

## NEWCASTLE UNIVERSITY

### TERMS AND CONDITIONS FOR THE PURCHASE OF GOODS AND SERVICES 2022

#### 1. **DEFINITION**

##### 1.1 In these Terms and Conditions:

**'Anti-Slavery Laws'** shall mean any and all laws including statutes, statutory instruments, bye-laws, orders, regulations, directives, treaties, decrees, decisions (as referred to in Article 288 of the Treaty on the Functioning of the European Union) (including any judgment, order or decision of any court, regulator or tribunal) anywhere in the world which relate to anti-slavery or servitude, anti-forced or compulsory labour and/or anti-human trafficking, including the Modern Slavery Act 2015;

**'Anti-Slavery Policy'** shall mean the Base Code of the Ethical Trading Initiative and University's anti-slavery Statement, in each case as amended from time to time;

**'Confidential Information'** shall mean the existence and terms of the Contract, and all other information and trade secrets relating to the University's business or students which come into the possession of, or are otherwise made available to, the Provider pursuant to the Contract, whether orally, or in documentary, electronic or other form, including all (if any) such information held by the Provider as of the commencement of the Contract;

**'Contract'** means the agreement between the University and the Provider for the supply and acquisition of the Goods and/or Services consisting of these Terms and Conditions, the Order and any other document which the University and the Provider have expressly agreed in writing shall be incorporated into the Contract formed in accordance with Condition 2;

**'Contract Personal Data'** shall mean Personal Data which is to be Processed under this Contract, including where:

- (a) made available by or on behalf of the University to the Provider for the purposes of the Contract;
- (b) obtained by the Provider during the course of providing the Services; and/or
- (c) generated in the course of providing the Services,

as more particularly described in the relevant specification for the Services;

**'Contract Start Date'** means the date on which the relevant Contract is formed in accordance with Condition 2.1;

**'Data Protection Legislation'** all applicable data protection and privacy legislation in force from time to time in the UK including the UK GDPR, the Data Protection Act 2018 (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) and the guidance and codes of practice issued by the Information Commissioner or other relevant regulatory authority and applicable to a party.

**'Deliverables'** means all information, data, documents, specification, software, drawings, images, sounds, results, works and/or other outputs arising out of or in connection with the Services;

**'Delivery'** means delivery of the Goods to the place specified in the Order. Delivery of the Goods will occur when they have been delivered into the possession of the University at the delivery address;

**'Discretionary Exclusions'** means the circumstances set out in regulation 57(8) of the Public Contracts Regulations;

**'EIR'** means the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department in relation to such regulations;

**'FOIA'** shall mean the Freedom of Information Act 2000 and any subordinate legislation (as defined under the Freedom of Information Act 2000) made under the Freedom of Information Act 2000 from time to time together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government Department in relation to such Act and, where applicable, the Environmental Information Regulations 2004;

**'Force Majeure Event'** means any event or circumstance to the extent it is beyond the reasonable control of and could not have been contemplated by the relevant party, but excluding any (i) changes in law; (ii) acts or omissions by sub-contractors; (iii) strikes, lockouts or industrial disputes.

**'Goods'** means the goods (including instalment, component, part of or raw materials used in such goods) described in the Order and such packaging as may be necessary for the immediate containment or handling of the goods but excluding additional cartons, cases and other similar containers used for convenience or distribution;

**'Indemnify'** means to indemnify, keep indemnified and hold harmless the relevant person in full and on demand from and against all Losses which the indemnified person incurs or suffers directly or indirectly in any way whatsoever; and "Indemnity" will be construed accordingly;

**'Information'** has the meaning given to it in Section 84 of the Freedom of Information Act 2000;

**'Insolvency Event'** means each and any of the following in relation to the Provider:

- (a) any action (corporate or otherwise), legal proceedings or other procedure or step taken by any person in any jurisdiction in relation to or with a view to: (i) the winding up, dissolution, administration or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) of the Provider (except that no right to terminate will arise in respect of any procedure commenced for the purpose of a solvent amalgamation or reconstruction); (ii) the appointment of a liquidator, trustee in bankruptcy, judicial custodian, compulsory manager, receiver, administrative receiver, administrator, nominee, supervisor or

similar officer in respect of the Provider or any of its assets; (iii) the enforcement of any security over any assets of the Provider; or (iv) the expropriation, attachment, sequestration, distress or execution over or affecting any material asset of the Provider;

- (b) the Provider is unable to pay its debts as they fall due or is insolvent;
- (c) the Provider ceases to trade or appears, in the reasonable opinion of the University, to be likely to cease to trade; or
- (d) the Provider convenes a meeting of its creditors and/or enters into a composition or arrangement with its creditors or any class of them;

**'Intellectual Property Rights'** means all intellectual and industrial property rights of any kind whatsoever including patents, supplementary protection certificates, rights in know-how, registered trade marks, registered designs, models, unregistered design rights, unregistered trade marks, rights to prevent passing off or unfair competition and copyright (whether in drawings, plans, specifications, designs and computer software or otherwise), database rights, topography rights, any rights in any invention, discovery or process, in each case whether or not registered or capable of registration, and all applications for and rights to apply for any of the foregoing together with all or any associated goodwill, in each case in the United Kingdom and all other countries in the world and together with all renewals, extensions, continuations, divisions, reissues, re-examinations and substitutions;

**'Losses'** means all losses (including all direct, indirect and consequential losses), liabilities, costs (on a full indemnity basis including legal and other professional costs and costs of enforcement), damages and expenses that the indemnified party does or will incur or suffer, all claims or proceedings made, brought or threatened against the indemnified party by any person and all losses (including all direct, indirect and consequential losses), liabilities, costs (on a full indemnity basis including legal and other professional costs and costs of enforcement), damages and expenses the indemnified party does or will incur or suffer as a result of defending or settling any such actual or threatened claim or proceeding;

**'Mandatory Exclusions'** means the circumstances set out in regulation 57(1) of the Public Contracts Regulations;

**'Minor Works'** means Services which are designated as Minor Works in an Order and includes all work to be undertaken and materials to be supplied by the Provider in relation to such Minor Works;

**'Minor Works Annex'** means the document entitled "Minor Works Annex" which sets out the provisions that apply to Minor Works. The provisions of the Minor Works Annex may be different than, or in addition to, these Terms and Conditions (as specified in the Minor Works Annex);

**'Modern Slavery Practice'** shall mean any practice that amounts to (a) slavery or servitude (each as construed in accordance with Article 4 of the Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950 as amended), (b) forced or compulsory labour (as defined by the International Labour Organisation's Forced Labour Convention 1930 (No. 29) and Protocol) (c) human trafficking or (d) the arranging or

facilitation of the travel of another person with a view to that person being exploited;

**'Order'** means the University's written acceptance of the Provider's and/or Provider's quotation for the supply of Goods and/or Services to the University;

**'Premises'** means the location where the Services are to be performed and/or where the Goods are to be Delivered as specified in the Order and/or any other premises of the University;

**'Price'** means the amount payable for the Goods and/or Services set out in or calculated by reference to the rates set out in the Contract (as applicable);

**'Provider'** means the person, firm or company named as the Provider in the Order and with whom the University has contracted to supply the Goods and/or Services and where the context so permits its legal successors in title, servants, agents, sub-contractors and permitted assigns;

**'Public Contracts Regulations'** means the Public Contracts Regulations 2015 SI 2015/102 as amended and in force from time to time;

**'Request for Information'** means a request for information or an apparent request under the Code of Practice on Access to Government Information, FOIA or the Environmental Information Regulations;

**'Relevant Sub-Contractor(s)'** means any sub-contractors engaged or to be engaged by the Provider in relation to the delivery of its obligations under the Contract where the sub-contractors are engaged or will be engaged for the provision of works or in relation to the provision of services at a facility under the direct oversight of the University;

**'Services'** means the services and Minor Works to be provided as specified in the Order and shall include, where applicable, any materials, articles and goods to be supplied thereunder;

**'Service Variation Notice'** means a written notice issued by the University to the Provider to vary the Services and/or Goods in accordance with Condition 30.1 or modify the quality or quantity of Minor Works in accordance with paragraph 7 of the Minor Works Annex;

**'Single Procurement Document'** means a Single Procurement Document consisting of an updated self-declaration confirming that the Relevant Sub-Contractor fulfils the selection criteria that the Provider is required to meet as part of any tender which relates to the Contract;

**'Specification'** means any description, drawings, data, plant or other information (if any) of the Goods (a) contained or referred to in the Contract; and/or (b) published or otherwise made available to the University by or on behalf of the Provider and/or the manufacturer of the relevant Goods;

**'Substantial Modification'** means a modification to the Goods and/or Services, Contract and/or other related agreement other than as provided for in Regulation 72 of the Public Contracts Regulations and to which the University is required to conduct a new procurement procedure in accordance with Regulation 72(9) of the Public Contracts Regulations;

**'UK GDPR'** has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the DPA 2018.

**'University'** means The University of Newcastle upon Tyne trading as Newcastle University; and

**'Working Day'** means a day that is not a Saturday, Sunday or public or bank holiday in England and/or Wales.

- 1.2 The headings in the Contract are for ease of reference only and shall not affect the construction thereof.
- 1.3 Any reference to any gender includes any other gender and references to a 'person' include any individual, body corporate, association, partnership, firm, trust, organisation, joint venture, government, local or municipal authority, governmental or supra-governmental agency or department, state or agency of state or any other entity (in each case whether or not having separate legal personality).
- 1.4 References to any statute or statutory provision will include any subordinate legislation made under it and will be construed as references to such statute, statutory provision and/or subordinate legislation as modified, amended, extended, consolidated, re-enacted and/or replaced and in force from time to time.
- 1.5 In the event of any conflict between these Terms and Conditions, and any other Contract documents, these Terms and Conditions shall apply to the extent of the conflict and inconsistency.
- 1.6 Any words following the words 'include', 'includes', 'including', 'in particular' or any similar words or expressions will be construed without limitation and accordingly will not limit the meaning of the words preceding them.
- 1.7 These Terms and Conditions are the only terms and conditions on which the University will purchase any Services and/or Goods from the Provider and will apply to the exclusion of all other terms and conditions including any terms and conditions which the Provider purports to apply under any quotation, acknowledgement, acceptance or confirmation of order, delivery note, invoice or similar document (whether or not such document is referred to in the Contract) and any terms and conditions which may otherwise be implied by trade, custom, practice or course of dealing. In particular, no conditions submitted or referred to by the Provider when tendering, submitting a quotation or otherwise shall form part of the Contract unless otherwise agreed to in writing by the University.
- 1.8 To the extent of any inconsistency between the documents comprising the Contract, the following order of precedence shall apply (with 1.8 (a) being the highest precedence):
  - (a) these Terms and Conditions;
  - (a) the Order;
  - (b) any other document which is incorporated into the Contract.

- 1.9 Nothing in the Contract and no action taken by the parties in connection with it will create a partnership or joint venture or relationship of employer and employee between the parties.

## 2. **APPOINTMENT**

- 2.1 The Provider's quotation constitutes an offer by the Provider to supply the Goods and/or Services to the University on these Terms and Conditions and will remain open for acceptance by the University for a period of not less than 60 days from and including its date. A contract for the supply of Goods and/or Services by the Provider to the University on these Terms and Conditions will be formed when the University accepts the quotation by issuing the Order to the Provider. For the avoidance of doubt the University is under no obligation to accept the quotation.
- 2.2 With effect from the date set out in the Contract, the University appoints the Provider to supply the Goods and/or perform the Services in accordance with the Contract.
- 2.3 Delivery of any Goods or commencement of the Services will be deemed conclusive evidence of the Provider's acceptance of these Terms and Conditions.
- 2.4 The Provider warrants on an ongoing basis that at all times all information provided by or on behalf of the Provider to the University in connection with a tender for any of the Goods and/or Services is complete and accurate.

## 3. **DELIVERY**

- 3.1 Where a time for Delivery is specified in the Order, time of Delivery is of the essence of the Contract. If no time of Delivery is specified, Delivery shall be within a reasonable time of the Order being made by the University.
- 3.2 The Goods shall be delivered as set out in the Contract. The University reserves the right to amend any delivery instruction. If Goods are incorrectly delivered, the Provider will be held responsible for any additional expense incurred in delivering them to their correct destination.
- 3.3 Where the Order provides for Delivery within a specified time, that time shall run from the date on which the University issues the Order.
- 3.4 The University shall not be obliged to take Delivery of any Goods tendered before the time(s) or date(s) shown in the Order and may return any Goods so tendered to the Provider at the Provider's risk and expense.
- 3.5 Unless otherwise expressly stated in the Contract, the Provider will be responsible for off-loading the Goods from the delivery vehicle.
- 3.6 Delivery or performance by instalments shall not be accepted by the University unless previously agreed in writing. If Goods are to be delivered in instalments the Contract will be treated as a single contract and not severable.

## 4. **DOCUMENTS**

4.1 The Provider shall:

- (a) clearly mark the outside of each consignment or package with the Provider's name and address together with University's order number and full details of the destination in accordance with the Order;
- (b) include a packing note stating the contents thereof and all the quality assurance documents required by the Specification;
- (c) send to the University a detailed price invoice as soon as is reasonably practicable after the despatch of each consignment;
- (d) state on every such packing note, advice note, invoice or other document relating to the Order, the order number and code number (if any);
- (e) provide the University on request evidence of the place of origin of the Goods and information relating to components, parts or materials used in manufacturing the Goods;
- (f) provide all information as the University requires to ensure that the Goods comply with, and that the University fulfils its obligations under, all applicable legislation and industry codes of practice;
- (g) clearly provide all information regarding hazardous substances and any dangerous properties the Goods may have; and
- (h) provide instructions for use and clear and conspicuous warnings relating to any conditions which are necessary to ensure safety in use or onward sale in each case with sufficient detail to enable the University and any end user to understand any possible risks to health and safety.

5. **QUALITY OF GOODS**

5.1 The Provider will ensure that the Goods:

- (a) conform as to quantity, quality and description with the Contract;
- (b) conform to any Specification provided by the University;
- (c) are of satisfactory quality, sound materials, workmanship and fit for any purpose held out by the Provider or made known to the Provider at the time the Order is placed;
- (d) where no specification or sample has been provided, will meet the University's performance criteria and will be of, and will perform to, a level of design, quality, functionality and durability as would be expected from the most advanced industry-leading goods of the same or a similar type that are on the market at the relevant time;
- (e) will be free from defects in design, material and workmanship;

- (f) correspond in all respects to all samples and/or patterns for the Goods as provided by the University;
- (g) conform with all standards of performance that are specified to the University by or on behalf of the Provider as applying to the Goods; and
- (h) will comply with all applicable law including statutory requirements and regulations relating to the manufacture and sale of goods, product safety, packaging, labelling (including the appropriate British standard or equivalent specification) unless agreed otherwise by the University in writing.

## 6. **PERFORMANCE OF SERVICES**

- 6.1 The Provider shall perform the Services on the performance date(s) set out in the Contract. The University may, by written notice, require the Provider to execute the Services in such order as the University may decide. Performance of the Services must be completed to the reasonable satisfaction of the University.
- 6.2 The quantity, quality and description of the Services shall be as specified in the Contract and/or in any specification supplied.
- 6.3 Time of performance of the Services is of the essence of the Contract. Notwithstanding this:
  - (a) if for any reason the University requests performance to be delayed, the Provider shall agree to such request at no extra cost to the University and the provisions of this Condition 6 shall apply to any such revised date for performance; and
  - (b) the Provider shall immediately notify the University of any occurrence which it reasonably considers will delay the delivery of the Services and the University shall, in its absolute discretion, decide whether any extension of time is to be granted. The Provider will use all reasonable endeavours to minimise the period and impact of any such delay and will promptly provide written details of the steps it will take to do so.
- 6.4 The Provider warrants to the University that the Services:
  - (a) will conform in every respect with the provisions of and requirements set out in the Contract;
  - (b) will comply with all standards of performance specified in the Contract;
  - (c) will be performed:
    - 6.4.c.1 using the degree of skill, care, prudence, supervision, diligence, foresight, quality control and quality management which would be adopted by a leading professional provider of the Services;



- 6.4.c.2 by appropriately qualified and trained personnel having experience in the provision of services of a similar type and nature of the Services;
  - 6.4.c.3 in a professional and ethical manner consistent with the University's commitment to equal opportunities and the Equality Act 2010;
  - 6.4.c.4 to the reasonable satisfaction of the University;
  - 6.4.c.5 at all times in a safe manner which is free from any unreasonable or avoidable risk to any person's health and well-being and in an economic and efficient manner;
  - 6.4.c.6 in accordance with all applicable law including statutory requirements and regulations that relate in any way to the Services and/or the Premises where the Services will be performed;
- (d) will comply with the University of Newcastle upon Tyne Code Of Safety Practice For Contractors Working For Academic Departments and any other rules, policies and/or instructions notified to the Provider by the University (including any request to leave immediately any of the Premises).
- 6.5 Without prejudice to Condition 7.1 and/or any other rights or remedies available to the University (whether express or implied), the Provider shall, without delay, promptly repair or replace (at the University's option) any defects during the period of 12 months from the University first using such Services in the ordinary course of its business or 18 months from the Services being completed, whichever the earlier, where such defects occur under proper usage and are due to faulty design, the Provider's erroneous instructions as to use or inadequate or faulty materials or workmanship, or any other breach of the Provider's obligations or warranties relating to the Services whether expressed or implied.
- 6.6 Conditions 7.1 and 6.5 will apply to any repaired or replacement Services supplied under Condition 6.5.
- 6.7 Where the date of performance of the Services is not specified in the Contract, the Provider will perform the Services within any timescales reasonably requested by the University in writing.
- 6.8 Performance by instalments shall not be accepted by the University except with the University's prior written agreement. If Services are to be performed by instalments, the Contract consisting of all instalments will be treated as a single contract and instalments will not be severable.
- 6.9 The Provider shall provide the University with all reports of the Service provided at such intervals and in such form as the University may from time to time require. The University may require the subject matter of such reports to include the use, performance, administration, or management of the Services, fraud, breaches of security and any other matter which the University considers reasonable.

6.10 The Provider shall take reasonable care to ensure that, in the performance of the Services, it does not interfere to any material degree with the operations of the University, its students, employees, consultants and any other Providers.

6.11 The Provider shall take every practicable precaution not to damage or injure any property or persons.

## **7. REJECTION AND TERMINATION**

7.1 Without prejudice to Condition 6.5 and/or any other rights or remedies available to the University (whether express or implied), if the whole or any part of the Goods do not conform in all material respects with any of the terms of the Contract and the Provider has failed to remedy such non-conformance without delay (as determined in the University's reasonable opinion), the University may:

- (a) terminate the Contract without compensation or other liability being owed to the Provider immediately by giving written notice to that effect to the Provider; or
- (b) require the Provider, at the University's option, to promptly repair or replace the relevant Goods free of charge or to refund the Price for the relevant Goods,

and, in either case, the University will be entitled to recover from the Provider any and Losses incurred by the University as a result of the non-conformity of the Goods, including in obtaining substitute goods from another Provider.

7.2 Conditions 7.1 and 6.5 will apply to any repaired or replacement Goods supplied under Condition 7.1(a).

7.3 The University shall not be deemed to have accepted the Goods until the University has had reasonable time to inspect and test them following delivery or, if later, within a reasonable time after any latent defect becomes apparent.

7.4 The University shall not be deemed to have accepted the Goods by virtue of having requested the Provider to repair or replace the Goods under these Terms and Conditions.

## **8. PACKAGING AND MARKING**

8.1 The Goods shall be carefully and safely packed and protected using the degree of care, diligence and foresight which would be adopted by a leading professional provider of the Goods:

- (a) in a manner suitable to the type and nature of the Goods and the means of transport being used; and
- (b) in accordance with any special requirements stated in the Contract.

8.2 Without prejudice to Condition 4, the Provider shall cause all Goods (including all external packaging) supplied by it to the University to be suitably and sufficiently marked, endorsed and labelled with information and advice

necessary to instruct and warn such persons into whosoever hands the Goods shall come about any hazards to health and/or safety arising from despatching, receiving, handling, using or possessing the Goods and also about the necessary precautions to be taken in respect thereof. Provided however that it shall not be reasonably practicable to mark, endorse or label the Goods accordingly, the Provider shall fully instruct and advise such persons by any accompanying notice at the time of despatch and take all necessary steps to ensure such notice is given to all persons into whose hands Goods shall come.

- 8.3 All Goods shall be marked to ensure conformance with all applicable laws and the University's written requirements.

## 9. **INSPECTION AND TESTING**

- 9.1 Before despatching the Goods, the Provider shall carefully inspect and test them for compliance with the Contract. The Provider shall, if requested by the University, give the University reasonable notice of such inspections and tests and the University shall be entitled to be represented thereat. The Provider shall at its own expense also supply to the University certificates of the results of inspections and tests in such form as the University may require.

- 9.2 It is expressly agreed that the University will be entitled at any reasonable time to inspect and test the Goods during manufacture, processing or storage, and the Provider shall at its own expense provide or procure the provision of all such facilities as may reasonably be required by the University thereof.

- 9.3 If as a result of any inspection or test under Condition 9.1 or 9.2 the University's representative is of the opinion that the Goods do not comply with the Contract and/or are unlikely on completion of manufacture or processing or Delivery so to comply, the University may:

- (a) notify the Provider and the Provider shall take such steps as are necessary to ensure such compliance; and/or
- (b) terminate the Contract without liability by giving written notice to that effect to the Provider.

- 9.4 Nothing in Condition 9.1, 9.2 or 9.3 above nor any failure of the University to exercise its rights thereunder shall release the Provider from any of its obligations or liabilities under the Contract or affect the University's rights and remedies under the same.

## 10. **RISK AND OWNERSHIP**

- 10.1 Risk of damage to or loss of the Goods shall pass to the University on Delivery or as otherwise stated in the Contract provided that, where the University rejects any part of the Goods in accordance with Condition 7, risk in that part shall revert to the Provider.

- 10.2 Ownership of any Goods shall pass to the University upon Delivery, unless payment for any Goods is made prior to Delivery, when ownership shall pass to the University once payment has been made.

- 10.3 All materials, equipment, tools, dyes and moulds supplied by the University to the Provider will at all times:
- (a) be and remain the exclusive property of the University;
  - (b) be held by the Provider in safe custody at its own risk;
  - (c) be maintained and kept in good condition by the Provider until returned to the University;
  - (d) not be disposed of other than in accordance with the University's written instructions;
  - (e) not be used otherwise than as authorised by the University in writing; and
  - (f) be returned to the University on demand.
- 10.4 The Provider shall keep all University materials, equipment, tools, dies and moulds at such location agreed with the University and shall keep such equipment clearly identified at all times as the property of the University.
- 10.5 Any surplus materials supplied by the University shall be disposed of at the University's discretion. Any waste of such materials arising from bad workmanship and/or negligence of the Provider shall be made good at the Provider's expense.

## 11. **OBSERVANCE OF REGULATIONS**

- 11.1 The Provider's and/or Provider's representatives, when employed within the boundaries of the Premises, shall comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force for the conduct of personnel at the Premises. Details of such rules, regulations and requirements shall be provided, on request, by the University.
- 11.2 Except as provided in the Contract, neither the Provider nor any of its employees or agents shall carry out any business or trading activity within the confines of the Premises and no advertisement, sign or notice of any description shall be exhibited without prior written approval of the University.
- 11.3 The Provider will notify the University immediately in writing if at any time it does or will Process Personal Data under or in connection with the Contract. In such cases, the Provider will promptly enter into such contractual provisions as required by the University (acting reasonably) to ensure that such Processing and the contractual provisions governing such Processing each comply with the Data Protection Legislation.

## 12. **PRICE AND PAYMENT FOR GOODS AND/OR SERVICES**

- 12.1 With the exception of expenses that are stated in the Order as payable by the University that are properly incurred and evidenced by the Provider and approved by the University in writing in advance, the Prices are the only monies to be paid by the University in connection with the supply of the Goods or performance of the Services which will be inclusive of all costs and

expenses incurred by the Provider including all insurance, travel, accommodation and subsistence expenses.

12.2 All Prices:

- (a) are fixed prices;
- (b) shall be quoted, invoiced and paid in sterling;
- (c) are inclusive of all costs and expenses incurred by the Provider including:
  - (i) packaging, insurance, carriage and delivery costs; and
  - (ii) taxes, customs, duties and other public dues, except VAT.

12.3 No increase in the Prices may be made for any reason without the prior written consent of the University. The University shall be entitled to any discounts for prompt payment, bulk purchase, volume or purchase customarily granted by the Provider.

12.4 Subject to the supply of the Goods and/or Services in accordance with the Contract, the Provider shall invoice the University for the Prices for the Goods and/or Services in the manner and at the times set out in the Contract. In the absence of any such provisions in the Contract, the Provider will invoice the University for the Price following Delivery and/or acceptance of the Goods (whichever the later) and for Services following performance. All invoices must be sent to the invoicing address indicated on the Order and must quote the full purchase order number of the Order.

12.5 Invoices shall (except to the extent that the relevant Services are exempt from VAT) be valid VAT invoices in such form as requested by the University in writing and accompanied by such information as the University may reasonably require in order to verify the Provider's entitlement to payment. VAT, where applicable, shall be shown separately on all invoices, as a strictly net extra charge. The Provider shall, if so requested by the University, furnish such information as may reasonably be required by the University as to the amount of VAT chargeable on the value of the Goods supplied or Services provided in accordance with the Contract and payable by the University to the Provider in addition to the Price.

12.6 Unless stated in the Contract, payment of any sums due under the Contract becomes due 28 days following receipt of any undisputed and properly submitted invoice.

12.7 Where the University disputes an invoice, the University is entitled to withhold the whole or part of the invoice to the extent of the amount in dispute, and shall pay the balance (if any) that is undisputed; the University shall promptly notify the Provider of its reasons for withholding any amount under this Condition 12.7. Should a dispute arise in relation to an invoice, the parties will meet within seven days of the University notifying the Provider of its reasons for withholding the relevant amount and each party will act in good faith to attempt to resolve the dispute.

- 12.8 The Provider is not discharged from performance of its obligations by reason only that some or all of the Price is withheld under Condition 12.7. No payment made by the University will constitute acceptance or approval by the University of the Goods and/or Services or otherwise prejudice any rights or remedies which the University may have against the Provider including the right to recover any amount overpaid or wrongfully paid to the Provider.
- 12.9 The University may set off against the Price any sums owed to it by the Provider, in connection with the Contract or any other agreement entered into by the parties.
- 12.10 If any sum payable under the Contract is not paid on or before the due date for payment the Provider will be entitled to charge the University interest on that sum at 4% per annum above the base lending rate from time to time of Barclays Banks Plc from the due date until the date of payment (whether before or after judgment), such interest to accrue on a daily basis. Such interest will not be chargeable on any sum disputed in accordance with Condition 12.7 for any period during which the payment of such sum remains disputed. The parties agree that this Condition 12.10 is a substantial remedy for late payment of any sum payable under the Contract, for the purposes of the Late Payment of Commercial Debts (Interest) Act 1998, in particular because:
- (a) the interest rate is greater than the interest rate available to the Provider in respect of cash on deposit which is immediately available; and
  - (b) the other provisions of the Contract reflect, and take into account, the overall relationship between the parties, and so it would be inappropriate for a higher interest rate to apply.
- 12.11 The provisions of Condition 12.10 are in lieu of statutory interest, which shall not accrue on any late payments.

13. **MINOR WORKS**

- 13.1 In the event that the Contract includes any Minor Works, the provisions of the Minor Works Annex will be incorporated into the Contract to govern the provision of Minor Works. Except where the provisions of the Minor Works Annex expressly amend the provisions of these Terms and Conditions (in which case such amendments will have effect in respect of the Minor Works only), the provisions set out in the Minor Works Annex are additional to, and do not replace, these Terms and Conditions. To the extent of any conflict or inconsistency between the provisions of the Minor Works Annex and these Terms and Conditions, the provisions of the Minor Works Annex shall take precedence in relation to the Minor Works only.

14. **PROVIDER'S STATUS**

- 14.1 In carrying out the Services and/or supplying the Goods, the Provider shall be acting as principal and not as the agent of the University. Accordingly:
- (a) the Provider shall not (and shall procure that its agents and servants do not) say or do anything that might lead any other

person to believe that the Provider is acting as the agent or employee of the University; and

- (b) nothing in the Contract shall impose any liability on the University in respect of any liability incurred by the Provider to any other person.

14.2 Nothing in the Contract and no action taken by the parties in connection with it will create a partnership or joint venture or relationship of employer and employee between the parties.

14.3 Notwithstanding any degree of supervision exercised by either party over employees of the other, in no circumstances will the relationship of employer and employee be deemed to arise between either party and an employee of the other party. The Provider will indemnify the University any such actual or threatened claim or proceeding, in each case including against all Losses arising out of or in connection with any claims that may be made by any relevant authorities against the University in respect of income tax collected (under PAYE or otherwise) or National Insurance including any connected interest, penalties or costs or any similar contributions relating to the Services.

15. **INTELLECTUAL PROPERTY**

15.1 Save for any Intellectual Property Rights in Provider Data, any Intellectual Property Rights which come into existence as a result of the performance by the Provider of the Services, including the Deliverables, or subsisting in or relating to the Specification and any Goods designed and/or created using such Specification, will be the property of the University.

15.2 The Provider hereby assigns to the University free from all charges and other encumbrances all right, title and interest in and to all Intellectual Property Rights subsisting in or relating to the Deliverables, together with all rights of action arising or accrued in relation to those Intellectual Property Rights, including the right to take proceedings and to seek and recover damages, the right to obtain delivery-up of all infringing copies and all other remedies for past infringement.

15.3 At the request and expense of the University, the Provider shall and shall procure that their personnel shall:

- (a) do all things necessary or desirable to enable the University or its nominee to confirm absolute title to and ownership of and to obtain the benefit of the invention, development, discovery, improvement, process, design or copyright work (as the case may be) and to secure patent or other appropriate forms of protection for it throughout the world;

- (b) provide to the University all such assistance as the University may require in relation to the resolution of any questions concerning patent, copyright or other intellectual property proprietary rights assigned by virtue of this Condition 15, and decisions as to the procuring of a patent or other appropriate protection and exploitation shall be in the sole discretion of the University.

- 15.4 The Provider shall clearly identify all Provider Data which are proposed to be included in the Deliverables and in such cases the Provider shall not include Provider Data in the Deliverables without the prior written consent of the University. The Provider shall grant or use its best endeavours to obtain the grant of an irrevocable royalty free, perpetual, transferable non-exclusive licence to the University to use such pre-existing Intellectual Property Rights as shall be necessary for the use of the Deliverables.
- 15.5 The Provider hereby waives and shall procure that any relevant third party shall waive (to the extent that such rights may be waived) all moral rights which now or in the future may subsist anywhere in the world in the Deliverables.
- 15.6 The Provider warrants that:
- (a) neither the Deliverables nor the provision or receipt of the Services shall infringe any third party Intellectual Property Rights.
  - (b) that the supply of the Goods to the University and the use by the University of the Goods (if the Provider has been made aware of the intended use) shall not in any way infringe any Intellectual Property Right except where the design for the Goods was made, furnished or specified by the University.
- 15.7 If any third party claims that the possession and/or use by a Protected Party or the supply of all or any part of the Deliverables and/or receipt of the Services, Goods, materials or other items to a Protected Party by or on behalf of the Provider (**'Indemnified Items'**) infringes the Intellectual Property Rights of that third party or of another person (**'IPR Claim'**), the Provider will indemnify each Protected Party in connection with that IPR Claim. The **'Protected Parties'** means the University and all of its agents, officers and employees.
- 15.8 If there is an IPR Claim:
- (a) the University will as soon as reasonably practicable notify the Provider of the IPR Claim, provided that the giving of such notice will not be a condition precedent to the liability of the Provider under Condition 15.7;
  - (b) the Provider will at its own cost and expense control the defence of the IPR Claim and any related proceedings or settlement negotiations, except that the University will be entitled to take any action which it deems necessary if the Provider fails to take action, or (in the University's reasonable opinion) delays taking action, in defending or settling any such IPR Claim and such failure or delay may, in the reasonable opinion of the University, prejudice the interests of any Protected Party; and
  - (c) at the cost and expense of the Provider, the University will take all reasonable steps to co-operate with the Provider in the defence or settlement of such IPR Claim.



- 15.9 If the University is (or reasonably believes it is likely to be) subject to any IPR Claim the University may by written notice require the Provider to promptly (and at the Provider's cost and expense) either:
- (a) obtain for the Protected Parties the right to continue possessing, using and receiving the Indemnified Items in the manner permitted under the Contract free from any liability for such infringement or likely infringement; or
  - (b) modify, substitute or replace the relevant Indemnified Item so as to avoid the infringement or alleged infringement, without prejudice to any representations, warranties and indemnities in the Contract and without adversely affecting or limiting in any respect the performance, scope or functionality of the infringing items or any other Indemnified Item or any part of them.
- 15.10 All materials, equipment, tools, dyes and moulds supplied by the University to the Provider will at all times:
- (a) be and remain the exclusive property of the University;
  - (b) be held by the Provider in safe custody at its own risk;
  - (c) be maintained and kept in good condition by the Provider until returned to the University;
  - (d) not be disposed of other than in accordance with the University's written instructions;
  - (e) not be used otherwise than as authorised by the University in writing; and
  - (f) be returned to the University on demand.
- 15.11 The Provider shall keep all University materials, equipment, tools, dyes and moulds at such location agreed with the University and shall keep such equipment clearly identified at all times as the property of the University.
- 15.12 Any surplus materials supplied by the University shall be disposed of at the University's discretion. Any waste of such materials arising from bad workmanship and/or negligence of the Provider shall be made good at the Provider's expense.

## 16. **PROVIDER'S PERSONNEL**

- 16.1 The Provider shall take the steps reasonably required by the University to prevent unauthorised persons being admitted to the Premises. If the University gives the Provider notice that a person is not to be admitted to or is to be removed from the Premises or is not to become involved in or is to be removed from involvement in the performance of the Contract, the Provider shall take all reasonable steps to comply with such notice and if required by the University, the Provider shall replace any person removed under this condition with another suitably qualified person and procure that any pass issued to the person removed is surrendered. Such removal or refusal shall not relieve the Provider of its duties under the Contract.

- 16.2 If and when instructed by the University, the Provider shall give the University a list of names and addresses of all persons who are or may be at any time concerned with the Services or any part of them, specifying the capacities in which they are so concerned, and giving such other particulars and evidence of identity and other supporting evidence as the University may reasonably require.
- 16.3 The decision of the University as to whether any person is to be admitted to or is to be removed from the Premises or is not to become involved in or is to be removed from involvement in the performance of the Contract and as to whether the Provider has furnished the information or taken the steps required of him by this condition, shall be final and conclusive.
- 16.4 The Provider shall bear the cost of any notice, instruction or decision of the University under this Condition 16.

17. **OBSERVANCE OF REGULATION**

- 17.1 The Provider's representatives, when employed within the boundaries of the Premises, shall comply with such rules, regulations and requirements (including those relating to security arrangements) as may be in force for the conduct of personnel at the Premises. Details of such rules, regulations and requirements shall be provided, on request, by the University.
- 17.2 Except as provided in the Contract, neither the Provider nor any of its employees or agents shall carry out any business or trading activity within the confines of the Premises and no advertisement, sign or notice of any description shall be exhibited without prior written approval of the University.

18. **DATA PROTECTION**

- 18.1 The following definitions apply in this Clause 18:
- (a) **Controller, Processor, Data Subject, Personal Data, Personal Data Breach, processing and appropriate technical and organisational measures:** as defined in the Data Protection Legislation.
  - (b) **Domestic Law:** the law of the United Kingdom or a part of the United Kingdom.
- 18.2 The parties will comply with all applicable requirements of the Data Protection Legislation. This Clause 19 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.
- 18.3 The parties acknowledge that for the purposes of the Data Protection Legislation, the University is the Controller, and the Provider is the Processor.
- 18.4 Without prejudice to the generality of Condition 18.2, the University will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to the Provider and/or lawful collection of the Personal Data by the Provider on behalf of the Customer for the duration and purposes of the Contract.

18.5 Without prejudice to the generality of Condition 18.2, the Provider shall, in relation to any Personal Data processed in connection with the performance by the Provider of its obligations under the Contract:

- (a) process that Personal Data only on the documented written instructions of the University unless the Provider is required by Domestic Law to otherwise process that Personal Data. Where the Provider is relying on Domestic Law as the basis for processing Personal Data, the Provider shall promptly notify the University of this before performing the processing required by the Domestic Law unless the Domestic Law prohibits the Provider from so notifying the University;
- (b) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the University, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
- (c) ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and
- (d) not transfer any Personal Data outside of the UK unless the prior written consent of the University has been obtained and the following conditions are fulfilled:
  - 18.5.d.1 the University or the Provider has provided appropriate safeguards in relation to the transfer;
  - 18.5.d.2 the Data Subject has enforceable rights and effective legal remedies;
  - 18.5.d.3 the Provider complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
  - 18.5.d.4 the Provider complies with reasonable instructions notified to it in advance by the University with respect to the processing of the Personal Data;

18.6 assist the University, in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection

Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators:

- (a) notify the University without undue delay on becoming aware of a Personal Data Breach;
- (b) at the written direction of the University, delete or return Personal Data and copies thereof to the University on termination of the Contract unless required by Domestic Law to store the Personal Data; and
- (c) maintain complete and accurate records and information to demonstrate its compliance with this Condition 18 and allow for audits by the University or the University's designated auditor and immediately inform the University if, in the opinion of the Provider, an instruction infringes the Data Protection Legislation.

18.7 The Provider shall not appoint any third party processor of Personal Data under the Contract without prior written consent of the University.

18.8 Where the University consents to the Provider appointing a third-party processor of Personal Data under the Contract. The Provider confirms that will enter with the third-party processor into a written agreement incorporating terms which are substantially similar to those set out in this Condition 18 and undertakes that it will continue to reflect the requirements of the Data Protection Legislation. As between the University and the Provider, the Provider shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this Condition 18.

18.9 In considering whether to grant written consent in accordance with Condition 18.7, the Provider shall provide the University with a Single Procurement Document for the Relevant Sub-Contractor. The University may withhold its consent to the appointment or continued use of any Relevant Sub-Contractor where the Single Procurement Document provided to it in accordance with this Condition 18.9 does not meet any of the selection criteria that the Provider is required to meet as part of any tender which relates to the Contract.

18.10 Either party may, at any time on not less than 30 days' notice, revise this Condition 18 by replacing it with any applicable controller to processor standard clauses or similar terms adopted by the Information Commissioner or forming part of an applicable certification scheme (which shall apply when replaced by attachment to the Contract).

## 19. **FORCE MAJEURE**

19.1 Neither party shall be liable for failure to perform or delay in performing its obligations under the Contract to the extent that such failure results from a Force Majeure Event and, if the affected party is the Provider, the impact of that Force Majeure Event could not have reasonably been avoided or prevented by the Provider.

19.2 If a Force Majeure Event occurs, the party affected will:

- (a) promptly upon becoming aware of the Force Majeure Event give the other party written notice of the occurrence, anticipated duration and impact of the Force Majeure Event;
- (b) use reasonable endeavours to mitigate the effects of the Force Majeure Event, to continue to perform the affected obligations notwithstanding the occurrence of the Force Majeure Event and to ensure that the Force Majeure Event comes to an end; and
- (c) continue to perform all of its obligations under this Agreement the performance of which are not affected by the Force Majeure Event.

19.3 If any Force Majeure Event prevents, hinders or delays performance of all or any part of the obligations of a party for more than 30 days, then by written notice to the Provider the University may terminate the Contract without liability as of the date specified by the University in the notice.

## 20. **WARRANTY**

20.1 The Provider warrants and represents to the University that it has full right, power, capacity and authority to provide the Goods and it is fully qualified, equipped, financed and organised to perform the Contract.

20.2 The Provider represents and warrants to the University that it is fully experienced, qualified, equipped to perform its obligations under the Contract.

## 21. **INDEMNITIES AND INSURANCE OF THE PROVIDER**

21.1 The Provider shall Indemnify the University, its servants and agents, from and against all Losses in each case arising out of or in connection with:

- (a) any claim made against the University in respect of breach or alleged breach by the University of any applicable law, including statutory provisions, regulations, bye-laws or other rule of law arising from the acts or omissions of the Provider or its employees, agents or sub-contractors;
- (b) any default or breach of the Contract by the Provider or any sub-contractor, agent or any person engaged by the Provider;
- (c) any claim, allegation, action, dispute or proceedings that the Deliverables, or the provision or receipt of the Services infringe the Intellectual Property Rights of any third party;
- (d) any act or omission of the Provider or its employees, agents or sub-contractors in performing the Services or providing the Goods, including any injury, Losses or damage to persons or to University property caused or contributed to by any of their negligence or by faulty design, workmanship or materials (except to the extent that the injury, Losses or damage is caused by the negligent act or omission of the University);
- (e) damage or injury to property and/or persons which arise out of or in consequence of any operations under the Contract (whether

claimed by the University or a third party against the Provider or against the University).

21.2 The Provider (but without limiting its obligations and responsibilities under the Contract) shall maintain insurance policies with a reputable insurer which provide cover in respect of all of the Provider's potential liabilities in connection with the Services and its performance of its obligations under the Contract.

21.3 Without prejudice to Condition 21.2, the Provider shall take out and maintain with reputable insurers the following insurance policies which will provide cover in respect of the Services and the performance by the Provider of its obligations under the Contract:

- (a) professional indemnity insurance with a minimum per claim limit of indemnity of at least £1,000,000 and shall maintain such insurance for a period of 6 years after completion of the Services;
- (b) employers' liability insurance with a minimum per claim limit of indemnity of not less than £10,000,000; and
- (c) any other insurances which the Provider is required by applicable law to maintain,

and the Provider shall maintain such insurances for the term of the Contract and for a period of not less than six years after the Contract has expired or terminated.

21.4 Upon the University's written request, the Provider will promptly provide full policy documents that evidence the policies required to be held in accordance with this Condition 21 together with evidence to meet the University's satisfaction of payment of all relevant premiums.

21.5 If the Provider is in breach of Conditions 21.2 to 21.3 the University may itself insure against any risk that should have otherwise been insured against by the Provider, and may (at the University's option) deduct a sum or sums equivalent to the amount paid or payable in respect of premiums from any monies due or to become due to the Provider under the Contract or recover such sum or sums from the Provider as a debt (such debt falling due when the University makes payment of the relevant amount).

## 22. **DEFAULT OF THE PROVIDER**

22.1 Subject to Condition 24.7 in the event of the Provider failing to carry out all or part of the Services in accordance with the Contract, the University shall (without prejudice to any other remedy available) be entitled:

- (a) to deduct from any account rendered by the Provider in respect of unsatisfactory Services such sum as the University considers appropriate (acting reasonably);
- (b) to have such Services carried out by other persons and in the meantime to debar the Provider, its servants and agents from the Premises; and

- (c) to recover from the Provider any and all Losses incurred in having the Services carried out by other persons and/or obtaining substitute services.

23. **CLAIMS UNDER UNIVERSITY INSURANCE**

23.1 In the event that the Provider becomes aware of any accident or damage to persons or property and/or any circumstances which would reasonably be expected to result in the University making a claim under the University's own insurance, the Provider shall:

- (a) immediately provide the University with written notice of such accident, damage and/or circumstances;
- (b) promptly provide all information and assistance that the University and/or its insurers may request in relation to any related claim; and
- (c) not negotiate, pay, settle, admit or repudiate any related third party claim without the University's written consent and, where relevant, shall permit the University's insurers to take proceedings in the name of the Provider to recover compensation or secure an indemnity from any third party in respect of any of the matters covered by the said insurance.

24. **LIABILITY FOR ACCIDENTS AND DAMAGE**

24.1 The Provider will indemnify the University against all Losses that the University does or will incur or suffer, all claims or proceedings made, brought or threatened against the University by any person and all losses, liabilities, costs (on a full indemnity basis), damages and expenses the University does or will incur or suffer as a result of defending or settling any such actual or threatened claim or proceeding, including where they arise from the negligence of the University and in each case arising out of or in connection with :

- (a) any breach of Contract by the Provider;
- (b) any negligence of the Provider;
- (c) any claim made allegation, action, dispute or proceedings that the Goods infringe the Intellectual Property Rights of any third party;
- (d) claim made against the University in respect of any breach or alleged breach by the University of any applicable law (including any statutory provision, regulation or bylaws) arising from the acts or omissions of the Provider or its employees, agents or sub-contractors; or
- (e) any defective design (other than a design made, furnished or specified by the University and for which the Provider had disclaimed responsibility in writing within a reasonable time after receipt of the University's instructions), defective materials or defective workmanship.

24.2 The Provider (but without limiting its obligations and responsibilities under the Contract) shall maintain insurance policies with a reputable insurer which provide cover in respect of all of the Provider's potential liabilities in connection with the supply of the Goods and/or Services and its performance of its obligations under the Contract.

24.3 In addition to the obligations under Condition 24.2, the Provider shall take out and maintain:

- (a) public/product liability insurance with a minimum per claim limit of indemnity of at least £1,000,000 for each and every claim; and
- (b) employers liability insurance with a minimum per claim limit of indemnity of not less than £10,000,000 for each and every incident; and
- (c) any other insurances which the Provider is required by applicable law to maintain

and the Provider shall maintain such insurances for the term of the Contract and for a period of not less than six years after the Contract has expired or terminated.

24.4 The Provider shall whenever required produce evidence satisfactory to the University that the policies required by this Condition 24 are in force.

24.5 Upon the University's written request, the Provider will promptly provide full policy documents that evidence the policies required to be held in accordance with this Condition 24 together with evidence to meet the University's satisfaction of payment of all relevant premiums.

24.6 If the Provider is in breach of Conditions 24.2 to 24.3 the University may itself insure against any risk that should have otherwise been insured against by the Provider, and may (at the University's option) deduct a sum or sums equivalent to the amount paid or payable in respect of premiums from any monies due or to become due to the Provider under the Contract or recover such sum or sums from the Provider as a debt (such debt falling due when the University makes payment of the relevant amount).

24.7 Nothing in the Contract will operate to exclude or restrict one party's liability arising out of or in connection with the Contract, whether in contract, tort, misrepresentation, restitution, under statute or otherwise, including any liability under an indemnity contained in the Contract and/or arising from a breach of, or a failure to perform or defect or delay in performance of, any of a party's obligations under the Contract, in each case howsoever caused including if caused by negligence (if any) to the other:

- (a) for death or personal injury resulting from its negligence;
- (a) for its fraud or fraudulent misrepresentation;
- (b) for breach of its obligations arising under section 12 Sale of Goods Act 1979;



- (c) for breach of a third party's Intellectual Property Rights and for breach of Condition 15 (Intellectual Property);
- (d) for breach of Condition 11.3 (Observance of Regulations);
- (e) for breach of Condition 25 (Confidentiality and Freedom of Information Act 2000);
- (f) for any indemnity given under the Contract; or
- (g) for any matter for which it is not permitted by law to exclude or limit, or to attempt to exclude or limit, its liability.

24.8 Subject to Condition 24.7 and unless otherwise expressly stated in the Contract, the University's maximum aggregate liability arising out of or in connection with the Contract, whether in contract, tort, misrepresentation, restitution, under statute or otherwise, including any liability arising from a breach of, or a failure to perform or defect or delay in performance of, its obligations under the Contract, in each case howsoever caused including if caused by negligence shall be limited to the total Prices paid and/or payable by the University under the Contract.

24.9 Subject to Condition 24.7, where applicable, the Provider's maximum aggregate liability arising out of or in connection with the Contract, whether in contract, tort, misrepresentation, restitution, under statute or otherwise, including any liability arising from a breach of, or a failure to perform or defect or delay in performance of, its obligations under the Contract, in each case howsoever caused including if caused by negligence will be limited as expressly set out in the Contract.

25. **CONFIDENTIALITY AND FREEDOM OF INFORMATION ACT 2000**

25.1 Except to the extent required by law the Provider shall not disclose to another party the existence of the Contract or the Price or any other terms and conditions of the Contract.

25.2 The Provider will, subject to Conditions 25.3 and 25.4:

- (a) keep all Confidential Information secret, safe and secure;
- (b) not disclose Confidential Information without the other's prior written consent to any other person except those of its employees who have a need to know the Confidential Information so that it can perform its obligations and exercise its rights under the Contract;
- (c) not use Confidential Information except for the purposes of performing its obligations under the Contract (and in particular not use Confidential Information to obtain a commercial, trading or any other advantage); and
- (d) to keep separate from all other information all Confidential Information in its possession or control.

- 25.3 The provisions of Condition 25.2 shall not apply to Confidential Information to the extent that it is or was:
- (a) already in the possession of the other free of any duty of confidentiality on the date of its disclosure;
  - (b) in the public domain other than as a result of a breach of Condition 25.2.
- 25.4 Each party may disclose the other party's Confidential Information:
- (a) pursuant to applicable law or regulation or requirement of a competent authority, or the rules of any recognised exchange on which the securities of a party are or are to be listed; or
  - (b) in connection with proceedings before a court of competent jurisdiction or under any court order or for the purpose of receiving legal advice,
- but only to the extent necessary for to achieve the relevant purpose(s) set out in this Condition 25.4.
- 25.5 Each party acknowledges that Confidential Information is valuable and that damages might not be an adequate remedy for any breach of Condition 25.2 and accordingly the University will be entitled, without proof of special damage, to an injunction and other equitable relief for any actual or threatened breach of Condition 25.2.
- 25.6 Notwithstanding the provisions of Conditions 25.1 to 25.5 the University is committed to meeting its responsibilities under the FOIA and EIR and the Provider acknowledges that the University is subject to the requirements of the FOIA and EIR and shall assist and cooperate with the University (at no expense to the University) to enable the University to comply with the University's responsibilities under the FOIA and EIR.
- 25.7 Accordingly, any and/or all information submitted to the University may need to be disclosed and/or published in accordance with the FOIA and/or EIR. In the event that any of the information held in connection with this Contract would give rise to an actionable breach of confidence and/or would prejudice the Provider's and/or Provider's commercial interests and/or constitute trade secrets (**'Commercially Sensitive Information'**), the Provider must promptly following such information coming into existence or being shared between the parties (whichever the earlier) identify such information and provide an explanation (in broad terms) what harm might result from the disclosure and/or publication of such information.
- 25.8 The Provider shall procure that its employees, and agents shall:
- (a) transfer any Request for Information received by the Provider to the University as soon as practicable after receipt and in any event within 2 Working Days of receiving a Request for Information;
  - (b) provide the University with a copy of all Information in its possession or power in the form that the University requires as

soon as is practicable and in any event within 5 Working Days (or such other period as the University acting reasonably may specify) of the University requesting that Information;

- (c) 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 the FOIA; and
- (d) not respond directly to a Request For Information unless authorised in writing to do so by the University.

25.9 The University shall be responsible for determining at its absolute discretion whether the Commercially Sensitive Information and/or any other information is:

- (a) exempt from disclosure in accordance with the provisions of the FOIA; and/or
- (b) to be disclosed in response to a Request for Information and in no circumstances shall the Provider respond directly to a Request for Information unless expressly authorised by the University.

25.10 The Provider acknowledges that the University may, acting in accordance with the Code of Practice in the Discharge of Functions of Public Authorities under Part I of the Freedom of Information Act 2000 (the 'FOIA Code') be obliged under the FOIA to disclose information:

- (a) without consulting the Provider; or
- (b) following consultation with the Provider and having taken its views into account,

provided always that where Condition 25.10(a) applies, the University shall in accordance with the recommendations of the FOIA Code, draw this to the attention of the Provider prior to any disclosure.

25.11 The Provider shall ensure that all Information produced in the course of or relating to the Contract is retained by the Provider in case required for disclosure under the FOIA and/or EIR.

## **26. EQUAL OPPORTUNITIES AND THE EQUALITY ACT 2010**

26.1 The University is committed to a comprehensive policy of equal opportunities and to meeting its responsibilities under the Equality Act 2010 (the 'EA') and the Code of Practice on Racial Equality in Employment 2005.

26.2 The Provider shall in performing the Contract comply with the provisions of section 149 of the EA as if the Provider were a body within the meaning of Schedule 19 of the EA.

26.3 The Provider shall comply with the provisions of section 41 of the EA in all dealings with sub-contractors.

- 26.4 The Provider shall comply with all of its legal obligations regarding the prevention of discrimination, victimisation or harassment because of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, and sexual orientation, and the promotion of equality.
- 26.5 The Provider shall, when required, answer queries raised by the University on matters referred to in this Condition 26 and breach of statutory obligations will entitle the University to immediately terminate the Contract.
- 26.6 The Provider shall comply with all of the University's equal opportunities and equality policies. Such policies are available on request.

27. **ASSIGNMENT AND SUBCONTRACTING**

- 27.1 The Provider will not be entitled to assign, transfer, charge, hold on trust for any person or deal in any other manner with any of its rights under the Contract. The Provider shall not sub-contract any of its obligations under any part of the Contract (including to Relevant Sub-Contractors) without the written consent of the University. The Provider shall be responsible for all the acts and omissions of its sub-contractors.
- 27.2 Subject to Condition 27.1, the Provider shall provide to the University details of the name contact details and legal representatives of its permitted Relevant Sub-Contractors by no later than Contract Start Date.
- 27.3 During the period during which the Contract remains in force, the Provider shall notify the University in writing within five calendar days of:
- (a) any changes to the information required to be notified to the University in accordance with Condition 27.2 above; and/or
  - (b) the name contact details and legal representatives of any Relevant Sub-Contractors appointed since the Contract Start Date.
- 27.4 Where the Provider is required to notify the University in accordance with Conditions (a) and (b) it must obtain the written consent of the University to the appointment or continued use of the Relevant Sub-Contractor(s).
- 27.5 In considering whether to grant written consent in accordance with Condition 27.4, the Provider shall provide the University with a Single Procurement Document for the Relevant Sub-Contractor. The University may withhold its consent to the appointment or continued use of any Relevant Sub-Contractor where the Single Procurement Document provided to it in accordance with this Condition 27.5 does not meet any of the selection criteria that the Provider is required to meet as part of any tender which relates to the Contract.
- 27.6 Where the University withholds its consent in accordance with Condition 27.5 the Provider shall replace the Relevant Sub-Contractor and shall propose a new sub-contractor by following the process detailed in Conditions 27.3 to 27.5 above.

27.7 Where the University has consented to the Provider appointing a sub-contractor, the Contract will, promptly following the relevant subcontract(s) coming into force, provide copies of each subcontract and related orders to the University.

27.8 The University will be entitled to assign, transfer, charge, hold on trust for any person and deal in any other manner with any of its rights under the Contract.

28. **TERMINATION**

28.1 The University may terminate the Contract immediately at any time without any liability to the Provider and reserving all rights and remedies available to the University by giving notice to the Provider at any time if:

- (a) the Provider is in material breach of any of its obligations under the Contract and that breach is not capable of remedy; or
- (b) the Provider is in material breach of any of its obligations under the Contract and that breach can be remedied but the Provider has failed to do so within 30 days of being given notice of such breach; or
- (c) the Provider commits more than one breach of any of its obligations under the Contract and the cumulative effect of such breaches is such that the University reasonably believes that the Provider will deliver a sub-standard performance during a period of one month or longer immediately after such breach; or
- (d) if the Provider, suffers an Insolvency Event; or
- (e) the University reasonably believes that any of the above events is about to occur in relation to the Provider and notifies the Provider accordingly.

28.2 Notwithstanding the provisions of Condition 28.4 below, the University may terminate the Contract by giving not less than three (3) months' written notice to the Provider in the event that the University considers any of the following circumstances have arisen:

- (a) where there is a Substantial Modification; or
- (b) where any of the circumstances detailed in the Mandatory Exclusions or Discretionary Exclusions apply to the Provider at the time that a decision to award a contract to the Provider is made in respect of any tender to which the Contract relates.

28.3 The Provider shall notify the University in writing within 10 calendar days of becoming aware of any of the circumstances listed in Conditions 28.2(a) to (b) above applying.

28.4 Subject to Condition 24.7, no termination of the Provider's and/or Provider's engagement under this Agreement in accordance with Condition 28.2 shall render the University liable to the Provider for any claim for loss of profit, loss of fees or other Losses.

- 28.5 Termination of the Contract howsoever effected does not affect:
- (a) the rights or liabilities of the parties under this Condition 28 or which have accrued on or before termination; and
  - (b) the continuance in force of Conditions 1, 10, 11, 12.6, 12.8-12.10, 13, 14, 15, 16, 18, 20, 21, 22.1,24.7, 25, 28.4, 29.5, 30.3, 31, 32, 34, 35, 36, 37, 38 and Conditions 2.3, 3, 4, 10, 11, 12 of the Minor Works Annex which survive termination of the Contract. which survive termination of the Contract.

29. **BREAK**

- 29.1 Subject to Conditions 29.2 to 29.5 and without prejudice to the rights of the parties accrued prior to the date of termination, the University may, in addition to its other rights and remedies under the Contract, terminate the Contract at any time by giving not less than one month's written notice to that effect to the Provider.
- 29.2 In the event of such notice being given in accordance with Condition 29.1, the University may at any time before the expiration of the notice direct the Provider:
- (a) where work in relation to all or any part of the Services has not been commenced, to refrain from commencing work; and
  - (b) to complete in accordance with the Contract all or any of the Services, or any part or component thereof.
- 29.3 Where the Contract is due to terminate under Condition 29.1 and the University has directed the Provider to complete Services in accordance with Condition 29.2(b):
- (a) the Contract will terminate in part in respect of the Services, other than those that the University has directed should be completed, on the expiry of the notice issued in accordance with Condition 29.1; and
  - (b) the Contract will terminate in respect of the Services that the University has directed should be completed, on the later of (i) the expiry of the notice issued in accordance with Condition 29.1 and (ii) the date on which all such Services have been completed.
- 29.4 Where the Contract terminates in part under Condition 29.1 without all Services being successfully performed, the Price shall be reduced by a fair and equitable amount having regard to the proportion of the Services performed in accordance with the Contract prior to such termination, and where the revised Price:
- (a) exceeds the aggregate amount paid to the Provider on the date of termination, the University shall make a balancing payment to the Provider of any shortfall; or

- (b) is less than the aggregate amount then paid to the Provider, the Provider shall refund any payments made by the University that exceed the Price.
- 29.5 The University shall not in any case be liable to pay under the Contract any sum which, when taken together with any sums paid, or due, or becoming due to the Provider under the Contract shall exceed the total Price.
- 29.6 The University may terminate the Contract in whole or in part immediately by giving written notice to that effect to the Provider at any time before Delivery of the relevant Goods. If the University exercises its right of cancellation under this Condition 29.6 the University's sole liability will be to pay to the Provider fair and reasonable compensation for work-in-progress at the time of cancellation but such compensation will not include loss of profits (whether direct or indirect and whether actual or anticipated) or any indirect or consequential loss.

### 30. **VARIATION AND ENTIRE AGREEMENT**

- 30.1 The University reserves the right to vary the Goods and/or Services ordered by giving written notice of such variation to the Provider (a '**Service Variation Notice**'), should this at any time become necessary. In the event of any variation of the Goods and/or Services, the Prices for the affected Goods and/or Services shall be subject to fair and reasonable adjustment to be agreed in writing between the University and the Provider.
- 30.2 In the event that the parties have failed to agree a reasonable adjustment to the Prices in accordance with Condition 30.1 within a period of 14 days following the Service Variation Notice being issued, the reasonable adjustment will be determined by independent expert who will be selected and appointed in accordance with the following provisions of this Condition 30.2.
  - (a) The independent expert will be a member of the Chartered Institute of Accountants of England and Wales of not less than ten years standing.
  - (b) If within a period of 28 days following the Service Variation Notice being issued, the parties have not selected and then contractually appointed an appropriate expert, then the expert will (on the written request of either party) be selected by the President from time to time of the Institute of Chartered Accountants of England and Wales. If, following his appointment, the expert dies or becomes unwilling or incapable of acting, either party may serve written notice to request the appointment of a new expert. If the parties have not contractually appointed a new expert within a period of 14 days of such notice, the expert will be selected by the President from time to time of the Institute of Chartered Accountants of England and Wales.
  - (c) Each party will co-operate in doing everything that is reasonably necessary to procure the appointment of any expert that has been selected pursuant to this Condition 30.2 (including by acting reasonably in agreeing the terms of engagement of any such expert).

- (d) The expert will make his determination in writing and will give reasons. The expert will act as expert and not as arbitrator. The expert's determination will (save in the event of manifest error) be final and binding.
  - (e) The expert's fees and any costs and expenses incurred in relation to his appointment will be borne by the parties in such proportions as the expert determines and in the absence of such determination by the parties equally.
- 30.3 An amendment to the Contract is ineffective unless it is in writing, expressly purports to amend the Contract and is executed by both parties.
- 30.4 The Contract constitutes the entire agreement between the parties relating to its subject matter and supersedes all prior representations, agreements, negotiations or understandings between the parties in respect of such subject matter and:
- (a) neither party has entered into the Contract in reliance upon, and it will have no remedy in respect of, any misrepresentation, representation or statement (whether made by the other party or any other person and whether made to the first party or any other person) which is not expressly set out in the Contract; and
  - (b) nothing in this Condition 30 will be interpreted or construed as limiting or excluding the liability of any person for fraud or fraudulent misrepresentation.

## 31. **AUDIT**

- 31.1 The Provider will and will procure that its sub-contractors will maintain a complete, detailed, accurate and up to date set of records and books of account pertaining to all activities relating to the performance of the Contract and all transactions entered into for the purposes of the Contract and all payments made and received and all other advantages given and received by the Provider in connection with the Contract (the '**Retained Records**'). The Provider will ensure that those records and books of account are sufficient to enable the University to verify the Provider's and/or Provider's compliance with the Contract.
- 31.2 The Provider will and will procure that its sub-contractors will at any time whilst the Provider or their sub-contractor is required to retain Retained Records pursuant to Condition 31.3, promptly on request from time to time, provide copies of the Retained Records to the University and will permit the Retained Records to be copied to or examined or inspected by the University, and any of its representatives or any representative of any regulatory authority.
- 31.3 The Provider will and will procure that its sub-contractors will retain the Retained Records for the longer of:
- (a) six years from the date on which the Contract expires or is terminated; and
  - (b) the period of time (if any) required by applicable law



except as otherwise notified by the University to the Provider in writing.

- 31.4 The Provider will and will procure that its sub-contractors will, during the term of the Contract and for a period of six years thereafter, permit the University and any persons nominated by it, to have such access on demand to the Provider's premises, personnel, systems, books and records (including the Retained Records) as the University may require in order to fulfil any request by any regulatory authority and as the University may reasonably require in order to:
- (a) undertake verifications of the accuracy of the Price or investigate suspected fraud;
  - (b) undertake verification that the Provider's obligations are being performed in accordance with the Contract;
  - (c) assess and verify the Provider's compliance with all applicable laws; and/or
  - (d) enable the University to:
    - (i) fully comply with all applicable laws (including any accounting, tax and filing obligations);
    - (ii) respond to enquiries raised by any regulatory authority or deal with any investigation by, or order or direction of, any regulatory authority; or
    - (iii) deal fully with enquiries, complaints or claims made by third parties.

31.5 The University will, to the extent the same is within its control, use its reasonable endeavours to procure that each exercise of the University's rights under Condition 31.4 does not unreasonably delay the performance by the Provider of its obligations under the Contract and that, where possible, the exercise of those rights is coordinated so as to minimise disruption.

31.6 The Provider will and will procure that its sub-contractors will provide the University with all reasonable co operation, access and assistance in relation to each audit.

## 32. **CORRUPT GIFTS**

32.1 The Provider shall, and shall procure that their employees, officer, agents, sub-contractors, or anyone else acting on their behalf shall:

- (a) not commit any act or omission which causes or could cause it or the University to breach, or commit an offence under, any laws relating to anti-bribery and/or anti-corruption;
- (b) not, offer or give, or agree to give either directly or indirectly, to any employee or representative of the University, any gift or consideration of any kind as an inducement or reward for doing or refraining from doing or for having done or refrained from doing, any act in relation to the obtaining or execution of this or any other

contract with the University, or for showing or refraining from showing favour or disfavour to any person in relation to the Contract or any such other contract;

- (c) keep accurate and up to date records showing all payments made and received and all other advantages given and received by it in connection with the Contract and the steps it takes to comply with this Condition 32.1, and permit the University to inspect those records as reasonably required;
- (d) promptly notify the University of:
  - (i) any request or demand for any financial or other advantage received by it; and
  - (ii) any financial or other advantage it gives or intends to givewhether directly or indirectly in connection with the Contract; and
- (e) promptly notify the University of any breach of this Condition 32.1.

32.2 The attention of the Provider is drawn to the criminal offences created by the Bribery Act 2010.

32.3 The University may terminate the Contract immediately by giving written notice to that effect to the Provider if the Provider is in breach of Condition 32.1.

33. **ANTI-SLAVERY**

33.1 The Provider will not engage in any Modern Slavery Practice.

33.2 The Provider will:

- (a) comply with the Anti-Slavery Policy and Contractors Health and Safety Requirements at all times and will procure that its officers, employees, agents, sub-contractors and any other persons who perform services for or on behalf of it in connection with this Contract will comply with the same at all times;
- (b) conduct proper and adequate checks on any agency or person used by the Provider to provide labour, employees, contractor or other persons to undertake tasks for the Provider (in each case whether on a permanent or temporary basis) to ensure that any such agency or person does not engage and has not in the past engaged in any Modern Slavery Practice;
- (c) provide the University with such assistance and information as it may require from time to time to enable the University to:
  - (i) perform any activity required by any government, regulatory entity or agency in any relevant jurisdiction for the purpose of compliance with any

applicable Anti-Slavery Laws or as required by the University;

- (ii) prepare its slavery and human trafficking statement as required by section 54 Modern Slavery Act 2015 and to include the matters referred to in section 54(5) of that Act;
  - (iii) identify any non-compliance with the Anti-Slavery Policy or the University of Newcastle upon Tyne Code Of Safety Practice For Contractors Working For Academic Departments or the University of Newcastle upon Tyne Code Of Safety Practice For Suppliers Working For Academic Departments; and
  - (iv) conduct due diligence and to measure the effectiveness of the steps the University is taking or wishes to take to ensure that Modern Slavery Practices are not taking place in its business or supply chains;
- (d) permit the University, and any person nominated by it for this purpose, to have such access on demand to the Provider's premises, personnel, systems, books and records as the University may require to verify the Provider's compliance with this Condition 33.

33.3 The Provider will immediately give written notice to the University upon the occurrence of a breach or suspected breach of any of its obligations referred to in this Condition 33. The notice will set out full details of the breach or suspected breach.

33.4 Any breach of this Condition 33 by the Provider will be a material breach of this Contract, irrespective of whether any financial loss or reputational damage arises and irrespective of the level of any financial loss or deprivation of benefit arising as a consequence of the breach.

33.5 The University will be entitled, by giving written notice to that effect to the Provider, to require the Provider to:

- (a) remove from the performance of this Contract any of the Provider's officers, employees, agents or sub-contractors whom the University believes to be engaging in any Modern Slavery Practice; or
- (b) take such action as the University requires to ensure that the Provider fully complies with any Anti-Slavery Law, the Anti-Slavery Policy, the University of Newcastle upon Tyne Code Of Safety Practice For Providers Working For Academic Departments and the University of Newcastle upon Tyne Code Of Safety Practice For Providers Working For Academic Departments.

#### 34. **WAIVER**

A delay in exercising or failure to exercise a right or remedy under or in connection with the Contract will not constitute a waiver of, or prevent or restrict future exercise of, that or any other right or remedy, nor will the single or partial exercise of a right or remedy prevent or restrict the further exercise of that or any other right or remedy. A waiver of any right, remedy, breach or default will only be valid if it is in writing and signed by the party giving it and only in the circumstances and for the purpose for which it was given and will not constitute a waiver of any other right, remedy, breach or default.

**35. NOTICE**

All notices and communications required to be sent by either party under the Contract shall be made in writing and sent by first class mail and if sent to the Provider shall be sent to its registered or head office and if sent to the University shall be sent to Head of Procurement, University of Newcastle Upon Tyne, King's Gate, Newcastle Upon Tyne, NE1 7RU and shall be deemed to have reached the party to whom it is addressed on the second Working Day following the date of posting.

**36. ENFORCEABILITY**

If any term of the Contract is held by any competent authority to be illegal, unenforceable or invalid such term will be deemed to be severed from the Contract and this will not affect the remainder of the Contract which will continue in full force and effect.

**37. THIRD PARTY RIGHTS**

The Contract does not create, confer or purport to confer any benefit or right enforceable by any person not a party to it for the purposes of the Contract (Rights of Third Parties) Act 1999.

**38. INDEPENDENT CONTRACTOR**

Each party agrees that it is an independent contractor and is entering into the Contract as principal and not as agent for or for the benefit of any other person.

**39. APPOINTMENT OF A CHARGES EXPERT**

39.1 The independent expert will be a member of the Chartered Institute of Accountants of England and Wales of not less than ten years standing.

39.2 If within a period of 28 days following the Service Variation Notice being issued, the parties have not selected and then contractually appointed an appropriate expert, then the expert will (on the written request of either party) be selected by the President from time to time of the Institute of Chartered Accountants of England and Wales. If, following his appointment, the expert dies or becomes unwilling or incapable of acting, either party may serve written notice to request the appointment of a new expert. If the parties have not contractually appointed a new expert within a period of 14 days of such notice, the expert will be selected by the President from time to time of the Institute of Chartered Accountants of England and Wales.

- 39.3 Each party will co-operate in doing everything that is reasonably necessary to procure the appointment of any expert that has been selected pursuant to this Condition 39 (including by acting reasonably in agreeing the terms of engagement of any such expert).
- 39.4 The expert will make his determination in writing and will give reasons. The expert will act as expert and not as arbitrator. The expert's determination will (save in the event of manifest error) be final and binding.
- 39.5 The expert's fees and any costs and expenses incurred in relation to his appointment will be borne by the parties in such proportions as the expert determines and in the absence of such determination by the parties equally.

#### 40. **ESCALATION PROCEDURE**

- 40.1 Subject to Condition 40.5, neither party may commence proceedings in relation to a dispute that arises out of or in connection with the Contract (including (without limitation) in relation to any non-contractual obligations) (a '**Dispute**') unless that party has:
- (a) served a written notice (a '**Referral Notice**') on the other party notifying it of the relevant Dispute: or
  - (b) already received a Referral Notice from the other party in relation to the same Dispute.
- 40.2 Following service of a Referral Notice in relation to a Dispute, each party will respectively procure that such Dispute will be referred for resolution to any director for the time being on behalf of the Provider and any person of Head of Procurement level (or above) for the time being on behalf of the University. Those representatives will meet at the earliest convenient time and in any event within seven days of the date of service of the relevant Referral Notice and will attempt to resolve the Dispute.
- 40.3 If a Dispute has not been resolved within seven days of the date of service of the relevant Referral Notice each party will respectively procure that such Dispute be referred for resolution to the Chairman, Chief Executive or Finance Director for the time being on behalf of the Provider and the Finance Director for the time being on behalf of the University. Those representatives will meet at the earliest convenient time and in any event within 14 days of the date of service of the relevant Referral Notice and will attempt to resolve the Dispute.
- 40.4 If a Dispute is not resolved within 14 days of service of the relevant Referral Notice either party may commence proceedings in accordance with Condition 41 or, if both parties agree in writing to do so, the parties will attempt to settle the Dispute by mediation in accordance with the CEDR Model Mediation Procedure. Either party may withdraw from mediation at any time.
- 40.5 Nothing in this Condition 40 will prevent or delay either party from:
- (a) seeking orders for specific performance, interim or final injunctive relief;

- (b) exercising any rights it has to terminate the Contract; or
- (c) commencing any proceedings where this is necessary to avoid any loss of a claim due to the rules on limitation of actions.

41. **GOVERNING LAW AND LANGUAGE**

- 41.1 The language of the Contract shall be English.
- 41.2 The Contract and any non-contractual obligations arising out of or in connection with it will be governed by the law of England and Wales.
- 41.3 The University's rights and remedies set out in the Contract are in addition to and not exclusive of any rights and remedies provided by law.
- 41.4 Subject to Condition 41.5, the courts of England and Wales have exclusive jurisdiction to determine any dispute arising out of or in connection with the Contract (including in relation to any non-contractual obligations).
- 41.5 Either party may seek specific performance, interim or final injunctive relief or any other relief of similar nature or effect in any court of competent jurisdiction.

## **MINOR WORKS ANNEX**

### **1. DEFINITIONS AND INTERPRETATION**

In this Annex:

**'CDM Regulations'** means the Construction (Design and Management) Regulations 2015.

**'Loaned Plant'** means plant or equipment owned by the University and used by or on behalf of the Provider in connection with the Minor Works as permitted by the University.

**'Site'** shall mean the location where the Works are to be performed.

### **2. MINOR WORKS IN CONTEXT**

- 2.1 The Price includes all materials, labour, plant, equipment, transport, handling of materials and plant, tools and appliances and all other things necessary for the Minor Works.
- 2.2 The Provider shall comply with its obligations under the CDM Regulations, including all requirements in relation to the provision and maintenance of a health and safety file.
- 2.3 The Provider shall supply all information to the University that the University reasonably requires from time to time to comply with the University's obligations under the CDM Regulations.

### **3. INSPECTION OF SITE**

- 3.1 The Provider shall ensure that it has made all appropriate and necessary enquiries (including visiting the Site) to ensure that it has sufficient information to enable it to perform the Minor Works and any related Services in accordance with the Contract.

- 3.2 The Provider will not:

- (a) be entitled to any additional payment,
- (b) be excused from any obligation or liability under the Contract; and/or
- (c) make any claim,

as a consequence of any misinterpretation or misunderstanding by the Provider of any matter or fact relating to the University's requirements, the nature and extent of the Minor Works and/or the conditions or circumstances existing at the Site.

- 3.3 The University shall, on request of the Provider, grant such access to the Site as may be reasonable for the purpose of enabling the Provider to make enquiries in accordance with Paragraph 3.1.

4. **MANNER OF CARRYING OUT THE MINOR WORKS**

- 4.1 The Provider shall not make any delivery nor commence work on the Site without obtaining the University's prior written consent.

- 4.2 Access to and possession of the Site shall not be exclusive to the Provider. The University will grant the Provider reasonable access to enable the Provider to carry out the Minor Works (which may require the Provider to work concurrently with the University's personnel and other Providers).

- 4.3 The University shall have the power at any time during the progress of the Minor Works to order in writing:

- (a) the removal from the Site of any materials which in the reasonable opinion of the University are not in accordance with the Contract;
- (b) the substitution of proper and suitable materials for any materials which in the reasonable opinion of the University are not in accordance with the Contract;
- (c) the removal and proper re-performance (notwithstanding any previous inspection, testing and/or payment relating to the Minor Works or related Services) of any Minor Works which, in respect of material or workmanship, is not in the reasonable opinion of the University in accordance with the Contract.

- 4.4 No work shall be laid in excavation and no work shall be covered or hidden until approved by the University in writing.

5. **COMPLETION DATE**

The date of completion of the Minor Works or, in the case of a service being performed at regular intervals, the period of the Contract, shall be that specified in the Order unless otherwise agreed in writing between the University and the Provider. Time shall be of the essence for performance of the Minor Works.

6. **PROVIDER'S SUPERVISOR**

The Provider shall at all times provide a suitably qualified, experienced and competent supervisor on the Site. Any instructions given by the University to the Provider's supervisor (whether written or oral) shall be deemed to have been given to the Provider.

7. **VARIATION OF THE MINOR WORKS**

- 7.1 The Provider shall not vary any of the Minor Works, except as directed in writing by the University.

- 7.2 The University reserves the right at any time by notice in writing to modify the quality or quantity of the Minor Works and any alteration to the Price



arising by reason of such modification shall be agreed in writing between the parties acting reasonably. If the parties have not agreed the modification to the Price within 14 days of the relevant Service Variation Notice being issued by the University then (unless otherwise agreed in writing) either party may refer the issue to an independent expert in accordance with Condition 39 who will determine what is a reasonable modification to the Price in the relevant circumstances that should reasonably and properly flow from the proposed modification(s) to the Minor Works.

8. **SITE WORKING**

8.1 The hours of working, including overtime, for the Provider's and its sub-contractors' personnel shall be agreed in writing with the University in advance.

8.2 Before performing any Minor Works, the Provider shall obtain for itself and its sub-contractors (if any) all written approvals from the University as required by the Condition 8.1 above. The Provider and its sub-contractors shall not introduce or commence to negotiate any changes in these arrangements without the prior written consent of the University. The Provider will promptly provide written notice to the University of the implementation of any national awards affecting these arrangements.

9. **STATUTORY DUTIES AND SAFETY**

9.1 The Provider shall comply with, and shall ensure that its sub-contractors and each of their personnel comply with, the Works Rules (available on request) applicable to the Site where the Minor Works are carried out. The University shall have the right to require the Provider immediately on receipt of notice in writing to remove any of its employees on the Site who has:

(a) failed to comply with the University of Newcastle upon Tyne Code Of Safety Practice For Contractors Working For Academic Departments and any other rules, policies and/or instructions notified to the Provider by the University; or

(b) in the opinion of the University misconducted himself, or been negligent or incompetent.

9.2 The Provider shall be responsible for the suitability and safety of the equipment used in connection with the Minor Works and no equipment shall be used which may be unsuitable, unsafe or liable to cause damage to any person and/or property. Without lessening the absolute responsibility of the Provider in regard to such equipment, the University shall have the right to inspect such equipment and if in the University's opinion it is unsuitable it shall not be used on the Minor Works, no extra time or payment being allowed to the Provider for replacement.

10. **SECRECY**

No photographs of any of the University's equipment, installations or property shall be taken without the University's prior consent in writing. Without prejudice to Condition **Error! Reference source not found.**, the Provider shall keep secret and shall not divulge to any third party (except sub-contractors accepting a like obligation of secrecy, and then only to the

extent necessary for the performance of the sub-contract) all information given by the University in connection with the Contract or which becomes known to the Provider through its performance of such work under the Contract.

11. **CLEARANCE OF SITE ON COMPLETION**

On completion of the Minor Works the Provider shall remove at its expense all plant, equipment and unused materials that relate to the Minor Works (other than any plant and equipment owned by the University and/or materials that the University has directed shall remain at the Site) and shall clear away from the Site all rubbish arising out of the Minor Works.

12. **LOAN OF UNIVERSITY'S PLANT AND EQUIPMENT**

12.1 The inclusion of this Paragraph 12 in the Contract does not imply that the University assumes any obligations to provide Loaned Plant.

12.2 Where Loaned Plant is operated by a servant of the University:

(a) such operator shall not become the servant of the Provider but shall carry out with the Loaned Plant such work as he may be directed to do by the Provider.

(b) the Provider shall be liable for any damage to the Loaned Plant caused by misdirection or misuse of it due to negligence on the part of the Provider, or its servants, agents or sub-contractors.

(c) the University shall be liable for any damage to the Loaned Plant caused by a defect in or faulty operation of the plant.

12.3 Where Loaned Plant is operated by a servant of the Provider, the Provider shall be liable for all damage to the Loaned Plant unless the Provider can show that such damage existed prior to the loan or was caused by a defect in the plant which existed at the commencement of the loan and the Provider shall be liable for any loss (whether direct, indirect and consequential including loss by theft) of the said plant.

12.4 The University shall have the right to withdraw Loaned Plant at any time and shall be under no liability whatever (howsoever caused including if caused by negligence) in connection with the University failing to lend plant at any time.

12.5 The Provider shall ensure that any Loaned Plant is suitable for the purpose intended prior to its use in connection with the Minor Works and/or any related Services.