<b>"Purchase Order"</b>	means the purchase order attached hereto;
<b>"Commencement Date"</b>	means the date specified in the attached Purchase Order;	<b>"Services"</b>	means the services purchased by the University hereunder, as set out in the Purchase Order;
<b>"Confidential Information"</b>	means information, data and material of any nature, which either Party may receive or obtain in connection with the conclusion and/or operation of the Agreement including any procurement process which is:  Personal Data or Sensitive Personal Data; and/or  designated as confidential by either party or that ought reasonably to be considered as confidential (however it is conveyed or on whatever media it is stored);	<b>"Services Commencement Date"</b>	means the date delivery of the Services shall commence as specified in the Purchase Order. If no date is specified in the Purchase Order this date shall be the Commencement Date;
<b>"Defective Goods"</b>	has the meaning under Clause 4.5;	<b>"Supplier"</b>	means the supplier of Goods and/or Services to the University detailed in the Purchase Order;
<b>"Dispute Resolution Procedure"</b>	means the process for resolving disputes as set out in Clause 15.3;	<b>"Supply of Goods Commencement Date"</b>	means the date delivery of the Goods shall commence as specified in the Purchase Order. If no date is specified in the Purchase Order this date shall be the Commencement Date;
<b>"FOIA"</b>	means the Freedom of Information Act 2000;	<b>"Term"</b>	means the period over which the University requires supply of the Goods and/or Services as detailed in the Purchase Order;
<b>"Foreground Intellectual Property"</b>	means all Intellectual Property Rights created or developed by the Supplier in the course of providing the Services to the University;	<b>"University"</b>	means the University of Durham, whose registered address is the Palatine Centre, Stockton Road, Durham, DH1 3LE; and
<b>"Goods"</b>	means all goods, materials or items that the Supplier is required to supply to the University as detailed in the Purchase Order.	<b>"VAT"</b>	means value added tax chargeable under the Value Added Tax Act 1994 or any similar, replacement or extra tax.

### 2. SUPPLY OF GOODS AND THE PROVISION OF SERVICES

- 2.1. The Supplier shall supply the Goods ordered by the University and provide the Services detailed in the Purchase Order:
- 2.1.1. promptly and in any event within any time limits as may be set out in this Agreement;
  - 2.1.2. in accordance with all other provisions of this Agreement;
  - 2.1.3. using reasonable skill and care;
  - 2.1.4. in accordance with any quality assurance Standards as may be set out in the Specification or elsewhere in this Agreement;
  - 2.1.5. in accordance with all applicable laws;
  - 2.1.6. in accordance with good industry practice;
  - 2.1.7. in accordance with all University policies of which the Supplier is notified; and
  - 2.1.8. in a professional and courteous manner.
- 2.2. The Supplier shall promptly commence supply of the Goods and/or delivery of the Services as detailed in the Purchase Order.
- 2.3. Unless otherwise agreed by the Parties in writing, the Goods shall be new, consistent with any sample, and shall comply with any applicable specification set out in this Agreement and any applicable manufacturers' specifications.
- 2.4. The Supplier shall ensure that all relevant consents, authorisations, licences and accreditations:

- 2.4.1. required to lawfully supply the Goods are in place prior to the delivery of any Goods to the University; and
  - 2.4.2. required to provide the Services are in place at the Services Commencement Date and are maintained throughout the Term.
- 2.5. If there are any incidents that in any way relate to or involve the use of the Goods by the University, the Supplier shall cooperate fully with the University and shall respond promptly to any reasonable and proportionate queries, questions and/or requests for information that the University may have in this context in relation to the Goods.
- 2.6. If there are any quality, performance and/or safety related reports, notices, alerts or other communications issued by the Supplier or any regulatory or other body in relation to the Goods, the Supplier shall promptly provide the University with a copy of any such reports, notices, alerts or other communications.
- 2.7. Subject to the Supplier supplying the Goods and providing the Services in accordance with this Agreement, the University will pay the Supplier for the Goods and/or Services in accordance with the Purchase Order.

### 3. DELIVERY OF THE GOODS TO THE UNIVERSITY

- 3.1. The Supplier shall deliver the Goods in accordance with any delivery timescales, delivery dates and delivery instructions (to include, without limitation, as to delivery location and delivery times) set out in the Purchase Order or as otherwise agreed with the University in writing.

- 3.2. Delivery shall be completed when the Goods have been unloaded at the location specified by the University and such delivery has been received by a duly authorised agent or employee of the University. The University shall procure that such duly authorised agent or employee of the University is at the delivery location at the agreed delivery date and times in order to accept such delivery.
- 3.3. The Supplier shall ensure that a delivery note shall accompany each delivery of the Goods. Such delivery notes shall, as a minimum, contain the University's order number, the name and address of the University premises to which the Goods are delivered, a description and quantity of the Goods, and shall show separately any extra agreed charges for containers and/or any other item not included in the Agreement Price or, where no charge is made, whether the containers are required to be returned.
- 3.4. Part deliveries and/or deliveries outside of the agreed delivery times/dates may be refused unless the University has previously agreed in writing to accept such deliveries. Where delivery of the Goods is refused by the University in accordance with this Clause 3.4, the Supplier shall be responsible for all risks, costs and expenses associated with the re-delivery of the Goods in accordance with the agreed delivery times/dates. Where the University accepts delivery more than five (5) days before the agreed delivery date, the University shall be entitled to charge the Supplier for the costs of insurance and storage of the Goods until the agreed date for delivery.
- 3.5. Unless otherwise set out in the Purchase Order or agreed with the University in writing, the Supplier shall be responsible for carriage, insurance, transport, all relevant licences, all related costs, and all other costs associated with the delivery of the Goods to the delivery location and unloading of the Goods at that location. Without limitation to the foregoing provision of this Clause 3.5, unless otherwise stated in the Purchase Order or agreed with the University in writing, the Supplier shall be responsible for obtaining all export and import licences for the Goods and shall be responsible for any delays to the delivery time due to such licences not being available when required. In the case of any Goods supplied from outside the United Kingdom, the Supplier shall ensure that accurate information is provided to the University as to the country of origin of the Goods and shall be liable to the University for any extra duties or taxes for which the University may be accountable should the country of origin prove to be different from that set out in the Purchase Order.
- 3.6. All third party carriers engaged to deliver the Goods shall at no time be an agent of the University and accordingly the Supplier shall be liable to the University for the acts and omissions of all third party carriers engaged to deliver the Goods to the University.
- 3.7. Risk in the Goods shall pass to the University when the Goods are delivered as specified in this Agreement or, in the case of Goods which require installation by the Supplier, when that installation process is complete.
- 3.8. Ownership of the Goods shall pass to the University on the earlier of:
- 3.8.1. full payment for such Goods; or
- 3.8.2. where the goods are consumables at the point such Goods are taken into use. For the avoidance of doubt, where ownership passes in accordance with this Clause 3.8.2, then the full Agreement Price for such Goods shall be payable by the University in accordance with this Agreement.
- 3.9. All tools, equipment and materials of the Supplier required in the performance of the Supplier's obligations under this Agreement shall be and remain at the sole risk of the Supplier, whether or not they are situated at a University location for delivery.
- 4. INSPECTION, REJECTION, RETURN AND RECALL OF THE GOODS**
- 4.1. The University shall visually inspect the Goods within a reasonable time following delivery and may by written notice reject any Goods found to be damaged or otherwise not in accordance with the requirements of this Agreement. The whole of any delivery may be rejected if a reasonable sample of the Goods taken indiscriminately from that delivery is found not to conform in all material respects to the requirements of the Agreement.
- 4.2. The Supplier shall at the University's written request:
- 4.2.1. collect the Rejected Goods at the Supplier's risk and expense within ten (10) Business Days of issue of written notice from the University rejecting the Goods; and
- 4.2.2. without extra charge, promptly (and in any event within twenty (20) Days or such other time agreed by the Parties in writing acting reasonably) supply replacements for the Rejected Goods to the University subject to the University not cancelling its purchase obligations in accordance with this Agreement.
- 4.3. Risk and title in respect of any Rejected Goods shall pass back to the Supplier on the earlier of:
- 4.3.1. collection by the Supplier in accordance with Clause 4.2.1; or
- 4.3.2. immediately following the expiry of ten (10) Business Days from the University issuing written notification rejecting the Goods. If Rejected Goods are not collected within ten (10) Business Days of the University issuing written notification rejecting the Goods, the University may return the Rejected Goods at the Supplier's risk and expense and charge the Supplier for the cost of storage from the expiry of ten (10) Business Days from the date of notification of rejection.
- 4.4. Where the University rejects any Goods in accordance with Clause 4.1 and the University no longer requires replacement Goods, the University may by written notice cancel its purchase obligations in relation to such quantity of Rejected Goods. Should the University have paid for such Rejected Goods the Supplier shall refund such payment to the University within thirty (30) days of the University cancelling such purchase obligations and informing the Supplier that the University does not require replacements for such Rejected Goods.
- 4.5. Without prejudice to any other provisions of this Agreement or any other warranties or guarantees applicable to the Goods supplied, if at any time following the date of the delivery of any Goods, all or any part of such Goods are

found to be defective or otherwise not in accordance with the requirements of this Agreement ("Defective Goods"), the Supplier shall, at the University's discretion:

- 4.5.1. upon written request and without charge, promptly (and in any event within twenty (20) Business Days or such other time agreed by the Parties in writing acting reasonably) remedy the deficiency by repairing such Defective Goods; or
- 4.5.2. upon written notice of rejection from the University, treat such Defective Goods as Rejected Goods in accordance with Clauses 4.1 to 4.4.
- 4.6. Where the Supplier is required by Law, Guidance, and/or Good Industry Practice to order a product recall ("Requirement to Recall") in respect of the Goods, the Supplier shall:
- 4.6.1. promptly notify the University in writing of the recall together with the circumstances giving rise to the recall;
- 4.6.2. from the date of the Requirement to Recall, treat the Goods the subject of such recall as Defective Goods in accordance with Clause 4.5 of this Agreement;
- 4.6.3. consult with the University as to the most efficient method of executing the recall of the Goods and use its reasonable endeavours to minimise the impact on the University of the recall; and
- 4.6.4. indemnify and keep the University indemnified against, any loss, damages, costs, expenses (including without limitation legal costs and expenses), claims or proceedings suffered or incurred by the University as a result of such Requirement to Recall.

**5. OPERATION OF THE SERVICES**

- 5.1. The Services shall be provided at such University premises and at such other locations, as may be set out in the Purchase Order or as otherwise agreed by the Parties in writing.
- 5.2. If the Services, or any part of them, are regulated by any regulatory body, the Supplier shall ensure that at the Services Commencement Date it has in place all relevant registrations and shall maintain such registrations during the Term. The Supplier shall notify the University forthwith in writing of any changes to such registration or any other matter relating to its registration that would affect the delivery or the quality of Services.
- 5.3. Where applicable, the Supplier shall implement and comply with the Policies on reporting and responding to all incidents and accidents, including serious incidents requiring investigation, shall complete the University's incident and accident forms in accordance with the Policies and provide reasonable support and information as requested by the University to help the University deal with any incident or accident relevant to the Services.
- 5.4. The Supplier shall, as reasonably required by the University, cooperate with any other service providers to the University and/or any other third parties as may be relevant in the provision of the Services.

**6. PRICE AND PAYMENT**

- 6.1. The Agreement Price shall be as stated in or calculated in accordance with the Purchase Order. The Supplier shall submit to the University invoices as set out in the Purchase Order.
- 6.2. Unless otherwise stated in the Purchase Order the price:
- 6.2.1. shall remain fixed during the Term; and
- 6.2.2. in respect of the Goods, is the entire price payable by the University to the Supplier in respect of the provision of the Goods and includes, without limitation:
- 6.2.2.1. packaging, packing materials, addressing, labelling, loading, delivery to and unloading at the delivery location, all appropriate tax (excluding VAT) and duty, any installation costs and associated works, the costs of all associated documentation and information supplied or made accessible to the University in any media, and any training in relation to the use, storage, handling or operation of the Goods;
- 6.2.2.2. any royalties, licence fees or similar expenses in respect of the making, use or exercise by the Supplier of any Intellectual Property Rights for the purposes of performing this Agreement, and any licence rights granted to the University in accordance with this Agreement; and
- 6.2.2.3. costs and expenses in relation to supplies and materials used by the Supplier or any third party in the manufacture of the Goods, and any other costs incurred by the Supplier in association with the manufacture, supply or installation of the Goods; and
- 6.2.3. in respect of the Services:
- 6.2.3.1. shall be payable from the Services Commencement Date; and
- 6.2.3.2. is the entire price payable by the University to the Supplier in respect of the Services and includes, without limitation, any royalties, licence fees, supplies and all consumables used by the Supplier, travel costs, accommodation expenses and the cost of Staff.
- 6.3. No increase shall be made by the Supplier to the Agreement Price for any reason without the prior written consent of the University. The University shall be entitled to any discounts for prompt payment, bulk purchase, volume or purchase which may be customarily granted by the Contractor or as may be set out in the Pricing Schedule.
- 6.4. The Agreement Price shall be considered exclusive of VAT, which, if properly chargeable, the University shall pay at the prevailing rate subject to receipt from the Supplier of a valid and accurate VAT invoice. Such VAT invoices shall show the VAT calculations as a separate line item.
- 6.5. The University shall pay each undisputed invoice received within thirty (30) days of receipt of such invoice.

- 6.6. The University reserves the right to deduct any monies due to the Supplier from the University from any monies due to the University from the Supplier under this Agreement.

## 7. SUPPLIER WARRANTIES

- 7.1. The Supplier hereby warrants and undertakes to the University that:
- 7.1.1. the Goods shall be suitable for the purposes as required in the Purchase Order, be of satisfactory quality, fit for their intended purpose and shall comply with the standards and requirements set out in this Agreement;
- 7.1.2. it shall ensure that prior to actual delivery to the University the Goods are manufactured, stored and/or distributed using reasonable skill and care and in accordance with Good Industry Practice;
- 7.1.3. without prejudice to the generality of the warranty at it shall ensure that, the Goods are manufactured, stored and/or distributed in accordance with good manufacturing practice and/or good distribution practice, as may be defined under any law relevant to the Goods, and in accordance with any specific instructions of the manufacturer of the Goods;
- 7.1.4. it shall ensure that all facilities used in the manufacture, storage and distribution of the Goods are kept in a state and condition necessary to enable the Supplier to comply with its obligations in accordance with this Agreement;
- 7.1.5. it has, or the manufacturer of the Goods has, manufacturing and warehousing capacity sufficient to comply with its obligations under this Agreement;
- 7.1.6. it will ensure sufficient stock levels to comply with its obligations under this Agreement;
- 7.1.7. it shall ensure that the transport and delivery of the Goods mean that they are delivered in good and useable condition;
- 7.1.8. where there is any instruction information, that accompany the Goods, it shall provide a sufficient number of copies to the University and provide updated copies should the instruction information change at any time during the Term;
- 7.1.9. it shall not make any significant changes to the Goods without the prior written consent of the University, such consent not to be unreasonably withheld or delayed;
- 7.1.10. any equipment it uses in the manufacture, delivery, or installation of the Goods shall comply with all relevant Law and Guidance, be fit for its intended purpose and maintained fully in accordance with the manufacturer's specification;
- 7.1.11. it has and shall as relevant maintain all rights, consents, authorisations, licences and accreditations required to supply the Goods;
- 7.1.12. it has, and shall ensure its Staff shall have, and shall maintain throughout the Term, all appropriate licences and registrations with the relevant bodies to fulfil its obligations under this Agreement;
- 7.1.13. it has all rights, consents, authorisations, licences and accreditations required to provide the Services and shall maintain such consents, authorisations, licences and accreditations throughout the Term;
- 7.1.14. it has and shall maintain a properly documented system of quality controls and processes covering all aspects of its obligations under this Agreement and/or under law and shall at all times comply with such quality controls and processes;
- 7.1.15. it shall not make any significant changes to its system of quality controls and processes in relation to the Goods and/or Services without notifying the University in writing at least twenty one (21) days in advance of such change (such notice to include the details of the consequences which follow such change being implemented);
- 7.1.16. where any act of the Supplier requires the notification to and/or approval by any regulatory or other competent body in accordance with any law, the Supplier shall comply fully with such notification and/or approval requirements;
- 7.1.17. receipt of the Goods and/or Services by or on behalf of the University and use of the Goods and/or deliverables or of any other item or information supplied or made available to the University will not infringe any third party rights, to include without limitation any Intellectual Property Rights;
- 7.1.18. it will comply with all Law, Guidance and Policies in so far as is relevant to the supply of the Goods and/or the provision of the Services;
- 7.1.19. it will provide the Services using reasonable skill and care and in accordance with Good Industry Practice and shall fulfil all requirements of this Agreement using appropriately skilled, trained and experienced staff;
- 7.1.20. unless otherwise set out in the Purchase Order and/or as otherwise agreed in writing by the Parties, it has and/or shall procure all resources, equipment, consumables and other items and facilities required to provide the Services;
- 7.1.21. it shall comply with all health and safety processes, requirements safeguards, controls, and training obligations in accordance with its own operational procedures, Law, Guidance, Policies, Good Industry Practice, the requirements of the Purchase Order and any notices or instructions given to the Supplier by the University and/or any competent body, as relevant to the supply of the Goods, the provision of the Services and the Supplier's access to the Premises and Locations in accordance with this Agreement;
- 7.1.22. without prejudice to any specific notification requirements set out in this Agreement, it will promptly notify the University of any health and safety hazard which has arisen, or the Supplier is aware may arise, in

- connection with the Goods and/or the performance of the Services and take such steps as are reasonably necessary to ensure the health and safety of persons likely to be affected by such hazards;
- 7.1.23. any equipment it uses in the provision of the Services shall comply with all relevant Law and Guidance, be fit for its intended purpose and maintained fully in accordance with the manufacturer's specification;
- 7.1.24. it shall use Good Industry Practice to ensure that any information and communications technology systems and/or related hardware and/or software it uses are free from corrupt data, viruses, worms and any other computer programs or code which might cause harm or disruption to the University's information and communications technology systems;
- 7.1.25. it will promptly respond to all requests for information regarding this Agreement, the Goods and the provision of the Services at the frequency and in the format that the University may reasonably require;
- 7.1.26. all information included within the Supplier's responses in the Purchase Order and all accompanying materials is accurate;
- 7.1.27. it has the right and authority to enter into this Agreement and that it has the capability and capacity to fulfil its obligations under this Agreement;
- 7.1.28. it is a properly constituted entity and it is fully empowered by the terms of its constitutional documents to enter into and to carry out its obligations under this Agreement and the documents referred to in this Agreement;
- 7.1.29. all necessary actions to authorise the execution of and performance of its obligations under this Agreement have been taken before such execution;
- 7.1.30. there are no pending or threatened actions or proceedings before any court or administrative agency which would materially adversely affect the financial condition, business or operations or either the Supplier of the University;
- 7.1.31. there are no material agreements existing to which the Supplier is a party which prevent the Supplier from entering into or complying with this Agreement;
- 7.1.32. it has and will continue to have the capacity, funding and cash flow to meet all its obligations under this Agreement;
- 7.1.33. it has satisfied itself as to the nature and extent of the risks assumed by it under this Agreement and has gathered all information necessary to perform its obligations under this Agreement and all other obligations assumed by it; and
- 7.1.34. it shall ensure that it shall at all times act fully in accordance and in compliance with the provisions of the WEEED, and agrees to finance the costs for collection, treatment, recovery and environmentally sound disposal of any Goods to the University which fall within the scope of WEEED.

- 7.2. Where the Supplier is found or in the reasonable opinion of the University is considered to be in breach of any provision of Clause 7.1 above, then, without prejudice to any other right or remedy of the University, the University shall be entitled to reject and/or return the Goods and/or Services and the Supplier shall, indemnify and keep the University indemnified against, any loss, damages, costs, expenses (including without limitation legal costs and expenses), claims or proceedings suffered or incurred by the University as a result of such breach.
- 7.3. The Supplier agrees to use reasonable endeavours to assign to the University upon request the benefit of any warranty, guarantee or similar right which it has against any third party manufacturer or supplier of the Goods in full or part.
- 7.4. The Supplier warrants that all information, data and other records and documents required by the University as set out in the Purchase Order shall be submitted to the University in the format and in accordance with any timescales set out in the Purchase Order.
- 7.5. The Supplier further warrants and undertakes to the University that it will inform the University in writing immediately upon becoming aware that any of the warranties set out in this Clause 7 have been breached or it be could reasonably be considered likely that there is a risk that any warranty given herein may be breached.
- 7.6. Any warranties provided by the Supplier under this Agreement are both independent and cumulative and may be enforced independently or collectively at the sole discretion of the University.

## 8. INTELLECTUAL PROPERTY

- 8.1. All Background Intellectual Property is and shall remain the exclusive property of the party owning it (or, where applicable, the third party from whom its right to use the Background Intellectual Property has been derived) as of the Commencement Date. No party will make any representation or do any act which may be taken to indicate that it has any right, title or interest in or to the ownership or use of any Background Intellectual Property of the other party except under the terms of this Agreement and each party acknowledges that nothing contained in this Agreement shall give it any such right, title or interest. The University grants to the Supplier a limited, non-exclusive, royalty free licence, without the right to sublicense, to use its Background Intellectual Property only as is strictly necessary for the Supplier to deliver the Services to the University and only for the Term of this Agreement. Unless otherwise specified in the Key Provisions, all Foreground Intellectual Property arising from delivery of the Services, whether or not solely produced by the Supplier shall belong absolutely to the University, as shall the right to apply for and obtain relevant intellectual property rights and protection in relation thereto. The University hereby grants to the Supplier a non-exclusive, royalty-free, fully paid-up, perpetual right and licence to use the Foreground Intellectual Property only for the purposes of delivery of the Services.
- 8.2. Unless specified otherwise in the Purchase Order, the Supplier hereby grants to the University, for the life of the use of Goods by the University, an irrevocable, royalty-free, non-exclusive licence of any Intellectual Property

Rights required for the purposes of receiving and using, and to the extent necessary to receive and use, the Goods (to include any associated technical or other documentation and information supplied or made accessible to the University in any media) in accordance with this Agreement.

## **9. CONFIDENTIALITY**

- 9.1. In the event that during the Term of this Agreement either Party ("Discloser"), discloses any Confidential Information to the other Party ("Recipient"), whether directly or indirectly each Party undertakes to keep such Confidential Information secret and strictly confidential and shall not disclose any such Confidential Information to any third party without the Discloser's prior written consent provided that:
- 9.1.1. the Recipient shall not be prevented from using any general knowledge, experience or skills which were in its possession prior to the Commencement Date;
- 9.1.2. the provisions of this Clause 9.1 shall not apply to any Confidential Information:
- 9.1.2.1. which is in or enters the public domain other than by breach of this Agreement or other act or omissions of the Recipient;
- 9.1.2.2. which is obtained from a third party who is lawfully authorised to disclose such information without any obligation of confidentiality;
- 9.1.2.3. which is authorised for disclosure by the prior written consent of the Discloser;
- 9.1.2.4. which the Recipient can demonstrate was in its possession without any obligation of confidentiality prior to receipt of the Confidential Information from the Discloser; or
- 9.1.2.5. which the Recipient is required to disclose purely to the extent to comply with the requirements of any judicial, administrative, governmental or regulatory process in connection with any action, suit, proceedings or claim or otherwise by applicable Law, including the Freedom of Information Act 2000.

## **10. DATA PROTECTION**

- 10.1. The Parties acknowledge their respective duties under Data Protection Legislation and shall give each other all reasonable assistance as appropriate or necessary to enable each other to comply with those duties.
- 10.2. Where the Supplier is Processing Personal Data under or in connection with this Agreement, the Supplier must, in particular, but without limitation:
- 10.2.1. only Process such Personal Data as is necessary to perform its obligations under this Agreement, and only in accordance with any instructions given by the University under this Agreement;
- 10.2.2. put in place appropriate technical and organisational measures against any unauthorised or unlawful Processing of that Personal Data, and against the accidental loss or destruction of or damage to such Personal Data having regard to the state of technical development and the level of harm that may be suffered by a Data Subject whose Personal Data is affected by unauthorised or unlawful Processing or by its loss, damage or destruction;
- 10.2.3. take reasonable steps to ensure the reliability of Staff who will have access to Personal Data, and ensure that those Staff are aware of and trained in the policies and procedures identified in this Clause 10; and
- 10.2.4. not cause or allow Personal Data to be transferred outside the European Economic Area without the prior consent of the University.
- 10.3. The Supplier and the University shall ensure that Personal Data is safeguarded at all times in accordance with the Law, and this obligation will include (if transferred electronically) only transferring Personal Data (a) if essential, having regard to the purpose for which the transfer is conducted; and (b) that is encrypted in accordance with any international data encryption standards applicable to the University under any Law and Guidance (this includes, data transferred over wireless or wired networks, held on laptops, CDs, memory sticks and tapes).
- 10.4. Where any Personal Data is processed by any subcontractor of the Supplier in connection with this Agreement, the Supplier shall procure that such subcontractor shall comply with the relevant obligations set out in this Clause 12, as if such subcontractor were the Supplier.
- 10.5. The Supplier shall indemnify and keep the University indemnified against, any loss, damages, costs, expenses (including without limitation legal costs and expenses), claims or proceedings whatsoever or howsoever arising from the Supplier's unlawful or unauthorised Processing, destruction and/or damage to Personal Data in connection with this Agreement.

## **11. FREEDOM OF INFORMATION ACT 2000**

- 11.1. The Supplier acknowledge the duties of the University under the FOIA, Codes of Practice and Environmental Regulations and shall give the University all reasonable assistance as appropriate or necessary to enable the University's compliance with those duties.
- 11.2. The Supplier shall assist and cooperate with the University to enable it to comply with its disclosure obligations under the FOIA, Codes of Practice and Environmental Regulations. The Supplier agrees:
- 11.2.1. that this Agreement and any recorded information held by the Supplier on the University's behalf for the purposes of this Agreement are subject to the obligations and commitments of the University under the FOIA, Codes of Practice and Environmental Regulations;

- 11.2.2. that the decision on whether any exemption to the general obligations of public access to information applies to any request for information received under the FOIA, Codes of Practice and Environmental Regulations is a decision solely for the University;
- 11.2.3. that where the Supplier receives a request for information under the FOIA, Codes of Practice and Environmental Regulations and the Supplier itself is subject to the FOIA, Codes of Practice and Environmental Regulations it will liaise with the University as to the contents of any response before a response to a request is issued and will promptly (and in any event within two (2) Business Days) provide a copy of the request and any response to the University; and
- 11.2.4. that where the Supplier receives a request for information under the FOIA, Codes of Practice and Environmental Regulations and the Supplier is not itself subject to the FOIA, Codes of Practice and Environmental Regulations, it will not respond to that request (unless directed to do so by the University) and will promptly (and in any event within two (2) Business Days) transfer the request to the University.
- 11.3. Where any information is held by any subcontractor of the Supplier in connection with this Agreement, the Supplier shall procure that such subcontractor shall comply with the relevant obligations set out in this Clause 11, as if such subcontractor were the Supplier

## **12. INDEMNITY**

- 12.1. In addition to any other indemnities provided by the Supplier to the University elsewhere in this Agreement, the Supplier shall be liable to the University for, and shall indemnify and keep the University indemnified in full against, any and all liabilities, losses (whether direct or indirect and including loss of profit), damages, costs, expenses (including legal expenses), actions, costs claims, demands awarded against or incurred or paid by the University, its servants or agents as a result of or in connection with:
- 12.1.1. any injury or allegation of injury to any person, including injury resulting in death;
- 12.1.2. any loss of or damage to property;
- 12.1.3. any breach of the terms of this Agreement including any warranty given by the Supplier under this Agreement;
- 12.1.4. any claim that the Goods or any Foreground Intellectual Property arising from the Services infringe, or their incorporation, use or resale infringes the Intellectual Property Rights of any other person;
- 12.1.5. any claim made against the University in respect of any breach or alleged breach by the University of any statutory provision, regulation or bye-law or other rule of law arising from the acts or omissions of the Supplier or its employees, agents or subcontractors;
- 12.1.6. any liability under the Consumer Protection Act 1987 in respect of any Goods;
- 12.1.7. any liability under the General Product Safety Regulation 1994 in respect of the Goods and any claims which might give rise as a result of the Goods being a risk to health and safety/unsafe;
- 12.1.8. any liability under regulations relating to hazardous substances or under the Environment Protection Act 1990 in respect of the Goods; and
- 12.1.9. any act or omission of the Supplier or its employees, agents or sub-Suppliers in supplying, delivering and installing the Goods or performing the Services, including any injury, loss or damage to persons or to University property caused or contributed to by any of their negligence or by faulty design, workmanship or materials (except to the extent that the injury, loss or damage is caused by the negligent act or omission of the University);
- that arise or result from the Supplier's acts or omissions or breach of Agreement in connection with the performance of this Agreement including the supply of Goods and provision of the Services.

## **13. LIMITATION OF LIABILITY**

- 13.1. Nothing in this Agreement shall exclude or restrict the liability of either Party:
- 13.1.1. for death or personal injury resulting from its negligence;
- 13.1.2. for fraud or fraudulent misrepresentation; or
- 13.1.3. in any other circumstances where liability may not be limited or excluded under any applicable law.
- 13.2. Subject to Clause 13.1, the total liability of the University to the Supplier under or in connection with this Agreement whether arising in Agreement, tort, negligence, breach of statutory duty or otherwise shall be limited in aggregate to the total Agreement Price paid or payable by the University to the Supplier for the Goods and/or Services under this Agreement.
- 13.3. Under no circumstance shall the University be liable to the Supplier for any losses, damages and/or other costs and expenses under or in connection with this Agreement, whether arising in contract (to include, without limitation, under any relevant indemnity), tort, negligence, breach of statutory duty or otherwise to the extent that any losses, damages and/or other costs and expenses claimed are in respect of loss of production, loss of business opportunity or are in respect of indirect loss of any nature suffered or alleged.
- 13.4. Each Party shall at all times take all reasonable steps to minimise and mitigate any loss for which the other Party is entitled to bring a claim against the other pursuant to this Agreement.

## **14. TERMINATION**

- 14.1. Without prejudice to the rights of the University to pursue any other remedies available to it in the event of a breach of the terms of this Agreement by the Supplier, the University may at its sole discretion choose to terminate the Contract and/or any part thereof by written notice to the Supplier, where:

- 14.1.1. the Supplier fails to deliver any Goods and/or Services to the University in accordance with the terms of this Agreement;
- 14.1.2. the Supplier is in material breach of any of its obligations under this Agreement and that breach is not capable of remedy;
- 14.1.3. the Supplier is in material breach of any of its obligations under this Agreement and that breach can be remedied but the Supplier has failed to do so within thirty (30) days of being given notice of such breach;
- 14.1.4. the Supplier commits more than one breach of any of its obligations under this Agreement and the cumulative effect of such breaches is such that the University believes that the Supplier will continue to deliver a sub-standard performance over the one (1) month period immediately after such breach;
- 14.1.5. the Supplier fails to make progress with delivery of any Goods and/or Services Ordered so as to jeopardise the purpose of the Goods and/or Services;
- 14.1.6. the Supplier being given a reasonable period to rectify a breach of the Contract, fails to do so to the reasonable satisfaction of the University or fails to provide adequate replacement Goods and/or Services when required to do so under the provisions of this Agreement;
- 14.1.7. the Supplier becomes bankrupt or insolvent, or has a receiving order made against it, or compounds with its creditors or, being a corporation, commences to be wound up or is put into administration or if the Supplier attempts to carry on its business under a receiver for the benefit of any of its creditors;
- 14.1.8. the Supplier is the subject of a takeover by or merger with another entity;
- 14.1.9. the Supplier is convicted or has been convicted of a criminal offence relating to the conduct of its business or profession;
- 14.1.10. the Supplier commits or is found to have committed an act of gross misconduct in the course of its business or profession;
- 14.1.11. the Supplier is found to have made any serious misrepresentations in the tendering process for this Contract;
- 14.1.12. the Supplier fails to obtain any necessary licences or to obtain or maintain membership of any relevant body necessary to perform the Services; or
- 14.1.13. the Supplier fails to comply with any of the University's policies and/or codes of practice including but not limited to access, health and safety, equality and diversity, environment or financial regulation.
- 14.2. In the event that the University terminates the Contract in accordance with the provisions of this Clause 14 the University shall not be liable for any losses suffered by the Supplier as a result of such termination.
- 14.3. The Supplier may terminate the Contract immediately by written notice to the University in the event that the University commits a material breach of the Contract. The notice shall include a detailed statement describing the nature of the breach. If the breach is capable of being remedied by the University and is remedied within the thirty (30) day notice period, then the termination shall not take effect. If the breach is of a nature such that it can be fully remedied by the University but not within the thirty (30) day notice period, then termination shall also not be effected if the University begins to remedy the breach within that period and then continues diligently to remedy the breach until it is remedied fully. If the breach is incapable of remedy, then the termination shall take effect at the end of the thirty (30) day notice period in any event.
- 14.4. Termination of the Contract shall be without prejudice to any rights of each Party against the other which may have accrued up to the date of such termination.

## 15. DISPUTE RESOLUTION

- 15.1. During any dispute, it is agreed that the Supplier shall continue its performance of the provisions of the Agreement (unless the University specifically requests in writing that the Supplier should not do so).
- 15.2. In the case of a dispute arising out of or in connection with this Agreement the Supplier and the University shall make every reasonable effort to resolve the dispute amicably via the respective Parties' Agreement Managers. In the event that any disputes cannot be resolved at this level within a reasonable period of time, then the senior executives of the relevant Parties who have authority to settle the same shall use good faith efforts to resolve the same. In the event that either Party considers the dispute unable to be resolved through negotiation at this level, either Party may serve a notice on the other Party to commence formal resolution of the dispute.
- 15.3. The Parties shall agree to seek formal resolution of the dispute ("Dispute Resolution Procedure") via either:
  - 15.3.1. mediation in accordance with the Centre for Dispute Resolution ("CEDR") Model Mediation Procedure (the "Model Procedure"). To initiate mediation a Party must give notice in writing to the other Party to the dispute requesting mediation pursuant to the Model Procedure. A copy of the request shall also be sent to CEDR. The mediation shall be before a single, jointly agreed upon, mediator; or
  - 15.3.2. reference to the jurisdiction of the Courts in England. In this event, each of the Parties shall have the right to take proceedings in any other jurisdiction for the purposes of enforcing a judgement or order obtained from the Courts in England.
- 15.4. In the event that the Parties are unable to select a mutually agreeable mediator or cannot agree on the forum in which any dispute is to be held within sixty (60) days of a dispute being notified, then the provisions of Clause 15.3.2 shall apply.

## 16. FORCE MAJEURE

- 16.1. Where the Supplier is affected by a Force Majeure Event it shall use reasonable endeavours to mitigate the consequences of such a Force Majeure Event upon the performance of its obligations under this Agreement, and to resume the performance of its obligations affected by the Force Majeure Event as soon as practicable.
- 16.2. Where the Force Majeure Event affects the Supplier's ability to perform part of its obligations under the Agreement the Supplier shall fulfil all such Contractual obligations that are not so affected and shall not be relieved from its liability to do so.
- 16.3. Where the Supplier is prevented or delayed in the performance of its obligations under this Agreement by a Force Majeure Event, that Party shall as soon as reasonably practicable serve notice in writing to the University specifying the nature and extent of the circumstances giving rise to its failure to perform or any anticipated delay in performance of its obligations.
- 16.4. Subject to service of such notice, the Supplier where affected by such circumstances shall have no liability for its failure to perform or for any delay in performance of its obligations affected by the Force Majeure Event only for so long as such circumstances continue.
- 16.5. The Supplier shall notify the University in writing as soon as the consequences of the Force Majeure Event have ceased and of when performance of its affected obligations can be resumed.
- 16.6. If the Supplier is prevented from performance of its obligations as a result of a Force Majeure Event, the University may at any time if the Force Majeure Event subsists for thirty (30) days or more, terminate this Agreement on service of written notice on the Supplier.

## 17. CONFLICTS OF INTEREST AND THE BRIBERY ACT 2010

- 17.1. The Supplier shall take appropriate steps to ensure that neither the Supplier nor any Staff are placed in a position where, in the reasonable opinion of the University, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier and the duties owed to the University under the provisions of this Agreement. The Supplier will disclose to the University full particulars of any such conflict of interest which may arise.
- 17.2. The University reserves the right to terminate this Agreement immediately by notice in writing and/or to take such other steps it deems necessary where, in the reasonable opinion of the University, there is or may be an actual conflict, or a potential conflict, between the pecuniary or personal interests of the Supplier and the duties owed to the University under the provisions of this Agreement. The actions of the University pursuant to this Clause shall not prejudice or affect any right of action or remedy which shall have accrued or shall subsequently accrue to the University.
- 17.3. The Supplier warrants and represents that:
  - 17.3.1. it has not committed any offence under the Bribery Act 2010 or done any of the following ("Prohibited Acts"):
    - 17.3.1.1. offered, given or agreed to give any officer or employee of the University any gift or consideration of any kind as an inducement or reward for doing or not doing or for having done or not having done any act in relation to the obtaining or performance of this or any other agreement with the University or for showing or not showing favour or disfavour to any person in relation to this or any other agreement with the University; or
    - 17.3.1.2. in connection with this Agreement paid or agreed to pay any commission other than a payment, particulars of which (including the terms and conditions of the agreement for its payment) have been disclosed in writing to the University; and
    - 17.3.1.3. it has in place adequate procedures to prevent bribery and corruption, as contemplated by section 7 of the Bribery Act 2010.
- 17.4. If the Supplier or its Staff (or anyone acting on its or their behalf) has done or does any of the Prohibited Acts or has committed or commits any offence under the Bribery Act 2010 with or without the knowledge of the Supplier in relation to this or any other agreement with the University:
  - 17.4.1. the University shall be entitled:
    - 17.4.1.1. to terminate this Agreement and recover from the Supplier the amount of any loss resulting from the termination;
    - 17.4.1.2. to recover from the Supplier the amount or value of any gift, consideration or commission concerned; and
    - 17.4.1.3. to recover from the Supplier any other loss or expense sustained in consequence of the carrying out of the Prohibited Act or the commission of the offence under the Bribery Act 2010.
  - 17.4.2. any termination under Clause 21.4.1 shall be without prejudice to any right or remedy that has already accrued, or subsequently accrues, to the University.

## 18. EQUALITY

- 18.1. The Supplier shall:
  - 18.1.1. ensure that (a) it does not, whether as employer, a supplier of Goods or as provider of the Services, engage in any act or omission that would contravene the Equality Legislation, and (b) it complies with all its obligations as an employer, a supplier of Goods or provider of the Services as set out in the Equality Legislation and take reasonable endeavours to ensure its Staff do not unlawfully discriminate within the meaning of the Equality Legislation;

- 18.1.2. in the management of its affairs and the development of its equality and diversity policies, cooperate with the University in light of the University's obligations to comply with its statutory equality duties whether under the Equality Act 2010 or otherwise. The Supplier shall take such reasonable and proportionate steps as the University considers appropriate to promote equality and diversity, including race equality, equality of opportunity for disabled people, gender equality, and equality relating to religion and belief, sexual orientation and age; and
- 18.1.3. the Supplier shall impose on all its subcontractors and suppliers, obligations substantially similar to those imposed on the Supplier by this Clause 18.
- 18.2. The Supplier shall meet reasonable requests by the University for information evidencing the Supplier's compliance with the provisions of Clause 18.

#### **19. NOTICES**

- 19.1. Any notice required to be given by either Party under this Agreement shall be made in writing quoting the Purchase Order number and shall be delivered by hand or sent by prepaid first class recorded delivery or by email to:
  - 19.1.1. In the case of the Supplier, the Supplier's registered business address, or as the University may otherwise be notified by the Supplier in writing; or
  - 19.1.2. In the case of the University, the University Secretary, the Palatine Centre, Stockton Road, Durham, DH1 3LE.
- 19.2. A notice shall be treated as having been received:
  - 19.2.1. if delivered by hand within normal business hours when so delivered or, if delivered by hand outside normal business hours, at the next start of normal business hours; or
  - 19.2.2. if sent by first class recorded delivery mail on a normal Business Day, at 9.00 am on the second Business Day subsequent to the day of posting, or, if the notice was not posted on a Business Day, at 9.00 am on the third Business Day subsequent to the day of posting; or
  - 19.2.3. if sent by email, if sent within normal business hours when so sent or, if sent outside normal business hours, at the next start of normal business hours provided the sender has either received an electronic confirmation of delivery or has telephoned the recipient to inform the recipient that the email has been sent.

#### **20. ASSIGNMENT AND SUBCONTRACTING**

- 20.1. The Supplier shall not, assign, subcontract, novate, create a trust in, or in any other way dispose of the whole or any part of this Agreement without the prior consent in writing of the University. If the Supplier subcontracts any of its obligations under this Agreement, every act or omission of the subcontractor shall for the purposes of this Agreement be deemed to be the act or omission of the Supplier and the Supplier shall be liable to the University as if such act or omission had been committed or omitted by the Supplier itself.
- 20.2. Any authority given by the University for the Supplier to subcontract any of its obligations under this Agreement shall not impose any duty on the University to enquire as to the competency of any authorised subcontractor. The Supplier shall ensure that any authorised subcontractor has the appropriate capability and capacity to perform the relevant obligations and that the obligations carried out by such subcontractor are fully in accordance with this Agreement.
- 20.3. Where the Supplier enters into a subcontract in respect of any of its obligations under this Agreement relating to the manufacture, supply, delivery or installation of or training in relation to the Goods or the provision of the Services, the Supplier shall include provisions in each such subcontract, unless otherwise agreed with the University in writing, which:
  - 20.3.1. contain at least equivalent obligations as set out in this Agreement in relation to such manufacture, supply, delivery or installation of or training in relation to the Goods or the performance of the Services to the extent relevant to such subcontracting;
  - 20.3.2. contain at least equivalent obligations as set out in this Agreement in respect of confidentiality, information security, data protection, Intellectual Property Rights, compliance with Law and Guidance and record keeping;
  - 20.3.3. contain a prohibition on the subcontractor subcontracting, assigning or novating any of its rights or obligations under such subcontract without the prior written approval of the University (such approval not to be unreasonably withheld or delayed);
  - 20.3.4. contain a right for the University to take an assignment or novation of the subcontract (or part of it) upon expiry or earlier termination of this Agreement; and
  - 20.3.5. require payment to be made of all sums due to the subcontractor from the Supplier within a specified period not exceeding thirty (30) days from receipt by the Supplier of a valid invoice.
- 20.4. The University may at any time transfer, assign, novate, subcontract or otherwise dispose of its rights and obligations under this Agreement or any part of this Agreement and the Supplier warrants that it will carry out all such reasonable further acts required to effect such transfer, assignment, novation, subcontracting or disposal.

#### **21. VARIATION**

- 21.1. The Supplier acknowledges to the University that the University's requirements for the Goods and/or Services may change during the Term and the Supplier shall not unreasonably withhold or delay its consent to any reasonable variation or addition to the Purchase Order, as may be requested by the University from time to time.
- 21.2. Any change to the Goods and/or Services or other variation to this Agreement shall be binding only once it has been agreed in writing and signed by an authorised representative of both Parties.

#### **22. GENERAL**

- 22.1. For the purposes of this Agreement, each of the Parties is considered to be independent of the other, and nothing contained in this Agreement shall be construed to imply that there is any relationship between the Parties of partnership or of principal/agent or of employer/employee nor are the Parties hereby engaging in a joint venture and accordingly neither of the Parties shall have any right or authority to act on behalf of the other nor to bind the other by agreement or otherwise, unless expressly permitted by the terms of this Agreement.
- 22.2. Failure or delay by either Party to exercise an option or right conferred by this Agreement shall not of itself constitute a waiver of such option or right.
- 22.3. The delay or failure by either Party to insist upon the strict performance of any provision, term or condition of this Agreement or to exercise any right or remedy consequent upon such breach shall not constitute a waiver of any such breach or any subsequent breach of such provision, term or condition.
- 22.4. Neither Party will furnish, deliver, or release any information or material made available to it hereunder to any individual, entity, or destination, or for any use, except in full accordance with all applicable laws, regulations, and requirements with regard to export control and trade sanctions. Each party warrants that they shall at all times be and remain compliant with all such applicable laws, regulations, and requirements.
- 22.5. Any provision of this Agreement which is held to be invalid or unenforceable in any jurisdiction shall be ineffective to the extent of such invalidity or unenforceability without invalidating or rendering unenforceable the remaining provisions of this Agreement and any such invalidity or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provisions in any other jurisdiction.
- 22.6. Each Party acknowledges and agrees that it has not relied on any representation, warranty or undertaking (whether written or oral) in relation to the subject matter of this Agreement and therefore irrevocably and unconditionally waives any rights it may have to claim damages against the other Party for any misrepresentation or undertaking (whether made carelessly or not) or for breach of any warranty unless the representation, undertaking or warranty relied upon is set out in this Agreement or unless such representation, undertaking or warranty was made fraudulently.
- 22.7. Unless otherwise expressly stated in this Agreement, a person who is not a party to this Agreement shall have no right to enforce any terms of it which confer a benefit on such person. No such person shall be entitled to object to or be required to consent to any amendment to the provisions of this Agreement.
- 22.8. This Agreement, any variation in writing signed by an authorised representative of each Party and any document referred to (explicitly or by implication) in this Agreement or any variation to this Agreement, contain the entire understanding between the Supplier and the University relating to the supply of the Goods and the provision of the Services to the exclusion of all previous agreements, confirmations and understandings and there are no promises, terms, conditions or obligations whether oral or written, express or implied other than those contained or referred to in this Agreement.
- 22.9. This Agreement, and any dispute or claim arising out of or in connection with it or its subject matter, shall be governed by, and construed in accordance with, the laws of England and Wales.
- 22.10. The Parties irrevocably agree that the courts of England and Wales shall have non-exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter.