



## University of Roehampton Terms and Conditions for the Supply of Goods and Services

### 1. Interpretation

1.1 In these conditions (**Conditions**) the following words shall have the following meanings:

**Authorised Officer** means the University's employee authorised, either generally or specifically, to approve a Purchase Order in any given case, as confirmed by the University's Head of Procurement or Director of Finance;

**Authorised** means authorised or approved by an Authorised Officer;

**Contract** means the contract formed between the Supplier and the University upon the Supplier's acceptance of the Purchase Order and governed by these Conditions;

**Deliverables** means any document, report, software, designs, other material, data, works, information or other output (tangible or intangible) developed and supplied to the University by the Supplier as part of the Services (but excluding Goods);

**Delivery** has the meaning given in Clause 5.4;

**Delivery Address** means the delivery address stated in the Purchase Order;

**Goods** means the materials, merchandise or other goods as set out in the Purchase Order;

**IPR** means trade marks, service marks, domain names, goodwill, copyright, moral rights, rights in designs, rights in inventions, database rights, know-how, confidential information, rights in computer software (including the object and source codes) and all or any other intellectual property rights whether or not capable of registration and whether subsisting in the United Kingdom or any other part of the world;

**Key Personnel** means the persons (if any) listed as the key personnel in the Purchase Order;

**Purchase Order** means the University's written order for goods and/or services (as may be described on and/or subsequently confirmed by a completed Purchase Order Form) and any ancillary documents referred to in such written order or on the completed Purchase Order Form relating to such order;

**Purchase Order Form** means the University's official purchase order form, as may be issued and/or updated by the University from time to time;

**Policies** has the meaning given in Clause 12.2;

**Price** means the total charge for the Goods and/or Services as set out in the Purchase Order;

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**Purchasing Consortium** means such purchasing consortium as the University may notify to the Supplier from time to time;

**Service Levels** means any specific service standards agreed in relation to the Purchase Order, whether under a service level agreement and/or as otherwise agreed in writing (and including any key performance indicators (KPIs)) to which the Services are to be provided (if any);

**Services** means the services to be provided by the Supplier (including the creation and supply of any Deliverables) as set out in the Purchase Order;

**Supplier** means any person, firm or company who accepts the Purchase Order;

**Tender** means any tender document, quotation or similar document submitted by the Supplier to the University in relation to the provision of the Goods and/or Services;

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

**University** means Roehampton University, trading as the University of Roehampton or such company within the University of Roehampton group of companies as is submitting the applicable Purchase Order; and

**University Materials** means any documents or other materials, data or other information provided by the University to the Supplier relating to the provision by the Supplier of the Goods and/or Services.

1.2 In these Conditions, reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.

## **2. Purchase Orders**

2.1 The Purchase Order constitutes an offer by the University to purchase the Goods and/or Services on the terms contained in such Purchase Order, subject to these Conditions, which shall apply to the Contract to the exclusion of all other terms and conditions (whether previously issued by the University or appearing on any documentation issued by the Supplier). These Conditions or any part of the Purchase Order can only be varied by express written agreement between the University and the Supplier. These Conditions shall apply whether or not a Purchase Order Form has been issued by the University.

2.2 Only Authorised Officers have authority to issue and/or confirm Purchase Orders.

2.3 A Purchase Order shall be accepted when the Supplier either expressly gives notice of acceptance or by implication when the Supplier takes steps to fulfil the Purchase Order.

2.4 The Goods and/or Services shall not be provided in part or in instalments unless expressly agreed by the parties in writing. In the event of such an agreement, the Contract shall be treated as single and not severable; provided that failure to deliver any one instalment or part in accordance with the Contract shall entitle the University to exercise the rights under Clause 11.

2.5 For the avoidance of doubt, except for any minimum quantities set out in the Purchase Order, no minimum purchase or volume commitment in relation to Goods or Services is granted by the University and the entering into a series of Purchase Orders does not constitute a long-term supply agreement.

2.6 The Supplier shall notify the University in writing of any actual, potential or possible conflict of interests on its part in contracting with the University for the provision of the Goods and/or Services, as soon as it becomes aware of the same, or suspects that the same may have arisen.

## **3. Price and Payment**

3.1 The Price for the Goods and/or Services shall (unless stated otherwise in the Purchase Order) be:

3.1.1 exclusive of any applicable Value Added Tax (**VAT**) (which shall be payable by the University in addition subject to receipt of a valid VAT invoice); and

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- 3.1.2 inclusive of all charges for packaging, freight, carriage, insurance, delivery of the Goods at the Delivery Address and inclusive of all charges for insurance and all expenses incurred by the Supplier in carrying out the Services and any duties, tariffs, taxes or levies (other than VAT).
- 3.2 The Price may not be increased without the University's Authorised Officer's prior written consent.
- 3.3 Payment is subject to a Purchase Order Form having been concluded in respect of the provision of Goods and/or Services. Provided the Goods and/or Services have been supplied in accordance with the provisions of the Contract, the University shall pay the Price within thirty (30) days of the date of receipt of a valid invoice addressed as specified on the Purchase Order Form. Invoices must be addressed to the department indicated on the Purchase Order and must quote the full Purchase Order number. Invoices must be received within one (1) year of the date of the Purchase Order. The University shall not be responsible for delays in payment caused by a failure to comply with the University's invoicing instructions.
- 3.4 The University may set off against the Price any sums owed to it by the Supplier.
- 3.5 The University is entitled to all discounts or special terms negotiated by or granted to the Purchasing Consortium, and other public bodies having power to negotiate on behalf of universities. The University, as an educational establishment, will also be entitled to all discounts provided by the Supplier to educational establishments. The Supplier shall ensure that the Price invoiced to the University reflects each of the above forms of discount whenever they apply.
- 3.6 If the services performed by the Supplier exceed those Services set out in the Purchase Order or the goods provided by the Supplier exceed those Goods set out in the Purchase Order, the University shall not be bound to pay for the excess Goods and/or Services.
- 3.7 If a party fails to make any payment due to the other party under the Contract by the due date for payment then the non-defaulting party shall have the option to charge the defaulting party interest on the overdue amount at the rate of 3% per annum above the Bank of England's base rate from time to time. Such interest shall accrue on a daily basis from the due date until the date of the actual payment of the overdue amount whether before or after judgment. The defaulting party shall pay the interest together with the overdue amount. This clause shall not apply to payments that the defaulting party disputes in good faith.
- 3.8 Where the University disputes an invoice, the following procedure shall be followed:
- 3.8.1 the University shall inform the Supplier of the reason for disputing the invoice;
- 3.8.2 the Supplier shall escalate the matter to personnel of sufficient seniority to make strategic decisions relating to invoicing and finances and to resolve the matter;
- 3.8.3 the Supplier shall deal with all matters relating to the invoicing dispute in a timely fashion and shall provide the University with all information it reasonably requires in relation to the matter; and
- 3.8.4 both parties will act in good faith at all times in relation to the dispute.

#### **4. Supply of Goods**

- 4.1 The Supplier shall ensure in relation to the Goods supplied to the University:
- 4.1.1 that the quantity, quality and description of the Goods shall be as specified in the Purchase Order and comply with any description, pattern, sample or specification given by the University, or, where no such description, pattern, sample or specifications are given, be of the best in their respective kind;
- 4.1.2 that the Goods are of satisfactory quality (within the meaning of the Sale of Goods Act 1979, as amended), free from defect and fit for the purpose held out by the Supplier or made known to the Supplier by the University;
- 4.1.3 that the Goods are capable of all standards of performance specified in the Contract;

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- 4.1.4 that the Goods comply with all statutes, regulations and codes of practice that apply to such Goods and, in particular, to such matters as concern the safety and health and welfare of all persons into whose hands the Goods may come; and
- 4.1.5 that the Goods are properly packed and secured in such manner as to ensure that they are delivered in good condition.
- 4.2 The Supplier warrants to the University that, in addition to the terms implied into the Contract by statute from time to time and without prejudice to Clause 4.1 above, the Goods (and/or their importation, use or resale) will not infringe the IPR of any other person.
- 4.3 The Supplier hereby grants to the University, or (where the Supplier is not the holder of the applicable rights) undertakes to procure the grant to the University of, an irrevocable, worldwide, royalty-free licence of all IPR required in connection with the Goods.
- 4.4 The Supplier shall comply with all applicable regulations or other legal requirements concerning the manufacture, packaging and delivery of the Goods (including, where relevant, the Modern Slavery Act 2015, the Criminal Finances Act 2017, the Bribery Act 2010) and shall obtain and maintain in force all licences, permissions, authorisations and permits needed to supply the Goods in accordance with the terms of the Contract.
- 4.5 The Supplier shall maintain a complete set of records to trace the supply chain of all Goods provided to the University in connection with the Contract; and permit the University and its third party representatives to inspect the Supplier's premises, records, and to meet the Supplier's personnel to audit the Supplier's compliance with its obligations under anti-slavery and human trafficking laws and regulations including the Modern Slavery Act 2015.
- 4.6 The Supplier shall permit the University on reasonable notice and within ordinary business hours to inspect and test the Goods during manufacture, processing or storage at the premises of the Supplier or any third party prior to despatch, and the Supplier shall provide the University with all facilities required for such inspection and testing.
- 4.7 If as a result of inspection or testing the University is not satisfied that the Goods will comply in all respects with the Contract and the University so informs the Supplier within seven days of inspection or testing, the Supplier shall take such steps as are necessary to ensure compliance and if such steps are not taken to the University's satisfaction, the University may withdraw its Purchase Order without any liability to the Supplier.
- 4.8 The University shall be entitled, on reasonable notice, to carry out (either itself or through its professional advisers) an audit of the books and records of the Supplier to the extent that they relate to the supply (including manufacture) of the Goods.
- 4.9 Without prejudice to any other obligation or warranty of the Supplier under this Contract, including in this Clause 4, the Supplier warrants that:
- 4.9.1 the Supplier shall promptly make good at the Supplier's expense any defect in the Goods that the University discovers under proper usage during the first twelve (12) months of actual use or eighteen (18) months from the date of acceptance by the University whichever period shall expire first. Such defects may arise from the Supplier's faulty design, the Supplier's erroneous instructions as to use or inadequate or faulty materials or poor workmanship or any other breach of the Supplier's obligations whether in this Contract or at law;
- 4.9.2 repairs or replacements will themselves be covered by the Supplier's warranty at Clause 4.9.1 but for a period of twelve (12) months from acceptance by the University;
- 4.9.3 the Supplier will ensure that compatible spares are available to facilitate repairs (where applicable) for a period of at least ten (10) years from the date of delivery of the Goods.

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## **5. Delivery and Acceptance of Goods**

- 5.1 The Supplier shall ensure that the Goods are securely packaged and clearly addressed to the person who issued the Purchase Order.
- 5.2 The Supplier shall ensure that each delivery of Goods is accompanied by a delivery note stating the Purchase Order number, quantity and exact description of each article of Goods supplied and the name and department of the individual who issued the Purchase Order.
- 5.3 The Supplier must ensure a signature acknowledging receipt of the Goods by an authorised member of the University's staff is obtained on delivery.
- 5.4 The Goods shall be delivered to the Delivery Address during the University's ordinary business hours (0730 - 1600) on the date stated in the Purchase Order or, where the date of delivery is to be fixed after the placing of the Purchase Order, on the date agreed by the University and the Supplier. The time for delivery of the Goods is of the essence of the Contract. "**Delivery**" shall take place at the Delivery Address when all of the Goods have been unloaded from the vehicle of the Supplier or any carrier appointed by the Supplier and a signature acknowledging receipt of the Goods by an authorised member of the University's staff is obtained.
- 5.5 The University shall be entitled to reject any of the Goods delivered which are not in accordance with the Contract. Notwithstanding the provisions of Clause 5.3, the University shall not be deemed to have accepted any of the Goods until it has had a reasonable time to inspect them following delivery or, if later, within a reasonable time after any latent defect in the Goods has become apparent.
- 5.6 If the Goods are delivered to the University in excess of the quantities set out in the Contract, the University shall not be bound to pay for the excess and any excess shall be and shall remain at the Supplier's risk and shall be returnable at the Supplier's expense.
- 5.7 The Supplier shall be responsible for collecting any rejected Goods or any Goods delivered which are in excess of the quantity set out in the Contract and shall reimburse any costs incurred by the University in respect of storage or otherwise.
- 5.8 The University shall not be obliged to safeguard or return to the Supplier any packaging or packing materials for the Goods, whether or not any of the Goods are accepted by the University.

## **6. Risk and Title in Goods**

- 6.1 Risk of damage to or loss of the Goods shall pass to the University upon Delivery in accordance with the Contract. Pending such Delivery the Supplier shall maintain sufficient insurance cover against risk of loss or damage to the Goods.
- 6.2 Without prejudice to the University's right of rejection, title to and property in the Goods shall pass to the University upon Delivery, unless payment is made prior to Delivery, in which case, without prejudice to the terms of Clause 6.1, title and property shall pass to the University once payment has been made.

## **7. Supply of Services**

- 7.1 The Supplier shall perform the Services in accordance with the particulars set out in the Purchase Order and the requirements under these Conditions.
- 7.2 The Supplier warrants that it is entitled to enter into the Contract and that (without prejudice to the statutory terms implied in the favour of the University by the Supply of Goods and Services Act 1982 and any other statute) it shall ensure that the Services are performed at all times:
- 7.2.1 with all reasonable skill and care and in accordance with the generally recognised commercial practices and standards prevailing in the industry for similar services from time to time and in such way that the applicable Service Levels are met or exceeded;
- 7.2.2 by suitably qualified and experienced personnel;

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- 7.2.3 in full cooperation with the University, truthfully, accurately, loyally and in good faith towards the University;
  - 7.2.4 in accordance with all applicable laws, rules and regulations (including, where relevant, the Modern Slavery Act 2015, the Criminal Finances Act 2017, the Bribery Act 2010 and any World Trade Organisation agreements and European Community directives governing tendering and contractual procedures, and any derivative and implementing UK laws) and that any necessary licences and consents are in place before the performance of the Services commences;
  - 7.2.5 without doing any act or thing which would or might be expected to damage the reputation of the University;
  - 7.2.6 in accordance with any health and safety or other codes of conduct issued by the University from time to time and any other reasonable directions of the University; and
  - 7.2.7 in accordance with the description of the Services as set out in the Purchase Order.
- 7.3 The Supplier shall ensure that it and (if applicable) its personnel shall have sufficient resources and time to perform the Services promptly and in accordance with the Contract.
- 7.4 Where specified in the Purchase Order and/or otherwise reasonably required by the University, the Supplier shall provide regular reports to the University summarising the extent to which the Supplier has met the Service Levels and any other details so required by the University.
- 7.5 The Supplier shall ensure that the Key Personnel (if any) named in the Purchase Order or, if no Key Personnel are named, the same team of personnel perform the Services throughout the duration of the Contract unless agreed otherwise in advance in writing by the University.
- 7.6 The Supplier shall ensure that all personnel attending the University shall, on arrival, present themselves to the appropriate University personnel and comply with such other security arrangements as the University may specify from time to time. All personnel must receive authorisation from an authorised member of the University's staff before entering the University's premises or commencing any work on the University's premises.
- 7.7 While on the University's premises, the Supplier shall comply with the requirements of the Health and Safety at Work etc Act 1974 and any other acts, regulations and codes of practice relating to health and safety, which may apply to personnel working at the University in the performance of its obligations under the Contract, including any health and safety measures implemented by the University in respect of the Suppliers' personnel and other persons working there. The Supplier shall ensure that its health and safety policy statement (as required by the Health and Safety at Work etc Act 1974) is made available to the University on request.
- 7.8 The Supplier shall maintain a complete set of records to trace the supply chain of all Services provided to the University in connection with the Contract; and permit the University and its third party representatives to inspect the Supplier's premises, records, and to meet the Supplier's personnel to audit the Supplier's compliance with its obligations under anti-slavery and human trafficking laws and regulations including the Modern Slavery Act 2015.
- 7.9 The University shall be entitled, on reasonable notice, to carry out (either itself or through its professional advisers) an audit of the books and records of the Supplier to the extent that they relate to the performance of the Services.
- 7.10 Without prejudice to any other obligation or warranty of the Supplier under this Contract, including in this Clause 7, the Supplier warrants that:
- 7.10.1 the Supplier shall promptly make good at the Supplier's expense any defect in the Deliverables relating to the Services that the University discovers under proper usage during the first twelve (12) months of actual use or eighteen (18) months from the date of acceptance by the University whichever period shall expire first. Such defects may arise from the Supplier's faulty design or delivery of the Deliverables, the Supplier's erroneous instructions as to use or inadequate or faulty

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materials or poor workmanship or any other breach of the Supplier's obligations whether in this Contract or at law;

7.10.2 repairs or replacements of defective Deliverables of the Services will themselves be covered by the Supplier's warranty at Clause 7.10.1 but for a period of twelve (12) months from acceptance by the University;

7.10.3 the Supplier shall promptly make good any defect relating to Service Levels or otherwise in the provision of the Services that the University discovers.

## **8. Status of Personnel**

8.1 The parties agree nothing in the Contract will render the Supplier (where contracting individually), nor any of its personnel, an employee, officer, worker, agent or partner of the University and the Supplier will not hold itself out as such and will procure that none of its personnel will hold themselves out as such.

8.2 Neither the Supplier nor any of its personnel will be entitled to benefit from or participate in any policies, schemes or other arrangements which exist for the benefit of employees of the University.

8.3 The Contract constitutes a contract for the provision of Goods and/or Services and not a contract of employment and accordingly the Supplier will be fully responsible for and will indemnify the University on a continuing basis for and in respect of any payments of the following:

8.3.1 any income tax, National Insurance and Social Security contributions and any other liability, deduction, contribution, assessment or claim arising from or made in connection with the Contract or any payment or benefit received by the Supplier and/or its personnel in respect of the provision of Goods and/or Services. The Supplier will further indemnify the University against all reasonable costs, expenses and any penalty, fine or interest incurred or payable by the University in connection with or in consequence of any such liability, deduction, contribution, assessment or claim;

8.3.2 any liability for any employment-related claim or any claim based on employee or worker status (including reasonable costs and expenses) brought by the Supplier and/or its personnel against the University or arising out of or in connection with the provision of the Goods and/or Services.

8.4 If the Supplier ceases for whatever reason to provide the Goods and/or Services (or any part of the Services) under the Contract, the Supplier agrees to reassign the Supplier's employees or other personnel engaged in providing the Goods and/or Services which are ceasing to other parts of its business and to otherwise ensure that they do not transfer, whether under TUPE or howsoever otherwise, to the University, or to any replacement supplier.

8.5 Notwithstanding Clause 8.4, if any person claims or it is determined that his/her contract of employment has been transferred to the University or any replacement supplier as a result of the Supplier ceasing to provide the Goods and/or Services (or any part of the Services) then the Supplier shall indemnify and keep indemnified the University and any replacement Supplier against any and all costs (including reasonable legal fees), awards, fines, orders, losses, liabilities, damages and expenses suffered or incurred by the University and any replacement supplier howsoever arising in relation to the relevant employee.

## **9. Rights in Deliverables**

The Supplier hereby:

9.1 warrants that it is or shall be the sole and unencumbered owner of all IPR in any Deliverables and that nothing in the performance of the Services or the Deliverables (or any exploitation thereof by the University) will infringe any right whatsoever of any third party;

9.2 irrevocably assigns to the University with full title guarantee the IPR, whether vested, contingent or future, in any Deliverables for the full period thereof, including any extensions or renewals, and including all rights of action accrued at the date of this assignment or which may accrue hereafter;

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- 9.3 undertakes to do all acts and execute all documents which may be necessary to confirm the title of the University to the IPR so assigned;
- 9.4 warrants that it has not, and shall not, grant or assign any rights of any nature in any Deliverables to any third party whatsoever in any part of the world;
- 9.5 warrants that the IPR in any Deliverables is assigned to the University free of all moral rights; and
- 9.6 warrants that it has all the applicable permissions and licenses and has fulfilled any other relevant requirements required to copy and provide to the University any third party documentation or information in whatever format provided as part of the Services, and that any such documentation shall be appropriately labelled as such where not immediately identifiable.

## **10. University Materials**

- 10.1 The University shall provide the Supplier with any University Materials reasonably requested by the Supplier to enable the Supplier to provide the Services in accordance with the Contract.
- 10.2 University Materials shall be and remain the University's property, and the Supplier shall maintain all such materials in good order and condition, subject, in the case of tooling, patterns and the like, to fair wear and tear. The University Materials shall be used solely for the purpose of fulfilling the Contract/Purchase Order, and shall be returned to the University upon demand.
- 10.3 The Supplier shall be liable for any loss of or damage to any of the University Materials unless and to the extent that the Supplier is able to demonstrate that such loss or damage was caused by the University or contributed to by its negligence or default.
- 10.4 The Supplier shall not in any circumstances have a lien on the University Materials and shall take all steps necessary to ensure that the University's title to such University Materials and the exclusion of any lien are brought to the attention of any third party dealing with the University Materials.

## **11. Remedies for Goods and/or Services not supplied in accordance with the Contract**

- 11.1 Without prejudice to any other right or remedy that the University may have (including, but not limited to, rights under the Sale of Goods Act 1979 and the Sale of Goods and Services Act 1982), if any Goods and/or Services are not supplied in accordance with the Contract, then the University shall be entitled (at its sole discretion and without liability to the Supplier) to avail itself of any one or more of the following remedies at its discretion, whether or not any part of the Goods and/or Services have been accepted by the University:
- 11.1.1 to rescind the Contract (namely, treat the Contract as if it is not and has never been in force);
- 11.1.2 to reject the Goods (in whole or in part) and return them to the Supplier at the risk and cost of the Supplier on the basis that a full refund for the Goods so returned shall be paid forthwith by the Supplier and, in relation to Services, for a full refund for Services not performed in accordance with Clause 7 to be paid forthwith by the Supplier;
- 11.1.3 at the University's option (and on such terms as the University may specify) to give the Supplier the opportunity at the Supplier's expense either to remedy any defect in the Goods and/ or Services or to supply replacement Goods and/or carry out any other necessary work to correct the Supplier's failure(s);
- 11.1.4 to refuse to accept any further deliveries of the Goods and/or to refuse to accept the provision of any further Services by the Supplier and to require immediate repayment of all sums previously paid by the University under the Contract;
- 11.1.5 to carry out/contract a third party to carry out at the Supplier's expense any work necessary to make the Goods comply with the Contract or to purchase substitute goods; and/or to make the Services comply with the Contract or to purchase substitute services from elsewhere and to hold the Supplier accountable for any losses and additional costs incurred by the University;

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11.1.6 to claim such damages as may have been sustained in consequence of the Supplier's breach(es) of the Contract including where the University is reliant on the Delivery of Goods or delivery of Services as detailed in the Purchase Order for it to fulfil an obligation to a third party.

11.2 Time shall be of the essence in relation to the Supplier performing its obligations under the Contract and for the avoidance of doubt, if the Goods are not delivered or the Services are not performed by the time(s) specified in the Contract (or, where no specific time is specified, within a reasonable timeframe, such reasonable timeframe to be judged with reference to the nature of the supply in question and the University's need for such supply, as may be communicated by the University to the Supplier), the University shall be entitled to reject the delivery of the Goods and/ or the performance of the Services carried out after such date and the Supplier shall be liable for any liabilities, claims, loss, damage, costs or expense incurred by the University as a result of the failure to deliver the Goods and /or Services in accordance with the Contract and repay any sums previously paid by the University under the Contract.

## **12. Liability and Insurance**

12.1 The Supplier shall indemnify the University in full against all claims, liabilities, losses, damages, costs and expenses (including legal expenses) awarded against or incurred or paid by the University as a result of or in connection with any defect in the Goods and/or Services, any breach of any warranty or default by the Supplier in the performance of any of its obligations under the Contract.

12.2 The Supplier shall maintain in force (and ensure that any subcontractors maintain) during the term of the Contract and for a period of six years thereafter with reputable insurance companies the following insurance policies as required covering the potential liabilities of the Supplier under the Contract (**Policies**):

12.2.1 employer liability insurance for not less than £10 million per claim;

12.2.2 public liability insurance for not less than £10 million per claim;

12.2.3 product liability insurance for not less than £10 million for claims arising from any single event and not less than £10 million in aggregate for all claims arising in any year;

12.2.4 professional indemnity insurance for not less than £5 million per claim; and

12.2.5 any other insurance policies in such amounts as specifically requested by the University

and on the University's written request, the Supplier shall provide details of the cover provided under the Policies.

12.3 The Supplier shall do nothing to invalidate any of the Policies.

12.4 The University's liability for any breach of the Contract or arising in any other way in relation to the subject-matter of the Contract (including negligence) will not extend to any loss of profits or any indirect or consequential loss. With the exception of those categories of loss which cannot lawfully be limited or excluded, the University's maximum liability under or in relation to the Contract (including negligence) will not exceed an amount equal to the Price of the applicable Purchase Order.

## **13. Cancellation and Termination**

13.1 The University shall have the right at any time and for any reason (without any liability to the Supplier) to terminate the Contract in whole or in part (including any particular Purchase Order) by giving the Supplier written notice whereupon all work on the Contract shall be discontinued and the University shall pay to the Supplier fair and reasonable compensation for evidenced work-in-progress or costs incurred (if any) at the time of termination but such compensation shall not include loss of anticipated profits or any consequential loss.

13.2 The University shall have the right at any time by giving notice in writing to the Supplier to terminate the Contract (in whole or in part) forthwith (without any liability to the Supplier) if:

13.2.1 the Supplier commits a material breach of any of the terms and conditions of the Contract (including for the avoidance of doubt a breach of clauses 4.1.1, 4.1.2; 7.1 or 7.2) and (in the case of a material

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- breach which is capable of remedy) fails to remedy that breach within thirty (30) days of being notified in writing (including by email) of the breach;
- 13.2.2 the Supplier repeatedly breaches any of the terms and conditions of the Contract in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms and conditions of the Contract;
- 13.2.3 there is a change of control of the Supplier (within the meaning of section 1124 of the Corporation Tax Act 2010);
- 13.2.4 any distress, execution or other process is levied upon any of the assets of the Supplier;
- 13.2.5 the Supplier suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
- 13.2.6 the Supplier commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors;
- 13.2.7 a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Supplier;
- 13.2.8 an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the Supplier;
- 13.2.9 a floating charge holder over the assets of the Supplier has become entitled to appoint or has appointed an administrative receiver;
- 13.2.10 a receiver is appointed over the assets of the Supplier;
- 13.2.11 a creditor or encumbrancer of the Supplier attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Supplier's assets and such attachment or process is not discharged within 14 days;
- 13.2.12 any event occurs, or proceeding is taken, with respect to the Supplier in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in Clauses 13.2.5 to 13.2.11 (inclusive);
- 13.2.13 the Supplier suspends or ceases, or threatens to suspend or cease, to carry on all or a substantial part of its business;
- 13.2.14 the financial position of the Supplier deteriorates to such an extent that in the opinion of the University the capability of the Supplier adequately to fulfil its obligations under the Contract has been placed in jeopardy; or
- 13.2.15 the Supplier commits a breach of any of Clauses 4.4, 4.5, 7.2.4, 7.8, 16.2, (k), (l) or (m) by failing to comply with all applicable laws, regulations and University policies (including the Modern Slavery Act 2015, the Criminal Finances Act 2017 and the Bribery Act 2010).
- 13.3 The termination of the Contract, however arising, will be without prejudice to the rights and duties of the University accrued prior to termination. The conditions which expressly or impliedly have effect after termination will continue to be enforceable notwithstanding termination.

**14. Freedom of Information Act 2000 (FOIA)**

- 14.1 The Supplier acknowledges that the University is subject to the requirements of the FOIA and the Environmental Information Regulations 2004 (EIR) and shall assist and cooperate with the University to enable the University to comply with its information disclosure obligations under the same.
- 14.2 The Supplier shall and shall ensure that its employees, agents, sub-contractors and any other representatives shall:
- 14.2.1 transfer any request for Information (as defined within the FOIA) under the FOIA or the EIR (a “Request for Information”) to the University as soon as practicable after receipt and in any event within two business days of receiving a Request for Information;
  - 14.2.2 provide the University with a copy of all Information in its possession or power in the form that the University requires within five business days (or such other period as the University may specify) of the University requesting that Information; and
  - 14.2.3 provide all necessary assistance as reasonably requested by the University to respond to a Request for Information within the time for compliance set out in section 10 of FOIA or regulation 5 of EIR.
- 14.3 The University shall be responsible for determining whether any Information:
- 14.3.1 is exempt from disclosure in accordance with the provisions of FOIA or EIR; and/or
  - 14.3.2 is to be disclosed in response to a Request for Information.
- 14.4 The Supplier acknowledges that the University may be obliged under the FOIA or EIR to disclose Information, in some cases even where that Information is commercially sensitive provided that the University take reasonable steps, where appropriate, to give the Supplier advanced notice, or failing that, to draw the disclosure to the Supplier’s attention as soon as practicable after any such disclosure.

**15. Confidentiality**

- 15.1 In the event of either party (the “Disclosing Party”) making available to the other party (the “Receiving Party”) (or the Receiving Party otherwise gaining access to) confidential information relating to the Disclosing Party’s personnel, students, business, technical or other activities (including but not limited to confidential information regarding the Goods and/or Services), the Receiving Party shall protect and safeguard such confidential information received with at least the same degree of care with which it protects and safeguards its own confidential information, which shall be at least reasonable care (to the extent that such information is within its control), and not use or disclose such confidential information except to the extent necessary for the purpose of the Contract (which shall, where the University is the Receiving Party, include the use and enjoyment of the Goods and Services (and any Deliverables) supplied) .
- 15.2 The obligations in Clause 15.1 shall not apply to data or information which the Receiving Party can clearly demonstrate:
- 15.2.1 was known to it prior to disclosure by the Disclosing Party, or is independently developed or conceived by the Receiving Party; or
  - 15.2.2 was in or enters the public domain through no fault of the Receiving Party or breach by a third party of an obligation of confidence; or
  - 15.2.3 becomes available to the Receiving Party by an unconnected third party with the lawful right to make such a disclosure; or
  - 15.2.4 required to be disclosed pursuant to the requirements of any applicable law or regulation or by order of a Court of competent jurisdiction (to the extent required).

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**16. General**

16.1 No exclusivity. Nothing in this Contract shall be interpreted to mean that the Supplier is engaged on an exclusive basis. The University is free to contract with any competitor of the Supplier or any other entity at any time.

16.2 Data Protection.

16.2.1 The Supplier shall (and shall ensure that all of its personnel and sub-contractors shall) comply with the requirements of the Data Protection Act 2018 and the General Data Protection Regulation (and related legislation) arising in respect of data processed in relation to performing the Contract or otherwise in connection with the Contract.

16.2.2 Where the Supplier will be processing personal data on behalf of the University the Supplier shall comply with the obligations detailed in Schedule 1. The parties agree to update and amend Appendix 1 of Schedule 1 to reflect the particulars of any processing of personal data, in addition to any other required amendments to Schedule 1 generally. For the avoidance of doubt, the terms of Schedule 1 shall continue to apply pending agreement on any required amendments or completion of Appendix 1 of Schedule 1.

16.2.3 The Supplier will indemnify the University against all claims and proceedings and all claims, liability, loss, costs and expenses made or brought by any person against the University in respect of any loss, damage or distress caused to that person by the Supplier's breach of applicable data protection legislation and/or the requirements of this Contract (including the data processing agreement referred to above, where entered into).

16.3 Business continuity. The Supplier shall establish, maintain and regularly review its processes and procedures with respect to the identification of any threats or risks to the supply of Goods and/or Services, how such threats and risks may be mitigated and how the supply of the Goods and/or Services may be maintained in the event of any such identified threats or risks materializing. The Supplier shall keep and maintain a business continuity plan ("BCP") in respect of such risks and mitigation, and promptly provide such BCP (and any amendments to it) as and when requested by the University.

Discrimination. The Supplier shall not unlawfully discriminate either directly or indirectly on such grounds as race, colour, ethnic or national origin, disability, sex or sexual orientation, religion or belief, or age and without

(a) prejudice to the generality of the foregoing the Supplier shall not unlawfully discriminate within the meaning and scope of the Equality Act 2010, the Human Rights Act 1998 or other relevant or equivalent legislation, or any statutory modification or re-enactment thereof.

(b) Advertising and Marketing.

(i) The logo and name of the University, its members, its constituent institutions and departments shall not be used by the Supplier in advertising for any purpose without the University's prior written consent.

(ii) The Supplier shall not use the University's name, logo and/or its branding in any way without the prior written consent of the University's Marketing Department. If the University's Marketing Department does give consent, any usage of its name, logo and/or branding shall be in accordance with its guidelines and any other required conditions of use.

(c) Notices. Any notice required or permitted to be given by either party to the other under these Conditions shall be in writing addressed to the other party at its registered office or principal place of business or such other address as may at

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the relevant time have been notified pursuant to this provision to the party giving notice.

- (d) Assignment and sub-contracting. The Supplier shall not, without the prior written consent of the University, assign, sub-license, sub-contract or otherwise transfer to any third party any of its rights or obligations under the Contract. The University shall be entitled to assign its rights and/or obligations under the Contract.
- (e) Payment of sub-contractors. Where the Supplier, with the University's approval, enters into a sub-contract for the purpose of performing the Supplier's obligations under the Contract, it shall ensure that a provision is included in such sub-contract which requires payment to be made of all sums due by the Supplier to the sub-contractor within a specified period not exceeding 30 days from receipt of a valid invoice.
- (f) Third party rights. Both parties agree that no term of the Contract will be enforceable by any third party by virtue of the Contracts (Rights of Third Parties) Act 1999 or otherwise.
- (g) Severance. In the event that any provision (including any distinct sub-condition) of the Contract is held to be illegal, invalid, void or unenforceable, it shall be severed from the remaining provisions of the Contract, which shall continue in full force and effect.
- (h) Waiver. Failure or neglect by either party to enforce any provision of the Contract shall not be construed nor shall be deemed to be a waiver of that party's rights under the Contract and shall not prejudice that party's rights to take subsequent action.
- (i) Force Majeure. Without prejudice to the Supplier's obligations relating to business continuity under Clause 16.3:
  - (i) Subject to Clauses 16.12.2 and 16.12.3, neither party shall be liable for delay in performing or failure to perform obligations if the delay or failure results from events or circumstances outside its reasonable control ("**Force Majeure Event**"). Such delay or failure shall not constitute a breach of this Agreement and the time for performance shall be extended by a period equivalent to that during which performance is so prevented, provided that if such delay or failure persists for more than two (2) months nothing in this Clause (i) shall be taken to limit or prevent exercise by either party of its rights of termination under Clause 13.
  - (ii) If a party is affected by a Force Majeure Event, it shall:
    - (1) as soon as reasonably practicable after the start date of the Force Majeure Event, notify the other party in writing of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under the Contract; and

- (2) use reasonable endeavours to mitigate the effect of the Force Majeure Event on the performance of its obligations.
- (iii) Clause (i) shall not apply where the Supplier is unable to perform its obligations due to:
- (1) failure of the Supplier's own suppliers to perform; or
- (2) industrial action by persons employed or otherwise engaged by the Supplier or (where the Supplier is a company) affiliate companies of the Supplier.
- (j) Entire agreement. The Contract constitutes the entire agreement between the parties in relation to the purchase by the University of the Goods and/or Services. It supersedes any prior agreements, representations, arrangements or undertakings in relation to such subject matter, provided that nothing in this Clause shall exclude or limit liability for fraudulent misrepresentation.
- (k) Anti-Bribery. The Supplier shall not, in the performance of its obligations under the Contract, act in a manner that constitutes a breach of applicable laws, regulations, codes and sanctions relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010. In addition to having its own adequate procedures in place, the Supplier shall comply with any policy or procedure governing anti-bribery imposed by the University and warrants that in providing the Goods and/or Services will not induce or improperly reward any third party, including any public official, to act improperly. For the purposes of this clause to act improperly shall be interpreted in accordance with the Bribery Act 2010. The University shall be entitled to terminate the Contract immediately and to recover from the Supplier the amount of any loss resulting from a breach of this Clause (k).
- (l) Compliance with anti-slavery and human trafficking laws. In performing its obligations under the Contract, the Supplier shall comply with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force including but not limited to the Modern Slavery Act 2015 and include in contracts with its direct subcontractors and suppliers provisions which are at least as onerous as those set out in these Conditions. The University shall be entitled to terminate the Contract immediately and to recover from the Supplier the amount of any loss resulting from a breach of this Clause (l).
- (m) Compliance with anti-facilitation of tax evasion laws. In performing its obligations under the Contract, the Supplier shall comply with all applicable anti-facilitation of tax evasion laws and regulations including the Criminal Finances Act 2017. The Supplier shall not engage in any activity, practice or conduct which would constitute either a UK tax evasion facilitation offence under section 45(5) of the Criminal Finances Act 2017; or a foreign tax evasion facilitation offence under section 46(6) of the Criminal Finances Act 2017. The University shall be entitled to terminate the Contract immediately and to recover from the Supplier the amount of any loss resulting from a breach of this Clause (m)

- (n) Variation. No variation to these Conditions or a Purchase Order or any other part of the Contract shall be binding on the University unless agreed in writing by the Authorised Officer.
- (o) Law and jurisdiction. The Contract and any dispute arising out of or in connection with it (including non-contractual disputes or claims) shall be governed by and interpreted in accordance with English law and the parties submit to the exclusive jurisdiction of the English courts.
- (p) Headings. The headings of the Conditions and sub-conditions of the Contract are used for convenience only and shall not affect the interpretation hereof.

## SCHEDULE 1

### DATA PROCESSOR AGREEMENT (“AGREEMENT”)

#### 1. DEFINITIONS

In this Schedule 1 the following definitions shall apply:

<b>"Applicable EU Law"</b>	means any law of the European Union (or the law of one or more of the Member States of the European Union);
<b>"Controller"</b>	shall have the meaning given to that term in the applicable Data Protection Laws;
<b>"Data Protection Impact Assessment"</b>	means an assessment of the impact of the envisaged Processing operations on the protection of Personal Data, as required by Article 35 of the GDPR;
<b>"Data Protection Laws"</b>	means (a) any law, statute, declaration, decree, directive, legislative enactment, order, ordinance, regulation, rule or other binding restriction (as amended, consolidated or re-enacted from time to time) which relates to the protection of individuals with regards to the Processing of Personal Data to which a Party is subject, including the Data Protection Act 1998 (to the extent that it remains in force), the Data Protection Act 2018, the GDPR and all legislation enacted in the UK in respect of the protection of personal data as well as the Privacy and Electronic Communications (EC Directive) Regulations 2003; and (b) any code of practice or guidance published by the ICO (or equivalent regulatory body) from time to time;
<b>"Data Processing Particulars"</b>	means, in relation to any Processing under this Agreement:  (a) the subject matter and duration of the Processing;  (b) the nature and purpose of the Processing;  (c) the type of Personal Data being Processed; and  (d) the categories of Data Subjects;  as set out in Appendix 1;
<b>"Data Subject"</b>	shall have the meaning given to that term in the applicable Data Protection Laws;
<b>"Data Subject Request"</b>	means an actual or purported request or notice or complaint from or on behalf of a Data Subject exercising his rights under the Data Protection Laws in relation to Personal Data including without limitation: the right of access by the Data Subject; the right to rectification; the right to erasure; the right to restriction of processing; the right to data portability; and the right to object;
<b>"GDPR"</b>	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 repealing Directive 95/46/EC (General Data Protection Regulation) OJ L 119/1, 4.5.2016;
<b>"Good Industry Practice"</b>	means, at any time, the exercise of that degree of care, skill, diligence, prudence, efficiency, foresight and timeliness which would be reasonably expected at such time from a leading and expert supplier of similar services to those being carried out under this Agreement, such supplier seeking to comply with its contractual obligations in full and complying with all applicable laws (including the Data Protection Laws);

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"ICO"	means the UK Information Commissioner's Office, or any successor or replacement body from time to time;
"ICO Correspondence"	means any correspondence or communication (whether written or verbal) from the ICO in relation to the Processing of Personal Data;
"Losses"	means all losses, fines, penalties, liabilities, damages, costs, charges, claims, amounts paid in settlement and expenses (including legal fees (on a solicitor/client basis), disbursements, costs of investigation (including forensic investigation), litigation, settlement (including ex gratia payments), judgment, interest and penalties), other professional charges and expenses, disbursements, cost of breach notification including notifications to the Data Subject, cost of complaints handling (including providing Data Subjects with credit reference checks, setting up contact centres (e.g. call centres) and making ex gratia payments), all whether arising in contract, tort (including negligence), breach of statutory duty or otherwise;
"Permitted Purpose"	means the purpose of the Processing as specified in the Data Processing Particulars;
"Personal Data"	means any personal data (as defined in the Data Protection Laws) Processed by either Party in connection with this Agreement, and for the purposes of this Agreement includes Sensitive Personal Data (as such Personal Data is more particularly described in Appendix 1 ( <i>Data Processing Particulars</i> ));
"Personal Data Breach"	has the meaning set out in the Data Protection Laws and, for the avoidance of doubt, includes a breach of Paragraph 2.2.1(d);
"Personal Data Breach Particulars"	means the information that must be included in a Personal Data Breach notification, as set out in Article 33(3) of the GDPR;
"Personnel"	means all persons engaged or employed from time to time by the Supplier in connection with this Agreement, including employees, consultants, contractors and permitted agents;
"Processing"	has the meaning set out in the Data Protection Laws (and "Process" and "Processed" shall be construed accordingly);
"Processor"	shall have the meaning given to that term in the applicable Data Protection Laws;
"Restricted Country"	means a country, territory or jurisdiction outside of the European Economic Area which the EU Commission has not deemed to provide adequate protection in accordance with Article 45(1) of the GDPR;
"Security Requirements"	means the requirements regarding the security of Personal Data, as set out in the Data Protection Laws (including, in particular, the measures set out in Article 32(1) of the GDPR (taking due account of the matters described in Article 32(2) of the GDPR)) as applicable;
"Sensitive Personal Data"	means Personal Data that reveals such special categories of data as are listed in Article 9(1) of the GDPR;
"Third Party Request"	means a written request from any third party for disclosure of Personal Data where compliance with such a request is required or purported to be required by law or regulation.

## 2. DATA PROTECTION

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## 2.1 Arrangement Between The Parties

- 2.1.1 The Parties shall each Process the Personal Data. The Parties acknowledge that the factual arrangements between them dictate the classification of each Party in respect of the Data Protection Laws. Notwithstanding the foregoing, the Parties anticipate that, in respect of the Personal Data, as between the University and the Supplier for the purposes of this Agreement, the University shall act as the Controller and the Supplier shall act as the Processor, as follows:
- (a) the University shall be the Controller where it is Processing Personal Data in relation to the Contract; and
  - (b) the Supplier shall be the Data Processor where it is Processing Personal Data in relation to the Permitted Purpose in connection with the performance of its obligations under the Contract.
- 2.1.2 Each of the Parties acknowledges and agrees that Appendix 1 (*Data Processing Particulars*) to this Schedule is an accurate description of the Data Processing Particulars.
- 2.1.3 Nothing within this Schedule relieves the Supplier of its own direct responsibilities and liabilities under the Data Protection Laws.
- 2.1.4 Each Party shall make due notification to any relevant Regulator.
- 2.1.5 The Supplier undertakes to the University that it will take all necessary steps to ensure that it operates at all times in accordance with the requirements of the Data Protection Laws and the Supplier will, at its own expense, assist the University in discharging its obligations under the Data Protection Laws as more particularly detailed in this Paragraph 2 (*Data Protection*). The Supplier shall not, whether by act or omission, cause the University to breach any of its obligations under the Data Protection Laws.

## 2.2 Data Processor Obligations

- 2.2.1 To the extent that the Supplier Processes any Personal Data as a Processor for and on behalf of the University (as the Controller) it shall:
- (a) only Process the Personal Data for and on behalf of the University for the purposes of performing its obligations under the Contract, and only in accordance with the terms of this Agreement and any instructions from the University;
  - (b) keep a record of any Processing of the Personal Data it carries out on behalf of the University;
  - (c) unless prohibited by law, notify the University immediately (and in any event within twenty-four (24) hours of becoming aware of the same) if it considers, in its opinion (acting reasonably) that it is required by Applicable EU Law to act other than in accordance with the instructions of the University including where it believes that any of the University's instructions under Paragraph 2.2.1(a) infringe any of the Data Protection Laws;
  - (d) take, implement and maintain appropriate technical and organisational security measures which are sufficient to comply with:
    - (i) at least the obligations imposed on the University by the Security Requirements; and
    - (ii) the obligations set out in Appendix 2 (Information Security);and where requested provide to the University evidence of its compliance with such requirements promptly, and in any event within forty-eight (48) hours of the request;

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- (1) hold the Personal Data in such a manner that it is capable of being distinguished from other data or information processed by the Supplier;
- (2) within thirty (30) calendar days of a request from the University allow its data processing facilities, procedures and documentation to be submitted for scrutiny, inspection or audit by the University (and/ or its representatives, including its appointed auditors) in order to ascertain compliance with the terms of this Paragraph 2 (*Data Protection*), and provide reasonable information, assistance and co-operation to the University including access to relevant Personnel and/ or, on the request of the University provide the University with written evidence of its compliance with the requirements of this Paragraph 2 (*Data Protection*);
- (3) not disclose Personal Data to a third party (including a sub-contractor) in any circumstances without the University's prior written consent, save in relation to Third Party Requests where the Supplier is prohibited by law or regulation from notifying the University in which case it shall use reasonable endeavours to advise the University in advance of such disclosure and in any event as soon as practicable thereafter;
- (4) promptly comply with any request from the University to amend, transfer or delete any Personal Data;
- (5) notify the University promptly (and in any event within forty-eight (48) hours) following its receipt of any Data Subject Request or ICO Correspondence and shall:
  - (a) not disclose any Personal Data in response to any Data Subject Request or ICO Correspondence without first consulting with and obtaining the University's prior written consent; and
  - (b) provide the University with all reasonable co-operation and assistance required by the University in relation to any such Data Subject Request or ICO Correspondence;
- (6) notify the University promptly (and in any event within twenty-four (24) hours) upon becoming aware of any actual or suspected, threatened or 'near miss' Personal Data Breach in relation to the Personal Data (and follow-up in writing) and shall:
  - (a) conduct or support the University in conducting such investigations and analysis that the University reasonably requires in respect of such Personal Data Breach;
  - (b) implement any actions or remedial measures necessary to restore the security of compromised Personal Data; and
  - (c) assist the University to make any notifications to the ICO and affected Data Subjects;
- (7) comply with the obligations imposed upon a Processor under the Data Protection Laws;
- (8) use all reasonable endeavours, in accordance with Good Industry Practice, to assist the University to comply with the obligations imposed on it by the Data Protection Laws, including:
  - (a) compliance with the Security Requirements;
  - (b) obligations relating to notifications required by the Data Protection Laws to the ICO and/ or any relevant Data Subjects;
  - (c) undertaking any Data Protection Impact Assessments (and, where required by the Data Protection Laws, consulting with the ICO and/ or any other relevant regulator in respect of any such Data Protection Impact Assessments); and
  - (d) without undue delay and where feasible not later than 72 hours after having become aware of it notify Personal Data Breaches to the ICO and/ or any other relevant regulator unless the Personal Data Breach is unlikely to result in a risk to the rights and freedoms of natural persons;
- (9) Upon the earlier of:

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- (a) termination or expiry of this Agreement and/or the Contract (as applicable); and
- (b) the date on which Personal Data is no longer relevant to, or necessary for, the Permitted Purpose,

the Supplier shall cease Processing all Personal Data and return and/ or permanently and securely destroy so that it is no longer retrievable (as directed in writing by the University) all Personal Data and all copies in its possession or control and, where requested by the University, certify that such destruction has taken place (promptly, and in any event within forty-eight (48) hours of the request except to the extent required by Applicable EU Law to retain the Personal Data) and not make (nor instruct or permit a third party to make) a transfer of any Personal Data to a Restricted Country except with the prior written consent of the University and in accordance with any terms the University may impose on such transfer as the University deems necessary to satisfy the requirements to ensure that transfers of Personal Data outside of the EEA have adequate protections in place as set out in the Data Protection Laws.

- (ii) Except as otherwise provided, this Agreement does not transfer ownership of, or create any licences (implied or otherwise), in any intellectual property rights in any Personal Data.

**(q) Supplier Personnel**

- (i) The Supplier shall take all reasonable steps to ensure the reliability and integrity of any of the Personnel who shall have access to Personal Data (including, without limitation, ensuring such Personnel shall have undergone reasonable levels of training in Data Protection Laws and in the care and handling of Personal Data), and ensure that each member of Personnel shall have entered into appropriate contractually-binding confidentiality undertakings.

- (ii) The Supplier shall only disclose Personal Data to the Personnel where the following conditions have been satisfied in relation to such Personnel:

- (1) the Supplier shall have taken (and shall continue to take) all reasonable steps to ensure the reliability and integrity of each member of the Personnel;
- (2) each member of the Personnel shall have been subject to adequately clear pre-employment checks that include, as a minimum: employment history for at least the last three (3) years; identity; unspent criminal convictions; and right to work (including nationality and immigration status);
- (3) each member of the Personnel shall have undergone, and shall continue to receive on an annual basis, reasonable levels of training in Data Protection Laws and in the care and handling of Personal Data; and
- (4) each member of the Personnel shall have entered into appropriate contractually-binding confidentiality undertakings.

**(r) Appointing Sub-contractors**

- (i) The Supplier shall be permitted to appoint a sub-contractor in accordance with this Paragraph (r) and to disclose Personal Data to such sub-contractor for Processing in accordance with the Supplier's obligations under this Agreement, provided always that:

- (1) the Supplier undertakes thorough due diligence on the proposed sub-contractor, including a risk assessment of the information governance-related practices and processes of the proposed sub-

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contractor, which shall be used by the Supplier to inform any decision on appointing the proposed sub-contractor;

- (2) the Supplier provides the University with full details of the proposed sub-contractor including the results of the due diligence undertaken in accordance with Paragraph (i)(1) before its appointment and the University has consented to such appointment in writing;
- (3)** the sub-contractor contract (as it relates to the Processing of Personal Data) is on terms which are substantially the same as, and in any case no less onerous than, the terms set out in this Schedule 1, and the University is a named third party beneficiary to the contract; and
- (4) the sub-contractor's right to Process Personal Data terminates automatically on expiry or termination of this Agreement and/or the Contract for whatever reason.
  - (ii) Notwithstanding any consent or approval given by the University under Paragraph (i), the Supplier shall remain primarily liable to the University for the acts, errors and omissions of any sub-contractor to whom it discloses Personal Data, and shall be responsible to the University for the acts, errors and omissions of such sub-contractor as if they were the Supplier's own acts, errors and omissions to the extent that the Supplier would be liable to the University under this Agreement and/or the Contract for those acts, errors and omissions.
- (s) Notwithstanding anything in this Agreement and/or the Contract to the contrary, this Schedule 1 shall continue in full force and effect for so long as the Supplier Processes any Personal Data.

#### **INDEMNITY**

- (a) The Supplier shall indemnify on demand and keep indemnified the University from and against:
  - (i)** any monetary penalties or fines levied by the ICO and/or any other regulator on the University;
  - (ii)** the costs of an investigative, corrective or compensatory action required by the ICO and/or any other regulator, or of defending proposed or actual enforcement taken by the ICO and/or any other regulator;
  - (iii) any Losses suffered or incurred by, awarded against, or agreed to be paid by, the University pursuant to a claim, action or challenge made by a third party against the University (including by a Data Subject); and
  - (iv) except to the extent that Paragraphs (i) and/ or (ii) and/ or (iii) apply, any Losses suffered or incurred, awarded against, or agreed to be paid by, the University

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

- (b) Nothing in this Agreement will exclude, limit or restrict the Supplier's liability under the indemnity set out in Paragraph (a).

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**INSURANCE**

(a) The Supplier agrees:

(i) to obtain and keep in full force and effect at all times a policy or policies of insurance which meets the following conditions:

- (1) it must cover liability for damage arising to any person;
- (2) it must apply in relation to the Processing of Personal Data; and
- (3) it must have policy limits and provisions conforming to such requirements as the University may from time to time reasonably prescribe;

(ii) to deliver to the University:

- (1) copies of all applicable insurance policies taken out pursuant to the provisions of this Agreement; and
- (2) evidence of premiums paid in relation to such insurance; and

(iii) to ensure that the University shall be entitled to the benefit under such insurance and that the University's interest will be noted on the policy.

**APPENDIX 1**

**DATA PROTECTION PARTICULARS**

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

**APPENDIX 2**

**INFORMATION SECURITY**

***[include details of information sharing arrangements/technical security requirements]***

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