

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

**between**

**The University of Dundee**

established by Royal Charter dated 20 July 1967 and a registered Scottish Charity (charity number SC015096), having its principal office at 149 Nethergate, Dundee, DD1 4HN

(the "**University**")

**and**

**The person, firm, company or other body**

supplying the Goods and Services identified in the Purchase Order (the "**Supplier**")



University  
of Dundee

[dundee.ac.uk](http://dundee.ac.uk)

## TERMS AND CONDITIONS FOR THE PURCHASE OF GOODS AND SERVICES UNIVERSITY OF DUNDEE

### 1. INTERPRETATION

1.1 In these Conditions, the following definitions apply:

**Commencement Date:** has the meaning set out in clause 2.2.

**Conditions:** these terms and conditions as amended from time to time in accordance with clause 22.9.

**Contract:** has the meaning set out in clause 2.4.

**Deliverables:** all Documents, products and materials developed by the Supplier or its sub-contractors, agents, consultants and employees as part of or in relation to the Services in any form, including without limitation computer programs, data, reports and specifications (including drafts).

**Delivery Date:** has the meaning set out in clauses 4.4 and 12.2

**Document:** any written document, and any drawing, map, plan, diagram, design, picture or other image, tape, disk or other device or record embodying information in any form.

**EIRs:** the Environmental Information Regulations (Scotland) 2004 and any subordinate legislation made under such Regulations from time to time, together with any guidance and/or codes of practice issued by the Scottish Information Commissioner in relation to such legislation.

**FOISA:** the Freedom of Information (Scotland) Act 2002 and any subordinate legislation made under such Act from time to time, together with any guidance and/or codes of practice issued by the Scottish Information Commissioner in relation to such legislation.

**Goods:** the goods (or any part of them) set out in the Purchase Order.

**Intellectual Property Rights:** patents, trademarks, service marks, design rights (whether registerable or otherwise), applications for any of the foregoing, copyright,

database rights, know-how, trade or business names and other similar rights or obligations whether registerable or not in any country.

**Purchase Order:** the University's purchase order for the supply of Goods and/or Services, as set out in the University's purchase order form.

**Regulations:** any law, Act of any parliament or legislative assembly, instrument, rule, order, regulation, directive, which concerns or may affect the Goods, the Services and/or the supply or receipt thereof.

**Relevant Laws:** all applicable laws, statutes, regulations, and codes relating to anti bribery and anti-corruption including the UK Bribery Act 2010.

**Relevant Policies:** the University's anti-bribery and anti-corruption policies, as may be updated by the University from time to time.

**Request for Information:** the meaning given to it in FOISA or any apparent request for information under FOISA or the EIRs. "**Information**" has the meaning given to it in section 73 of FOISA.

**Services:** the services, including without limitation any Deliverables, to be provided by the Supplier under the Contract as set out in the Specification.

**Specification:** in relation to Goods, any specification for the Goods (including any relevant plans or drawings) provided by the University to the Supplier and in relation to Services, the description or specification for Services produced by the Supplier and agreed in writing by the University.

**Supplier:** the person, firm, company or other body from whom the University purchases the Goods and/or Services.

**University Assets:** any materials, plant or equipment owned or held by the University and provided by the University for use in providing the Goods and/or the Services.

**University Materials:** has the meaning set out in clause 5.3.12.

**WEEE:** any Goods which fall within the definition of waste electrical or electronic equipment in Directive 2002/96/EC.

**Working Day:** any day (other than a Saturday or Sunday) on which clearing banks are open for the transaction of normal business (ignoring for this purpose 24-hour electronic banking) in Edinburgh.

1.2 In these Conditions, the following rules apply:

1.2.1 words denoting the singular shall include the plural and vice versa, and words denoting any gender shall include all genders, and words denoting persons include corporations, partnerships and all other legal entities;

1.2.2 unless the context otherwise requires, references in these Conditions to any clause will be deemed to be a reference to the relevant clause in these Conditions.

1.2.3 The headings are inserted for ease of reference only and will not affect the interpretation or construction of these Conditions.

1.2.4 References in these Conditions to the word "include", "including" and "in particular" are to be construed as being by way of illustration or emphasis only and shall not be construed as, nor shall they take effect as, limiting the generality of any preceding words.

1.2.5 A reference to a particular law or statutory provision is to be construed as a reference to that law or statutory provision as it is in force for the time being taking account of any enactment, modification, extension or re-enactment and includes any subordinate legislation for the time being in force made under it.

1.2.6 Any reference to any Scottish term for any action, remedy, method or judicial proceeding, legal document, legal status, court, official or any legal concept or thing will in respect of any jurisdiction other than Scotland be deemed to include what most nearly approximates in that jurisdiction to the Scottish term.

## **2. NATURE OF CONTRACT**

2.1 The Purchase Order constitutes an offer by the University to purchase Goods and/or Services from the Supplier in accordance with these Conditions.

2.2 The Purchase Order shall be deemed to be accepted on the earlier of the following ("**Commencement Date**"):

2.2.1 the Supplier issuing written acceptance of the Purchase Order; or

2.2.2 any act by the Supplier consistent with fulfilling the Purchase Order, at which point and on which date the Contract shall come into existence.

2.3 If the supply of the Goods and/or Services is for one single delivery, the terms of the Contract shall apply to that delivery. If the supply of the Goods and/or Services is intended to take place over a period of time, the terms of the Contract shall apply for the duration of the period of time as specified in the Purchase Order, subject to earlier termination in accordance with the terms of these Conditions.

2.4 These Conditions apply to any Purchase Order which together constitute the "**Contract**". The Contract applies to the exclusion of any other terms that the Supplier seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing.

2.5 In the event of any conflict between these Conditions and the Purchase Order, the terms of the Purchase Order shall take precedence.

### **3. SUPPLY OF GOODS**

- 3.1 The Supplier hereby warrants that the Goods shall:
- 3.1.1 correspond with their description and any applicable Specification;
  - 3.1.2 be of satisfactory quality (within the meaning of the Sale of Goods Act 1979) and fit for any purpose held out by the Supplier or made known to the Supplier by the University, either expressly or by implication, and in this respect the University relies on the Supplier's skill and judgement;
  - 3.1.3 where applicable, be free from defects in design, materials and workmanship;
  - 3.1.4 not infringe the Intellectual Property Rights of any third party; and
  - 3.1.5 comply with all applicable Regulations, and statutory and regulatory requirements relating to the manufacture, labelling, packaging, storage, handling and delivery of the Goods.
- 3.2 The Supplier shall ensure that at all times it has and maintains all the licences, permissions, authorisations, consents and permits that it needs to carry out its obligations under the Contract in respect of the Goods. The University reserves the right to request copies of any such documentation.
- 3.3 The University shall have the right to inspect and/or test the Goods at any time before delivery.
- 3.4 If following such inspection or testing the University considers that the Goods do not conform or are unlikely to comply with the Supplier's undertakings at clauses 3.1 and 3.2, the University shall inform the Supplier and the Supplier shall immediately take such remedial action as is necessary to ensure compliance.
- 3.5 Notwithstanding any such inspection or testing, the Supplier shall remain fully liable for the Goods and any such inspection or testing shall not reduce or otherwise affect the Supplier's obligations under the Contract. The University shall have the right to conduct further inspections and tests after the Supplier has carried out any remedial action.

### **4. DELIVERY OF GOODS**

- 4.1 The Supplier shall ensure that:
- 4.1.1 the Goods are properly packed and secured in such manner as to enable them to reach their destination in good condition and are delivered carriage paid; and
  - 4.1.2 each order of Goods shall be accompanied by a delivery note from the Supplier showing the order number, the date of the order, the type and quantity of Goods included in the order and, in the case of an order being delivered by instalments, the outstanding balance of Goods remaining to be delivered.

- 4.2 Unless otherwise provided in the Contract, the Supplier shall be responsible for the collection and disposal of all returnable packaging at no cost to the University. The Supplier shall be responsible for the collection, treatment and disposal of all WEEE at no cost to the University.
- 4.3 If the Supplier requires the University to return any packaging materials to the Supplier, that fact must be clearly stated on the delivery note accompanying the relevant order, and any such returns shall be at the Supplier's expense.
- 4.4 The Supplier shall deliver the Goods:
- 4.4.1 on the date specified in the Purchase Order unless otherwise agreed with the University in writing (the "**Delivery Date**");
- 4.4.2 to the University's premises or such other location as is set out in the Purchase Order or as instructed by the University before delivery (the "**Delivery Location**"); and
- 4.4.3 during the University's normal hours of business being 8.30am to 5pm Monday to Friday or as otherwise instructed by the University.
- 4.5 Subject to clauses 7.1 to 7.4 (inclusive) and any obligations regarding the installation by the Supplier of the Goods as set out in the Purchase Order, delivery of Goods shall be complete on the completion of unloading of the relevant Goods at the Delivery Location and once a signature, on behalf of the University confirming delivery, has been obtained by the Supplier.
- 4.6 Unless otherwise agreed by the Parties in writing, title to the Goods delivered to the University shall pass to the University on delivery of the relevant Goods in accordance with clause 4.54.2.
- 4.7 Subject always to clause 4.8, the risk of theft, loss of or damage to the Goods delivered to the University shall pass to the University on satisfactory delivery of the relevant Goods in accordance with clause 4.5.
- 4.8 Nothing in clause 4.7 restricts the liability of the Supplier for any claims, losses liabilities or expenses arising as a result of the Supplier's negligence, breach of contract, or criminal act.

## **5. SUPPLY OF SERVICES**

- 5.1 The Supplier shall from the Commencement Date and for the duration of the Contract provide the Services to the University in accordance with the terms of the Contract.
- 5.2 The Supplier shall meet any performance dates for the Services specified in the Purchase Order or notified to the Supplier by the University.
- 5.3 In providing the Services, the Supplier warrants that it shall:

5.3.1 perform the Services and provide the Deliverables in accordance with all applicable Regulations from time to time in force and the Supplier will at all times comply with all Regulations;

5.3.2 co-operate with the University in all matters relating to the Services, and comply with all instructions provided by the University;

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

5.3.4 use personnel who are qualified, adequately trained and capable of providing the applicable Services in respect of which they are engaged;

5.3.5 ensure that the Services and Deliverables conform with the Specification, and that the Deliverables shall be fit for any purpose expressly or impliedly made known to the Supplier by the University;

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

5.3.7 use the best quality goods, materials, standards and techniques, and ensure that the Deliverables, and all goods and materials supplied and used in the Services or transferred to the University, are free from defects in workmanship, installation and design;

5.3.8 maintain up-to-date records on the personnel engaged in the provision of the Services and, on request, shall provide reasonable information to the University about such personnel. The Supplier shall ensure at all times that it has the right to provide these records in compliance with data protection laws;

5.3.9 obtain and at all times maintain all necessary approvals, certificates, authorisations, permissions, licences, permits, regulations and consents and comply with all applicable Regulations;

5.3.10 observe all health and safety rules and regulations and any other security requirements that apply at any of the University's premises including any permit to work systems, and ensure that the working area is not left unattended during any periods in which the Services are being provided;

5.3.11 ensure that the working area is left safe and secure at the end of any working period;

5.3.12 hold any materials, equipment and tools, drawings, specifications and data supplied by the University to the Supplier ("University Materials") in safe custody at its own risk, maintain the University Materials in good condition until returned to the University, and not dispose of or use the University Materials other than in accordance with the University's written instructions or authorisation of the University;

5.3.13 not do or omit to do anything which may cause the University to lose any license, authority, consent or permission upon which it relies for the purposes of conducting its business, and the Supplier acknowledges that the University may rely or act on the Services; and

5.3.14 where relevant, provide evidence of competence to deliver the Services.

## **6. UNIVERSITY PREMISES AND ASSETS**

6.1 The Supplier shall ensure that:

6.1.1 where using the University's premises and any University Assets, it will comply and cooperate with the University's reasonable directions regarding the security of the same; and

6.1.2 any University Assets used by the Supplier are maintained (or restored at the end of the term of the Contract) in the same or similar condition as at the Commencement Date (fair wear and tear excepted) and are not removed from University premises unless expressly permitted under the Contract or by the University in writing.

## **7. THE UNIVERSITY'S REMEDIES**

7.1 If the Supplier fails to deliver the Goods on the Delivery Date and/or meet any performance dates for the Services specified in the Purchase Order or notified to the Supplier by the University, the University shall, without limiting its other rights or remedies, have one or more of the following rights:

7.1.1 to terminate the Contract with immediate effect upon written notice to the Supplier;

7.1.2 to refuse to accept any subsequent performance of the Services and/or delivery of the Goods which is attempted by the Supplier;

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

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

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

7.2 If the Supplier has delivered Goods that do not comply with the undertakings set out in clauses 3.1 and 3.2 then, without limiting its other rights or remedies, the University shall have one or more of the following rights, whether or not it has accepted the Goods:

7.2.1 to reject the Goods (in whole or in part) whether or not title has passed and to return them to the Supplier at the Supplier's own risk and expense;

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

7.2.3 to require the Supplier to repair or replace the rejected Goods, or to provide a full refund of the price of the rejected Goods (if paid);

7.2.4 to refuse to accept any subsequent delivery of the Goods which the Supplier attempts to make;



7.2.5 to recover from the Supplier any expenditure incurred by the University in obtaining substitute goods from a third party; and

7.2.6 to claim damages for any additional costs, loss or expenses incurred by the University arising from the Supplier's failure to supply Goods in accordance with clauses 3.1 and 3.2.

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

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

## **8. THE UNIVERSITY'S OBLIGATIONS**

The University shall:

8.1.1 provide the Supplier with reasonable access at reasonable times to the University's premises for the purpose of delivering the Goods and/or providing the Services; and

8.1.2 provide such information as the Supplier may reasonably request for the provision of the Services and the University considers necessary for the purpose of delivering the Goods and/or providing the Services.

## **9. TUPE**

9.1 The parties agree that TUPE will not apply on commencement, expiry or termination (whether in whole or in part) of the Contract.

## **10. CHARGES AND PAYMENT**

10.1 The price for the Goods shall:

10.1.1 be the price set out in the Purchase Order;

10.1.2 be inclusive of the costs of packaging, insurance and carriage of the Goods, unless otherwise agreed in writing by the University. No extra charges shall be effective unless agreed in writing and signed by the University.

10.2 The charges for the Services shall be set out in the Purchase Order, and shall be the full and exclusive remuneration of the Supplier in respect of the performance of the Services. Unless otherwise agreed in writing by the University, the charges shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the performance of the Services.

10.3 Unless otherwise stated in the Purchase Order, payment will be made within thirty (30) Days of receipt and agreement of invoices, submitted monthly in arrears, for Goods delivered and Services completed to the satisfaction of the University.

- 10.4 Each invoice shall include all required details as stipulated on the Purchase Order and include such supporting information required by the University to verify the accuracy of the invoice, including but not limited to the relevant Purchase Order number.
- 10.5 Value added tax, where applicable, shall be shown separately on all invoices as a strictly net extra charge.
- 10.6 Payment of the price may be delayed, but no prompt discount (if applicable) shall be forfeited by the University and no interest shall be payable in respect of late payment if the Supplier fails to comply with the specific invoicing requirements (if any) set out in the Purchase Order.
- 10.7 Subject to Clause 10.6 above, interest on late payments shall be payable by the University at the rate of two per cent (2%) per annum above the base rate from time to time of the Clydesdale Bank plc, on such late amounts from the due date for payment until the date of actual payment in full of such amounts.
- 10.8 Any payment made shall be without prejudice to the University's rights, should the Goods and/or Services prove unsatisfactory or not in accordance with any applicable Specification.
- 10.9 The Supplier shall maintain complete and accurate records of the time spent and materials used by the Supplier in providing the Services, and the Supplier shall allow the University to inspect such records at all reasonable times on request.
- 10.10 The University may retain or set off any sums owed to it by the Supplier which have fallen due and payable against any sums due to the Supplier under the Contract or any other agreement pursuant to which the Supplier or any associated company such as the holding company or any subsidiary of the Supplier provides goods or services to the University.

## **11. INTELLECTUAL PROPERTY RIGHTS**

- 11.1 In respect of the Goods and any goods that are transferred to the University as part of the Services under this Contract, including without limitation the Deliverables or any part of them, the Supplier warrants that it has full clear and unencumbered title to all such items, and that at the date of delivery of such items to the University, it will have full and unrestricted rights to sell and transfer all such items to the University.
- 11.2 The Supplier assigns to the University, with full title guarantee and free from all encumbrances and other third party rights, all Intellectual Property Rights in the products of the Services, including for the avoidance of doubt the Deliverables.
- 11.3 The Supplier shall obtain waivers of all moral rights in the products, including for the avoidance of doubt the Deliverables, of the Services to which any individual is now or

may be at any future time entitled under Chapter IV of Part I of the Copyright Designs and Patents Act 1988 or any similar provisions of law in any jurisdiction.

- 11.4 The Supplier shall, at its own expense, promptly at the University's request, procure that any third party shall promptly execute and deliver such documents and perform such acts as may be required for the purpose of giving full effect to the Contract, including securing for the University the full benefit of the Contract, including all right, title and interest in and to the Intellectual Property Rights assigned to the University in accordance with clause 11.2.
- 11.5 Any Intellectual Property Rights owned by, vested in or controlled by the University which may be disclosed or made available by the University to the Supplier will remain at all times the exclusive property of the University.
- 11.6 The provisions of this clause 11 shall survive expiry or termination of the Contract.

## **12. INDEMNITY**

- 12.1 The Supplier shall and hereby agrees to fully and continually indemnify the University on demand from and against any and all losses, claims, damages, charges, expenses, liabilities, demands, proceedings and actions (including reasonable legal costs) which the University sustains or incurs or which may be brought or established against the University by any person and which in any case arises as a result of or in connection with:

12.1.1 any claim made against the University by a third party for death, personal injury or damage to property arising out of, or in connection with, defects in the Goods, to the extent that the defect in the Goods is attributable to the acts or omissions of the Supplier, its employees, agents or subcontractors;

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

12.1.3 any claim made against the University for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the manufacture, supply or use of the Goods, or receipt, use or supply of the Services.

- 12.2 For the duration of the Contract and unless otherwise agreed with the University in writing, for a period of six (6) years thereafter, the Supplier shall at its own cost, effect and maintain with a reputable insurance company a policy or policies of insurance providing appropriate levels of cover as may be specified and notified to the Supplier by the University from time to time. The cover shall be in respect of all risks which may be incurred by the Supplier, arising out of the Supplier's performance of the Contract, including death or personal injury, loss of or damage to property or any other loss.

Such policies shall include cover in respect of any financial loss arising from any advice given or omitted to be given by the Supplier.

12.3 The Supplier shall, on the University's request, produce both the insurance certificates giving details of cover and the receipt for the current year's premium in respect of each insurance described in clause 12.3.

12.4 This clause 12 shall survive termination of the Contract.

### **13. LIMITATION OF LIABILITY**

13.1 Subject to clauses 13.4 and 13.5, neither Party shall be liable to the other Party (as far as permitted by law) for indirect special or consequential loss or damage in connection with the Contract which shall include, without limitation, any loss of or damage to profit, revenue, contracts, anticipated savings, goodwill or business opportunities whether direct or indirect.

13.2 Each party shall at all times take all reasonable steps to minimise and mitigate any loss or damage for which the relevant party is entitled to bring a claim against the other Party pursuant to the Contract.

13.3 Subject to clause 13.5, the University's total aggregate liability in respect of any claim, loss or damage, whether arising from delict (including negligence), breach of contract or otherwise under or in connection with the Contract (other than a failure to pay the price that is properly due and payable in respect of Goods and/or Services supplied and for which the University shall remain fully liable), shall in no event exceed an amount equal to the total fees paid or payable in respect of any Goods and Services over the twelve (12) month period preceding the claim, loss or damage arising, or the applicable shorter period if the Contract commenced less than twelve (12) months prior to the claim, loss or damage arising.

13.4 Any clause limiting the Supplier's liability does not apply in relation to a breach of clause 14 (Confidentiality).

13.5 Nothing in the Contract shall limit or exclude either party's liability for death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors, fraud or fraudulent misrepresentation, or any other matter the exclusion or limitation of which is not permitted by law.

### **14. CONFIDENTIALITY**

14.1 A party ("**Receiving Party**") shall keep in strict confidence all matters relating to the Contract and all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Receiving Party by the other party ("**Disclosing Party**"), its employees, agents or

subcontractors, and any other confidential information concerning the Disclosing Party's business or its products or its services which the Receiving Party may obtain. The Receiving Party shall restrict disclosure of such confidential information to such of its employees, agents or subcontractors as reasonably need to know such confidential information for the purpose of discharging the Receiving Party's obligations under the Contract, and shall ensure that such employees, agents or subcontractors are subject to written obligations of confidentiality which are no less onerous than those which bind the Receiving Party. This clause 14 shall survive termination of the Contract.

14.2 The Supplier shall not, without the prior written consent of the University (which shall not be unreasonably withheld or delayed):

14.2.1 make any press announcements or publicise the Contract or its contents in any way; or

14.2.2 use the University's name or brand in any promotion or marketing or announcement of orders.

#### 14.3 **FREEDOM OF INFORMATION**

14.3.1 The Supplier acknowledges that the University is subject to the requirements of the FOISA and the EIRs and shall assist and cooperate with the University (at the Supplier's expense) to enable the University to comply with its information disclosure requirements.

14.4 The Supplier shall:

14.4.1 provide all necessary assistance as reasonably requested by the University to enable the University to respond to a Request for Information within the time for compliance set out in section 10 of FOISA or regulation 5 of the EIRs; and

14.4.2 provide the University with a copy of all Information in its possession or power in the form that the University requires within three (3) Working Days (or such other period as the University may specify) of the University requesting that Information.

14.5 The University shall be responsible for determining at its absolute discretion whether Information:

14.5.1 is exempt from disclosure in accordance with the provisions of FOISA or the EIRs; and

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

14.6 In no event shall the Supplier respond directly to a Request for Information unless expressly authorised to do so by the University.

14.7 The Supplier acknowledges that the University may, acting in accordance with the Scottish Ministers' Code of Practice on the Discharge of Functions of Public Authorities under Section 60(5) of FOISA, be obliged under FOISA or the EIRs to disclose Information:

14.7.1 without consulting with the Supplier; or

14.7.2 following consultation with the Supplier and having taken its views into account.

14.8 The Supplier shall ensure that all Information produced in the course of the Contract or relating to the Contract is retained for disclosure and shall permit the University to inspect such records as requested from time to time.

14.9 The Supplier agrees that, notwithstanding the terms of the Contract, any disclosure of Information by the University in response to a Request for Information will not breach any confidentiality obligations imposed on the University by the Supplier whether in the Contract or otherwise.

## **15. TERMINATION**

15.1 Without limiting its other rights or remedies, the University may terminate the Contract with immediate effect by giving written notice to the Supplier if:

15.1.1 the Supplier commits a material or persistent breach of the Contract and (if such a breach is remediable) fails to remedy that breach within ten (10) days of receipt of notice in writing of the breach;

15.1.2 a resolution is passed or an order made for the winding up of the Supplier (otherwise than for the purpose of solvent amalgamation or reconstruction) or the Supplier becomes subject to an administration order or a receiver is appointed over or an encumbrancer takes possession of any of the Supplier's property or equipment;

15.1.3 the Supplier ceases or threatens to cease to carry on business in the United Kingdom;

15.1.4 there is a change of control (as defined in section 574 of the Capital Allowances Act 2001) of the Supplier to which the University reasonably objects; or

15.1.5 the Supplier (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his own affairs or becomes a patient under any mental health legislation.

15.2 Without limiting its other rights or remedies, the University may terminate the Contract:

15.2.1 in respect of the supply of Services, by giving the Supplier thirty (30) days written notice; and

15.2.2 in respect of the supply of Goods, with immediate effect by giving written notice to the Supplier, in which case the University shall pay the Supplier fair and reasonable compensation for any work in progress on any other Goods at the date of termination but such compensation shall not include loss of anticipated profits or any consequential loss.

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

## **16. CONSEQUENCES OF TERMINATION**

16.1 On termination of the Contract or any part of it for any reason:

16.1.1 where the Services are terminated, the Supplier shall immediately deliver to the University all Deliverables, whether or not then complete, and return all Customer Materials. If the Supplier fails to do so, then the University may without limiting its other rights or remedies enter the Supplier's premises and take possession of them. Until they have been returned or delivered, the Supplier shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract;

16.1.2 the accrued rights and remedies of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination; and

16.1.3 clauses which expressly or by implication have effect after termination shall continue in full force and effect.

## **17. DISCRIMINATION**

17.1 The Supplier shall not unlawfully discriminate within the meaning and scope of any Regulations relating to discrimination (whether in age, race, gender, religion, disability, sexual orientation or otherwise) in employment. Breach of this clause 17 is a material default which shall entitle the University to terminate the Contract with immediate effect.

17.2 The Supplier shall take all reasonable steps to secure the observance of clause 17.1 by all of its employees, agents and subcontractors engaged in the performance of the Contract.

## **18. ANTI-CORRUPTION AND ANTI-BRIBERY**

18.1 For the purposes of this clause 18 the expressions 'adequate procedures' and 'associated with' shall be construed in accordance with the Bribery Act 2010 and guidance published under it.

18.2 The Supplier shall ensure that it and each person referred to in clauses 18.2.1 to 18.2.3 (inclusive) does not, by any act or omission, place the University in breach of Relevant Laws. The Supplier shall comply with all Relevant Laws and Relevant Policies in connection with the performance of the Contract, ensure that it has in place adequate procedures to prevent any breach of this clause 18.2 and ensure that:

18.2.1 all of the Supplier's personnel and all subcontractors, suppliers, agents and other intermediaries of the Supplier;

18.2.2 all others associated with the Supplier; and

18.2.3 each person employed by or acting for or on behalf of any of those persons referred to in clauses 18.2.1 and/or 18.2.2, involved in performing services for or on behalf of the Supplier so comply.

- 18.3 Without limitation to clause 18.2, the Supplier shall not in connection with the Contract make or receive any bribe (which term shall be construed in accordance with the Relevant Laws) or other improper payment or advantage, or allow any such bribe or improper payment or advantage to be made or received on its behalf, either in the United Kingdom or elsewhere, and will implement and maintain adequate procedures to ensure that such bribes or improper payments or advantages are not made or received directly or indirectly on its behalf.
- 18.4 The Supplier shall immediately notify the University as soon as it becomes aware of a breach or possible breach of any of the requirements in this clause 18.
- 18.5 In the event that the Supplier breaches the terms of this clause 18, the University will be entitled to terminate the Contract without notice.
- 18.6 The Supplier shall at all times, during and after the term of the Contract, on written demand indemnify the University and keep the University indemnified against all losses, damages, costs or expenses and other liabilities (including legal fees) incurred by, awarded against or agreed to be paid by the University as a consequence of the Supplier or any person referred to in clauses 18.2.1 to 18.2.3 (inclusive) committing a breach of Relevant Laws.

## **19. ETHICAL & SOCIAL REQUIREMENTS**

- 19.1 The Supplier shall, and shall ensure that any subcontractor and/or supplier shall, comply with all relevant Regulations in relation to the terms of employment and working conditions of their employees, workers and any other persons engaged to perform works and/or services on their behalf. This includes complying with:
- 19.1.1 health and safety requirements;
  - 19.1.2 national minimum wage requirements;
  - 19.1.3 any relevant social security requirements; and
  - 19.1.4 all applicable anti-slavery and human trafficking laws, statutes, regulations and codes of the University from time to time in force including the Modern Slavery Act 2015.
- 19.2 The Supplier shall, and shall ensure that any subcontractor and/or supplier shall, indemnify the University against any losses, liabilities, damages, costs (including but not limited to legal fees) and expenses incurred by or awarded against, the University as a result of any breach of this clause 19.
- 19.3 In the event that the Supplier and any of its subcontractors and/or its suppliers breach the any of the terms contained in this clause 19, the University will be entitled to terminate the Contract without notice.



## **20. ENVIRONMENTAL CONSIDERATIONS**

20.1 The Supplier shall comply in all material respects with any relevant Regulations relating to environmental matters which are relevant to the Contract. Further, the Supplier shall ensure that:

20.1.1 no Services are supplied which will endanger the health and safety of the end users of the Services (in each case assuming that such persons act reasonably); and

20.1.2 no goods are supplied as part of the Services which will cause significant damage to the environment during manufacture, use, or disposal, which consume a disproportionate amount of energy during manufacture, use, or disposal, which cause unnecessary waste because of over-packaging or because of an unusually short shelf life, or which contain materials derived from threatened species or threatened environments.

20.2 In the event that the Supplier and/or any of its employees, agents or subcontractors breach the terms of clause 20.1 above, the University will be entitled to terminate the Contract without notice.

## **21. AUDIT**

21.1 The Supplier shall promptly, and in any event within five (5) Working Days following a request to do so, both during the term of the Contract and following termination, make available to the University and any regulatory authority any contract, note, file, correspondence, information and document (howsoever recorded) relating to the provision of Goods and/or the performance of Services to enable the University to fully and effectively comply with the requirements of any regulatory authority, all relevant legislation and/or regulations, and/or as the University may reasonably require to comply with its own internal accounting, audit and legal requirements.

## **22. GENERAL**

22.1 **Force majeure:**

22.1.1 Subject to the remaining provisions of this clause 22.1, neither party shall be liable to the other for any delay or non-performance of its obligations under the Contract to the extent that such non-performance is due to an event or circumstance which is beyond the reasonable control of that party which by its nature could not have been foreseen by such a party or if it could have been foreseen was unavoidable ("Force Majeure Event").

22.1.2 In the event that either party is delayed or prevented from performing its obligations under the Contract by a Force Majeure Event, such party shall:

- (a) give notice in writing of such delay or prevention to the other party as soon as reasonably possible, stating the commencement date and extent of such delay or prevention, the cause thereof and its estimated duration;

- (b) use all reasonable endeavours to mitigate the effects of such delay or prevention on the performance of its obligations under the Contract; and
- (c) resume performance of its obligations as soon as reasonably possible after the removal of the cause of the delay or prevention.

22.1.3 A party cannot claim relief if the force majeure event is attributable to that party's wilful act, neglect or failure to take reasonable precautions against the relevant Force Majeure Event.

22.1.4 The Supplier cannot claim relief if the Force Majeure Event is one where a reasonable supplier should have foreseen and provided for the cause in question.

22.1.5 As soon as practicable following the affected party's notification, the parties shall consult with each other in good faith and use all reasonable endeavours to agree appropriate terms to mitigate the effects of the Force Majeure Event and to facilitate the continued performance of the Contract.

22.1.6 The affected party shall notify the other party as soon as practicable after the force majeure event ceases or no longer causes the affected party to be unable to comply with its obligations under the Contract. Following such notification, the Contract shall continue to be performed on the terms existing immediately before the occurrence of the force majeure event unless agreed otherwise by the parties.

22.1.7 The University may, during the continuance of any force majeure event, terminate the Contract by written notice to the Supplier if a Force Majeure Event occurs that affects all or a substantial part of the provision of the Goods and/or the Services and which continues for more than three (3) months.

## 22.2 **Assignment and subcontracting:**

22.2.1 The Supplier shall not assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights or obligations under the Contract without the prior written consent of the University, such consent not to be unreasonably withheld.

22.2.2 The University may at any time assign, transfer, charge, subcontract, or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party or agent.

## 22.3 **Notices:**

22.3.1 Any notice or other document to be served under the Contract shall be served personally, by first class 'signed for' post, or by email to the address of the relevant party as specified in clauses 22.3.2 and 22.3.3. Any such notice shall be deemed to have been duly served, (a) if delivered personally, at the time of delivery, (b) if sent by post, at the time of signature confirming delivery, or (c) if sent by email, by proof of read receipt/sending provided that hard copies are then also sent.

22.3.2 Notices to the University shall be sent to the address on the front page of these Conditions for the attention of "Head of Procurement", or such other address as may be notified to the Supplier in writing.

- 22.3.3 Notices to the Supplier shall be sent to the address stipulated on the most recent Purchase Order issued to the Supplier, or such other address as may be notified to the Supplier in writing.
- 22.4 **Set-Off:** The University may retain or set off any sums owed to it by the Supplier which have fallen due and payable against any sums due to the Supplier under the Contract or any other agreement pursuant to which the Supplier or any associated company such as the holding company or any subsidiary of the Supplier provides Services or services to the University.
- 22.5 **Waiver and cumulative remedies:**
- 22.5.1 No failure or delay by any party in exercising any right or remedy under the Contract will operate as a waiver of such right or remedy nor will any single or partial exercise or waiver of any such right or remedy preclude its further exercise or the exercise of any other right or remedy.
- 22.5.2 Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.
- 22.6 **Severance:** If a court or any other competent authority finds that any provision (or part of any provision) of the Contract is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected.
- 22.7 **No partnership:** The Supplier is an independent contractor and nothing in the Contract shall render it an agent, joint venture or partner of the University, and the Supplier shall not hold itself out as such. The Supplier shall not have any right or power to bind the University to any obligation.
- 22.8 **Third parties:** The Contract does not confer on any person other than the Parties any right to enforce or otherwise invoke any term of the Contract under the Contract (Third Party Rights) (Scotland) Act 2017 or otherwise.
- 22.9 **Variation:** No addition, amendment, modification or waiver of any term of the Contract will be effective unless it is in writing and signed by or on behalf of both Parties.
- 22.10 **Invalidity.** If any term of the Contract is or becomes invalid, or is ruled illegal by any court of competent jurisdiction or is deemed unenforceable under then current applicable law from time to time in effect during the period of the Contract, it is the intention of the Parties that the remainder of the Contract will not be affected thereby provided that the Parties' rights under the Contract are not materially altered. It is further the Parties' intention that in lieu of each such invalid, illegal or unenforceable term, there will be substituted or added as part of the Contract a valid, legal and enforceable term which in effect will be as similar as possible to the effect of the original invalid, illegal or unenforceable term.

22.11 **Governing law and jurisdiction:** The Contract will be governed by and construed in accordance with the laws of Scotland and all claims and disputes between the parties arising out of or in connection with the Contract (whether or not contractual in nature) shall be determined in accordance with the laws of Scotland. The parties agree that any dispute arising under the Contract or in connection with it will be decided in the Scottish Courts which will have the sole jurisdiction in any such matter.

-----**END OF DOCUMENT**-----