

**STANDARD TERMS AND CONDITIONS FOR THE PURCHASE OF GOODS AND
SERVICES**

1. DEFINITIONS AND INTERPRETATION

In these standard terms and conditions:

1.1 the following words and expressions shall have the following meanings:

"Acceptance Date "	the date on which an Acceptance Certificate is issued and "Acceptance" shall be construed accordingly;
"Acceptance Certificate"	a certificate issued by University when the Goods have been installed and implemented and have successfully passed the Acceptance Tests in accordance with Condition 3A ;
"Acceptance Criteria"	the criteria specified by University for the purposes of the Acceptance Tests;
"Acceptance Tests"	the tests to be carried out in accordance with Condition 3A to determine whether the Goods (or any part of the Goods) comply with the Specification and the provisions of the Terms and Conditions ;
"Anti-Bribery Laws"	any and all statutes, statutory instruments, bye-laws, orders, directives, decrees and laws which relate to anti-bribery and/or anti-corruption including the Bribery Act
"Bribery Act"	the Bribery Act 2010
"Business Day"	a day that is not a Saturday, Sunday or public or bank holiday in England and/or Wales
"Confidential Information"	all information in respect of the business of University including know-how and other matters connected with the Goods and/or Services , information concerning University's relationships with actual or potential clients, customers or suppliers and the needs and requirements of University and of such persons and any other information which, if disclosed, will be liable to cause harm to University

"Contract"	the contract between University and the Supplier for the sale and purchase of the Goods and/or supply of the Services formed in accordance with Condition 2
"Delivery Point"	the place where delivery and Installation if applicable of the Goods is to take place under Condition 7.1
"Dispute"	a dispute which arises out of or in connection with a Contract or the Terms and Conditions (including in relation to any non-contractual obligations)
"Data Protection Legislation"	means all applicable data protection and privacy legislation in force from time to time in the UK including without limitation the UK GDPR; the Data Protection Act 2018 (and regulations made thereunder); the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended; and the guidance and codes of practice issued by the Information Commissioner and which are applicable to a party
"Data Protection Agreement"	means a data protection agreement entered or to be entered into between the Parties pursuant to which personal data may be exchanged
"Failure Notice"	a written notice from University to the Supplier setting out the reasons for the Goods and/or Services failing to achieve Acceptance
"FOI Legislation"	the Freedom of Information Act 2000, all regulations made under it and the Environmental Information Regulations 2004, and any guidance issued by the Information Commissioner, the Ministry of Justice or the Department for Environment Food and Rural Affairs (including in each case its successors or assigns) in relation to such legislation

"Insolvent"

the **Supplier** is **Insolvent** where it:

- (a) proposes or passes a resolution for its winding up or in the case of a limited liability partnership proposes or determines that it will be wound up;
- (b) is subject to an application to or order or notice issued by a court or other authority of competent jurisdiction for its winding up or striking off;
- (c) enters administration or is the subject of an application for administration filed at any court or a notice of intention to appoint an administrator given by any person filed at any court;
- (d) proposes, makes or is subject to, a company voluntary arrangement or a composition with its creditors generally, an application to a court of competent jurisdiction for protection from its creditors generally or a scheme of arrangement under Part 26 Companies Act 2006;
- (e) has a receiver or a provisional liquidator appointed over any of its assets, undertaking or income;
- (f) ceases to trade or appears, in the reasonable opinion of **University**, to be likely to cease to trade;
- (g) is unable to pay its debts within the meaning of section 123 Insolvency Act 1986; or
- (h) is the subject of anything analogous to the foregoing under the laws of any applicable jurisdiction

"Installation"	the installation of the Goods , at the Delivery Point and into the operating environment specified by University in the Contract
"Intellectual Property Rights"	all intellectual and industrial property rights including patents, know-how, registered trade marks, registered designs, utility models, applications for and rights to apply for any of the foregoing, unregistered design rights, unregistered trade marks, rights to prevent passing off for unfair competition, copyright, database rights, topography rights and any other rights in any invention, discovery or process, in each case in the United Kingdom and all other countries in the world and together with all renewals and extensions
"Key Performance Indicators"	the key performance indicators or levels of service which the Supplier is expected to achieve in relation to the performance of its obligations under a Contract
"Losses"	all costs (including legal costs and costs of enforcement), expenses, liabilities (including any tax liability), direct, indirect or consequential loss (all three of which terms include pure economic loss, loss of profits, loss of business, depletion of goodwill and like loss), damages, claims, demands, proceedings and judgments
"Mediation Notice"	a written notice from one party to the other referring a Dispute to mediation in accordance with Condition 25.4
"Premises"	the premises of University and any other member of the University Group to which it is necessary for the Supplier to have access for the performance of its obligations under a Contract
"Previous Supplier"	any provider engaged in providing the same or similar Goods and/or Services prior to the

	commencement of the Terms and Conditions
"Price"	the price of the Goods and/or Services in Great British pounds sterling as set out in the Purchase Order.
"Project Plan"	any plan in relation to any part of the provision of the Goods and/or Services as agreed between University and the Supplier from time to time
"Records"	a complete and correct set of records pertaining to all activities relating to the performance of the Supplier's obligations under a Contract and all transactions entered into by the Supplier for the purposes of a Contract
"Referral Notice"	a written notice from one party to the other referring a Dispute to the resolution procedure set out in Condition 25
"Replacement Supplier"	any provider engaged in providing the same or similar Goods and/or Services after the expiry or termination of the Terms and Conditions
"Retention Period"	the term of a Contract and the period of not less than 6 (six) years (or such longer period as may be required by law) following termination of any Contract with University
"Services"	any services which the Supplier agrees to supply to University (including any of them or any part of them) as set out in the Purchase Order.
"Specification"	in relation to the Goods and/or Services , the technical specifications of those Goods and/or documents detailing the requirements of the Services ; all preparatory, design and development materials which relate to the Goods and/or Services ; all information of any description which explains the structure, design, operation, functionality of the Goods and/or how the Services will be performed; all information of any description which relates to

	the maintenance and/or support of the Goods
"Supplier"	the person from whom University orders the Goods and/or Services
"Supplier's Materials"	all materials, equipment, goods and other items owned, leased or hired by the Supplier and used by the Supplier in the performance of a Contract
"Supplier Personnel"	any individual employed or engaged by the Supplier in the provision of the Goods and/or Services
"Terms and Conditions"	these standard terms and conditions of purchase together with any special terms agreed in writing between the Supplier and University as specified in the Contract
"Test Procedures"	the procedures for testing the Acceptance Criteria as set out in Condition 3A.4.2.1
"Third Party Act"	the Contracts (Rights of Third Parties) Act 1999
"Transfer Regulations"	the Transfer of Undertakings (Protection of Employment) Regulations 2006
"UK GDPR"	means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data as it forms part of the law of England and Wales, Scotland and Northern Ireland by virtue of section 3 of the European Union (Withdrawal) Act of 2018
"University"	The University of Exeter, a higher education institution incorporated by Royal Charter (Company number RC000653) of Northcote House, The Queen's Drive, Exeter, EX4 4QJ
"University Group"	University and its subsidiaries or associated companies (as defined in Section 1159 of the Companies Act 2006) incorporated in the United Kingdom together with such subsidiaries

and associated companies (as so defined) incorporated outside the United Kingdom as the parties may agree in writing from time to time

"VAT"

value added tax chargeable under English law for the time being and any similar tax.

- 1.2 all headings are for ease of reference only and shall not affect the construction or interpretation of the **Terms and Conditions**;
- 1.3 unless the context otherwise requires:
 - 1.3.1 references to the singular include the plural and vice versa and references to any gender include every gender;
 - 1.3.2 references to a "person" include any individual, body corporate, association, partnership, firm, trust, organisation, joint venture, government, local or municipal authority, governmental or supra-governmental agency or department, state or agency of state or any other entity (in each case whether or not having separate legal personality);
- 1.4 references to any statute or statutory provision shall include any subordinate legislation made under it and shall be construed as references to such statute, statutory provision and/or subordinate legislation as modified, amended, extended, consolidated, re-enacted and/or replaced and in force; and
- 1.5 any words following the words "include", "includes", "including", "in particular" or any similar words or expressions shall be construed without limitation and accordingly shall not limit the meaning of the words preceding them.

2. FORMATION AND INCORPORATION

- 2.1 Subject to any variation under **Condition 2.5**, the **Contract** will be upon the **Terms and Conditions** to the exclusion of all other terms and conditions, including any terms or conditions which the **Supplier** purports to apply under any acknowledgement or confirmation of order, quotation, **Specification**, invoice or similar document, whether or not such document is referred to in the **Contract**.
- 2.2 Each quotation for the **Goods** and/or **Services** from the **Supplier** will be deemed to be an offer by the **Supplier** to supply the **Goods** and/or **Services** upon the **Terms and Conditions**. All quotations provided by the **Supplier**, including the **Price**, will remain open for 90 (ninety) days from its date. Where a quotation is given, the **Contract** is only formed when a written acceptance of

the quotation is served by **University** on the **Supplier**. No contract will exist prior to service of such notice of acceptance.

Each order placed by the **University** for **Goods** and/or **Services** will be accepted by the **Supplier** by returning **University's** standard acknowledgement of order form , or such other form as required in the order placed by the University. Where an order is placed by the **University**, the **Contract** is only formed when the **Supplier** has served **University's** standard acknowledgement of order form or such other form as required in the order placed by the **University** on **University**. No **Contract** will exist prior to service of such acknowledgement of order form or such other form as required in the order placed by the **University**.

2.3 Delivery of the **Goods** and/or commencement of performance of the **Services** will be deemed conclusive evidence of the **Supplier's** acceptance of the **Terms and Conditions**.

2.4 Not used

2.5 No variation to the **Terms and Conditions** shall be effective unless it is in writing and signed by a duly authorised representative on behalf of **University**.

2.6 Any **Contract** formed pursuant to this **Condition 2** is for the benefit of the **University Group**. Any obligation on the **Supplier** to perform under a **Contract** or that otherwise confers a benefit, right and/or privilege on **University** under a **Contract** shall be construed as an obligation to perform those obligations for and/or confer those benefits, rights and/or privileges on the **University Group**.

3. THE GOODS AND SERVICES

3.1 The quantity and description of the **Goods** and/or **Services** will be as set out in the **Contract** and/or in any applicable **Specification** supplied or advised by **University** to the **Supplier**.

3.2 The **Supplier** will comply with all applicable laws, standards, regulations and other legal requirements concerning the manufacture, packaging, packing and delivery of **Goods** and/or performance of the **Services**. For the avoidance of doubt, and without prejudice to the foregoing, the **Supplier** will comply with the Waste Electrical and Electronic Equipment Regulations 2006 to the extent that such Regulations apply to the **Goods** and/or **Services** provided by the **Supplier**.

3.3 **University** will have the right to inspect and test the **Goods** at any time prior to delivery. The **Supplier** will not unreasonably refuse any request by **University** to carry out such inspection and testing and will provide **University** with all facilities reasonably required.

- 3.4 If as the result of such inspection or testing **University** is not satisfied that the **Goods** will comply in all respects with the **Contract** and **University** so informs the **Supplier** within 30 (thirty) days of inspection or testing, the **Seller** will take all steps necessary to ensure compliance. Without prejudice to any other rights of **University** under the **Contract**, any failure of this obligation by the **Supplier** will be deemed to be a material breach entitling **University** to terminate the **Contract** under **Condition 13.1.1**.
- 3.5 Notwithstanding any such inspection or testing, the **Seller** will remain fully responsible for the **Goods** and any such inspection or testing will not diminish or otherwise affect the **Seller's** obligations under the **Contract**.
- 3.6 The **Supplier** acknowledges that precise conformity of the **Goods** and/or **Services** with the **Contract** is of the essence of the **Contract** and **University** will be entitled to reject the **Goods** and/or **Services** or terminate the **Contract** under **Condition 13.1.1** if the **Goods** and/or **Services** are not in conformance with the **Contract**, however slight the breach may be. Any breach of this condition is deemed to be a material breach.
- 3.7 **University** may at any time make changes in writing relating to the **Contract**, including changes in the drawings or **Specification**, method of shipment, quantities, packing or time or place of delivery of the **Goods** or performance of the **Services**. If such changes result in an increase in cost of, or time required for, performance of the **Contract** an equitable adjustment will be made to the price, delivery schedule or both. Any such claim or adjustment must be approved by **University** in writing before the **Supplier** proceeds with such changes.
- 3.8 In respect of the **Goods** and/or **Services** the **Supplier** will maintain and observe quality control and supplier quality assurance standards in accordance with the requirements of **University**, its customs, relevant British Standards and statutory and regulatory bodies.
- 3.9 The **Supplier** will maintain detailed quality control and manufacturing records for the period of at least 12 (twelve) years from the date of supply of **Goods** and/or performance of the **Services**.
- 3.10 If the **University** is not satisfied that the **Services** comply in all respects with the **Contract** and **University** so informs the **Supplier**, the **Supplier** will take all steps necessary to ensure compliance. Without prejudice to any other rights of **University** under the **Contract**, any failure of this obligation by the **Supplier** will be deemed to be a material breach entitling **University** to terminate the **Contract** under **Condition 13.1.1**.
- 3.11 It is the responsibility of the **Supplier** to acquaint itself with the purposes for which the **Goods** supplied or **Services** performed are to be used.

3A ACCEPTANCE TESTING

3A.1 For the avoidance of doubt, the provisions of this **Condition 3A** shall apply but shall be subject to any specific acceptance provisions as may be agreed by the **Supplier** and **University** in addition or by way of amendment.

3A.2 The **Goods** and/or **Services** shall be subject to and shall be required to satisfy the **Acceptance Tests**, to demonstrate that they comply with the **Acceptance Criteria** (together with the **Terms and Conditions**) before being accepted by **University**.

3A.3 Specific Provisions

3A.3.1 Software Tests

The following is intended to allow any software forming part of the **Goods** and/or **Services** to be delivered in phases if agreed between the **Supplier** and **University**) in which case the following will apply independently to each phase:

On or before the date specified within the **Project Plan** the **Supplier** and **University** will produce a set of tests and a set of results which are designed to prove that the software forming part of the **Goods** and/or **Services** performs in accordance with the requirements set out in the **Specification**. It will be prepared by the **Supplier** and agreed by **University** and will include:

- List of key functionality
- Description of the test steps
- Pass/fail criteria including the results expected to be achieved by processing such data;
- Issue resolution method and timescales; and
- Issue prioritisation.

For this purpose, **University** will define test data which the **Supplier** will verify.

In the event that the software forming part of the **Goods** and/or **Services** is delivered in a phased manner, there will be software testing to prove that the combination of phases perform in accordance with the **Specification**.

3A.3.2 Hardware Tests

Unless **University** requires specific tests to be performed in relation to any hardware forming part of the **Goods** and/or **Services**, the **Supplier** shall perform its own tests to ensure that such hardware performs in accordance with the **Specification** in good time in order to allow the **Supplier** to be able to provide the **Goods** and/or **Services** on time in accordance with the **Project Plan**. The **Supplier** shall provide **University** with written evidence that the tests have been performed and passed successfully in relation to such hardware.

3A.3.3 System Tests

On or before the date specified in the **Project Plan**, the **Supplier** and **University** will agree a set of tests and a set of results which are designed to prove that the combination of hardware and software performs in accordance with the **Specification**. It will be prepared by the **Supplier** and agreed by **University** and will, at **University's** option, include:

- multi-user testing;
- volume testing; and
- interfacing to third party and **University** systems interfacing to the hardware and/or software forming part of the **Goods** and/or **Services**.

3A.4 General provisions

3A.4.1 In the case of all testing set out in this **Condition 3A**, and save where otherwise agreed by the **Supplier** and **University** in the **Project Plan** the **Supplier** shall give **University** as much notice as possible when the relevant part of the **Goods** and/or **Services** is ready for testing and, unless **University** requests that the **Supplier** perform the tests, **University** shall give the notice in accordance with the **Project Plan** of the days on which the tests shall be performed by **University**. The **Supplier** shall attend such tests in accordance with this **Condition 3A**.

3A.4.2 In the case of any tests and other detail and documentation that is to be agreed under this **Condition 3A**:

3A.4.2.1 the **Supplier** and representatives of the **University** shall meet together in user groups to discuss the tests, the expected results, the documentation, the testing to be

carried out in relation to each and every element of the testing and any other detail that is to be agreed in accordance with this **Condition 3A** as well as the **Acceptance Criteria**; and

3A.4.2.2 the **Supplier** shall be afforded, in each and every case, the opportunity to comment on the suitability of the **Test Procedures** and the **Supplier** shall incorporate all reasonable comments into such **Test Procedures** and pass those to **University** for further comment and agreement. Should the **Supplier** and **University** be unable to agree any of the **Test Procedures** from time to time, either party may escalate the matter in accordance with the dispute resolution procedure set out in **Condition 25**.

3A.4.2.3 the **Supplier** shall formally document each set of **Acceptance Tests** and the results thereof.

3A.5 **University** shall sign an **Acceptance Certificate** promptly following successful completion of the **Acceptance Tests** for the **Goods** and/or **Services** which are the subject of the **Acceptance Tests**. Such **Acceptance Certificate** shall not be of any effect unless signed by a duly authorised representative of **University**. **University** shall have no obligation to sign an **Acceptance Certificate** in relation to any relevant **Acceptance Tests** unless the **Supplier** can demonstrate that the **Acceptance Tests** have been carried out in accordance with the agreed procedure and the results of the **Acceptance Tests** objectively demonstrate that all of the **Acceptance Criteria** have been met. **University** shall act reasonably in this regard.

3A.6 If any of the **Goods** and/or **Services** which are the subject of **Acceptance Tests** fail to pass and satisfy all **Acceptance Tests** applicable to them, **University** shall (if the **Supplier** is not specified as being responsible for carrying out the **Acceptance Tests**) serve on the **Supplier** a **Failure Notice** setting out (where possible) in reasonable detail the suspected nature of the defects giving rise to such failure or failures. In the event the **Supplier** receives a **Failure Notice** or in the event the **Supplier** has performed the **Acceptance Tests** itself unsuccessfully then the **Supplier** shall (at its own expense) use its best endeavours to adapt, modify and/or otherwise correct the relevant **Goods** and/or **Services** to which the **Failure Notice** relates or, where there is no **Failure Notice**, the **Goods** and/or **Services** that have previously failed, in both cases to the extent necessary for those **Goods** and/or **Services** to comply with

the applicable **Acceptance Criteria** and resubmit the relevant **Goods** and/or **Services** for further **Acceptance Tests** within (or, at the latest, by the expiry of) a correction period reasonably specified by **University** provided that if any **Goods** and/or **Services** shall not have passed the applicable **Acceptance Tests** by any final completion date set out in the **Project Plan** (or such further period of time as the **Supplier** and **University** shall agree), **University** shall be entitled (in its discretion and without prejudice to its other rights under the **Contract**):

- 3A.6.1 to grant further periods of time during which the **Supplier** shall be required to adapt, modify and/or otherwise correct the relevant **Goods** and/or **Services** to which the **Failure Notice** relates to the extent necessary for the relevant **Goods** and/or **Services** to comply with the applicable **Acceptance Criteria** and thereafter re-submit the relevant **Goods** and/or **Services** for further testing; or
- 3A.6.2 to sign an **Acceptance Certificate** accepting such **Goods** and/or **Services** and agree with the **Supplier** a list of exceptions to be attached to the **Acceptance Certificate** which the **Supplier** shall then rectify within the timescales set out in the list or if none is set out then within a reasonable time and should the **Supplier** fail to ensure that such exceptions are remedied within such timescales **University** shall be entitled to exercise (in its discretion) the rights set out in **Condition 3A.6.3** or **Condition 3A.6.4** or **Condition 3A.6.5**; or
- 3A.6.3 to sign an **Acceptance Certificate** accepting the **Goods** and/or **Services** under the **Contract** for all purposes under the **Contract** subject to an agreed refund or reduction in respect of the **Price** (including any fees in respect of the **Services** paid and/or payable) in respect of the failing **Goods** and/or **Services**) or (where such fees cannot reasonably be calculated) subject to an adjustment downwards to the overall **Price** paid and/or payable under the **Contract** to reflect the extent to which the **Goods** and/or **Services** to be provided or performed (as applicable) in accordance with the **Contract** (operating as a whole) are impaired by the failure of the relevant **Goods** and/or **Services**, such adjustment to be agreed between the **Supplier** and **University** (both acting fairly and reasonably). In default of such agreement, **University** shall be entitled to exercise the rights set out at **Condition 3A.6.4** or elsewhere in this **Condition 3A**; or
- 3A.6.4 to reject the **Goods** and/or **Services** (meaning any or all of them) and serve notice on the **Supplier** immediately terminating the **Contract** without liability to the **Supplier** including any liability to pay any outstanding payments of the **Price** which, at the time of (and but for)

such termination, remain outstanding and are due to be paid, on the basis of a total failure of consideration. In the event of any termination pursuant to this **Condition 3A.6.4**, the **Supplier** shall (within 14 (fourteen) days of the date of such termination) repay to **University** any amounts paid to the **Supplier** under the terminated **Contract**; or

3A.6.5 to (i) itself complete the supply of the **Goods** and/or **Services**, or to enter into a contract with a third party to effect such completion; and (ii) the **Supplier** shall pay to **University** the amount by which the reasonable cost to **University** of completion of the **Goods** and/or **Services** pursuant to this **Condition 3A.6.5** exceeds the **Price**, and **University** may deduct the said amount from such amounts (if any) as are due to the **Supplier** or to recover such amount as a debt due from the **Supplier**; and (iii) **University** shall be entitled to use or have used on its behalf all know-how and **Intellectual Property Rights** owned or controlled by the **Supplier** used in or in connection with the **Goods** and/or **Services** free of charge for the purposes of completion in accordance with this **Condition 3A.6.5** and use, amendment, modification and/or enhancement of the **Goods** and/or **Services** as envisaged by the **Contract** after such completion.

3A.7 The **Supplier** shall ensure that any corrections made as a result of any failure to pass an **Acceptance Test** or to be approved in accordance with **Condition 3A** shall not adversely impact on any previously successful **Acceptance Test** or (as applicable) approval procedure in respect of any other **Goods** and/or **Services** (as the case may be). To the extent that any such adverse impacts occur, the **Supplier** shall be liable to **University** in respect of **University's** reasonable costs in conducting further tests or (as applicable) re-running the relevant approval procedure.

3A.8 Any dispute as to whether any **Acceptance Test** has been passed or whether any failure to provide approval is reasonable in the circumstances shall be referred for resolution in accordance with **Condition 25**.

3A.9 Acceptance of the **Goods** and/or **Services** shall not relieve the **Supplier** from performing its other obligations under a **Contract** and shall not limit the warranties provided by the **Supplier** under **Condition 12**.]

3B MAINTENANCE

3B.1 If required by **University** before the end of the warranty period set out in **Condition 12.4.5**, the **Supplier** shall enter into a separate contract with **University** for the maintenance of the **Goods**.

- 3B.2 If a contract for maintenance of the **Goods** pursuant to **Condition 3B.1** commences before the end of the warranty period set out in **Condition 12.4.5** the maintenance charges and obligations under the maintenance contract shall reflect the **Supplier's** obligations under **Condition 12**.

4. PRICE

- 4.1 Subject to **Condition 4.2**, the only monies to be paid by **University** in connection with the supply of **Goods** and/or the performance of the **Services** is the **Price** which shall be inclusive of all costs and expenses incurred by the **Supplier** including all packaging, insurance, carriage and delivery costs, visits, equipment, travel and attendance at meetings.
- 4.2 Any sum payable under the **Contract** will be exclusive of **VAT** and any other similar tax which may be chargeable and which will be payable in addition to the sum in question at the rate for the time being prescribed by law, subject to receipt by the paying party of a valid **VAT** invoice.
- 4.3 The **Supplier** shall not be entitled to increase the **Price** in any circumstances.
- 4.4 If the **Goods** are not delivered and/or the **Services** are not performed on the date set out in **Condition 7.2**, then, without prejudice to **University's** other rights under the **Contract**, the **Price** will be reduced at the rate if any set out in the Contract for each day which elapses between the due date and the date of actual delivery or performance.

5. PAYMENT

- 5.1 Subject to the **Supplier** performing its obligations in accordance with the terms of the **Contract**, **University** shall pay the **Price** to the **Supplier** in accordance with this **Condition 5**.
- 5.2 The **Supplier** shall invoice **University** for the **Price** for the **Goods** following delivery of the **Goods** in accordance with **Condition 7.1**.
- 5.3 The **Supplier** shall invoice **University** for the **Price** for the **Services** following performance of the **Services**.
- 5.4 Each invoice shall be a valid **VAT** invoice and shall contain the following information: purchase order number; date of invoice; invoice number; period to which the invoice relates; **Goods** and/or **Services** to which the invoice relates; and **VAT**.
- 5.5 Invoices should be addressed to the University of Exeter and not to a named individual within the Organisation. Copy invoices should be sent only if requested by the Accounts Payable Department. Each such invoice shall contain

all information required by University including the Consultant's name and address, a separate calculation of VAT and an adequate description of elements of the Works and/or the Services performed.

The preferred method of receipt will be via email, to invoices@exeter.ac.uk, but only for invoices in PDF, MS Word or TIFF formats. Otherwise invoices should be sent by post to the following address: Box 1, Finance, Northcote House. University of Exeter, Exeter. EX4 4QJ.

- 5.6 Subject to **Condition 5.7**, each invoice shall be payable by **University** within 30 (thirty) days following the date on which the invoice is received by **University**. All payments shall be made in pounds sterling, except where agreed otherwise by the parties.
- 5.7 Notwithstanding any purported contrary appropriation by the **Supplier**, **University** shall be entitled, by giving written notice to the **Supplier**, to appropriate any payment by **University** to any invoice issued by the **Supplier**.
- 5.8 **University** shall be entitled to set-off any liability which the **Supplier** has to it against any liability which it has to the **Supplier**, whether such liability is present or future, liquidated or unliquidated, under the **Contract** or any other contract between the parties or other cause of action.
- 5.9 Subject to **Condition 5.9**, if any sum payable under the **Contract** is not paid on or before the due date for payment the **Supplier** shall be entitled to charge **University** interest on that sum at 2% (two percent) per annum above the base lending rate from time to time of Barclays Bank plc from the due date until the date of payment (whether before or after judgment), such interest to accrue on a daily basis. The parties agree that this **Condition 5.8** is a substantial remedy for late payment of any sum payable under the **Contract**, for the purposes of the Late Payment of Commercial Debts (Interest) Act 1998.
- 5.10 No payment made by **University** shall constitute acceptance by **University** of the **Goods** and/or **Services** or otherwise prejudice any rights or remedies which **University** may have against the **Supplier** including the right to recover any amount overpaid or wrongfully paid to the **Supplier**.
- 5.11 Where the **Supplier** enters into a sub-contract for the provision of the whole or any part of the **Goods** or **Services**, the **Supplier** shall ensure that a term is included in the sub-contract which requires the **Supplier** to pay all sums due to the sub-contractor within a specified period, not exceeding 30 days from the date of receipt of a valid invoice as defined by the terms of that sub-contract.

6. **INSTALMENTS**

6.1 The **Supplier** may not deliver the **Goods** by separate instalments or perform the **Services** in stages or invoice the **Price** for an instalment separately unless agreed in writing by **University**. If **University** does agree, the **Contract** will be construed as a separate **Contract** in respect of each instalment or stage, and without prejudice to any other right or remedy, **University** will have the right, but not the obligation, to:

6.1.1 treat all the **Contracts** for the total amount of the **Goods** and/or **Services** as repudiated if the **Supplier** fails to deliver or perform any instalment or stage; and

6.1.2 reject any or all of the instalments for the total amount of the **Goods** and/or **Services** if **University** is entitled to reject any one instalment.

7. **DELIVERY**

7.1 The **Goods** will be delivered carriage paid to the address stated in the **Contract**. The **Supplier** will off-load the **Goods** at the **Delivery Point** at its own risk as directed by **University**.

7.2 The **Services** will be performed at the address stated in the **Contract** or at such other place as the **Supplier** is directed by **University**.

7.3 The **Goods** will be delivered and/or the **Services** will be performed during **University's** normal office hours on the date or within the period specified in the **Contract**, or if no such period is specified then within 30 (thirty) days of the date of the **Contract**.

7.4 The **Supplier** will ensure that:

7.4.1 the **Goods** are marked and delivered in accordance with **University's** instructions and any applicable regulations or requirements of the carrier and properly packed and stored so as to reach their destination in an undamaged condition;

7.4.2 each delivery is accompanied by a prominently displayed delivery note which shows, inter alia, the name of the recipient, the recipient's location, the order number, date of order, number of packages and contents and, in the case of part delivery, the outstanding balance remaining to be delivered;

7.4.3 each delivery is signed for by an appropriately authorised individual on behalf of, or receipt of the **Goods** is acknowledged by, **University** at the time the **Goods** are delivered;

- 7.4.4 before delivery or performance **University** is provided in writing with a list by name and description of any harmful or potentially harmful properties or ingredients in the **Goods** supplied whether in use or otherwise or which will be used in performance of the **Services** and thereafter information concerning any changes in such properties or ingredients. **University** will rely on the supply of such information from the **Supplier** in order to satisfy its own obligations under the Health and Safety at Work Act 1974 and any other relevant legislation; and
- 7.4.5 **University** is supplied on delivery of the **Goods** with all operating and safety instructions, warning notices clearly displayed and other information as may be necessary for their proper use, maintenance and repair for the **University** to accept delivery of the **Goods**.
- 7.5 No **Goods** or **Services** supplied under the **Contract** earlier than the date for delivery or performance, will be accepted or paid for unless **University** notifies the **Supplier** in writing of its intention to accept and pay for the same.
- 7.6 Without prejudice to **University's** other rights under the **Contract**, if the **Goods** are delivered to **University** in excess of the quantities ordered, **University** will be entitled to retain but will not be bound to pay for the excess and such excess will be and remain at the **Supplier's** risk and be returnable at the **Supplier's** expense.
- 7.7 **University** will not be deemed to have accepted the **Goods** and/or **Services** until it has had 3 (three) **Business Days** to inspect them following delivery or performance by the **Supplier**. **University** will also have the right to reject the **Goods** as though they had not been accepted for 30 (thirty) days after any latent defect in the **Goods** has become apparent.
- 7.8 In performing the **Services** and/or delivering the **Goods**, the **Supplier** will use reasonable endeavours to comply with the **University's** policies and not behave in a manner that could reasonably be seen as being capable of detrimentally affecting the **University's** reputation or its students wellbeing.

7A SPARES

- 7A.1 Where appropriate to the **Goods** supplied in accordance with a **Contract**, the **Supplier** shall make available to **University**, or any nominated third party maintenance service provider in respect of the **Goods**, on request, with reasonable despatch and at reasonable prices, all spares and replacement parts as **University**, or its nominated third party maintenance service provider, shall require for the **Goods**.

- 7A.2 The **Supplier** shall maintain a supply of such spares or replacement parts for a period of 7 (seven) years from the date of **Delivery** or the date on which an **Acceptance Certificate** is issued, whichever is the later.
- 7A.3 Such spares or replacement parts shall be required to be fully compatible with, and maintain as a minimum the same levels of performance as, the **Goods** originally supplied, but need not be identical with those items. The warranty in **Condition 12.4.5** shall apply to the spares or replacement parts as if they were part of the original **Goods**.
- 7A.4 If during the period of 7 (seven) years stipulated in **Condition 7A.2** the **Supplier**, or any sub-supplier of the **Supplier**, intends to discontinue the manufacture of spares or replacement parts for the **Goods** the **Supplier** shall forthwith give notice to **University** of such intention, and advise **University** of any third party source from which the spares or replacement parts will be available, or to which third party source the **Supplier** intends to provide drawings, patterns, specifications and other information for the purposes of obtaining spares or replacement parts.
- 7A.5 If during the period of seven (7) years stipulated in **Condition 7A.2** the **Supplier**, or any sub-supplier of the **Supplier**, either:
- 7A.5.1 fails to make available to **University**, or any nominated third party maintenance service provider, with reasonable dispatch, at reasonable prices all such spares or replacement parts as **University** or its nominated third party maintenance service provider shall require for the **Goods**; or
- 7A.5.2 becomes **Insolvent**, or commences to be wound up (not being a member's winding up for the purposes of reconstruction),

then the **Supplier** shall so far as it is legally entitled to do so, and if so required by **University**, as soon as practicable, deliver to **University** or its nominated third party maintenance service provider, free of charge such drawings, patterns, specifications and other information as referred to in **Condition 7A.4** and which **University**, or its nominated third party maintenance service provider, shall be entitled to retain for such time only as necessary for the exercise by **University** of its rights under this **Condition 7A.5**, and which, if the **Supplier** so requires, shall be returned by **University** to the **Supplier** at **University's** cost and expense.

7B INSTALLATION

- 7B.1 Unless otherwise agreed in writing and/or stated in the **Contract**, the **Supplier** shall be required to undertake a visit to the **Delivery Point** and shall:

- 7B.1.1 issue a report detailing work to be carried out to prepare the **Delivery Point** for the delivery and/or **Installation** of the **Goods** in the designated place; or
 - 7B.1.2 issue a certificate, stating that the **Delivery Point** is suitable and acceptable for the delivery and/or **Installation** or use of the **Goods** in the designated place to commence and proceed with the delivery and **Installation**; and
 - 7B.1.3 include in the report and/or certificate confirmation that the **Delivery Point** conditions, layout and design and/or other provisions related to the **Delivery Point** are suitable and such that the **Supplier** can complete delivery and **Installation** of the **Goods** in the designated place (and **University** will be able to use the **Goods** in the designated place) or notification to **University** of any work or requirements that need to be completed in order for the **Supplier** to be able to gain access to and undertake delivery and **Installation** of the **Goods** at the **Delivery Point** and **University** is able to put the **Goods** to use at the **Delivery Point**. If the **Supplier** does not notify **University** of any such work or requirements, the **Supplier** shall be deemed to have accepted that the **Delivery Point** is suitable and shall proceed with the delivery and **Installation**.
- 7B.2 The report issued by the **Supplier** in accordance with **Condition 7B.1.1** above must supply adequate information in sufficient time to enable **University** to prepare the **Delivery Point** for **Installation**, and enable **University** to provide:
- 7B.2.1 a suitable supply of electric current and such other mains services as maybe required;
 - 7B.2.2 all other required electrical and mechanical items and fittings, as specified by the **Supplier** at the time of the **Contract** and agreed by **University** (other than the **Goods**);
 - 7B.2.3 such facilities and environmental conditions as defined in the **Contract** and/or in any **Project Plan**; and
 - 7B.2.4 access to, and egress from, the **Delivery Point** for the delivery and **Installation** of the **Goods** to enable the delivery, off-loading and placing in position of the **Goods** (including, without limitation, appropriate access and egress that enables the **Supplier** to deliver and remove any equipment, tooling or other facilities required for the purposes of undertaking and completing the delivery and **Installation** of the **Goods**) which complies with any specific requirements set out in the report.

- 7B.3 In circumstances where the **Supplier** issues a report in accordance with **Condition 7B.1.1** the **Supplier** shall be required to re-examine the **Delivery Point** upon the notification by **University** that any work specified in the report has been completed and issue a certificate in accordance with **Condition 7B.1.2** or apply the provisions of **Condition 7B.1.3** as appropriate.
- 7B.4 **University** at its own expense shall ensure that such preparations and provisions made known in writing to **University** by the **Supplier** are made such that the **Supplier** is able to deliver the **Goods** and/or **Services** on the date specified for delivery and **Installation** in the **Contract** and/or in any **Project Plan**. In the event that such preparation and provision are unsuitable for the purpose of the **Installation** as the result of an act or default of one party, then any costs which the other party can demonstrate as being reasonably and necessarily incurred as a direct result of that act or default shall be recoverable from the defaulting party.
- 7B.5 Without prejudice to any obligations imposed on the **Supplier** by **Condition 12** with regard to the standard of the **Installation**, the **Supplier** shall use good quality materials, techniques and standards to execute the **Installation** with the care, skill and diligence in accordance with best industry practice.

7C PERFORMANCE MONITORING

- 7C.1 **University** and the **Supplier** shall meet at the frequencies specified in the **Project Plan** to discuss their respective levels of satisfaction in respect of the **Contract** and to agree any changes necessary to address areas of dissatisfaction. **University** and the **Supplier** agree to act in a spirit of mutual trust and co-operation in relation to their respective obligations under a **Contract**.
- 7C.2 The time, date and venue of any meetings arranged pursuant to **Condition 7C.1** shall be agreed by the **Supplier** and **University** in writing. The **Supplier** shall produce an agenda incorporating items requested by **University** in advance of the meeting.
- 7C.3 The **Supplier** shall ensure that at any meeting arranged pursuant to **Condition 7C.1** it has all information and personnel necessary for a meaningful discussion of the items on the agenda and that the **Supplier** is represented at such meeting(s) by personnel who have the authority to make decisions on behalf of the **Supplier**.
- 7C.4 The proceedings of any meeting(s) arranged pursuant to **Condition 7C.1** shall be minuted by the **Supplier** and such minutes forwarded to **University** for acceptance as soon as possible thereafter. Once the minutes, including any agreed changes thereto have been agreed and signed for on behalf of

University such minutes shall be deemed to be an authoritative record of the matters discussed and agreed.

- 7C.5 The **Supplier** will provide **University** with such information and assistance as **University** may reasonably require in order to assess the **Supplier's** performance against any **Key Performance Indicators** set out in the **Project Plan**. If the **Supplier** fails to achieve any of the **Key Performance Indicators**, **University** shall be entitled to exercise any rights or remedies set out in the **Project Plan** in respect of such failure.

8. RISK / OWNERSHIP

Risk in and ownership of the **Goods** will pass to **University** on acknowledged delivery in accordance with **Condition 7.4.3**.

9. UNIVERSITY'S PROPERTY AND PREMISES

- 9.1 All materials, equipment, tools, dies and moulds supplied by **University** to the **Supplier** will at all times:

- 9.1.1 be and remain the exclusive property of **University**;
- 9.1.2 be held by the **Supplier** in safe custody at its own risk;
- 9.1.3 be maintained and kept in good condition by the **Supplier** until returned to **University**;
- 9.1.4 not be disposed of other than in accordance with **University's** written instructions; and
- 9.1.5 not be used otherwise than as authorised by **University** in writing.

- 9.2 **University** shall grant to the **Supplier** full and free access to those parts of the **Premises** required to perform the **Services** for such period as the **Supplier** is obliged to provide the **Services** during such other times as the **Supplier** and **University** may agree solely to enable the **Supplier** to perform its obligations under a **Contract**.

- 9.3 The **Supplier** shall:

- 9.3.1 have the use of such **Premises** as licensee and shall not have or purport to claim any sole or exclusive right to possession, or to possession of any particular part, of such **Premises**;
- 9.3.2 vacate such **Premises** upon the termination of the **Contract** or at such earlier date as **University** may determine;

- 9.3.3 not exercise or purport to exercise any rights in respect of any **Premises** in excess of those granted under this **Condition 9**;
- 9.3.4 ensure that the **Supplier's** personnel carry any identity passes issued to them by **University** at all relevant times pursuant to **Condition 12.3**; and
- 9.3.5 not damage the **Premises** or any assets on the **Premises**.
- 9.4 Nothing in this **Condition 9** shall create or be deemed to create the relationship of landlord and tenant in respect of any **Premises** between the **Supplier** and any **University Group** member.
- 9.5 Unless agreed otherwise in writing between the **Supplier** and **University** (referencing the **Contract** formed pursuant to the **Terms and Conditions**), **University** shall be under no obligation to provide office or other accommodation or facilities or services (including telephony and IT services) to the **Supplier**.
- 9.6 **University** reserves the right:
 - 9.6.1 to refuse to admit to any **Premises** any of the **Supplier's** personnel who fail to comply with any of **University's** procedures, requirements, policies and standards contemplated in **Condition 12**;
 - 9.6.2 to instruct any of the **Supplier's** personnel to leave any **Premises** at any time for any reason and such **Supplier's** personnel shall comply with such instructions immediately.
- 9.7 The **Supplier** shall promptly notify the **Supplier's** personnel and **University** of any health and safety hazards that exist or may arise in connection with the performance of the **Services**.
- 9.8 The **Supplier** may bring onto the **Premises** such of the **Supplier's Materials** as may be necessary for the provision of the **Services** and such other of the **Supplier's Materials** as may be agreed by the parties and it shall use reasonable endeavours to ensure that any such materials having a material value are clearly marked as belonging to the **Supplier** or any relevant third party. Risk in all of the **Supplier's Materials** shall be with the **Supplier** at all times. Where any **Supplier's Materials** are affixed to the **Premises**, the parties acknowledge that ownership thereof shall not thereby vest in **University Group** and **University** undertakes that neither it nor any member of the **University Group** shall have or claim any entitlement thereto unless the **Supplier** shall fail to remove the same within a reasonable period following the termination of the **Contract**.

- 9.9 The **Supplier** shall make good any damage to the **Premises** arising as a consequence of the removal of the **Supplier's Materials** therefrom.

10. INTELLECTUAL PROPERTY

- 10.1 **University** authorises the **Supplier** to use the **Intellectual Property Rights** of **University** for the purposes only of exercising its rights and performing its obligations under the **Contract**. The **Supplier** will have no other rights whatsoever in respect of the **Intellectual Property Rights** of **University**.
- 10.2 The University will own all such right, title and interest in any Intellectual Property Rights subsisting in any deliverables created by Supplier, or any of its contractors, in the performance of the Services by the Supplier.
- 10.3 Supplier hereby grants to University a non-exclusive, fully paid-up, royalty-free, worldwide, irrevocable and perpetual licence to use Supplier's existing Intellectual Property Rights owned or controlled by Supplier which exist prior to or are created independently from the provision of the Services (and, if relevant, to procure the same from Supplier's contractors relating to their performance of the Services) but only to the extent that such licence(s) are required for University to enjoy the full benefit and use of the Services provided, and any related deliverables, for all purposes.
- 10.4 Supplier hereby irrevocably, unconditionally and absolutely assigns to University, with full title guarantee, and without restriction, all right, title and interest in and to all future Intellectual Property Rights (including future copyright and design right) subsisting in deliverables arising from the performance of the Services, on or after the date of commencement of the Services. For the avoidance of doubt, the assignment under this Clause 10.5 shall take effect from the date on which the deliverables are created, developed or produced.
- 10.5 To the extent that Clause 10.4 is not effective to assign legal title to the Intellectual Property Rights subsisting in deliverables arising from the performance of the Services, then Supplier shall assign or procure the assignment of such Intellectual Property Rights to University as and when requested by University by executing any assignment documents reasonably requested by University, at University's cost. Until such time as those Intellectual Property Rights are assigned to University, Supplier shall hold all such Intellectual Property Rights on trust for University and University shall have an exclusive worldwide, royalty-free licence under those Intellectual Property Rights and to use the deliverables, being the subject of the assignment, for any purpose.
- 10.6 Supplier shall procure that its personnel, contractors and its contractors' personnel and other third parties, if any, used by Supplier in connection with the provision of the Services shall unconditionally and irrevocably waive all of their

moral rights described in Chapter 4 of Part 1 of the Copyright Designs and Patents Act 1988 (or any similar or equivalent legislation anywhere in the world) in respect of deliverables created in the performance of the Services. Supplier shall promptly provide copies of any waivers to University, on request.

- 10.7 Supplier shall not incorporate and/or use Third Party Materials in any deliverable created in the performance of the Services unless Supplier has obtained the prior written consent of University to do so.
- 10.8 The Supplier warrants and shall ensure that the possession and/or use by the University Group and its agents, contractors and suppliers of the deliverables delivered to University in the performance of the Services, and the performance by the Supplier of the Services shall not constitute any infringement or misappropriation of any Intellectual Property Rights or any other legal or equitable right of any person and that the Supplier owns or has obtained valid licences, consents and approvals of all such Intellectual Property Rights and other rights which are necessary for the performance of its obligations under this Agreement.
- 10.9 If any third party claims that the possession and/or use of any deliverables delivered to University in the performance of the Services and/or the receipt of the Services ("Indemnified Deliverables") by any University Group member or its agents, contractors or suppliers and/or the provision by the Supplier of any Indemnified Deliverable under or in connection with this Agreement constitutes an infringement or misappropriation of any Intellectual Property Rights or other right of that third party ("IPR Claim"), the Supplier shall indemnify, keep indemnified and hold harmless the University Group members (including their respective employees, agents, contractors and suppliers) against all Losses arising from or incurred by reason of any such IPR Claim (including the defence and any settlement of such IPR Claim).
- 10.10 In the event of a claim pursuant to clause 10.12:
- 10.10.1 University shall promptly notify the Supplier of the claim;
- 10.10.2 the Supplier shall at its own cost and expense control the defence of such IPR Claim and any related proceedings or settlement negotiations, except that University shall be entitled to take any action which it deems necessary if the Supplier fails to take action, or (in University's reasonable opinion) delays taking action, in defending or settling any such IPR Claim and such failure or delay may, in the reasonable opinion of University, prejudice the interests of the University Group; and

- 10.10.3 at the cost and expense of the Supplier, University shall take all reasonable steps to co-operate with the Supplier in the defence or settlement of such IPR Claim.
- 10.11 If any Indemnified Deliverable becomes the subject of any IPR Claim and, as a result of such IPR Claim, a court of competent jurisdiction grants an injunction preventing the use by the Supplier or any University Group member of any of such Indemnified Deliverable or there is substantial risk of such injunction being granted or the IPR Claim is settled on the basis that the Indemnified Deliverable cannot be used, the Supplier shall at its expense as soon as possible following (and in any event within thirty days of) such event occurring:
- 10.11.1 obtain for the University Group members and their agents, contractors and suppliers, the right to continue to possess, use and/or receive the benefit of the relevant Indemnified Deliverable(s); or
- 10.11.2 replace or modify the relevant Indemnified Deliverable(s) so that it becomes non-infringing without detracting from the performance of the Services and provided that any such replacement or modification shall not prevent the Supplier's compliance with the warranties contained at clause 12.

11. CONFIDENTIALITY

- 11.1 The **Supplier** will keep confidential and will ensure that its employees keep confidential and will not (except as expressly authorised by **University** or required by the duties imposed on the **Supplier** hereunder) use or disclose or attempt to use or disclose to any person any of **University Group's Confidential Information** which comes to the knowledge of the **Supplier**.
- 11.2 The term "**Confidential Information**" extends to all information of a confidential nature disclosed pursuant to the **Contract** or discovered further to the operation of the **Contract** including knowledge and information relating to the trade, business activities, operations, organisation, finances, processes, dealings, specifications, methods, designs, formulae, and technology of and specifically concerning any member of **University Group** or any of its customers or suppliers.
- 11.3 The restriction contained in **Condition 11.1** shall not apply to information or knowledge which:-
- 11.3.1 has in its entirety become public knowledge otherwise than through any unauthorised disclosure or other breach of such restriction;

- 11.3.2 has already come into the possession of the **Supplier** from an independent third party without breach of any obligation of confidentiality;
- 11.3.3 **University** has consented in writing to being disclosed; and
- 11.3.4 is or has been independently developed by the **Supplier** without reference to or use of the **Confidential Information**.
- 11.4 All **Confidential Information** (howsoever stored) concerning the **University Group** supplied by **University** or by a member of the **University Group** or prepared by or on behalf of the **Supplier** for the purposes of the **Contract** and all copies and extracts of it made or acquired by or on behalf of the **Supplier** shall be used only for the purposes of the **Contract**, shall be the property of the **University Group** and shall be returned to the **University Group** upon termination of the **Contract**.
- 11.5 Nothing contained herein shall restrict disclosure:-
 - 11.5.1 to third parties to the extent necessary by legal, accounting or regulatory requirements; and/or
 - 11.5.2 to the professional advisers of the **Supplier** in connection with the interpretation and operation of the **Contract** and any dispute arising therefrom.
- 11.6 The **Supplier** shall ensure that those of its employees or contractors whom **University** specifies for the purposes of this **Condition 11.6** comply with the terms of this **Condition 11**.
- 11.7 The **Supplier** shall promptly notify **University** if it becomes aware of any breach of confidence by any person to whom the **Supplier** divulges any part of such **Confidential Information** and shall give **University Group** all reasonable assistance in connection with any proceedings which **University Group** may institute against such persons for breach of confidence.
- 11.8 Without prejudice to the preceding provisions of this **Condition 11**, the **Supplier** confirms that all data contained on tangible property which becomes the property or comes into the possession of the **Supplier** under the terms of the **Contract** remains the property of **University** or such other member of the **University Group** to which it relates and accordingly the **Supplier** will ensure that:-
 - 11.8.1 no such data shall be removed from premises of **University** or any other member of the **University Group** without the prior written consent of **University** or the applicable member of the **University**

Group and that any data so removed will be returned as soon as the reason for its removal has ceased to exist or upon the request of **University** (whichever is the sooner);

- 11.8.2 all security procedures in place for the **Supplier's** own assets will apply to **University's** data and tangible property;
 - 11.8.3 when such data and tangible property is received by the **Supplier** it will be stored securely in areas of restricted access; and
 - 11.8.4 if **University** requires the erasure of any of **University's** data the **Supplier** will ensure that **University** has a copy thereof prior to erasure and following erasure will provide a certificate of erasure to **University** in writing.
- 11.9 The **Supplier** acknowledges that **University**:
- 11.9.1 is subject to the **FOI Legislation** and agrees to assist and co-operate with **University** to enable **University** to comply with its obligations under the **FOI Legislation**; and
 - 11.9.2 may be obliged under the **FOI Legislation** to disclose information without consulting or obtaining consent from the **Supplier** and, subject to the provisions of this **Condition 11**, may ultimately at its discretion disclose such information.
- 11.10 Without prejudice to the generality of **Condition 11.9**, the **Supplier** shall:
- 11.10.1 transfer to **University** each **FOI Legislation** information request relevant to the **Contract**, the **Goods** and/or **Services**, or any **University Group** member that it or they (as the case may be) receive as soon as practicable and in any event within 2 (two) **Business Days** of receiving such information request; and
 - 11.10.2 in relation to information held by the **Supplier** on behalf of **University**, provide **University** with details about and/or copies of all such information that the **University** requests and such details and/or copies shall be provided within 5 (five) **Business Days** of a request from **University** (or such other period as **University** may reasonably specify) and in such forms as **University** may reasonably specify.
- 11.11 **University** shall be responsible for determining whether information is exempt information under the **FOI Legislation** and for determining which information will be disclosed in response to an information request in accordance with the **FOI Legislation**. The **Supplier** shall not itself respond to any person making

an information request, save to acknowledge receipt, unless expressly authorised to do so by **University**.

- 11.12 The Parties shall comply with their respective obligations under the Data Protection Legislation and the provisions of any Data Protection Agreement, and shall not perform their obligations under the Contract in such a way to cause another Party to breach any of its obligations thereto.

12. WARRANTY INDEMNITY AND CANCELLATION

- 12.1 The **Supplier** warrants, represents and undertakes to **University** that the **Goods** and **Services**:

12.1.1 will be of satisfactory quality within the meaning of the Sale of Goods Act 1979 and the Supply of Goods and Services Act 1982, and fit for any purpose held out by the **Supplier** or made known to the **Supplier** either in writing or orally at or prior to the **Contract** being formed;

12.1.2 will be free from defects in design, material and workmanship;

12.1.3 will correspond in every respect with any **Specification**, drawings, samples or descriptions provided by **University**;

12.1.4 will comply with all statutory requirements, regulations and voluntary codes of conduct relating to the **Goods** and/or **Services** and their sale and supply;

12.1.5 will be so formulated, designed, constructed, finished and packaged as to be safe and without risk to health;

12.1.6 will be performed by appropriately qualified, trained and experienced personnel with a high standard of skill, care and diligence and in accordance with the **Contract**; and

12.1.7 will be performed to such standards of quality generally observed in the industry for similar services.

- 12.2 The **Supplier** will comply with and shall procure that the **Supplier's** personnel comply with **University's** security and personnel policies in force from time to time and notified to the **Supplier** in writing from time to time, including without limitation the following:

12.2.1 Sustainability and Environmental Awareness Policy;

12.2.2 Non-Discrimination / Equality / Diversity Policies;

12.2.3 Health and Safety Policy;

- 12.2.4 Corporate Social Responsibility Policy; and
- 12.2.5 Freedom of Information Act 2000 Policy.
- 12.3 All employees and sub-contractors of the **Supplier** who may require access to the **Premises** may be required by **University** to carry identity passes including the bearer's photograph.
- 12.4 Without prejudice to any other rights or remedies of **University** (whether express or implied), if the **Supplier** breaches any terms of the **Contract** (including a failure or delay in performance) or **University** terminates the **Contract** in accordance with **Condition 13** then **University** may (but will not be obliged) to, whether or not the **Goods** have been accepted or performance of the **Services** has commenced:
 - 12.4.1 cancel any or all remaining instalments or stages if the **Contract** has not already been terminated;
 - 12.4.2 refuse to accept any subsequent delivery of the **Goods** and/or performance of the **Services** which the **Supplier** attempts to make;
 - 12.4.3 recover from the **Supplier** any additional expenditure reasonably incurred by **University** in obtaining the **Goods** and/or **Services** in substitution from another supplier;
 - 12.4.4 claim **Losses** incurred by **University** which are in any way attributable to the **Supplier's** breach of the **Contract** or failure to deliver the **Goods** and/or perform the **Services** on the due date or at all; and/or
 - 12.4.5 for a period of 12 (twelve) months from the date of delivery, in respect of **Goods** which do not conform with the provisions of **Condition 12.1**, oblige the **Seller**, at **University's** option, forthwith to replace or repair such **Goods** free of charge and any repaired or replaced **Goods** will be guaranteed on the terms of this condition for the unexpired portion of the 12 (twelve) month period.

13. TERMINATION

- 13.1 If the **Supplier**:
 - 13.1.1 commits a material breach of the **Contract** which cannot be remedied; or
 - 13.1.2 commits a material breach of the **Contract** which can be remedied but fails to remedy that breach within 30 (thirty) days of a written notice setting out the breach and requiring it to be remedied being given by **University**,

University may terminate the **Contract** immediately by giving written notice to that effect to the **Supplier**.

- 13.2 The **Supplier** may not cancel the **Contract**. **University** is entitled to cancel the **Contract** in whole or in part by giving written notice to the **Supplier** at any time prior to delivery of the **Goods** and/or the **Supplier** commencing the performance of the **Services** in which event **University's** sole liability will be to pay to the **Supplier** fair and reasonable compensation for work-in-progress at the time of cancellation but such compensation will not include loss of profits (whether direct or indirect and whether actual or anticipated) or any indirect or consequential loss.
- 13.3 **University** may terminate the **Contract** immediately by giving written notice to that effect to the **Supplier** if the **Supplier** becomes **Insolvent**.
- 13.4 The **University** is entitled to terminate the **Contract** by giving ten (10) Business Days written notice to the **Supplier**, in which event, **University's** sole liability will be to pay to the **Supplier** for those **Services** completed up to the date of termination.
- 13.5 Following expiry or termination of the **Contract**:
- 13.5.1 **Conditions 3, 11, 15, 16, 17, 18, 23 and 24** shall continue in force, together with any other **Conditions** which expressly or impliedly continue to have effect after expiry or termination of the **Contract**; and
- 13.5.2 all other rights and obligations shall immediately cease without prejudice to any rights, obligations, claims (including claims for damages for breach) and liabilities which have accrued prior to the date of expiry or termination.

14. INDEPENDENT CONTRACTOR

- 14.1 For the purposes of the **Contract** and the **Services** to be performed under the **Contract** the **Supplier** is acting as an independent contractor. The **Supplier** shall have no right, power or authority whatsoever to create any obligation, express or implied, on behalf of **University** or other members of the **University Group** unless **University** has specifically authorised the same in writing.
- 14.2 The **Supplier** shall immediately inform **University** in writing of any proposal or negotiations which may, or will, result in:
- 14.2.1 control of the **Supplier's** affairs passing to another company;
- 14.2.2 a merger between the **Supplier** and another company; or

- 14.2.3 a change of managing director or chairman or company secretary of the **Supplier**.
- 14.3 **University** may terminate the **Contract** immediately by giving written notice to that effect to the **Supplier** if in the **University's** absolute discretion the occurrence of any of the events set out in **Condition 14.2** may compromise the **Supplier's** ability to perform its obligations under a **Contract**.
- 14.4 **University** shall treat in confidence any information given by the **Supplier** under **Condition 14.2**.

15. ANTI-CORRUPTION AND ANTI-BRIBERY

- 15.1 The **Supplier** shall, and shall procure that its officers, employees, agents and sub-contractors (if any) shall:

- 15.1.1 comply with all applicable **Anti-Bribery Laws**;
- 15.1.2 without prejudice to **Condition 15.1.1**, not do or omit to do any act or thing which causes or may cause **University** to be guilty of an offence under section 7 **Bribery Act** (or would do so if **University** was unable to prove that it had in place adequate procedures designed to prevent persons associated with it from undertaking such conduct);
- 15.1.3 promptly report to **University** any request or demand for any undue financial or other advantage of any kind received in connection with the performance of the **Contract** by it or its officers, employees, agents or sub-contractors; and
- 15.1.4 comply with **University's** Code of Conduct, Statement for Third Parties as it is in force from time to time

<http://www.exeter.ac.uk/staff/employment/codesofconduct/statementforthirdparties/>

- 15.2 The **Supplier** shall immediately give written notice to **University**:
- 15.2.1 upon a breach, or suspected breach, of its obligations at **Condition 15.1** occurring or upon becoming aware of a breach of its obligation under **Condition 15.2.2**; and
- 15.2.2 of any financial or other advantage, inducement or reward it has given or intends to give (whether directly or through any third party) to any person (including any employee of **University**) in connection with the awarding or continuation in force of the **Contract**.

15.3 The **Supplier** shall:

15.3.1 keep, for a minimum of 6 (six) years and at its normal place of business, detailed, accurate and up to date records and books of account showing all payments made by the **Supplier** in connection with the **Contract** and the steps taken by the **Supplier** to comply with **Anti-Bribery Laws** and **University's** anti-corruption policy; and

15.3.2 permit **University**, and any person nominated by it for this purpose (and the Higher Education Funding Council for England) to have such access on demand to the **Supplier's** premises, personnel, systems, books and records as **University** may reasonably require to verify the **Supplier's** compliance with this **Condition 15**.

15.4 **University** may terminate a **Contract** immediately by giving written notice to that effect to the **Supplier** if the **Supplier** is in breach of any of its obligations under **Condition 15** or if **University** has reasonable cause to believe that such a breach has occurred or may occur.

15.5 **University** shall be entitled, by giving written notice to that effect to the **Supplier**, to require the **Supplier** to remove from the performance of its obligations under the **Contract** any of the **Supplier's** officers, employees, agents or sub-contractors in respect of whom the **Supplier** is in breach of any of its obligations under this **Condition 15**.

15.6 The **Supplier** shall include in any sub-contract which **University** permits it to enter into in connection with the **Contract**:

15.6.1 a clause equivalent to this **Condition 15**; and

15.6.2 a right under the **Third Party Act** for **University** to exercise equivalent rights over the sub-contractor to those which it exercises over the **Supplier** in **Condition 15.3.2**.

16. ANTI-FRAUD

16.1 The Supplier shall during the term of the Contract:

16.2 not engage in any activity, practice or conduct which would constitute fraud, including but not limited to a fraud offence under section 199(6) of the Economic Crime and Corporate Transparency Act 2023;

16.3 comply with the University's Anti-fraud Policy available at <https://www.exeter.ac.uk/departments/finance/aboutus/policies/fraud/#a3> and as updated from time to time;

- 16.4 promptly notify the University (in writing) if it becomes aware of any suspected or actual breach of Condition 16.1(a), or has reason to believe that it has received a request or demand to commit a fraud offence within the meaning of section 199(6) of the Economic Crime and Corporate Transparency Act 2023, in connection with the performance of the Contract;
- 16.5 establish, maintain and enforce its own policies and procedures including but not limited to reasonable procedures to prevent the commission of fraud and to ensure compliance with Condition 16.1.1 and Condition 16.1.2; and
- 16.6 if requested, co-operate with and provide reasonable assistance to the University, at the University's reasonable cost, to enable the University to investigate, or respond to any requests from a relevant government department or agency to investigate, an alleged offence under 199 of the Economic Crime and Corporate Transparency Act 2023.
- 16.7 The Supplier shall ensure that any of its agents, consultants, contractors, subcontractors or other persons engaged in performance of the Supplier's obligations under the Contract do 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 Condition 16.
- 16.8 Breach of this Condition 16 shall be deemed a material breach under Condition 13.1 of the Contract.

17. GENERAL EXCLUSIONS AND LIMITATION OF LIABILITY

- 17.1 Neither party excludes or limits its liability to the other party in respect of:
 - 17.1.1 the terms implied by section 12 of the Sale of Goods Act 1979 or section 2 of the Supply of Goods and Services Act 1982;
 - 17.1.2 death or personal injury resulting from negligence within the meaning of section 1(1) of the Unfair Contract Terms Act 1977;
 - 17.1.3 to the extent applicable, liability under Part 1 of the Consumer Protection Act 1987 for defects within the meaning of that Act;
 - 17.1.4 **Condition 11** (Confidentiality);
 - 17.1.5 fraud (including fraudulent misrepresentation);
 - 17.1.6 a deliberate repudiatory breach; or
 - 17.1.7 any other liability which, by law, it cannot exclude or limit,

but nothing in this clause confers any right or remedy upon a party to which it would not otherwise be entitled.

- 17.2 The **Supplier** does not exclude or limit its liability to **University** under or in connection with the **Contract** for breach of **Intellectual Property Rights** (whether pursuant to **Condition 10** or otherwise) except to the extent expressly set out.
- 17.3 The exclusions from and limitations of liability set out in this **Condition 16** shall be considered severably. The validity or unenforceability of any one clause, sub-clause, paragraph or sub-paragraph of this **Condition 16** shall not affect the validity or enforceability of any other clause, sub-clause, paragraph or sub-paragraph of this **Condition 16**.
- 17.4 Subject to **Condition 16.5**, the **Supplier** warrants to the **University** and the other **University Group** members (including their respective employees, sub-contractors and agents) that it will not cause any of them to incur or suffer any **Losses** as a consequence of any breach or any negligent performance of the **Contract** by the **Supplier** (including in each case any non-performance or delay in performance of the **Contract**) or of any breach of statutory duty, misrepresentation or misstatement by the **Supplier**.
- 17.5 The **Supplier** is not responsible for any **Losses** to the extent that such **Losses** are caused by any breach or negligent performance of any of its obligations under the **Contract** by **University** and/or any other **University Group** member.
- 17.6 The **Supplier** shall maintain in force, with a reputable insurance company, professional indemnity insurance, product liability insurance and public liability insurance cover to cover such heads of liability as may arise under or in connection with a **Contract**.

18. RECORDS, AUDIT AND INSPECTION

- 18.1 The **Supplier** shall, and shall procure that any sub-contractors shall:
- 18.1.1 maintain all **Records**; and
- 18.1.2 retain all **Records** for the **Retention Period**.
- 18.2 **University** and any person nominated by **University** has the right to audit any and all **Records** at any time during the **Retention Period** on giving to the

Supplier what **University** considers to be reasonable notice (whether in writing or verbally) and at any reasonable time to inspect any aspect of the **Supplier's** performance of its obligations under a **Contract**. **University** shall use reasonable endeavours to co-ordinate its audits and to manage the number, scope, timing and method of undertaking audits so as to ensure that the **Supplier** is not, without due cause, disrupted or delayed in the performance of its obligations under a **Contract**.

- 18.3 The **Supplier** grants to **University** and its agents the right, at any time, on 2 (two) **Business Days'** notice to audit the **Supplier's** compliance with **University's** requirements on security, data integrity and protection against breach of confidentiality. The **Supplier** agrees to indemnify the **University Group** and its agents against any **Losses** that **University Group** or its agents may incur by reason of claims, actions, demands or proceedings brought against the **University Group** or its agents by third parties, including the **Supplier's** service provider(s), arising out of or in connection with such audits.
- 18.4 For the purposes of exercising its rights under **Conditions 17.2** and **17.3**, the **Supplier** shall provide **University** and/or any person nominated by **University** with all reasonable co-operation including:
- 18.4.1 granting access to any premises, equipment, plant, machinery or systems used in the **Supplier's** performance of the **Contract**, and where such premises, equipment, plant, machinery or systems are not the **Supplier's** own, using all reasonable endeavours to procure such access;
 - 18.4.2 ensuring that appropriate security systems are in place to prevent unauthorised access to, extraction of and/or alteration to any **Records**;
 - 18.4.3 making all **Records** available for inspection and providing copies of any **Records** if requested; and
 - 18.4.4 making the **Supplier's** personnel available for discussion with **University**.
- 18.5 Any audit, inspection and/or testing by **University** pursuant to **Condition 17.3** shall not relieve the **Supplier** or any of its sub-contractors from any obligation under the **Contract** or prejudice any of **University's** rights, powers or remedies against the **Supplier**.
- 18.6 The **Supplier** shall promptly, to the extent reasonably possible in each particular circumstance comply with **University's** reasonable requests for access to senior

personnel engaged in the **Supplier's** performance of its obligations under a **Contract**.

19. ASSIGNMENT AND SUB-CONTRACTING

- 19.1 The **Supplier** shall not assign or sub-contract all or any part of its obligations under the **Contract** without the prior written consent of **University** to the identity of the relevant sub-contractor which may be refused or granted subject to such conditions as **University** sees fit.
- 19.2 Where the **Supplier** sub-contracts all or any part of its obligations under the **Contract** to any person, the **Supplier** shall:
- 19.2.1 ensure that such person is obliged to comply with all of the obligations and duties of the **Supplier** under the **Contract** insofar as they relate to the supply of the **Goods** or the **Services** or part thereof (as the case may be) which that sub-contractor is required to perform;
 - 19.2.2 be solely responsible for payments to that person; and
 - 19.2.3 remain solely responsible and liable to **University** for any breach of the **Contract** or act or omission of a sub-contractor or any performance, non-performance, part-performance or delay in performance of any of the **Supplier's** obligations under the **Contract** to the same extent as if such breach or act or omission had been committed by the **Supplier**.
- 19.3 Where **University** gives its consent to sub-contracting under **Condition 18.1**, **University** may as a condition of giving its consent to the **Supplier** require direct warranties, undertakings, guarantees or indemnities from such sub-contractor concerning the supply of the **Goods** or the performance of the **Services** and its compliance with the obligations set out in the **Contract** in all respects.
- 19.4 **University** may novate or otherwise transfer the **Contract** (in whole or in part).
- 19.5 Within 10 (ten) **Business Days** of a written request from **University**, the **Supplier** shall at its expense execute such agreement as **University** may reasonably require to give effect to any such transfer of all or part of its rights and obligations under the **Contract** to one or more persons nominated by **University**.

20. PUBLICITY

No media releases, public announcements or public disclosures by the **Supplier** or the **Supplier's** employees or agents or subcontractors relating to the **Contract** or its subject matter, including but not limited to promotional or marketing material, (but excluding any announcement intended solely for internal distribution by the parties or any disclosure required by legal, accounting or regulatory requirements) may be made without the prior written approval of **University**

21. EMPLOYEE ISSUES

21.1 The **University** and the **Supplier** agree that it is not intended that the commencement of the provision of the **Goods** and/or the **Services** under the **Terms and Conditions** shall constitute a relevant transfer under the **Transfer Regulations** such as to transfer the employment of any person from the **University** to the **Supplier** ("**Alleged Entry Employees**").

21.2 In the event that contrary to **Condition 20.1** above any **Alleged Entry Employee** transfers or alleges that their employment has so transferred, the **University** shall indemnify and keep indemnified the **Supplier** from and against any **Losses** suffered by the **Supplier** which arise directly or indirectly from such transfer or alleged transfer, whether these arise specifically from the **Transfer Regulations** or otherwise.

21.3 Notwithstanding the above, the **Supplier** agrees that at any time **EITHER** at any time during the provision of the **Goods** and/or the **Services** under the **Terms and Conditions** **OR** within the six months immediately preceding the expiry or termination of the provision of the **Goods** and/or the **Services** under the **Terms and Conditions** the **Supplier** shall:

21.3.1 provide promptly to the **University**, on request, in respect of any **Supplier Personnel** full and accurate details of the number of **Supplier Personnel**, the amount of time each **Supplier Personnel** is engaged in providing the **Goods** and/or **Services** each week, the total payroll bill (i.e. total taxable pay and allowances including employer's contributions to pension schemes) for the **Supplier Personnel**, their length of service, date their continuous employment commenced and (if different) their commencement date, job title and descriptions, terms and conditions of employment, any other factors affecting their redundancy entitlement, any outstanding claims arising from their employment, the total number of agency workers, agents and independent contractors engaged by the **Supplier**, the total annual payments made or due to any agency workers, agents or independent contractors and any other related information reasonably requested by

- the **University**, the **University** being entitled to pass on such information (subject always to the requirements of the Data Protection Act 1998) to a **Replacement Supplier**;
- 21.3.2 notify the **University** in writing of any material amendments to the information provided at **Condition 21.3.1** above;
- 21.3.3 not, without the express consent of the University, make any material increase or decrease in the numbers of **Customer Personnel**;
- 21.3.4 not, without the express consent of the University, materially change the terms and conditions of any **Customer Personnel**;
- 21.3.5 not, without the express consent of the University, transfer any of the **Customer Personnel** to another part of its business or move other individuals from elsewhere within its business who have not been previously engaged as such into the provision of the **Goods** and/or the **Services**;
- 21.3.6 cooperate fully with the **Replacement Supplier** to ensure a smooth transition of the **Goods** and/or the **Services** from the **Supplier** to the **Replacement Supplier**.
- 21.4 The **Supplier** shall indemnify and keep indemnified the **University** from and against any **Losses** suffered by the **University** which arise directly or indirectly from any breach by the Supplier of **Condition 21.3** above.
- 21.5 The **University** and the **Supplier** agree that it is not intended that the expiry or termination of the provision of the **Goods** and/or the **Services** under the **Terms and Conditions** shall constitute a relevant transfer under the **Transfer Regulations** such as to transfer the employment of any person from the **Supplier** to the **University** or **Replacement Supplier** ("**Alleged Exit Employees**").
- 21.6 In the event that contrary to **Condition 21.5** above any **Alleged Exit Employee** transfers or alleges that their employment has so transferred, the **Supplier** shall indemnify and keep indemnified the **University** and the **Replacement Supplier** from and against any **Losses** suffered by the **University** and the **Replacement Supplier** which arise directly or indirectly from such transfer or alleged transfer, whether these arise specifically from the **Transfer Regulations** or otherwise.
- 21.7 Notwithstanding **Conditions 21.1 – 21.6** above, the **Supplier** shall indemnify and keep indemnified the **University** from and against any **Losses** suffered by the **University** as a result of any claim or demand by any **Supplier Personnel** arising out of their employment or engagement by the **Supplier** and/or its

termination (including, for the avoidance of doubt, any claim that any **Supplier Personnel** is employed or engaged by the **University**) during the period of provision of the **Goods** and/or the **Services** under the **Terms and Conditions**.
GENERAL

- 21.8 Time shall be of the essence in respect of all dates, periods and timescales with which the **Supplier** is required to comply under the **Contract** and any dates, periods and timescales which may be substituted for them by the agreement in writing of the parties.
- 21.9 **University's** rights and remedies set out in the **Terms and Conditions** are in addition to and not exclusive of any rights and remedies provided by law.
- 21.10 **University** and the **Supplier** shall execute and do all such further deeds, documents and things as may be necessary to carry the provisions of a **Contract** into full force and effect.
- 21.11 Any waiver of a breach of any of the terms of the **Contract** shall not be deemed a waiver of any subsequent breach and shall not affect the other terms of the **Contract**.
- 21.12 If any provision of the **Contract** (in whole or in part) is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed from the **Contract** and the remaining provisions shall continue in full force and effect as if the **Contract** had been executed without the invalid, illegal, or unenforceable provision. In the event that in **University's** reasonable opinion such a provision is so fundamental as to prevent the accomplishment of the purpose of the **Contract**, **University** and the **Supplier** shall immediately commence good faith negotiations to remedy such invalidity.
- 21.13 In performing their obligations under this Agreement, the Supplier shall and shall ensure that each of its sub-contractors, shall:
- 21.13.1 comply with the Modern Slavery Act 2015; and
- 21.13.2 not engage in any activity, practice or conduct that would constitute an offence under sections 1, 2 or 4, of the Modern Slavery Act 2015 if such activity, practice or conduct were carried out in the UK.

22. NOTICE

- 22.1 Subject to **Condition 22.4** any notice or other communication given under or in connection with the **Contract** shall be in writing using the English language and:
- 22.1.1 delivered by hand; or
- 22.1.2 sent by pre-paid recorded delivery post

to **University** at the address and marked for the attention of the individual detailed in the **Contract** and to the **Supplier** at the address detailed in any quotation, acknowledgement of order or other document received by **University** from the **Supplier** (or such other address or, in the case of **University**, individual, as may be notified by the relevant party to the other party from time to time in accordance with this **Condition 22**).

22.2 Any notice or communication given in accordance with **Condition 22.1** shall be deemed to have been served:

22.2.1 if delivered by hand, at the time of receipted delivery; and

22.2.2 if sent by pre-paid recorded delivery post at 9.00 a.m. on the second **Business Day** after the date of posting.

22.3 To prove service of a notice or communication it shall be sufficient to prove that the provisions of **Condition 22.1** were complied with.

22.4 This **Condition 22** shall not apply to the service of any proceedings or other documents in a legal action to which the Civil Procedure Rules apply.

23. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

23.1 Save that any **University Group** member has the right to enforce the terms of the **Contract** in accordance with the **Third Party Act, University** and the **Supplier** do not intend that any of the terms of the **Contract** will be enforceable by virtue of the **Third Party Act** by any person not a party to it.

23.2 Notwithstanding **Condition 23.1**, the parties are entitled to vary or rescind the **Contract** without the consent of any **University Group** members.

24. GOVERNING LAW AND JURISDICTION

24.1 The formation, construction, performance, validity and all aspects whatsoever of the **Contract** shall be governed by English law.

24.2 The parties hereby submit themselves to the exclusive jurisdiction of the English Courts.

25. DISPUTE RESOLUTION

25.1 In the event of a **Dispute** either party may serve a **Referral Notice** on the other party to refer the matter for resolution.

25.2 Once a **Referral Notice** has been served in relation to a **Dispute**, that **Dispute** shall be referred for resolution to the Assistant Director of Service or Faculty DFO for the time being on behalf of **University** and accountable person of equivalent

seniority for the time being on behalf of the **Supplier**. Those representatives shall meet at the earliest convenient time and in any event within 14 days of the date of service of the relevant **Referral Notice** and shall attempt to resolve the **Dispute**.

25.3 If a **Dispute** has not been resolved within 14 (fourteen) days of the date of service of the relevant **Referral Notice** it shall be referred for resolution to Director of Service or Faculty for the time being on behalf of **University** and accountable person of equivalent seniority for the time being on behalf of the **Supplier**. Those representatives shall meet at the earliest convenient time and in any event within 14 (fourteen) days of the date of service of the relevant **Referral Notice** and shall attempt to resolve the **Dispute**.

25.4 If a **Dispute** is not resolved within 14 (fourteen) days of the date of service of the relevant **Referral Notice** the parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. Either party may initiate a mediation by serving a **Mediation Notice** on the other party identifying the **Dispute** it believes has arisen and requesting it be referred to mediation.

25.5 Unless a mediator has been agreed upon by the parties and has confirmed his appointment within 28 (twenty eight) days of the date of service of the relevant **Mediation Notice**, a mediator will be nominated at the written request of either party by CEDR. The parties shall use all reasonable endeavours to procure that the mediation shall start within 42 (forty two) days of the date of service of the **Mediation Notice**.

25.6 If the **Dispute** is not resolved within 84 (eighty four) days of the date of service of the **Mediation Notice**, either party may commence proceedings in accordance with **Condition 24.2**.

25.7 Subject to **Condition 25.8**, the procedures set out in **Condition 25.4 to 25.6** will be followed prior to the commencement of any proceedings by either party in relation to a **Dispute**.

25.8 **Conditions 25.4 to 25.6** will not prevent or delay either party from:

25.8.1 seeking orders for specific performance, interim or final injunctive relief; or

25.8.2 exercising any rights it has to terminate the **Contract**.

26. ENTIRE AGREEMENT / RELIANCE ON REPRESENTATIONS

26.1 The **Contract** and any **Specification** and/or **Project Plan** if required contain all the terms which the parties have agreed in relation to the subject matter of the **Contract** and supersede any prior written or oral agreements,

representations or understandings between the parties in relation to such subject matter.

- 26.2 The **Supplier** acknowledges that the **Contract** has not been entered into wholly or partly in reliance on, nor has the **Supplier** been given, any warranty, statement, promise or representation made by or on behalf of **University** other than as expressly set out in the **Contract**. To the extent that any such warranties, statements, promises or representations have been given the **Supplier** unconditionally and irrevocably waives any claims, rights or remedies which it might otherwise have had in relation to them.
- 26.3 Nothing in this **Condition 26** will exclude any liability which one party would otherwise have to the other party in respect of any statements made fraudulently.

Schedule 1 – The Price

Schedule 2 – The Services